

Amendment:
En. 3 of 2011

STATE OF SABAH

THE NATIVE COURTS ENACTMENT 1992

An Enactment to provide for the constitution, organisation and procedure of native courts, the jurisdiction and powers of such courts and matters relating thereto.

ENACTED by the Legislature of the State of Sabah as follows:

PART I PRELIMINARY

Short title and commencement.

1. This Enactment may be cited as the Native Courts Enactment 1992, and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint. [01.04.1993]

Interpretation.

2. In this Enactment, unless the context otherwise requires-

“appellate Court” means a District Native Court or the Native Court of Appeal;

“Civil Courts” means the Supreme Court, the High Court and the Subordinate Courts established under the Federal Constitution and federal law;

“Court” means any court constituted under this Enactment;

“district” has the same meaning assigned to it under the Interpretation and General Clauses Enactment 1963 [En. No. 34 of 1963.] and includes a municipality;

“District Chief” means a person appointed as such by the State Public Service Commission;

“District Native Court” means a District Native Court constituted under section 4(1);

“District Officer” has the same meaning assigned to it under the Interpretation and General Clauses Enactment 1963 [*En. No. 34 of 1963.*] , and where there is no District Officer, means the Mayor of a city or any officer authorised in writing by the Mayor or the Deputy President of a Municipal Council;

“Headman” means a person appointed as such by the State Public Service Commission and includes any person appointed to perform the functions of a Headman in a locality;

“Judge” means a Judge of the High Court and includes any person appointed to perform the functions of such Judge;

“Magistrate” includes an ex-officio Second Class Magistrate;

“Minister” means the Minister for the time being responsible for the administration of native affairs;

“municipality” has the same meaning assigned to it under the Local Government Ordinance 196 [*Ord. No. 11 of 1961.*];

“native” has the same meaning assigned to it under the Interpretation (Definition of Native) Ordinance 1952 [*Cap. 64.*];

“Native Chief” means a person appointed as such by the State Public Service Commission and includes any person appointed to perform the functions of a Native Chief in a locality;

“Native Court” means a Native Court constituted under section 3(1);

“Native Court of Appeal” means the Native Court of Appeal constituted under section 5(1);

“order” includes any judgement, decision and penalty;

“penalty” includes a fine, imprisonment, or other form of punishment recognised under native law or custom;

“Syariah Courts” means Islamic religious courts established under any State law.

PART II CONSTITUTION AND ORGANISATION

Constitution of Native Courts.

3. (1) The Yang di-Pertua Negeri may, by notification in the *Gazette*, constitute Native Courts at such places as he may deem fit and may prescribe the territorial jurisdiction of such courts.

(2) A Native Court shall consist of the District Chiefs as the presiding member and two other members who shall be Native Chiefs or Headmen resident within the territorial jurisdiction of such Native Court duly empowered by the State Secretary to adjudicate in such court:

Provided that no District Chief, Native Chief or Headman shall sit as a member of a Native Court on the hearing of any matter in which he has any personal interest.

Provided further that the State Secretary may, if it is deemed necessary, empower any District Chief, Native Chief or Headman to adjudicate in any Native Court.

Constitution of District Native Courts.

4. (1) The Yang di-Pertua Negeri may, by notification in the *Gazette*, constitute a District Native Court for each district in the State which shall have jurisdiction within the district for which such court is constituted.

(2) A District Native Court shall consist of the District Officer of the district as the presiding member and two other members who shall be District Chiefs or Native Chiefs resident within the district duly empowered by the State Secretary to adjudicate in such court:

Provided that no District Chief or Native Chief shall sit as a member of the District Native

Court on the hearing of an appeal in any matter in which he has any personal interest or if he has been a member of the Native Court from which the appeal lies.

Constitution of Native Court of Appeal.

5. (1) The Yang di-Pertua Negeri may, by notification in the *Gazette*, constitute a Native Court of Appeal for the State which shall have jurisdiction throughout the State.

