



**CONSTITUTION OF THE  
CONSTITUTIONAL TRIBUNAL OF  
THE UNIVERSITY OF PRETORIA**

**April 2014**

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## **Preamble**

### **We, the judges of the Constitutional Tribunal:**

Undertake to facilitate the development of a student culture committed to justice, equity, transparency and accountability;

Commit ourselves to the protection and promotion of a student society based on human dignity, equality and freedom;

Dedicate ourselves to the diligent fulfilment of the duties placed upon us in terms of this Constitution and the Constitution for Student Governance without fear, favour or prejudice;

It is our strongest conviction to see justice realised. Fiat iustitia!

## 1. Definitions and Interpretation

(1) In this Constitution, unless the context indicates differently:

(a) **Bill of Student Rights** means the Bill of Student Rights as contained in Chapter 2 of the Constitution for Student Governance;

(b) **Constitution for Student Governance** means the University of Pretoria Constitution for Student Governance 2013, as adopted and amended by the Council of the University from time to time;

(c) **Executive Committee** means the Executive Committee of the Constitutional

Tribunal as constituted in terms of section 4 below;

(d) **Judicial Services Commission**

means the Judicial Services Commission as constituted in terms of section 6 below;

(e) **Management** means the

management of the University and includes, but is not limited to, the Senate, Council, Principal, Vice-Principal, Registrar and Director of Student Affairs;

(f) **Service Provider** means a service

provider in terms of Chapter 6 of the Constitution for Student Governance;

(g) **Student Representative Council /**

**SRC** means the Student Representative

Council as constituted in terms of Chapter 3 of the Constitution for Student Governance;

(h) **The University** means the University of Pretoria as established in terms of the Statute of the University of Pretoria as amended from time to time.

(2) The section headings used in this Constitution are for structural purposes only and are not to be used in the proper interpretation of this Constitution.

(3) Words in the plural refer to the singular and *vice versa*, and reference to any one gender includes the other, both unless the context indicates differently.

## **2. Founding Provisions**

- (1) A Constitutional Tribunal for the University of Pretoria is established in terms of Chapter 4 of the Constitution for Student Governance.
- (2) The Constitutional Tribunal has the jurisdiction and functions given to it in terms of the Constitution for Student Governance and in terms of this Constitution.
- (3) The Constitutional Tribunal is an independent and impartial body. All other University structures must ensure that the independence of the Tribunal is maintained, and that it is not impeded from fulfilling its functions.

(4) The Constitutional Tribunal is subject only to:

- (a) The Constitution of the Republic of South Africa;
- (b) The Constitution for Student Governance (including the Bill of Student Rights) ;
- (c) This Constitution; and
- (d) The general law of South Africa.

### **3. Composition of the Constitutional Tribunal**

- (1) The Constitutional Tribunal is made up of:
- (a) The Chief Justice;
  - (b) The Deputy Chief Justice;
  - (c) The Registrar; and



- (d) Between 9 (nine) and 13 (thirteen) other judges.
- (2) As far as possible, the Chief Justice and Deputy Chief Justice should be appointed from the ranks of judges who have previously served a term on the Constitutional Tribunal.
- (3) At the start of its annual term, the Constitutional Tribunal may choose to elect a Guardian. The process for this appointment and the functions of the Guardian are dealt with elsewhere in this Constitution.

#### **4. Executive Committee**

- (1) The Constitutional Tribunal has an Executive Committee. It consists of the:

- (a) Chief Justice;
  - (b) Deputy Chief Justice; and
  - (c) Registrar.
- (2) The Executive Committee is responsible for the day-to-day management of the Constitutional Tribunal.
- (3) The Executive Committee has the following powers, functions and duties:
  - (a) To facilitate communication between the Constitutional Tribunal and any other University Structure, including but not limited to the SRC and University Management;
  - (b) To fulfil any task assigned to the Executive Committee, or any member of

the Committee, in terms of the Constitution  
for Student Governance;

(c) Any other power, function or duty  
assigned to the Executive Committee in  
terms of this Constitution.

(4) In the event that for any reason a member  
of the Executive Committee is absent or  
unable to fulfil their functions, the remaining  
members may co-opt an ordinary member of  
the Constitutional Tribunal to the Executive  
Committee for the duration of the absence or  
inability.

## **5. Term of Office**

- (1) All judges of the Constitutional Tribunal are appointed for a 1 (one) year term which runs from 1 January to 31 December.
- (2) The term of office of Constitutional Tribunal judges is independent of the term of office of any other student structure and is in no way affected by the dissolution or restructuring of any other structure.
- (3) The Chief Justice must, by the last day of September each year, request that the SRC member responsible for the Constitutional Tribunal convene the Judicial Services Commission, as described elsewhere in this

Constitution, to appoint the members of the Constitutional Tribunal for the following year.

(4) Together with the Chief Justice's request in terms of subsection 3 above, the Chief Justice must include:

(a) the names of 3 (three) Constitutional Tribunal judges, who are not reapplying to serve on the Constitutional Tribunal, appointed to serve on the Judicial Services Commission;

(b) a recommendation of 2 (two) lecturers of the Law Faculty to serve on the Judicial Services Commission; and

- (c) a recommendation as to the number of judges to be appointed for the next term of the Constitutional Tribunal.

## **6. Judicial Services Commission**

- (1) After receiving the Chief Justice's request in terms of section 5(3) above, the SRC member responsible for the Constitutional Tribunal must constitute the Judicial Services Commission.
- (2) The Judicial Services Commission is made up of:
  - (a) 3 (three) Constitutional Tribunal judges appointed by the Chief Justice in terms of section 5(4) above;

- (b) 2 (two) lecturers of the Law Faculty;
  - (c) the Constitutional Tribunal guardian if one was so appointed; and
  - (d) the SRC member responsible for the Constitutional Tribunal.
- (3) The Judicial Services Commission is chaired by the SRC member responsible for the Constitutional Tribunal.
- (4) The Chairperson may delegate any and all of his duties to another member or members of the Judicial Services Commission provided that this delegation is made in writing and is accepted in writing by each member so delegated to.

