



LAWS OF SARAWAK

ONLINE VERSION

NATIVE COURTS ORDINANCE, 1992

[Ord. No. 9/92]

Incorporating all amendments up to 31st December, 2017

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STATE ATTORNEY-GENERAL'S CHAMBERS
SARAWAK

NATIVE COURTS

THE NATIVE COURTS ORDINANCE, 1992

[Ord. No. 9/92]

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SARAWAK LAWNET

NATIVE COURTS ORDINANCE, 1992**[Ord. No. 9/92]**

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SCHEDULE—Chiefs and Headmen

NATIVE COURTS ORDINANCE, 1992

[Ord. No. 9/92]

An Ordinance to make better provisions for the constitution of Native Courts; the definition of their powers and jurisdiction; and all matters ancillary thereto.

[1st June, 1993]

**[Swk. L. N. 13/93.]*

Enacted by the Legislature of Sarawak—

Short title, commencement and application

1.—(1) This Ordinance may be cited as the Native Courts Ordinance, 1992, and shall come into force on such date as the Yang di-Pertua Negeri may, by notification in the *Gazette**, appoint.

(2) This Ordinance shall not apply to any native professing the religion of Islam, except—

- (a) in cases involving the Malay customs of Sarawak under section 5(1)(a) and (b);
- (b) in cases of disputes under section 5(3); and
- (c) in determining any question under section 20.

[Sub. Cap. A87.]

Interpretation

2.—(1) In this Ordinance—

“advocate” means a person admitted and enrolled as an advocate under the Advocates Ordinance [*Cap. 110 (1958 Ed.)*];

[Ins. Cap. A87.]

“Chief” means any person who holds with the approval of any lawful authority the appointment, rank or position specified in the Schedule;

[Sub. Cap. A87.]

“community” means a group of persons subject to the same system of personal law:

Provided that, if a customary law applies to different groups with divergencies in customary law, each group shall constitute a separate community;

“customary law” means a custom or body of customs to which the law of Sarawak gives effect;

“Headman” means any person who holds with the approval of any lawful authority the appointment, rank or position specified in the Schedule;

[Sub. Cap. A87.]

“Judge” means a Judge of the High Court in Sabah and Sarawak;

[Am. Cap. A87.]

“local area of jurisdiction of the Native Court” means—

(a) in the case of the Headmen’s Court, the area in which the Tua Kampung or Tuai Rumah exercises jurisdiction;

(b) in the case of the Chief’s Court, the area in which the Penghulu exercises jurisdiction;

(c) in the case of the Chief’s Superior Court, the area in which the Pemanca or Temenggong exercises jurisdiction; or

(d) in the case of the District Native Court or the Resident’s Native Court, within the District or Division for which such Court is constituted;

“Magistrate” means any person appointed to be a Magistrate of either the First or Second Class under the provisions of the Subordinate Courts Act 1948 *[Act 92]*, and includes an *ex-officio* Magistrate;

“native system of personal law” means the customary law applying to any community, being a community forming the whole or part of any native race specified in the Schedule to the Interpretation Ordinance, 2005 [*Cap. 61*];

“presiding officer” means the Headman, Chief, Sarawak Administrative Officer, Magistrate, Judge or such other person as may be appointed to preside over a Native Court under this Ordinance;

“Sarawak Administrative Officer” means an officer of the Sarawak Administrative Service of the Government of Sarawak serving in an administrative office in a Division, district or sub-district, and includes the Resident of the Division, the District Officer and the Officer-in-Charge of the administrative area;

“system of personal law” means the system of personal law recognized by the general law of Sarawak as being applicable to the members of any racial, religious or other community because they are members of such community, and includes any rules or customary laws of such system which may refer the determination of any matter to another system of personal law.

(2) In this Ordinance, a reference to the Yang di-Pertua Negeri shall be construed as a reference to the Yang di-Pertua Negeri acting in accordance with the advice of the Majlis Mesyuarat Kerajaan Negeri or of a member thereof acting under the general authority of the Majlis.

Classes of Native Courts

3. There shall be the following Native Courts of original jurisdiction—

- (a) the District Native Court;
- (b) the Chief’s Superior Court;
- (c) the Chief’s Court;
- (d) the Headman’s Court.

Constitution of Native Courts

4.—(1) Without prejudice to subsection (6), the constitution of Native Courts shall be as follows:

(a) the District Native Court shall consist of a Magistrate and two assessors;

(b) the Chief's Superior Court shall consist of a Temenggong or Pemanca sitting with two assessors, or both Temenggong and Pemanca sitting with one assessor;

(c) the Chief's Court shall consist of a Penghulu and two assessors;

(d) the Headman's Court shall consist of a Headman and two assessors:

Provided that a Headman's Court or a Chief's Court in which the proceeding is commenced may, on its own motion or on application by any party to the proceedings, order in accordance with the provisions of section 5(6) that the case be referred for trial by a Chief's Superior Court.

[Sub. Cap. A87.]

