

CHAPTER 04:05 - CUSTOMARY COURTS: SUBSIDIARY LEGISLATION
INDEX TO SUBSIDIARY LEGISLATION

Customary Court of Appeal Rules
Customary Courts (Corporal Punishment) Rules
Customary Courts (Enforcement of Specified Laws) Order
Customary Courts (Procedure) Rules
Establishment and Jurisdiction of Customary Courts Order
Customary Courts (Powers to Prosecute) (Authorisation) Order

CUSTOMARY COURTS (PROCEDURE) RULES

(under section 49)

(25th June, 1971)

ARRANGEMENT OF RULES

RULE

1. Citation
2. Interpretation
3. Registers
4. Identification number of cases
5. Entry of criminal case in Register
6. Entry of civil case in Register
7. Refusal to enter case
8. Date of hearing
9. Particulars to be entered
10. Summons to witness and notice of hearing
11. Witnesses' fee
12. Contents and service of summons
13. Failure to obey summons
14. Power of Court to order prisoner to be brought to give evidence
15. Recording of evidence
16. Adjournment
17. Cases to be called on date of hearing
18. Rights of defendant
19. Hearing of criminal cases
20. Procedure at trial
21. Recording and delivery of judgment
22. Passing of sentence
23. Right of appeal to be explained
24. Warrant for sentence of imprisonment
25. Procedure on hearing-civil cases
26. Right of appeal
27. Fees
28. Payment of fines
29. Payment of compensation
30. Failure to pay fines or compensation
31. Attachment and sale of property
32. Power of Court to enforce judgment of other Courts

Schedule - Forms

S.I. 74, 1971,
S.I. 55, 1975,
S.I. 117, 1976,
S.I. 78, 1991.

1. Citation

These Rules may be cited as the Customary Courts (Procedure) Rules.

2. Interpretation

In these Rules unless the context otherwise requires-

"civil case" means a case in which the complainant seeks to recover from another person-

- (a) any money owing to the complainant;
 - (b) the value of any goods sold;
 - (c) any property belonging to the complainant;
 - (d) compensation for damage done to the complainant's person, property or reputation;
- and includes a case where the complainant seeks to enforce a legally binding agreement or where the complainant seeks some remedy available under the customary law applicable to the parties;

"clerk" means a clerk of a Customary Court appointed by the Minister;

"compensation" means recompense in money or livestock paid to an aggrieved or injured party;

"complainant" for the purposes of rules 20 and 22 includes a prosecutor;

"Court" means a Customary Court established under the Act;

"criminal case" means a case in which the complainant alleges facts which, if proved, would show that some person had committed an offence and in which the punishment of the offender is sought;

"fine" means a sum of money fixed as a penalty for an offence;

"Presiding Officer" means a person who being a member of a Court presides over that Court;

"Register" means a case Register kept in accordance with the provisions of rule 3.

3. Registers

The clerk of every Court shall keep a case Register in respect of all criminal and civil cases in such Court.

4. Identification number of cases

(1) A serial number shall be given to every case depending on the year in which the case started and the number of such case in such year.

(2) All documents in a case shall bear the serial number of that case, which shall be written at the top of the first page.

(3) In every case there shall be recorded in writing and attached to the record of the case the names of the members of the Court trying such case.

5. Entry of criminal case in Register

If a complainant wishes to start a criminal case the clerk, if he is satisfied that the complaint is made in good faith and that the facts complained of constitute an offence within the jurisdiction of the Court, shall enter the case in the Register and shall give it a serial number and, unless the defendant is in custody, shall prepare a summons in Form 1 in the Schedule.

6. Entry of civil case in Register

If the complainant wishes to start a civil case the clerk shall enter the case in the Register and shall give it a serial number and shall prepare a summons in Form 2 in the Schedule.

7. Refusal to enter case

A complainant who is aggrieved by the refusal of a clerk to enter a case in the Register may appeal to the Presiding Officer.

8. Date of hearing

(1) As soon as possible after a case has been entered in the Register, the clerk shall apply to the Presiding Officer to fix the date of hearing.

(2) In fixing the dates for hearing the Presiding Officer shall take account of the necessity

for service of the summons to be effected on the defendant not less than seven clear days before the date of hearing, and of the places of residence of any witnesses of whom the Court is informed:

Provided that, if the defendant is present before the Court and consents, the trial may proceed forthwith, or on any convenient date.

9. Particulars to be entered

(1) Every summons, whether in a criminal case or a civil case, shall be prepared in duplicate and shall be signed by the clerk and, if a summons to a defendant, shall be served on the defendant not less than seven clear days before the date of hearing.

(2) Every summons to a defendant in a criminal case shall state briefly the offence with which the defendant is charged.

(3) Every summons to a defendant in a civil case shall state briefly the substance of the claim and the matter in dispute.

(4) Nothing in this section shall be deemed to affect the power of a Court to warn persons to attend Court.

10. Summons to witness and notice of hearing

(1) If any of the parties wishes to compel the attendance of any witness to give evidence at the trial he shall in sufficient time for service to be effected apply for a summons to be served on the witness. A summons to a witness shall be in Form 3 in the Schedule.

(2) Every summons to be served on a witness who resides within the area of jurisdiction of the Court which issues the summons shall be served not less than three clear days before the date of hearing.

(3) Every summons to be served on a witness who resides outside the area of jurisdiction of the Court shall, after being endorsed in accordance with the provisions of section 28 of the Act, be delivered to the clerk of the Court in whose jurisdiction the witness resides not less than 10 clear days before the date of hearing.

11. Witnesses' fee Witnesses who attend before the court under rule 10 shall be paid fees and reimbursements on the same scales as are applicable in a magistrate's court. In criminal appeals payments shall be made by the clerk from public funds and in civil appeals such payments shall be made by the party in whose favour the witnesses are to testify.

12. Contents and service of summons

(1) Every summons shall require the person named in it to appear before the Court on the date of hearing and shall if reasonably practicable be served personally on him by a Court messenger delivering one copy to him.

