

# CRIMES, PROCEDURE AND EVIDENCE RULES 2003

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**1 Name**

These Rules are the Crimes, Procedure and Evidence Rules 2003.

**PART 1 OFFENCES**

**2 Interpretation**

(1) In these Rules —

“Failatuhi” means the Court Clerk

“justified” means not guilty of an offence;

“liable” means liable on conviction by a court in criminal proceedings;

“public officer” means a member of the Tokelau Public Service, a Commissioner, a Faipule, a Puluenuku or a Failautuhi.

- (2) If a person does an act that is justified, that act shall not give rise to any civil liability.

### ***Offences against the Person***

#### **3 Homicide**

- (1) Homicide is the killing of a human being by another person, directly or indirectly, by any means, and includes the case where a human being dies in consequence of injuries received before, during, or after birth.
- (2) Culpable homicide is the killing of a person —
- (i) by an unlawful act; or
  - (ii) by an omission without lawful excuse to perform or observe a legal duty; or
  - (iii) by both combined; or
  - (iv) by causing that person by threats or fear of violence, or by deception, to do an act which causes his or her death; or
  - (v) by intentionally frightening that person, if that person is under the age of 16 years or is sick or infirm.

#### **4 Murder**

- (1) Culpable homicide is murder where —
- (i) the offender means to cause the death of the person killed;
  - (ii) the offender means to cause to the person killed any bodily injury that is known to the offender to be likely to cause death, and is reckless whether death ensues or not;
  - (iii) the offender means to cause death, or, being reckless whether death ensues or not, means to cause bodily injury that is known to the offender to be likely to cause death to one person, and by accident or mistake kills another person, though the offender does not mean to hurt the person killed;

(iv) the offender for an unlawful object does an act that the offender knows to be likely to cause death, and that act kills any person though the offender may have desired that the object should be effected without hurting anyone.

(2) A person who commits murder commits an offence.

## **5 Causing death**

A person who by any act or omission causes the death of another person kills that person, although the effect of the bodily injury caused to that person was merely to hasten his death while labouring under some disorder or disease of the mind.

## **6 Manslaughter**

(1) Culpable homicide that is not murder is manslaughter.

(2) Any person who commits manslaughter commits an offence.

## **7 Provocation**

(1) Culpable homicide that would otherwise be murder may be reduced to manslaughter if the person who caused the death did so under provocation.

(2) This rule applies where —

(i) the provocation was given by the person killed;

(ii) the person charged, under provocation given by one person, killed another person.

(3) Anything said or done may be provocation if —

(i) in the circumstances of the case it was sufficient to deprive a person having the power of self-control of an ordinary person, but otherwise having the characteristics of the person charged, of the power of self-control; and

(ii) it did in fact deprive the person charged of the power of self-control and induced that person to commit homicide.

(4) No one gives provocation to another by lawfully exercising a power conferred by law, or by doing anything which the person charged incited him or her to do in order to provide the person charged with an excuse for killing or doing bodily harm to any person.

- (5) An illegal arrest shall not necessarily reduce the offence from murder to manslaughter, but if the illegality was known to the person charged it may be evidence of provocation.
- (6) The fact that by virtue of this rule one party to a homicide has not been or is not liable to be convicted of murder does not affect the question whether the homicide amounted to murder in the case of any other party to it.

**8 Concealment of birth**

Any person who disposes of the dead body of a child with intent to conceal the fact of its birth, whether the child died before, during, or after birth, commits an offence.

**9 Counselling suicide**

Any person who counsels or procures a person to commit suicide, or aids or abets a person in the commission of suicide commits an offence.

**10 Dangerous omissions and things**

- (1) A person who undertakes to do an act the omission of which is or may be dangerous to life is under a legal duty to do that act.
- (2) A person who —
  - (i) has the charge or control of any animate or inanimate thing; or
  - (ii) erects, makes, or maintains anything, which in the absence of precaution or care may endanger human life,commits an offence if that person fails to take reasonable precautions against and to use reasonable care to avoid the danger.

**11 Necessaries of life**

- (1) A person who has charge of another unable, by reason of detention, age, sickness, or other cause, to withdraw from such charge, and unable to provide himself or herself with the necessaries of life, is under a legal duty to supply that person with the necessaries of life.
- (2) A person who, without lawful excuse, neglects the duty specified in paragraph (1) so that the life of the person is endangered or the health of the person is seriously impaired by the neglect, commits an offence.

**12 Cruelty to a child**

A person who has the care or control of a child under the age of 16 years, and who intentionally ill-treats or intentionally neglects the child, or intentionally permits the child to be ill-treated or neglected, in a manner likely to cause the child unnecessary suffering, actual bodily harm, injury to health, or mental disorder, or to result in any other unnecessary physical or mental disability to the child, commits an offence.

**13 Abduction and detention of person or property**

- (1) A person who, without lawful excuse, takes away or detains another without that other's consent, or with consent obtained by fraud or duress, commits an offence.
- (2) A person under the age of 16 years shall for the purpose of this rule be deemed to be incapable of consenting to being taken away or detained.
- (3) It is not defence to a charge under this rule that the person charged believed that the person taken away or detained was not under the age of 16 years.
- (4) Where a person under the age of 16 years has been taken away from Tokelau by a parent or guardian, the parenthood or guardianship is not a lawful excuse under paragraph (1) where —
  - (i) the parents or guardians disagree about taking the child from Tokelau; or
  - (ii) the child is taken from Tokelau in circumstances where the refusal of a parent or guardian to consent to the taking away could reasonably be predicted.
- (5) A person who detains any person or property with intent —
  - (i) to demand from that person or any other, payment by way of ransom for the return or release of that person or property; or
  - (ii) to gain an advantage personally or for any other person from that detention,commits an offence.

**14 Bodily harm**

- (1) A person who intentionally and without lawful excuse causes bodily harm to another, commits an offence.

- (2) A person who causes bodily harm to another under such circumstances that, if death had been caused, the offence of manslaughter would have been committed, commits an offence.

**15 Assault**

- (1) A person who without lawful excuse assaults another commits an offence.
- (2) In these Rules, "assault" means —
  - (i) the act of intentionally applying force to the person of another directly or indirectly; or
  - (ii) threatening by anything said or done to apply force to the person of another if the person making the threat has or causes the other to believe on reasonable grounds that he or she has present ability to carry out the threat.
- (3) A person is justified in using force by way of correction of a child under their care or of a person voluntarily in their tutelage, if the force used is reasonable in the circumstances.
- (4) A person is justified in using such force as may be reasonably necessary in order to prevent —
  - (i) suicide;
  - (ii) the commission of an offence which would be likely to cause immediate and serious injury to any person or damage to property; or
  - (iii) an act being done which that person believes, on reasonable grounds, would, if committed, amount to an offence likely to cause immediate and serious injury to any person or immediate and serious damage to property.
- (5) Such force as may be reasonably necessary for the purposes of paragraph (4) means the use of no more force than is reasonably proportionate to the injury to the person or damage to property apprehended.

**16 Preventing breach of the peace**

- (1) A person who witnesses a breach of the peace or who has reasonable grounds to believe they have witnessed a breach of the peace is justified in intervening to prevent its continuance or renewal, and may detain any

person committing it, in order to give the offender into the custody of a constable.

- (2) A person who intervenes under paragraph (1) shall use no more force than —
  - (i) is reasonably necessary for preventing the continuance or renewal of the breach of the peace; and
  - (ii) is reasonably proportionate to the danger to be apprehended from the continuance or renewal of the breach of the peace.
- (3) A constable is justified in receiving into custody any person as having committed a breach of the peace, by one who has witnessed the breach of the peace or whom the constable believes on reasonable grounds to have witnessed the breach of the peace.

**17 Failure to assist**

- (1) A person who by immediate action and without danger to anyone, could have prevented an offence against the person, but intentionally fails to do so, commits an offence.
- (2) A person who intentionally fails to render assistance to or obtain assistance for a person in danger when to do so was possible without danger to anyone commits an offence.

***Offences against Sexual Morality***

**18 Incest**

- (1) Incest means sexual intercourse between —
  - (i) parent and child;
  - (ii) grandparent and grandchild;
  - (iii) brother and sister;
  - (iv) uncle and niece;
  - (v) aunt and nephew;
  - (vi) persons within the prohibited degrees of consanguinity as prescribed in the Marriage Rules 1986,where the person charged knows of the relationship between the parties.
- (2) A person who commits incest commits an offence.



**19 Unlawful carnal knowledge**

- (1) A person who has carnal knowledge of another —
- (i) (I) if the victim is at least 16 years of age, without the consent of the victim;
  - (ii) (II) if the victim is under the age of 16 years, whether the victim consented or not;
  - (ii) with consent extorted by threats or of bodily harm;
  - (iii) with consent obtained by personating the spouse of that other; or
  - (iv) with consent obtained by false representations as to the nature of the act,
- commits an offence.
- (2) The belief of the offender as to the age of victim is irrelevant to a conviction for unlawful carnal knowledge.

**20 Sexual intercourse with mental defective**

A person who has sexual intercourse with a person of unsound mind knowing or having good reason for knowing that person is of unsound mind, commits an offence.

**21 Indecent assault**

- (1) A person who indecently assaults another commits an offence.
- (2) Where the victim is a mental defective or under the age of 16 years it is no defence to a charge under this rule that the person consented to the offence, or that the person charged believed that the person assaulted was sane or not under the age of 16 years as the case may be.

**22 Adultery and fornication**

Any one who has sexual intercourse with another to whom he or she is not married commits an offence.

**23 Unmarried Persons living together**

Where a man and a woman live together as man and wife but are not married to each other they each commit an offence.

**24 Miscarriage**

- (1) A person who without lawful excuse does anything with intent to procure the miscarriage of a woman or girl, whether pregnant or not, commits an offence.
- (2) A woman who, whether pregnant or not, unlawfully administers to herself or permits to be administered to her a poison or a drug or other noxious thing, or unlawfully uses on herself or permits to be used on her any instrument or other means, with intent to procure miscarriage commits an offence.
- (3) A person who supplies or procures anything, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of a woman or girl commits an offence.

**25 Prostitution**

Any person who loiters and importunes any person in any public place for the purpose of prostitution commits an offence.

**26 Bigamy**

- (1) A person who commits bigamy commits an offence.
- (2) Bigamy is —
  - (i) the act of a person who, knowing he or she is married, goes through a valid form of marriage with another person; or
  - (ii) the act of a person who goes through a valid form of marriage with a person whom he or she knows to be married,if the parties go through the form of marriage, or if the person charged is habitually resident, in Tokelau.
- (3) The fact that the parties would, if unmarried, have been incompetent to contract marriage is not a defence to a prosecution for bigamy.
- (4) Every form of marriage shall for the purposes of this rule be deemed valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form.

