

## THE CUSTOMARY COURTS (AMENDMENT) ACT, 1972

No. 6



of 1972

### ARRANGEMENT OF SECTIONS

#### SECTION

1. Short title
2. Amendment of section 2 of Proclamation No. 19 of 1961
3. Amendment of section 2C of Proclamation No. 19 of 1961
4. Amendment of section 9 of Proclamation No. 19 of 1961
5. Amendment of section 10 of Proclamation No. 19 of 1961
6. Repeal and replacement of section 14 of Proclamation No. 19 of 1961
7. Amendment of section 16 of Proclamation No. 19 of 1961
8. Amendment of section 24 of Proclamation No. 19 of 1961
9. Amendment of section 27 of Proclamation No. 19 of 1961
10. Amendment of section 29 of Proclamation No. 19 of 1961
11. Amendment of section 37 of Proclamation No. 19 of 1961
12. Amendment of section 41 of Proclamation No. 19 of 1961
13. Addition of Schedule to Proclamation No. 19 of 1961

#### **AN ACT TO AMEND THE CUSTOMARY COURTS PROCLAMATION, 1961.**

*Date of Assent:* 7.4.1972

*Date of Commencement:* 21.4.1972

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Customary Courts (Amendment) Act, 1972. Short title

Amendment  
of section 2 of  
Proclamation  
No. 19 of  
1961

**2.** Subsection (3) of section 2 of the Customary Courts Proclamation, 1961, hereinafter referred to as the principal law, is amended by the insertion immediately after the words "any person" appearing therein of the words "other than a witness".

Amendment  
of section 2C  
of Proc-  
lamation No.  
19 of 1961

- 3.** Section 2C of the principal law is amended as follows —
- (i) in subsection (1) thereof by the deletion of the words "an officer in the Public Service to be Assistant Customary Courts Commissioner" appearing therein and by the substitution therefor of "not more than two officers in the public service to be Assistant Customary Courts Commissioners"; and
  - (ii) in subsection (2) thereof by the deletion of the words "The Assistant Customary Courts Commissioner" wheresoever they appear therein and by the substitution therefor of "An Assistant Customary Courts Commissioner".

Amendment  
of section 9 of  
Proclamation  
No. 19 of  
1961

**4.** Section 9 of the principal law is amended by adding thereto a new subsection as follows —

"(6) No person shall be charged with a criminal offence unless such offence is created by the Penal Code or some other written law."

Amendment  
of section 10  
of Proc-  
lamation No.  
19 of 1961

**5.** Section 10 of the principal law is amended as follows —

- (i) in paragraph (a) (v) thereof by the deletion of the words "perjury or subornation of perjury or conspiring to defeat the course of justice" appearing therein;
- (ii) in paragraph (a) (viii) thereof by the deletion of the words "or by abuse of authority" appearing therein; and
- (iii) in paragraph (b) thereof by the addition immediately after the words "is sought" appearing therein of the words "where such a marriage has been contracted other than in accordance with customary law".

Repeal and  
replacement  
of section 14  
of Proc-  
lamation 19  
of 1961

**6.** The principal law is amended by the deletion of section 14 thereof and by the substitution therefor of three new sections as follows —

"Punishments

**14.** (1) Subject to the provisions of subsections (2), (3) and (4) and section 14A and to the provisions of any other law for the time being in force a customary court may sentence a convicted person to a fine,

imprisonment, corporal punishment or any combination of such punishments but shall not impose any punishment exceeding those set out in its warrant.

(2) No customary court shall sentence any female or any person who is, in the opinion of the court, over the age of 40 years, to corporal punishment.

(3) No person shall be sentenced to corporal punishment other than for an offence specified in the Schedule to this Law:

Provided that where any person under the age of 18 years is convicted of any offence a customary court may, in its discretion, order him to undergo corporal punishment in addition to or in substitution for any other punishment.

(4) No customary court shall subject any person to any punishment which is not in proportion to the nature and circumstances of the offence and the circumstances of the offender.