(2) If the person named in the summons cannot be found after a careful search the summons may be served by delivering one copy to the husband, wife or guardian of the person named in the summons.

13. Failure to obey summons

Where the defendant in a criminal case or any witness in a criminal or civil case has been summoned or warned to attend before the Court and who, without lawful excuse, fails to attend as required by the summons, or who having attended, goes away without first being given the permission of the Court, or who fails to attend after an adjournment of the Court after being told by the Court to attend, the Court may issue a warrant for his arrest in Form 4 (Warrant for arrest of Defendant) or Form 5 (Warrant for arrest of Witness) in the Schedule.

14. Power of Court to order prisoner to be brought to give evidence

(1) Where any Court, either on the application of any party to a case pending before it or on its own motion, desires that any person confined in any prison should be examined as a witness in the hearing of such case, such Court may issue an order in Form 6 in the Schedule to the officer-in-charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before the Court for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith

and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid.

15. Recording of evidence

(1) In every trial the evidence shall be recorded in writing in the language of the Court by the clerk under the directions of the Presiding Officer.

(2) At the close of each case and of each day's hearing the Presiding Officer and the clerk shall sign their names and the date at the last line of the record.

16. Adjournment

(1) The Court may from time to time adjourn the hearing of any case for a suitable period-

- (a) if the complainant, the defendant or an essential witness is absent, or is otherwise unable or unfit to take part in the proceedings;
- (b) if the hearing continues for more than one day;
- (c) if the decision cannot be reached due to lack of time;
- (d) if the Court is not satisfied that it has jurisdiction to try the case; or
- (e) for any other sufficient reason to be recorded on the record of the case.

(2) In a criminal case, if the defendant is being held in custody the period of an adjournment shall not exceed seven days.

(3) Before adjourning a case the Court shall inform any of the parties and any witnesses who are present of the date to which the case is to be adjourned.

17. Cases to be called on date of hearing

(1) Every case shall be called for mention or hearing on the date fixed for the hearing and shall either be disposed of or adjourned.

(2) If the complainant in a criminal case does not appear when the case is called for hearing, the Court shall appoint a later date. If then the complainant shall again fail to appear, the Court may discharge the defendant.

(3) If the complainant in a civil case does not appear, whether after an adjournment or not, when the case is called for hearing the Court may dismiss the case.

18. Rights of defendant

Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty.

19. 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 he admits committing the acts complained of and that he has contravened the law concerned;
- (c) 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. In all other cases the Presiding Officer shall record a plea of not guilty.

20. Procedure at trial

The procedure on the trial of any criminal case shall be as follows-

- (a) the prosecutor or, if there is no prosecutor the complainant, shall inform the Court briefly of the facts of the case;
- (b) the complainant shall call witnesses in turn to prove his case;
- (c) if the complainant wishes to give evidence himself he shall do so before he calls any other witnesses;
- (d) each witness shall give his name, address and occupation and shall state what he knows about the case and shall answer any relevant questions put to him by the complainant;
- (e) after the witness has stated what he knows about the case, the Presiding Officer shall inform the defendant that he is entitled to ask the witness any questions relevant to the

- facts of the case and the defendant may then ask such questions;
- (f) after the defendant has finished asking any relevant questions under paragraph (e) the Presiding Officer and any member in turn may then ask relevant questions of the witness;
 - (g) after the complainant has called all his witnesses he shall close his case and the Court shall consider whether the evidence that has been given is sufficient to require an answer from the defendant;
 - (h) the Court shall not require an answer from the defendant unless it is satisfied that the charge has been substantiated by credible evidence and that in the absence of explanation or evidence by the defendant, the Court would have the duty to convict him of the offence charged: unless the Court is so satisfied it shall acquit the defendant;
 - (i) where the Court considers the evidence sufficient to require an answer from the defendant, the Presiding Officer shall inform the defendant that he may say anything he wishes in his defence or that he may remain silent;
 - (j) the Presiding Officer shall inform the defendant that he may call witnesses if he wishes;
 - (k) where the defendant gives evidence or says anything in his defence he may be asked questions by the complainant and by the Presiding Officer and members;
 - (l) where the defendant wishes to give evidence or to say anything in his defence, as the case may be, under paragraph (i), he shall do so before he calls any witnesses;
 - (m) the defendant may ask questions of the witnesses whom he calls, and they may be asked relevant questions by the complainant and by the Presiding Officer and members;
 - (n) after the defendant has called witnesses he wishes to call, if any, and they have been questioned, the Court shall consider all the evidence and pronounce judgment;
 - (o) where the Court, 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. Where the Court has no such doubt and is satisfied on the evidence before it that the guilt of the person has been proved, the Court shall convict the accused of the offence charged. If the Court 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; if the views of the members are equally divided the defendant shall be acquitted.

21. Recording and delivery of judgment

When the Court has determined whether the defendant shall be convicted or acquitted of the offence with which he is charged, it shall record in writing the judgment, including the reasons for it. Such judgment shall be signed by the Presiding Officer of the Court, who shall deliver it in open Court in the presence of the defendant.

22. Passing of sentence

(1) When a defendant is convicted the complainant may inform the Court of any other offences of which the defendant has been convicted previously, and the Presiding Officer shall ask the defendant whether he agrees that he has been convicted of those offences. If the defendant does not agree that he has been convicted of the offences concerned, the Court may hear evidence from the complainant and the defendant concerning the commission of the offences concerned, and, after making such further enquiries as it shall think fit, the Court, if it is satisfied that the defendant was convicted of the alleged offences, shall take such offences as are similar in nature to the offence of which the defendant stands convicted into consideration in determining the sentence to be passed.

(2) Before passing sentence the Presiding Officer shall ask the defendant whether he wishes to say anything about the sentence which should be passed on him.

(3) After the defendant has said anything he wishes under subrule (2) the Court shall

consider and determine the sentence to be imposed.