(2) The Native Court of Appeal shall consist of a Judge as President, and two other members who shall be District Chiefs or Native Chiefs to be appointed by the Minister to be members of such court:

Provided that no District Chief or Native Chief shall sit as a member of the Native Court of Appeal on the hearing of an appeal in any matter in which he has any personal interest or has been a member of the Native Court or District Native Court from which the appeal lies.

PART III
JURISDICTION AND POWERS OF
NATIVE COURTS

Jurisdiction of Native Courts.

6. (1) Every Native Court shall exercise original jurisdiction to the extent set forth and subject to the provisions of this Enactment to hear, try, determine and dispose of the following cases:

- (a) cases arising from breach of native law or custom in which all the parties are natives;
- (b) cases arising from breach of native law or custom, religious, matrimonial or sexual, if the written sanction of the District Officer acting on the advice of two Native Chiefs has been obtained to the institution of the proceedings, where one party is a non-native;
- (c) cases involving native law or custom relating to-
 - (i) betrothal, marriage, divorce, nullity of marriage and judicial

separation;

(ii) adoption, guardianship or custody of infants, maintenance of dependants and legitimacy;

(iii) gifts or succession testate or intestate; and

(d) other cases if jurisdiction is conferred upon it by this Enactment or any other written law.

(2) The Native Court shall exercise jurisdiction in respect of cases referred to in subsection (1) where-

(a) the cause of action arose; or

(b) the breach is alleged to have been committed; or

(c) the facts on which the proceedings are based exist or alleged to have occurred,

as may be appropriate, within the territorial jurisdiction of the court.

(3) In any matrimonial or sexual case where the parties are not of the same race, the Native Court shall be guided by the native law or custom of the woman's race.

(4) In any case relating to gifts or succession testate or intestate, the Native Court shall be guided by the native law or custom of the race of the grantor, the testate or intestate, as the case may be.

(5) In any case relating to adoption, guardianship or custody of infants, maintenance of dependants and legitimacy, the Native Court shall be guided by the native law or custom of the race of the person in respect of whom the proceedings are instituted.

Judgement of Native Courts.

7. The judgement of every Native Court shall be unanimous or that of the majority of its members.

Proceedings to be in open court.

8. Unless otherwise directed by a Native Court, all proceedings shall be heard in open court to which the public may have access.

No jurisdiction.

9. Native Courts shall have no jurisdiction in respect of any cause or matter within the jurisdiction of the Syariah Courts or of the Civil Courts.

Power to impose penalties and to make orders.

10. (1) For offences against native law or custom, a Native Court may-
- (a) impose a fine; or
 - (b) order imprisonment; or
 - (c) award both fine and imprisonment; or
 - (d) inflict any punishment authorised by native law or custom not being repugnant to natural justice and humanity:

Provided that such fine or imprisonment shall not exceed the amount or the term, as the case may be, or a combination thereof, as may be conferred by federal law.

(2) In other cases, a Native Court may make such order as may be just and equitable in accordance with native law or custom.

Endorsement of sentence of imprisonment.

11. No sentence of imprisonment by any Native Court shall have effect unless such sentence is endorsed by a Magistrate.

Compensation to person injured or aggrieved.

12. In addition to any penalty imposed for an offence against native law or custom, a Native Court may order the guilty party to pay to the person injured or aggrieved by the act or

omission, in respect of which such penalty has been imposed, compensation in cash or in kind authorised by native law or custom.

Recovery of penalties or compensation.

13. A Native Court may order that any penalty or compensation payable in cash or kind which it shall impose shall be paid at such time and by such instalments in kind or otherwise as it shall think just, and in default of the payment of any such penalty or compensation or of any instalment of the same when due, the court shall order that the amount of such penalty or compensation or the instalment thereof, as the case may be, shall be levied by sale of any property belonging to the offender and situate within the territorial jurisdiction of the court.

Imprisonment in default of penalty or compensation.

14. (1) When a Native Court imposes a penalty in kind or in cash or orders the payment of compensation under the provisions of this Enactment, it shall have power to direct by its sentence that in default of payment of the penalty or compensation the offender shall suffer such period of imprisonment as will justify the justice of the case.

