

CUSTOMARY COURTS ACT
(Cap. 04:05)

CUSTOMARY COURTS (PROCEDURE) (AMENDMENT) RULES, 2016
(Published on 28th September, 2016)

ARRANGEMENT OF RULES

RULE

1. Citation
2. Amendment of rule 2 of Cap. 04:05 (Sub. Leg.)
3. Amendment of rule 10 of the Rules
4. Amendment of the Rules
5. Amendment of rule 12 of the Rules
6. Amendment of rule 13 of the Rules
7. Amendment of rule 16 of the Rules
8. Amendment of the Rules
9. Amendment of rule 20 of the Rules
10. Amendment of the Rules
11. Amendment of the Rules
12. Amendment of rule 28 of the Rules
13. Amendment of rule 29 of the Rules
14. Amendment of rule 30 of the Rules
15. Amendment of rule 31 of the Rules
16. Amendment of Schedule to the Rules

IN EXERCISE of the powers conferred on the Minister of Local Government and Rural Development by section 49 of the Customary Courts Act, the following Rules are hereby made —

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| 1. These Rules may be cited as the Customary Courts (Procedure) (Amendment) Rules, 2016. | Citation |
| 2. The Customary Courts (Procedure) Rules (in these Rules referred to as “the Rules”) are amended in rule 2 by inserting in its appropriate alphabetical order the following definition —
““revenue collector” means an officer appointed by the Minister for the collection of revenue”. | Amendment of rule 2 of Cap. 04:05 (Sub. Leg.) |
| 3. Rule 10 is amended in subrule (3) by deleting the words “, after being endorsed in accordance with the provisions of section 28 of the Act,”. | Amendment of rule 10 of the Rules |
| 4. The Rules are amended by substituting for rule 11 the following new rule —
“11. (1) A witness who attends before the Court under rule 10 shall be paid such tariff of allowances on the same scales as are payable to a witness appearing in a magistrate’s court.
(2) In criminal cases, the revenue collector shall pay the allowance due to a witness from public funds and in civil cases the allowance shall be made by the party in whose favour the witness is to testify.”. | Amendment of the Rules |

Amendment
of rule 12 of
the Rules

5. Rule 12 is amended in subrule (1) by substituting for the words "Court messenger", the words "bailiff".

Amendment
of rule 13
of the Rules

6. Rule 13 is amended by inserting immediately after the words "Where the defendant in a criminal", the words "or civil".

Amendment
of rule 16 of
the Rules

7. Rule 16 is amended by substituting for subrule (2) the following new subrule —

"(2) In a criminal case, if the defendant is being held in custody the period of an adjournment shall not exceed seven days, and the Court shall issue a remand warrant in accordance with Form 7 in the Schedule, and where the defendant is to be removed from custody, the court shall issue a removal warrant in accordance with Form 8 in the Schedule."

Amendment
of the Rules

8. The Rules are amended by substituting for rule 19 the following new rule —

"Hearing of criminal cases
The hearing of a criminal case shall commence in the following manner —

- (a) the Presiding Officer shall explain to the defendant the charge against him;
- (b) the Presiding Officer shall ask the defendant whether there is anything to stop the case from proceeding;
- (c) the Presiding Officer shall ask the defendant whether he admits committing the acts complained of and that he has contravened the law concerned; and
- (d) if the defendant admits unequivocally that he has committed the acts complained of and that he has contravened the law concerned, the Presiding Officer shall record a plea of guilty, and in all other cases the Presiding Officer shall record a plea of not guilty."

Amendment
of rule 20 of
the Rules

9. Rule 20 is amended —

- (a) by inserting in paragraph (d) immediately after the word "address", the words ", national identity number, telephone or cellular phone number, next of kin";
- (b) by substituting for paragraph (n) appearing therein the following new paragraph —
 - "(n) after the defendant has called witnesses he wishes to call, if any, and they have been questioned, the Court shall give the complainant and the defendant an opportunity to sum up their evidence and make any other relevant submissions which they may wish to make, and the Court shall consider all the evidence and pronounce judgment; and
- (c) by substituting for paragraph (o) appearing therein the following new paragraph —
 - "(o) where the Court —
 - (i) after considering all the evidence and other matters properly before it in the case, feels any real doubt regarding the guilt or innocence of the defendant, the Court shall acquit the defendant of the offence charged,

- (ii) has no doubt referred to under subparagraph (i) and is satisfied on the evidence before it that the guilt of the defendant has been proven, the Court shall convict the accused of the offence charged, or
- (iii) is constituted of more than one member, and the members cannot agree to the guilt or innocence of the defendant, the view of the majority of the members shall be the verdict of the Court, and if the views of the members are equally divided the defendant shall be acquitted.”.