(4) The sentence of the Court shall be recorded in writing and signed by the Presiding Officer together with the reasons for it, and such sentence and reasons shall be delivered in open Court in the presence of the defendant.

23. Right of appeal to be explained

Immediately after passing sentence on the defendant the Presiding Officer shall inform him of his right of appeal as laid down in the Act.

24. Warrant for sentence of imprisonment

A warrant in Form 7 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 shall be issued by the clerk of the sentencing Court. Such warrant shall be subject to the provisions laid down in section 23 of the Act and on the satisfying of such provisions shall be full authority to the officer-in-charge of such prison and to all other persons for the carrying into effect of the sentence described in such warrant.

25. Procedure on hearing-civil cases

The hearing of every civil case shall be conducted in accordance with the procedure authorized by the customary law prevailing in the area of jurisdiction of the Court, subject to the following provisions-

- (a) the complainant shall outline the nature of his claim and may call such witnesses as he may wish to support his case;
- (b) the defendant shall thereupon make an answer to the complainant's claim;
- (c) every witness shall give evidence and may be questioned in the same manner as is laid down in rule 20;
- (d) after the defendant has called all his witnesses, 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;
- (e) after considering all the evidence and any submission made by the complainant and the defendant, the Court shall decide whether and to what extent the complainant's claim has been made out and shall give judgment accordingly;
- (f) the Presiding Officer having heard the views of other members present shall proceed to judgment: the view of the majority of the members shall be the judgment of the Court: if the views of the members are equally divided judgment shall be for the defendant;
- (g) every judgment or order shall be recorded in writing and shall contain the reasons for the decisions, and shall be signed by the Presiding Officer who shall deliver it in open Court.

26. Right of appeal

After the judgment or order has been delivered the Presiding Officer shall inform the party against whom the judgment has been given, if he is present, of his right to appeal as laid down in section 42 of the Act.

27. Fees

On every civil appeal from a judgment of a Court to the magistrates' court a fee of P4 shall be payable to the Court from whose decision the appeal is made. No fee shall be payable in a criminal trial.

28. Payment of fines

All fines imposed by and all fees payable to a Court shall be paid to the clerk of such Court who shall issue a receipt and shall dispose of the same as from time to time directed by the Accountant-General.

29. Payment of compensation

All compensation whether in moneys or livestock as ordered by the Court shall be paid to the clerk of the Court in the presence of the aggrieved party or in his absence, in the presence of two members of the Court.

30. Failure to pay fines or compensation

(1) Where a Court makes an order for the payment of a fine or compensation, or both, it shall direct by its sentence that in default of the payment of the fine or both or compensation the offender shall suffer such period of imprisonment as will satisfy the justice of the case:

Provided that in no case shall such imprisonment exceed the maximum fixed by the following scale-

<i>Amount</i>	<i>Maximum Period</i>
Not exceeding P1	14 days
Exceeding P1 but not exceeding P2	1 month
Exceeding P2 but not exceeding P10	3 months
Exceeding P10 but not exceeding P40	4 months
Exceeding P40	6 months

(2) *The imprisonment which is imposed in default of payment of a fine or compensation, or both shall terminate whenever the fine is either paid or levied by process of law.*

(3) Where a term of imprisonment is imposed by a Court in default of the payment of a fine or of compensation that term shall, on the payment or levy of a part of such sum, be proportionately reduced.

(4) For the purposes of this rule in calculating the maximum period of imprisonment for non-payment of compensation one head of cattle shall be worth P80, and four head of small stock shall be the equivalent of one head of cattle.

31. Attachment and sale of property

(1) Where a Court believes that a person on whom a fine or order of compensation, or both has been imposed by that Court has property liable to seizure it may without application in default of such payment make a sale order for the levy of such fine or compensation, or both.

(2) A sale order issued under paragraph (1) shall be in Form 8 in the Schedule.

32. Power of Court of enforce judgment of other Courts

Upon receipt of any decree, order, warrant or process directed to a Court, the Court concerned shall enter such decree, order, warrant or process in its own records and enforce, execute or serve them as though they were issued originally by the Court concerned.

SCHEDULE

FORMS

Form 1

CRIMINAL SUMMONS

(Rule 5 of the Customary Courts (Procedure) Rules)

In the

.....

..... Customary Court

Case No.....of 20

i (1)

.....

.....

versusⁱⁱ

(2)

.....

.....

To: ⁱⁱⁱ(3)

of

You are ordered to come to the Court at ^{iv}(4)

.....on ^v(5).....day the day of

..... 20at.....o'clock

to answer a charge that ^{vi}(6)

.....
.....
If you fail to come to Court you will be liable to arrest, and to punishment for your failure.
Seal

.....
Date

.....
Clerk of the Court

Form 2
CIVIL SUMMONS

(Rule 6 of the Customary Courts (Procedure) Rules)
BOTSWANA

In the

.....
..... Customary Court
Case No.....of 20
vii(1)

.....
versus
viii(2)

To: ix(3)

You are ordered to come to the Court at x(4)
on xi(5)day the day of 20
atto answer the claim against
you that xii(6)

.....
If you fail to come to Court judgment may be given against you in your absence.
Seal

.....
Date

.....
Clerk of the Court

Form 3
SUMMONS TO WITNESS

(Rule 10(1) of the Customary Courts (Procedure) Rules)
BOTSWANA

In the

.....
..... Customary Court
Case No of 20
xiii(1)

.....
versus
xiv(2)

To: xv(3)
of

of
was summoned to attend the above Court on ^{xxx}(5)..... day
the day of
..... 20for the purpose of giving evidence and failed to do
so, you are hereby directed to arrest the said ^{xxxi}(6).....
and to produce him before this Court in execution of this your Warrant and HEREIN FAIL NOT.
Dated this day of 20
Seal

.....
Presiding Officer
.....
Customary Court

Form 6
ORDER FOR PRODUCTION OF PRISONER AS WITNESS
(Rule 14(1) of the Customary Courts (Procedure) Rules)
BOTSWANA

In the
.....
..... Customary Court
.....
..... Case No of 20
^{xxxii}(1)
.....
.....
.....
..... versus
^{xxxiii}(2)
.....
.....

