

DIRECTOR OF PUBLIC PROSECUTION'S GENERAL INSTRUCTIONS

NUMBER 3 OF 2015

Made at Nuku'alofa on Monday 5 October 2015

CRIMINAL PROSECUTION PROCEDURES

- 1 These Instructions are issued in order to have certainty and uniformity in the criminal prosecution of matters in the Supreme Court and the enhanced jurisdiction of the Magistrate's Court.
- 2 These Instructions shall come into force from Monday 5 October 2015.

INSTRUCTIONS:

Crown Prosecutors are hereby instructed to implement the following instructions in relation to the criminal prosecution of matters in the Supreme Court and the enhanced jurisdiction of the Magistrate's Court:



'Aminiasi Kefu

Acting Attorney General and Director of Public Prosecutions

ATTORNEY GENERAL'S OFFICE
CRIMINAL PROSECUTION PROCEDURES

I PRELIMINARY

- 1 These procedures apply once a criminal matter is committed from the Magistrates Court under section 32 of the Magistrates Court Act, to the Supreme Court for trial.
- 2 The committal papers are placed in a Supreme Court criminal file, and is registered and allocated the CR number from the Supreme Court.
- 3 The file is then referred to the Director of Public Prosecutions to be assigned to a Crown Prosecutor.
- 4 The Director of Public Prosecutions then assigns the file to a Crown Prosecutor, and if appropriate, assign another Crown Prosecutor to junior on the file, and also records the date of receipt of the file, and the deadline for the Crown Prosecutor to submit a draft summary of facts and indictment.
- 5 The file is then returned to the Filing Registrar to register the assignment in the criminal pending register, and then enter a filenote on the file recording the date of assignment and referral to the Crown Prosecutor, and then refer the file to the senior Crown Prosecutor.
- 6 The senior Crown Prosecutor assigned the file must then enter a filenote recording the date of receipt of the file, the deadline to submit the facts and indictment, and also shall record such deadline in his or her diary, and then commences preparing the draft summary of facts and indictment for the file, as directed by the Director of Public Prosecutions.
- 7 The draft summary of facts and indictment must be provided by the Crown Prosecutor by email to the Director of Public Prosecutions by the deadline directed on the file.

- 8 The Director of Public Prosecutions will then consider the facts and indictment, and if appropriate, approve them both, and then return them by email to the Crown Prosecutor to print for signing.
- 9 The Crown Prosecutor must then provide to the Filing Registrar the appropriate number of copies of the facts and indictment to be referred to the Director of Public Prosecutions to sign, and he or she must record in a filenote the date that the file is referred to the Filing Registrar to be referred to the Director of Public Prosecutions for signing.
- 10 The Director of Public Prosecutions then signs the facts and indictment, and records in a filenote the date of signing the facts and indictment, and also direct the appropriate jurisdiction for the matter to be tried. The Director of Public Prosecutions then returns the file to the Filing Registrar to register and file.
- 11 The Filing Registrar must then ensure that the facts and indictment are filed in the Supreme Court and served on the Accused or the Legal Counsel of the Accused, if there is any, as soon as practicable.
- 12 Once the facts and indictment are filed and served, the Filing Registrar must then register the filing and service, and also enter a filenote to record the same, and then informs the Crown Prosecutor by email that the facts and indictment have been filed and served.

II FIRST MENTION: ARRAIGNMENT

- 13 The Filing Registrar receives a Notice of Hearing / Arraignment from the Supreme Court
- 14 The Filing Registrar must bring up the file for the date of arraignment to be given to the Duty Prosecutor on the first day of the week in order for the Duty Prosecutor to prepare for the arraignment or mentions.

- 15 At the first mention in the Supreme Court, the facts and indictment must already have been filed and served, and the Accused should be ready to plead and elect the mode of trial.
- 16 If however either of those are not ready, the Duty Prosecutor must refer the file to the Director of Public Prosecutions for directions to apply to the Supreme Court for an adjournment of a period of up to 4 weeks in order for the Crown to file the facts and an indictment, or if the Accused needs time to consider his plea and election, the Court on its own initiative or by request of the Accused, will adjourn the matter for a reasonable period to allow the Accused to consider his plea and election.
- 17 On arraignment, the Duty Counsel appears, and takes the arraignment, and then records in a file note the plea and election made by the Accused.
- 18 The matter is then adjourned to the next Callover to fix the trial date for this matter.
- 19 The Duty Counsel then returns the file to the Filing Registrar to refer to the Director of Public Prosecutions to provide directions on how the file is progressed.