(2) In any case in which the native system of personal law applicable is the law of a particular community, the Headman or Chief presiding shall be a member of that community:

Provided that, subject to the directions of the Resident within whose Division such case arises, any person who is or has been a Sarawak Administrative Officer or any person who, in the opinion of the Resident, is versed in the native system of personal law of the relevant community applicable thereto, may be appointed to preside over a Native Court notwithstanding that he is not a member of the community to which the relevant system of personal law applies; and the person so appointed may exercise the powers and jurisdiction of that Native Court. Any person appointed under this proviso or ordered under section 9(2) to preside over a Native Court shall be paid such remuneration and allowance as may be prescribed by rules made under section 29.

[Am. Cap. A118.]

(3) When any question of native law or custom is involved, at least one assessor shall be a member of the community, the law or custom of which is relevant to the determination thereof, or some other native who in the opinion of the Resident is versed in such law or custom.

[Am. Cap. A87.]

(4) The assessors in each case shall be appointed by the presiding officer in accordance with such rules as may be prescribed under section 29.

(5) A Magistrate may sit in and constitute any court lower than the court which he had power to constitute, as if he were the presiding officer of such lower court.

(6) Notwithstanding anything in this section, in the case of any community following an Iban system of personal law:

(a) a Headman's Court may be constituted by a Tuai Rumah sitting without assessors;

(b) a Chief's Court may be constituted by a Penghulu sitting with two Tuai Rumah to assist him;

(c) a Chief's Superior Court may be constituted by a Temenggong or a Pemanca, or both Temenggong and Pemanca sitting in either case with two assessors.

Jurisdiction of Native Courts

5.—(1) A Native Court shall, subject to section 28, have jurisdiction over—

(a) cases involving native law or custom (other than the Islamic Family Law Ordinance, 2001 [*Cap. 43*]) in which all the parties are subject to any native system of personal law;

(b) cases involving native law or custom (other than the Islamic Family Law Ordinance, 2001 [*Cap. 43*]) relating to any religious, matrimonial or sexual matter where one party is a native;

[Sub. Cap. A87.]

(c) any civil case, not being a case under the jurisdiction of any of the Syariah Courts constituted under the Syariah Courts Ordinance, 2001 [*Cap. 42*], in which the value of the subject matter does not exceed two thousand ringgit and all the parties are subject to the same native system of personal law;

(d) any criminal case of a minor nature which are specifically enumerated in the Adat Iban or any other customary law by whose custom the court is bound and which can be adequately punished by a fine not exceeding that which, under section 11, a Native Court may impose; and

[Am. Cap. A87.]

(e) any matter in respect of which it may be empowered by any other written law to exercise jurisdiction:

(i) Provided that it shall be lawful for the Resident, if he considers that any proceedings instituted or about to be instituted under paragraph (b) or (e) or under subsection (2) are likely to prejudice good relations between different communities or lead to a breach of public order or that, owing to his having formed the opinion that the determination will require the application of more than one native system of personal law, or for any other reason, the parties should be left to such remedies as they may have in other courts, to order that such proceedings be stayed or shall not be commenced. In any such case, the Resident shall make a report thereof to the State Attorney-General, who may confirm or set aside any such order;

(ii) And provided further that the judgment or order of a Chief's Superior Court involving cases relating to native law or custom other than land disputes shall be final and conclusive and shall not be a subject of appeal.

[Ins. Cap. A87.]

(2) In cases relating to any matrimonial or sexual matter in which a Native Court has jurisdiction where the parties are of different sexes and are not of the same community, or are by virtue of any written law deemed to belong to or be identified with different communities, the Native Court shall, unless the contrary is expressly provided in any written law, be bound by the law or custom of the community of which the woman is or is deemed to be a member:

Provided that a woman who has embraced the religion of Islam in accordance with the rites prescribed therefor in Sarawak shall be bound by the Islamic Family Law Ordinance, 2001 *[Cap. 43]*.

(3)(a) Cases involving disputes between natives in respect of—

(i) any land held under native customary rights or which is within a native communal reserve declared under section 6 of the Land Code *[Cap. 81 (1958 Ed.)]*;

(ii) any claim for compensation to be paid under the Land Code for termination of native customary rights over land; and

(iii) any right to inheritance under native customary law to any land held under native customary rights or within a Native Communal Reserve,

shall be heard in the first instance by a District Native Court.

(b) Any person aggrieved by a decision of the District Native Court may appeal against the same to a Resident's Native Court in accordance with rules made under section 29.

(c) Any dispute between natives involving any land to which there is no title issued by the land office which is not of the nature described in paragraph (a) shall be heard in the first instance by a Chief's Court.

[Sub. Cap. A118.]

(4) Where any proceedings of a civil or criminal nature which are required to be determined in accordance with—

(a) native law and custom applicable to any native community; or

(b) any other customary law by whose custom the Native Court is bound,

are commenced in a court constituted under the Subordinate Courts Act 1948 *[Act 92]*, such proceedings shall be transferred to a Native Court having jurisdiction.

(5) Any proceedings in respect of which a court constituted under the Subordinate Courts Act 1948 *[Act 92]*, and a Native Court (other than a proceeding referred to in subsection (1)) have concurrent jurisdiction shall be tried by the court in which the proceeding is commenced unless that court—

(a) commits the case for trial under the provisions of the Criminal Procedure Code *[Act 593]* by some other court having jurisdiction; or

(b) in the case of a Native Court, orders in accordance with subsection (6) that the case be transferred for trial by some other court having jurisdiction.

