



**Tuvalu**

# **ISLAND COURTS ACT**

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Tuvalu

## ISLAND COURTS ACT

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Tuvalu

## ISLAND COURTS ACT

**AN ACT TO PROVIDE FOR THE CONSTITUTION OF ISLAND COURTS,  
FOR THE APPOINTMENT OF ISLAND MAGISTRATES AND OTHER  
OFFICERS THEREOF AND FOR THE REGULATION OF THEIR  
POWERS, DUTIES AND JURISDICTION AND FOR APPEALS FROM,  
AND REVISION OF, THE DECISIONS OF ISLAND COURTS AND FOR  
MATTERS CONNECTED THEREWITH<sup>1</sup>**

Commencement [12th October 1965]

### PART I - PRELIMINARY

#### **1 Short title and commencement in islands**

This Act may be cited as the Island Courts Act, and shall come into operation on such date or dates and in such island or islands as the Governor-General may by notice appoint and different dates may be appointed for different islands.<sup>2</sup>

#### **2 Interpretation**

In this Act, unless the context otherwise requires —

“**cause**” shall include any action, suit or other original proceeding between a plaintiff and a defendant and any criminal proceeding;

“**cause of action**” in suits founded on contract shall not necessarily mean the whole cause of action; but a cause of action shall be deemed to have arisen within the jurisdiction if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere;

“**island**” includes any atoll and any chain of islands about a single lagoon or connected by a continuous reef formation and any place which the Governor-General may by notice declare to be an island for purposes of this Act;

“**island court**” means an island court established under this Act;

“**island magistrate**” means a person for the time being appointed as such under section 9;

“**matter**” includes every proceeding in a court not in a cause;

“**suit**” includes action, and means a civil proceeding commenced by writ of summons or such other means as may be prescribed and does not include any criminal proceeding;

“**warrant**”, in relation to the constitution or jurisdiction of any island court, means the warrant appointing members to such island court as provided for in section 9(2).

## **PART II - CONSTITUTION, JURISDICTION AND POWERS OF ISLAND COURTS**

### **3 Constitution of island courts**

- (1) There shall be and are hereby constituted throughout Tuvalu courts of summary jurisdiction, to be known as island courts, subordinate to magistrates’ courts, and to be presided over by persons appointed under the provisions of this Act to be island magistrates and each island court, subject to the provisions of any other Act, shall exercise such jurisdiction as is by this Act provided.
- (2) There shall be an island court in and for each such island as the Governor-General, acting in his discretion, shall by notice direct.
- (3) Any power, authority, function or discretion vested in an island court by this or any other Act or law shall be possessed and may be exercised by island magistrates sitting as in this Act provided.

### **4 Territorial extent of jurisdiction of island courts**

Subject to any express provisions contained in this or any other Act or in its warrant, an island court shall exercise jurisdiction within the limits of the island within which it is situated and its jurisdiction shall extend over any territorial waters adjacent to such island as well as over inland waters within and adjacent to such island.

## 5 Powers of island courts

- (1) Subject to the other provisions of this Act and of any other law for the time being in force in Tuvalu, an island court shall have and exercise the jurisdiction in civil causes and matters for the time being set out in Schedule 1 and in criminal causes and matters for the time being set out in Schedule 2.
- (2) The Governor-General, after consultation with the Chief Justice, may by notice add to, amend or delete any part of Schedules 1 or 2.

## 6 Sentences which an island court may pass

- (1) An island court may, in any case in which such sentences are authorised by law, pass the following sentences —
  - (a) imprisonment for a term not exceeding 6 months; or
  - (b) a fine not exceeding \$250;<sup>3</sup> or
  - (c) both such imprisonment and such fine.
- (2) An island court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.
- (3) In determining the extent of an island court's jurisdiction under subsection (1) to pass a sentence of imprisonment, the island court shall be deemed to have jurisdiction to pass the full sentence of imprisonment provided for in the subsection in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.
- (4) When a person is convicted at one trial of 2 or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to impose; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.
- (5) In the case of consecutive sentences imposed by an island court in respect of 2 or more distinct offences arising out of the same facts it shall not be necessary for such island court to send the offender for trial before a higher court, by reason only of the aggregate punishment for the several offences in respect of which such sentences are imposed being in excess of the punishment which it is competent to impose on conviction of a single offence:

