

**CHIEFS' COURTS ACT (TRANSKEI)
NO. 6 OF 1983**

[ASSENTED TO 11 JULY, 1983]

[DATE OF COMMENCEMENT TO BE PROCLAIMED]

(Xhosa and English text signed by the President)

as amended by

Chiefs' Courts Amendment Act, No. 3 of 1984
[Act missing.]

Chiefs' Courts Further Amendment Act, No. 16 of 1984

GENERAL NOTE

In terms of Proclamation No. 111 of 17 June, 1994, the administration of Act No. 6 of 1983 has been assigned to this Province.

ACT

To provide for the conferment of civil and criminal jurisdiction upon any chief, to repeal certain laws and to provide for other related matters.

ARRANGEMENT OF SECTIONS

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1. Definitions.—In this Act, unless the context otherwise indicates—

“**appeal court**” means a regional authority court or magistrate’s court having jurisdiction to hear appeals lodged in terms of this Act;

“**chief**” means a chief as defined in section 1 of the Transkei Authorities Act, 1965 and includes a headman or deputy of a chief authorized in terms of this Act or any other law in force prior to the commencement of this Act, to hear and determine civil claims and try certain criminal cases;

“**head**” means the head of a regional authority referred to in section 2 (2) of the Regional Authority Courts Act, 1982;

“**marriage**” means a customary marriage and a civil marriage;

“**Minister**” means the Minister of Justice

“**regional authority court**” means a regional authority court established in terms of section 2 (1) of the Regional Authority Courts Act, 1982;

“**regulation**” means a regulation made by the Minister in terms of section 12 of this Act;

“tribal authority” means a tribal authority constituted in terms of section 3 of the Transkei Authorities Act, 1965.

2. Powers of chiefs to hear civil and criminal cases.—(1) The Minister may by writing under his hand confer

- (a) (i) upon any chief or headman who is the head of a tribal authority jurisdiction to hear and determine civil claims arising out of traditional law and custom brought before him and which involve parties who are subject to such traditional law and custom and in which the defendant is resident within the area of jurisdiction of the tribal authority concerned; and
- (ii) upon any such chief or headman, jurisdiction to try and punish any person who is subject to traditional law and custom who has committed, within the area of jurisdiction of the tribal authority concerned—
 - (aa) any offence at common law or under traditional law and custom other than an offence referred to in the Schedule to this Act; and
 - (bb) any statutory offence (other than an offence referred to in the Schedule to this Act) specified by the Minister;
- (b) at the request of any chief on whom jurisdiction has been conferred in terms of paragraph (a), upon any deputy of such chief, jurisdiction—
 - (aa) to hear and determine civil claims arising out of traditional law and custom brought before him by a person who is subject to traditional law and custom and in which the defendant is resident within the area of jurisdiction of the tribal authority concerned; and
 - (bb) to try and punish any person who is subject to traditional law and custom who has committed, in the area of the tribal authority concerned, any offence which may be tried by such chief:

Provided that a paramount chief or his duly appointed deputy may at any time and within his own area of jurisdiction exercise any of the powers which may be exercised by a chief in terms of paragraph (a) (i) and (ii) of this subsection within the area of jurisdiction of such chief.

- (2) No chief shall preside over any matter in which he is pecuniarily or personally interested.

3. Limitation of civil and criminal jurisdiction.—(1) A chief shall not under this Act or any other law have power to determine any question of nullity, divorce or separation arising out of a marriage.

(2) If any offence has been committed by two or more persons any of whom is not subject to traditional law and custom, or in relation to a person who is not subject to traditional law and custom or property belonging to any person who is not subject to traditional law and custom, other than property, movable or immovable, belonging to the Government of Transkei, or held in trust for a Transkeian tribe or a community or aggregation of Transkeian citizens or a Transkeian citizen, such offence may not be tried by a chief.

(3) In the exercise of the jurisdiction conferred on him in terms of this Act a chief may not inflict any punishment involving death, mutilation, grievous bodily harm or imprisonment or impose a fine in excess of—

- (a) four head of large stock with an alternative fine calculated at a rate not exceeding one hundred rand per head; or
- (b) twenty head of small stock with an alternative fine calculated at a rate not exceeding twenty rand per head; or
- (c) four hundred rand.

4. Civil procedure.—(1) The procedure in connection with the trial of civil claims shall, save in so far as the Minister may prescribe by regulation, be in accordance with traditional law and custom.

- (2) A judgment given by a chief shall be executed in accordance with the procedure prescribed by regulation.

(3) Any party to a suit in which a chief has given judgment may appeal therefrom to an appeal court which would otherwise have had jurisdiction to hear the matter in the first instance and if the appellant has noted his appeal in the manner and within the period prescribed by regulation or the rules referred to in section 6 (a), the execution of the judgment shall be suspended

- (a) until the appeal has been decided if it was prosecuted at the time and in the manner prescribed; or
- (b) until the expiration of the said period for noting an appeal if it was not prosecuted at the time and in the manner prescribed; or
- (c) until the appeal has been withdrawn or has lapsed:

Provided that no such appeal shall lie in any case where the claim or the value of the matter in dispute is less than twenty-five rand unless the magistrate or head, as the case may be, of the appeal court to which the appellant proposes to appeal has certified after summary enquiry that the issue involves an important principle of law.

(4) The appeal court may confirm, alter or set aside the judgment after hearing such evidence as may be tendered by the parties to the dispute, or may be deemed desirable by the court.

5. Criminal procedure.—(1) The procedure at any criminal trial by a chief, the punishment, the manner of execution of any sentence imposed shall, save in so far as the Minister may prescribe by regulation, be in accordance with traditional law and custom.

