



Constitutional Tribunal

Fiat Justitia

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

September 2018

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 (CSG)** means the University of Pretoria Constitution for Student Governance, 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 a Judicial Service 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

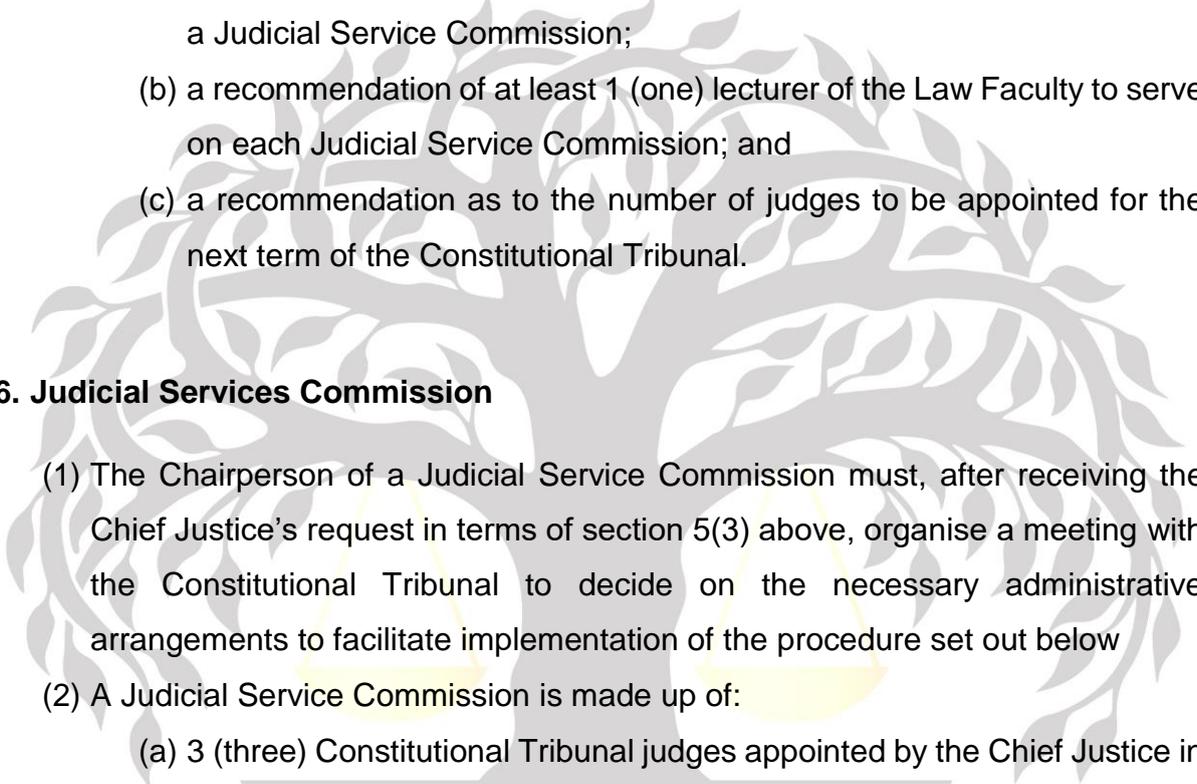
- (d) Between 9 (nine) and 13 (thirteen) other judges.
- (2) As far as possible, the Chief Justice and Deputy Chief Justice should be appointed from the ranks of judges who have previously served a term on the Constitutional Tribunal.
- (3) At the start of its annual term, the Constitutional Tribunal 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.