(2) The imprisonment (if any) imposed under subsection (1) in default of payment of such penalty or compensation shall terminate when the penalty or compensation is paid or levied by the process of law.

Power to issue summons and warrants.

15. (1) Every Native Court shall have the powers of the Court of a Magistrate to summon parties and witnesses and to issue warrants of arrest:

Provided that if the summons is to be served outside its territorial jurisdiction such summons shall be signed by two members of the court or by one member and a Magistrate.

(2) No warrant of arrest issued by a Native Court shall be executed unless it is endorsed by a Magistrate.

PART IV
REVISION AND APPEAL

Power of revision.

16. (1) All proceedings of every Native Court shall be subject to revision by the District Native Court which, if it considers that such proceedings are irregular, improper or unconscionable, may quash or vary the same or direct a rehearing.

(2) A District Native Court may call for and examine the record of proceedings of a Native Court for the purpose of satisfying itself as to the correctness, legality or propriety of any order recorded or passed and as to the regularity of any proceedings of such court.

(3) In exercising its powers of revision, a District Native Court shall have the discretion whether to allow the parties involved a right to be heard:

Provided that no final order shall be made to the prejudice of any person unless such person has had an opportunity of being so heard.

Appeal to District Native Courts.

17. (1) An appeal shall lie from any order of Native Court to the District Native Court in the district in which such Native Court is established.

(2) An appeal to the District Native Court shall lie-

(a) as of right, on any ground of appeal which involves a question of native law or custom alone;

(b) with the leave of the District Native Court to which the appeal lies, on any ground of appeal which involves a question of fact alone or mixed law and fact or against a sentence of imprisonment.

(3) The District Native Court may, in the exercise of its appellate or revisionary jurisdiction, perform any or a combination of the following:

(a) recall any witness;

- (b) take further evidence itself;
- (c) direct the Native Court to take further evidence;
- (d) summon any person whom it deems fit to act as an assessor to advise it.

Appeal to Native Court of Appeal.

18. (1) An appeal shall lie from any order of the District Native Court to the Native Court of Appeal.

(2) An appeal to the Native Court of Appeal shall lie-

- (a) as of right, on any ground of appeal which involves a question of native law or custom alone;
- (b) with leave of the Native Court of Appeal, on any ground of appeal which involves a question of fact or question of mixed law and fact or sentence of imprisonment.

Native Court of Appeal may request for report.

19. (1) Prior to the exercise of the powers conferred on the Native Court of Appeal under section 23, the Judge or any member of the court may request from the Native Court or District Native Court from which the appeal lies a report in writing amplifying any order upon the case either generally or giving an opinion upon any point arising upon the consideration of the appeal.

(2) Where a report is requested under subsection (1), the Native Court or the District Native Court shall furnish such report to the Native Court of Appeal and serve a copy of such report upon all parties to the appeal.

(3) The Native Court of Appeal may, at its discretion, summon and hear any witness as to the existence of any native law or custom affecting the matter for decision and shall record its opinion thereto.

PART V
PROCEDURE OF APPEAL

Notice of Appeal.

20. (1) No appeal shall be entertained unless notice of appeal as may be prescribed is filed in the District Native Court or Native Court of Appeal, as the case may be, within 60 days from the date of the order appealed against.

(2) A notice of appeal shall operate as a stay of execution if such notice is filed within the time prescribed under subsection (1).

Appellate Courts to have powers and privileges of Native Courts.

21. Any appellate Court shall, in addition to the powers conferred on it under this Enactment, have the powers and privileges of a Native Court.

Proceedings to be in open court.

22. Unless otherwise directed by the appellate Court, an appeal shall be heard in open court to which the public may have access.

Power of appellate Courts.

23. (1) An appellate Court may-

- (a) dismiss an appeal;
- (b) set aside or vary an order;
- (c) reduce or increase any sentence of punishment or fine or order for compensation; or
- (d) order a rehearing by the same or a differently constituted Native Court.

(2) No order shall be varied or declared void solely by reason of any defect in procedure or want of form.

Judgement of appellate Court.