(6) When any proceedings are before a Native Court, at any time before judgment, such court may by order for reasons which shall be recorded, on its own motion or on an application made by any party to the proceedings, transfer the case for hearing and determination by any other Native Court or by a Magistrate's Court of competent jurisdiction. A copy of the order and the reasons for the transfer shall be transmitted to the Resident. If the Resident considers that any decision recorded or passed by the Native Court to transfer the case for trial by some other court is illegal or improper or that any such proceeding is irregular, he shall order that such proceedings be stayed or shall not be commenced. In any such case, the Resident shall make a report thereof to the State Attorney-General who shall confirm or set aside any such order.

(7) Where proceedings are transferred from a court to some other court under subsection (6), such other court shall commence the proceedings *de novo*.

(8) *[Deleted by Cap. A87].*

(9) All records of proceedings in a Native Court shall be kept in the manner prescribed by rules made under section 29.

Laws to be administered

6.—(1) Subject to this Ordinance, a Native Court shall administer and enforce only—

(a) the native law and custom prevailing in the area of the jurisdiction of the court, so far as it is applicable and is not repugnant to natural justice or morality or is not, in principle, in conflict with the provisions of any law in force in the State; and

(b) any written law which the court may be authorised to administer or enforce.

(2) The Yang di-Pertua Negeri may, by order in the *Gazette*, confer jurisdiction or powers upon any Native Court to administer or enforce any specified written law, subject to any restrictions or limitations that may be imposed by such order.

Territorial limits of jurisdiction

7.—(1) Subject to any limitation in any rules made under this Ordinance, the jurisdiction of a Native Court shall extend only to causes and matters arising within the local area of jurisdiction of the court and to causes and matters arising elsewhere when the defendant is originally resident within such area, save that causes or matters relating to immovable property shall be heard in the Native Court exercising jurisdiction in the area in which such property is situate.

(2) Where in the course of any proceedings in a Native Court, any person claims that he is not subject to the jurisdiction of such court, the court shall refer the matter to a Magistrate posted to the area in which such court exercises jurisdiction and such Magistrate, after making such inquiries as he thinks necessary, shall, in his discretion, decide whether such person is or is not a person subject to the jurisdiction of such court and shall thereupon send to the Native Court a certificate accordingly which for the purposes of such proceedings shall be conclusive and final.

[Am. Cap. A87.]

Returns of cases to be submitted to the Resident or District Officer

8. Every Native Court shall, if called upon to do so, submit in writing to the Resident or to the District Officer a return of all cases tried in such court in such form as the Resident or District Officer may direct.

Resident's power to transfer cases

9.—(1) A Resident shall at all times have access to the Native Courts in the area to which he is posted and may send for and examine the record of any proceedings before any such court for the purpose of satisfying himself as to the correctness, legality or propriety of any judgment, sentence or order, recorded or passed, or as to the regularity of any proceedings in any such court.

(2) Whenever it is made to appear to the Resident—

(a) that any finding, sentence or order of a Native Court is illegal or improper or has resulted in a miscarriage of justice;

(b) that a fair and impartial trial cannot be had in any Native Court;

(c) that some question of law of unusual difficulty is likely to arise;

(d) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same;

(e) that for the speedy despatch of business of the Native Court in any area in which a District Officer or a Magistrate is busy or not available to attend to the business of the Native Court;

(f) that an order under this section will tend to the general convenience of the parties or witnesses; or

(g) that such an order is expedient for the ends of justice, or is required by this Ordinance,

he may order—

(i) that the case may be reheard *de novo* either before the same Native Court or some other Native Court;

(ii) that any particular case or class of cases be transferred from the present court to any other court of equal or superior jurisdiction;

(iii) that the hearing of the proceedings, whether at first instance or on appeal, pending in any Native Court, be continued before any person who is or has been a Sarawak Administrative Officer or any person who, in the opinion of the Resident, is versed in the native system of personal law of the community;

(iv) that any particular case pending in the present Native Court be transferred to any other Native Court or to a Magistrate's Court of competent jurisdiction; or

(v) that a person committed for trial in one place be tried in another place.

[Am. Cap. A118.]

(3) The Resident may make an Order under subsection (2) either on the report of the lower court, or on the application of the State Attorney-General or by any party to the proceedings, or on his own initiative, or on the direction of the Chief Registrar issued pursuant to section 9A:

Provided that no Order shall be made under subsection (2) after the expiration of twelve months from the termination of such proceedings in the lower Native Court concerned.

[Ins. Cap. A87; Am. Cap. A118.]

(4) When an Order is made under subsection (2), the court before which the case is pending shall cause the parties concerned to appear or to be brought before the court specified in the said Order as soon as may be practicable.

(5) When the parties concerned appear or are brought before the court in accordance with subsection (4), it shall fix a date for hearing.

(6) The court to which a case is transferred under this section may act on the evidence already recorded and may make any such order thereon by way of revision as if the proceedings came before the court on appeal or it may re-summon the witnesses and re-commence the proceedings *de novo*.

(7) The provisions of the preceding subsections, so far as applicable, shall apply in relation to the enforcement of judgments of any of the present Native Courts given, but not satisfied, on or after the commencement of this Ordinance.