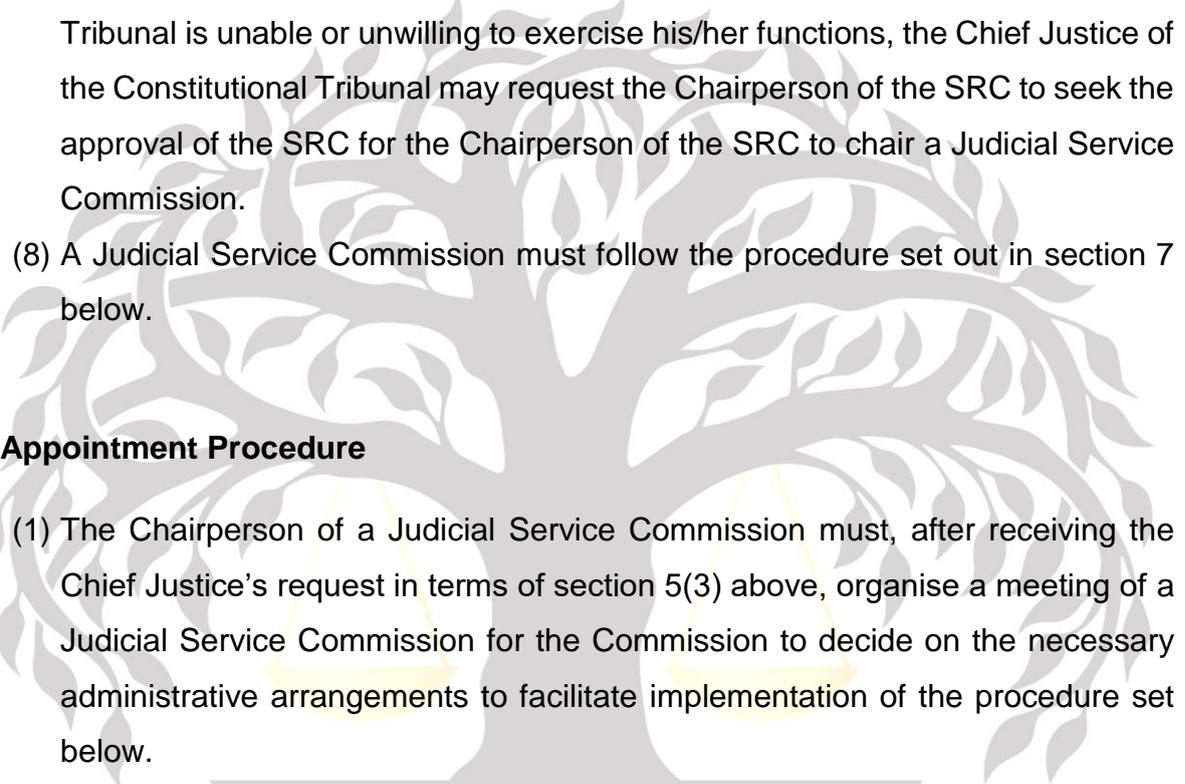
5. Term of Office

- (1) All judges of the Constitutional Tribunal are appointed for a 1 (one) year term which runs from 1 January to 31 December.

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- (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 a Judicial Service 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 a Judicial Service Commission;
 - (b) a recommendation of at least 1 (one) lecturer of the Law Faculty to serve on each Judicial Service 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) The Chairperson of a Judicial Service Commission must, after receiving the Chief Justice's request in terms of section 5(3) above, organise a meeting with the Constitutional Tribunal to decide on the necessary administrative arrangements to facilitate implementation of the procedure set out below
- (2) A Judicial Service Commission is made up of:
 - (a) 3 (three) Constitutional Tribunal judges appointed by the Chief Justice in terms of section 5(4) above;
 - (b) at least 1 (one) lecturer 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) A Judicial Service 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 a Judicial Service Commission provided that this delegation is made in writing and is accepted in writing by each member so delegated to.

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- (5) In any decision taken by a Judicial Service 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 a Judicial Service Commission;
 - (b) 3 (three) judges of the Constitutional Tribunal; and
 - (c) 1 (one) lecturer of the Law Faculty.
- (6) Decisions of a Judicial Service Commission are taken by a simple majority vote. In the event of a tie, the Chairperson of a Judicial Service 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 a Judicial Service Commission.
- (8) A Judicial Service Commission must follow the procedure set out in section 7 below.

7. Appointment Procedure

- (1) The Chairperson of a Judicial Service Commission must, after receiving the Chief Justice's request in terms of section 5(3) above, organise a meeting of a Judicial Service Commission for the Commission to decide on the necessary administrative arrangements to facilitate implementation of the procedure set below.
- (2) The Constitutional Tribunal 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) organising a meeting of a Judicial Service Commission at which all applications are considered, and a short-list is compiled;
- (c) contacting all short-listed candidates telephonically with the details of their interviews;
- (d) contacting successful applicants as soon as possible with the details of their inauguration;
- (e) informing unsuccessful applicants as soon as possible that their application has been unsuccessful;
- (f) keeping full minutes of all meetings of the Judicial Services Commission.

