

**PART B**

**ISLAND COURT (CRIMINAL PROCEDURE)**

**RULES**

**2005**

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES**  
**2005**

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## **Interpretation**

In these rules, unless the context indicates otherwise,

“**accused**” means the person against whom a charge has been laid;

“**complainant**” means a person who makes a report to a police officer that another person has committed an offence;

“**criminal prosecution**” means proceedings that are brought in a court against a person who is alleged to have committed a criminal offence;

“**offence**” means some conduct of a person that is stated to be a criminal offence by the laws of Vanuatu;

## **Rule 1 - Starting a criminal prosecution**

### (1) Filing a charge

A police officer who receives a complaint or becomes aware that a person appears to have committed a criminal offence shall make a full investigation, and if it appears that a criminal offence has been committed the police officer shall complete a charge sheet and file it at an office of an Island Court.

### (2) Contents of charge

The charge sheet must contain the following information: the name of the accused and his or her address, the offence with which the accused is charged, and the date and place of the alleged offence.

### (3) Place of filing of charge

The charge must be filed in the office of the Island Court within whose jurisdiction the criminal offence which is charged was committed wholly or partly.

### (4) Withdrawal of charge

If a prosecution or a complainant, as the case may be, at any time before a final order is passed, satisfies the court that there are sufficient grounds for permitting him to withdraw the charge, the court may permit him to withdraw the same.

### (5) Summons to Accused

If the accused is not in custody, a police officer shall prepare a summons addressed to the accused in which the clerk shall enter the details of the charge and the date of hearing of the charge and which the clerk shall sign.

### (6) Service of summons

Every summons against an accused shall be served by handing a copy of it to the accused personally, or leaving it with an adult member of the family of the accused or with the employer of the accused.

(7) Time of service

A summons must be served not less than 7 days before the date of hearing.

(8) Person to make service

A summons for a criminal offence shall be served by a police officer, but may be served by an officer of the court.

(9) Proof of service

The person who served the summons must make and sign a note in writing of the person to whom the summons was handed, and the time and place of service, and this must be filed by the clerk with the charge.

(10) Accused in custody

If a person has been arrested without a warrant and detained in custody that person must be brought before a court as soon as possible or released if he or she has promised to attend the hearing.

**Rule 2 - Avoidance of service by accused**

(1) Warrant of arrest to compel attendance

If a charge has been filed and a summons issued, and the court has reason to believe that the accused is avoiding service or is unlikely to obey the summons, the court may make an order that a warrant for the arrest of the accused be issued.

(2) Application for warrant

Application for such a warrant may be made to the court by a police officer orally or in writing.

(3) Signing and execution of warrant

The warrant of arrest shall be signed by the clerk and executed by a police officer who must return the warrant to the clerk to be filed.

(4) Record of execution of warrant

Details of the execution of the warrant of arrest shall be entered by the clerk in the file and signed by the police officer who executed the warrant.

(5) Release of accused on bail

The court may order the release of an accused who has been arrested on condition that the accused pays such sum of money as the court considers reasonable as security to ensure that the accused will attend the hearing of the charge, and also subject to such other conditions as the court considers appropriate.

If the accused attends the hearing, the sum paid by the accused as security shall be refunded to the accused at the end of the hearing, but if the accused does not attend the bail money shall be forfeited by the court.

### **Rule 3 - Summons to witness**

- (1) Issue of summons If the prosecutor or accused so request, the court may issue a summons to such person requiring that person to attend the hearing, and bring such documents or things as may be specified.
- (2) Warrant of arrest If without good reason, the person against whom a witness summons is issued does not attend at the specified time and place, the court may order the issuance of a warrant of arrest against the defaulting witness.
- (3) Security When a witness is arrested and it is not possible to take the evidence of that witness at that time, the court shall order the release of the witness from custody on condition that the witness pays such sum of money as the court considers reasonable as security to ensure that the witness will attend the hearing of the charge, and also subject to such other conditions as the court considers appropriate.

### **Rule 4 - Non-attendance of parties**

- (1) Prosecutor  
If the prosecutor, having been informed of the time and place of the hearing, fails to appear, the court shall dismiss the charge unless it considers that there is some good reason for the non-attendance of the prosecutor.

If the court considers there is good reason for the non-attendance of the prosecutor, it shall adjourn the hearing until another date, and, if the accused is in custody, remand the accused in custody or release him or her, subject to such conditions as the court considers appropriate.

