



Tuvalu

ISLAND COURTS REGULATIONS

L.N. 34/65, 9 of 1969, L.N. 5/80



Tuvalu

ISLAND COURTS REGULATIONS

Arrangement of Sections

Section

PART I - PRELIMINARY	7
1 Citation.....	7
2 Interpretation.....	7
PART II - CRIMINAL PROCEDURE	8
3 Charge to be in writing	8
4 Court may issue summons	8
5 No charge to be for more than 1 offence	8
6 Form and service of summons	8
7 Proof of service of summons	9
8 Service beyond jurisdiction of island court	9
9 Non-appearance of person summoned.....	9
10 When warrant may issue in first instance	10
11 Proceedings on arrest.....	10
12 Compelling attendance of witness	10
13 Charge to be laid within 6 months	11
14 When person charged does not appear and when attendance may be dispensed with.....	11
15 When person making the charge does not appear.....	11
16 Appearance of both parties, trial and adjudication	12
17 Warrant of commitment.....	12
PART III - CIVIL PROCEDURE	12
18 Commencement of civil action	12
19 Service of summons on defendant and subpoena to any witness.....	13
20 Procedure at hearing of summons.....	13

21 Adjournment13
 22 Judgment14
 23 Non-appearance of plaintiff14
 24 Non-appearance of defendant.....14
 25 Allowance to witnesses14
 26 Mode of enforcing judgment.....14
 27 Default in compliance with order of court other than for payment of money15

PART IV - GENERAL PROVISIONS RELATING TO APPEAL 16

28 Appeals to magistrate's courts16
 29 Sittings, etc., of magistrate's court to hear, etc., appeal.....16
 30 Procedure on appeal16
 31 Notice of appeal17
 32 How respondents notified of appeals17
 33 Clerk of island court to notify magistrate's court17
 34 Clerk of island court to complete record18
 35 Translation and notification of parties.....18
 36 Discontinuance of appeal18
 37 Service of notices, etc., relating to appeals19
 38 Magistrate to peruse each record.....19
 39 Decision on appeal19
 40 Adjournment of hearing of appeal.....19

PART V - CRIMINAL APPEALS 19

41 Notice of summary dismissal of criminal appeal19
 42 Setting down criminal appeal and notice to respondent.....19
 43 Release on bail of appellant in custody and suspension of sentence pending appeal.....20
 44 Appellant entitled to be present at hearing of criminal appeal and powers of court if appellant fails to be present at any hearing20

PART VI - CIVIL APPEALS 21

45 Security to be given for any civil appeal21
 46 Cross-appeal21
 47 Extension of time for civil appeal, amendment of grounds, etc.....21
 48 Failure of parties to appear at civil appeal22

PART VII - FEES 22

49 Fees22

PART VIII - GENERAL 22

50 Application of Criminal Procedure Code22

51	Appearances.....	23
52	Extension of jurisdiction where more than 1 island court on the same island.....	23
53	Service beyond jurisdiction in divorce proceedings	23

SCHEDULE 1 **24**

ISLAND COURTS ORDINANCE - CHARGE	24
ISLAND COURTS ORDINANCE - SUMMONS.....	25
ISLAND COURTS ORDINANCE - AFFIDAVIT OF SERVICE	26
ISLAND COURTS ORDINANCE - WARRANT TO APPREHEND PERSON CHARGED	27
ISLAND COURTS ORDINANCE - WARRANT TO REMAND PERSON CHARGED	28
ISLAND COURTS ORDINANCE - SUMMONS TO WITNESS	29
ISLAND COURTS ORDINANCE - WARRANT TO APPREHEND WITNESS	30
ISLAND COURTS ORDINANCE - WARRANT OF COMMITMENT.....	31
ISLAND COURTS ORDINANCE - WRIT OF SUMMONS.....	33
ISLAND COURTS ORDINANCE - SUBPOENA.....	34
ISLAND COURTS ORDINANCE - NOTICE OF APPEAL.....	35
ISLAND COURTS ORDINANCE - RECOGNISANCE OF BAIL OF APPELLANT.....	36
ISLAND COURTS ORDINANCE - RECOGNISANCE OF BAIL OF APPELLANTS SURETIES	38

SCHEDULE 2 **40**

FEES	40
------------	----

Supporting Documents

ENDNOTES	43
Table of Legislation History	43
Table of Renumbered Provisions.....	43
Table of Endnote References	43



Tuvalu

ISLAND COURTS REGULATIONS

L.N. 34/65, 9 of 1969, L.N. 5/80

ISLAND COURTS ORDINANCE

ENACTED BY THE PARLIAMENT OF TUVALU

Commencement [Date]

PART I - PRELIMINARY

1 Citation

These Regulations may be cited as the Island Courts Regulations.

2 Interpretation

In these Regulations unless the context shall otherwise require —

“**appeal**” means any appeal under Part V of the Ordinance;

“**appellant**” means a person who has appealed under Part V of the Ordinance or a person who is entitled so to appeal;

“**decision**” means any judgment, order or decision, whether final or otherwise, and includes any sentence;

“**record of appeal**” means a record of appeal under regulation 34;

“**respondent**” means, in the case of any criminal appeal, the prosecutor in the cause in which the decision appealed from was given, and, in the case

of any civil appeal, means all parties (other than the appellant) to the cause in which the decision appealed from was given;

“**sentence**” has the meaning ascribed to it in section 29(2).

PART II - CRIMINAL PROCEDURE

3 Charge to be in writing

In all cases in which a charge is made before an island court that any person has committed or is suspected of having committed any offence within its jurisdiction, such charge shall be made on oath and shall be written down by such island court in Form 1 in Schedule 1.

Schedule 1

Form 1

4 Court may issue summons

Upon any charge having been written down as prescribed in the preceding regulation an island court may issue a summons directed to the person who committed, or is suspected of having committed, the offence referred to in such charge.