(3) The Chairperson is responsible for:

- (a) Collecting of applications and the safeguarding thereof;
- (b) Organising an inauguration

(4) As far as possible, all members of a Judicial Service 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.

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

(6) After the interviews, a Judicial Service 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, a Judicial Service 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) A Judicial Service 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 a Judicial Service 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 a Judicial Service Commission voting once only. In the event of such procedure failing to resolve the tie, a Judicial Service 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.
- (i) In the event that at least 1 (one) lecturer is not available to attend all interviews, the JSC (Judicial Service Commission) may be divided as to accommodate for this. In the interest of fairness, at least one lecturer must stay for a full day of interviews, where a short list is compiled at the end of that day and then combined as to create a list from where members of the JSC that attended all the interviews (of all days) may vote using the notes made by lecturers as advisory opinions, especially the notes made by the Guardian of the Constitutional Tribunal. After attending to all the notes made by lecturers and discussing the remaining candidates, the JSC must constitute a full bench of judges.

- (j) In the event that a lecturer attends a day of interviews, but does not stay the full day, but asks a question to a candidate (excluding follow-up questions), that question must be directed to every candidate on that day, even in the absence of said lecturer.
- (7) All proceedings of a Judicial Service Commission are strictly confidential.
- (8) Applicants appointed to the Constitutional Tribunal must take an oath or solemn declaration before a Judicial Service Commission at the inauguration. The relevant oath and solemn declaration are set out in Schedule A to this Constitution.
- (9) Training of new judges must be done before the start of the next term by all exiting judges of the Constitutional Tribunal

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;

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;

- (ii) 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
- (iii) 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

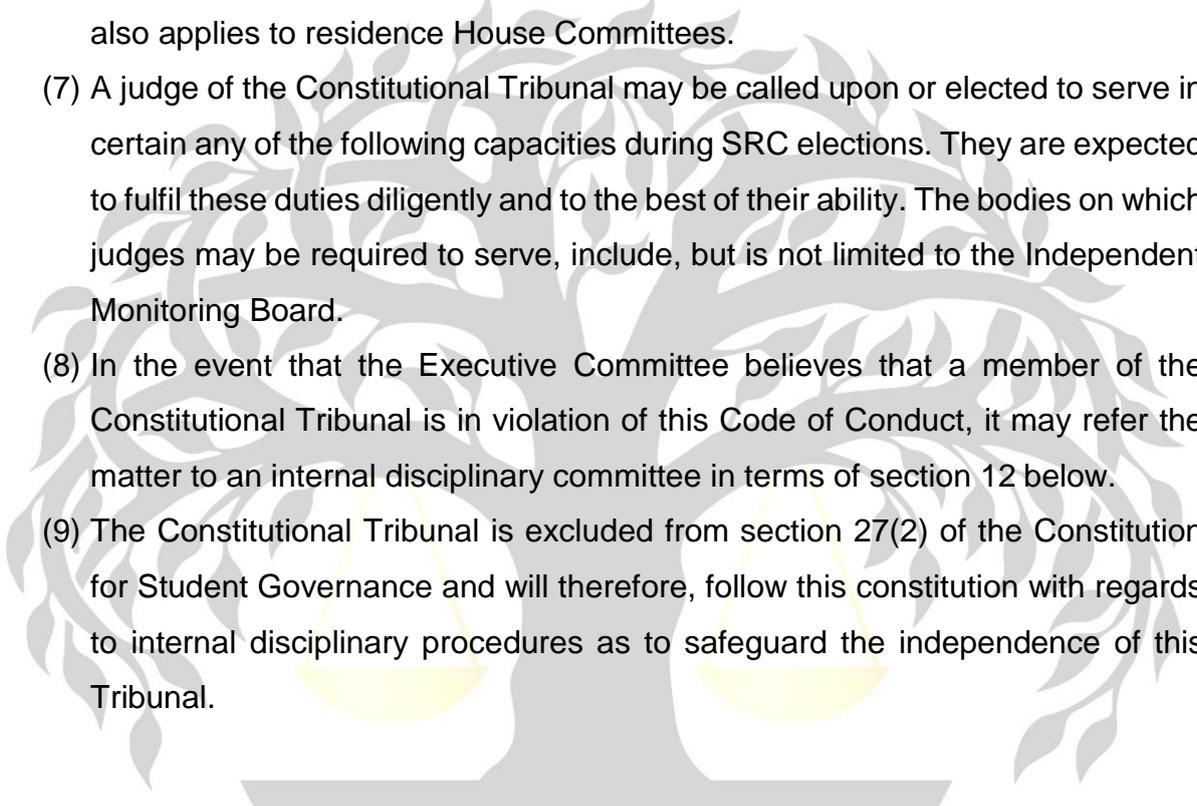
(1) The procedures for the various matters that may be heard by the Constitutional Tribunal are set out in Schedule B of this Constitution.