Provided that the aggregate punishment imposed in the form of consecutive sentences shall not exceed twice the amount of punishment which such island court is competent to impose in respect of one offence in exercise of its ordinary jurisdiction.
- (6) For the purposes of appeal or review the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

- (7) An island court may, in lieu of any other punishment, make an order placing an offender under the supervision of a probation officer or any other suitable person chosen by the court for that purpose for a period not exceeding 1 year and attach such conditions to the order as the court may think fit; and in the event of the offender's failure to comply with the order or of the commission of a further offence during the period of supervision, he shall appear before the island court which made such order and may be sentenced in respect of the first offence; and any sentence then passed upon him shall be in addition to any sentence imposed on him in respect of such further offence.
- (8) Whenever an island court imposes a fine, or a sentence of which a fine forms a part, such court may, when passing judgment, order the whole or any part of such fine to be paid to any person in compensation for any loss or injury caused by the offence or in defraying any expenses incurred in bringing or prosecuting the charge.

## 7 Dismissal of Charges

Notwithstanding that it thinks any charge against an accused person is proved, an island court, if it is of the opinion that it is not expedient to inflict punishment, may make an order dismissing the charge either absolutely or conditionally.

## 8 Treatment of young offenders

- (1) In this section, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say —
  - “**child**” means any person under the age of 14 years;
  - “**young person**” means a person who has attained the age of 14 years and is under the age of 17 years.
- (2) No island court shall impose imprisonment on any child.
- (3) No island court shall impose imprisonment on any young person unless —
  - (a) he is over the age of 15 years; and
  - (b) unless the island court, having obtained and considered information about the circumstances of the offence and his age and character, is of the opinion that no other method of dealing with him is appropriate.
- (4) No imprisonment imposed under subsection (3) shall exceed one month in duration.
- (5) Where a child or young person is convicted by an island court of any offence for the commission of which a fine, damages or costs may be imposed, if such island court is of the opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the island court may, and, in the case of a child, shall order that the fine, damages or costs awarded be paid by the parent or guardian of the

child or young person convicted, instead of by such child or young person, unless the island court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.

- (6) In the case of any child or young person convicted by it of any offence, an island court may order his parent or guardian to give security in some sum not exceeding \$20 for his good behaviour for any period not exceeding 1 year.
- (7) An island court may require the attendance before it of any parent or guardian of any child or young person charged with an offence before the court and if such parent or guardian will not appear voluntarily may compel his attendance in like manner to that in which witnesses are compelled to attend.
- (8) In lieu of any other sentence which an island court may lawfully impose on any male child or male young person, the provisions of section 6(1) to the contrary notwithstanding, it may order his parent or guardian to cane him with a specific number of strokes of a cane not exceeding, in the case of a child, 6 strokes, and in the case of a young person, 10 strokes; and any strokes so ordered shall be administered in accordance with such regulations as may, for the time being, be in force and in the presence of a member of the island court.
- (9) Any parent or guardian who without lawful justification or excuse fails to obey an order given under subsection (8) shall commit an offence triable summarily by an island court, or other court of competent jurisdiction, and shall be liable to a fine of \$10.

## **PART III - OFFICERS OF ISLAND COURTS**

### **9 Composition of island courts and appointment of island magistrates**

- (1) Each island court shall be composed of 3 members, to be known as island magistrates, and who shall be president, vice-president and ordinary member of the court respectively; and the president shall take precedence of the other members and the vice-president shall take precedence of the ordinary member.
- (2) The Governor-General, acting in accordance with the advice of the Public Service Commission, and subject to the approval either general or specific of the Chief Justice or a person authorized by him for the purpose, may appoint fit and proper persons to be the members of each island court, declaring which members shall be president, vice-president and ordinary member respectively, and, acting in accordance with the advice of the Public Service Commission and subject to the approval, either general or specific, of the Chief Justice or a person authorized by him for the purpose, may further appoint any person or

persons to be temporary members for the purpose of filling any vacancy that may occur due to the temporary incapacity of a member:

Provided that —

- (a) a member of a Kaupule established under section 5 of the Falekaupule Act; or
- (b) a member of a lands court under section 6 of the Native Lands Act;<sup>4</sup> or
- (c) a member of the Lands Courts Appeals Panel under section 9 of the Native Lands Act,

is not eligible for appointment as an island magistrate.<sup>5</sup>

- (2A) The Governor-General acting in accordance with the advice of the Public Service Commission and subject to the approval, either general or specific, of the Chief Justice or a person authorized by him for the purpose, may remove from office an island magistrate.
- (3) Save as is otherwise expressly provided by any law for the time being in force in Tuvalu, every civil and criminal proceeding in any island court and all business arising therefrom shall be heard and determined by the 3 members of such court sitting together.