(5) In any decision taken by the Judicial Services Commission, at least 5 (five) members of the Commission must be present for it to be binding. The same quorum must be present at every interview of applicants. These five members must be made up as follows:

(a) the Chairperson of the Judicial Services Commission;

(b) 2 (two) judges of the Constitutional Tribunal; and

(c) 1 (one) lecturer of the Law Faculty.

(6) Decisions of the Judicial Services Commission are taken by a simple majority vote. In the event of a tie, the Chairperson of



the Judicial Services Commission has a casting vote if necessary.

- (7) In the event that the member of the SRC responsible for the Constitutional Tribunal is unable or unwilling to exercise his/her functions, the Chief Justice of the Constitutional Tribunal may request the Chairperson of the SRC to seek the approval of the SRC for the Chairperson of the SRC to chair the Judicial Services Commission.
- (8) The Judicial Services Commission must follow the procedure set out in section 7 below.

## **7. Appointment Procedure**

- (1) The Chairperson of the Judicial Services Commission must, after receiving the Chief Justice's request in terms of section 5(3) above, organise a meeting of the Judicial Services Commission for the Commission to decide on the necessary administrative arrangements to facilitate implementation of the procedure set below.
- (2) The Chairperson is responsible for:
  - (a) Sufficient and comprehensive advertising of the vacancies on the Constitutional Tribunal, including:
    - (i) the requirements for application;

- (ii) that all applications must include a comprehensive curriculum vitae, a letter of motivation and a full academic record;
  - (iii) that the vacancies must be advertised for a period of two weeks not falling over a recess period;
- (b) collection of the applications;
- (c) organising a meeting of the Judicial Services Commission at which all applications are considered and a short-list is compiled;
- (d) contacting all short-listed candidates telephonically with the details of their interviews;

- (e) organising an inauguration;
- (f) contacting successful applicants as soon as possible with the details of their inauguration;
- (g) informing unsuccessful applicants as soon as possible that their application has been unsuccessful;
- (h) keeping full minutes of all meetings of the Judicial Services Commission.

(3) As far as possible, all members of the Judicial Services Commission must attend all interviews.

- (a) If this is not possible, the absent member may not be replaced.

(b) A member of the Commission who is absent for an interview may not vote for the applicant whose interview he/she failed to attend.

(4) During interviews, members of the Judicial Services Commission may ask the applicant any question, provided that it relates to their competence to serve on the bench of the Constitutional Tribunal.

(5) After the interviews, the Judicial Services Commission must appoint the number of applicants required to fill the vacancies on the Tribunal.

(a) After the interviews but before voting for each candidate, the Judicial Services

Commission must decide on how many judges will be appointed to the Constitutional Tribunal in accordance with paragraph 3(1)(d). This decision may be amended at any time during the deliberation process.

- (b) The Judicial Services Commission may opt to ignore the minimum number of judges contained in paragraph 3(1)(d), provided that:
  - (i) There are not enough candidates to fill the positions available; or
  - (ii) There may or may not be enough candidates to fill the positions available but by adhering the minimum

the Judicial Services Commission  
would be forced to appoint candidates  
who they believe are not competent to  
serve on the Tribunal.

- (c) A maximum of three LL.M students  
may be appointed to the Tribunal, unless  
there are not enough LL.B students to fill  
the minimum number of positions, in which  
case as many LL.M students as is  
necessary may be appointed, provided  
that all the available LL.B candidates,  
subject to (5)(b)(ii) above, are appointed.
- (d) An applicant may not be considered  
for a specific executive position if the

applicant has already served in that position for two terms.

- (e) Each member of the Judicial Services Commission has an equal number of votes to the number of positions to be filled, and votes for the candidates that he/she wishes to be appointed. The applicants are then ranked according to the number of votes and the applicants with the highest number of votes are appointed, until all vacancies are filled. In the event of a tie, a vote shall take place only on those candidates tied, with each member of the Judicial Services Commission voting once only. In the event of such procedure failing



to resolve the tie, the Judicial Services Commission may create its own procedure.

- (f) Voting must take place after all interviews have been concluded.
- (g) The members of the Executive Committee are appointed after the full bench has been constituted. Each member of the Commission votes for his/her choice of Chief Justice, Deputy Chief Justice and Registrar. The judges with the highest number of votes are appointed to the relevant office.
- (h) Voting must be accompanied by a discussion of the relevant applicants.

- (6) All proceedings of the Judicial Services Commission are strictly confidential.
- (7) Applicants appointed to the Constitutional Tribunal must take an oath or solemn declaration before the Judicial Services Commission at the inauguration. The relevant oath and solemn declaration are set out in Schedule A to this Constitution.

## **8. Requirements to be eligible for appointment**

- (1) In order to be eligible to be appointed to the bench of the Constitutional Tribunal, the applicant must:
- (a) satisfy the following academic requirements:

- (i) in the year for which he/she wishes to be appointed, register for the LL.B or LL.M degree;
- (ii) in the case of where an applicant is studying an LL.B in the year for which he/she wishes to be appointed, be in their ultimate or penultimate year of study;
- (iii) if the applicant is, at time of application, registered for the LL.B or LL.M degree, have an academic average of no less than 65% for the previous year of study;
- (iv) if the application is, at time of application, registered for either a BA

(Law) or BCom (Law) degree, have an academic average of no less than 65% for all law subjects taken as part of that degree;

(v) not have failed more than 2 (two) subjects in the degree course for which the applicant is currently registered;

(b) not have served more than 2 (two) previous term on the Constitutional Tribunal;

(c) not have been found guilty of any charge by the Committee for Discipline (Students); and

(d) be a fit and proper person to hold office.

(2) If the applicant previously served on the SRC, at least 1 (one) calendar year must pass between the end of the applicant's term of office on the SRC, and the start of the term of the Constitutional Tribunal for which the applicant seeks appointment.

