

# **African Court on Human and Peoples' Rights**



## **CODE OF CONDUCT FOR COUNSEL APPEARING BEFORE THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**



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# **AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

## **CODE OF CONDUCT FOR COUNSEL APPEARING BEFORE THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

**Arusha, July 2018**



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## **Introduction**

As legal practitioners, Counsel must maintain high standards of professional conduct. The role of Counsel in the administration of justice requires them to act honestly, fairly, skillfully, diligently and with a high level of integrity. Counsel has a duty to represent a client's interests, without acting dishonestly or by improperly prejudicing the administration of justice. To these ends, this Code serves to guide Counsel on the appropriate conduct towards the Court and their clients in the course of representation before the Court. The Code of Conduct for Counsel appearing before the African Court on Human and People Rights (the Code) complements the provisions of the Rules of Court and Practice Directions to which Counsel is also expected to adhere in the course of representation of Clients before the Court.

## **I. Preliminary Provisions**

### **Article 1 Terms and Definitions**

- (a) Bureau: the Bureau of the Court.
- (b) Client: a person who has engaged Counsel for the purposes of legal representation before the African Court on Human and Peoples' Rights.
- (c) Counsel: any legal professional representing a party, witness, amicus or intervener before the Court.

- (d) Code: the present Code of Conduct.
- (e) Court: the African Court on Human and Peoples' Rights.
- (f) Protocol: the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
- (g) Registrar: the Registrar of the Court.
- (h) Rules: the Rules of Court.
- (i) Witness: A person who gives or is due to give testimony before the Court as a result of being called by the parties or summoned by the Registrar as per Rule 46 of the Rules.

## **Article 2**

### **Object and Purpose**

The purpose of the Code is to provide for standards of conduct on the part of Counsel, which are appropriate in the interests of fair and proper administration of justice.

## **Article 3**

### **Scope of Application**

The Code applies to Counsel as defined in Article 1. (c) of the Code.

## **Article 4**

### **Conflicts**

If there is any inconsistency between the Code and any

other code which Counsel is bound to honor, the terms of the Code prevail in respect of Counsel's conduct before the Court.

## **II. General Obligations of Counsel**

### **Article 5**

#### **Principle of Non-Discrimination**

In the course of the proceedings before the Court, Counsel shall not in relation to any other person, discriminate directly or indirectly on the basis of race, ethnic group, color, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or any other status.

### **Article 6**

#### **Competence, Independence, Integrity**

In providing representation to a client, Counsel must:

- (a) Act with competence, dignity, skill, care, honesty and loyalty;
- (b) Exercise independent professional judgment and render open and honest advice;
- (c) Never be influenced by improper or dishonest behavior on the part of a client;
- (d) Preserve their own integrity and that of the legal profession as a whole; and,



(e) Never permit their independence, integrity and standards to be compromised by external pressures.

## **Article 7**

### **Professional Courtesy and Fairness**

Counsel shall act courteously and respectfully towards all persons with whom they have professional contact, including but not limited to Judges, other Counsel, Court staff, witnesses, victims and Clients.

## **III. Obligations of Counsel to the Client, Witnesses and Victims**

## **Article 8**

### **Scope of Representation**

1. Counsel must advise and represent their Client until the Client duly terminates Counsel's representation, or Counsel is otherwise withdrawn with the consent of the Court.

2. When representing a Client, Counsel must:

- (a) Abide by a Client's decisions concerning the objectives of representation if not inconsistent with Counsel's ethical duties; and
- (b) Consult the Client about the means by which to pursue those objectives.

## **Article 9**

### **Diligence**

Counsel must represent a Client diligently in order to protect the Client's best interests. Unless the representation is terminated, Counsel must carry through to conclusion all matters undertaken for a Client within the scope of his/her legal representation.

## **Article 10**

### **Communication with the Client**

Counsel must keep a Client informed about the status of a matter before the Court in which the Client is an interested party and must promptly comply with all reasonable requests for information.

## **Article 11**

### **Confidentiality**

1. Counsel shall respect the confidentiality of all information which has been entrusted to him/her in connection with his/her representation of a Client, even after Counsel has ceased to represent such a Client.
2. Whether or not the relationship of Counsel and Client continues, Counsel shall preserve the confidentiality of his/her Client's affairs and shall not:

(a) Reveal to any other person, information that has been entrusted to Counsel in confidence, provided that

he/she may reveal such information to his/her co-counsel/legal team; or

(b) Use such information to the Client's detriment or disadvantage.