## **10 Decisions of island courts**

Any decision, whether final or not, of an island court shall be that of the 3 island magistrates of which such court is composed, or failing agreement between them, the decision of the majority of them shall prevail.

## **11 Procedure where island magistrate is unable to adjudicate by reason of personal interest, etc.**

Where an island magistrate is a party to a cause or matter or is unable from personal interest or other sufficient reason to adjudicate on any cause or matter, he shall be replaced as a member of the court during such incapacity in accordance with the provisions contained in the court's warrant for the filling of casual vacancies, or, if for any reason his replacement under those provisions is not possible, the magistrate for the time being empowered to exercise powers of review under section 37 in respect of such cause or matter may direct some other island magistrate to act instead of the aforesaid island magistrate for the hearing and determination of such particular cause or matter.

## **12 Clerk of court**

- (1) There shall be a clerk of court attached to each island court who shall be appointed by the Senior Magistrate<sup>6</sup> and who shall, subject to the general supervision of the Senior Magistrate, be under the immediate direction and

control of the island magistrates for the time being exercising the jurisdiction of the island court to which he is attached.

- (2) The duties of every clerk of court shall be —
- (a) to keep true and accurate minutes of all proceedings in the island court to which he is attached and to record minutes of all evidence given therein and the judgments, convictions and orders of such island court;
  - (b) to fill up or cause to be filled up all summonses, warrants, orders, convictions, recognisances, writs of execution and other documents and to submit the same for the signature of the island magistrate for the time being performing the duties of president of the island court concerned or as may be otherwise prescribed or required;
  - (c) to issue any civil processes in accordance with the law;
  - (d) to attend all sittings of the island court;
  - (e) to receive or cause to be received all fees, fines and penalties and all other moneys paid or deposited in respect of proceedings in the island court and to keep or cause to be kept true and accurate accounts of the same; and
  - (f) to perform such other duties as may be assigned to him by the Senior Magistrate.

### **13 Execution and service of processes**

- (1) Any process of an island court may be executed or served by any person authorised to do so by such court, either generally or in any particular case, and such person shall for all purposes of such execution and connected therewith be an officer of the island court.
- (2) All police officers are hereby authorised and required to obey the warrants, orders and directions of an island court in the exercise of its criminal jurisdiction, and, in so far as such obedience may be authorised and required by any Act in that behalf, of its civil jurisdiction.

### **14 Protection of island magistrates and officers of island courts**

No island magistrate shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, provided that he, at the time, in good faith believed himself to have jurisdiction to do or order the act complained of; and no officer of any island court shall be liable to be sued in any civil court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the court issuing the same.

## **PART IV - THE LAW TO BE APPLIED IN, AND THE PRACTICE AND PROCEDURE OF, ISLAND COURTS**

### **15 Language**

- (1) The language of each island court shall be such language as the Senior Magistrate shall from time to time specify by order.<sup>7</sup>
- (2) In any proceedings in any island court in which the language spoken by any witness or party requires to be interpreted into the language of the island court, or *vice versa*, such island court may appoint any suitable persons as interpreters.

### **16 Repealed by Act 8 of 1987**

### **17 The procedure to be followed**

The procedure to be followed in any cause or matter shall be that for the time being prescribed in regulations made by the Governor-General with the approval of the Chief Justice under section 41.

