

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.