

COURTS REGULATION1980Explanatory Note

The purpose of this Regulation is to establish the courts provided for in the Constitution and also magistrates courts.

Part 1 of the Regulation covers Village and Island Courts. This is a radical piece of legislation in that it deliberately leaves custom courts as they are and does not limit their custom jurisdiction. The reason is that the Government feels that if there is any attempt to formalise village courts and custom the courts and the custom they administer will cease to be matters of custom but something else. On the other hand Section 1 (2) provides that where custom conflicts with written law the latter prevails. This is international practice. The very fact that the Legislature passes a written law must show intention that the written law will prevail over any law already in being. The one reservation will be that if the written law specifically states that custom will prevail over it, it will do so.

Section 2 provides for Village and Island Courts to be prescribed by Order. This is necessary so that we can ensure that only the real custom courts may exercise the powers set out in this law.

Section 3 provides for a special type of customary court in urban areas, called a Town Court. These courts will probably consist of panels of chiefs and leaders drawn from all the custom communities in such areas. When a case is taken to a Town Court the relevant Chiefs and Leaders will hear the case. Some cases in urban areas will involve persons from more than one custom. In such cases the President has power under Section 15 (c) to establish a Special Court possibly with members from all the customs involved.

Under Section 4 the decisions of village and island courts will have the force of law.

Under Section 5 the courts must follow custom and no lawyers must appear before them.

Because custom courts have had problems in getting persons to appear before them under Section 6 a Court may ask a police officer to enforce attendance. Again under Section 7 the Court can through a magistrate get a police officer to enforce its orders. There is no appeal from custom courts and so Sections 9 and 10 provide a procedure where a magistrate settles complaints with custom courts. The magistrate will go to islands or villages rather than the other way round.

When there is a land dispute between two custom groups it will be heard by a special court set up under Section 15 (c). There will be appeals in respect of land matters from such a court to a Land Appeals Tribunal set up under Section 11 by the President.

Part 2 of the law provides for magistrates courts. No reference is made to them in the Constitution. It is necessary however to have a court between the village court and the Supreme Court.

Magistrates courts will be established between then will

The Minister of Justice will prescribe the number of magistrate courts and the area of their jurisdiction (Section 16 (2)).

Magistrates Courts may hear criminal cases up to those with a maximum term of imprisonment of 2 years. They may in some circumstances hear cases with a maximum penalty of 5 years imprisonment but may not impose a greater penalty than 2 years imprisonment (Section 19 (2)). They may also hear more serious cases if the Supreme Court so decides (Section 19 (3)).

Section 20 provides for two grades of magistrates, Senior Magistrate and Magistrates. Although it is felt desirable it is not essential that they be legally qualified.

Section 23 provides for special clerks to be appointed for each magistrate court.

Under Section 26 a magistrate may refer special questions of law to the Supreme Court for its decision.

Under Section 27 all magistrate courts are presided over by a magistrate sitting alone.

Part 3 of the law provides for the Supreme Court. Under Section 29 the Supreme Court shall consist of a judge sitting with 2 assessors except in cases where he considers it unsuitable or for cases referred to it in accordance with the Constitution when the court will consist of the Chief Justice and 2 other judges sitting without assessors.

Under Section 31 the Supreme Court may hear appeals from magistrate courts and under Section 33 it may review the convictions of persons even when there has been no appeal.

Part 4 provides for the Court of Appeal. Under Section 40 no judge may sit in the Appeal Court if a case heard by him is being considered.

Finally Section 44 in Part 5 gives the courts inherent powers to deal with matters where it has not been given specific powers and to use inherent powers to properly apply written law and custom.

JULY 1980

W.H. LINI
CHIEF MINISTER AND
MINISTER OF JUSTICE

DRAFTSMAN'S NOTE

The Resident Commissioners Joint Regulation bringing this Resolution into force as a law will provide that it shall be cited as the Courts Regulation 1980 and shall come into operation on the Day of Independence.

To provide for the Courts of the Republic.

The Representative Assembly at its sitting on the 1980 hereby resolves and decides in accordance with Article 23 of the Schedule to the Exchange of Notes of the 15th September 1977 to adopt the following measures :-

PART 1 - THE VILLAGE AND ISLAND COURTS

Jurisdiction
of customary
courts.

1. (1) Subject to any directions of the Minister given by Order on the recommendation of the Judicial Committee, the village and island courts of the Republic shall have jurisdiction to apply customary law and such other civil or criminal law as may be prescribed in the district within which such customary law applies.

(2) In the case of conflict between the customary law and such other law the provisions of such other law shall prevail.

Customary
courts to be
prescribed
and pending
proceedings
to continue.