To the officer in charge of the Prison at ^{xxxiv}(3)
Whereas ^{xxxv}(4) is confined as a convicted prisoner in the said prison;
And whereas this Court is desirous that the said ^{xxxvi}(4)
..... be examined before it as a witness;
You are hereby ordered to produce the said ^{xxxvii}(4)
before this Court in proper custody on the ^{xxxviii}(5) day of 20
..... at o'clock, for the purpose of his being examined as aforesaid.
Dated this day of 20
Seal

.....
Presiding Officer
.....
Customary Court

Form 7
WARRANT OF COMMITTAL
(Rule 24 of the Customary Courts (Procedure) Rules)
BOTSWANA

In the
.....
..... Customary Court
..... Case No of 20
^{xxxix}(1)
.....

.....
versus
^{xi}(2)
.....
.....

To the officer in charge of the Prison at ^{xli}(3)
WHEREAS ^{xlii}(4) of
was on this day convicted of the offence of ^{xliii}(5)and was sentenced to:
^{xliv}* (a) imprisonment for a period of ^{xlv}(6)

^{xlvi}* (b) a fine of ^{xlvii}(7) or in default of payment
to imprisonment for a period of ^{xlviii}(8)

AND WHEREAS of the said fine the whole ^{xlix}* (or the sum of ^l(9) P.....) remains
unpaid.

You are hereby required to receive the said ^{li}(10) in the said
prison together with this Warrant and there carry the aforesaid sentence to law.

Dated this day of 20
Seal

.....
Presiding Officer
.....
District Commissioner

Date

Form 8
SALE ORDER AGAINST PROPERTY

(Rule 31 of the Customary Courts (Procedure) Rules)
BOTSWANA

In the
.....
..... Customary Court

Case No of 20
^{lii}(1)

.....
.....
versus

^{liii}(2)
.....
.....

To: All Messengers of the Court and to all Police Officers.

WHEREAS the Customary Court at ^{liv}(3)
on the day of 20 ordered that ^{lv}(4)

..... pay a court fine and/or
compensation of ^{lvi}(5).....

and failed to do so, this is therefore to authorize and require you that of the property of the said
^{lvii}(6) you cause to be levied and raised the said
sum of ^{lviii}(7) and return to this Court what you have done by virtue hereof.

DATED this day of 20
Seal

.....
Presiding Officer
.....
Customary Court

CUSTOMARY COURTS (CORPORAL PUNISHMENT) RULES

(under section 49)

(4th February, 1972)

ARRANGEMENT OF RULES

RULES

1. Citation
2. Only cane to be used
3. Manner of administering

S.I. 9, 1972,
S.I. 122, 1974.

1. Citation

These Rules may be cited as the Customary Courts (Corporal Punishment) Rules.

2. Only cane to be used

No instrument other than a cane or thupa shall be used to inflict corporal punishment. In no circumstance shall a sjambok or other type of whip be used.

3. Manner of administering

(1) Corporal punishment shall be administered on the buttocks only and on no other part of the body.

(2) Where a cane is used, protection shall be placed over the kidneys before such punishment is inflicted.

ESTABLISHMENT AND JURISDICTION OF CUSTOMARY COURTS ORDER

(under sections 7(2) and 12(5))

(8th September, 1972)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Recognition and establishment
3. Area of jurisdiction
4. Jurisdiction
5. Jurisdiction of certain courts in respect of stock theft

First Schedule
Second Schedule
Third Schedule

S.I. 68, 1972,
S.I. 93, 1974,
S.I. 118, 1976,
S.I. 129, 1977,
S.I. 138, 1977,
S.I. 15, 1979,
S.I. 49, 1980,
S.I. 50, 1980,
S.I. 117, 1980,
S.I. 26, 1982,
S.I. 106, 1982,
S.I. 129, 1982,

S.I. 144, 1982,
 S.I. 68, 1983,
 S.I. 118, 1983,
 S.I. 18, 1984,
 S.I. 138, 1984,
 S.I. 47, 1987,
 S.I. 48, 1987,
 S.I. 99, 1997,
 S.I. 72, 1999,
 S.I. 51, 2004.

1. Citation

This Order may be cited as the Establishment and Jurisdiction of Customary Courts Order.

2. Recognition and establishment

The customary courts listed in the first column of the First Schedule hereto have by warrant been recognised and established as customary courts within the district named in the said column.

3. Area of jurisdiction

The area of jurisdiction of each court shall be the area stated in relation to the Court in the second column of the First Schedule.

4. Jurisdiction

Subject to paragraph 5, the jurisdiction of each court in respect of civil and criminal matters shall be that indicated by letters in relation to its name in the third and fourth columns respectively of the First Schedule, which letters refer to the maximum awards, fines or punishments which may be imposed, inflicted or granted by the court and which are more fully indicated in the Second Schedule hereto.

5. Jurisdiction of certain courts in respect of stock theft

Where a person is convicted of the offence of stealing or attempting to steal stock, contrary to the Penal Code, by a customary court specified in the first column of the Third Schedule (under the district within which it has been recognized or established), the court may, for that offence, sentence the person so convicted-

- (a) to pay a fine not exceeding the amount specified in the corresponding entry in the second column of the Schedule; and
- (b) to a period of imprisonment not exceeding the number of years specified in the corresponding entry in the third column of that Schedule.