5 No charge to be for more than 1 offence

Every charge shall be for 1 offence only but it shall be lawful for a prosecutor to lay 1 or more charges against the same person at the one time; and the island court hearing the charges may, when it considers it necessary, deal with them either together or separately.

6 Form and service of summons

Every summons shall be in Form 2 in Schedule 1 and shall be in the language of the court and shall be served by a police officer or other person authorised under section 13 by delivering it personally to the person to be served or, if he cannot be conveniently found, by leaving it for him with some person at his last or most usual place of abode.

Form 2

7 Proof of service of summons

The person who serves the summons shall either make and file an affidavit of the service in Form 3 in Schedule 1 endorsed on a true copy of the summons served or attend before the court at the time and place mentioned therein to depose, if necessary, to the service thereof.

Form 3

8 Service beyond jurisdiction of island court

Where a person against whom a charge is made is beyond the jurisdiction of the island court before which such charge is made, but is within the jurisdiction of another island court, it shall be lawful for the first-mentioned island court, when a summons for the appearance of such person is issued and when the same has been backed by a certificate of a magistrate appointed under the Magistrates' Courts Ordinance, that in his opinion such service is just and proper having regard to the seriousness of the offence charged, the distance which the person served may have to travel in order to appear at the time and place named in the summons, and all other circumstances known or appearing to such magistrate to be relevant, to transmit the summons to that other island court with a request for the service thereof and on receipt of such summons such other island court shall direct that such summons be served; and in any such case the island court issuing the summons shall allow such time for the appearance of the person summoned as in the opinion of that island court is necessary to enable him to appear.

Cap. 2

9 Non-appearance of person summoned

- (1) If the person served with the summons does not appear at the time and the place mentioned in the summons, and it is made to appear on oath to the island court having cognisance of the proceedings that the summons was duly served within a reasonable period before the time for his appearance as aforesaid, such island court may issue its warrant in Form 4 in Schedule 1 to apprehend the person so summoned as aforesaid.

Form 4

- (2) A warrant issued under this or the next succeeding regulation shall remain in full force until executed by any police officer or member of the district police in any part of Tuvalu and no signature other than that of the island magistrate issuing it shall be necessary.

10 When warrant may issue in first instance

In all cases where a charge is made, an island court, if it thinks it expedient that a warrant should be issued in the first instance instead of a summons, shall cause the charge to be written down as required by regulation 3 and verified by the oath of the person making the charge and may issue a warrant in Form 4 in Schedule 1 to apprehend the person charged; and such a warrant may issue, notwithstanding that a summons in respect of the matter charged has been issued at any time before the time of the appearance in that summons mentioned:

Form 4

Provided, however, that no warrant shall be issued under this regulation unless the island court issuing the same is satisfied by evidence on oath that the person to be apprehended is within its jurisdiction at the time when the charge is laid.

11 Proceedings on arrest.

- (1) When a person has been apprehended under a warrant, he shall be brought before the island court which issued such warrant and thereupon, either by warrant in Form 5 in Schedule 1, committed to prison, or, orally, to the custody of the officer apprehending him or to such other safe custody as may be thought fit; and the island court may order him to be brought up at a certain time and place before it and shall give notice accordingly to the person who laid the charge in question:

Form 5

Provided, however, that no committal under this regulation shall exceed 7 days.

- (2) Upon the request of the person who laid the charge as aforesaid when the person charged is brought before the island court upon being apprehended under paragraph (1), the island court may with the consent of the person charged proceed to hear and determine the charge forthwith.

12 Compelling attendance of witness

- (1) If it is made to appear to an island court that any person within its jurisdiction is likely to give or produce evidence which such island court thinks should be given or produced in any criminal cause or matter and such person will not appear voluntarily for the purpose of being examined as a witness or of producing that evidence such island court may issue a summons in Form 6 in Schedule 1 to such person requiring his attendance or the production of the aforesaid evidence which shall be sufficiently described in the summons.

Form 6

- (2) If the island court is satisfied by evidence upon oath that any such person as aforesaid will not attend unless compelled to do so, the island court may issue a warrant in Form 7 in Schedule 1.

Form 7

13 Charge to be laid within 6 months

Except where a longer time is specially allowed by law, no offence shall be triable by an island court unless the charge relating to it is laid within 6 months from the time when the offence was committed.

14 When person charged does not appear and when attendance may be dispensed with

If the person charged does not appear at the time and place of hearing mentioned in a summons, and it is made to appear on oath to the island court having cognisance of the proceedings that the summons was duly served within a reasonable period before the time for his appearance as aforesaid and if the island court does not think it expedient to issue a warrant for his apprehension, or if the court has before it any writing purporting to be a plea of guilty by the person charged to the charge in question and it is satisfied as to the correctness of such plea, such court may proceed to hear and determine the case without his appearance; and in any case in which it deems it appropriate to do so, an island court may cause an endorsement to appear on any summons issued by it notifying the person charged that such court may dispense with his personal attendance at the hearing if he pleads guilty to such charge in writing before the time fixed for hearing.

15 When person making the charge does not appear

- (1) If at the time and place appointed the person charged is before the court and the person making the charge, having had due notice, does not appear, the court may dismiss the charge or adjourn the hearing as to it seems fit.
- (2) In the event of the charge being dismissed the court may make such order as to payment of compensation by the person making the charge to the person charged and his witnesses for loss of time as to the court seems just; and the compensation to be paid shall be limited to a sum or sums, not exceeding \$1 for each day or part of a day of attendance of each person in respect of whom compensation is payable.