***Property Offences***

**27 Theft**

- (1) Theft is the act of dishonestly taking, or converting to the use of any person, or misappropriating or disposing of, or dealing in any other manner, with anything capable of being stolen, with intent —
  - (i) to deprive the owner, or a person having a special property or interest in it, permanently of the thing; or
  - (ii) to part with it under a condition as to its return which the person parting with it may be unable to perform; or
  - (iii) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of the taking or conversion.
- (2) Anything which is the property of any person, and is movable, is capable of being stolen.
- (3) Anything which is the property of any person and is capable of being made movable is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.
- (4) Any person who fraudulently abstracts or uses electricity commits theft.
- (5) A person can commit theft notwithstanding —
  - (i) that at the time of the theft that person was in lawful possession of the property stolen; or
  - (ii) that person had a lawful interest in the property stolen; or
  - (iii) that person was a trustee of the property stolen;
  - (iv) that the property stolen was vested in that person as an executor or administrator.
- (6) A person commits theft who holds, receives, or obtains anything capable of being stolen subject to an obligation to deal with it in a certain manner, and who fraudulently or dishonestly deals with it in any other manner or fails to deal with it in accordance with that obligation.
- (7) A person who by means of fraud or false pretence dishonestly obtains for himself or herself or for any other person, whether directly or through the medium of any contract procured by the fraud or false pretence, anything capable of being stolen commits theft of that thing.

(8) A person who destroys, cancels, conceals, or obliterates in whole or in part a document for any fraudulent or dishonest purpose commits theft of the document.

(9) A person who commits theft commits an offence.

**28 Receiving**

A person who receives stolen property knowing it to have been stolen or dishonestly obtained commits an offence.

**29 Conversion**

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.

**30 Breach of trust**

(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.

**31 Fraud**

(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.

**32 Forgery**

(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.

**33 Counterfeit coin**

- (1) A person who makes counterfeit coin, or who has in his or her possession any die or other instrument or material intended to be used in the making of counterfeit coin, commits an offence.
- (2) A person who fraudulently utters a counterfeit coin commits an offence.
- (3) (a) No coin of Tokelau which has been altered is legal tender.  
(b) A coin is altered when it has been impaired, diminished or lightened otherwise, than by fair wear and tear, or it has been defaced by having any name, word, device or number stamped or engraved on it.
- (4) Every person commits an offence who -
  - (a) makes or causes to be made any commemoration coin for Tokelau other than in accordance with legislation authorising that coin, or
  - (b) possesses, sells, or otherwise deals with a commemoration coin for Tokelau which is not made in accordance of legislation authorising that coin.

**34 Intentional fire**

- (1) 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 or by means of explosive,commits an offence.
- (2) Where the act done under paragraph (1) results in the destruction of or damage to anything in which the accused has an interest, the existence of that interest shall not prevent the act being an offence if it is done with intent to defraud or to cause loss to any other person.

**35 Careless fire**

A person who negligently causes a fire commits an offence.

**36 Damage to property**

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

**37 Animal trespass**

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.

**38 Trespass**

- (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,
- belonging to another commits 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.

***Offences against Public Order, Public Morality and Community Services***

**39 Indecent documents and things**

- (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.

**40 False report to police**

- 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.

**41 Accusation of offence**

- 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.

**42 Spreading rumours**

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

**43 Obstruction in a public place**

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.

**44 Fighting in public**

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

**45 Offensive behaviour**

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.

**46 Noise**

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

**47 Throwing stones**

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.

**48 Invasion of privacy**

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

**49 Drugs**

(1) In this rule, "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.

(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.

(3) (i) A person may on the written prescription of a qualified medical practitioner import a drug for the use of him or herself or a member of their family.

- (ii) This rule does not apply to a drug generally or specifically exempted by the Director of Health by public notice.

**50 Intoxicating liquor**

(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.

**51 Tobacco**

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

**52 Drunkenness**

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.

**53 Use of explosives**

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.

**54 Offensive weapons and disabling substances**

(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)(i) if the person accused proves that it was not his or her intention to use the weapon or substance to commit an offence.

**55 Public boats**

- (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.

**56 Use of vehicle and vessel**

- (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.

**57 Endangering vessel**

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.

**58 Visiting vessel**

- (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.

**59 Poison**

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

**60 Polluting water**

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.

**61 Unwholesome provisions**

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.

**62 Insanitary premises**

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.

**63 School attendance**

(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.

**64 Gaming**

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

**65 Witchcraft**

A person who pretends to exercise or use any kind of witchcraft, or undertakes to tell fortunes, commits an offence.

**66 Cruelty to animals**

A person who is intentionally or negligently cruel to an animal, bird, or other creature commits an offence.

**67 Telephones**

(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.

**68 Electricity**

(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.

**69 Sea voyages**

- (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.

***Offences against the State & the Administration of Justice***

**70 Treason**

- (1) A person who —
  - (i) levies war against New Zealand; or

- (ii) assists an enemy at war with New Zealand, or any armed forces against which New Zealand forces are engaged in hostilities, whether or not a state of war exists between New Zealand and any other country; or
  - (iii) incites or assists any person with force to invade New Zealand; or
  - (iv) uses force for the purpose of overthrowing the Government of New Zealand,
- commits an offence.

(2) In this rule, "New Zealand" includes Tokelau.

## **71 Sedition**

- (1) A person who intentionally by word or deed —
- (i) excites disaffection against the Sovereign, or against the Parliament or Government of New Zealand, or against the Government of Tokelau; or
  - (ii) excites such hostility or ill-will between different classes of persons in Tokelau as may be injurious to the public welfare; or
  - (iii) incites, encourages, or procures lawlessness, violence, or disorder in Tokelau; or
  - (iv) procures otherwise than by lawful means the alteration of any matter affecting the laws or Government of Tokelau,
- commits an offence.
- (2) It is a defence to a charge under paragraph (1) if the accused proves an intention in good faith —
- (i) to show that the Sovereign has been misled or mistaken in a measure; or
  - (ii) to point out errors or defects in the Parliament or Government of New Zealand or in the Government of Tokelau, or to incite the inhabitants of Tokelau to attempt to procure by lawful means the alteration of any matter affecting the laws, or Government of Tokelau; or
  - (iii) to point out, with a view to their removal, matters producing or having a tendency to produce hostility or ill-will between different classes of persons in Tokelau.



**72 Official corruption**

- (1) Any public officer commits an offence who corruptly —
  - (i) accepts or agrees to accept; or
  - (ii) obtains,a bribe 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,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.

**73 Abuse of office**

- (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.

**74 Contempt**

- (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.

**75 False evidence**

- (1) A person who, where required or permitted by law to make a statement, declaration or affidavit makes a statement, declaration or affidavit that is known by the person making it to be false, commits an offence.
- (2) A person who, with intent to mislead a court, or an officer of a court in the exercise of his functions, fabricates evidence by any means other than words under paragraph (1), commits an offence.

**76 Perverting justice**

A person who intentionally obstructs, prevents, perverts, or defeats the course of justice commits an offence.

**77 Escape**

A person who escapes from lawful custody commits an offence.

**78 Offences against public officers**

- (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.

**79 Conspiracy**

A person who conspires with any other person to commit an offence commits an offence and is liable on conviction to the same penalty as that to which a person who commits that offence may be sentenced.

**80 Attempts to commit offences**

- (1) A person who intends to commit an offence and does an act to accomplish that object commits the offence intended, whether or not it was otherwise possible in the circumstances either in fact or in law to commit the offence.
- (2) A person who intends to commit an offence is liable on conviction to the same penalty as that to which a person who commits that offence may be sentenced.

**81 Inciting**

- (1) Every person who incites any person, whether ascertained or unascertained, to commit any offence punishable by imprisonment shall be liable to imprisonment for a term not exceeding half the longest term to which a person committing the said offence may be sentenced.
- (2) If the offence to which any person is so incited is actually committed by that person, the person so inciting that person shall be liable, on a charge of inciting, to the same charge as if he or she had committed the offence, or may be charged and convicted as a party to the offence so procured.

**82 Drunkenness not an excuse for committing a crime**

Being under the influence of alcohol is not a defence for a person charged with committing a crime.

**PART 2 GENERAL PROCEDURE**

**83 Commissioner's court**

- (1) All cases in the court of a Commissioner shall take place before the Commissioner and such members of the Taupulega as choose to be present.
- (2) The Commissioner may discuss the case with the members of the Taupulega who are present before giving judgment.

**84 Liability of Commissioner**

- (1) No civil or criminal liability shall be incurred by a Commissioner in respect of an act done in good faith in the performance of the duties of

Commissioner or in the belief on reasonable grounds that the action was done in the performance of the duties of Commissioner.

- (2) In any action brought against a Commissioner in respect of an act done as Commissioner the burden of proving absence of good faith shall lie on the person alleging it.

**85 Court records**

- (1) The Failautuhi shall keep a record book in which the Failautuhi shall register all cases commenced in the Commissioner's court and every order made by the Commissioner.
- (2) The Failautuhi shall make and keep proper alphabetical and other indexes to the contents of the court record book.
- (3) Minutes of all cases heard in the Commissioner's court shall be drawn up, and shall be signed by the Commissioner and kept as a record in the office of the Commissioner.
- (4) The Failautuhi shall take notes of all evidence given in court.

**86 Court documents**

All documents which issue from the Commissioner's court, shall be signed by the Commissioner.

**87 Deciding on the papers**

Every civil case and every criminal appeal in the High Court or in the Court of Appeal shall, unless the court otherwise directs, be decided on the papers.

**88 Challenge of Commissioner**

- (1) A party to a case may, on the grounds of the personal interest of the Commissioner in the case challenge the exercise of jurisdiction by the Commissioner in that case.
- (2) The Commissioner may decline to hear a case on the grounds of personal interest in the case.
- (3) Where a challenge has been made under paragraph (1) the Commissioner shall decide the question of challenge before hearing the case and shall only hear the case if the challenge is declined.

**89 Closing court**

Where, in any case a court thinks that the interests of justice, or of public morality, or of the reputation of any party to an alleged offence, or of the security or defence of Tokelau or New Zealand require it may —

- (i) forbid publication of any report or account of the whole or any part of the evidence, or of the submissions made;
- (ii) forbid the publication of the name of any party or witness, or any name or particulars likely to lead to the identification of the party or witness;
- (iii) exclude from the whole or any part of the case, any person other than the parties, any lawyer engaged in the proceedings, and any officer of the court.

**90 Reserving questions of law**

The Commissioner may, on the application of a party to a case or otherwise, reserve for the consideration of the High Court by way of a case stated any question of law which arises in any proceedings, and if a case is stated under this rule, may give judgment subject to the opinion of the High Court.

**91 Adjournments**

A court may adjourn at any time and designate a future date for the continuation of proceedings.

**92 Cost**

- (1) A court may, if it thinks fit, order a person convicted before it to pay the whole or part of the expenses of the prosecution, or of the punishment, or both.
- (2) A court may in any case make such order as to the costs of the case as it thinks fit.

**93 Form of judgment**

- (1) Every court shall record its judgment in writing.
- (2) Every judgment shall contain the reasons for the decision and be signed and dated by the judge at the time of judgment.