- (2) Accused  
If the accused, having been served with a summons, fails to attend at the hearing, the court may make an order that a warrant for the arrest of the accused be issued.

- (3) Application for warrant  
Application for such a warrant may be made to the court by a police officer orally or in writing.

- (4) Signing and execution of warrant  
The warrant of arrest shall be signed by the clerk and executed by a police officer who must return the warrant to the clerk to be filed.

(5) Record of execution of warrant Details of the execution of the warrant of arrest shall be entered by the clerk in the file and signed by the police officer who executed the warrant.

## **Rule 5 - Promotion of reconciliation**

The court may encourage reconciliation and promote amicable settlement, according to custom or otherwise, of any prosecution of a charge of a personal or private nature punishable by imprisonment of two years or less, or by a fine only, and if satisfied that the settlement is adequate and fair, may order the prosecution to be stayed or terminated.

## **Rule 6 - Trial**

### (1) Adjournment of hearing

When an accused appears before a court, charged with a criminal offence the court may direct that the trial take place immediately or be adjourned for some good reason to a date, time and place as directed by court.

If the trial is adjourned the accused may be remanded in custody for a period not exceeding 7 days or released subject to the payment of bail or such other conditions, as the court considers appropriate.

### (2) Language

The language of the court shall be Bislama and the accused shall be asked by the clerk if he or she understands Bislama.

If the accused does not understand Bislama the court will appoint a suitably qualified person as an interpreter for the accused, and may adjourn the trial to enable that to be done.

### (3) Assistance to accused

An accused may, with the permission of the court, be permitted to be assisted by another person except a lawyer.

### (4) Defendant to be asked to plead to charge

The charge shall be read out aloud by the clerk to the accused, and the accused shall be asked whether he or she admits that the charge is true or denies that the charge is true.

The clerk shall record in writing the answer of the accused.

### (5) If the defendant admits the charge

If the defendant admits the charge, the prosecutor shall give a summary of the facts to court, and the accused shall be asked whether or not he or she agrees with that summary.

If the accused agrees with the summary, the court shall convict the accused, and then shall allow the accused to address it with regard to the penalty that should be imposed before announcing the sentence imposed by the court upon the accused.

(5) If the accused refuses to plead, or denies the charge or disagrees with the summary of facts

If the accused refuses to plead, or denies the charge, or disagrees with the summary of facts, the chairperson shall direct that a plea of not guilty be entered.

(6) Plea of not guilty

If a plea of not guilty is entered by or for the accused:

- (a) Exclusion of witnesses The chairperson shall require the clerk to ensure that all witnesses relating to the case, except the parties, must leave the court room and wait outside until called to give evidence.
- (b) Statement of presumption of innocence to be read  
The chairperson shall ask the clerk to read the following statement to the accused:  
“In this trial you will be presumed innocent until the prosecution have proved beyond reasonable doubt that you are guilty. You do not have to prove your innocence. If at the end of the trial there is a reasonable doubt as to whether you are guilty you will be acquitted.”
- (c) Evidence for the prosecution  
The chairperson shall ask the prosecutor to provide evidence in support of the charge. The prosecutor will then ask the complainant and the witnesses for the prosecution to give evidence, and when each has given evidence he or she may be questioned by the accused, and the justices.  
If at the end of the evidence for the prosecution, the court considers that the evidence does not establish a sufficient case against the accused, the court shall dismiss the charge and acquit the accused.
- (d) Explanatory statement to accused  
If the court considers that the evidence of the prosecutor does establish a sufficient case against the accused, the chairperson shall explain to the accused that the evidence of the prosecution does raise a sufficient case against him or her, and that he or she is entitled to give and to produce evidence against the prosecution but is not obliged to do so, and may remain silent, and that this will not in itself be regarded as an admission or evidence of guilt. The accused should also be told that if he or she, or witnesses on behalf of the accused, do give evidence, each will be subject to questioning by the prosecution and by the justices.
- (e) Evidence of accused  
If the accused chooses to provide evidence, he or she will give evidence first and then such other witnesses as the accused wishes to call. After each has given evidence he or she may be questioned by the prosecutor and the justices.
- (f) Summary statements by parties  
When the witnesses for the accused have completed giving evidence, the chairperson shall invite the prosecutor and the accused to make a short

statement, if they wish, summarising the main points which they wish to emphasise to the court.

(g) Certain kinds of questions not allowed

The chairperson must ensure that the following kinds of questions are not asked by the parties or the justices, or if asked, are disallowed:

- (i) questions that are not relevant;
- (ii) questions that are expressed in a provocative or argumentative manner;
- (iii) leading questions, ie questions which suggest the answer.