16 Appearance of both parties, trial and adjudication

- (1) If both parties appear, the court shall cause the substance of the charge to be stated to the person charged and ascertain his plea thereto.
- (2) If the person charged pleads “guilty”, the plea shall be recorded and he may be convicted thereon.
- (3) If the person charged pleads “not guilty” or if, after a reasonable opportunity being given for him to do so, the person charged refuses to plead, the court shall hear the person making the charge and such evidence as he shall adduce; and the person charged shall have the right to cross-examine the person making the charge, if he gives evidence, and any witness called by him.
- (4) The court shall then hear such evidence as the person charged may wish himself to give in his defence which evidence may be given on oath and, when he has concluded such evidence, if any, the evidence of any witness he may wish to call; and the person making the charge shall have the right to cross-examine the person charged, if he gives evidence on oath or affirmation, and any witness called by him.
- (5) The clerk (or, if he is not present, the president) of the court shall take full notes of all evidence so given.
- (6) The court shall then consider the matter and may then convict the person charged or dismiss the charge. The court shall thereupon declare aloud, and having done so, record, its decision and any punishment imposed or other order made by it in consequence of such decision.

17 Warrant of commitment

If the court convicts the person charged and imposes a term of imprisonment by way of punishment a warrant of commitment shall be drawn up in Form 8 in Schedule 1, or as near thereto as the circumstances permit, and shall be signed by the president of the court.

Form 8

PART III - CIVIL PROCEDURE**18 Commencement of civil action**

For the purpose of commencing any action, the plaintiff may apply to the island court having jurisdiction for a writ of summons in Form 9 in Schedule 1 and the

particulars of the claim shall be set out therein and signed and filed by such island court and a copy issued by it for service on the defendant.

Form 9

19 Service of summons on defendant and subpoena to any witness

- (1) The copy writ of summons signed by the plaintiff shall be served by him, or by someone on his behalf, on the defendant personally; and if for any reason personal service cannot be promptly effected, the island court which issued the writ may, upon proof of the fact by the plaintiff and on being satisfied that the defendant is within the island and jurisdiction of such court, direct that the same be left with some person other than the defendant, if the court is satisfied that through such person the issue of the writ of summons and its contents will come to the knowledge of the defendant.
- (2) Either party to an action may obtain from the island court before which a claim is made a subpoena in Form 10 in Schedule 1 to a witness to give evidence at the hearing, such court issuing the same upon request.

Form 10

20 Procedure at hearing of summons

- (1) Upon the hearing of any writ of summons an island court shall first cause the substance of the claim to be stated to the defendant and shall then ask him if he is, or is not, indebted; and if the defendant pleads “not indebted” the island court shall then hear the evidence of the plaintiff and such other evidence as he may adduce; and the defendant shall have the right to cross-examine the plaintiff and any witness called by him.
- (2) The island court shall then hear such evidence as the defendant may wish himself to give in support of his case and, when he has concluded such evidence, if any, the evidence of any witness he may wish to call; and the plaintiff shall have the right to cross-examine the defendant if he gives evidence and any witness called by him.
- (3) The clerk (or if he is not present, the president) of the court shall take full notes of all evidence so given.

21 Adjournment

- (1) Notice of any adjournment given by an island court in the presence of both parties shall be deemed a sufficient notice to them of such adjournment.

- (2) If at the time and place appointed by an island court for any adjourned hearing either or both the parties do not appear, such island court may then and there proceed with the further hearing of the case as if the party or parties were present.

22 Judgment

On completion of the hearing by any island court it shall give judgment by making such order in the matter as in the nature of the case seems just.

23 Non-appearance of plaintiff

If the plaintiff does not appear on the day named in any writ of summons for the hearing thereof, the island court may dismiss the summons and order payment by the plaintiff to the defendant and his witnesses, if he and those witnesses have attended the place of hearing, of such compensation for loss of time as to such court seems just.

24 Non-appearance of defendant

If a defendant does not appear on the day named in the writ of summons for the hearing thereof, the island court may, upon proof that the same has been served and the plaintiff proving to the satisfaction of such court the claim sought to be enforced make an order upon such writ of summons as the nature of the case demands; and such order may provide for the payment by the defendant to the plaintiff and his witnesses, if he and those witnesses have attended at the place of hearing, of such compensation for loss of time as to the island court seems just.

25 Allowance to witnesses

Compensation paid under the provisions of the 2 last preceding regulations shall not exceed \$1 for each day or part of a day of attendance of each person in respect of whom compensation is payable.

26 Mode of enforcing judgment

- (1) Upon a judgment of an island court for any sum of money such court may —
 - (a) order the sum to be paid forthwith, and in default of payment order that the defendant be imprisoned; or

- (b) order the sum to be paid by instalments and in default of the payment of any instalment order that the defendant be imprisoned:

Provided that any imprisonment ordered under this regulation shall not exceed the following scale –

Amount	Maximum period
Not exceeding \$2	7 days;
Exceeding \$2 but not exceeding \$4	14 days;
Exceeding \$4 but not exceeding \$20	6 weeks;
Exceeding \$20	2 months

Provided further that no order of imprisonment under this regulation shall be made unless it is proved to the satisfaction of the court that the person making default has, or has had since the date of the judgment, the means to pay the debt but refuses or neglects to do so.

- (2) For the avoidance of any possible doubts, it is declared that the undergoing of any period of imprisonment ordered under this regulation for the non-payment of any debt shall not extinguish that debt.

27 Default in compliance with order of court other than for payment of money

- (1) Unless otherwise provided in the law on which such order is based, a person disobeying for a period of 7 days any order of an island court other than for the payment of money may, upon application being made to the court and on proof that the order has been disobeyed, be ordered to pay a sum not exceeding \$1 for every day during which he has disobeyed the order, or to be imprisoned until he consents to obey the order.
- (2) No person shall, for disobeying any such order as is mentioned in this and the last preceding regulation, be liable to imprisonment for a period or periods amounting together to more than 3 months or to payment of any sums exceeding in the aggregate \$50.