**94 Speaking for another in court**

- (1) No person shall represent another or speak for another in a court of Tokelau without first having notified the court of their intention to do so and the reason for doing so.
- (2)
  - (i) A person who wants government assistance for the conduct of a case, shall apply to the Commissioner for legal aid.
  - (ii) If an application is made under subparagraph (i), the Commissioner shall adjourn the proceeding and refer the application to the Council for the Ongoing Government.
- (3) The Council for the Ongoing Government shall in deciding an application under paragraph (2) take into account —
  - (i) the nature of the case;
  - (ii) the means of the applicant; and
  - (iii) any other circumstances that the Council for the Ongoing Government thinks fit.
- (4) The provision of a lawyer at the cost of the Tokelau Administration shall be subject to such conditions as the Council for the Ongoing Government thinks fit.

**95 Law practice**

- (1) No person shall practise law in Tokelau or before a court of Tokelau without the prior written approval of the Council for the Ongoing Government.
- (2) The approval of the Council for the Ongoing Government shall —
  - (i) be given subject to such terms and conditions as the Council thinks fit to impose; and
  - (ii) public notification be given of it.
- (3) The Council for the Ongoing Government shall not give approval under this rule unless the applicant —
  - (i) is admitted to practise law in a Commonwealth jurisdiction; and
  - (ii) satisfies the Council for the Ongoing Government of possessing a sufficient knowledge of the law of Tokelau.
- (4) A person who contravenes paragraph (1) commits an offence.

- (5) No lawyer shall appear in a court of Tokelau until —
  - (i) the written approval of the Council for the Ongoing Government given under this rule has been presented to the court; and
  - (ii) in the case of a Commissioner's court, the Commissioner has granted leave to appear.
- (6) No wig, gown or other formal barristerial attire shall be worn by a lawyer in a court in Tokelau.

**96 Assistance to court**

Where it is necessary in the interests of justice in a specific case, the Commissioner may with the approval of the Council for the Ongoing Government, appoint a lawyer to assist the court in that case.

**97 Service**

- (1) A court document that is to be served shall be —
  - (i) in the language of the court unless the court and the parties otherwise agree; and
  - (ii) served by a constable, by delivering it personally to the person to be served or, if that person cannot be conveniently found, by leaving it with some person at the last or most usual place of residence of the person to be served.
- (2) Where a person in respect of whom a notice to appear has been issued is beyond the jurisdiction of a court of Tokelau, but is within the jurisdiction of another court, the Commissioner may transmit the notice to the other court with a request for the service of the notice.
- (3) A document which is required to be served on a corporate body shall be served by leaving the document —
  - (i) at the registered office, or principal place of business of the corporate body;
  - (ii) in the case of a foreign corporate body, with a person authorised to accept service of process on behalf of the body.
- (4) The service of a court document may be proved —
  - (i) by filing an affidavit of the service in form 1 of Schedule 1 endorsed on a true copy of the document served; or

- (ii) by the person who served the document attending before the court and deponing on oath to the service.

**98 Service by post and outside Tokelau**

- (1) Where an enactment authorises or requires a document to be served by post, the service shall be effected by properly addressing, prepaying and posting a letter containing the document and be presumed to have been effected at the time when the letter would be delivered in the ordinary course of post.
- (2) Where service outside Tokelau is required the court document shall be delivered to the Council for the Ongoing Government with an English translation for such action as the Council for the Ongoing Government thinks fit in the circumstances.

**99 When process of law valid**

- (1) Subject to paragraph (2), no document shall be issued, served or executed on a holiday.
- (2) The following documents may be issued, served or executed at any time —
  - (i) an arrest warrant;
  - (ii) a search warrant;
  - (iii) a custody warrant;
  - (iv) an imprisonment order;
  - (v) a bail bond.

**100 Notice to appear**

- (1) A person who is to be prosecuted for an offence or against whom a claim is made in court shall be given notice to appear before the court in form 2 of Schedule 1.
- (2) In criminal cases notice to appear shall be in form 2 of Schedule 1.
- (3) In cases other than criminal cases the notice to appear shall be in form 3 of Schedule 1.



- (4) Notwithstanding paragraphs (2) and (3) where the person who is alleged to have committed the offence or against whom the claim is made is —
- (i) sufficiently informed of the charge or claim and the result of a failure to appear; and
  - (ii) agrees to appear before the court as required,
- the prosecution or claim may proceed without further formality.

**101 Warrant to appear**

If a person served with a notice to appear does not appear at the time and the place mentioned in the notice, and the court is satisfied that the notice was served within a reasonable period before the time for the appearance, the court may issue a warrant in form 4 of Schedule 1 to apprehend the person.

**102 Summons of witness**

- (1) If a court is satisfied that a person is able to give or produce evidence which the court thinks should be given or produced in a case and that the person will not appear voluntarily for the purpose of being examined as a witness or of producing that evidence the court may issue a notice to appear in form 5 of Schedule 1 requiring the attendance of that person or the production of the evidence.
- (2) If the court is satisfied that a person in respect of whom a notice has been issued under paragraph (1) will not attend, the court may issue a warrant in form 6 of Schedule 1.

**103 Rehearings and appeals**

- (1) A court may, after giving judgment in any case and where the application for a rehearing is made by a party in form 7 of Schedule 1 before the time for appeal against the judgment has expired, rehear the case if the applicant satisfies the court that for a reason not before the court at the previous hearing a substantial miscarriage of justice may have occurred.
- (2) Where a case is reheard under paragraph (1) the time for appeal from the judgment shall run from the date of the judgment on the rehearing.
- (3) Any person who wishes to appeal from the judgment of the Commissioner to the High Court shall within 28 days after the date of the

judgment of the Commissioner, give notice in writing in form 15 of Schedule 1 of that person's intention to appeal.

**104 Time limits for bringing case to court**

- (1)
  - (i) No prosecution for an offence other than murder may be commenced later than 2 years after the date when the offence was committed.
  - (ii) Where the alleged offence is against a person under a disability, the limitation period shall commence from the date when that person is no longer under a disability.
  - (iii) For the purposes of this rule, a person shall be deemed to be under a disability while a child or of unsound mind.
- (2) No civil action shall be brought after 2 years from the date on which the cause of action accrued.
- (3)
  - (i) A cause of action shall accrue on the date when the damage or matter for which the claim is brought is discovered by the plaintiff or could with reasonable diligence have been discovered by the plaintiff.
  - (ii) If any part of any damage has been paid or admitted in writing within 2 years from the accrual of the cause of action, the limitation period shall begin to run from the date of the payment or admission.
- (4)
  - (i) If when the cause of action accrued the plaintiff was under a disability, the action may be brought before the expiration of 2 years from the date when the plaintiff ceased to be under a disability or died, whichever event occurred first.
  - (ii) For the purposes of this paragraph, a person shall be deemed to be under a disability while a child or of unsound mind.
- (5) If a civil action is subject to limitation by this rule, and —
  - (i) the action is based on the fraud of the defendant or the agent of the defendant or of any person through whom the defendant or the agent of the defendant claim;
  - (ii) the right of action is concealed by the fraud of a person mentioned in subparagraph (i); or

- (iii) the action is for relief from the consequences of a mistake, the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be or could with reasonable diligence have discovered it.
- (6)
- (i) This rule shall apply to an arbitration as it does to an action.
  - (ii) Where the High Court orders that an award be set aside, or orders after the commencement of an arbitration that the arbitration shall cease to have effect with respect to the dispute referred, the court may further order that the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed for the commencement of proceedings.

**105 Court orders**

- (1) A court may, in any proceedings, make an order to grant relief which will —
- (i) vest in any party to the proceedings, or direct such party to transfer or assign or deliver to any other party the whole or any part of the property which was the subject-matter of the claim; or
  - (ii) direct any party to the proceedings to do or refrain from doing, in relation to any other party, any act or thing as the court thinks fit; or
  - (iii) direct any party to pay a sum of money to any other party as payment of a debt or as damages or compensation.
- (2) An order made under paragraph (1) may be made subject to such terms and conditions as the court thinks fit.
- (3) A person who —
- (i) has done or desires to do an act the validity, legality, or effect of which depends on the construction or validity of an Act, or a regulation made by the Governor-General, or any rule made by the General Fono or a village, or any deed, will, or document of title, or any agreement made or evidenced by writing, or any memorandum or articles of association of any company or body corporate, or any instrument prescribing the powers of any company or body corporate; or

- (ii) claims to have acquired any right under any such statute, rule, rule, deed, will, document of title, agreement, memorandum, articles, or instrument, or to be in any interested in its construction other manner or validity; or
  - (iii) wishes to have a formal statement as to the existence or non-existence of a marriage or the validity of a dissolution of marriage, may apply to the High Court for a declaration determining any question as to the construction or validity of the statute, regulations, rule of Tokelau, deed, will, document of title, agreement, memorandum, articles, or instrument, or as to marriage or dissolution of marriage.
- (4) An order or declaration under this rule shall be on form 8 of Schedule 1.

**106 Emergency situations**

- (1) On proof of extreme urgency or other peculiar circumstances, the court may, if it thinks fit, before service of a statement of claim, and without notice, make in form 8 of Schedule 1 an order of injunction, or an order to sequester money or goods, or to stop the clearance of a vessel, or to hold to bail, or to attach property.
- (2) Before making an order under paragraph (1) the court shall require the person applying for it to enter into a recognizance in form 9 of Schedule 1, with or without a surety as the court thinks fit, as security for any damages that may as a result become payable to the person against whom the order is sought.
- (3) An order under paragraph (1) shall not remain in force more than 24 hours except when within this period a formal claim is brought by the person who requested the injunction.
- (4) An order made under paragraph (1) shall be dealt with in the action as the court thinks just.
- (5) On proof of extreme urgency or other peculiar circumstances, the court may, if it thinks fit, on the application of a plaintiff, or of its own motion, make an order for stopping the clearance of, or for the arrest and detention of, a vessel about to leave Tokelau.

**107 Effect of death on proceedings**

- (1) On death all causes of action subsisting against or vested in the deceased shall survive against or, as the case may be, for the benefit of the deceased's estate.
- (2) No proceedings other than for defamation, shall cease because of the death of a party.
- (3) Where a party to any proceedings dies, the court shall, if it thinks necessary, order that the personal representative, trustee or other successor in the interest of that party, be made a party to the proceedings.

**108 Money judgments**

- (1) Where sum of money ordered to be paid under a judgment is not paid within the time designated in the judgment or, where no time is designated, within one month of judgment the court may order that —
  - (i) the judgment debtor be arrested and brought before the court;
  - (ii) movable property of the debtor other than necessary items of clothing and work tools be seized and held by the police until the judgment debt is paid;
  - (iii) order the judgment debtor to perform community service until the debt is paid but in no case for a period of more than 2 months; or
  - (iv) sentence the judgment debtor to imprisonment until the debt is paid but in no case for more than 3 months;
  - (v) any debtor or employer of the judgment debtor shall, after notice in form 10 of Schedule 1 to both parties pay money owed or payable to the judgment debtor directly into court for the satisfaction of the judgment debt; or
  - (vi) in the case of a fine, the fine is converted to any equivalent penalty that the court could have imposed for the offence at the time of the conviction.
- (2) A payment into court by a debtor under paragraph (1)(v) shall be treated as payment to the judgment debtor and satisfy the debt to the extent of the payment into court.