2. This Part shall apply to the prescribed customary courts. Any proceedings of any such courts pending at the commencement of this Regulation shall be continued as if they had been commenced under this Regulation.

Town courts.

3. The Provisions of this Part shall apply equally to customary courts established within any urban area and these shall be known as Town Courts.

Rules and
findings to
have force
of law.

4. The rules of custom and the findings of the customary courts shall have the force of law in the Republic.

Constitution
and procedure
of customary
courts.

5. (1) Subject to section 15, the constitution and procedure of the customary courts shall be in accordance with custom.
- (2) No lawyer shall be permitted to take part in any proceedings in a customary court.
- (3) No agent shall take part in any proceedings of a customary court except as allowed by the customary law administered by that court.

Enforcement
of attendance.

6. Every customary court shall have power to request a police officer to enforce the attendance before it of any person whose presence is necessary to determine the proceedings and the police officer shall comply with any such request as soon as possible.

Powers of court to make orders against person before it.

7. (1) Every customary court shall have power after hearing any proceedings to order any person before it -
- (a) to pay compensation to another person;
 - (b) to make restitution to another person;
 - (c) to pay a fine to be retained in a fund for communtiy purposes; or
 - (d) to perform community work.
- (2) If a person does not obey an order made against him in accordance with subsection (1) the court shall in its discretion decide the length of a reasonable term of imprisonment not exceeding the prescribed maximum which that person shall suffer for his disobedience and he shall be informed of this consequence.

Disobedience to be reported to magistrate.

8. A customary court shall inform a Magistrate of any disobedience of an order made under section 7 (1) who shall satisfy himself that there is no reasonable excuse for the default. He shall then issue a written warrant to a police officer who shall execute the sentence of imprisonment imposed by the court.

Complaint to magistrate about proceedings.

9. Subject to section 11, any interested person who is dissatisfied with any proceedings or decision of a customary court may within a reasonable time after them make a complaint to a Magistrate.

Investigation by and powers of magistrate.

10. Whether or not any person has made a complaint about them, a Magistrate may make an informal investigation of any proceedings of a customary court as he thinks fit. He may make such recommendations, or if the case is sufficiently serious may give binding directions, to the court as he may think necessary to secure a just determination of the proceedings.

Appeals in land disputes.

11. (1) A person dissatisfied with the decision of a court established in accordance with section 15 (c) regarding a dispute concerning ownership of land may appeal to a Land Appeals Tribunal established generally to hear such disputes or established for that particular appeal by the President acting on the advice of the Minister responsible for land matters.
- (2) A tribunal established in accordance with subsection (1) shall decide such appeal as far as is practicable in accordance with custom and the dictates of justice.
- (3) The decision of a Land Appeals Tribunal shall be final and shall not be questioned in any court.

Record.

12. The chief or leader responsible for the conduct

Compensation of chief or leader.

13. The chief or leader responsible for the conduct of a customary court shall not receive any money payments from any person for his judicial services but may be compensated in any other manner in accordance with custom.

No jurisdiction in certain cases.

14. No customary court shall have jurisdiction over any dispute to which more than one system of customary law applies.

Power of President to make orders.

15. The President acting on the advice of the Judicial Committee may by Order not inconsistent with this Part -
(a) prescribe customary courts and Town Courts;
(b) provide for the constitution of Town Courts and the physical limits of their jurisdiction;
(c) establish special courts either to hear cases generally or to hear specific cases where more than one system of custom applies and to which otherwise the provisions of this Part shall apply;
(d) prescribe any other matter required to be prescribed by this Part;
(e) make rules of a procedural or administrative nature to implement the operation of this Part or any other order made hereunder.

PART 2 - THE MAGISTRATES' COURTS

Establishment of Magistrates' Courts.

16. (1) There are hereby constituted throughout the Republic Magistrates' Courts, subordinate to the Supreme Court and to be presided over by persons appointed under the provisions of this Part to be magistrates and such courts may exercise such jurisdiction as is provided by this Regulation or by any other law.
(2) There shall be such number of Magistrates' Courts in the Republic and every such Magistrate's Court shall have such territorial jurisdiction as the Minister shall by Order prescribe.
(3) Any power, authority, function or discretion vested in a Magistrate's Court by this Regulation or by any other law shall be possessed and may be exercised by any magistrate having jurisdiction.
(4) Every Magistrate's Court shall try criminal causes without a preliminary judicial enquiry.

Territorial jurisdiction of Magistrates' Courts.

17. (1) Subject to the provisions of this Part or of any other law, every Magistrate's Court shall exercise jurisdiction within the limits of the district within which it is constituted.
(2) The jurisdiction of each Magistrate's Court shall extend over any territorial waters