(3) The applicant may not concurrently serve a term on the Student Disciplinary Advisory Panel and the Constitutional Tribunal.

(4) For the purposes of section 8(1)(iv) above, "law subject" means a subject offered by the Faculty of Law and is part of the curriculum for the LL.B degree.

## **9. Jurisdiction and Powers of the Constitutional Tribunal**

(1) The Constitutional Tribunal has the following jurisdiction:

(a) Jurisdiction in terms of section 35 of the Constitution for Student Governance, namely:

(i) To align any constitution of a student governance structure with the Constitution for Student Governance;

(ii) To give a non-binding advisory interpretation of the Bill of Student Rights, the Constitution for Student Governance and any other constitution adopted in terms of the

Constitution for Student Governance.

Such advisory opinion is

communicated to the person or

structure, as the case may be, that

has requested the opinion as well as

to the Director: Student Affairs, Deputy

Director: Student Affairs and the

President of the SRC;

(iii) To adjudicate any dispute arising from

the Constitution for Student

Governance, including a dispute

pertaining to the exercising of

authority, the taking of a decision, or

the execution of functions by any

student governance structure carried

out in terms of the Constitution for  
Student Governance or a constitution  
adopted in terms of the Constitution  
for Student Governance; and

(iv) To investigate an alleged breach of  
the Code of Conduct for all student  
governance structures as described in  
section 27; and

(b) Special jurisdiction, namely:

(i) To mediate disputes arising from the  
Constitution for Student Governance,  
including a dispute pertaining to the  
exercising of authority, the taking of a  
decision, or the execution of functions  
by any student governance structure



carried out in terms of the Constitution for Student Governance or a constitution adopted in terms of the Constitution for Student Governance, where both parties agree to the jurisdiction of the Tribunal;

- (ii) Mediation and / or arbitration as provided for in section 30 of the Constitution for Student Governance, where a dispute arises in the SRC that renders the SRC unable to discharge its responsibilities or perform its duties, and one of its members approach the Constitutional Tribunal for relief;

(iii) Appointments to serve as members of the Disciplinary Committee (Students) by the Department of Legal Services, as per the Code of Conduct of the University; and

(iv) Other appointments made by the Constitution for Student Governance and / or the University Management from time to time.

(2) In any matter brought before the Constitutional Tribunal, the Tribunal has the power to make any order which it deems to be just and equitable in the circumstances.

- (3) The Constitutional Tribunal is, in giving judgment, not bound by previous cases heard by it.

## **10. Procedure before the Constitutional Tribunal**

- (1) The procedures for the various matters that may be heard by the Constitutional Tribunal are set out in Schedule B of this Constitution.

## **11. Code of Conduct**

- (1) A judge of the Constitutional Tribunal must recuse him/herself from any matter where bias

could be perceived to exist. If a judge of the Constitutional Tribunal fails to do so, the judge can be instructed to do so by the Chief Justice (or Deputy Chief Justice in the case of the Chief Justice).

(2) A judge of the Constitutional Tribunal must as soon as possible provide the Deputy Chief Justice with a report after attending:

(a) any disciplinary committee hearing;

and/or

(b) any matter referred to the

Constitutional Tribunal where the judge in question was appointed as to hear the matter by the Chief Justice.

- (3) Judges of the Constitutional Tribunal are expected to attend all meetings of the Tribunal. Where it is impossible for them to do so, a prior written excuse is expected.
- (4) Judges are expected to comply with any directive issued for the effective functioning of the Tribunal by the Executive Committee.
- (5) All judges of the Constitutional Tribunal are expected to fulfil their duties, both in terms of this Constitution and the Constitution for Student Governance, conscientiously and to the best of their ability.
- (6) No judge of the Constitutional Tribunal may, during their term, accept a position or make him/herself available for election to any

position on any other student governance structure in terms of the Constitution for Student Governance. This also applies to residence House Committees.

(7) A judge of the Constitutional Tribunal may be called upon or elected to serve in certain any of the following capacities during SRC elections. They are expected to fulfil these duties diligently and to the best of their ability. The bodies on which judges may be required to serve, include, but is not limited to the Independent Monitoring Board.

(8) In the event that the Executive Committee believes that a member of the Constitutional Tribunal is in violation of this Code of Conduct,

it may refer the matter to an internal disciplinary committee in terms of section 12 below.

## **12. Internal disciplinary hearings**

- (1) The Internal Disciplinary Committee of the Constitutional Tribunal consists of the members of the Executive Committee. If the misconduct involved relates to a member of the Executive Committee, a person designated by the Director: Student Affairs will constitute the Internal Disciplinary Committee, to prevent perception of bias.
- (2) The procedure followed during an internal disciplinary hearing is similar to the procedure

followed by the Committee for Discipline  
(Students) at the University of Pretoria.

(3) The Internal Disciplinary Committee may  
apply the following sanctions, individually or in  
combination :

(a) Suspend a judge of the Constitutional  
Tribunal from all activities of the  
Constitutional Tribunal for a certain period  
of time; and/or

(b) Refer the matter to the Committee for  
Discipline (Students) and request that if  
the judge in question be found guilty, that  
the judge be removed from the  
Constitutional Tribunal.



(4) A judge found guilty of any offence at an internal disciplinary hearing has a right of appeal to the Committee for Discipline (Students).

(5) In the event that a member of the Executive Committee has been brought before the Internal Disciplinary Committee, the remaining members of the Executive Committee must appoint an ordinary judge of the Tribunal to the Internal Disciplinary Committee.

### **13. Vacancies on the Constitutional Tribunal**

(1) A judge of the Constitutional Tribunal ceases to be a judge of the Tribunal if he/she:

- (a) Ceases to be a registered student of the University of Pretoria;
  - (b) Ceases to be registered for the LL.B / LL.M degree, as the case may be;
  - (c) Is found guilty of any charge by the Committee for Discipline (Students);
  - (d) Resigns from the Constitutional Tribunal by submitting his written resignation to the Chief Justice; or
  - (e) Is removed from the Constitutional Tribunal in terms of section 12(3)(b) above.
- (2) A judge whose membership is terminated as provided for in terms of subsection 1 above shall cease to be a judge of the Constitutional

Tribunal from the moment at which the cause of termination sets in and shall immediately be divested of all the powers associated with such office.