(h) Order and respect to be maintained throughout hearing.

The chairperson is responsible for ensuring that order and respect are maintained throughout the hearing, and if that is not possible, the chairperson shall adjourn the hearing to a different time or place.

## Rule 7 - Decision of Court

(1) Discussions between justices before giving decision

After the evidence and closing statements of the parties is concluded, the justices must discuss what should be the decision of the court.

Such discussions may take place at the court table, but if the case is difficult, the court should adjourn so that the discussions can be held in private in another place.

The clerk must not take part in these discussions, or be present with the justices while those discussions are taking place.

(2) Decision may be given orally but must be in writing if a difficult case

The decision of the court may be given orally or in writing but if the case is a difficult one, it must be given in writing.

(3) Decision must be based on evidence

The decision of a court must be based upon the evidence that is produced to the court, and should not be based on information that has come to the knowledge of the justices from other sources.

(4) Decision must be in favour of accused if reasonable doubt that not guilty of charge

If, having regard to all the evidence, there is a reasonable doubt that the accused is not guilty of the offence charged, the decision should be in favour of the accused, and the charge must be dismissed and the accused must be acquitted of the charge.

(5) Decision must be in favour of prosecution if no reasonable doubt that the accused is guilty of charge

If, having regard to all the evidence, there is no reasonable doubt that the accused is guilty of the offence charged, the decision should be in favour of the prosecution and the accused should be convicted.

(6) Sentence

If the court convicts the accused, it must invite the prosecution and the accused to address it as to the appropriate penalty.

In assessing an appropriate penalty, the court must take into account any compensation that has been made or promised to be made, under custom, and may adjourn the sentence to enable such compensation to be made.

(7) Compensation

In addition to any penalty, the court may also order the accused to make payment of compensation to the complainant for any injury or damage caused by the offence of which the accused was convicted.

**Rule 8 - Forms**

The forms set out in the Schedule shall be used with such adaptations as are appropriate for the circumstances.

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005**

**SUMMONS TO ATTEND COURT**

Form Crim. 1

.....Island Court

To: ..... (name) of ..... (place)

You are hereby commanded to appear before the above Island Court at ..... (place)

on .....(date) at ..... (time) to give evidence.

Statement of offence .....

Contrary to .....(law/by-law)

Particulars of offence .....

.....  
.....

Signed .....

Court Clerk

Date .....

**Note:** Any person summoned to attend court who fails to do so shall be liable to a fine not exceeding VT24,000 or imprisonment not exceeding 6 months or to both.

Summons served by me on person named and contents explained:

at: ..... (place) on ..... (date)

Signed .....

Police Officer

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005**

**WARRANT TO REMAND ACCUSED IN CUSTODY**

Form Crim. 2

..... Island Court

To: All police officers in the Republic of Vanuatu and to the officer-in-charge of the prison at .....

Whereas ..... of ..... stands charged with the offence ..... of .....

You are hereby commanded to convey the said ..... to the prison at ..... and deliver him to the officer-in-charge thereof who is hereby directed to keep him safely until ..... and then have him brought before this court at ..... o'clock in the morning/afternoon for trial/ sentence.

Dated this ..... day of ..... 20.....

..... (Justice)

..... (Justice)

..... (Justice)

..... (Court Clerk)

Further remands:

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005**

**CHARGE**

Form Crim. 3

..... Island Court

Name of accused: .....

Address: .....

Occupation: .....

Age:.....

Father's name: .....

Mother's name: .....

Statement of offence:.....

Contrary to .....

..... (law/by-law)

Particulars of offence .....

Signed .....



Date charge preferred to Clerk of .....Island Court

The ..... day of ..... 20.....

Signed .....

Court Clerk

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005**

**WARRANT OF IMPRISONMENT FOR  
FAILURE TO PAY A FINE**

Form Crim. 4

..... Island Court

To: All police officers in the Republic of Vanuatu and to the officer-in-charge of the prison at

.....

Whereas ..... (name) of ..... (place) was convicted  
before this court on ..... 20..... of the following offence(s):

Statement of offence(s)-

Particulars of offence(s)-

and it was adjudged that the said ..... (name) should pay a fine of  
VT..... or in default of payment be imprisoned for.....(period)\* and  
whereas he has made default.

You are therefore commanded to take the said .....  
and convey him to prison and deliver him to the officer-in-charge who is hereby directed to imprison  
him for the period aforesaid unless he shall first pay the fine of VT.....