III SECOND MENTION: CALLOVER

- 20 Before the Callover, the Filing Registrar must gather all the files for the Callover, and refer them to the Director of Public Prosecutions so that they can fix the proposed trial date, back-up trial date and PTC date for the file.
- 21 At the Callover, either the Director of Public Prosecutions or one of the senior Crown Prosecutors shall appear and fix the trial dates with the Supreme Court, based on the proposed trial and back-up trial dates.
- 22 After the trial dates are fixed, the files are returned to the Filing Registrar to register the dates for the back-up, trial and pre-trial conference, and with the direction of the Director of Public Prosecutions, the dates for Crown Prosecutors to start preparing for trial, and then

produce fixtures list to be sent to all Crown Prosecutors, and to the Police Prosecutors and Police Investigators, through the Police Commissioner

IV THIRD MENTION: PRE-TRIAL CONFERENCE

- 23 A month before the PTC, the Filing Registrar must provide the file to the Crown Prosecutor to start preparing the file, if the Crown Prosecutor has not started preparations already.
- 24 The Crown Prosecutor must ensure all the witnesses and exhibits are available, and are subpoenaed, and if required, brief Crown witnesses in order to prepare them for giving evidence, or to clarify their evidence.
- 25 At the PTC, the Duty Prosecutor, or if appropriate, the Crown Prosecutor, shall appear and inform the Supreme Court that the matter is ready for trial, unless there is a reasonable ground to request that the trial be vacated, and then re-called in the next Callover, or another mention date to confirm the readiness of the matter for trial.

V FOURTH MENTION: TRIAL

- 26 Before the trial, the Crown Prosecutor shall already have prepared the closing address, opening address and any arguments in relation to any legal issue that may be raised by the Accused or the Supreme Court judge.
- 27 The Crown Prosecutor shall prosecute the matter in the Supreme Court or the enhanced jurisdiction of the Magistrates Court in accordance with the required standards of a Crown Prosecutor under the Attorney General's Office Prosecution Code.
- 28 If the Accused is acquitted, the Crown Prosecutor shall report the result in writing to the Director of Public Prosecutions, along with how the trial was heard, and give an opinion if there is any question of law arising at or in connection with the trial that should be referred

to the Attorney General to be submitted to be determined by the Court of Appeal under section 17D of the Court of Appeal Act.

- 29 If no appeal is to be made under section 17D of the Court of Appeal Act, the Director of Public Prosecutions shall report the acquittal to the Police Commissioner, and send the police file to the Police Prosecutor. The Director of Public Prosecutions will then close the file.
- 30 If the Accused is convicted, the Crown Prosecutor shall determine the Crown's position as to bail, or seek directions from the Director of Public Prosecutions on bail, otherwise, refer bail to be determined by the Supreme Court.
- 31 The Crown Prosecutor shall then refer the decision of the Supreme Court to the Director of Public Prosecutions to consider, and to provide any further directions in relation to preparation for sentencing.

VI SENTENCING

- 32 At the sentencing, and if the Supreme Court requires, appropriate submissions on sentencing and a table of comparable sentences shall have been prepared by the Crown Prosecutor, and also the criminal record of the Accused shall be made available to the Supreme Court.
- 33 The Crown Prosecutor shall appear at the sentencing and make submissions as required and appropriate for the Crown.
- 34 After the sentence, the Crown Prosecutor shall enter in a filenote the sentence imposed, and then return the file to the Filing Registrar to be referred to the Director of Public Prosecutions for further directions.

VI APPEALS

- 35 Upon being informed of the sentence imposed on the Accused, the Director of Public Prosecutions may either accept the sentence, or direct the Crown Prosecutor to provide an opinion on whether the sentence should the Crown should appeal against the sentence imposed for being inadequate, under section 17B of the Court of Appeal Act.
- 36 If there is no appeal by the Crown against the sentence imposed on the Accused, the Director of Public Prosecutions shall direct the Crown Prosecutor to report the result to the Police Commissioner, and the police file will be returned to the Police Prosecutor, and the criminal record and fingerprint form be referred to the Scene of Crime Office.
- 37 If there is an appeal by the Crown against sentence, the Director of Public Prosecutions shall seek the approval of the Attorney General, and make directions regarding the lodging of a notice of appeal, and preparation of the appeal.
- 38 If there is any appeal against conviction or sentence or both by the Accused, or the Crown appeals against a point of law or the sentence, the Director of Public Prosecutions shall make directions as to preparations for the appeal.
- 39 At the conclusion of the appeal, the result shall be entered in a filenote on the file, then registered, then referred to the Director of Public Prosecutions to report to the Police Commissioner, with the police file sent to the Police Prosecutors, and the criminal record and fingerprint form referred to the Scene of Crime Officer.

VII CLOSED FILES AND ARCHIVES

- 40 At the end of the case, the file is closed and referred to the Filing Registrar to register, then place in the closed files, then at the following year, the file is then archived in the office archives.