(3) The Constitutional Tribunal may fill any such vacancy in its own discretion and according to its own procedure provided that:

- (a) The process is open and fair;
- (b) The new judge is only appointed for the remainder of the term;
- (c) The new judge meets all the requirements to be a judge of the Constitutional Tribunal; and
- (d) The powers associated with membership shall only vest in the newly

appointed judge once the judge has been duly sworn in and has taken the oath or pledge.

(4) A vacancy may also be deemed to exist in terms of subsection (3) provided that:

(a) A majority of judges, including all three members of the executive, are convinced that it is necessary to appoint additional judges provided that:

(b) The decision in (a) above is approved by the SRC member responsible for the Constitutional Tribunal;

(c) By appointing additional judges, the maximum number of judges as set in paragraph 3(1)(d) is not exceeded.

## **14. Meetings**

- (1) Any member of the Executive Committee may call a meeting of the Constitutional Tribunal.
- (2) Any member of the Executive Committee may chair a meeting of the Constitutional Tribunal.
- (3) The member of the Executive Committee calling the meeting is required to ensure that all members of the Constitutional Tribunal are provided with adequate notice of the meeting, as well as its agenda.
- (4) The procedure to be followed at such meetings will be determined by the Executive Committee member chairing the meeting and

must meet the approval of the remaining members of the Executive Committee.

- (5) All meetings of the Constitutional Tribunal are confidential and under no circumstances may the content of such meetings be disclosed to any person other than to other judges of the Constitutional Tribunal.

## **15. Finance**

- (1) The Constitutional Tribunal is funded by the office of the Director of Student Affairs by way of an annual financial allocation to be determined by such office.

- (2) Such funding shall in no way compromise the independence, impartiality and objectivity of the Constitutional Tribunal.
- (3) All expenditure incurred by the Constitutional Tribunal must be approved by the Executive Committee.
- (4) The Executive Committee must appoint an ordinary judge of the Constitutional Tribunal to serve as the Treasurer who will be obliged to:
  - (a) Confirm the approval by the Executive Committee of all expenditure incurred by the Constitutional Tribunal;
  - (b) Compile and present a quarterly financial report;

- (c) Draw the relevant financial statements and inform the Executive Committee of any irregularities;
- (5) The funding from the office of the Director of Student Affairs shall provide for the payment of honoraria to the judges of the Constitutional Tribunal.

## **16. Constitutional Tribunal Guardian**

- (1) The Constitutional Tribunal may choose to elect a guardian.
- (2) The guardian must be a lecturer in the Law Faculty and must consent to being nominated.



- (3) He/she is elected by way of a simple majority of the Constitutional Tribunal judges present at the meeting where a vote is tabled.
- (4) The guardian may be requested by the Executive Committee to attend any meeting of the Constitutional Tribunal.

## **17. Amendments**

- (1) This Constitution may be amended by the judges of the Constitutional Tribunal, provided that two thirds of all judges of the Constitutional Tribunal vote in favour of the amendment.

- (2) The amendment must be in writing, and signed by all judges voting in favour of the amendment.
- (3) The amended Constitution must then be transmitted to the SRC and the amendment only comes into effect once it has been adopted by the SRC.

## **18. Logo and Motto**

- (1) The logo of the Constitutional Tribunal is decided upon by the judges of the Constitutional Tribunal at a meeting.
- (2) The motto of the Constitutional Tribunal is *fiat iustitia* – let justice be done.

## **19. Language**

- (1) This Constitution is adopted in English and the official version is in English.
- (2) The Constitutional Tribunal must, as soon as possible, provide a version of this Constitution in Afrikaans and Sepedi. It may, if reasonable and practical, provide further versions of this Constitution in any other official language of the University.
- (3) In the event of any future translation of this Constitution being made, should a conflict with the English version arise during interpretation, an attempt to reconcile the different versions must be made. Failing this, the English version takes preference.

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## **SCHEDULE A: OATH AND SOLEMN DECLARATION OF JUDGES**

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### **1. Oath**

I do hereby swear that I will, in my capacity as a member of the Constitutional Tribunal, obey, maintain and protect the Student Bill of Rights and the Constitution of the Constitutional Tribunal, perform the duties of my office conscientiously and to the best of my ability and administer justice to all alike without fear, favour or prejudice. So help me God.

## **2. Solemn Declaration**

I do hereby solemnly affirm that I will, in my capacity as a member of the Constitutional Tribunal, obey, maintain and protect the Student Bill of Rights and the Constitution of the Constitutional Tribunal, perform the duties of my office conscientiously and to the best of my ability and administer justice to all alike without fear, favour or prejudice.

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## **SCHEDULE B: PROCEDURES BEFORE THE CONSTITUTIONAL TRIBUNAL**

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### **B1. GENERAL PROVISIONS**

- (1) As a rule of courtesy, all communications that are made on behalf of the Constitutional Tribunal must be CC'd to the Chief Justice, Deputy Chief Justice and Registrar.
- (2) The role of the SDAP in the execution of these proceedings must be considered and negotiated with the SDAP.

- (3) All queries regarding “which procedure to follow” must be directed to the Chief Justice who will advise accordingly.

## **B2. CSG ALIGNMENTS AND ADVISORY OPINIONS**

- (1) The procedure for obtaining a CSG alignment opinion and an advisory opinion is the same. For the sake of convenience, these two items are collectively referred to here as “opinions”.
- (2) A party applying for an opinion must complete a *pro forma* application form, electronically. The application form must be

made available on the Constitutional Tribunal's website.

(3) The application form must contain the following information:

- (a) The applicant's details;
- (b) An allegation of the Constitutional Tribunal's jurisdiction;
- (c) In the case of a CSG alignment opinion, the name of the society and its constitution;
- (d) In the case of an advisory opinion, the details of the interpretation sought; and
- (e) An indication (with reasons) as to why the opinion sought is urgent or not.