PART IV - GENERAL PROVISIONS RELATING TO APPEAL

28 Appeals to magistrate's courts

Subject to any direction made by the Senior Magistrate under section 4 of the Magistrates' Courts Ordinance, an appeal from any island court shall be dealt with, heard and determined by the magistrate's court which ordinarily sits nearest to the place in which the island court is situated.

Cap.2

29 Sittings, etc., of magistrate's court to hear, etc., appeal

The sittings, forum and venue of any magistrate's court for the purpose of dealing with, hearing or determining any appeal shall, subject to these Regulations and to any directions given by the Senior Magistrate (either generally or with regard to any particular case) be settled by the magistrate holding such court.

30 Procedure on appeal

- (1) An appeal, whether civil or criminal, from any decision of an island court to a magistrate's court shall, subject to the other provisions of this regulation, be commenced by the appellant giving notice of appeal in writing in the Form prescribed in regulation 31 to the clerk of such island court within 21 days after the day on which such decision was given.
- (2) Where an appeal lies to a magistrate's court from any decision of an island court in any criminal cause, such island court shall, immediately after announcing such decision, inform the person convicted, if he is in court and not represented by a legal practitioner, of his right to such appeal and of the time within which such appeal may be brought; and if, upon receiving such information, the person convicted declares verbally to the court that he intends so to appeal, such declaration shall for all purposes of these Regulations have the same effect as a written notice of appeal given in accordance with the provisions of paragraph (1).
- (3) For the purpose of paragraphs (1) and (2) the day on which the decision of an island court is given, where such court has adjourned the trial after conviction, shall be the day upon which the court sentences or otherwise deals with the offender.
- (4) Where it appears to a magistrate's court, on application made to it in accordance with the following provisions of this regulation, that any

person wishing to appeal to that court from any decision of an island court has failed to give the notice of appeal as required by paragraph (1) or has failed to give such notice within the time prescribed, the magistrate's court may, if it thinks fit, allow such person to give notice of appeal within such period as it may specify or direct that any notice of appeal given by such person after the expiration of the period prescribed by paragraph (1) be deemed to have been given within the time prescribed.

- (5) An application made under paragraph (4) shall be in writing stating the grounds upon which it is made and shall be sent by the applicant to the clerk of the magistrate's court having jurisdiction; and in the event of such court's granting the application, notice of its decision shall be sent by the clerk of the magistrate's court to the respondent.

31 Notice of appeal

A notice of appeal for the purposes of these Regulations shall be in writing in Form 11 in Schedule 1 and shall, where indicated in such Form, state clearly the grounds of appeal, and shall be signed by the applicant.

Form 1

32 How respondents notified of appeals

- (1) Within 3 days of receiving any notice of any civil appeal the clerk of any island court shall give notice of it to the respondent or respondents to the proceedings in question by sending to him, or to each of them, a copy of the notice of appeal duly endorsed by the clerk with the date of its receipt by him.
- (2) Notice to the respondent in the case of any criminal appeal shall be given by the magistrate's court in accordance with the provisions of regulation 42.

33 Clerk of island court to notify magistrate's court

- (1) Upon receiving any notice of appeal under these Regulations, the clerk of an island court shall forthwith cause particulars thereof to be sent to the clerk of the magistrate's court having jurisdiction; and such particulars may be sent by post, or by telegraph, but in any case shall be despatched so as to reach the clerk of the said magistrate's court not later than 24 hours after receipt by the clerk of such island court of such notice.
- (2) The clerk of the island court shall thereafter comply with any directions he may receive from the clerk; of the magistrate's court with regard to the despatch of the record of appeal to the magistrate's court or as to its

retention and safe custody pending the next sitting of such magistrate's court at or near the place at which the island court has been held.

34 Clerk of island court to complete record

Within 7 days of receiving any notice of appeal under these Regulations the clerk of any island court shall, without the application of any party, make up and complete a record of appeal which shall consist of the notice of appeal, the pleadings, if any, all documents admitted as evidence or tendered as evidence and rejected in the original proceeding, true copies of the notes of the evidence in such proceeding and the judgment or order of the court.

35 Translation and notification of parties

It shall be the duty of the clerk of the magistrate's court forthwith upon receipt of any record of appeal to arrange for the translation of any paper or document, or any part thereof, not in the English language into such language by an interpreter duly appointed under section 58 of the Magistrates' Courts Ordinance; and the clerk shall also notify to the parties thereto the time and place fixed for the hearing of any appeal.

Cap. 2

36 Discontinuance of appeal

- (1) An appellant may discontinue any appeal by giving notice in writing not later than the third day before the day fixed for the hearing of the appeal to the clerk of the island court against the decision of which the appeal is brought and such clerk shall thereupon give notice of the discontinuance to the clerk of the magistrate's court and to the respondent.
- (2) Where notice to discontinue an appeal has been duly given by the appellant, the island court against the decision of which the appeal was notified may issue process for enforcing that decision, subject to anything already suffered or done under it by the appellant.
- (3) Where notice to discontinue any criminal appeal has been given by the appellant, any recognizance conditioned for the appearance of the appellant at the hearing of the appeal shall have effect as if conditioned for the appearance of the appellant before the island court from the decision of which the appeal was notified at a time and place to be notified to the appellant by the clerk of that court.

37 Service of notices, etc., relating to appeals

Any notice of appeal or other document relating to any appeal required Service of under these Regulations to be served on any person may be served by delivering notices, etc., the same to him personally or by sending it by Post in a registered letter addressed to him at his last known or usual place of abode.

38 Magistrate to peruse each record

When the clerk of any magistrate's court receives the record of any appeal, he shall, as soon as practicable after the completion of any translation required under regulation 35, deliver it to a magistrate who shall forthwith peruse the same.