### **18 Sittings**

- (1) Each island court shall normally be held at the principal village on the island in which it is situated but should necessity arise, or the Senior Magistrate otherwise direct, it may be held at any other place within its jurisdiction.
- (2) In construing this section, the principal village of any island shall be that village where the headquarters of the local government of and for the island are situated, or such other village as the Governor-General may by notice declare in respect of any island to be the principal village thereof.
- (3) Each island court shall be held at least once in every calendar month and shall continue sitting, with such adjournments as the court shall deem necessary until all outstanding causes and matters have been dealt with fully:  

Provided, however, that, subject to the provisions of this Act, a sitting of an island court may be held at any time the presiding island magistrate thinks fit.
- (4) Both civil and criminal matters, or either one or the other, may be heard, determined and dealt with at any sitting of any island court.

### **19 Adjournments**

- (1) Any island court may adjourn such court from day to day or to any convenient day.

- (2) If the 3 island magistrates of which any island court is composed are not present at the time and place appointed for the sitting of an island court, any island magistrate or officer of the court or other person authorised in that behalf by the island magistrate may by giving public notice, oral or written, adjourn the sitting until such time and to such place as may have been communicated to him by the island court, or, in the absence of any such communication to such time and place as may be convenient; and all persons bound to be present at the sitting so adjourned shall be equally bound to be present at the time and place appointed by such notice.
- (3) When any day appointed for the sitting of an island court falls on a Sunday or a public holiday, the sitting shall not take place on that day and the island magistrates shall in such case, if practicable, attend and transact the business appointed to be heard at such sitting as aforesaid on the day (not being a Sunday or a public holiday) next after the day appointed for such sitting.

## **20 Sitings to be public**

All sittings of any island court shall be open to the public.

## **21 Issue of process**

All summonses, warrants, orders, convictions and recognisances and all other processes, whether civil or criminal, of any island court shall be issued or made under the hand of the island magistrate for the time being performing the duties of president thereof.

## **22 Mode of securing attendance of accused persons, parties and witnesses**

The attendance before an island court of accused persons and witnesses in any criminal cause or matter, or of parties and witnesses in any civil cause or matter, shall be secured in the manner prescribed in regulations made under section 41.

## **23 Examination on oath**

Any person attending any island court as a witness, or summoned or brought on a warrant before it for the purpose of giving evidence in any cause may be examined or give evidence on oath in the form or with the ceremony that he declares binding on his conscience.

## **24 Records and returns**

Every island court shall keep such written records and furnish such returns as may be required by this Act or as the Senior Magistrate may from time to time direct.

**25 A cause may be reported for transfer**

An island court may, of its own motion or on the application of any person concerned, report to a magistrate's court the pendency of any cause or matter which in the opinion of the island court ought to be transferred from it to any other island court or to a magistrate's court; and the magistrate's court shall by order direct in what mode and where the cause or matter shall be heard and determined.

**26 Transfer of causes by a magistrate**

- (1) A magistrate's court may at any time and at any stage thereof transfer any civil cause or matter before an island court to any other island court or to itself, and such cause may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein.
- (2) The power of transfer shall be exercised by means of an order under the hand of a magistrate and the seal of the magistrate's court, and may apply to any particular cause or causes, matter or matters in dependence either entirely or in respect of any part thereof or procedure required to be taken therein, as may be described in such order.
- (3) The magistrate's court making any order under the preceding subsection may at all times cancel, alter, add to or amend the same.
- (4) The magistrate's court may, if it appears expedient, in the first instance cause the contents of any such order to be telegraphed, and any such telegram shall until receipt of the said order have the same validity and effect as if it were the said order.

**27 Effect of an order of transfer**

- (1) Every order of transfer shall operate as a stay of proceedings in the island court to which it may be addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of all entries in the books of such court relative thereto, shall be transmitted to the court to which the same shall be transferred and thenceforth all proceedings in the cause or matter shall be taken in such court as if the cause or matter had been commenced therein.
- (2) An order given under section 25 or section 26 shall not be subject to appeal.

