

CUSTOMARY COURTS (AMENDMENT) ACT, 2001

No. 1



of 2002

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of the Act
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4. Amendment of section 4 of the Act
5. Insertion of section 4A in the Act
6. Amendment of section 10 of the Act
7. Amendment of section 11 of the Act
8. Amendment of section 12 of the Act
9. Amendment of section 17 of the Act
10. Amendment of section 22 of the Act
11. Amendment of section 27 of the Act
12. Amendment of section 28 of the Act
13. Amendment of section 36 of the Act
14. Amendment of section 38 of the Act
15. Amendment of section 44 of the Act

An Act to amend the Customary Courts Act

Date of Assent: 03.01.02.

Date of Commencement: 07.01.02.

ENACTED by the Parliament of Botswana.

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| <p>1. This Act may be cited as the Customary Courts (Amendment) Act, 2001.</p> | Short title |
| <p>2. The Customary Courts Act (hereunder referred to as "the Act") is amended by substituting the words "Director of Tribal Administration" for the words "Customary Courts Commissioner" wherever they appear in the Act.</p> | Amendment of Cap. 04:05 |
| <p>3. Section 2 of the Act is amended by deleting subsection (3) thereof.</p> | Amendment of section 2 of the Act |
| <p>4. Section 4 of the Customary Courts Act is amended by deleting subsections (3), (4) and (5) thereof.</p> | Amendment of section 4 of the Act |
| <p>5. The Act is amended by inserting, immediately after section 4 thereof, the following new section —</p> | Insertion of section 4A in the Act |

“Deputy Director of Tribal Administration 4A (1) The Minister may by notice published in the Gazette appoint an officer in the public service to be Deputy Director of Tribal Administration.

(2) The Deputy Director of Tribal Administration shall —

- (a) act as the Director of Tribal Administration when the latter is unable to carry out his duties or perform his functions under this Act; and
- (b) discharge such duties, under this Act, as the Director may from time to time delegate.

Amendment of section 10 of the Act

6. Section 10 of the Act is amended by —

- (a) deleting therefrom, the word “and” which appears immediately before subparagraph (i) thereof; and
- (b) deleting subparagraphs (i) and (ii) of paragraph (a).
- (c) deleting from subsection (2) thereof, the following words —
“in which the defendant is a tribesman or consents in writing to the jurisdiction of the court”, which appear immediately after the word “council”.

Amendment of section 11 of the Act

7. Section 11 of the Act is amended by substituting, for subsections (1) and (2) thereof, the following new subsections —

“(1) Subject to the provisions of section 12, a customary court shall have and may exercise criminal jurisdiction to the extent set out in its warrant in connection with criminal charges and matters in which the charge relates to the commission of an offence committed either wholly or partly within the area of jurisdiction of the court.

(2) No customary court shall sentence a person to a period of imprisonment in excess of the period of imprisonment authorised in its warrant.”

Amendment of section 12 of the Act

8. Section 12 of the Act is amended —

- (a) in paragraph (a) thereof, by inserting, immediately after the words “Penal Code” which appear in subparagraph (iv), the following words —
“with the exception of offences under sections 108, 119, 123, 125 and 128 of the said Division”; and
- (b) in paragraph (d), thereof by substituting, for the words “Customary Courts Commissioner” the words “Attorney-General”, which appear therein.

Amendment of section 17 of the Act

9. Section 17 of the Act is amended by substituting, for subsection (3) thereof, the following new subsection —

“(3) 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.”;

Amendment of section 22 of the Act

10. Section 22 (4) is amended by substituting, for the words “Customary Courts Commissioner,” which appear therein, the words “Customary Court of Appeal.”

- 11. Section 27 of the Act is amended by substituting, for the words “P10” and “one month” which appear therein, the words “P100” and “three months” respectively.** Amendment
of section 27
of the Act
- 12. Section 28 of the Act is amended —** Amendment
of section 28
of the Act
- (a) by substituting, for subsection (2) thereof, the following new subsection —
“(2) Every summons shall be in the prescribed form and served in the prescribed manner.”;
- (b) by deleting subsection (3) thereof; and
- (c) by renumbering subsections (4) and (5) as subsections (3) and (4) respectively.
- 13. Section 36 of the Act is amended —** Amendment
of section 36
of the Act
- (a) by substituting the words “Customary Court of Appeal” for the words “Customary Courts Commissioner” wherever they appear in the section.
- (b) in subsection (3) thereof by substituting —
- (i) the word “it” for the word “he” wherever the latter appears in the subsection; and
- (ii) the word “its” for the word “his” which appears in paragraph (b) thereof.
- 14. Section 38 is amended —** Amendment
of section 38
- (a) by deleting therefrom, the words “The Customary Courts Commissioner or” which appear therein; and
- (b) by inserting therein, the following new subsection —
“(2) The powers conferred upon the administrative officer under subsection (1) shall also be exercised by the Customary Court of Appeal.”
- 15. Section 44 of the Act is amended —** Amendment
of section 44
of the Act
- (a) by substituting the words “Customary Court of Appeal” for the words “Customary Courts Commissioner” wherever they appear in the section; and
- (b) by deleting subsection (3) thereof.
- 16. The Act is hereby amended by deleting the Schedule thereto.**

PASSED by the National Assembly this 6th day of December, 2001.

C.T. MOMPEI,
Clerk of the National Assembly.