39 Decision on appeal

- (1) When a case is decided on appeal by a magistrate's court, it shall certify its judgment or order to the island court by which the decision appealed against was given.
- (2) The island court to which a judgment or order is certified under paragraph (1) shall thereupon make such orders as are conformable to the judgment or order of the magistrate's court and shall take such steps as may be necessary to enforce such judgment or order.

40 Adjournment of hearing of appeal

A magistrate's court may at any stage adjourn the hearing of any appeal under these Regulations.

PART V - CRIMINAL APPEALS

41 Notice of summary dismissal of criminal appeal

Whenever a criminal appeal is summarily dismissed notice of such dismissal shall forthwith be given by the clerk of the magistrate's court to the appellant.

42 Setting down criminal appeal and notice to respondent

If the magistrate's court does not dismiss the appeal summarily it shall set the same down for hearing and shall notify the appellant and the respondent of the

time and place fixed for the hearing and, unless the appeal is against sentence only, supply copies of the record of appeal to the parties.

43 Release on bail of appellant in custody and suspension of sentence pending appeal

- (1) Where a convicted person gives notice of appeal under these Regulations, the magistrate's court having jurisdiction, or the island court which convicted such person may, if, in the circumstances of the case, it thinks fit, with or without hearing any party, order that the convicted person, if he be in custody, be released on bail upon entering into a bond upon his own recognizance, with or without sureties, conditioned upon his due appearance at the hearing of the appeal or order that the sentence or order against which the appeal is pending be suspended pending the determination of the appeal; and the bonds to be entered into by any appellant and by sureties under this regulation shall be in Forms 12 and 13 respectively in Schedule 1.

Forms 12 and 13

- (2) Where any appellant has been released on bail or the sentence is suspended, the time during which he is at large after being so released, or during which the sentence has been suspended, shall be excluded in computing the term of any sentence, to which he is for the time being subjected.
- (3) An appellant whose sentence is suspended but who is not admitted to bail shall during the period of such suspension be treated in like manner as a prisoner awaiting trial.
- (4) Where any person, having given notice of appeal under these Regulations, has for the purpose of his release from custody entered into a recognizance conditioned for his appearance at the hearing of the appeal, the clerk of the island court from the decision of which the appeal is brought shall, before the day fixed for the hearing of the appeal, send the recognizance if taken before such court to the clerk of the magistrate's court.

44 Appellant entitled to be present at hearing of criminal appeal and powers of court if appellant fails to be present at any hearing

- (1) Any appellant, notwithstanding that he is in custody, shall be entitled to be present, if he so desires, at the hearing of any appeal.
- (2) Any appellant who has been admitted to bail under this Part shall be personally present at each and every hearing of his appeal and at the final determination thereof; and in the event of such appellant not being present

at any such hearing or determination, the magistrate's court dealing with the appeal, may, if it thinks right to do so, decline to consider the appeal and may proceed summarily to dismiss the same and may issue a warrant for the apprehension of the appellant:

Provided, however, that a magistrate's court may consider an appeal under this Part in the absence of the appellant if it thinks fit so to do or make such other order as to it seems just.

- (3) A magistrate's court, on the application of any person, or, if it thinks right so to do, without application, may make revoke or vary any such order previously made or enlarge from time to time the recognizance of the appellant or his sureties or substitute any other surety for a surety previously bound.

PART VI - CIVIL APPEALS

45 Security to be given for any civil appeal

- (1) The appellant in any civil appeal under these Regulations shall give to the clerk of the island court concerned, within 7 days of the time of the lodging therewith of the relevant notice of appeal, security for the prosecution of the appeal and for all such costs as he may be ordered to pay. Such security shall be in the following amounts —
 - (a) where the subject matter of the judgment appealed from exceeds \$20 in value....\$3
 - (b) in all other cases.....\$2
- (2) In the event of security not being given as prescribed in paragraph (1), all proceedings in the appeal shall be stayed and, unless the magistrate's court having jurisdiction otherwise orders, a formal order of dismissal shall be made at the sitting of the magistrate's court at which the hearing of the appeal would otherwise have taken place.

46 Cross-appeal

No formal notice shall be required for any cross-appeal.

47 Extension of time for civil appeal, amendment of grounds, etc.

The magistrate's court before which any appeal under this Part is, or is to be, heard may extend the time for any such appeal or amend the grounds of appeal or make any other order on such terms as such court shall think fit to ensure the

determination on the merits of the real question in controversy between the parties.

48 Failure of parties to appear at civil appeal

- (1) If the appellant therein fails to appear in person, or by legal practitioner on his behalf, when an appeal under this Part is called on for hearing the appeal shall, on proof of service on the appellant of notice of the hearing, stand dismissed with costs:

Provided that when such an appeal has been dismissed owing to the non-appearance of the appellant, or any legal practitioner representing him, the magistrate's court may, if it thinks fit, and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

- (2) If the respondent fails to appear, either in person, or by legal practitioner representing him, when the appeal is called on for hearing, the magistrate's court shall, on proof of service of notice of hearing, proceed to hear the appeal *ex parte*.

PART VII - FEES

49 Fees

The fees set forth in Schedule 2 may be demanded and received by the Schedule 2 clerks of island courts, or by other persons appointed to receive such fees for and in respect of the several matters mentioned therein.

Schedule 2

PART VIII - GENERAL

50 Application of Criminal Procedure Code

In all criminal proceedings in or before any island court, where no other provision is made by the Ordinance or these, or other, Regulations made under it, the practice and procedure to be followed by such island court shall, unless the Senior Magistrate, either generally, or in any special case, directs otherwise, be in accordance with the practice and procedure required by the Criminal Procedure Code to be followed in summary trials before magistrate's courts.

*Cap. 7***51 Appearances**

Any person may appear on his own behalf in any cause before any island court or, with the leave of such court, he may be represented by any person he nominates for that purpose.

52 Extension of jurisdiction where more than 1 island court on the same island

Notwithstanding anything contained in these Regulations, where there are more than 1 island courts on an island, the jurisdiction of such courts shall, for the purposes only of issuing warrants, summonses or any other process, extend over the whole of that island.