Exercise of power by Chief Registrar

9A. The powers conferred on a Resident under section 9(1) may be exercised by the Chief Registrar, and in any such case, he may direct a Resident to take such action as may be appropriate or necessary pursuant to section 9(2).

[Ins. Cap. A118.]

Appearances before Native Courts

10.—(1) An Advocate may appear or act as a representative for any party in any proceedings before a District Native Court, a Resident's Native Court or a Native Court of Appeal constituted under this Ordinance if the permission of such court is first obtained by such person who shall give sufficient and satisfactory proof that his presence in such proceedings is necessary.

[Am. Cap. A118.]

(2) Any court constituted under this Ordinance may permit any person who is not an advocate or a legal practitioner to appear and to act as a representative, for any party, in any proceeding before such court.

(3) Nothing in this section shall prevent the State Attorney-General or any person duly authorized in that behalf by writing under his hand from appearing before any court constituted under this Ordinance; and any writing purporting to be signed by the State Attorney-General shall, until the contrary is proved, be evidence thereof.

Power to impose penalties

11.—(1) Subject to section 23(4), the following penalties may be imposed by the courts specified respectively:

- (a) District Native Court Imprisonment not exceeding two years and a fine not exceeding five thousand ringgit;
- (b) Chief's Superior Court Imprisonment not exceeding one year and a fine not exceeding three thousand ringgit;
- (c) Chief's Court Imprisonment not exceeding six months and a fine not exceeding two thousand ringgit;
- (d) Headman's Court Fine not exceeding three hundred ringgit;

Provided that where jurisdiction is given to a Native Court to award compensation in excess of the fines prescribed herein, a Native Court may, notwithstanding anything herein, award the full compensation authorized under the Adat Iban or any other customary law by whose custom the court is bound.

- (2) [*Deleted by Cap. A87.*]

(3) Nothing in this section or section 5 shall empower a Native Court to try a case which, under the Adat Iban or any other customary law by whose custom the court is bound, it is not empowered to try.

(4) If the Yang di-Pertua Negeri is satisfied that the pecuniary penalties from time to time sanctioned by any native system of personal law for the appropriate Native Court are greater than those sanctioned by this Ordinance, or if he is satisfied that the imposition of increased pecuniary penalties approved or deemed approved under the Native Customs (Declaration) Ordinance, 1996 [*Cap. 22*], or any enactment replacing it may be entrusted to any Native Court, he may by order signified in the *Gazette* empower the appropriate Native Court or such Native Court as he may deem appropriate to impose such greater pecuniary penalties, subject to such limitations as are imposed under the Native Courts (Criminal Jurisdiction) Act 1991 [*Act 471*].

[*Am. Cap. A87; Am. Cap. 22.*]

Appeals

12.—(1) Subject to section 13, an appeal shall lie—

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

(b) on any ground of appeal which involves a question of fact alone or mixed law and fact or against a sentence of imprisonment.

[*Am. Cap. A118.*]

(2) Such appeal shall, if made from a Resident's Native Court, be lodged with a Resident and, in every other case shall be lodged with the District Officer within whose district the Native Court, the decision of which is challenged, exercises jurisdiction, or with such other person or body as may be prescribed by rules made under section 29, and shall state the grounds of appeal:

Provided that—

(a) where no grounds are stated, the Resident, District Officer or such other person or body with whom the appeal is lawfully lodged shall endeavour within the period allowed for appeal to ascertain and record the grounds upon which the appeal is made; and

(b) save in so far as any rules made may prescribe to the contrary effect, a District Officer may, as regards appeals from any court in his district subordinate to a District Native Court, authorise any other person or persons to receive appeals and to exercise the functions devolving under this subsection on a District Officer or, alternatively, to receive appeals and transmit them to the District Officer.

(3) Such appeal shall be made in writing within thirty days of the date of such decision, or within such further time and upon such terms as the court to which the appeal lies may in any particular case allow and in such manner as may be prescribed by rules made under section 29 for appeals.

Courts to which appeal lies

13.—(1) An appeal shall lie—

(a) from the Headman's Court to the Chief's Court;

(b) from the Chief's Court to the Chief's Superior Court: Provided that the decision of the Chief's Superior Court in respect of all matters under section 5 (except land disputes under section 5(3)) shall be final and conclusive and shall not be a subject of appeal to the District Native Court or Resident's Native Court or Native Court of Appeal;

(c) subject to subsection (2), from the Chief's Superior Court to the District Native Court;

(d) from the District Native Court to the Resident's Native Court which shall be constituted by a person for the time being holding or acting in the office of Resident of a Division sitting with not less than two but not more than four assessors who shall be persons whom the Resident has reason to believe are versed in the customary law relevant to the determination of the appeal:

Provided that for the purpose of the speedy despatch of the business of the Resident's Native Court, the Yang di-Pertua Negeri may appoint any person who has held office as Resident in the State, or such person as he may deem fit or proper to preside in the Resident's Native Court; and the person so appointed may exercise all or any of the powers conferred on a Resident by this Ordinance;

(e) from the Resident's Native Court, by way of petition for revision to the Native Court of Appeal constituted by subsection (3).