FIRST SCHEDULE

<i>CUSTOMARY COURT</i>	<i>AREA</i>	<i>CIVIL JURISDICTION</i>	<i>CRIMINAL JURISDICTION</i>
Ngwato Tribal Authority	Bamangwato Tribal Territory	A	E
Senior Sub-Tribal Authority	Gweta	B	F
	Bobonong		
	Letlhakane		
	Mahalapye		
	Mmadinare		
	Mookane		
	Nata		
	Palapye		
	Ramokgonami		
	Sefhare		

	Shoshong Tonota Tsienyane Tutume		
Subordinate Tribal Authority	Dukwi Kalamare Lecheng Lerala Machaneng	C	G
	Maitengwe Maokatumo Mathangwane Mathathane Maunatlala Mmadinare Mogapi Moiyabana Molalatau Mosetse Mopipi Mosu Nkange Paje Pilikwe Sebina Sefhophe Semolale Serule Tsetsebjwe Tumasera		
Headman	Bonwapitse Chadibe Chadibe/Borolong Changate Dagwi Damuchojena Dibete Dimajwe Dovedale Gobojango Gootau Goshwe Kgagodi Khumaga Khwee Kodibeleng Kudumatse Lentswe-le-moriti Lepashe Lephephe Lepokole Mabeleapudi Mabesekwa	D	H

Mabolwe
Mabuo
Malatswai

Makalamabedi
Makwate
Manxotae
Marapong
Marobela
Matobo
Matsitama
Mhalapitsa
Mmadikola
Mmandunyane
Mmaphashalala
Mmashoro
Mmatshumu
Mmutlane
Mogorosi
Moletemane
Mokgenene
Mokobeng
Mokoboxane
Moreomaoto
Moshopha
Mosolotshane
Mosu
Motlhabaneng
Motlopi
Motshegaletau
Nswazwi
Palla Road
Poloka
Radisele
Ratholo
Seleke
Semolale
Sepako
Shakwe
Tamasane
Taupye
Tlhabala
Tobane
Topisi
Toromoja
Tshokwe
Tshimoyapula
Xhomo

Selebi-Phikwe
Customary Court
President
(Urban)

Botshabelo
Ikageleng
Kagiso

B

F

Deputy Court

Botshabelo

C

G

President	Ikagaleng Kagiso		
Kweneng Chief	Bakwena Tribal Territory	A	E
Senior Chief's Representative	Gabane Kopong Lentsweletau Lephephe Letlhakeng Mmankgodi Mogoditshane Motokwe Salajwe Takatokwane Thamaga	B	F
Chief's Representative	Ditshegwane Khudumelapye Metsimotlhabe Mmopane	C	G
Headman	Boatlaname Botlhapatlou Diphuduhudu Dutlwe Gakgatla Gakuto Gamodubu Hatsalatladi Kgope Kotolanamane Kubung Kumakwane Kweneng Lesilakgokong Maboane Mahetlwe Malwelwe Mantswemabe Medie Monwane Moshaweng Ngware Ramankhung	D	H
	Salajwe Sesung Shadishadi Sojwe Takatokwane Tsetseng		
Ngamiland Chief	Batawana Tribal Territory	A	E

Senior Chief's Representative	Gumare Nokaneng Sehitwa Sepopa Seronga Shakawe Shorobe Tsau	B	F
Chief's Representative	Chanoga Etsha 6 Kareng Makalamabedi Ngarange Qangwa Toteng	C	G
Headman	Beetsha Bodiba Botlhatlogo Chukumuchu Etsha 13 Gudigwa Gunotsoga Habu Ikoga Kauxwi Komana Mabebe Makakung Matlapana Mogotlho Nxamasere Nxau-nxau Phuduhudu Samedupe Sankoyo Semboyo	D	H
	Tubu Xakao Xaxa Xauxau		
Ngwaketse Chief	Bangwaketse Tribal Territory	A	E
Senior Chief's Representative	Mabutsane Manyana Mmathethe Moshupa Phitshane-Molopo	B	F
Chief's Representative	Digawana Khakhea Lotlhakane East	C	G

	Mabule Maokane Molapowabojang Ntlhantlhe Ranaka Sekoma			
Headman	Gasita Gasegwagwa Gathwane Keng Kgomokasitwa Khonkhwa Kokong Lekgolobotlo Loporung Lorolwane Lotlhakane West Magoriapitse Magotlhwane Metlobo Mmakgori Mogojogojo Mogonye Mokgomane Mokhomma Morwamosu Moshana Pitseng Samane	D		H
	Sedibeng Selokolela Sese Thankane Tshidilamolomo			
Barolong Chief	Barolong Tribal Territory	A		E
Senior Chief's Representative	Goodhope	B		F
Chief's Representative	Hebron Papatlo Pitsane		C	G
Headman	Cwagare Ditlharapa Kgoro Mokatako Rakhuna Ramatlabama Tlhareseleele		D	H
Kgatleng	Bakgatla Tribal		A	E

Chief	Territory			
Senior Chief's Representative	Artesia Bokaa Mmathubudukwane Oodi	B		F
Chief's Representative	Malotwana Morwa Olifants Drift Rasesa Ramotlabaki Sikwane	C		G
Headman	Bokaa Dikgonnye Dikwididi Kgomodiatshaba Khurutshe Leshibitse Mabalane Malolwane	D		H
	Matebele Modipane Mokatse Pilane Ramonaka			
South East Chief	Bamalete Tribal Territory	A		E
Senior Chief's Representative	Ramotswa	B		F
Chief's Representative	Mogobane Otse Taung	C		G
Chief	Batlokwa Tribal Territory	A		E
Senior Chief's Representative	Tlokwenq	B		F
Gaborone City				
Court President (Urban)	Broadhurst Gaborone Gaborone West Naledi	B		F
Deputy Court President (Urban)	Broadhurst Gaborone Gaborone West Naledi	C		G

Kgalagadi Sub-chief	Bogobogobo Bokspits Hukuntsi Kang Lehututu Lokgwabe Makopong Tsabong Werda	C	G
Headman	Draaihoek Gakhibane Hereford Hunhukwe	D	H
	Inalegolo Khawa Khuis Kisa Kolonkwaneng Kokotsha Maralaleng Maubelo Middlepits Ntshutela Ohe Omaweneno Phuduhudu Tshane Ukhwi		
Ghanzi Court President	Ghanzi (Urban)	B	F
Sub-chief	Charleshill Kalkfontein Karakobis Kule Ncojane New Xanagas	C	G
Headman	Bere Chobokwane East Hanahai Grootlaagte Kacgae Makunda New Xade Qabo West Hanahai	D	H
Chobe Sub-chief	Kachikau Kavimba Pandamatenga	C	G
Court President	Kasane	B	F

