
GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 1257

29 December 2010

CODE OF CONDUCT FOR MEMBERS OF THE NATIONAL PROSECUTING AUTHORITY UNDER SECTION 22(6) OF THE NATIONAL PROSECUTING AUTHORITY ACT, 1998.

I, **Menzi Simelane**, National Director of Public Prosecutions, acting under section 22(6) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), and in consultation with the Minister for Justice and Constitutional Development and after consultation with the Deputy National Directors and Directors of Public Prosecutions, framed the attached code of conduct which shall be complied with by members of the National Prosecuting Authority with effect from 18 October 2010, which is published for general information.

**ADV MENZI SIMELANE
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

THE CODE OF CONDUCT FOR MEMBERS OF NATIONAL PROSECUTING AUTHORITY

PREAMBLE

Section 22(6)(a) of the *National Prosecuting Authority Act, 1998 (Act No. 32 of 1998)* (hereinafter referred to as 'the Act'), provides for a Code of Conduct to be framed by the National Director of Public Prosecutions, which should be complied with by all members of the Prosecuting Authority.

In framing this Code, the Minister, Deputy National Directors of Public Prosecutions and Directors of Public Prosecutions were consulted as prescribed by the Act. Due account was taken, *inter alia*, of the values and principles enshrined in the *Constitution of the Republic of South Africa, 1996* ("the Constitution"), the aims to be achieved as set out in the Act, the "*United Nations Guidelines on the Role of Prosecutors*" as well as the "*Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*" developed by the International Association of Prosecutors as tabled at the 17th session of the UN Commission on Crime Prevention and Criminal Justice.

This Code acknowledges the crucial role of prosecutors in the administration of criminal justice. It emphasises the essential need for prosecutions to be fair and effective and for prosecutors to act without fear, favour or prejudice.

Furthermore, it serves to inform the public of what is expected of prosecutors and is aimed at ensuring public confidence in the integrity of the criminal justice process.

Above all, this Code requires all prosecutors to respect human dignity and human rights, and to perform their professional duties with full recognition of the supremacy of the Constitution and the rule of law.

CODE OF CONDUCT

A. PROFESSIONAL CONDUCT

Prosecutors must—

- (a) be individuals of integrity whose conduct is objective, honest and sincere;
- (b) respect, protect and uphold justice, human dignity and fundamental rights as entrenched in the Constitution;
- (c) protect the public interest;
- (d) strive to be and to be seen to be consistent, independent and impartial;
- (e) conduct themselves professionally, with courtesy and respect to all and in accordance with the law and the recognised standards and ethics of their profession;
- (f) strive to be well-informed and to keep abreast of relevant legal developments; and
- (g) at all times maintain the honour and dignity of their profession and dress and act in a manner befitting their status and upholding the decorum of the court.

B. INDEPENDENCE

The prosecutorial discretion to institute and to stop criminal proceedings should be exercised independently, in accordance with the Prosecution Policy and the Policy Directives, and be free from political, public and judicial interference.

C. IMPARTIALITY

Prosecutors should perform their duties without fear, favour or prejudice. In particular, they should—

- (a) carry out their functions impartially and not become personally, as opposed to professionally, involved in any matter;
- (b) avoid taking decisions or involving themselves in matters where a conflict of interest exists or might possibly exist;
- (c) take into consideration the public interest as distinct from media or partisan interests and concerns, however vociferously these may be presented;
- (d) avoid participation in political or other activities which may prejudice or be perceived to prejudice their independence and impartiality;
- (e) not seek or receive gifts, donations, favours or sponsorships that may compromise, or may be perceived to compromise, their professional integrity;
- (f) act with objectivity and pay due attention to the constitutional right to equality;
- (g) take into account all relevant circumstances and ensure that reasonable enquiries are made about evidence, irrespective of whether these enquiries are to the advantage or disadvantage of the alleged offender;
- (h) be sensitive to the needs of victims and do justice between the victim, the accused and the community, according to the law and the dictates of fairness and equity; and
- (i) assist the court to arrive at a just verdict and, in the event of a conviction, an appropriate sentence based on the evidence presented.