- (3) A judgment debtor who wishes to leave the jurisdiction of the court may be required before leaving either to pay the debt or to provide security to the satisfaction of the court for the payment of the debt.
- (4) All money ordered to be paid under a judgment shall be paid in a lump sum to the Failautuhi and credited to the village accounts, unless the court otherwise directs.
- (5) Subject to any express contractual provision or express provision in any other enactment, interest due on a judgment debt shall be payable at the rate of 10% per annum.

**109 Non-money judgments**

A person who disobeys, for more than 5 days, a court order for other than the payment of money, may be ordered —

- (i) to pay a sum not exceeding one dollar for every day during which the order has been disobeyed and during which the order continues to be disobeyed; or
- (ii) to do community service until the order is obeyed.

**110 Unlawful detention**

- (1) A court may, on the application of any person and on receiving on oath sufficient information of an alleged unlawful detention, order the person detained to be brought before the court and after enquiry into the facts of the situation may —
  - (i) declare the detention lawful; or
  - (ii) order the release of the person detained; or
  - (iii) grant bail to the person obtained until the hearing of a criminal charge,  
according to the circumstances of the case.
- (2)
  - (i) Notwithstanding rules 84, 143 and 177, a person who has been unlawfully detained may by way of civil claim be compensated for the loss of liberty suffered by the person responsible.
  - (ii) Where the person responsible was a public officer acting in the course of duty the claim for compensation shall be against the Government of Tokelau.

***Criminal Process***

**111 Criminal proceedings**

- (1) No person shall be subject to criminal proceedings except for an offence.
- (2) No person shall be tried or punished again for an offence, on the same facts, for which that person has already been convicted or acquitted.

**112 Court of trial** [amendment of 2005/8 not in force]

- (1) Offences for which the maximum penalty does not exceed \$150 fine or 3 months imprisonment shall be tried before the Commissioner.
- (2) Offences within the jurisdiction of the Commissioner for which the maximum penalty is a fine of more than \$150, or a term of imprisonment which does not exceed one year, shall be tried by the Commissioner unless the Commissioner otherwise directs.
- (3) Notwithstanding paragraphs (1) and (2), the High Court alone shall have jurisdiction to try a case –
  - (i) which is outside the jurisdiction of a Commissioner;
  - (ii) in which the Commissioner is a party;
  - (iii) where there has been a valid challenge of the exercise of jurisdiction by the Commissioner.

**113 Parties to offences**

- (1) A person is a party to and guilty of the offence who —
    - (i) actually commits the offence; or
    - (ii) does or omits an act for the purpose of aiding a person to commit the offence; or
    - (iii) encourages a person in the commission of the offence; or
    - (iv) counsels or procures a person to commit the offence; or
    - (v) knowing a person to have been a party to the offence —
      - (I) receives, comforts, or assists that person; or
      - (II) interferes with or actively suppresses any evidence relating to the offence,
- in order to enable that person to avoid arrest or conviction or to escape after arrest.

- (2) If two or more persons form a common intention to prosecute an unlawful purpose and to assist each other in that purpose, each of them is a party to every offence committed by any one of them in the prosecution of that common purpose, the commission of which offence was a probable consequence, of the prosecution of the common intention.
- (3) A person who counsels or procures another to be a party to an offence of which that other is afterwards found guilty is a party to that offence, although it may be committed in a way different from that which was counselled.
- (4) A person who counsels or procures another party to an offence is a party to every offence which that other commits in consequence of that counselling or procuring, and which the person counselling or procuring knew or ought to have known to be likely to be committed as a result of the counselling or procuring.

**114 Children**

- (1) No person shall be convicted of an offence committed when that person was under the age of 10 years.
- (2) No person shall be convicted of an offence committed when of the age of at least 10 years but under the age of 14 years, unless that person knew that the act or omission was wrong or that it was contrary to law.
- (3) The fact that under this rule a person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of the offence.

**115 Offence by agent or body corporate**

- (1) If an offence is committed by —
  - (i) an agent, the person for whom the agent is acting;
  - (ii) a body corporate, every person who, at the time of the commission of the offence, was concerned in the management of the body corporate or was purporting to act in that capacity,shall also commit the offence, unless it is proved that the offence was committed without the knowledge or consent of that person and that that person took all reasonable steps to prevent the commission of the offence.



- (2) (i) If a corporate body is charged with an offence, a representative may appear before the court and enter a plea of guilty or not guilty on behalf of the corporate body.
- (ii) In subparagraph (i), “representative” means a director or the secretary of the corporate body or a person duly authorised by the corporate body to represent it.

**116 Insanity, necessity and self-defence**

- (1) (i) No person shall be convicted of an offence if at the time of the commission of the offence that person was insane or acted under duress.
- (ii) A person shall be presumed to have been sane at the time of the commission of an offence until the contrary is proved.
- (2) No person shall be convicted of an offence other than murder, who in an emergency situation acts to prevent serious harm to property or persons if the harm prevented is greater than that which results from the offence and could not have effectively been avoided by lesser means.
- (3) Everyone is justified in using in their defence or in the defence of another, such force as, in the circumstances as the person believes them to be, it is reasonable to use.

**117 Prosecution of offences**

- (1) A person who has reasonable cause to suspect that an offence has been committed may report the matter to a constable for prosecution.
- (2) Every prosecution in Tokelau shall be conducted —
  - (i) by or for the police; and
  - (ii) in the name of the Government of Tokelau or a village of Tokelau.

**118 Defects of substance and form**

- (1) No objection shall be allowed to any criminal process for any alleged defect in substance or in form, or for any variance between the charge, notice, warrant or other document and the evidence adduced at the trial.

- (2) The court may at any stage of the trial amend the charge in such manner as it thinks fit in respect of any defect or variance of the kind mentioned in paragraph (1).
- (3) An accused may be convicted either of the offence charged or of any offence which is included within the offence charged.
- (4) If, on the trial of a person charged with an offence on certain facts, the court is of opinion that the accused committed a different offence on the same facts the court may find the accused guilty of that other offence, and may convict as if the accused had been charged with that other offence.
- (5) Where in a trial one offence is substituted for another —
  - (i) before the trial is continued, the substance of the amended charge shall be stated to the accused and a new plea taken; and
  - (ii) evidence already given shall be deemed to have been given in and for the purposes of the trial of the charge as amended.
- (6) The court may, at the request of the accused, if it is of the opinion that the accused would be embarrassed in his or her defence by reason of any amendment made or proposed to be made under this section, adjourn the trial.

**119 Withdrawal of charge**

Where a charge is withdrawn by the prosecutor the withdrawal shall not bar any future prosecution against the accused in respect of the same offence.

**120 Stay of proceedings**

In any criminal prosecution, the Council for the Ongoing Government may direct a stay of proceedings, and the proceedings shall be stayed accordingly.

**121 Remand**

- (1) When a prosecution has been commenced the court may in form 11 of Schedule 1 remand the accused in custody to appear before the court at another time.
- (2) The accused shall not be remanded in custody at any time for more than 7 days, unless circumstances appear to the court to make it necessary or proper that the accused should be remanded for a longer time.

- (3) Where an accused person is remanded in custody for more than 7 days, the circumstances and time of the remand shall be noted in the court record.
- (4) In no case shall a remand be for more than 30 days at one time.
- (5) No person shall be held in custody pending trial unless doing so is necessary in the interests of the accused, the course of justice, or public safety.

**122 Bail**

- (1) An accused person may be granted bail at any stage of the proceedings.
- (2) A person who is granted bail shall, with or without sureties, enter into a bond in favour of the Government of Tokelau in such sum as may be required, conditioned in such manner as may be appropriate to the particular case.
- (3) A bail bond shall be —
  - (i) in form 12 of Schedule I;
  - (ii) entered into before a judge; and
  - (iii) signed by the person granted bail and by any sureties and the signature of that person and of each of any sureties shall be attested by a judge.
- (4) The judge shall require a person who is granted bail to deposit with the government finance officer a sum of money which shall not exceed the amount of the bond.
- (5) If the conditions of the bond are performed, the bond shall be void and any sum deposited under paragraph (4) shall be forthwith repaid.
- (6) If a person who is granted bail fails to perform the conditions of the bond, the Commissioner shall —
  - (i) fix a place and time at which the court may consider the forfeiture of the bond; and
  - (ii) a reasonable time before the time fixed under subparagraph (i), and, where possible, cause to be served on the person granted bail and on any sureties notice that unless at the place and time fixed under subparagraph (i) some person bound by the bond proves to the satisfaction of the court that it ought not to be forfeited, the bond may be forfeited.

- (7) If at the time and place fixed under paragraph (6) no sufficient cause to the contrary is shown, the court, on proof of non-performance of the bond, may order forfeiture of the bond to the Government in such amount as it thinks fit as to any person bound by the bond.

**123 Arrest**

- (1) A Commissioner may, on being satisfied by information given on oath, issue a warrant in form 4 of Schedule 1 for the arrest of a person for an offence.
- (2) No person shall be arrested without warrant except under an enactment giving power to arrest without warrant.
- (3) A constable and any person whom the constable calls to assist may, without warrant, arrest and take into custody —
- (i) a person whom the constable has reasonable grounds to believe is committing or has committed an offence punishable by imprisonment;
  - (ii) a person whom the constable has good cause to suspect to be attempting or to be about to commit an offence punishable by imprisonment.
- (4) Any person may arrest without warrant —
- (i) anybody he or she finds disturbing the public peace in a public place;
  - (ii) anybody he or she has good cause to suspect to be about to commit a breach of the peace, in a public place.
- (5) Where a person other than a constable arrests without warrant, that person shall as soon as reasonably possible deliver the person arrested into the custody of a constable.

**124 Duty of persons arresting**

- (1) A person who makes an arrest shall inform the person arrested, at the time of the arrest, of the act or omission for which the person is being arrested, unless in the circumstances it is impracticable to do so, or the reason for the arrest is obvious.
- (2) Any person who makes an arrest under a court order shall —
- (i) if he has the order in his possession at the time of the arrest, produce it if required by the arrested person to do so;

- (ii) if the order is not available at the time of the arrest, show it to the arrested person as soon as practicable after the arrest, if that person so requires.
- (3) A failure to comply with paragraphs (1) and (2) shall not of itself deprive the person arresting, or any assistant, of protection from criminal responsibility, but shall be relevant to the inquiry whether the arrest might not have been effected, or the process or warrant executed, by reasonable means in a less violent manner.
- (4) A person who is arrested shall —
  - (i) be brought before the court, as soon as possible, and either committed to the custody of the police in form 11 of Schedule 1 or dealt with in some other way to ensure appearance at a specified time and place before the court; and
  - (ii) be promptly informed of any charge to which the arrest relates.