(2) No appeal shall lie to the District Native Court from the decision of any lower court in any cause or matter where the judgment or order relates to any case referred to in section 5(1) and (2).

[Sub. Cap. A87.]

(3)(a) There shall be a Native Court of Appeal which shall consist of—

(i) a President, who shall be appointed by the Yang di-Pertua Negeri;

(ii) the President of the Majlis Islam or the Ketua Majlis of Majlis Adat Istiadat Sarawak;

(iii) any person who is or has been appointed a Temenggong and nominated by the President in consultation with the Chief Registrar, to sit in connection with the hearing of any particular appeal:

Provided that where any of the persons specified in subparagraph (ii) is not able to sit as a member of the Native Court of Appeal in any particular case, the President shall, after consultation with the Chief Registrar, nominate a Temenggong to replace him.

(b) No person shall be appointed to preside over a Native Court of Appeal unless he is holding or has held the office of a Judge of the High Court or is qualified under the Federal Constitution to be appointed as a Judge of the High Court.

(c) The President of the Native Court of Appeal may be appointed for such period as may be stipulated in the instrument of appointment and may be paid such remuneration and allowance as may be determined by the Yang di-Pertua Negeri, provided that no person shall be so appointed for a period exceeding three years but he is eligible for re-appointment.

(d) Proceedings before a Native Court of Appeal may be regulated by rules made by the Yang di-Pertua Negeri under section 29.

(e) The Native Court of Appeal shall have jurisdiction to hear and determine all appeal cases which are still pending before such Court, including those cases filed after the 1st day of June, 1993.

[Sub. Cap. A118.]

(4) Any person appointed to preside in a Resident's Native Court under the proviso to subsection (1)(d) or in a Native Court of Appeal under paragraph (a) of the proviso to subsection (3) shall be paid such remuneration and allowances as may be prescribed by rules made under section 29.

[Am. Cap. A118.]

Power of the appellate court

14.—(1) The appellate court may—

- (a) dismiss the appeal;
- (b) re-hear the case itself or order the case to be heard by any lower court;
- (c) hear further evidence, or order the court of first instance, or any other Native Court having jurisdiction, to hear further evidence;
- (d) order a re-trial;
- (e) set aside, reverse, amend or vary the decision of the lower court, however, the decision as altered shall not be in excess of the jurisdiction of the court of first instance; or
- (f) make such other order as it may deem just.

(2) Sections 23 and 24 shall apply to a Resident's Native Court but shall not apply to the Native Court of Appeal which shall, in respect of all such matters, have the same powers as may from time to time be vested in the High Court.

Further investigation and appeal

15. An appellate court other than the Native Court of Appeal may, upon application by an aggrieved party to the proceedings or by the State Attorney-General or of its own motion, investigate any case heard by an inferior court and may upon such investigation exercise any of the powers which it might have exercised had there been an appeal:

Provided that there shall be an appeal from any exercise of the powers hereby conferred in a like manner and subject to the like conditions as if such powers had been exercised on appeal;

[Am. Cap. A87.]

And provided further that an appellate court other than a Native Court of Appeal shall not exercise the powers herein conferred after the expiration of twelve months from the conclusion of the case heard by such inferior Native Court.

[Ins. Cap. A87.]

Revisionary powers of the Native Court of Appeal

16.—(1) Where it appears that in any original, revisional or appellate proceedings under this Ordinance an error material to the merits of any case or involving a miscarriage of justice has occurred, the Native Court of Appeal may, either upon the application of an aggrieved party or of its own motion, exercise any of the powers of revision vested in the High Court in such manner as the justice of the case may require:

Provided that the Native Court of Appeal, if it sees fit, may refuse to exercise the powers conferred on it by this section on the application of any party where such party has not exhausted his rights to appeal under this Ordinance.

(2) No proceedings shall be revised under this section after the expiration of twelve months from the termination of such proceedings in the Native Court; and no proceedings shall be further revised under this section in respect of any matter arising thereon which has previously been the subject of a revisional order under this section or section 9.

(3) Prior to the exercise of the powers of the Native Court of Appeal under subsection (1), the Judge may, and at the request of any other member of the Court shall, request the Resident or the District Officer or the Sarawak Administrative Officer to furnish 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 and the Resident or District Officer or Sarawak Administrative Officer shall furnish the same and serve a copy of such report upon all parties to the appeal.

Recovery of penalty or compensation

17.—(1) 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 as it shall think just, and, in default of the payment of any such penalty or compensation or of any instalment when due, the Court may order that the amount of such penalty or compensation or of such instalment as the case may be, shall be levied by the sale of any property belonging to the person who is penalised or ordered to pay compensation.

(2) Proceedings for the sale of any property pursuant to any order made under subsection (1) shall be regulated by rules made under section 29.