- (4) The completed application form must then be emailed to the Registrar of the Constitutional Tribunal.
- (5) Upon receipt of the application form, the Registrar will notify the applicant of such receipt and that the matter is being considered, via email.
- (6) The Registrar then forwards the application to the Deputy Chief Justice, who ensures that the requested opinion falls within the jurisdiction of the Constitutional Tribunal.
- (7) If the Deputy Chief Justice finds that the Constitutional Tribunal does NOT have jurisdiction, the Deputy Chief Justice informs the applicant of this fact by email.

- (8) If the Deputy Chief Justice finds that the Constitutional Tribunal does indeed have jurisdiction, the Deputy Chief Justice informs the Chief Justice of this fact, so that the Chief Justice can appoint a judge to provide the opinion.
- (9) The Chief Justice formally appoints a judge (to provide the opinion) by email.
- (10) The opinion is sent directly from the judge in question to the Chief Justice, Deputy Chief Justice and the Registrar by email in PDF-format, within a reasonable time, for record-keeping purposes.
- (11) The Registrar then forwards the opinion to the applicant by email, CC'ing the Deputy

Chief Justice, Chief Justice, Director: Student Affairs, Deputy-Director: Student Affairs, and the President of the SRC. This is required by section 35 of the CSG.

### **B3. INSTITUTING PROCEEDINGS FOR (GENERAL) MEDIATION, ADJUDICATION, AND LODGING AN APPEAL AND/ OR REVIEW AGAINST SUCH PROCEEDINGS<sup>1</sup>**

- (1) The same application form is used for (general) mediations and adjudications, as well as the lodging of an appeal and / or review against such proceedings.

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<sup>1</sup> This must not be confused with the (special) SRC mediations and arbitrations, as laid out in B7 below.

(2) A party applying for these proceedings must complete a *pro forma* application form, electronically. The application form must be made available on the Constitutional Tribunal's website. Please take note of the time restrictions placed on the lodging of appeals and / or reviews elsewhere in this Schedule.

(3) The application form must contain the following information:

- (a) The instituting party's details;
- (b) The responding party's details;
- (c) An allegation of jurisdiction of the Constitutional Tribunal;
- (d) The nature of the proceedings  
(mediation, adjudication, or appeal /

review thereof), including a brief description of each as well as the relationship between these proceedings;

- (e) An indication (with reasons) as to why the proceedings desired is urgent or not;
- (f) Details of the complaint, divided into paragraphs, each paragraph containing a separate idea. The paragraphs must be consequently numbered for ease of response. In the case of an appeal and / or review, this section must detail the reasons for appeal and / or review;
- (g) A basic “discovery” / exposition of evidence to be used during the proceedings; and

(h) The remedy desired by the instituting party.

(4) The completed application form is emailed by the instituting party to the Registrar.

(5) Upon receipt of the application form, the Registrar informs the instituting party of such receipt by email, and informs them that the matter is being considered.

(6) The Registrar then forwards the application to the Deputy Chief Justice, who ensures that the requested opinion falls within the jurisdiction of the Constitutional Tribunal. In the case of an appeal, the criterion for determining jurisdiction is testing whether there is a reasonable prospect that the appeal

court will come to a different conclusion based on law or fact. In the case of a review, the criterion for determining jurisdiction is testing whether there is a reasonable prospect that the review court will conclude that a procedural irregularity or unfairness tainted the proceedings in the court *a quo*.

- (7) If the Deputy Chief Justice finds that the Constitutional Tribunal does NOT have jurisdiction, the Deputy Chief Justice informs the applicant of this fact by email.
- (8) If the Deputy Chief Justice finds that the Constitutional Tribunal does indeed have jurisdiction, the Deputy Chief Justice also needs to make a determination regarding the

urgency of the dispute. The Deputy Chief Justice emails this determination to the Registrar.

(9) Upon receipt of the determination made by the Deputy Chief Justice as contemplated in (8) directly above, the Registrar contacts the responding party telephonically to inform them that proceedings have been instituted, and that a document will be emailed to them shortly, which demands urgent attention. The overview of the process from this point forwards should be briefly explained over the telephone at this stage.

(10) The Registrar then emails the responding party a *pro forma* “defending proceedings”



form, which must be electronically completed by the responding party and emailed to the Registrar:

- (a) In the case of an urgent dispute, within 72 hours from the moment that the Registrar's email is sent to the responding party; or
- (b) In the case of a non-urgent dispute, within 10 University Days from the moment that the Registrar's email is sent to the responding party (Mondays – Fridays, excluding public holidays, University recess periods, and weekends).

(11) The pro forma “defending proceedings” form, must contain the following detailed information:

- (a) A friendly warning regarding compliance with the time periods found in (11) directly above, together with the consequences of non-compliance as contemplated in (12) directly below;
- (b) A confirmation of the responding party’s details;
- (c) An indication whether the jurisdiction of the Tribunal is put into dispute, together with reasons if there is such a dispute;
- (d) In the case of a mediation, an indication whether mediation is consented

to or not. If the mediation is consented to, the mediation will occur. If the mediation is not consented to, the dispute will automatically continue as adjudication;

(e) In the case of an adjudication, there can be no dispute as to the nature of the proceedings;

(f) A space for a “paragraph – by – paragraph” response to the details of the initiating party’s version of the facts;

(g) The responding party’s basic “discovery” / exposition of evidence to be used during the proceedings.

(12) In the instance that the responding party fails to complete the “defending proceedings”

form and email it to the Registrar in accordance with the time limits specified above, the Registrar emails both parties informing them that default judgment has been granted in favour of the instituting party. A *pro forma* “default judgment” is to be completed by the Registrar and emailed to both parties and the SRC as soon as possible.

- (13) In the instance that the responding party completes the “defending proceedings” form and emails to the Registrar in accordance with the time limits specified above, the Registrar informs both parties of such receipt, and that the venue, time and date is currently being set, and that a judge will be appointed soon.