**125 Search warrants**

- (1) A judge who is satisfied by evidence on oath of that there is reasonable ground for believing that there is in any building, vessel, receptacle or place —
  - (i) anything which there is reasonable ground to believe may be evidence of the commission of an offence; or
  - (ii) anything which there is reasonable ground to believe is intended to be used for the purposes of committing an offence,may, by warrant in form 13 of Schedule 1, authorise a constable to search the building, vessel, receptacle, or place, for the thing, and bring it before the court.
- (2) A search warrant shall be executed by day unless the warrant expressly authorises execution by night.
- (3) A search warrant may be executed by the use of reasonable force if necessary.
- (4) (i) When anything is seized and brought before the court under this rule, the judge may either order it to be detained as long as reasonably necessary for the purpose of evidence on the trial of any person for any offence or may direct it to be delivered to any person believed by the judge to be entitled to it.

- (ii) Where a seized article is on examination found not to have been obtained by means of an offence or used in the commission of an offence it shall be restored to the person from whom it was taken.
- (5) An order of delivery shall not affect the right of any person to the ownership or possession of the thing.

**126 Power to enter premises**

- (1) Where a constable is authorised to arrest a person without warrant, that constable, and anyone whom the constable calls to assist, may enter any premises or vessel, by reasonable force if necessary, to arrest that person if the constable —
  - (i) believes on reasonable grounds that person is committing an offence punishable by imprisonment; or
  - (ii) has reasonable grounds to suspect that the person has committed an offence punishable by imprisonment on those premises.
- (2) A constable, and any person whom the constable calls to assist, may enter any premises or board any vessel, by reasonable force if necessary, to prevent the commission of an offence that would be likely to cause immediate and serious injury to any person or property, if the constable believes, on reasonable grounds, that such an offence is about to be committed.
- (3) Unless otherwise specified, a constable who exercises a power of entry conferred under these rules shall inform the person in charge of the premises or vessel of the reason for the act and the authority under which the constable acts.

**127 Medical examination and search**

- (1) A constable or a judge may, where it is necessary for the administration of justice, call on a medical officer to make such examination of the person of an alleged offender as the circumstances of the case require, provided that neither the taking of blood nor internal body searches take place without the consent of the alleged offender.
- (2) If a constable has reason to believe that an offence has been or is about to be committed the constable may require the person suspected of having committed or being about to commit an offence to be searched.

- (3) A constable who acts under paragraph (1) or (2) shall promptly report to the Commissioner the circumstances the medical examination or search, and the result of the examination or search.
- (4) No search of a person shall be made other than by and in the presence of persons of the same sex as the person searched.

**128 Speedy trial**

- (1) Where a person is to be prosecuted for an offence the court shall hear the case as soon as the circumstances reasonably admit.
- (2) As much notice of the time of trial as the circumstances reasonably admit shall be given to the accused by the court.

**129 Committal for trial in High Court**

- (1) When a person is brought before a Commissioner for an offence that cannot be tried by the Commissioner's Court, the Commissioner may, after any preliminary inquiry that the Commissioner thinks fit to make, and after giving the accused an opportunity of being heard —
  - (i) discharge the accused; or
  - (ii) commit the accused to prison in form 14 of Schedule 1 to await trial by the High Court; or
  - (iii) admit the accused to bail, with or without sureties, conditioned to appear before the High Court in due course for trial for the offence.
- (2) Discharge by a Commissioner under paragraph (1) does not amount to an acquittal.
- (3) In case of a preliminary examination, the interrogation of the accused by the court shall be recorded in full and shall be read over to the accused who shall be at liberty to explain or add to the answers or statements.
- (4) When the record made under paragraph (3) has been made conformable to what the accused declares to be the truth —
  - (i) the accused shall be invited to sign it ; and
  - (ii) the record of the preliminary examination shall be brought before the trial court and be evidence at the trial.

**130 Settlement in criminal matters**

- (1) In criminal matters the court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings taken for an offence of a private or personal character, on terms for the payment of compensation or other terms approved by the court.
- (2) Where settlement of a criminal matter is approved by the court under paragraph (1), the court shall order the proceedings to be stayed.

**131 Trial of offence**

- (1) If both parties appear, the prosecutor shall state the substance of the charge and the court shall ask the accused to make a plea.
- (2) If the accused pleads "guilty", the plea shall be recorded and the accused may be convicted.
- (3) If the accused pleads "not guilty" or if, after a reasonable opportunity being given to do so, the accused refuses to plead, the court shall hear the evidence of the prosecutor.
- (4) The court shall then hear any evidence the accused may wish to give in defence and, when the accused has concluded, the evidence of any witness the accused may wish to call.
- (5) The court shall then consider the matter and may convict the accused or dismiss the charge.
- (6) The court shall in open court declare its decision and any punishment imposed or other order made by it in consequence of the decision.
- (7) If the court convicts the accused and imposes a term of imprisonment by way of punishment a warrant of committal shall be drawn up in form 14 of Schedule 1.

**132 Inquisitorial process**

- (1) In a prosecution in a Commissioner's court, the Commissioner may at any stage of the proceedings put such questions to the accused as the court thinks necessary or proper for arriving at the truth respecting the case, and the answers of the accused shall be evidence in the case.
- (2) No question shall be put to the accused except by the Commissioner.



- (3) No question shall be put to the accused, and no answer shall be received from the accused, other than questions and answers bearing immediately on the case.
- (4) The interrogation of the accused by Commissioner shall not be in the nature of cross-examination, but shall be conducted so to allow the accused to make a full statement the truth of the matter as the accused wishes to be believed.
- (5) An accused who refuses to answer a question put by the court, shall not be liable criminally for so doing, but the court may draw from the refusal such inference as it thinks just.
- (6) No influence by promise or threat or otherwise shall be used to induce the accused to answer any question or to make any statement.

**133 Non-prosecution**

If at the time and place appointed the accused is before the court but no person appears to prosecute the case, the court may dismiss the charge or adjourn the trial.

**134 Trial in absence of accused**

Where an accused has been given notice to appear before a Commissioner and fails to appear, the court may try and sentence the accused for that offence in the absence of the accused, or adjourn the case.

**135 Criminal trial in High Court**

The trial of an accused in the High Court shall be by judge alone.

**136 Penalties**

- (1) The maximum penalty that may be imposed on a person convicted of an offence under these rules is the penalty referred to for that offence in Schedule 2.
- (2) A court may, in respect of any offence which is not within the exclusive jurisdiction of the High Court, instead of sentencing an offender to a penalty in Schedule 2, order the offender to perform community service for a term not exceeding that prescribed in Schedule 3.
- (3) No prison sentence shall be imposed on a person under the age of 16 years.

- (4) On the conviction of an offender the court may, without prejudice to any other order it may make —
  - (i) reprimand the offender; and
  - (ii) order the repayment of any money stolen; or
  - (iii) order the restoration to its original condition of any property the subject of the offence; or
  - (iv) revoke any licence or permit held by the accused which relates in any way to the circumstances of the offence.
- (5) Any property of an accused which is the subject of the offence may, in addition to any penalty the court may impose, by order of the court be forfeited to the village and disposed of as the village directs.
- (6) The court may, if it thinks fit, in addition to any penalty imposed order a person convicted of an offence to pay to any person whose property was damaged in the commission of the offence, by way of compensation, a sum of money not exceeding 3 penalty units.

**137 Cumulative sentences**

- (1) When an offender is sentenced for more than one offence at the same time, or if, when sentenced for one offence, has already been sentenced for any other offence and has not yet completed that sentence, the sentences passed for several offences shall take effect one after the other unless the court otherwise directs.
- (2) Subject to paragraph (1), a sentence of imprisonment shall take effect on the day on which the sentence is pronounced.

**138 Suspended sentence**

- (1) The court, on convicting a person may, having regard to all the circumstances, instead of passing sentence order the offender to appear for sentence if called on to do so, on such conditions as it thinks fit, including, if the court thinks fit a condition that the offender shall be subject to supervision by a person nominated by the Commissioner for such period as the court specifies, not exceeding the period specified under paragraph (3).
- (2) The making of an order under paragraph (1) shall not limit or affect the power of the court under any enactment applicable to the offence, to

make an order for the payment of costs, or compensation, or for the restitution of property.

- (3) A person in respect of whom an order is made under this rule may be called on to appear for sentence within any period specified by the court in the order, being a period not exceeding 2 years from the date of the conviction, or if no period is so specified, within one year from the date of the conviction.
- (4) Where a person is brought up for sentence under this rule the court may, after inquiry into the circumstances of the case and the conduct of the offender since the order was made, sentence or otherwise deal with the offender for the offence in respect of which the order was made.

### **139 Conviction without sentence**

- (1) If the court thinks that a criminal charge, though proved, is in the particular case of so trifling a nature or was committed under such circumstances that no punishment should be imposed, the court may convict and discharge the accused without sentence, either unconditionally or on such conditions as the court thinks fit to impose.
- (2) Any person who is convicted and discharged on conditions under paragraph (1) and who commits any breach of those conditions, commits an offence punishable in the same manner as the offence for which the conviction and discharge was ordered.
- (3)
  - (i) Without limiting the powers conferred by paragraph (1), where a person is accused of an offence, the court, after inquiry into the circumstances of the case, may discharge the accused without conviction.
  - (ii) The court, when discharging any person under this paragraph may, make any order for the payment of costs, or compensation, or for the restitution of any property, that it could have made under any enactment applicable to the offence if it had convicted and sentenced the offender.
  - (iii) A discharge under this paragraph shall be deemed to be an acquittal.

**140 Appeals for lesser offences**

- (1) Each Taupulega shall, for the purposes of section 10 of the Tokelau Amendment Act 1986, appoint an appeal committee to hear an appeal against the decision of the Commissioner.
- (2) The appeal committee shall be comprised of no fewer than 3 persons who —
  - (i) did not participate in the decision appealed; and
  - (ii) have no personal or family interest in the case on appeal.
- (3) The appeal committee shall follow the same rules of procedure as the Commissioner's court.
- (4) The appeal committee may confirm, reverse or amend the judgment of the Commissioner or any judgment the Commissioner could have given.
- (5) There shall be no appeal from the decision of an appeal committee.
- (6) An appeal under this rule shall be made in form 15 of Schedule 1 to the Commissioner within 15 days of the judgment appealed against.
- (7) The appeal document shall specify the grounds of appeal.
- (8) The Commissioner shall on receipt of an appeal document under paragraph (6) forthwith notify the Taupulega.
- (9) As soon as possible after receiving notice of an appeal the appeal committee shall notify the parties to the appeal of the date and time for hearing the appeal.
- (10) If a party to an appeal does not appear before the appeal committee at the time notified without reasonable excuse the appeal shall be decided against that party.

**141 Transfer for trial or imprisonment**

[see regulation 2 and sections 243-245 of the Tokelau Crimes regulations 1975 (SR 1975/279) as amended by the Tokelau Amendment Act 2007]

- (1) Any person who is to be tried for an offence by the High Court of Tokelau sitting outside Tokelau shall be transferred to the place of sitting of the court on the order of the court and in such manner and subject to such conditions as the Council for the Ongoing Government directs.
- (2) The written direction of the Council for the Ongoing Government shall be sufficient authority for any officer of the Government of New Zealand to take and hold the person designated in the direction.