10. The Rules are amended by substituting for rule 24 the following new rule —

Amendment of the Rules

“Warrant for sentence of imprisonment

24. (1) A clerk of the sentencing Court shall issue a warrant in Form 9 in the Schedule signed by the Presiding Officer of the Court by which any person has been sentenced to imprisonment, ordering that the sentence shall be carried out in a specified prison within Botswana.
- (2) Subject to the provisions of section 23 of the Act, a warrant issued in accordance with subrule (1) shall be full authority to the officer-in-charge of the prison to which a person is committed in terms of subrule (1), for the carrying into effect of the sentence described in such warrant.”.

11. The Rules are amended by substituting for rule 27 the following new rule —

Amendment of the Rules

- “Fees 27. On every civil appeal from judgment of a Court to a higher customary court or Customary Court of Appeal, a fee of P50.00 shall be payable to the Court from whose decision the appeal is made, and no fee shall be payable in a criminal trial.”.

12. Rule 28 is amended by substituting for the words “clerk of such Court” the words “revenue collector”.

Amendment of rule 28 of the Rules

13. Rule 29 is amended —

Amendment of rule 29 of the Rules

- (a) by substituting for the words “clerk of the Court” the words “revenue collector”; and
- (b) by deleting the words “in the presence of the aggrieved party or in his absence, in the presence of two members of the Court”.

14. Rule 30 is amended —

Amendment of rule 30 of the Rules

(a) by substituting for the proviso appearing in subrule (1), the following new proviso —

“Provided that in no case shall such imprisonment exceed the maximum period fixed as follows —

<i>Amount</i>	<i>Maximum Period</i>
Not exceeding P 50	14 days
Not exceeding P100	1 month
Not exceeding P150	3 months
Not exceeding P200	4 months
Exceeding P200	6 months.”; and

Amendment of rule 31 of the Rules

- (b) in subrule (4) by substituting —
 - (i) for the word “P80”, the word “P1 000”, and
 - (ii) for the word, “four” the word “eight”.

15. Rule 31 is amended —

- (a) in subrule (2) by substituting for the words “Form 8” appearing there in, the words “Form 10”; and
- (b) by inserting immediately after subrule (2) the following new subrule —
“(2A) Where the defendant in a civil case obstructs a bailiff or assistant bailiff from enforcing a sale order, the defendant shall be in contempt of court and shall be liable to the penalties provided under section 28 of the Act.”.

Amendment of Schedule to the Rules

16. The Schedule to the Rules is amended —

- (a) in Form 1 by substituting for the words “will be liable to arrest, and to punishment for your failure” appearing therein, the words “shall be liable to the penalties provided under section 29 (3) of the Act.”;
- (b) in Form 3 by substituting for the words “will be punished.” the words “shall be liable to the penalties provided under section 29 (3) of the Act”;
- (c) in Form 5 by substituting for the words “Police Officers” the words “bailiffs”;
- (d) by inserting immediately after Form 6, the following new Forms —

“Form 7
REMAND WARRANT

(Rule 16 (2) of the Customary Courts (Procedure) Rules)

BOTSWANA

In the Customary Court
..... Case No. of 20.....
.....

Versus

To the officer-in-charge of the Prison at
WHEREAS the trial of
charged with the offence of
.....
is pending/proceeding before me;

AND WHEREAS it is necessary or expedient to postpone/ adjourn the trial until
the day of..... 20..... at..... o'clock

NOW therefore this is to require you, in the President’s name, to receive the said

.....
into your custody and there safely to keep him until the said date or until he shall otherwise
lawfully be discharged from custody.

Given under my hand at..... this day of20.....

.....
Presiding Officer

Form 8
REMOVAL WARRANT

(Rule 16 (2) of the Customary Courts (Procedure) Rules)

BOTSWANA

In the Customary Court
..... Case No. of 20.....
.....

Versus

.....
To the officer-in-charge of the Prison at
WHEREAS the trial of..... sex.....
.....
charged with the offence of
is proceeding before me and was in remand for
You are hereby to release the said
on the.....day of.....20.....at.....o'clock for the
purpose of.....

Given under my hand atthisday of20.....

.....
Presiding Officer";

- (e) in Form 7 —
 (i) by substituting for the words “Form 7”, the words “Form 9”, and
 (ii) by deleting the words “District Commissioner”; and
(f) in Form 8 by substituting —
 (i) for the words “Form 8”, the words “Form 10”, and
 (ii) for the words, “Police Officers” the words “bailiffs”.

MADE this 19th day of September, 2016.

SLUMBER TSOGWANE,
*Minister of Local Government
and Rural Development.*