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.

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- (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.
 - (9) The Constitutional Tribunal is excluded from section 27(2) of the Constitution for Student Governance and will therefore, follow this constitution with regards to internal disciplinary procedures as to safeguard the independence of this Tribunal.

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.

- (a) The Internal Disciplinary Committee may apply the following sanctions, individually or in combination:
- (i) Suspend a judge of the Constitutional Tribunal from all activities of the Constitutional Tribunal for a certain period of time; and/or
 - (ii) 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.
- (3) A judge found guilty of any offence at an internal disciplinary hearing has a right of appeal to the Committee for Discipline (Students).
- (4) 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. The SRC may either:
 - (a) send the Constitution back with concerns;
 - (b) adopt the Constitution.
- (4) If the Constitution is sent back to the Constitutional Tribunal in terms of section 17(3)(a), the Constitutional Tribunal must evaluate the concerns and send it back to the SRC, who must then adopt the Constitution or refer the matter to a dispute commission in terms of section 34(5) of the Constitution for Student Governance.

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.

SCHEDULE A: OATH AND SOLEMN DECLARATION OF JUDGES

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.

SCHEDULE B: PROCEDURES BEFORE THE CONSTITUTIONAL TRIBUNAL

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 PROCEEDINGS¹

- (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. 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.
- (2) 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.
- (3A) In the case of an adjudication, sworn affidavits from all witnesses stated in (g), detailing the evidence they will provide at the adjudication, must be attached to the application form.
- (3) The completed application form is emailed by the instituting party to the Registrar.
- (4) 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.

¹ Not to be confused with the SRC Mediation Process in the Constitution for Student Governance.

- (5) 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*.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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).
- (10) 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 an 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.
 - (h) In the case of an adjudication, sworn affidavits from all the witnesses stated in (g) detailing the evidence they will provide at 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. 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

(16A) The presiding judge informs both parties about the format in which the documentary evidence must be provided at the pre-hearing meeting.

(16B) The pre-hearing meeting must be chaired by the presiding judge, or another appointed judge assigned by the presiding judge, and must deal with the following matters:

(a) Exchange of all the evidence stated in part (g) of the application form and the defending proceedings form as prescribed in (16A).

(b) Which documents or copies of documents will, without further proof, serve as evidence of what they purport to be as well as which extracts may be proved without proving the whole document or any other agreement regarding the proof of documents.

(c) The admissibility of any new evidence the instituting party wants to produce in reply to the defending proceedings form.

(d) Any other matter relevant to the adjudication.