Dated the..... day of .....20.....

.....(Justice)

..... (Justice)

..... (Justice)

..... (Court Clerk)

*\*In the case of a sentence of more than 14 days this Warrant must be counter-signed by the supervising  
magistrate.*

.....(Magistrate)

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005**

**ORDER TO PERFORM COMMUNITY WORK**

Form Crim. 5

.....Island Court

*Insert name and address of the supervisor to whom the accused is to report.*

To..... of .....

Whereas ..... of ..... was convicted before this court on ..... 20..... of the following offence-

Statement of offence:

Particulars of offence:

*\*Delete whichever is inapplicable.*

And it was adjudged that the said ..... \* should pay a fine of VT..... out of which a sum of VT..... should be paid to ..... as compensation and in default of payment of the fine the said ..... should be sentenced to a term of imprisonment not exceeding 2 months;

*Insert duration of order*

And whereas as an alternative to the said .....

..... undergoing such term of imprisonment the Court has determined in its discretion that he/she should perform specified work or work of a specified kind for community purposes for a period of 8 hours a day from Monday to Saturday in each week commencing from ..... 20..... and terminating on ..... 20..... ;

*Insert any conditions which the court may impose*

It is hereby ordered that you will supervise the said ..... in the performance of such community work as you may direct him/her to do subject to the following conditions:

**ISLAND COURTS (CRIMINAL PROCEDURE) RULE 2005**

**WARRANT TO ARREST ACCUSED.**

Form Crim.6

..... Island Court

To: All Police Officers within the Republic of Vanuatu.

Whereas ..... of ..... is

charged with the following offence(s):.....

Statement of offence:

Particulars of offence:

You are hereby commanded to arrest and detain the said ..... and to produce him before this Court forthwith in execution of this Warrant.

Dated the ..... day of ..... 20.....

.....  
**Court Clerk**  
.....

**RETURN OF WARRANT**

(To be completed by Police Officer to whom Warrant is handed).

Warrant executed by me and the above-named accused produced before the.....Island Court this ..... day of ..... 20.....

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005  
FORM OF RECORD IN CRIMINAL PROCEEDINGS**

Form Crim. 7

In the ..... Island Court sitting at ..... on the ..... 20.....

Before....., Justice

....., Justice

....., Justice

....., Court Clerk

Case No. .... / ..... -accused. .... of .....

-accused ..... of .....

-accused ..... of .....

Prosecutor .....

Plea .....

**PART 1**

*(If the accused initially pleads guilty, the following procedure applies.)*

Facts as stated by the prosecutor .....

Accused's answer (if any) to the facts .....

Conviction recorded .....

Antecedents .....

Sentence .....

Compensation to aggrieved person (if applicable) .....

Accused to be informed of his right of appeal .....

**PART 2**

*( If the accused pleads not guilty, the following procedure applies when the trial commences on the date fixed for hearing of the case.)*

Witness's full name, age whether sworn or affirmed P.W.I:

XD:

XXD:-Accused:

Re-XM Prosecutor:

XD- Court:

*Witness's full name, age whether sworn or affirmed PW.2 etc*

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**Case for the Prosecution**

(If the Court finds that there is a case to answer, the accused is put to his defence.)

*If the accused elects to testify, full name, age Accused:  
whether sworn or affirmed*

*XD:*

*XXD:-Prosecutor:*

*Re-XM:*

*XD-Court:*

*If any defence witnesses testify, full name, age, sworn or affirmed DW1 etc.:*

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**Case for the Defence**

(The Court will either give judgment at the conclusion of all the evidence or else reserve its decision. The clerk should write down any reasons given by the Court in reaching its decision. If the accused is found guilty the Court will then proceed to pass sentence.)

Antecedents: .....

*(Follow the procedure in Part 1 for the remainder of the trial.)*

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005  
RECOGNIZANCE (WITHOUT SURETY)**

Form Crim. 8

..... Island Court

I, the undersigned, acknowledge myself to owe to the Clerk for the time being of the above-named Island Court the sum written opposite my signature hereto, to be raised by seizure and sale of my goods if the condition hereon endorsed is not fulfilled.

Dated this ..... day of ..... 20.....

Signature	Address	Occupation	Amount
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The condition of this recognizance is that if the within-named shall personally appear before the above-named Island Court on ..... day of ..... 20..... at ..... o'clock in the morning/afternoon to answer a charge contrary to ..... and shall continue to attend from day to day and at each adjournment of the said court and not to depart therefrom without leave, then this recognizance shall be void and otherwise it shall be in force.