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## PART V - APPEALS FROM ISLAND COURTS

### 28 Civil appeals

Subject to the provisions of this or any other Act for the time being in force in Tuvalu, an appeal shall lie from any judgment or decision, whether final or otherwise, of any island court to a magistrate's court —

- (a) in exercise of its jurisdiction in divorce; or
- (b) in any suit, civil cause or matter before it, in which the value of the property, debt or damage (whether as a balance of account or not) comprising the subject-matter of the claim exceeded \$100,

but not otherwise.<sup>8</sup>

### 29 Criminal Appeals

(1) Subject to the provisions of this or any other Act for the time being in force in Tuvalu, any person convicted on a trial before any island court and who has been sentenced in respect of such conviction to —

- (a) undergo any term of imprisonment without the option of a fine; or
- (b) pay any fine in excess of \$10; or
- (c) undergo imprisonment of a term exceeding 7 days in default of the payment of all or any part of any fine,

but not otherwise, may appeal to a magistrate's court against his conviction or against such sentence except when it is one fixed by law:

Provided however that no appeal shall lie in the case of any person who had pleaded guilty and been convicted on such plea except as to the extent or legality of the sentence.

(2) In this section, "sentence" includes any order made on conviction with reference to the person so convicted.

### 30 Discretionary power of a magistrate's court to entertain appeals

Notwithstanding anything hereinbefore contained a magistrate's court may entertain any appeal from an island court on any terms which it thinks just.

### 31 Summary dismissals of criminal appeals

(1) When a magistrate's court has received the notice of any criminal appeal and the record of proceedings, the magistrate holding such court shall peruse the same.

- (2) Where an appeal is brought on the ground, either so expressed or in words to like effect, that the decision is unreasonable or cannot be supported having regard to the evidence, or that the sentence is excessive, and it appears to the magistrate that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which would raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily dismissed by order of the magistrate certifying he has perused the record and is satisfied that the appeal has been lodged without sufficient ground of complaint.

### **32 Powers of magistrate's court in regard to criminal appeal**

- (1) At the hearing of any criminal appeal the magistrate's court shall hear the appellant, or his advocate, if he appears, and the magistrate's court may thereupon confirm, reverse or vary the decision of the island court, or make such other order in the matter as to it may seem just, and may by such order exercise any power which the island court might have exercised:

Provided that a magistrate's court may, notwithstanding that it is of opinion that the point raised in such appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

- (2) At the hearing of any criminal appeal against sentence, a magistrate's court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the island court and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed.
- (3) If it shall appear to a magistrate's court on hearing any criminal appeal under this Part that a new trial ought to be had, it shall be lawful for such court, if it shall think fit, to order that the decision of the island court shall be set aside and that a new trial shall be had.

### **33 Additional evidence in any criminal appeal**

- (1) In dealing with any criminal appeal under this Part, a magistrate's court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by any island court.
- (2) When additional evidence is taken by any island court, such island court shall certify such evidence to the magistrate's court concerned which shall thereupon proceed to dispose of the appeal.
- (3) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before an island court.

**34 Power of magistrate's court in regard to civil appeal**

- (1) In any civil appeal under this Part a magistrate's court shall have power to draw inferences of fact and to give any judgment or make any order which ought to have been made and to make such further or other order as the case may require.
- (2) For all purposes of and incidental to the hearing and determination of any civil appeal under this Part and the amendment, execution or enforcement of any order; judgment or decision made thereon, a magistrate's court shall have all the powers, authority and jurisdiction of any island court.
- (3) If it shall appear to a magistrate's court on hearing any civil appeal under this Part, that a new trial ought to be had, it shall be lawful for such court, if it shall think fit, to order that the decision of the island court shall be set aside and that a new trial shall be had.

**35 Further evidence at civil appeal**

- (1) It shall not be open, as of right, to any party to any civil appeal under this Part to adduce new evidence in support of his original case, but a party may allege any facts essential to the issue which have come to his knowledge after the date of the judgment or decision from which the appeal is brought and may adduce evidence in support of his allegations.
- (2) A magistrate's court may in any case, if it thinks fit, allow or require new evidence to be adduced either by oral examination in court or by affidavit.

**36 Neither notice of appeal nor appeal to operate as stay of execution**

In the case of any civil proceedings neither notice of appeal nor an appeal shall operate as a stay of execution or of proceedings under the judgment appealed from, except so far as the island court which gave such judgment, or the magistrate's court above, may direct, and any such direction may be given with or without the application of either party.