(2) (a) If a chief fails to recover from a person any fine imposed upon him or any portion of such fine, he may arrest such person or cause him to be arrested by his messengers, and shall within forty-eight hours after his arrest bring or cause him to be brought before the magistrate or head of the regional authority in whose area of jurisdiction the trial took place.

(b) A magistrate or head before whom any person is brought in terms of paragraph (a) may, upon being satisfied that the fine was duly and lawfully imposed and is still unpaid either wholly or in part, order such person to pay the fine or the unpaid portion thereof forthwith and if such person fails to comply forthwith with such order, sentence him to imprisonment for a period not exceeding three months.

(c) The magistrate or head shall issue in respect of any person sentenced to imprisonment in terms of this subsection a warrant for his detention in a prison.

(3) Any person who has been convicted by a chief may in the manner and within the period prescribed by regulation or the rules referred to in section 6 (a), appeal against his conviction and against any sentence which may have been imposed upon him, to the appeal court in whose area of jurisdiction the trial in question took place.

(4) In hearing any appeal in terms of subsection (3) the appeal court shall hear and record such available evidence as may be relevant to any question in issue and shall thereupon either—

(a) confirm or vary the conviction and—

(i) confirm the sentence imposed by the chief and order that the said sentence be satisfied forthwith; or

(ii) set aside the sentence imposed by the chief and in lieu thereof impose such other sentence as in its opinion the chief ought to have imposed; and

(iii) impose a sentence of imprisonment for a period not exceeding three months on default of compliance forthwith with the order or sentence made or imposed under subparagraph (i) or (ii); or

(iv) set aside the sentence imposed by the chief and in lieu thereof impose a sentence of imprisonment for a period not exceeding three months without the option of a fine; or

(b) uphold the appeal and set aside the conviction and sentence.

(5) The provisions of paragraph (c) of subsection (2) shall *mutatis mutandis* apply in respect of any person who has been sentenced to imprisonment under subparagraph (iii) of paragraph (a) of subsection (4) and who has failed to comply forthwith with the order or sentence made against or imposed upon him under subparagraph (i) or (ii) of paragraph (a) of the said subsection and in respect of any person who has been sentenced to imprisonment under subparagraph (iv) of paragraph (a) of the said subsection.

6. Rules and regulations governing appeals.—An appeal from a judgment of a chief shall—

(a) in the case of an appeal to a regional authority court, be lodged in accordance with rules made in terms of section 12 of the Regional Authority Courts Act, 1982; and

(b) in the case of an appeal to a magistrate's court, be lodged in accordance with the regulations.

7. Fees of office and fines.—All fines and fees collected through the exercise of a chief's jurisdiction in terms of this Act shall be paid into the account of the tribal authority concerned.

8. Revocation of jurisdictions.—The Minister may at any time revoke the civil or criminal jurisdiction conferred upon a chief under the provisions of this Act or any other law in force prior to the commencement of this Act.

9. Choice of forum.—In the prosecution of an appeal under the provisions of sections 4 (3) and 5 (3) of this

Act it shall be within the prerogative of the appellant to appeal either to the regional authority court or to the magistrate's court having jurisdiction, and any appeal therefrom shall lie to the Supreme Court of Transkei.

10. Representation.—No party to proceedings presided over by a chief may be legally represented and no legal practitioner shall have the right of audience or may be present in the capacity of a legal representative during any proceedings before such chief.

11. Offences and penalties.—(1) Any person who—

- (a) wilfully insults a chief or other member of his court during a sitting of the court or who wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where the court is held; or
- (b) having been personally warned to attend a sitting of the chief's court, wilfully and without good cause, fails so to attend; or
- (c) obstructs a messenger of a chief in the execution of his duty; or
- (d) being a judgment debtor and whether or not the judgment in question is the subject of an appeal, makes or allows a disposition of his property with the intention of avoiding execution in satisfaction of the judgment debt, the onus of disproving such intention being on him,

shall be guilty of an offence.

(2) Any person convicted of an offence under—

- (a) subsection (1) (a) and (b), shall be liable to a fine not exceeding one hundred rand or, in default of payment, to imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine;
- (b) subsection (1) (c) and (d), shall be liable to a fine not exceeding one hundred rand or, in default of payment, to imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine;

(3) Any person committing any of the acts mentioned in subsection (1) (a) may, on the order of the chief be removed from the place where the court is being held and, if necessary, detained in custody until the rising of the court.

12. Regulations.—The Minister may make regulations—

- (a) in regard to all matters which by this Act are required or permitted to be prescribed by regulation;
- (b) prescribing the procedure to be followed in any action taken under this Act; and
- (c) generally with regard to any matter which he considers is necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

13. Repeal of laws and savings.—(1) Sections 12 and 20 of the Bantu Administration Act, 1927 (Act 38 of 1927), the Administration Amendment Act, 1976 (Act 25 of 1976) and section 13 of the Regional Authority Courts Act, 1982 (Act 13 of 1982), are hereby repealed.

(2) Any jurisdiction conferred upon a chief under any law repealed by this Act and which at the date of commencement of this Act has not been revoked under any such law shall be deemed to have been conferred under and subject to the provisions of this Act.

(3) Any determination made in terms of section 20 (1) (a) (ii) of the Bantu Administration Act, 1927 as to statutory offences justifiable by a chief shall be deemed to have been made under the corresponding provision of this Act.

14. Short title and date of commencement.—This Act shall be called the Chiefs' Courts Act, 1983, and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

SCHEDULE

[Schedule inserted by s. 1 of Act 3 of 1984 – Act missing. Amended by s. 1 of Act 16 of 1984]