53 Service beyond jurisdiction in divorce proceedings

- (1) Whenever the respondent to a divorce petition is out of the jurisdiction of the island court before which the petition is brought but is within the jurisdiction of another island court, or, where there is no island court, of a magistrate's court, the first mentioned island court may transmit the petition and such other documents as may be required to be served upon the respondent, to that other island court or magistrate's court, as the case may be, and such court shall direct service of the same.
- (2) Upon proof of the service of the petition and other documents referred to in paragraph (1) and after a reasonable time has been allowed for the respondent to enter an appearance, the island court before which the petition is brought may set it down for hearing, and a summons for attendance shall be served upon the respondent in the manner set forth in paragraph (1) for the service of a petition, and upon proof of the service of such summons the petition may be proceeded with.
- (3) The island court before which the petition is brought may accept as proof of service a written communication or a telegram issuing from the court that directed service.

SCHEDULE 1

FORMS

FORM 1 - CRIMINAL.

(Regulation 3)

ISLAND COURTS ORDINANCE - CHARGE

CRIMINAL CASE NUMBER/.....

IN THE ISLAND COURT OF AND FOR THE ISLAND OF

.....

(Here put name and address of person making the charge)

STATES (on oath) that

.....

(Here put name and address of the person charged)

on the

(Here put date of allege offence)

at

(Here put place of allege offence)

in the Island of did

(Here put offence alleged)

which is contrary to the following law —

*Taken or *sworn before me, President of the above-mentioned Island Court this day of..... 19.....

.....

Signature of President of Island Court

*Delete the alternative not applicable

FORM 2 - CRIMINAL.

(Regulation 6)

ISLAND COURTS ORDINANCE - SUMMONS

CRIMINAL CASE NUMBER..... /.....

IN THE ISLAND COURT OF AND FOR THE ISLAND OF

To

(Here put name and address of person making the charge)

YOU are hereby commanded to appear before the above-mentioned Court sitting at on the day of at o'clock in the *fore/after/noon there to answer the charge of

.....

(Here put name and address of person making the charge)

that you did on the at

.....

(Here put date of alleged offence)

..... you did which is

(Here put place of alleged offence)

(Here set out alleged offence)

contrary to the following law —

(Here give number of section or regulation and the name of the law under which it was made)

Dated this day of 19....

.....

Island Magistrate

FORM 3 - CRIMINAL.

(Regulation 7)

ISLAND COURTS ORDINANCE - AFFIDAVIT OF SERVICE

I

(Here put name and address of person who is making the affidavit)

DO MAKE OATH and say that I did on the day of 19.... serve a true copy of the within-written summons on the person to whom the same is addressed by delivering the same to at

.....

.....

Signature of person making oath

Sworn at)
before me thisday) of
..... 19.....)

.....

Person taking oath

FORM 4 - CRIMINAL.

(Regulations 9 and 10)

**ISLAND COURTS ORDINANCE - WARRANT TO APPREHEND
PERSON CHARGED**

CRIMINAL CASE NUMBER/.....

IN THE ISLAND COURT OF AND FOR

THE ISLAND OF

TO: Each and all police officers of and for Tuvalu.

BRING

(Here put name and address of person to be apprehended)

before this Court to answer a charge laid against him by.....

(Here put name and address of person making the charge)

..... and substantiated by oath that he
at

(Here put place where offence is alleged to have been committed)

..... day of 19....

DID contrary to the following law —

(Here set out particulars of alleged offence)

.....

(Here give number of section or regulation and the name of the law under which it was made)

Dated this day of 19.... .

.....

Island Magistrate

FORM 5 - CRIMINAL.

(Regulation 11)

**ISLAND COURTS ORDINANCE - WARRANT TO REMAND
PERSON CHARGED**

CRIMINAL CASE NUMBER/.....

IN THE ISLAND COURT OF AND FOR THE ISLAND OF

TO: Each and all police officers in Tuvalu and the Officer in Charge of the Prison at
.....has

(Here put place of prison)

(Here put name of person charged)

been brought before me under arrest to answer a charge laid against him that he did

.....

*(Here state the charge and the section or regulation number and the name of the law
under which it was made).*

.....

You, the said police officers, are therefore commanded to take

.....

(Here put name of person charged)

.....to the said prison and there deliver him together with this
warrant

to the Officer in Charge thereof who is hereby directed to receive him into custody in
the said prison and there keep him safely until the day of 19..., and
then have him atat

(Here put the place where the Court is to sit)

at o'clock in the noon before the Court there sitting.

Signed by me this day of 19....

.....

Island Magistrate

FORM 6 - CRIMINAL.

(Regulation 12 (1))

ISLAND COURTS ORDINANCE - SUMMONS TO WITNESS

CRIMINAL CASE NUMBER/.....

IN THE ISLAND COURT OF AND FOR THE ISLAND OF

TO:.....

(Here put name and address of witness)

WHEREAS a charge has been made BY.....

(Here put name of the person making the charge)

that.....

(Here put name of the person charged)

has committed an offence under

(Here put section or regulation number

.....

and the name of the law under which the charge is made)

AND it appears to me that you are likely to be able to give or produce material evidence on behalf of.....

(Here put either the person charged or the person making the charge)

and that you will not appear voluntarily before this Court for that purpose.

YOU ARE therefore commanded to appear before this Court sitting at
on the day of 19.... at o'clock in the noon to
testify what you know in the matter and to bring with you and produce thereat:

.....

(Here put thing(s) to be produced)

Dated this day of 19....

.....

Island Magistrate

FORM 7 - CRIMINAL.

(Regulation 12 (2))

ISLAND COURTS ORDINANCE - WARRANT TO APPREHEND WITNESS

CRIMINAL CASE NUMBER/.....