(Urban)				
Headman		Kazungula Leshoma Mabele Parakarungu Satau	D	H
Francistown Township Court President (Urban)	Donga	Monarch Phase IV Tati-town	B	F
Deputy Court President		Donga Monarch Phase IV Tati-town	C	G
Court President (Urban)		Orapa	B	F
Deputy Court President		Orapa	C	G
Court President (Urban)		Sowa	B	F
Deputy Court North East Sub-chief		Sowa Jackalas No 1 Makaleng Mapoka Masunga Matsiloje Moroka Mosojane Tati Siding Tsamaya Tshesebe	C C	G G
Headman		Butale Ditladi Gulubane Jackalas No 2 Kalakamati Kgari Letsholathebe Masingwaneng Masukwane Matshelagabedi Mbalambi	D	H

Nlaphwane

Ramokgwebana
Sechele
Sekakangwe
Senyawe
Shashe Bridge
Siviya
Themashanga
Zwenshambe

Lobatse Township Court President (Urban)	Motswedi Peleng Woodhall	B	F
Deputy Court President (Urban)	Motswedi Peleng Woodhall	C	G
Jwaneng Township Court President (Urban)	Jwaneng Raphalane	B	F
Deputy Court President (Urban)	Jwaneng Raphalane	C	G
Customary Court President	Block 8, Gaborone	B	F
Customary Court President	Plateau, Kasane	B	F
Customary Court President	Gerald Estate, Francistown	B	F

**SECOND SCHEDULE
CIVIL JURISDICTION**

A. P4000	30 bovines or equines 70 sheep or goats
B. P2500	20 bovines or equines 60 sheep or goats
C. P1000	15 bovines or equines 40 sheep or goats
D. P500	15 bovines or equines 40 sheep or goats
	<i>Criminal Jurisdiction</i>
E. P2000	20 bovines or equines 80 sheep or goats 3 years imprisonment 6 strokes
F. P1000	13 bovines or equines 50 sheep or goats 18 years imprisonment 5 strokes
G. 600	8 bovines or equines 40 sheep or goats 1 year imprisonment 5 strokes
H. P400	6 bovines or equines

30 sheep or goats
9 months imprisonment
3 strokes

THIRD SCHEDULE PART I
CRIMINAL JURISDICTION UNDER THE STOCK THEFT ACT

<i>Customary Court</i>	<i>Maximum Fine</i>	<i>Maximum Term of Imprisonment</i>
<i>Central</i>		
Tribal Authority	P5000	10 years
Senior Sub-Tribal Authority	P4000	9 years
Subordinate Tribal Authority	P3000	8 years
Headman	P2000	7 years
<i>Kweneng</i>		
Chief	P5000	10 years
Senior Chief's Representative	P4000	9 years
Chief's Representative	P3000	8 years
Headman	P2000	7 years
<i>Ngamiland</i>		
Chief	P5000	10 years
Senior Chief's Representative	P4000	9 years
Chief's Representative	P3000	8 years
Headman	P2000	7 years
<i>Chobe</i>		
Sub-Chief	P4000	9 years
Headman	P2000	7 years
<i>Southern</i>		
Chief	P5000	10 years
Senior Chief's Representative	P4000	9 years
Chief's Representative	P3000	8 years
Headman	P2000	7 years
<i>Kgatleng</i>		
Chief	P5000	10 years
Senior Chief's Representative	P4000	9 years
Chief's Representative	P3000	8 years
Headman	P2000	7 years
<i>South East</i>		
Chief	P5000	10 years
Senior Chief's Representative	P4000	9 years
Chief's Representative	P3000	8 years
<i>Gaborone City</i>		
Court President (Urban)	P4000	9 years
<i>Kgalagadi</i>		
Sub-Chief	P4000	9 years
Headman	P3000	8 years
<i>Ghanzi</i>		

Sub-Chief	P4000	9 years
Headman	P3000	8 years
<i>North East</i>		
Sub-Chief	P4000	9 years
Headman	P3000	8 years
<i>Francistown Township</i>		
Court President (Urban)	P4000	9 years
<i>Lobatse Township</i>		
Court President	P4000	9 years
<i>Selebi-Phikwe Township</i>		
Court President (Urban)	P4000	9 years
<i>Jwaneng Township</i>		
Court President (Urban)	P5000	10 years
<i>Ghanzi Township</i>		
Court President (Urban)	P5000	10 years
<i>Kasane Township</i>		
Court President (Urban)	P5000	10 years

PART II

CRIMINAL JURISDICTION UNDER THE DRUGS AND RELATED SUBSTANCES ACT

<i>Central</i>	<i>Maximum Fine</i>	<i>Maximum Term of imprisonment</i>
Tribal Authority	P8500	8 years
Senior Sub- Tribal Authority	P8000	7 years
Subordinate Tribal Authority	P7500	6 years
Headman	P7000	5 years
<i>Kweneng</i>		
Chief	P8500	8 years
Senior Chief Representative	P8000	7 years
Chief's Representative	P7500	6 years
Headman	P7000	5 years
<i>Ngamiland</i>		
Chief	P8500	8 years
Senior Chief Representative	P8000	7 years
Chief's Representative	P7500	6 years
Headman	P7000	5 years
<i>Southern</i>		
Chief	P8500	8 years
Senior Chief's Representative	P8000	7 years
Chief's Representative	P7500	6 years
Headman	P7000	5 years
<i>Kgatleng</i>		
Chief	P8500	8 years
Senior Chief's Representative	P8000	7 years