3. Notwithstanding Article 11 of the Code, Counsel may reveal information which has been entrusted to him/her in confidence in the following circumstances:

(a) When the Client has been fully consulted and knowingly consents; or

(b) When the Client has voluntarily disclosed the content of the communication to a third party, who then gives evidence of that disclosure; or

(c) When essential to establish a defense to a criminal or disciplinary charge or civil claim formally instituted against Counsel; or

(d) To prevent an act which Counsel reasonably believes:

(i) Is, or may be, criminal within the territory in which it may occur; or

(ii) May result in death or substantial bodily harm to any person unless the information is disclosed.

## **Article 12**

### **Best Interests of the Client**

Counsel owes a duty of loyalty to his or her Client. Counsel must at all times act in the best interests of the Client and must put those interests before their own interests or those of other person.

## **Article 13**

### **Conflict of Interest**

1. In the course of representing a Client, Counsel must exercise all care to ensure that no conflict of interest arises, in particular, Counsel must not represent a Client with respect to a matter if:

- (a) Such representation will be or is likely to be adversely affected by representation of another Client;
- (b) Representation of another Client will be or is likely to be adversely affected by such representation;
- (c) The Counsel's professional judgment on behalf of the Client will be, or may reasonably be expected to be, adversely affected.

2. Where a conflict of interest does arise, Counsel must promptly and fully inform each potentially affected Client of the nature and extent of the conflict; and either:

- (a) Take all steps necessary to remove the conflict; or

(b) Obtain the full and informed consent of all potentially affected Clients to continue the representation, so long as Counsel is able to fulfill all other obligations under the Code.

**Article 14.**  
**Conduct towards Victims, Witnesses, Parties,**  
**Interveners, Amicus**

1. In dealing with victims, witnesses, parties, interveners and amicus, Counsel shall:

- (a) subject to the Rules, preserve confidentiality, and not disclose information which may jeopardize the privacy, safety and security of these individuals;
- (b) make reasonable efforts to minimize inconvenience to these individuals;
- (c) consider the views, legitimate interests and concerns of these individuals;
- (d) ensure that victims, witnesses, parties are informed of their rights and obligations, including the right to request information about the progress of their case.

2. Counsel shall not offer or give any monetary or other incentive to any person for the purpose of unduly encouraging or influencing the testimony of a witness. This condition shall not apply to the payment of fees to expert witnesses.

3. Counsel shall not coerce, threaten, intimidate, humiliate or harass a witness or his/her relatives or acquaintances.

4. Counsel shall not communicate or meet with a witness of the opposing party during his/her testimony, except with leave of Court.

### **Article.15.**

#### **Contact with the Media**

Counsel shall not publish or assist in the publication of any material concerning any current proceedings which is false or discloses any confidential information. Counsel shall not comment on any matter which is sub-judice in any case which he/she is involved.

## **IV. Conduct before the Court**

### **Article 16**

#### **Rules of Court**

Counsel must at all times comply with the Rules and such rulings as to conduct and procedure as may be applied by the Court in its proceedings. Counsel must at all times have due regard to the fair conduct of proceedings.

## **Article 17**

### **Duty towards the Court**

1. Counsel has an overriding duty to the Court to act with independence and in the interests of justice and must assist the Court in the administration of justice; to this end, Counsel must take all necessary steps to ensure that their actions do not bring proceedings before the Court into disrepute;
2. Counsel shall not deceive or knowingly or recklessly mislead the Court. In particular, Counsel must not knowingly:
  - (a) Make an incorrect statement of material fact to the Court; or
  - (b) Offer evidence which Counsel knows to be incorrect.
3. Counsel shall take all necessary steps to correct an erroneous statement made by Counsel or his/her team as soon as possible, after becoming aware that the statement was erroneous.

## **Article 18**

### **Contact with Judges**

Counsel shall not, unless permitted by the Rules, the Code or the Judges hearing the matter:

1. Make direct contact with a Judge concerning the proceedings in which Counsel is involved, except within

the proper context of the proceedings; or

2. submit to a Judge evidence, notes or documents concerning the proceedings in which Counsel is involved, except through the Registrar of the Court.

## **Article 19**

### **Integrity of the Evidence**

1. Counsel must at all times maintain the integrity of evidence, whether in written, oral or any other form, which is or may be submitted to the Court.

2. If Counsel's representation of a Client terminates for any reason, Counsel shall return evidence and other materials, which have come into his/her possession as a result of the said representation, to his/her former Client, to the latter's Counsel, or under seal to the Registrar for onward transmission to the said Client or Counsel, as appropriate.

## **V. Misconduct and Disciplinary Measures**

### **Article 20**

#### **Misconduct**

It is professional misconduct for Counsel, inter alia, to:

(a) Violate or attempt to violate the Code or to knowingly assist or induce another person to do so, or to do so through the acts of another person;



- (b) Commit a reprehensible act which reflects adversely on Counsel's honesty, trustworthiness or fitness as Counsel;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct which is prejudicial to the proper administration of justice before the Court; or
- (e) Attempt to influence an officer of the Court in an improper manner.