**PART VI - REVISION OF DECISIONS OF ISLAND COURTS****37 Review by magistrate's court of island court cases**

- (1) A magistrate may, either on his own motion or on the petition of any person interested therein, call for the record of any cause before an island court and, either without seeing such record or after seeing such record, as he may determine, and either without hearing argument or after hearing argument as he may determine, exercise in the case of any criminal proceedings or in the case of any suit, civil cause or matter the powers conferred by subsections (2)

and (3) respectively and in the exercise of such powers he shall have all the powers, authority and jurisdiction vested in the island court which dealt with or determined the cause under review.

- (2) In the case of any criminal proceeding, a magistrate may —
- (a) subject to any law fixing a minimum penalty, reduce or alter the nature of but not increase a sentence; or
  - (b) subject to any law requiring a particular order to be made, set aside an order or modify an order in such form as he thinks fit; or
  - (c) set aside the conviction, in which case the person convicted, if under detention in respect of that conviction only, shall be forthwith set at liberty, or in the case of a fine having been imposed thereon such fine, if already paid, shall be refunded to the person fined, or if security has been required and given, he shall be freed from such security; or
  - (d) set aside the conviction and convict the accused person on the evidence of any offence of which he has not been specifically acquitted and of which he might have been convicted by the island court which convicted him and sentence him accordingly; or
  - (e) set aside the conviction and substitute a special finding to the effect that the person convicted was guilty of the act or omission charged, but was insane so as not to be responsible for his action at the time when he did the act or made the omission, and order such person to be kept in custody as a criminal lunatic in such place and manner as the Senior Magistrate may direct, and such special finding shall be forthwith reported for the order of the Governor-General who may order the person convicted to be confined in a mental health wing, prison or other suitable place of safe custody; or
  - (f) set aside the conviction and order a new trial before the island court which made the conviction in question or any other island court; or
  - (g) order further evidence to be taken either generally or on some particular point by the island court which passed the sentence or by any other island court, and order in the meantime any person who shall have been convicted to be liberated on bail or on his own recognisance; and
  - (h) make such order as justice may require and give all necessary and consequential directions:

Provided always that when a person convicted shall have appealed against such conviction or any sentence imposed in respect thereof under the provisions of this Act relating to such appeals, a magistrate shall not exercise the powers conferred by this subsection:

And provided further that nothing in this subsection shall be deemed to authorise the conversion of a finding of acquittal into one of conviction.

- (3) In the case of any suit, civil cause or matter a magistrate may —

- (a) set aside any judgment, decision or order made by the island court and substitute any judgment or order which ought to have been made;
- (b) direct the island court which gave the judgment or direction or made the order, or any other island court, to take further evidence either generally or on some particular point, and in the meantime order the stay of any proceedings for the execution of any judgment or order;
- (c) set aside the judgment and order a retrial before the island court which heard and determined the proceedings in question or any other island court; or
- (d) make any other order as justice may require and give all necessary and consequential directions:

Provided always that when a party shall have appealed against any judgment or order under the provisions of this Act relating to appeals, a magistrate shall not exercise the powers conferred by this subsection.

- (4) The powers conferred by this section shall not be exercised in respect of any case after the expiration of 12 months from the date of the passing of the sentence or the giving of judgment, order or decision terminating the proceedings in such case in the island court, and in respect of which the magistrate in question, or any predecessor of his, shall not up to then have taken any action.
- (5) For the purpose of facilitating the exercise of the powers conferred by this section, the Senior Magistrate may, by order under his hand,<sup>9</sup> direct that until such time as he shall otherwise order the clerk of any island court specified therein shall, at the end of each and every month, cause to be sent to the Clerk of the Senior Magistrate's Court true and complete copies of a list of all causes brought before such island court during that month.
- (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.
- (7) In the case of any suit, civil cause or matter there shall be set out in such list the names of the parties, the nature and subject-matter of the claim and brief details of the judgment of other order made.

## PART VII - MISCELLANEOUS

### 38 Concurrent jurisdiction of judges and magistrates

No jurisdiction conferred on any island court by or under this Act shall in any way affect the jurisdiction conferred on the High Court, or on any magistrate's court, but

judges and magistrates shall have in all causes and matters, civil and criminal, an original jurisdiction concurrent with that of the several island courts:

Provided that no person shall be liable to be punished twice for the same offence.