24. The judgement of an appellate Court shall be unanimous or that of the majority of its members.

PART VI
GENERAL

Contempt of court.

- 25.** (1) Every Court shall have power to punish any contempt of itself.
- (2) Any person who, in or during any proceedings-
- (a) disobeys any lawful order of the Court; or
 - (b) omits to produce or deliver up any document on the lawful order of the Court; or
 - (c) refuses to answer any lawful question asked by any member of the Court; or
 - (d) refuses to sign any statement lawfully required by the Court; or
 - (e) intentionally insults the Court or any of its members; or
 - (f) Intentionally interrupts the proceedings of the Court at any stage,

shall be guilty of contempt of court and shall on conviction be liable to a fine not exceeding five thousand ringgit or imprisonment not exceeding two years or both.

Removal on motion of defendant.

26. The defendant may, in any proceedings commenced or brought before any Native Court, apply to the State Attorney-General for the stoppage or removal of the proceedings and the State Attorney-General may, for reason which he shall record in writing-

- (a) stop the hearing or further hearing of the case before such Native Court on such

terms as he may consider just; or

- (b) direct that the case be heard by the High Court or any Subordinate Court of competent jurisdiction.

Representation in Courts.

27. (1) No advocate shall appear for any party in any proceedings before a Native Court or before the District Native Court, but an advocate may appear for any party in any proceedings before the Native Court of Appeal:

Provided that no advocate shall appear for any party in any proceedings before the Native Court of Appeal unless the advocate is duly registered as a Native Court of Appeal advocate in accordance with the prescribed procedure.

(2) A person who is not an advocate may appear as a representative for any party in any proceedings before any Court if the permission of such Court is first obtained by such person who shall give sufficient and satisfactory proof that his or her presence in such proceedings is necessary.

(3) Every Court shall have the power to refuse any permission under subsection (2) to any person who intends to appear as a representative for any party in any proceedings.

Protection of officers acting judicially for official acts.

28. (1) No person shall be liable to be sued in any Civil Court for any act done or ordered to be done by such person in the exercise of jurisdiction conferred by this Enactment, whether or not within the limits of such jurisdiction:

Provided that at the time of such act or order he believed in good faith that he had jurisdiction to do such act or to make such order.

(2) No officer of any Court or person bound to execute lawful warrants or orders issued or made in the exercise of his jurisdiction conferred under this Enactment shall be liable to be sued in any Civil Court for the execution of such warrant or order which he would be bound to execute, if the person issuing the same had been acting in the exercise of lawful authority.

Limitation period.

29. (1) Subject to sub-section (2) no proceedings, action or suit shall be entertained by any Court if such proceedings, action or suit is instituted after the limitation period prescribed under the Schedule.

(2) If the limitation period prescribed for any proceedings, action or suit expires on a weekly holiday or public holiday, the said proceedings, action or suit may be instituted on the day immediately after the weekly holiday or public holiday.

(3) In computing the limitation period prescribed for any proceedings, action or suit, the day from which such period is to be computed shall be excluded.

Power to make rules.

30. The Yang di-Pertua Negeri may make rules for carrying out the provisions and purposes of this Enactment and, in particular but without prejudice to the generality of the foregoing, such rules may provide for-

- (a) prescribing and determining the native law or custom relating to the matters falling within the jurisdiction of the Native Courts;
- (b) regulating and prescribing the practice and procedure of any Court or of any matter within the jurisdiction of the Native Courts;
- (c) prescribing the forms to be used for any purposes of this Enactment;
- (d) prescribing the fees to be paid for anything permitted or required to be done under this Enactment;
- (e) regulating and prescribing the procedure and the qualifications for the registration of any advocate permitted to appear before the Native Court of Appeal;
- (f) regulating the taking of evidence;
- (g) regulating and prescribing the procedure of serving any process of any Court;

and

- (h) generally prescribing such matters as may be necessary for more effectively carrying out the purposes of this Enactment.

Repeal of Cap. 86.