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005  
RECOGNIZANCE (WITH SURETIES)**

Form Crim. 9

..... Island Court

We, the undersigned, acknowledge ourselves to owe to the Clerk for the time being of the above-named Island Court the sums written opposite our respective signatures hereto, to be raised by seizure and sale of our several goods if the condition hereon endorsed is not fulfilled.

Dated this.....day of.....20.....

Signature	Address	Occupation	Amount
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The condition of this recognizance is that if the within-named shall personally appear before the above-named Island Court on ..... day of ..... 20.....at ..... o'clock in the morning/afternoon to answer a charge contrary to ..... and shall continue to attend from day to day and at each adjournment of the said Court and not to depart therefrom without leave then this recognizance shall be void and otherwise it shall be in force.

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005  
WARRANT OF IMPRISONMENT**

Form Crim. 10

..... Island Court

To: All police officers in the Republic of Vanuatu and to the officer-in-charge of the prison at  
.....

Whereas ..... (name) of ..... (place)

was on ..... 20..... (date) convicted before the  
..... Island Court of the following offence(s):

Statement of the offence(s):

Particulars of the offence(s):

and it was adjudged that the said ..... (name) for his  
offence(s) should be, imprisoned at ..... (prison) and thereto be kept  
for ..... (period)\* from this day.

You are therefore ordered to take the said ..... (name) and convey him to the  
said prison and deliver him to the officer-in-charge thereof who is hereby directed to imprison him for  
the aforesaid.

Dated the.....day of.....20.....

..... (Justice) ..... (Justice)

..... (Justice) .....(Court Clerk)

*\* In the case of a sentence exceeding 14 days this warrant must be countersigned by the Supervising Magistrate.*

Dated the.....day of.....20.....

..... (Magistrate)

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005  
UNDERTAKING TO APPEAR TAKEN BY A POLICE OFFICER**

Form Crim. 11

..... Island Court

I ..... of ..... being charged with the offence of ..... and being required to appear before the ..... Island Court at ..... on ..... 20..... do **HEREBY BIND MYSELF** to comply with the conditions of release (if any) and to attend the said court on the date stated and to continue so to attend until the trial of my case shall be concluded.

I acknowledge that should I fail to do so I will be liable to be arrested and brought before the said court.

*CONDITIONS OF RELEASE:*

Dated at ..... this ..... day of .....20.....

Witness: ..... Signature: .....

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005  
RECEIPT FOR COMPENSATION**

Form Crim. 12

.....Island Court

I ..... of ..... acknowledge to have received the sum of VT..... being the whole or part of the fine imposed against ..... in Criminal Case No. .... in which I am the complainant and I accept the same in full settlement of any claim I might have for damages for the loss or injury sustained by me by reason of the act or omission on the part of the said .....

Dated at ..... this ..... day of ..... 20.....

Witness: ..... Signature: .....

**ISLAND COURTS (CRIMINAL PROCEDURE) RULES 2005  
PROBATION ORDER**

Form Crim. 13

.....Island Court

*Name of accused*

Whereas .....of.....  
(hereinafter referred to as "the  
probationer") has this day been convicted  
of

*Particulars of  
offence*

And whereas the Court is of the opinion  
having regard to the circumstances,  
including the nature of the offence(s) and  
the character of the probationer, that it is  
expedient to make a probation order;

And whereas the court has explained to  
the probationer the effect of this order and  
that if the probationer fails to comply with  
any general or special conditions set out  
below the court shall order the termination  
of such probation and shall sentence the  
probationer afresh.

*Term of order to be from  
1 to 3 years*

Now therefore it is ordered that the  
probationer will reside at

and will for a period of.....years from the  
date of this order be under the  
supervision of  
(hereinafter referred to as "the  
Supervising Officer")

And it is further ordered that the  
probationer shall during the said period  
comply with the following conditions-

1. to appear when called upon by the  
supervising officer;
2. to receive visits from the supervising  
officer and furnish all information and  
documents necessary for verifying his  
means of support;
3. too advise the supervising officer in  
advance of any change of employment or  
residence and the reasons thereof;
4. to inform the supervising officer of any  
intended absence of over 15 days and of

his return;

5. to obtain the prior permission of the supervising officer before any departure abroad.

*Add any special conditions which may be imposed*

Dated this ..... day of ..... 20 .....