Imprisonment in default of penalty

18.—(1) Subject to subsection (2), where a Native Court imposes any penalty, it may direct that, in default of payment of the penalty, the offender shall suffer a period of imprisonment which shall be in accordance with the following scale:

<i>where the penalty</i>	<i>the period of imprisonment shall not exceed</i>
does not exceed fifty ringgit	one month
exceeds fifty ringgit but does not exceed one hundred ringgit	two months
exceeds one hundred ringgit but does not exceed two hundred ringgit	four months
exceeds two hundred ringgit but does not exceed five hundred ringgit	six months
exceeds five hundred ringgit	twelve months

(2) Nothing in this section shall confer on any Native Court over which a Magistrate does not preside power to direct that any person be imprisoned but, if any person neglects or refuses to pay any penalty imposed by such Court, the person presiding in such Court shall report the fact to a Magistrate and the Magistrate shall, subject to section 15, thereupon have power to take, and shall take, such action to recover the penalty or imprison the offender as it would have taken if the penalty had been imposed by itself.

(3) The imprisonment which is imposed in default of payment of a penalty shall terminate whenever that penalty is either paid or levied by process of law.

(4) Where a term of imprisonment is imposed by a court in default of the payment of a penalty that term shall, on payment or levy of a part of such sum, be proportionally reduced.

(5) If the accused has served the full sentence of imprisonment, he shall no longer be liable for payment of the penalty.

Power to award compensation and to make orders

19. A Native Court may—

(a) award compensation (which may include an amount for costs and expenses incurred by a successful party or his witness);

(b) direct that any penalty payable in cash or kind, or such part thereof as it shall deem fit, shall be paid to the person injured or aggrieved by the act or omission in respect of which such penalty has been imposed;

(c) order the restitution of any property;

(d) order the specific performance of any contract; or

(e) make any other order (including an order of forfeiture) which the justice of the case may require:

Provided that no order of forfeiture shall take effect unless and until it has been endorsed by a Magistrate.

Special jurisdiction of a Resident's Native Court

20.—(1) A Resident's Native Court, subject to section 28, shall have power to hear and determine—

(a) for the purpose of section 9 of the Land Code [*Cap. 81 (1958 Ed.)*], the question whether any non-native has become identified with a particular native community and subject to the native system of personal law of such community;

(b) the question whether a person who is subject to a particular system of personal law (whether native or otherwise) has become or became, by virtue of subsequent events, or by conduct or mode of life, subject to a different personal law;

(c) the question whether a person subject to the personal law of a particular native community ceased or has ceased to be so subject.

[Am. Cap. A87.]

(2) In determining any question under subsection (1)—

(a) a Resident's Native Court shall in the determination of any question raised under subsection (1) must—

(i) take into consideration the public opinion of the native community which the person has become so identified or seeks to be identified;

(ii) take into account the views of the Government, to be expressed through the State Secretary, whether that is in the public interest and interest of the State, that person ought to be identified with any native community;

(iii) unless the native community which a person seeks to be identified with is an Islamic community, disregard the fact that the person was or is a Christian and that some modification of the system of personal law of such community is, was or may be required on that account;

(iv) such other relevant facts and circumstances pertaining to the person who has been allegedly identified or seeks to be identified with the native community concerned and the customs and traditions of that community;

[Sub. Cap. A87.]

(b) the testimony of responsible persons in the community, and the opinion of the assessors who are members of the community or of the Tuai Rumah assisting a Resident's Native Court shall be acceptable evidence as to the public opinion of such community; and

[Am. Cap. A87.]

(c) no person who is not a Muslim may be declared to have become identified with or to be subject to the personal law of a native Islamic community.

(3) The jurisdiction conferred by this section may be exercised—

(a) on the application of any person who is able to satisfy the Court that he has a pecuniary or other interest in the determination of any question which the Court is authorized to determine;

(b) on the application of a Probate Officer, if he satisfies the Court that the determination of the question submitted by him is necessary to the discharge of any duty vested in him by law; or

(c) upon the certificate of the State Attorney-General that the application is fit and proper for the determination of the Resident's Native Court under subsection (1).

[Sub. Cap. A87.]

(3A)(a) A copy of the application made under this section shall be served by the applicant on the State Attorney-General within 14 days from the date of filing thereof and a copy thereof shall be posted on the notice board of the Resident's Native Court at least 10 days before the hearing of the application.

(b) The State Attorney-General or a State Legal Officer authorized by him may appear at the hearing of the application.

(c) If the State Attorney-General desires to be heard he shall be deemed to be a party to the proceedings and shall have the same right of appeal as any other party to the application.

[Ins. Cap. A87.]

(4) Any decision of the Court shall be binding only on the parties to the proceedings and on persons whose interests are lawfully represented by such parties or who claim under such parties, but the Court shall have power to give such directions as to joinder of parties as it may think fit and also, if it deems it desirable or expedient, to order that the interests of persons having a common interest be represented by one of their number or by a person specially appointed by the Court to represent those interests.

[Am. Cap. A87.]

(5) Any decision of a Resident's Native Court under this section, including a decision under subsection (1)(a) or subsection (3) or any direction or order under subsection (4), shall be subject to appeal by an aggrieved party to the proceedings or by the State Attorney-General, as the case may be, and also to further investigation and appeal under section 15, in a like manner as if the Court were exercising jurisdiction under section 5, and the appellate or investigating court shall have the powers conferred by subsection (4).

[Am. Cap. A87.]

(6)(a) The Resident's Native Court shall, after the period for any appeal referred to in subsection (5) has lapsed and where no appeal has been lodged against the decision of the Court, notify the State Secretary in writing of its decision or finding.