Chief's Representative	P7500	6 years
Headman	P7000	5 years
<i>South East</i>		
Chief	P8500	8 years
Senior Chief's Representative	P8000	7 years
Chief's Representative	P7500	6 years
Headman	P7000	5 years
<i>Gaborone City</i>		
Court President (Urban)	P8000	7 years
<i>Kgalagadi</i>		
Sub-Chief	P8000	7 years
Headman	P7000	5 years
<i>Ghanzi</i>		
Sub-Chief	P8000	7 years
Headman	P7000	5 years
<i>North East</i>		
Sub-Chief	P8000	7 years
Headman	P7000	5 years
<i>Francistown Township</i>		
Court President (Urban)	P8000	7 years
Deputy Court President (Urban)	P7500	6 years
<i>Lobatse Township</i>		
Court President (Urban)	P8000	7 years
Deputy Court President (Urban)	P7500	6 years
<i>Selebi-Phikwe Township</i>		
Court President (Urban)	P8000	7 years
Deputy Court President (Urban)	P7500	6 years
<i>Jwaneng Township</i>		
Court President (Urban)	P8000	7 years
Deputy Court President (Urban)	P7500	6 years
<i>Ghanzi Township</i>		
Court President (Urban)	P8000	7 years
Deputy Court President (Urban)	P7500	6 years
<i>Kasane Township</i>		
Court President (Urban)	P8000	7 years

CUSTOMARY COURTS (ENFORCEMENT OF SPECIFIED LAWS) ORDER

(under section 16)

(10th July, 1981)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Jurisdiction

Schedule

S.I. 65, 1981,
S.I. 131, 1987,
S.I. 69, 2000.

1. Citation

This Order may be cited as the Customary Courts (Enforcement of Specified Laws) Order.

2. Jurisdiction

Customary courts shall have jurisdiction to administer the provisions of the enactments specified in the Schedule hereto.

SCHEDULE

<i>Act</i>	<i>Sections</i>
Branding of Cattle Act (Cap. 36:02)	4(2)-9, and 23-27
Matimela Act (Cap. 36:06)	6, 7, 9, 22, 23 and 26
Road Traffic Act (Cap. 69:01)	64(1), 65(3), 68, 70, 71, 99(1)(b), 99(2)(a) and (b), 99(4) and 100(1) and (2)
	<i>Regulations</i>
	64(1)(a) and (b) and 65(1)
Tribal Land Act (Cap. 32:02)	39(1) and (2)

CUSTOMARY COURT OF APPEAL RULES

(under section 49)

(25th January, 1986)

ARRANGEMENT OF RULES

RULE

1. Citation
2. Interpretation
3. Registers to be kept
4. Dates of hearing
5. Delivery of judgment
6. Noting an appeal
7. Petition to appeal out of time
8. Transmission of petition to appeal
9. Transmission of court records
10. Setting down dates of hearing
11. Prosecution of appeal
12. Determination to call witnesses
13. Default judgment and dismissal of appeal
14. Procedure on hearing of civil appeals
15. Adjournment
16. Recording and delivery of judgment
17. Right of appeal
18. Payment of compensation
19. Witnesses summons
20. Witnesses fees
21. Enforcement of judgment

S.I. 3, 1986.

1. Citation

These Rules may be cited as the Customary Court of Appeal Rules.

2. Interpretation

In these Rules, unless the context otherwise requires-

"appeal" includes an application for leave to appeal;

"appellant" means a party appealing from a judgment or applying for leave in that behalf;

"clerk" means the clerk of the Customary Court of Appeal;

"court clerk" means the clerk of the Customary Court;

"court" means the Customary Court of Appeal;

"record" means the aggregate of papers relating to an appeal proper to be laid before the court on the hearing of the appeal together with all documents resulting from the proceedings thereof;

"respondent"-

- (a) in a civil appeal means any party other than the appellant directly affected by the appeal;
- (b) in a criminal appeal means the person who undertakes the defence of the judgment appealed against.

3. Registers to be kept

(1) The clerk shall keep-

- (a) a Criminal Appeal Register; and
- (b) a Civil Appeal Register.

(2) The following particulars shall be entered in the Criminal Appeal Register and the Civil Appeal Register-

- (a) the number of the appeal;
- (b) the year in which the appeal was lodged;
- (c) the names of the appellant and the respondent;
- (d) the place, date and time of hearing of the appeal; and
- (e) orders and awards made.

(3) All documents in a case shall bear the serial number of that case which shall be written at the top of the first page.

(4) In every appeal there shall be recorded in writing and attached to the record of the case the names of the members of the court hearing such an appeal.

4. Dates of hearing

The date, time and place of the sittings of the court shall be determined by the President of the court.

5. Delivery of judgment

The judgment of the court shall be pronounced by the Presiding Officer.

6. Noting an appeal

Any person noting an appeal shall within 30 days of such order or decision-

- (a) deliver his written reasons for an appeal to the court clerk;
- (b) deposit, with the court clerk, in the case of a Civil Appeal such fee as may be prescribed;
- (c) the notice of appeal shall disclose the names and addresses of the appellant and the respondent.

7. Petition to appeal out of time

Any person petitioning the court for leave to appeal out of time shall-

- (a) deliver to the court clerk the written petition setting out the grounds on which he relies for appealing;
- (b) in the case of a civil appeal, deposit, with the court clerk, such fee as may be prescribed, and the petition shall disclose the names and the addresses of the appellant and the

respondent.

8. Transmission of petition to appeal

The court clerk shall transmit the petition and a copy of the case record to the clerk of the Customary Court of Appeal.

9. Transmission of court records

(1) Subject to rules 6 and 7 the court clerk shall after an appeal has been noted transmit to the court, a copy of the record of the case and a copy of the grounds of appeal.

(2) The court clerk shall at the same time as he transmits the documents referred to in rule 6 or 7, send to the respondent a copy of the grounds of appeal if the appellant has not done so.