D. ROLE IN ADMINISTRATION OF JUSTICE

1. Prosecutors should perform their duties fairly, consistently and expeditiously and—
 - (a) perform their duties fearlessly and vigorously in accordance with the highest standards of the legal profession;
 - (b) where legally authorised to participate or assist in the investigation of crime, they should do so objectively, impartially and professionally, also insisting that the investigating agencies respect legal precepts and fundamental human rights;
 - (c) give due consideration to declining to prosecute, discontinuing criminal proceedings conditionally or unconditionally or diverting criminal cases from the formal justice system, particularly those involving young persons, with due respect for the rights of suspects and victims, where such action is appropriate;
 - (d) in the institution of criminal proceedings, proceed when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and not continue a prosecution in the absence of such evidence; and
 - (e) throughout the course of the proceedings the case should be firmly but fairly and objectively prosecuted.

2. Prosecutors should, furthermore—
 - (a) preserve professional confidentiality;
 - (b) refrain from making inappropriate media statements and other public communications or comments about criminal cases which are still pending or cases in which the time for appeal has not expired;
 - (c) consider the views, legitimate interests and possible concerns of victims and witnesses when their personal interests are, or might be, affected, and endeavour to ensure that victims and witnesses are informed of their rights, especially with reference to the possibility, if any, of victim compensation and witness protection;
 - (d) if requested by interested parties, supply reasons for the exercise of prosecutorial discretion, unless the individual rights of persons such as victims, witnesses or accused persons might be prejudiced, or where it might not be in the public interest to do so;
 - (e) in the case of child victims and child witnesses, always ensure that their best interests are taken into account;
 - (f) safeguard the rights of accused persons, in line with the law and applicable international instruments as required in a fair trial;
 - (g) as soon as is reasonably possible, disclose to the accused person relevant prejudicial and beneficial information, in accordance with the law or the requirements of a fair trial;
 - (h) examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained;
 - (i) refuse to use evidence which is reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the accused person's human rights and particularly methods which constitute torture or cruel treatment;

- (j) take the necessary steps to ensure that suitable action be taken against those responsible for using illegal methods in obtaining such evidence;
- (k) save in exceptional circumstances, not discuss pending cases with the presiding officer, in the absence or without the consent or knowledge, of the defence; and
- (l) if during the preparation for a trial or the conducting of criminal proceedings or functions incidental thereto, a prosecutor is of the opinion that information has been disclosed of the commission of an offence which has not been investigated or prosecuted, he or she must without delay in writing inform and disclose to the South African Police the particulars thereof.

E. CO-OPERATION

In order to ensure the fairness and effectiveness of the prosecution process, prosecutors should—

- (a) co-operate with the police, the courts, the legal profession, defence counsel, and any relevant government agencies, whether national or international;
- (b) in their professional dealings, at all times conduct themselves in a dignified manner commensurate with their position; and
- (c) render assistance to the prosecution services and colleagues of other jurisdictions in accordance with the law and in a spirit of mutual co-operation.

F. ENFORCEMENT

1. All prosecutors should respect and comply with the terms of this Code and report any instances of unprofessional conduct by colleagues (and also, as the case may be, other court officials) to the relevant supervising authority who should consider the appropriate steps to be taken, and do so.
2. In the event of transgressions, appropriate disciplinary steps may be taken in terms of the Public Service Regulations and NPA Act No 32 of 1998.

Notes to Code of Conduct

1. Deputy Directors of Public Prosecutions and prosecutors, being civil servants, are also expected to comply with the Code of Conduct for the Public Service.
 2. References in this Code to prosecutors include members of the National Prosecuting Authority as defined in the Act and every person acting under a temporary delegation to prosecute, unless the context indicates otherwise.
 3. A copy of this Code should be handed to all prosecutors at the time of their taking the oath or making an affirmation as prescribed in section 32(2) of the Act or as soon as possible thereafter, and signed for to denote acceptance thereof.
 4. This Code is a public document which will be published in the Government Gazette. Changes may become necessary from time to time and will be similarly gazetted. The Code is available from offices of the National Prosecuting Authority.
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