(b) The State Secretary shall, upon being satisfied that the decision or finding was made in accordance with the provisions of this section, cause the name of the person whom the Resident's Native Court has determined to be identified with any particular native community or subject to the personal law of any such community to be gazetted as such.

(7) Until and unless publication of the fact that the person has been identified or subject to the personal law of any particular native community in the *Gazette*, the person shall not be so identified or subject as the case may be and shall not be deemed a native of Sarawak.

[Ins. Cap. A87.]

Judgment

21. A Native Court shall, after having recorded and considered the opinions of the assessors, give judgment but in so doing shall *not* be bound to conform to the opinions of the assessors or either of them:

Provided that the Court shall record its reasons for dissenting therefrom.

Enforcement of judgment on claim or dispute over land held under native customary rights

22.—(1) Where a Native Court has pronounced judgment relating to a dispute or claim to land held under native customary rights and such land has been confirmed by a Superintendent of Lands and Surveys in evidence before the Native Court or otherwise in writing to have been subject to *native* customary land or such rights have been created over Interior Area Land pursuant to a permit issued under section 8(3) of the former Land (Classification) Ordinance, 1948 [*Ord. No. 19/1948*] or section 10(3) of the Land Code [*Cap. 81 (1958 Ed.)*], and there has been no appeal against the judgment of the Native Court, a copy of the judgment shall be served by the party who obtained the judgment on the Director of Lands and Surveys.

(2) If the Director is aggrieved by the judgment or wishes to raise any objection against the judgment, he shall cause a Notice of Objection to be filed with the Native Court whose judgment is served upon him and to all other parties affected thereby giving his grounds of objection.

(3) The Native Court shall fix a date to hear the objection made by the Director and thereupon, affirm or vary the said judgment.

[Sub. Cap. A118.]

Contempt of Native Court

23.—(1) Any person subject to the jurisdiction of a Native Court who—

(a) intentionally omits to attend a Native Court at a place and time specified by such Court for his attendance;

(b) omits to produce or deliver up a document or *thing* on the lawful order of a Native Court;

(c) refuses to answer any question lawfully asked by a Native Court, or to sign any statement lawfully required by such Court;

(d) having the means to pay any compensation awarded against him, refuses or wilfully fails to make such payment after due notice;

(e) intentionally insults a Native Court or any member thereof; or

(f) intentionally interrupts the proceedings of a Native Court at any stage,

shall be guilty of contempt of court: Penalty, imprisonment for a term not exceeding twelve months or a fine not exceeding five thousand ringgit, or to both.

[Am. Cap. A87.]

(2) Proceedings for contempt of Native Courts shall be regulated by rules made under section 29.

(3) Any person who fails to do or abstains from doing any act or thing, including payment of money towards the maintenance of a wife or dependant, on the lawful order of a Native Court may, upon proof of such default, be ordered by the Court to pay a sum not exceeding ten ringgit for each day during which default is made, or to be imprisoned until he has remedied his default, but so that any such term of imprisonment shall not exceed six months.

(4) Nothing in this Ordinance shall confer on any Native Court, other than a court presided by a Magistrate, power to direct that any person be imprisoned but, if it appears to the Native Court after the conviction of the offender that, by reason of the character and antecedents of the offender or by reason of the nature and circumstances of the case, the offender should be imprisoned, the person presiding in such Court may, in lieu of dealing with the offender in any manner in which such Court has power to deal with the offender, commit him to a court presided over by a Magistrate for sentence.

(5) To secure the presence of the offender before a court presided by a Magistrate for sentencing pursuant to an Order made under subsection (4), the Native Court may order the offender to furnish a security as it deems reasonable and if the offender shall default in providing such security, the Native Court may order that he be temporarily detained in prison pending his appearance before a Magistrate.

Power to issue warrants and summonses

24. A Sarawak Administrative Officer, Chief, or any other person who exercises jurisdiction in a Native Court may—

(a) issue a warrant of arrest; and

(b) either verbally or in writing summon any party or any witness who may be required in any case:

Provided that—

(i) a warrant of arrest shall be endorsed by a Magistrate; and

(ii) if the person on whom a summons is to be served resides outside the jurisdiction of the Court, the summons shall be in writing and shall be endorsed by a Magistrate.

Substantial justice to be done without undue regard to technicalities

25. It is declared that no proceedings in a Native Court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal or revision solely by reason of any defect in procedure or want of form, but every court exercising powers of appeal or revision under this Ordinance shall decide all matters according to substantial justice without undue regard to technicalities or procedural irregularities.

Fees

26. Such fees as may be prescribed by rules made under section 29 shall be payable in respect of proceedings under this Ordinance.

Personal interest

27. No Sarawak Administrative Officer, Chief, Headman, assessor or any other person shall preside over or sit in a Native Court in any case in which he is a party, or in which he is personally interested or if he has been a member of the Native Court from which the appeal lies.