(14) The Registrar then informs the Deputy Chief Justice by email that both forms have successfully been received, and that a venue, time and date need to be set ASAP. In the same email, the Chief Justice is requested to appoint:

- (a) One Judge in the case of a mediation;
- (b) Three Judges in the case of an adjudication (one of which is appointed as the presiding Judge); or
- (c) Five Judges in the case of a review and / or appeal (one of which is appointed as the presiding Judge); and to inform the Registrar and Deputy Chief Justice of the appointment(s) made.

(15) The Deputy Chief Justice sets the venue, time and date for the proceedings ASAP, and emails this information to the parties to the dispute and the appointed Judge(s). A clear reminder needs to be present in this email that legal representation is NOT ALLOWED during the proceedings.

(16) The appointed Judge(s) is/are forwarded both parties forms by the Registrar before the date of the proceedings, so that the Judge(s) can familiarise themselves with the dispute

(17) The actual proceedings are regulated by proceeding-specific rules, stipulated below

## **B4. (GENERAL) MEDIATION PROCEEDINGS**

***At the mediation, the following rules must be observed:***

### **(1) Attendance of parties:**

- (a) If either party fails to attend the mediation, the Deputy Chief Justice will reschedule the mediation and communicate the date, time and venue of the rescheduled mediation to the parties and Judge involved by email.
- (b) If the same party fails to attend the rescheduled mediation, a certificate of non-resolution is issued by the presiding Judge. The consequence of the issuing of

a certificate of non-resolution is laid out below.

- (c) As a general rule the mediation proceedings are not open to the public due to the fact that the mediation involves private and confidential negotiation of a dispute, the contents of which is not placed on the record.

## **(2) Rules of evidence**

- (a) The ordinary rules of evidence as applied in the Republic of South Africa apply to the mediations before the Tribunal, except that the mediation proceedings before the Tribunal are inquisitorial.



- (b) The standard of proof is “on a balance of probabilities”.
- (c) Parties and their witnesses are required to give oral evidence under oath or solemn declaration, as detailed below.
- (d) The mediation is NOT a court of record, and therefore the record will not be used in subsequent proceedings.

### **(3) Mediating the dispute**

- (a) The mediation proceedings are to be electronically recorded, and detailed handwritten notes should also be taken by the presiding Judge, solely for the purpose of effectively mediating the dispute. This

provision must not be understood to conflict with (2)(c) directly above.

(b) The parties are greeted and the Judge is introduced. The Judge once again emphasises to the parties:

- i. That legal representation is not allowed, and thus that the parties represent themselves; and
- ii. Gives a brief overview of the proceedings

(c) The Judge then reads out that part of the instituting party's application form detailing their version of events, followed by the paragraph-by-paragraph response

as found in the responding party's defence form.

(d) The Judge then indicates to the instituting party, that they now have the opportunity to present the evidence that will prove their allegations. Admissibility of the evidence presented needs to be established by the Judge presiding, by asking relevant questions.

*i.* In the case of witnesses, an oath or solemn pledge is to be administered by the Judge before a party provides evidence, in order for the oral evidence to be admissible. The oath / pledge is as follows, "*I do hereby*

*swear/I do hereby solemnly affirm that I will only give evidence that is true, complete and accurate, that I will not intentionally mislead any party or the bench and that all of the evidence which I give is within my own personal knowledge.”*

- (e) After a specific item of evidence is presented, the responding party will have the opportunity to cross-examine the witness or produce counter-evidence, as the case may be.
- (f) Re-examination of witnesses or a response to the counter-evidence will then be allowed.

(g) After the instituting party has presented all their evidence, they will be told to close their case.

(h) The same procedure for presenting evidence is followed by the responding party, who will also be told to close their case after all their evidence has been produced.

(i) The instituting party will be required to present a short closing argument to attempt to persuade the responding party of the correctness of their point of view. The responding party will have the opportunity to do the same.

(j) After these arguments, the Judge will enter the negotiation process, by recommending a course of action to the parties, based on the law and the facts:

i. That the one party should resign their point of view in totality in favour of the other, with reasons; or

ii. That the parties should consider extending their bargaining range such that both will concede certain valid point in each other's arguments in order to reach a compromise, with reasons.

(k) The proceedings may be postponed at any time, if the interests of justice so

demands. Any witnesses who took oaths / pledges at a previous occasion must be reminded that the oath is still binding on them.

(l) The parties will then be required to indicate whether they accept the Judge's recommendation or not.

(m) In the instance that the parties cannot reach an agreement (i.e. one or both do not accept the Judge's recommendations), a certificate of non-resolution is issued by the Judge, and is signed by the parties.

i. The certificate may not contain any information regarding the actual dispute or the recommendations made

by the Judge, as the process is off the record.

- ii. This certificate is emailed to the parties involved, the Chief Justice, Deputy Chief Justice, Registrar and the SRC.
- iii. The Chief Justice will automatically appoint three judges to adjudicate the dispute.
- iv. The Deputy Chief Justice will then automatically set a new date, time and venue for such adjudication, and email these details to the parties to the dispute, and the three appointed Judges.



(n) In the instance that the parties do reach an agreement, the Judge issues a certificate of resolution, together with the terms of the agreement, which is then signed by the parties to the dispute. This certificate is emailed to the Chief Justice, Deputy Chief Justice, Registrar and the SRC.

## **B5. (GENERAL) ADJUDICATION**

### **PROCEEDINGS**

***At the adjudication, the following rules must be observed:***

**(1) Attendance of parties:**

- (a) If either party fails to attend the mediation, the Deputy Chief Justice will reschedule the adjudication and communicate the date, time and venue of the rescheduled adjudication to the parties and the three Judges involved by email.
- (b) If the same party fails to attend the rescheduled adjudication, the adjudication will continue in the absence of the responding party, and the Judges will base their adjudication on the evidence presented by the party who is present.
- (c) As a general rule the adjudication proceedings are open to the public, unless if the Judges decide that the interests of

justice demand otherwise. The Judges have the authority to require any person to leave the adjudication proceedings and to prohibit them from returning, if they disrupt the proceedings in any way.