10. Setting down dates of hearing

(1) Subject to rule 4 on receipt of the documents referred to in rules 6 and 7 the clerk of the court shall forthwith set down a date of hearing of the appeal, and shall give due notice of such a date, place and time of hearing to the parties.

(2) If leave to appeal out of time has been granted the procedure for hearing appeals shall be the same as if an appeal had been in time.

11. Prosecution of appeal

If leave to appeal is granted by the court the appellant shall thereafter prosecute his appeal on the date that may be stipulated in the order granting leave or if no date or time is stipulated then on the date of set down in accordance with rule 4.

12. Determination to call witnesses

(1) Immediately on receipt of the documents mentioned in rules 6 and 7 the clerk shall place such documents before the President who shall thereupon read them and inform the clerk whether he will require the attendance of any or all of the witnesses at the hearing of the appeal.

(2) The clerk shall give due notice to the parties informing them of the date, place and time of hearing of the appeal and which, if any, of their witnesses shall be required at the hearing.

13. Default judgment and dismissal of appeal

(1) If an appellant or respondent in an appeal fails to prosecute or defend such appeal, after proper notice of the place, date and time of hearing of the appeal, judgment by default may be granted in such manner as the court deems fit.

(2) If the appellant in a criminal case fails to prosecute an appeal after proper notice of the date, place and time of hearing of such appeal, the appeal shall be dismissed.

14. Procedure on hearing of civil appeals

(1) The hearing of every civil appeal shall be conducted in accordance with the procedure authorized by the customary law of the area from which the appeal originates.

(2) Subject to the provisions of these Rules, the court may, in its discretion, grant leave to a party to adduce oral evidence at the hearing of the appeal or proceed by way of re-hearing either in whole or in part.

15. Adjournment

(1) The court may from time to time adjourn the hearing of an appeal for a suitable period provided that in a criminal appeal the adjournment shall not exceed 14 days.

(2) Before adjourning an appeal the court shall inform the parties and the witness who is present of the date to which the case is adjourned.

16. Recording and delivery of judgment

When the court has determined whether the appeal shall be upheld or dismissed it shall record in writing the judgment including the reasons for it. Such judgment shall be signed by the presiding officer of the court who shall deliver it in open court in the presence of the parties.

17. Right of appeal

After judgment or order has been delivered the presiding officer shall inform the party against whom the judgment has been given if he is present of his right to appeal as laid down in

section 42 of the Act.

18. Payment of compensation

Any compensation as ordered by the court shall be paid to the court clerk.

19. Witnesses summons

Where the court has ordered any witness to attend to be examined before the court, a summons shall be served upon such witness specifying the time and place at which to attend for such purpose.

20. Witnesses fees

Witnesses who attend before the court under rule 19 shall be paid fees and reimbursements on the same scales as are applicable in a magistrate's court. In criminal appeals payments shall be made by the clerk from public funds and in civil appeals such payments shall be made by the party in whose favour the witnesses are to testify.

21. Enforcement of judgment

The court from which the appeal originates shall, upon receipt of any decree, order, warrant or process directed to it, enter such decree, order, warrant or process in its own records and enforce, execute or serve them as though they were issued by it.

CUSTOMARY COURTS (POWERS TO PROSECUTE) (AUTHORISATION) ORDER

(under section 12(4))

(3rd March, 2006)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Authorisation to prosecute
3. Powers to be exercised subject to directions

S.I. 15, 2006.

1. Citation

This Order may be cited as the Customary Courts (Powers to Prosecute) (Authorisation) Order.

2. Authorization to prosecute

Members of the Local Police Force are hereby authorised by the Director of Public Prosecutions to prosecute in all the customary courts of Botswana.

3. Powers to be exercised subject to directions

The authority given in paragraph 2 shall be exercised subject to the directions given by the Director of Public Prosecutions.

ⁱInsert complainant's name

ⁱⁱInsert name of defendant

ⁱⁱⁱInsert name and address of defendant

^{iv}Insert place where defendant is to come

^vInsert day, date and time of hearing

^{vi}Insert details of offence charged

^{vii}Insert name of complainant

^{viii}Insert name of defendant

^{ix}Insert name and address of defendant

^xInsert place where defendant is to come

^{xi}Insert day, date of time of hearing

^{xii}Insert details of complaint

^{xiii}Insert name of the complainant

-
- xiv Insert name of the defendant
- xv Insert name and address of witness
- xvi Insert place where witness is to come
- xvii Insert day, date and time of hearing
- xviii Insert name of person requiring attendance of this witness
- xix Insert name of complainant
- xx Insert name of defendant
- xxi Insert name and address of defendant
- xxii Delete whichever does not apply.
- xxiii Delete whichever does not apply.
- xxiv Delete whichever does not apply.
- xxv Insert name of defendant.
- xxvi Insert whether civil or criminal
- xxvii Insert name of complainant
- xxviii Insert name of defendant
- xxix Insert name and address of witness
- xxx Insert day, date and time when witness was summoned to appear
- xxxi Insert name of witness.
- xxxii Insert name of complainant
- xxxiii Insert name of defendant
- xxxiv Insert name of place
- xxxv Insert name of prisoner who is required as witness
- xxxvi Insert name of prisoner who is required as witness
- xxxvii Insert name of prisoner who is required as witness
- xxxviii Insert date and time when prisoner is required to attend
- xxxix Insert name of complainant
- xl Insert name of defendant
- xli Insert name of place
- xlii Insert name and address of defendant
- xliii Insert offence
- xliv Delete whichever does not apply
- xlv Insert number of days, weeks or months
- xlvi Delete whichever does not apply
- xlvii Insert amount
- xlviii Insert number of days, weeks or months
- xlvi Delete whichever does not apply
- l Insert sum
- li Insert name of defendant
- lii Insert name of execution creditor
- liii Insert name of execution debtor
- liv Insert name of place
- lv Insert name of execution debtor
- lvi Insert amount
- lvii Insert name of execution debtor
- lviii Insert amount