**14A.** No customary court shall impose upon any person any punishment unless and until a criminal trial has been held in accordance with the provisions of the Customary Courts (Procedure) Rules, 1971.

Rules of procedure to be observed

**14B.** (1) The execution of the sentence of a customary court shall not be suspended by reason of an appeal against conviction unless the sentence is one of corporal punishment in which case the sentence shall not be executed until the appeal has been heard and decided:

When execution of sentence shall be suspended

Provided that where a person sentenced to corporal punishment, after having been informed of his right of appeal in accordance with the provisions of rule 22 of the Customary Courts (Procedure) Rules, 1971, states that he does not intend to appeal then, subject to the provisions of subsection (2), the sentence of corporal punishment may be carried out notwithstanding that the time within which an appeal may be lodged has not expired.

(2) Notwithstanding anything contained in subsection (1) no sentence of corporal punishment of

more than 4 strokes shall be carried out unless the sentence has been confirmed by an administrative officer."

Amendment  
of section 16  
of Proc-  
lamation 19  
of 1961

**7.** Section 16 of the principal law is amended by the deletion of subsection (3) thereof and by the substitution therefor of a new subsection as follows —

"(3) The Minister may, on the application by a Chief or, in any area in which there is no Chief by the District Commissioner of such area, by notice in the Gazette, vary the provisions of subsection (2) in so far as they relate to customary courts within the area of the Chief or District Commissioner as the case may be."

Amendment  
of section 24  
of Proc-  
lamation No.  
19 of 1961

**8.** Section 24 of the principal law is amended by the insertion immediately after the words "criminal proceedings" appearing therein of the words "or in any civil proceedings which fall to be determined by customary law."

Amendment  
of section 27  
of Proc-  
lamation No.  
19 of 1961

**9.** Section 27 of the principal law is amended by the deletion of the words "or, in default of payment thereof to imprisonment without the option of a fine, or to both such fine and imprisonment" appearing therein and by the substitution therefor of the words "and to imprisonment for one year".

Amendment  
of section 29  
of Proc-  
lamation No.  
19 of 1961

**10.** Section 29 of the principal law is amended as follows —

- (i) in subsection 3 (a) thereof by the deletion of the words "or otherwise" appearing therein; and
- (ii) in subsection (4) thereof by the insertion immediately after the words "another Customary Court" appearing therein of the words "or to a subordinate court".

Amendment  
of section 37  
of Proc-  
lamation No.  
19 of 1961

**11.** Subsection (1) of section 37 of the principal law is amended by the insertion immediately after the words "exceeding R200" appearing therein of the words "or in which the punishment of imprisonment although itself not exceeding six months when added to any other term of imprisonment which the convicted person still has to serve exceeds six months".

Amendment  
of section 41  
of Proc-  
lamation No.  
19 of 1961

**12.** Section 41 of the principal law is amended by the deletion of the word "*forty*" appearing therein.

Addition of  
Schedule to  
Proclamation  
No. 19 of  
1961

**13.** The principal law is amended by the addition at the end thereof of a Schedule as follows —

**“SCHEDULE**

**Attempted rape.  
Indecent assault on females.  
Defilement and attempted defilement of  
    (i) girls under the age of 16 years; and  
    (ii) idiots and imbeciles.  
Disabling in order to commit an offence.  
Assault occasioning actual bodily harm.  
Robbery and attempted robbery.  
Burglary.  
Stock theft.”**

Passed by the National Assembly this day, the 16th March, 1972.

**G.T. MATENGE,**  
*Clerk of the National Assembly.*

**CERTIFICATE**

I, Albert Alfred Frank Lock, Speaker of the National Assembly hereby certify that the National Assembly did not proceed on the Customary Courts (Amendment) Bill, 1972, until a copy had been referred to the House of Chiefs after the Bill had been introduced in the National Assembly and a period of 30 days elapsed from the time when the Bill was referred to the House of Chiefs before the National Assembly proceeded on the Bill.

**A.A.F. LOCK,**