Cases excluded from the ordinary jurisdiction of a Native Court

28. Except as are provided in sections 5, 20 and 23, no Native Court shall have jurisdiction—

(a) in any proceedings in which a person is charged with an offence in consequence of which death is alleged to have occurred;

(b) to try an offence which is an offence under the Penal Code [*Act 574*];

(c) in any proceedings concerning marriage or divorce regulated by the Law Reform (Marriage and Divorce) Act 1976 [*Act 164*], unless it is a claim arising only in regard to bride-price or adultery and founded only on native law and custom;

(d) in any proceedings affecting the title to or any interest in land which is registered under the Land Code [*Cap. 81 (1958 Ed.)*];

(e) to try any case involving a breach of native law or custom if the maximum penalty which it is authorized to pass by virtue of section 11 is less severe than the minimum penalty prescribed for such offence;

(f) over cases arising from the breach of the Islamic Family Law Ordinance, 2001 [*Cap. 43*], and any rules or regulations made thereunder;

(g) in respect of any criminal or civil matter of the nature arising within the jurisdiction of any of the Syariah Courts as prescribed for such Courts under the provisions of the Syariah Courts Ordinance, 2001 [*Cap. 42*]; or

(h) in any proceedings taken under any written law in force in the State.

[Am. Cap. A87; Am. Cap. A118.]

Rules

29. The Yang di-Pertua Negeri may make rules generally for carrying out the provisions of this Ordinance and, in particular, such rules may provide for—

(a) amending the Schedule;

(b) the practice and procedure of Native Courts in their original jurisdiction;

- (c) the records to be kept by Native Courts;
- (d) the disposal and application of fines and fees received by Native Courts;
- (e) the composition of panels of assessors and selection from them for the constitution of any Native Court or class of case and the rates and scales of the expenses or compensation to be paid to assessors and witnesses;
- (f) the area of jurisdiction of a Native Court;
- (g) fees;
- (h) forms to be used;
- (i) regulating the procedure with regard to hearing of appeals from Native Courts and the hearing of applications for revision by the Native Court of Appeal under section 13(1)(e);
- (j) regulating the appearance of persons acting as representatives in any Native Court and in applications for appeals and revision in the Native Court of Appeal; or
- (k) prescribing anything which is required to be or may be prescribed hereunder.

[Am. Cap. A87.]

Pending proceedings

30. This Ordinance shall apply to all investigations, inquiries, trials, cases and other proceedings pending on the date of its coming into force in the same manner as it applies to investigations, inquiries, trials, cases and other proceedings commenced after its coming into force.

Existing laws

31. Any written law in force at the commencement of this Ordinance relating or referring to, or imposing powers or duties on, Native Courts shall, except in so far as it may be inconsistent with the provisions of this Ordinance or any order or rule made hereunder, remain in force and shall be deemed to relate or refer to, or impose powers or duties on, Native Courts established under this Ordinance, and shall be construed subject to such modifications as may be necessary to bring it into conformity with this Ordinance or any rules made hereunder.

Removal of difficulties

32. If any difficulty should arise in bringing into operation any of the provisions of this Ordinance, or in giving effect to the purposes thereof, the Yang di-Pertua Negeri may, by Order, make such provision as may seem to him necessary or expedient for the purpose of removing such difficulty and, by such Order may vary, annul or add to the provisions of this Ordinance:

Provided that no Order under this section shall be made after the expiration of two years from the commencement of this Ordinance.

Immunity of officers acting judicially for official acts

33.—(1) No person shall be liable to be sued in any court for any act done or ordered to be done by him in the exercise of jurisdiction conferred by this Ordinance, whether or not within the limits of his 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 Native Court or other persons bound to exercise or enforce any orders, judgments, decisions or warrants issued or made in the exercise or purported exercise of jurisdiction conferred by this Ordinance shall be liable to be sued in any court for the execution or enforcement of any such orders, judgments, decisions or warrants which he is bound to execute or to enforce, if the person issuing the same had been acting or purporting to act in the exercise of lawful authority.

(3) For the avoidance of doubts as to the privileges and immunities of Native Courts, parties, representatives, judges, presiding officers, assessors or witnesses in proceedings before such courts, it is hereby declared that such proceedings are judicial proceedings.

Proceedings to be in open court

33A. Unless otherwise directed by the Presiding Officer of a Native Court, all proceedings shall be heard in open court to which the public may have access.

[Ins. Cap. A87.]

Repeal

34. The Native Courts Ordinance [*Cap. 43 (1958 Ed.)*] is repealed.

SCHEDULE

(Sections 2 and 29)

CHIEFS AND HEADMEN

<i>Chiefs</i>	<i>Headmen</i>
Temenggong	Tua Kampung/Ketua Kaum
Pemanca	Tuai Rumah/Ketuai Kaum
Penghulu	

Ord. No. 9/92

NATIVE COURTS ORDINANCE, 1992

LIST OF AMENDMENTS

Amending Law	Short Title	In force from
Swk. L.N. 13/93	Date of Commencement Notification	1.6.1993
Cap. A87	Native Courts (Amendment) Ordinance, 2001	1.1.2002
Cap. A118	Native Courts (Amendment) Ordinance, 2005	1.7.2005

SARAWAK LAWYERS

Ord. No. 9/92

SARAWAK LAWNET



DICETAK OLEH PERCETAKAN NASIONAL MALAYSIA BERHAD, KUCHING, SARAWAK
BAGI PIHAK DAN DENGAN KUASA PERINTAH KERAJAAN SARAWAK