IN THE ISLAND COURT OF AND FOR THE ISLAND OF

TO: Each and all the police officers in Tuvalu.

WHEAREAS a charge has been made by

(Here put the name and address of the person making the charge)

that

(Here put the name and address of the person charged)

AND it appears to me by the oath of

that.....

(Here put name and address of witness)

will not attend to give or produce evidence on behalf of the

..... unless compelled to do so.

(Here put either the person charged or the person making the charge)

You, the said police officers, are therefore commanded to bring the said
..... before this Court sitting at

(Here put name of witness)

on the day of 19 ... at o'clock in noon to testify what he
knows in the matter and to bring with him and produce thereat

.....

(Here put any documents, etc., to be produced)

Signed by me this day of 19.....

.....

Island Magistrate

FORM 8 – CRIMINAL.

(Regulation 17)

ISLAND COURTS ORDINANCE - WARRANT OF COMMITMENT

CRIMINAL CASE NUMBER/.....

IN THE ISLAND COURT OF AND FOR THE ISLAND OF

TO: Each and all the police officers in Tuvalu and to the Officer in Charge of the Prison at

(Here put place of prison) (Here put name of person committed to prison)

was on the day of 19... duly convicted before this Court for

.....

(Here state the offence which the person committed was convicted)

.....regulation

(Here state the section/ number and name of the law under which the charge was laid)

AND the above-mentioned Island Court has adjudged the said for this offence to be imprisoned in the

(Here put name of person committed to prison)

above-mentioned prison for a term of from

..... *(Here put term of imprisonment)*

(Here put date from which sentence is to run)

You, the said police officers, are therefore commanded to take the said

(Here put the name of the person committed)

safely to the said prison and there deliver him to the Officer in Charge thereof who is hereby directed to receive him and to imprison him for the said term of

(Here repeat term of imprisonment)

Signed by me this day of 19....

.....

Island Magistrate

FORM 9 – CIVIL.

(Regulation 18)

ISLAND COURTS ORDINANCE - WRIT OF SUMMONS

CIVIL CASE NUMBER/.....

IN THE ISLAND COURT OF AND FOR THE ISLAND OF

BETWEENPLAINTIFF

(Here put name and address of person making claim)

ANDDEFENDANT

(Here put name and address of person against whom claim is made)

TO:

(Here put name and address of defendant)

You are commanded to appear before this Court sitting at on the day of 19... at o'clock in the noon to answer a claim *(Here put "fore" or "after")*

against you by

(Here put name and address of plaintiff)

AND TAKE NOTICE that if you fail to appear as aforesaid the Court may proceed to hear and determine the claim in your absence. Dated this day of 19...

.....

Island Magistrate

PARTICULARS OF CLAIM

The Plaintiff claims *(here state the particulars of the claim and the order of the Court which is sought).*

Sum claimed \$ Court fees \$

Total \$

.....

Signature of Plaintiff

FORM 10.

(Regulation 19)

ISLAND COURTS ORDINANCE - SUBPOENA

CIVIL CASE NUMBER/.....

IN THE ISLAND COURT OF AND FOR THE ISLAND OF

BETWEENPLAINTIFF

(Here put name and address of person making the claim)

ANDDEFENDANT

(Here put name and address of person against whom claim is made)

TO:

(Name and address of witness)

WHEREAS a writ of summons has been filed in an action between the above-mentioned Plaintiff and the above-mentioned Defendant.

AND WHEREAS the above mentioned

(Here state plaintiff or defendant, as the case may be)

has requested the Court to issue a subpoena to you to give evidence at the hearing:

YOU are therefore commanded to attend before this Court sitting at

.....

(Here put place the Court is to sit)

on the day of 19.... ato'clock in the

(Here put "fore" or "after")

noon in order to give evidence in the above-mentioned action on behalf of the said party.

Signed by me this day of 19....

.....

Island Magistrate

FORM 11 – APPEALS.

(Regulation 31)

ISLAND COURTS ORDINANCE - NOTICE OF APPEAL

*CRIMINAL) JURISDICTION

*CIVIL)

)

IN THE MATTER OF *Criminal/Civil Case Number

BETWEEN

AND

IN THE ISLAND COURT OF AND FOR THE ISLAND OF

TO: The Clerk of the above-mentioned Island Court.

TAKE NOTICE that I, the *plaintiff *defendant in the above-mentioned proceedings intend to appeal against the

- * 1. sentence) given therein by the above-mentioned Island Court on the
- 2. conviction) day of 19....
- 3. decision)
-)

UPON the grounds that

(Here set out reasons for appeal)

Dated at this day of 19...

.....

Appellant

*Delete which not applicable

FORM 12 - APPEALS.

(Regulation 43)

ISLAND COURTS ORDINANCE - RECOGNISANCE OF BAIL OF APPELLANT

CRIMINAL CASE NUMBER...../.....

IN THE ISLAND COURT OF AND FOR

THE ISLAND OF

BE IT REMEMBERED that whereas

(Here put name of person convicted)

was convicted on the day of 19.... and was

(Here put date of conviction)

sentenced to by the above-mentioned Island Court

(Here put sentence)

and is now in lawful custody and whereas he has now duly appealed against his conviction and sentence to the Magistrate's Court and has been granted bail by the said Court upon his entering into his

(Here put either "Magistrate's" or "Island" as the case may be)

own recognisance in the sum of \$and with.....

(Here put amount of his own recognisance)

(Here put number of sureties)

sureties each in the sum of \$

(Here put amount of sureties)

THE SAIDpersonally comes before

(Here put name of person convicted)

me and acknowledges himself to owe to Her Majesty the Queen the said sum of

\$ of good and lawful money

(Here put amount of the recognisance of person convicted)

of Tuvalu to be made and levied of his goods, chattels, lands and tenements to the use of Her Majesty the Queen, Her Heirs and Successors, if the said

(Here put name of person convicted)

fail in the condition hereon endorsed.