## **Article 21**

### **Reporting Misconduct**

1. If Counsel knows that another Counsel has breached the Code or has otherwise engaged in professional misconduct and that violation or conduct raises a substantial question as to the other Counsel's honesty, trustworthiness or fitness as Counsel; Counsel shall inform the Judge(s) of the Court before which Counsel is appearing.
2. The Registrar may also communicate any misconduct of Counsel to the professional body regulating the conduct of Counsel in his/her country of admission or; if a Professor and not otherwise admitted to the profession, to the governing body of his/her University.

## **Article 22**

### **Complaints**

1. Complaints regarding the misconduct of Counsel may be submitted to the Registrar by any person and such complaints shall be treated confidentially.
2. The complaint shall be in writing or, if the complainant is unable to do so, orally before the Registrar or a member of the Registry. The complaint shall identify the complainant and counsel against whom the complaint is made, and shall describe in detail the alleged misconduct. The Registrar has to put it in writing.
3. The complaint shall be submitted no later than 6 months after the alleged misconduct is brought to the attention of the complainant or 6 months after the complainant should have reasonably known about the existence of the alleged misconduct.
4. The Registrar shall send the complaint to the Counsel concerned and request him, within 20 days of receiving the complaint, to submit to the Registrar a response to the complaint, if the Registrar is of the opinion that the complaint is genuine and raises serious issues of breach of this Code.
5. The Registrar shall submit the complaint and Counsel's response to the Bureau for consideration, after which the Bureau may take the following actions:
  - (a) reject the complaint if it is manifestly vexatious,

misconceived or unfounded based on the information at its disposal;

(b) offer mediation to the complainant and Counsel, if appropriate;

(c) request the Registrar, if necessary, to designate an independent Counsel to investigate the alleged misconduct; or,

(d) direct the Registrar, if necessary, to convene a Disciplinary Panel;

(e) direct the Registrar, if necessary, to appoint a counsel to prosecute the complaint.

## **Article 23**

### **Disciplinary Panel**

There shall be a Disciplinary Panel to hear complaints referred to it by the Bureau and shall consist of three members including a chairperson appointed by the President. The Disciplinary Panel shall adopt decisions by majority vote.

## **Article 24**

### **Procedure of Disciplinary Panel**

(a) The hearing shall be held in private.

(b) During the hearing, the Disciplinary Panel may admit any evidence which is relevant or which has probative value, whether oral or written. The Disciplinary Panel shall give Counsel an opportunity to present his/her defense.

(c) The Disciplinary Panel may decide to dismiss the complaint based on the evidence submitted to it or find that Counsel committed the alleged misconduct. The decision shall be pronounced orally and issued in writing.

(d) Where the Disciplinary Panel dismisses the complaint, it shall order that Counsel be reinstated if Counsel has been temporarily suspended pursuant to Article 27 of the present Code.

(e) The Registrar shall provide copies of the decision to: Counsel, the complainant and the President.

(f) The standard of proof shall be 'proof beyond reasonable doubt'.

(g) The Disciplinary Panel shall make such orders for the preparation or conduct of hearing of the complaint as it deems appropriate.

## **Article 25**

### **Right of Counsel**

Counsel, subject to disciplinary proceedings, shall be entitled to:

1. Assistance by another Counsel;
2. Refuse to make any statement that may lead to self-incrimination;
3. Adequate time to prepare a defense;
4. Examine or have examined witnesses against him/her and to allow the examination of witnesses on

his/her behalf under the same conditions as witnesses against him/her.

## **Article 26.**

### **Records of Disciplinary Hearings**

The Registrar shall maintain all documents and records of any disciplinary proceedings conducted pursuant to the Code.

## **Article 27**

### **Sanctions**

Where the Disciplinary Panel finds that misconduct has been established against Counsel, it may impose one or more of the following sanctions:

- (a) Admonishment;
- (b) Public reprimand;
- (c) A fine;
- (d) Temporary refusal of audience before the Court;
- (e) Permanent refusal of audience before the Court;
- (f) In addition to or in lieu of the sanctions above, the Disciplinary Panel may also, with approval of the President, communicate any misconduct of Counsel to the professional body regulating the conduct of Counsel in his country of admission, or other relevant academic institutions.

## **Article 28.**

### **Enforcement**

Counsel must abide by and voluntarily submit to any enforcement and disciplinary procedures as may be established by the Court in accordance with the Code.

## **VI. Final Provisions**

### **Article 29**

#### **Amendment**

The Code may be amended by the Court as necessary.

### **Article 30**

#### **Entry into Force**

The present Code enters into force on the date of its adoption by the Court.