

TRADITIONAL COURTS ACT, 2022 (ACT NO. 9 OF 2022)

CODE OF CONDUCT FOR PERSONS IN THE FUNCTIONING OF TRADITIONAL COURTS

The Minister of Justice and Constitutional Development has, in terms of section 16(1) of the Traditional Courts Act, 2022 (Act No. 9 of 2022) and after consultation with the Minister of Cooperative Governance and Traditional Affairs and the National House of Traditional Leaders, compiled a code the code of conduct for all persons who have a role in terms of customary law for the effective functioning of traditional courts in the Schedule.

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1. Definitions

1. In this code of conduct, any word or expression to which a meaning has been assigned in the Act bears that meaning and, unless the context otherwise indicates—

“code of conduct” means this code of conduct compiled in terms of section 16(1) of the Act;

“Constitution” means the Constitution of the Republic of South Africa, 1996, and

“the Act” means the Traditional Courts Act, 2022 (Act No. 9 of 2022).

2. Introduction

- 2.1 The Act requires the Minister to compile a code of conduct for all persons who have a role in terms of customary law for the effective functioning of traditional courts, including persons who facilitate sessions of a traditional court on behalf of traditional leaders, clerks of traditional courts and interpreters. The Act provides that such a code of conduct must be submitted to Parliament for approval 60 days prior to publication thereof in the *Gazette*.
- 2.2 The code of conduct is critical in providing guidance regarding the relationship between traditional courts, the public and other relevant stakeholders in terms of customary law and improving adherence to the Constitution, the Act and other relevant legislation. The code of conduct seeks to also improve adherence to acceptable conduct in traditional courts in relation to customer relations, combating unacceptable behaviour and invoking consequence management for negligent breach of code of conduct and the Act.
- 2.3 The code of conduct is not exhaustive in regulating standards of conduct of persons responsible for the functioning of traditional courts. Other relevant legislation will be applicable in instances where persons conduct themselves contrary to the provisions of those pieces of legislation. The Minister may, at least once in every three years, review the code of conduct to the extent reasonably necessary in order to improve or adapt this code of conduct to evolving developments in customary law.
- 2.4 Adherence to the code of conduct will also improve access to the administration of justice by enhancing the effectiveness, efficiency and integrity of traditional courts with a view to promote social cohesion, co-existence, peace and harmony in line with the spirit of the Act.

3. Application

The code of conduct applies to persons who have a role in the effective functioning of traditional courts in terms of customary law.

4. Purpose

The purpose of the code of conduct is to—

- (a) give effect to section 16(1) of the Act;
- (b) ensure the provision of services to traditional courts in a professional and responsible manner;
- (c) ensure that traditional courts are functioning in an effective and efficient manner;
- (d) provide a framework for identifying conduct that is ethical and acceptable for persons who are responsible for the functioning of traditional courts.
- (e) record, enable and detect acceptable standards of behaviour in the functioning of traditional courts; and
- (f) generally improve stakeholders' relations in traditional courts.

5. Traditional leaders or designated presiding officers

5.1 General conduct of traditional leaders or designated presiding officer

A traditional leader or designated presiding officer, in carrying out the activities of the traditional court, must at all times—

- (a) adhere to the code of conduct contained in Schedule 1 of the Traditional Khoi-San Leadership Act, 2019 (Act No. 3 of 2019);
- (b) strive to achieve the stated purpose of conduct and the general standard set out in this code of conduct;
- (c) take any reasonable steps to detect or combat any circumstances that may result in the breach of this code of conduct;
- (d) execute their duties in a professional and competent manner;
- (e) not be engaged in any unlawful activity;
- (f) not be engaged in any activities that may create a conflict of interest;
- (g) take steps to better understand the functioning of traditional courts in terms of customary law;
- (h) undergo regular training to upskill themselves and improve their knowledge on presiding over matters before the traditional courts;
- (i) place at the centre of their position, the interests of the public;
- (j) behave in a manner consistent with this code of conduct that improves the reputation of traditional courts and customary law; and

- (k) desist from any conduct that brings or likely to bring the name of the traditional courts into disrepute.

5.2 Performance of duties

A traditional leader or designated presiding officer facilitating sessions of traditional court, must at all times—

- (a) uphold the independence and integrity of the traditional court;
- (b) act honourably and in a manner befitting of the administration of justice;
- (c) comply with the laws of the Republic;
- (d) avoid or dissociate themselves from comments or conduct that are racist, sexist or otherwise manifest discrimination in violation of the equality guaranteed by the Constitution;
- (e) act courteously and respect the dignity of other persons;
- (f) resolve disputes by making findings of fact in a fair manner;
- (g) perform all duties diligently and dispose matters promptly without undue delay, and in a manner that that does not manifest any bias or prejudice;
- (h) refrain from discussing any matter pending before a traditional court in public; and
- (h) recuse themselves from the matter if there is conflict of interest or if they are related to any party to the matter.

5.3 Attendance to matters

5.3.1 A traditional leader must preside over each session or proceedings of a traditional court, or ensure that a presiding officer is designated in terms of the Act.

5.3.2 A traditional leader may not delegate any postponed matter to a new presiding officer unless the matter is to start *de novo*.

5.4 Rewards, gifts and favours

5.4.1 A traditional leader or a designated presiding officer may not request, solicit or accept any reward, gift or favour from any member of the community who is part of the proceedings before the traditional court.

5.4.2 A traditional leader or designated presiding officer may not use their position for private gain or to improperly benefit from a member of the community.

5.5 Relationship with other traditional leaders or presiding officers

All traditional leaders or presiding officers must—

- (a) co-operate fully with other presiding officers;
- (b) be committed to the development and promotion of customary law;
- (c) use appropriate channels to air grievances or to make direct representations;
- (d) desist from engaging in any action that is in conflict or infringes on the performance of their respective roles and responsibilities;
- (e) accept the responsibility to and avail themselves for on-going training relating to the functioning of traditional courts; and
- (f) accept and perform all reasonable instructions by a person officially empowered or assigned to give such instructions, provided that such instructions are not contrary to any law.

5.6 Relationship with persons responsible for functioning of traditional courts

A traditional leader or designated presiding officers, in carrying out the activities of the traditional court, must at all times—

- (a) observe and respect the mandate of persons involved in the functioning of traditional courts; and
- (b) co-operate and support other persons in the performance of their functions in terms of the Act.

6. Persons responsible for the functioning of traditional courts

All Provincial Traditional Court Registrars, Clerks, Interns and Paralegals must—

- (a) adhere to the code of conduct contained Chapter 2 Part 1 of Public Service Regulations;
- (b) perform their functions in terms of the Act, Public Services Act, 1994 (Proclamation No. 103 of 1994) and other relevant legislation; and
- (c) perform their functions in a professional manner.

7. Breach of code of conduct

Any breach of a provision of the code of conduct must, in terms of section 16(5)(a) of the Act, be reported and dealt with in accordance with the procedure set out in regulation 16 of the Traditional Courts Regulations, 2024. An investigation for any

breach of the code of conduct must be conducted in accordance with the rules of natural justice provided for in section 16(5)(b) of the Act.