### **39 Fees and costs**

The fees and costs for the time being prescribed to be paid in connection with any criminal or civil cause or matter in island courts may be demanded and received by the clerks thereof or by other persons appointed to receive such fees or costs:

Provided that, in the absence of the clerk from any island court or in the event of there being no such clerk or other person appointed to receive such fees and costs in any such island court, the island magistrate who is for the time being presiding over such island court may demand and receive such fees and costs.

### **40 Payment of fees and costs**

All fees and costs payable under or by virtue of this Act shall in the first instance be paid by the party applying for the summons, warrant, or other process or document in respect whereof the same are payable:

Provided that no fees shall be payable by any public officer or public department in any case instituted by any public officer when acting in his official capacity or in any case in which the island court endorses on the plaint, information or complaint, as the case may be, that it is a fit one for remission of fees on account of the poverty of the party or for any sufficient reason; and in every such case such fees and costs shall, in the discretion of the island court, be recoverable from the other party, if the decision be given against him.

### **41 Regulations**

The Governor-General may, with the approval of the Chief Justice, make such regulations as may seem to him expedient for the carrying into effect of any of the objects, intentions, and provisions of this Act and, without derogation from the generality of the foregoing or of any other provision of this Act relating to the making of regulations, for all or any of the following purposes —

- (a) for regulating the procedure and practice to be followed in any cause or matter;
- (b) for regulating forms to be used and all matters connected therewith;
- (c) for regulating the procedure and practice to be followed in any appeal under Part V;
- (d) for providing the form and manner in which any notice of appeal under Part V is to be given;

- (e) for prescribing the time within which any notice of appeal under Part V is to be given and for providing for any extension thereof;
- (f) for providing for the giving of security and for the payment of fees and costs in any civil appeal under Part V;
- (g) for providing for the release from custody of any appellant pending the determination of any criminal appeal under Part V and for the giving of security by such appellant;
- (h) for prescribing any fee, matter or thing which is required, or appears to be expedient, to be prescribed under or in connection with the provisions of Part V;
- (i) for regulating the receipt of money paid into an island court or received or recovered under or by virtue of any process of execution or distress;
- (j) for regulating the payment out of an island court of any money to any person entitled thereto;
- (k) for prescribing books and forms of account to be kept or used in island courts;
- (l) for prescribing fees, costs, amounts for service and execution of process which may be received by clerks of island courts and others in connection with the practice and procedure in island courts;
- (m) for prescribing for the acceptance, retention and disposal of fees and costs;
- (n) for prescribing provision for the payment of any sum, or sums, of money to persons required to attend any island court as witnesses for defraying their reasonable expenses, and allowing them reasonable compensation for their trouble and loss of time involved in any such attendance;
- (o) for prescribing rules of evidence to be observed in proceedings before island courts;
- (p) for providing for the appointment and terms and conditions of service of probation officers and for their powers, duties and functions;
- (q) for prescribing for the administration of any punishment ordered under section 8(8).

**SCHEDULE 1****(Section 5)****JURISDICTION IN CIVIL CAUSES AND MATTERS**

1. Each island court shall have jurisdiction to entertain, hear, try, determine and otherwise deal with —
  - (a) matrimonial proceedings in accordance with section 5 of the Matrimonial Proceedings Act;<sup>10</sup>
  - (b) any personal suit, whether arising from contract or from tort, or both, in which the defendant is ordinarily resident within the jurisdiction of such court or in which the cause of action arose in such jurisdiction and where the value of the property, debt or damage claimed (whether as a balance of account or otherwise) is under \$250;<sup>11</sup>
  - (c) any application for an order under the Maintenance (Miscellaneous Provisions) Act<sup>12</sup> subject to sections 4 and 7 of that Act;
  - (d) any application for an order under the Custody of Children Act<sup>13</sup> subject to section 5 of that Act.
2. For the avoidance of possible doubt it is hereby declared that no island court shall have jurisdiction to try any suit, civil cause or matter in respect of which original jurisdiction to hear and determine the same is conferred on any lands court by the provisions of the Native Lands Act.