**(2) Rules of evidence**

- (a) The ordinary rules of evidence as applied in the Republic of South Africa apply to the adjudications before the Tribunal, except that the adjudication proceedings before the Tribunal are inquisitorial.
- (b) The standard of proof is “on a balance of probabilities”.

- (c) Parties and their witnesses are required to give oral evidence under oath or solemn declaration, as detailed below.
- (d) The adjudication court IS a court of record, as the record will be used during review and / or appeal, if such review and / or appeal arises.

### **(3) Adjudicating the dispute**

- (a) The adjudication proceedings are to be electronically recorded, and detailed handwritten notes should also be taken by the Judges, as the proceedings must be recorded.
- (b) The parties are greeted and the Judges are introduced by the presiding

Judge. The presiding Judge once again emphasises to the parties:

- i. That legal representation is not allowed, and thus that the parties represent themselves; and
  - ii. Gives a brief overview of the proceedings.
- (c) The Judge then reads out that part of the instituting party's application form detailing their version of events, followed by the paragraph-by-paragraph response as found in the responding party's defence form.
- (d) The Judge then indicates to the instituting party, that they now have the

opportunity to present the evidence that will prove their allegations. Admissibility of the evidence presented needs to be established by the Judge presiding, by asking relevant questions.

*i. In the case of witnesses, an oath or solemn pledge is to be administered by the Judge before a party provides evidence, in order for the oral evidence to be admissible. The oath / pledge is as follows, “I do hereby swear/I do hereby solemnly affirm that I will only give evidence that is true, complete and accurate, that I will not intentionally mislead any party or the*

*bench and that all of the evidence  
which I give is within my own personal  
knowledge.”*

- (e) After a specific item of evidence is presented, the responding party will have the opportunity to cross-examine the witness or produce counter-evidence, as the case may be.
- (f) Re-examination of witnesses or a response to the counter-evidence will then be allowed.
- (g) After the instituting party has presented all their evidence, they will be told to close their case.

(h) The same procedure for presenting evidence is followed by the responding party, who will also be told to close their case after all their evidence has been produced.

(i) The instituting party will be required to present a short closing argument to persuade the Judges that their case should succeed. The responding party will have the opportunity to do the same.

(j) The proceedings may be postponed at any time, if the interests of justice so demands. Any witnesses who took oaths / pledges at a previous occasion must be reminded that the oath is still binding on them.



(k) After these arguments, the Judges may deliberate their decision in chambers.

(l) A written judgement is produced by the Judges. The majority opinion is binding, but minority and dissenting judgements are to be included in the written judgement.

i. The judgment must contain an indication that the judgment may be subject to review and / or appeal, after an application has been made to that effect, within 5 University Days (Monday to Friday, excluding public holidays as well as Saturdays and

Sundays) from the date that the judgment has been read.

(m) The written judgment is emailed to the Chief Justice, Deputy Chief Justice, Registrar and the SRC.

(n) The Deputy Chief Justice must ASAP set a date, time and venue for the reading of the judgment, and inform the parties accordingly. Presence or absence of a party at this reading has no effect on the validity of the judgment. Any party to the dispute or another interested party is allowed to request a copy of the judgment from the Registrar.

## **B6. (GENERAL) APPEAL AND / OR REVIEW PROCEEDINGS**

***At the appeal and / or review proceedings, the following rules must be observed:***

### **(1) Application for appeal and / or review**

- (a) An adjudication judgment of the Constitutional Tribunal may be subject to review and / or appeal, after an application has been made to that effect, within 5 University Days (Monday to Friday, excluding public holidays as well as Saturdays and Sundays) from the date that the judgment has been read. The general application form for instituting proceedings is used, but the grounds for

review and / or appeal must be laid out clearly. The facts and allegations of the primary dispute need not be repeated on this application form.

**(2) Attendance of parties:**

(a) If either party fails to attend the appeal and / or review, the Deputy Chief Justice will reschedule the adjudication and communicate the date, time and venue of the rescheduled adjudication to the parties and the three Judges involved by email.

(b) If the same party fails to attend the rescheduled appeal and / or review, the appeal and / or review will continue in the absence of the responding party, and the

Judges will base their appeal and / or review on the evidence presented by the party who is present.

- (c) As a general rule the appeal and / or review proceedings are open to the public, unless if the Judges decide that the interests of justice demand otherwise. The Judges have the authority to require any person to leave the adjudication proceedings and to prohibit them from returning, if they disrupt the proceedings in any way.

### **(3) Rules of evidence**

- (a) As a general rule, no new evidence may be lead at the appeal and / or review

proceedings, unless if the interest of justice demand the admission of such evidence.

(b) In the instance that evidence is admitted, the ordinary rules of evidence as applied in the Republic of South Africa apply to the appeal and / or review proceedings before the Tribunal, except that the appeal and / or review proceedings before the Tribunal are inquisitorial.

(c) Only arguments may be presented during the proceedings as to the incorrectness of the judgment or the

procedural defect in the adjudication proceedings.

(d) The standard of proof is “on a balance of probabilities”.

(e) The adjudication court IS a court of record.

#### **(4) Deciding the dispute**

(a) The appeal and / or review proceedings are to be electronically recorded, and detailed handwritten notes should also be taken by the Judges, in order for a proper determination to be made.

(b) The parties are greeted and the Judges are introduced by the presiding

Judge. The presiding Judge once again emphasises to the parties:

- i. That legal representation is not allowed, and thus that the parties represent themselves; and
  - ii. Gives a brief overview of the proceedings.
- (c) The Judge then reads out that part of the instituting party's application form detailing their version of events, followed by the paragraph-by-paragraph response as found in the responding party's defence form.
- (d) The Judge then indicates to the instituting party, that they now have the



opportunity to present arguments in favour of their case. The responding party will have the opportunity to do the same. The instituting party will have an opportunity to reply to the responding party's arguments.