TAKEN AND ACKNOWLEDGED this day of 19.... at..... before me:

.....
*Magistrate of the above-named Island Court or
Clerk or Magistrate of the Magistrate's Court*

The condition of the above-written recognisance is such that if the said shall personally appear and

(Here put name of person convicted)

surrender himself at and before the Magistrate's Court at each and every hearing of his appeal to such Court and at the final determination thereof and to then and there abide by the judgment of the said Court, and in the meantime not to depart out of Tuvalu, then this recognisance shall be void or else stand in full force and effect.

FORM 13 - APPEALS

(Regulation 43)

ISLAND COURTS ORDINANCE - RECOGNISANCE OF BAIL OF APPELLANTS SURETIES

CRIMINAL CASE NUMBER / ...

IN THE ISLAND COURT OF AND FOR THE ISLAND OF

BE IT REMEMBERED that on this day of 19.....

(Here put day on which recognisance given)

..... of and.....

(Names and addresses of sureties)

of personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several sums following that is to say the said the sum of

(Here put name of first surety)

..... and the said

(Here put amount of first surety) *(Here put the name of the second surety)*

the sum of of good and

(Here put the amount of the second surety)

lawful money of Tuvalu to be made and levied of their goods and chattels and lands and tenements respectively to the use of Her Majesty the Queen, Her Heirs and Successors if

(Here put name of person convicted)

now in lawful custody at

(Here put place person convicted is in custody)

fail in the condition hereon endorsed.

TAKEN AND ACKNOWLEDGED before me the undersigned the day and the year first hereinbefore written.

.....
*Magistrate of the above-mentioned Island Court or
Clerk or Magistrate of the Magistrate's Court*

CONDITION

The condition of the above-written recognisance is such that whenever the said having been convicted of an

(Here put name of person convicted)

offence by the above-mentioned Island Court and sentenced to imprisonment for by it for such offence and having duly appealed

(Here put term of imprisonment)

against his conviction (and sentence) and been granted bail upon his entering into a recognisance in the sum of \$

(Here put amount of convicted person's own recognisance)

With sureties each in the

(Here put number of sureties)

sum of \$the said

(Here put amount of sureties

. (Here put name of person convicted)

shall personally appear and surrender himself at and before the Magistrate's Court at each and every hearing of his appeal to such Court and at the final determination thereof and not depart or be absent from the said Court and at every such hearing without the leave of the Court and in the meantime not depart out of Tuvalu, then this recognisance shall be void or else stand in full force and effect.

SCHEDULE 2*(Regulation 49)***FEES****PART I - CRIMINAL**

Action	\$	c
For putting into writing any charge when person laying the charge is not a police officer	1	00
For issuing any summons or warrant to apprehend in any proceedings in which the person laying the charge is not police office		50
For taking any recognisance		50

PART II - CIVIL

Action	\$	c
1. For filing any writ of summons and issuing a copy thereof for service where the value of the property, debt or damage claimed —		
(i) does not exceed \$20		50
(ii) exceeds \$20 but does not exceed \$40	1	00
(iii) exceeds \$40 but does not exceed \$60	1	50
For issuing any summons to any witness		50
Forbearing any civil suit, per hour or part of an hour		50
For receiving notice of any civil appeal and making up any record (in addition to security provided for in regulation 45)	1	50
2. In addition to No. 1, where service is to be effected on any person more than two miles from the nearest Court House and where that journey is to be performed by land, a fee of 5 cents per mile with a minimum fee of 5 cents. The amount of the fee payable under this item is to be calculated without reference to the return journey.		
3. In addition to Nos. 1 and 2, reasonable travelling expenses actually incurred by the officer effecting service. Where an officer is engaged on more than one service the Court may order that the sum payable under this item be apportioned.		

4. Seizure	4	00
5. For every arrest in a civil case	2	00
6. In conveying to prison from place of arrest a fee not exceeding 30 cents per day with reasonable travelling expenses actually incurred.		
7: For executing process of attachment or committal	4	00
8. For any duty not herein provided for	Such sum as the court may allow	

Appointment of clerks of island courts under section 12(1)

G.N. 33/79

The Senior Magistrate has appointed as Clerk to each Island Court in Tuvalu the Island Executive Officer respectively appointed to the local government council having authority over the area of jurisdiction of such Island Court.

Specification of languages of island courts under section 15 (1)

G.N. 31/79

The Senior Magistrate has specified the Tuvalu language as the language of each Island Court in Tuvalu:

Provided that —

- (a) On the island of Nui, the Gilbertese language may be used if the court and parties prefer;
- (b) English may be used in any case in which a person who does not speak English is before the Court if the members of the court are familiar with English.
- (c) Returns of court cases furnished under the provisions of section 37 of the said Ordinance shall be in English;
- (d) The record of any case called for by the Magistrate or Senior Magistrate or produced for purposes of review or appeal shall be translated into English by the Clerk to the respective Island Court.

Revision of decisions of island courts under section 37

G.N. 32/79

1. In exercise of the powers conferred by section 37(5) the Senior Magistrate has directed that until such time as he shall otherwise order the Clerk of every Island Court in Tuvalu shall at the end of each and every month cause to be sent to the Registrar of the High Court, Funafuti, true and complete copies of a list of all cases brought before the Island Court of which he is Clerk during that month.

2. In accordance with section 37(6) in the case of criminal proceedings there shall be set out in such list the names, sex and age of each defendant, the offence with which he was charged, his plea thereto and, if convicted, the date of the conviction and the sentence or order in full. In the case of any suit, civil cause or matter there shall be set out in such list, in accordance with the provisions of section 37(7), the names of the parties, the nature and subject-matter of the claim and brief details of the judgment or other order made.

ENDNOTES**Table of Legislation History**

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References