- (3) A person taken from Tokelau to New Zealand for trial who is acquitted or who, on conviction, is sentenced to a penalty other than imprisonment shall if that person so requests, be returned to Tokelau at the expense of the Tokelau Administration.
- (4) Every person sentenced to imprisonment by a court may, by warrant of the Council for the Ongoing Government in form 14 of Schedule 1, be transferred to and held in a prison of New Zealand.
- (5) On the issue of a warrant under paragraph (4), the person named in it shall be taken in custody and forthwith delivered to the Superintendent of the prison named in the warrant.
- (6) The warrant shall be delivered to the Superintendent of the prison named together with details of the offence of which the offender was convicted and the term for which the offender has been sentenced.
- (7) Where a person is imprisoned in New Zealand under this rule —
  - (i) any period during which that person has been in custody since the sentence was imposed until delivery to the Superintendent in New Zealand shall for all purposes be computed as part of the term of imprisonment;
  - (ii) that person shall be imprisoned in New Zealand in the same manner in all respects and shall be subject in all respects to the same laws, as far as applicable, as if he or she had been sentenced by a court of New Zealand to imprisonment for the like offence, or committed to prison by a court of New Zealand on the like grounds.
- (8) A person who is imprisoned in New Zealand under Tokelau law shall on release, if that person requests, be returned to Tokelau at the expense of the Tokelau Administration.

### ***Civil Process***

#### **142 Civil jurisdiction**

A Commissioner shall have jurisdiction to hear a civil case where the defendant has been given notice of the trial and —

- (i) the defendant was within the jurisdiction when the notice was given; or

- (ii) property which is the subject-matter of the plaintiff's claim is within the jurisdiction; or
- (iii) property of the defendant is within the jurisdiction; or
- (iv) the defendant is not in Tokelau but agrees or has agreed in writing to accept the exercise of jurisdiction by the court in the case.

**143 Damages and claims other than property loss**

There is no right to claim damages for other than property loss in any action at Tokelau law.

**144 Village debts**

No court shall hear any claim for a debt owed to a village store until the matter has been referred to the relevant Taupulega for appropriate action and after a reasonable time the debt remains unpaid.

**145 Crown proceedings**

- (1) Subject to paragraph (6) and to any other enactment, the Crown shall be subject to all the civil liabilities to which, if it were a private individual of full age and capacity, it would be subject.
- (2) Suit on behalf of the Crown may be brought in the name of the Government of Tokelau by the Council for the Ongoing Government or by any person appointed by the Council for the Ongoing Government for the purpose.
- (3) A person who wishes to make a claim against the Crown in respect of Tokelau, may in respect of the claim bring a suit against the Government of Tokelau in any court of Tokelau.
- (4) If the Crown is a party to a suit —
  - (i) all process in the suit required to be served on that party shall be served on the Council for the Ongoing Government;
  - (ii) the rights of parties shall be the same, and judgment may be given and costs awarded on either side, as in a suit between subject and subject.
- (5) If a judgment is given in favour of the Crown and against any other person, the Crown may enforce the judgment against that person by any process that could be had in a suit between subject and subject.

- (6) (i) No execution or attachment, or process in the nature of execution or attachment, shall be issued against the property or revenues of the Crown in any suit.
- (ii) If judgment is given against the Crown the court shall give to the party in whose favour a judgment is given a certificate in form 16 of Schedule 1.
- (iii) On receipt of the certificate of a judgment against the Crown, the General Fono shall satisfy the judgment out of money available in the General Administration Account.

**146 Conciliation in civil matters**

In any civil matter, the court and its officers shall, as far as there is proper opportunity, promote reconciliation among persons over whom the court has jurisdiction, and encourage and facilitate the settlement in an amicable way, of differences among them.

**147 Civil claims**

- (1) For a claim other than a criminal claim the plaintiff shall —
  - (i) lodge with the court the particulars of the claim in form 17 of Schedule 1; and
  - (ii) in any case to which rule 99 does not apply, a copy of the claim lodged shall be issued by the court for service on the defendant.
- (2) The statement of claim shall have endorsed on it by the Commissioner the day and time for the hearing of the case.
- (3) (i) No action or proceeding shall be treated by the court as invalid on account of any defect in form or technical irregularity if no substantial wrong or miscarriage of justice has occurred as a result.
- (ii) Any such defect or irregularity may be corrected by the court.
- (4) The court may, either on or without application of a defendant order the plaintiff to put in further particulars of the claim.
- (5) The court may order the defendant to put in a written statement of defence.
- (6) The court may strike out a claim not pursued with due diligence by the plaintiff.

**148 Security for court costs**

The court may refuse to allow a civil case to proceed until security to the satisfaction of the court is given by deposit or otherwise for the fees and expenses of the court or the costs of any party.

**149 Absconding defendant**

- (1) Where —
  - (i) a case is brought for the recovery of money; and
  - (ii) it is proved that the defendant is about to leave the island to avoid payment of the debt,the court may make an order in form 18 of Schedule 1, that the defendant be arrested and delivered into custody.
- (2) A defendant arrested in accordance with paragraph (1) shall be held until bail or security is given, in form 12 of Schedule 1, with a surety, on the conditions specified in the form, with the additional condition that the defendant will accept execution or satisfaction of any order made against the defendant.
- (3) The bail or security referred to in paragraph (2) shall be such sum as the Court thinks fit, not exceeding the probable amount of the debt or damages and costs to be recovered in the case.

**150 Failure to appear**

- (1) If the plaintiff does not appear on the day set in the claim for the hearing of the claim, the court may dismiss the claim and order payment by the plaintiff to the defendant of such compensation not exceeding \$150 as the court thinks just.
- (2) If a defendant does not appear on the day set for the hearing of the claim, the court may, where the plaintiff proved —
  - (i) that the statement of claim was served on the defendant; and
  - (ii) the claim to the satisfaction of the court,give judgment in the case.

**151 Trial of civil claim**

- (1) At the hearing of a civil claim the court shall —
  - (i) cause the substance of the claim to be stated to the defendant,and then



- (ii) ask the defendant if the claim is correct.
- (2) If the defendant pleads that the claim is "not correct" the court shall then hear the evidence for the plaintiff.
- (3) The court shall then hear any evidence the defendant may wish to adduce in the case.
- (4) The judge may at the request of a party or otherwise ask questions of any party or witness.
- (5) On completion of the hearing the court shall give judgment by making such order in the matter as the law and the circumstances of the case require.

**152 Contributory negligence**

Where a person suffers loss or damage as the result partly of personal fault and partly of the fault of any other person, a claim in respect of that loss or damage shall not be defeated by reason of the fault of the person suffering the loss or damage, but the compensation recoverable shall be reduced to the extent the court thinks just and equitable having regard to the claimant's share in the responsibility for the loss or damage.

***Cases with Foreign Elements***

**153 Process**

- (1) All matters of procedure, evidence and remedies shall be governed by the law of Tokelau.
- (2) In the absence of proof to the contrary the law of another country shall be deemed to be the same as the law of Tokelau.
- (3) A reference to a law of another country is a reference to its internal law only and not to its rules of conflict of laws.
- (4) No law shall be recognised if it is contrary to the public policy or good morals of Tokelau.

**154 Habitual residence**

The place of habitual residence of a person shall be determined as a question of fact.

**155 Capacity**

The capacity of a person is governed by the law of the place in which that person habitually resides, or by the law of Tokelau, if that favours capacity.

**156 Contracts**

- (1) The creation and essential validity of a contract is governed by the system of law with which the contract has its closest connection.
- (2) A contract is formally valid if it is valid by —
  - (i) the system of law with which the contract has its closest connection; or
  - (ii) the place where the contract was made.
- (3) The performance, effect and legality of a contract is governed by —
  - (i) the law expressly chosen by the parties to govern the contract; or
  - (ii) in the absence of an express choice, the system of law with which the contract has its closest connection.

**157 Property**

- (1) Title to movable property is governed by the law of the place where the property is situated at the time of the transfer.
- (2) Succession to movable property is governed by the last place of habitual residence of the deceased.
- (3) Title and matters of succession to immovable property are governed by the law of the place where the immovable property is situated.

**158 Marriage**

The formal requirements of marriage, including any parental consent, are governed by the law of the place of celebration —

- (i) at the time of celebration; or
- (ii) if it would favour validity of the marriage, at the time of proceedings.

**159 Tortious acts**

Property loss which results from a tortious act wherever committed shall be actionable as a Tokelau tort if —

- (i) it would have been actionable as Tokelau if committed in Tokelau; and
- (ii) it would give rise to a civil claim in the place where it occurred.

**160 Foreign judgments**

- (1) In this rule —  
“judgment” means a judgment or order made by a court outside Tokelau in criminal or civil proceedings for the payment of a sum of money as compensation or damages and includes arbitral awards and maintenance orders but excludes judgments for sums payable in respect of a fine or other penalty;  
“judgment creditor” means the person in whose favour a judgment was given and any person who has rights under a judgment.
- (2) A judgment is enforceable in Tokelau if —
  - (i) the foreign court had jurisdiction to decide the matter; and
  - (ii) it is for a definite sum of money; and
  - (iii) it is final between the parties; and
  - (iv) it was not obtained by fraud; and
  - (v) enforcement would not be contrary to public policy in Tokelau; and
  - (vi) a certified copy of the judgment has been registered in the High Court for Tokelau.
- (3) A judgment may be final between the parties notwithstanding that an appeal may be pending or that it may be subject to an appeal in the courts of the country where the judgment was originally made.
- (4) A judgment creditor may register the judgment in the High Court, within 2 years after the date of the last judgment given in those proceedings unless —
  - (i) it has been wholly satisfied; or
  - (ii) it could not be enforced in the courts of the country where the judgment was originally made.
- (5) A judgment may only be registered in respect of a sum remaining unpaid under it.
- (6) No foreign judgment shall be enforced in Tokelau other than by way of registration under these rules.
- (7) After registration the High Court of Tokelau shall instruct the Council for the Ongoing Government to enforce the judgment according to its terms.

- (8) A judgment shall be recognised by a court of Tokelau as conclusive between the parties in a case founded on the same cause of action and as a defence or counter-claim if it satisfies paragraph (2).

**161 Custody orders**

- (1) A certified copy of a foreign custody order may be registered in the High Court of Tokelau by any person who has the right of custody or access to a child under the age of 16 years who is present in Tokelau and subject to the order.
- (2) Subject to paragraph (3), a registered custody order shall be enforced by a court of Tokelau.
- (3) A foreign custody order may be varied or discharged by a court of Tokelau where —
- (i) a certified copy of the foreign custody order has been registered in the High Court for Tokelau; and
  - (ii) the parties with rights to custody or access under the order agree to the exercise of jurisdiction; and
  - (iii) the person who is the subject of the order is in Tokelau.

**162 Adoption orders**

Where a person has been adopted outside Tokelau according to the law of that place, the adoption has the same effect for the purposes of Tokelau law as an adoption made under the Adoption Rules 1966.

**PART 3 EVIDENCE**

**163 Evidence**

“Evidence” means —

- (i) all statements which a court permits or requires to be made before it in relation to matters of fact under inquiry; and
- (ii) all documents and exhibits produced for the inspection of the court in relation to matters of fact under enquiry.