**SCHEDULE 2**

(Section 5)

**JURISDICTION IN CRIMINAL CAUSES AND MATTERS<sup>14</sup>**

Any island court shall, subject to the limitations imposed by this Act, have jurisdiction to hear, try and determine in accordance with the prescribed procedure any criminal proceedings arising in or from a charge made before such court that any person has committed, or is suspected of committing, within the jurisdiction of such court any offence the maximum punishment for which is a fine of \$250 and 6 months' imprisonment, or any offence under the provision of the enactments set forth below, that is to say —

<b>Act</b>	<b>Section or regulation in respect of which jurisdiction is conferred</b>
(i) Any Act in which such jurisdiction is expressly conferred upon an island court;	
(ii) Penal Code; <sup>15</sup>	(i) Sections 60, 82 and 83; (ii) Section 115 where the court or the proceeding in question is or is before an island court but not otherwise; (iii) Section 117; (iv) Section 133; (v) Section 167 (provided however that no island court shall exercise the power conferred by the proviso to the section); (vi) Sections 169 to 174 inclusive; (vii) Sections 181, 182 and 183; (viii) Sections 223, 237, 238 and 240; (ix) Sections 268, 269 and 270; (x) Section 285; (xi) Sections 254(1), 272, 273, 274, 275, 306, 307 and 319(1) where the thing stolen, cut, broken, severed, rooted up, ripped, damaged, destroyed, received or thrown down, as the case may be, is of a value not

	<p>exceeding \$50;</p> <p>(xii) Section 318;</p> <p>(xiii) Sections 322 and 323:</p> <p>Provided that in no case shall an island court pass upon any person convicted of an offence by it in exercise of the jurisdiction conferred by this Schedule a sentence in respect of that offence which is not authorised by section 6 or, where the person convicted is a young offender, section 8 of this Act;</p>
(iii) Falekaupule Act;	Any offence created by any bye-law made under Part VI of the Falekaupule Act; <sup>16</sup>
(iv) Marriage Act; <sup>17</sup>	Section 12(6);
(v) Dogs Act <sup>18</sup>	Section 5, 6, 11, 14 and 22;
(vi) Traffic Act; <sup>19</sup>	Section 14, 22, 23, 24, 25 and 30;
(vii) Public Order Act <sup>20</sup>	Section 15, 16, 25, 28, 29, and 34

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**ENDNOTES**

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<sup>1</sup> 1990 Revised Edition, Cap. 3 - Acts 10 of 1965, 10 of 1967, 2 of 1969, 8 of 1971, 9 of 1971, 3 of 1972, 9 of 1969, 13 of 1972, 1 of 1982, 8 of 1987, 1 of 1988, 4 of 1989; LNs. 63/1968, 40/1969, 43/1972, 31/1973, 12/1974, 41/1975

Amended by Act 4 of 1996, commencement 30 August 1996, (by Act 4 of 2009)

Amended by Act 4 of 2009, commencement 6 July 2009

<sup>2</sup> Act in operation and Island Courts established in - Funafuti (LNs 41/1967 and 7/1971); Nanumea, Nanumanga, Niutao, Nui, Nukufetau, Nukulaelae, Vaitupu (LNs 70/1967 and 5/1968); Niulakita (LN 13/1977, the court for Niutao is to be the court for Niulakita)

<sup>3</sup> Amended by Act 4 of 2009

<sup>4</sup> Cap. 46.20

<sup>5</sup> Amended by Act 4 of 1996

<sup>6</sup> G.N. 33/1979 —

The Senior Magistrate has appointed as Clerk to each Island Court in Tuvalu the Failautusi ote Kaupule respectively appointed to the Kaupule having authority over the area of jurisdiction of such Island Court

<sup>7</sup> By GN 31/1979 —

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 Tuvaluan 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 Act 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.”

<sup>8</sup> Amended by Act 4 of 2009

<sup>9</sup> By GN 32/1979 —

“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.

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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.”

<sup>10</sup> Cap. 17.30

<sup>11</sup> Amended by Act 4 of 2009

<sup>12</sup> Cap. 17.20

<sup>13</sup> Cap. 17.15

<sup>14</sup> Amended by Act 4 of 2009

<sup>15</sup> Cap. 10.20

<sup>16</sup> reference changed in exercise of law revision powers and Falekaupule Act

<sup>17</sup> Cap. 17.25

<sup>18</sup> Cap. 44.15

<sup>19</sup> Cap. 50.10

<sup>20</sup> Cap. 20.36