31. The Native Courts Ordinance (Cap. 86) is repealed:

Provided that-

- (a) any Native Court established under a warrant issued under the repealed Ordinance and exercising jurisdiction immediately prior to the commencement of this Enactment shall be deemed to be a Native Court constituted under this Enactment having territorial jurisdiction set out in the warrant of such court;
- (b) any District Chief, Native Chief and Headman empowered by the State Secretary under the repealed Ordinance to adjudicate in any Native Court established therein shall be deemed to be so empowered under this Enactment until the same is revoked;
- (c) any pending cases validly instituted before any Native Court or any appellate authority established under the repealed Ordinance shall continue to be heard, dealt with and disposed of by the corresponding court constituted under this Enactment in like manner as if the same were commenced under the provisions of this Enactment;
- (d) any order validly made by any Native Court or any appellate authority established under the repealed Ordinance shall continue to be valid and enforceable under this Enactment as if the same were made by the corresponding court constituted thereunder; and
- (e) any subsidiary legislation made under the repealed Ordinance shall in so far as it is not inconsistent with this Enactment continue to be in force and have effect as if the same had made hereunder and may be repealed, varied or amended under this Enactment.

SCHEDULE
(Section 29)

SUITS FOR WHICH THE LIMITATION PERIOD IS 1 YEAR

1. For *sogit* payable by any person who remarries before the bereavement period of his or her spouse's death is over;

Limitation period begins when the remarriage becomes known to the aggrieved person.

2. For *sogit* payable by any person who commits *lapau*;

Limitation period begins when the *lapau* becomes known to the spouse.

3. For *sogit* payable by a woman who gives birth in the house belonging to or in the lawful possession of another person;

Limitation period begins when the woman gives birth.

4. For adat fine, *sogit* or compensation payable by any person who commits an offence in respect of-

- (i) burning, digging or damaging a grave;
- (ii) burying, a corpse;
- (iii) death of a person in a house or farmland belonging to or in the lawful possession of another who is not a relative of the deceased;

Limitation period begins when the offence becomes known to the plaintiff.

SUITS FOR WHICH THE LIMITATION PERIODS IS 3 YEARS

1. For *sogit*, *lapau* or defamation payable by the defendant for offences in respect of adultery of illicit sexual intercourse;

Limitation period begins when the adultery or illicit sexual intercourse becomes known to the plaintiff.

2. For *sogit* payable by the defendant in respect of the offence of incest;

Limitation period begins when the incestuous act becomes known to the plaintiff.

3. For an adat fine payable in respect of-

- (i) returnable dowry;
- (ii) betrothal gift;
- (iii) expenses incurred during the betrothal negotiation or arrangement;
- (iv) breach of contract to marry;
- (v) enforcement of a term in a collateral agreement to a betrothal or engagement;

Limitation period begins when the betrothal is terminated or deemed to be terminated or when the contract to marry is breached.

4. For compensation or *solod* payable by a man who entices a married woman;

Limitation begins when the enticement becomes known to the plaintiff.

5. For adat fine or return of dowry and wedding expenses from an enticed married woman;

Limitation period begins when the enticement becomes known to the plaintiff.

6. For dowry, adat fine or mas kahwin payable by a man who entices or elopes with a person's daughter;

Limitation period begins when the enticement or elopement becomes known to the plaintiff.

7. For adat fine or compensation for offences in respect of indecent assault or sexual harassment;

Limitation period begins when the offence is committed.

8. For adat fine, *sogit*, and compensation payable by a person who commits gross misbehaviour, indecency or mischief;

Limitation period begins when the offence is committed.

SUIT FOR WHICH THE LIMITATION PERIOD IS 6 YEARS

For monthly maintenance from a husband where a separation or divorce is granted by the Court as a result of a breach of any native law or custom;

Limitation period begins when the separation or divorce is granted by the Court.

SUIT FOR WHICH THE LIMITATION PERIOD IS 12 YEARS

1. Execution of judgement or order of the Court;

Limitation period begins when the judgement or order is awarded.

2. Any suit for which no limitation period is provided in this Schedule;

Limitation period begins when the right to sue or claim arises, or when the offence becomes known to the plaintiff, or when any payment due becomes payable.