**164 Who may give evidence**

- (1) Any person shall be competent to testify unless the court considers that the witness is prevented from understanding the questions or from giving rational answers to those questions by reason of age, disease, or similar cause.
- (2) No one shall be excluded from giving evidence in any legal proceedings on the ground of —
  - (i) an interest in the matter in question;
  - (ii) an interest proceedings; or in the result of the proceedings; or
  - (iii) a conviction for an offence.

**165 Confessions**

A confession tendered in evidence in criminal proceedings shall not be rejected on the ground that a promise or threat or an inducement (other than the exercise of violence or force or other form of compulsion) has been held out to or exercised on the person confessing, if the judge is satisfied that the means by which the confession was obtained were not likely to cause an untrue admission of guilt to be made.

**166 Personal testimony**

Evidence in the form of personal testimony may, subject to the direction of the court, be wholly or partly oral, or on affidavit or by declaration.

**167 Evidence to be on oath or declaration**

- (1) The evidence of a person in court shall be given on oath or declaration.
- (2) The oath and declaration shall be administered in common form by the judge repeating the appropriate form of the statement commencing with the words “Do you swear/declare” and ending with the words “that the evidence you are about to give is the truth”.

**168 Evidence of a child**

A witness who is or appears to be under the age of 14 years shall be required, before being examined, to make the following declaration: “I promise to speak the truth, the whole truth and nothing but the truth”, or a declaration to the like effect.

**169 Judicial Notice**

- (1) No fact of which the court will take judicial notice need be proved.
- (2) The court shall take judicial notice of all enactments in force in Tokelau.
- (3) The court shall take judicial notice of the government seal for Tokelau and of the signature of any senior public officer.

**170 Privileged Communication**

- (1) A minister of religion shall not, without the express consent of the person who made the confession divulge in any proceeding any confession made to the minister of religion in a professional context.
- (2) A doctor shall not, without the express consent of the patient, divulge in any proceedings (unless the sanity of the patient is the matter in dispute) any communication made to the doctor by the patient which was necessary to enable the doctor to prescribe or act for the patient.
- (3) A lawyer shall not, without the express consent of the client, disclose any communication made to the lawyer in the course and for the purpose of employment as a lawyer by or on behalf of the client, or state the contents or condition of any document with which the lawyer has become acquainted in the course of the employment as a lawyer on behalf of the client.
- (4) Nothing in this rule shall —
  - (i) protect a communication made for a criminal purpose; or
  - (ii) prejudice the right to give in evidence any statement or representation made to or by a doctor in or about the effecting by any person of life insurance.
- (5) A person who contravenes paragraphs (1), (2) or (3) commits an offence.

**171 Burden of proof**

- (1) A person who wishes a court to give judgment as to a legal right or liability, dependent on the existence of facts which that person asserts, must prove that those facts exist.
- (2) Unless otherwise prescribed, the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence.
- (3) If a person is accused of an offence, the burden of proving the existence of circumstances bringing the case within a prescribed exception in a law

defining the offence, is on the accused. The standard of proof required is proof on the balance of probabilities.

- (4) If the question is whether a person has possession of property is the owner of property, the burden of proving that possessor is not the owner is on the person who affirms that the possessor is not the owner.

**172 Common course of events**

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

**173 Estoppel**

A person who has by declaration, act or omission intentionally caused or permitted another to believe a thing to be true and to act on that belief in a way which that other person would not have acted but for that belief, shall not be permitted either personally or representative in any proceeding between person or his representative to deny the truth of that thing.

**174 Matters to be disallowed**

- (1) A court may forbid any questions or inquiries which it regards as indecent or scandalous, although the questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.
- (2) The court shall forbid any question which appears to it to be intended to insult or annoy, or which though proper in itself, appears to the court to be needlessly offensive in form.

**PART 4 MISCELLANEOUS**

**175 Discretionary orders**

Where a matter of procedure or evidence is not provided for in these rules the judge shall make such order as the judge thinks best in the circumstances of the case to promote justice.

**176 Effect of rules of procedure and evidence**

The rules of evidence and procedure in these rules shall have effect in place of the rules of the common law and equity relating to evidence and procedure.

**177 Immunity from suit**

No civil or criminal liability shall attach to the Government of New Zealand, the Tokelau Administration, or to a servant or agent of either of them or to any person carrying out functions under these rules, in respect of anything done or omitted in good faith in the administration of these Rules.

**178 Repeal**

[Spent]

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SCHEDULE 1

FORM 1

rule 97(4)(I)

AFFIDAVIT OF SERVICE

I, (1) .....  
of (2) .....  
swear that on the ..... day of .....  
I served (3) .....  
with (4) .....  
a true copy of which is attached and marked (5) .....  
at (6) .....  
by delivering the same personally to (7) .....  
or (8) .....  
(9).....  
Sworn or declared at ..... on the ..... day of .....  
Before (10) .....

- (1) Insert name of person who served document (7)      Insert name of person which copy was
- (2) Insert address of person who served document      delivered to
- (3) Insert name of person served (8)      State other methods by which service was
- (4) Insert brief description of document served      effected
- (5) Indicate mark which identified (9)      Signature of person who served document
- (6) State place at which copy was served (10)      Signature of person before whom  
affidavit sworn

FORM 2

rules 100(2), 115(2)

NOTICE TO APPEAR – CRIMINAL

To (1) ..... of (2) .....  
You are ordered to appear before the (3) ..... on the ..... day of ..... at ..... am/pm  
to answer the charge that on the (4) ..... you did (5) .....  
which is contrary to the following law (6) .....  
Dated this ..... day of .....  
Signature of Judge .....

- (1) Insert name of person charged      (4) Insert date of alleged offence
- (2) Insert address of person charged      (5) State alleged offence
- (3) Insert name and address of court which is applicable      (6) Insert name and provision of law

**FORM 3**  
rule 100(3)  
**NOTICE TO APPEAR [CIVIL]**

(1) High Court/Court of the Commissioner (2) .....

BETWEEN (3) ..... PLAINTIFF

AND (4) ..... DEFENDANT

To (5) .....

You are ordered to appear before this Court sitting at ..... on the ..... day of ..... at ..... am/pm to answer a claim against you by (6) ..... particulars of which appear below.

AND TAKE NOTICE that if you fail to appear the Court may proceed to hear and determine the claim in your absence.

Dated this ..... day of .....

Signature of Judge.....

**PARTICULARS OF CLAIM**

I (7) ..... of (8) .....

state that (9) .....

As a consequence I claim (10) .....

from (11) .....

Dated this ..... day of .....

Signature of plaintiff .....

- |  |   |
|--|---|
| (1) Delete court which is inapplicable                           | (7) Insert name of plaintiff                              |
| (2) Insert case number   | (8) Insert address of plaintiff                           |
| (3) Insert name and address of person making claim               | (9) Insert details of situation which gives rise to claim |
| (4) Insert name and address of person against whom claim is made | (10) State order sought                                   |
| (5) Insert name and address of defendant                         | (11) Insert name and address of defendant                 |
| (6) Insert name and address of plaintiff                         |   |

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**FORM 4**  
rules 101, 123(1)  
**WARRANT FOR ARREST**

(1) High Court/Court of the Commissioner

To all police officers

Bring (2) ..... of (3) .....

before this Court to answer a charge that at (4)

on the ..... day of .....

that person did (5) .....

contrary to the following law (6) .....

Dated this ..... day of .....

Signature of Judge.....

- |   |   |
|---|---|
| (1) Delete court which is inapplicable      | (4) State place where offence is alleged to have been committed |
| (2) Insert name of person to be arrested    | (5) State alleged offence                                       |
| (3) Insert address of person to be arrested | (6) Insert name and provision of law                            |

**FORM 5**  
rule 102(1)  
**SUMMONS OF WITNESS**

(1) High Court/Court of the Commissioner

To (2) ..... of (3) .....

A case concerning (4).....

of (5) .....

is to come before the Court (6) .....

It appears to this Court that you are likely to be able to give or produce material evidence concerning the case.

Therefore, you are ordered to appear before this Court on the ..... day of ..... at ..... am/pm to give or produce evidence concerning the case.

If you fail to appear before the Court, the Court may issue an order for your arrest.

Dated this ..... day of .....

Signature of Judge.....

- |  |  |
|--|--|
| (1) Delete court which is inapplicable | (4) Insert name of person concerned    |
| (2) Insert name of witness             | (5) Insert address of person concerned |
| (3) Insert address of witness          | (6) Insert brief details of case       |

**FORM 6**  
rule 102(2)  
**WARRANT FOR WITNESS**

(1) High Court/Court of the Commissioner

To all police officers

A case concerning (2) ..... of (3) .....

has come before the court (4).....

It appears to the Court that (5) .....

of (6) .....

is likely to be able to give or produce material evidence concerning the case.

(7) ..... was ordered to appear before this Court on the ..... day of ..... at .....am/pm to give or produce evidence concerning the case.

(7) ..... has not appeared.

Therefore you are ordered to apprehend (7) ..... and bring that person before this Court.

Dated this ..... day of .....

Signature of Judge.....

- |  |                               |
|--|-------------------------------|
| (1) Delete court which is inapplicable | (5) Insert name of witness    |
| (2) Insert name of person concerned    | (6) Insert address of witness |
| (3) Insert address of person concerned | (7) Insert name of witness    |
| (4) Insert brief details of the case   |                               |

**FORM 7**  
rule 103(1)  
**APPLICATION FOR REHEARING**

(1) High Court/Court of the Commissioner

I (2) ..... of (3) .....  
apply to the Court for a rehearing of ..... on the grounds (4) .....  
Dated this ..... day of .....

Signature of Judge.....

- |  |  |
|--|--|
| (1) Delete court which is inapplicable | (3) State matter                               |
| (2) Insert name of applicant           | (4) State grounds on which application is made |

**FORM 8**  
rules 105(4), 106(1)  
**COURT ORDER**

(1) High Court/Court of the Commissioner  
(2) On the motion of the Judge/on considering the application of  
(3) ..... and hearing (4) .....  
this Court orders (5) .....  
subject to the following conditions (6) .....  
Dated this ..... day of .....

Signature of Judge.....

- |   |   |
|---|---|
| (1) Delete court which is inapplicable                        | 4) Insert name of opposite party, if applicable |
| (2) Delete circumstance which is inapplicable                 | (5) State order made                            |
| (3) Insert name of party applying for order,<br>if applicable | (6) State conditions, if any, of the order      |

**FORM 9**  
rule 105(2)  
**RECOGNISANCE FOR PAYMENT OF DAMAGES**

(1) High Court/Court of the Commissioner  
I (2) ..... of (3) .....  
and I (4) ..... of (5) .....  
pay to the Council for the Ongoing Government of Tokelau the sum of \$..... to be held as security  
for the performance of the conditions of this bond. The conditions of this bond are —  
If (6) ..... of (7) ..... pays any damages that may  
as a result of the making of the emergency order become payable to the person against whom the order is  
sought, the bond shall be void and the above sum shall be repaid.  
If (6) ..... of (7) .....  
fails to pay the damages specified the bond shall remain in force and the above sum shall be forfeited.  
(8)..... (9).....  
Receipt of money acknowledged

Signature of Judge.....