(e) The proceedings may be postponed at any time, if the interests of justice so demands.

(f) After these arguments, the Judges may deliberate their decision in chambers.

(g) A written judgement is produced by the Judges. The majority opinion is binding, but minority and dissenting judgements are to be included in the written judgement.

i. The judgment must contain an indication that the judgment may be subject to review by the Director: Student Affairs, as provided for in section 35(3) of the CSG.

(h) The written judgment is emailed to the Chief Justice, Deputy Chief Justice, Registrar and the SRC.

(i) The Deputy Chief Justice must ASAP set a date, time and venue for the reading of the judgment, and inform the parties accordingly. Presence or absence of a party at this reading has no effect on the validity of the judgment. Any party to the dispute or another interested party is

allowed to request a copy of the judgment from the Registrar.

## **B7. SECTION 27 INVESTIGATIONS**

(1) A written complaint of alleged breach of the Code of Conduct may be laid by a student or staff member with the Office of the Director: Student Affairs.

(2) Upon receiving a complaint the Director: Student Affairs requests the Constitutional Tribunal to investigate the alleged breach.

(a) The Constitutional Tribunal is mandated to conduct such an investigation by means of an official *pro forma* form, which is completed by the Director:

Student Affairs, and emailed to the Chief Justice

- (b) This mandate form must contain:
- i. The complainant's details;
  - ii. The details of the complaint;
  - iii. The scope of the mandate, including, among others, whether the investigation must take place:
    - 1. In the Chief Justice's chambers; or
    - 2. By means of a public enquiry (for this option to be chosen, reasons of public interest must be provided); and
  - iv. A certification that a copy of the written complaint has been attached,

and that the copy has not been  
tampered with

- (3) The investigation is conducted by the Chief Justice, either in chambers (where parties are interviewed in private and evidence is collected and evaluated) or by means of a commission of enquiry (the procedure hereof will be determined by the Chief Justice before the commission sits for the first time, having due regard for the principles of administrative justice), depending on the mandate received from the Director: Student Affairs.
- (4) The Constitutional Tribunal must submit a report to the Director: Student Affairs within a reasonable time of receipt of the mandate:

(a) The Chief Justice compiles the report in the same format as an advisory opinion, advising either that the complaint be declared:

- i. Unfounded, and thus dismissed; or
- ii. That a serious breach has been committed, and the appropriate order to be made, including but not limited to:

- 1. A fine;

- 2. A ruling that the person must vacate their seat on the student governance structure concerned; and / or

3. That the Disciplinary Committee  
(Students) be notified of the  
breach of the Code of Conduct,  
and from there to act in  
accordance with its powers

## **B8. SECTION 30: (SPECIAL) SRC MEDIATIONS AND ADJUDICATIONS**

### **(1) Application:**

- (a) Where a dispute arises in the SRC  
that renders the SRC unable to discharge  
its responsibilities or perform its duties,  
any member of the SRC may refer such  
dispute to the Constitutional Tribunal.

(b) A special application form is to be used to initiate these proceedings, and must be made available on the Constitutional Tribunal website, which must contain the following detailed information:

- i. The instituting party's details;
- ii. The nature of the proceedings  
(indicating that mediation is always the first step, and only if this procedure fails can adjudication take place); and
- iii. A summary of the dispute, indicating all the different stances that are in competition.



- (c) The application form is electronically completed and emailed to the Registrar.

**(2) First step of the procedure: Mediation**

- (a) Upon the first application, the Registrar forwards the application to the Chief Justice who sets a time, date and venue for mediation.
- (b) With a view to resolving the dispute the Constitutional Tribunal convenes and the Chief Justice, Acting Chief Justice, or a judge of the Constitutional Tribunal chairs a meeting of the SRC during which full discussion of the dispute is allowed. An additional two (2) judges of the

Constitutional Tribunal may preside  
depending on the nature of the dispute.

(c) The procedure to be followed at this mediation meeting will take on the form of informal discussion, to allow proper ventilation of the dispute. There will not be a need for the taking of oaths or pledges, and no formal evidence is admitted. The proceedings are not on the record.

(d) The convening Judge of the meeting will make a recommendation based on law and fact:

- i. That the one party should resign their point of view in totality in favour of the other, with reasons; or

ii. That the parties should consider extending their bargaining range such that both will concede certain valid point in each other's arguments in order to reach a compromise, with reasons

(e) If the parties agree to comply with the recommendation, the convening Judge issues a certificate of resolution, and such a resolution is a binding decision of the SRC

(f) If notwithstanding the mediation, the dispute still remains unresolved, a certificate of non-resolution is issued.

(g) The Registrar is informed of this certificate of non-resolution, and requests the SRC to complete the special application form again, this time with a better narrowing of the issues, so that the Constitutional Tribunal can arbitrate the matter and make a binding ruling on the SRC

**(3) The second step of the procedure:**

**Arbitration**

(a) The electronically completed special application form is emailed to the Registrar, who approaches the Chief Justice to appoint three judges to adjudicate the matter, and the Deputy

Chief Justice to set a time, date and venue for the adjudication to take place.

(b) The Constitutional Tribunal

“arbitrates”<sup>2</sup> the matter and makes a binding ruling.

(c) The process for arbitration in this context is identical to the procedure followed in the case of adjudication as described in B4 of this Schedule, except that these proceedings are NOT open to the public.

(d) The judgment of the Constitutional Tribunal must contain a provision drawing the attention of the parties to the fact that

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<sup>2</sup> As used in section 30 of the CSG.

the Director: Student Affairs may review the ruling if considerations of justice and fairness so require, and may amend or set aside the ruling. Such review must take place within one (1) week of the ruling being made place within one (1) week of the ruling being made.

## **B9. DISCIPLINARY COMMITTEE (STUDENTS)**

- (1) The rules regulating the Disciplinary Committee (Students) are found in the Institutional Rules and Code of Conduct of the University, and no provision in this Schedule must be understood to attempt to amend those procedure-specific rules.