- |  |   |
|--|---|
| (1) Delete court which is inapplicable                       | (5) Insert address of person providing surety,<br>if applicable |
| (2) Insert name of person bound                              | (6) Insert name of person bound                                 |
| (3) Insert address of person bound                           | (7) Insert address of person bound                              |
| (4) Insert name of person providing surety, if<br>applicable | (8) Signature of person bound                                   |
|  | (9) Signature of person providing surety                        |

**FORM 10**  
rule 108(1)(V)  
**HOLDING OF DEBTS**

(1) High Court/Court of the Commissioner  
To (2) ..... Take notice that from the time when this notice is served on you,  
until the time when it is discharged —

1. all property within the jurisdiction of this Court, other than land to which (3) ..... is  
entitled, which is in your custody or under your control: and

2. all debts owed to (3) ..... by you, are to be held by you to satisfy the claim  
against (3) .....

If after this notice is served on you and before it is discharged you —

- 1. (i) knowingly and wilfully part with the custody or control or any of the property: or  
(ii) remove the property out of the jurisdiction of this Court; or  
(iii) sell or dispose of the property; or

2. pay over any debt owed by you to (3) ..... except to or to the use of  
(4) ..... you will be liable to pay damages to (4) .....

Dated this ..... day of .....

Signature of Judge .....

- (1) Delete Court which is inapplicable (3) Insert name of defendant
- (2) Insert name of third person on whom notice is being served (4) Insert name of plaintiff

**FORM 11**  
rules 121(1), 124(4)  
**WARRANT FOR CUSTODY OR REMAND**

(1) High Court/Court of the Commissioner

To all police officers.

(2) ..... of (3) .....

has been brought before this Court in connection with (4) .....

The hearing of the charge (5) is adjourned/cannot be immediately proceeded with, and it is necessary that  
the accused should in the meantime be kept in custody, under Police supervision. Therefore you are  
ordered to keep (6) ..... in custody and bring that person before this Court  
on the ..... day of ..... at ..... am/pm to answer the charge, and be further dealt  
with according to law.

Dated this ..... day of .....

Signature of Judge .....

- (1) Delete court which is inapplicable (4) State offence
- (2) Insert name of accused (5) Delete circumstance which is inapplicable
- (3) Insert address of accused (6) Insert name of accused

**FORM 12**  
rules 122(3)(I), 148(2)  
**BAIL BOND**

(1) High Court/Court of the Commissioner

I (2) ..... of (3) .....  
and I (4) ..... of (5) .....  
agree to pay to the Council for the Ongoing Government of Tokelau the sum of \$....., to be held  
as security for the performance of the conditions of this bail bond.

The conditions of the bail bond are —

- (i) if (6) ..... of (7) ..... appears  
before this Court at any time when called on, the bond shall be void and the above sum shall be repaid.  
if (6) ..... of (7) .....  
fails to appear before this Court at any time when called on, the bond shall remain in force and the above  
sum shall be forfeited.
- (ii) (8) .....
- (9) ..... (10) .....

Receipt of money acknowledged

Signature of Judge.....

- |  |  |
|--|--|
| (1) Delete court which is inapplicable                           | (5) Address of person providing surety                 |
| (2) Person granted bail, or of person providing surety           | (6) Name of person to appear before Court              |
| (3) Person's address granted bail, or of person providing surety | (7) Person's address to appear before Court            |
| (4) Name of person providing surety                              | (8) State additional conditions applicable             |
|  | (9) Person's signature granted bail / providing surety |
|  | (10) Signature of person providing surety              |

**FORM 13**  
rule 125(1)  
**SEARCH WARRANT**

(1) High Court/Court of the Commissioner

To all police officers

You are authorised and ordered with proper assistance to enter  
(2)..... and there to search for  
(3)..... and if the same is found to bring it/them and also  
(4)..... before this Court to be dealt with according to law.

This warrant will expire 48 hours from (5) .....

Signature of Judge.....

- |  |   |
|--|---|
| (1) Delete name of Court which is inapplicable | (4) Insert name of occupier of place searched |
| (2) State place to be searched                 | (5) Insert date and time of signature         |
| (3) State what is to be searched for           |   |

**FORM 14**  
rules 129(1)(II), 131(7), 141(4)  
**ORDER FOR IMPRISONMENT**

(1) High Court/Court of the Commissioner

To all police officers, and to the Superintendent of

(2) ..... at (3) .....

This Court has ordered that (4) ..... of (5) ..... be

(6) (i) held in custody pending trial for the offence of (7) .....; or

(ii) held in prison for a term of ..... as penalty for (8) .....

and as a result of conviction by this Court on the ..... day of .....

Therefore, you are the police officers ordered to convey

(9) ..... to (10) .....

and deliver that person together with this order to the Superintendent; and you the Superintendent are ordered to keep (11)..... in custody until that person is released by due course of law.

Dated this ..... day of .....

Signature of Judge.....

- (1) Delete court which is inapplicable (7) State alleged offence person to be held is to (2) Insert name of prison have committed
- (3) State place of prison (8) State offence person to be imprisoned has
- (4) Insert name of person been convicted
- (5) Insert address of person (9) Insert name of person
- (6) Delete paragraph which does not apply (10) Insert name of prison
- (11) Insert name of person

**FORM 15**  
rules 103(3), 140(6)  
**APPEAL FORM**

(1) High Court/Court of the Commissioner

I (2) .....

wish to appeal to the Court against the decision of (3) .....

at ..... on ..... on the following grounds

(4) .....

.....

Dated this ..... day of .....

Signature .....

- (1) Delete name of inapplicable Court (3) Particulars of the decision against which
- (2) Insert name of appellant appeal is made, including date and place
- (4) State grounds on which the appeal is based

**FORM 16**  
rule 145(6)(II)  
**CERTIFICATE OF JUDGMENT AGAINST THE CROWN**

(1) High Court/Court of the Commissioner  
(2) ..... v Government of Tokelau  
I certify that on the ..... day of .....  
a judgment was obtained in favour of (3) ..... of (4) .....  
and that by that judgment the sum of \$..... was awarded to (5) .....

Dated this ..... day of .....

Signature of Registrar ..... of ..... Court

- |   |  |
|---|--|
| (1) Delete court which is inapplicable          | (4) Insert address of person who obtained judgment |
| (2) State name of action                        | (5) Insert name of person who obtained judgment    |
| (3) Insert name of person who obtained judgment |  |

**FORM 17**  
rule 147(1)(I)  
**CLAIM OR APPLICATION**

(1) High Court/Court of the Commissioner  
I (2) ..... of (3) .....  
state that (4) .....  
As a consequence I claim (5) ..... from (6) .....

Dated this ..... day of .....

Signature of plaintiff .....

- |   |  |
|---|--|
| (1) Delete name of court which is inapplicable            | (5) State order sought                                     |
| (2) Insert name of plaintiff                              | (6) Name and address of any person against whom claim made |
| (3) Insert address of plaintiff                           |  |
| (4) Insert details of situation which gives rise to claim |  |

**FORM 18**  
rule 149  
**ORDER TO ARREST ABSCONDING DEFENDANT**

(1) High Court/Court of the Commissioner

To all police officers

It has been shown to this Court that (2) .....  
is about to abscond. Therefore, you are ordered to arrest (2) ..... and to keep  
(2) ..... in custody until this Court orders otherwise.

Dated this ..... day of .....

Signature of Judge .....

- |   |                               |
|---|-------------------------------|
| (1) Delete court which is inapplicable. | (2) Insert name of defendant. |
|---|-------------------------------|



**SCHEDULE 2**  
rule 136(1)  
**JURISDICTION AND PENALTY**

<b>RULE</b>	<b>NAME</b>	<b>COMMISSIONER ONLY</b>  For all offences with a fine not more than 3 penalty units or not more than 3 months imprisonment	<b>COMMISSIONER</b>  For all offences with a fine not more than 20 penalty units or not more than 1 year imprisonment	<b>HIGH COURT ONLY</b>
4	Murder			Imprisonment for a term not less than 10 years nor more than 20 years
6	Manslaughter			Imprisonment for a term not exceeding 6 years
8	Concealment of birth	√		
9	Counselling suicide	√		
10	Dangerous omissions and things	√		
11(2)	Necessaries of life	√		
12	Cruelty to a child	√		
13	Abduction and detention of person or property			
	(1)		√	
	(5)	√		
14	Bodily harm		√	
15	Assault	√		
17	Failure to assist	√		
18	Incest		√	
19	Unlawful carnal knowledge		√	
20	Sexual intercourse with a mental defective	√		
21	Indecent assault	√		
22	Adultery and fornication	√		
23	Unmarried person living together	√		
24	Miscarriage	√		
25	Prostitution	√		
26	Bigamy	√		
27	Theft	Where value of property alleged stolen does not exceed \$1000	Where value of property alleged stolen exceeds \$1000	
28	Receiving	√		
29	Conversion	√		
30	Breach of trust		√	
31	Fraud		√	
32	Forgery		√	
33	Counterfeit coin		√	

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34	Intentional fire	√		
35	Careless fire	√		
36	Damage to property		√	
37	Animal trespass	√		
38	Trespass	√		
39	Indecent documents & things		√	
40	False report to police	√		
41	Accusation of offence	√		
42	Spreading rumours	√		
43	Obstruction in a public place	√		
44	Fighting in a public place	√		
45	Offensive behaviour	√		
46	Noise	√		
47	Throwing stones	√		
48	Invasion of privacy	√		
49	Drugs		√	
50	Intoxicating liquor	√		
51	Tobacco	√		
52	Drunkenness	√		
53	Use of explosives	√		
54	Offensive weapons and disabling substances		√	
55	Public boats	√		
56	Use of vehicle and vessel	√		
57	Endangering vessel	√		
58	Visiting vessel			
	(1)	√		
	(2)	√		
59	Poison	√		
60	Polluting water	√		
61	Unwholesome provisions	√		
62	Insanitary premises	√		
63	School attendance	√		
64	Gaming	√		
65	Witchcraft	√		
66	Cruelty to animals	√		
67	Telephones	√		
68	Electricity	√		
69	Sea voyages	√		
70	Treason			Imprisonment for a term not less than 10 years nor more than 20 years
71	Sedition	√		
72	Official corruption	√		
73	Abuse of office	√		
74	Contempt		√	
75	False evidence		√	
76	Perverting justice		√	

77	Escape	√		
78	Offences against public officers	√		
95	Law practice	√		
170	Privileged communications	√		

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**SCHEDULE 3**  
rule 136(1)  
**COMMUNITY SERVICE**

Fine or period of imprisonment	Period of community service
Up to a fine of 1 penalty unit or up to 1 month's imprisonment	not more than 1 month
From a fine up to 2 penalty units, or imprisonment for more than 1 month but not more than 2 months	not more than 2 months
From a fine of 2 penalty units up to not more than 3 penalty units, or imprisonment for more than 2 months but not more than 3 months	not more than 3 months
Above a fine of 3 penalty units or 3 months imprisonment	not more than 12 months

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