(16) 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

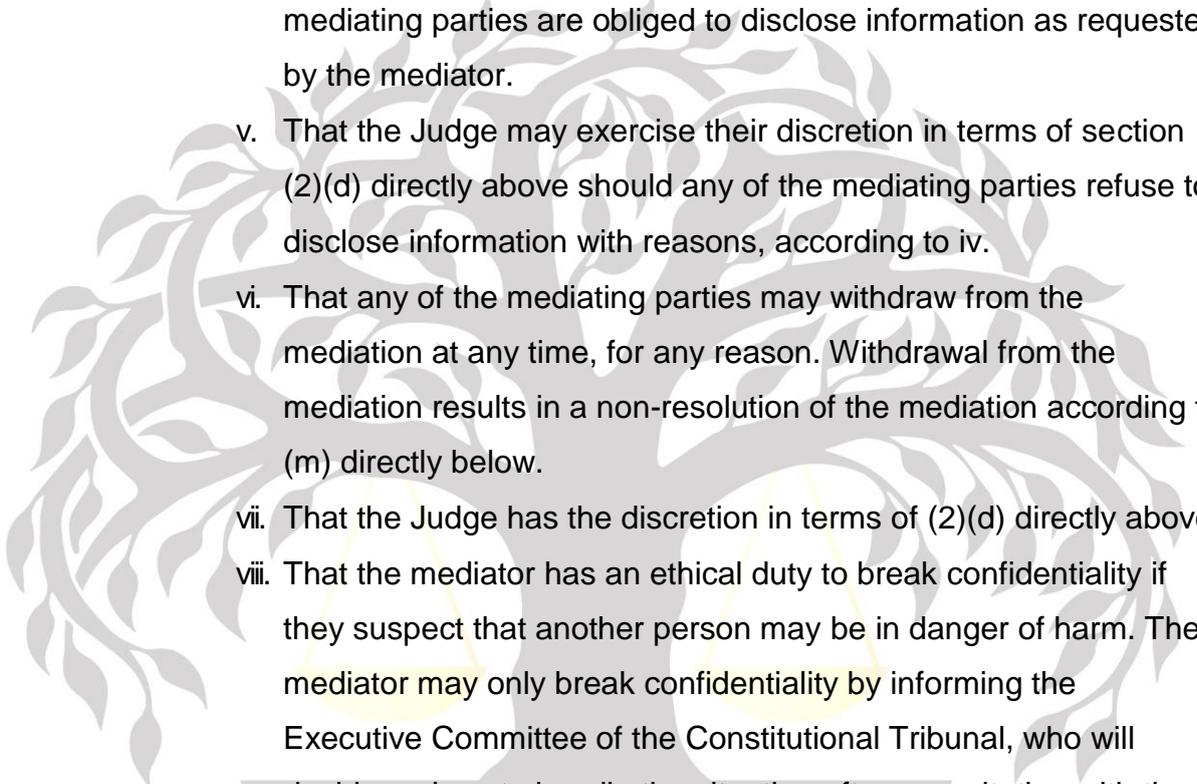
negotiation of a dispute, the contents of which is not placed on the record.

(2) Rules of Mediation

- (a) The procedure to be followed at the mediation proceedings will take on the form of informal discussions, 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.
- (b) The mediation proceedings are strictly confidential and closed to the public. Only the mediating parties may attend the mediation proceedings, unless agreed otherwise by both the mediating parties.
- (c) The mediator may request the mediating parties to fully disclose any information relating to the dispute if in the opinion of the mediator such disclosure may facilitate a resolution of the dispute between the mediating parties. Disclosed information is protected by the same rule in (b) directly above and (e) directly below.
- (d) The Judge as mediator has the discretion to suspend or terminate the mediation if they are of the view that the mediation will lead to an unjust or unreasonable result, or if the mediator is of the view that there is a deadlock, or if the mediator determines that it is no longer possible to perform their facilitative role.
- (e) The mediation is NOT a court of record. 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. That the Judge plays a facilitative role as an impartial mediator. As mediator, the Judge may not make any decisions of fact or law and may not determine the credibility of any of the mediation parties.

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- iii. The general rules applicable to mediation proceedings provided for above and any rules determined by the Judge for the particular mediation proceedings. The rules determined by the Judge for the particular mediation proceedings only relate to the procedure of how the mediation proceedings will be concluded
 - iv. That any of the mediation parties may allege, with reasons, that the request by the mediator for the disclosure of the information as provided for in (2)(c) directly above does not relate to the dispute. Once any of the mediating parties makes this allegation with reasons, the mediator may not continue with the request for the disclosure of the particular information. Otherwise, the mediating parties are obliged to disclose information as requested by the mediator.
 - v. That the Judge may exercise their discretion in terms of section (2)(d) directly above should any of the mediating parties refuse to disclose information with reasons, according to iv.
 - vi. That any of the mediating parties may withdraw from the mediation at any time, for any reason. Withdrawal from the mediation results in a non-resolution of the mediation according to (m) directly below.
 - vii. That the Judge has the discretion in terms of (2)(d) directly above
 - viii. That the mediator has an ethical duty to break confidentiality if they suspect that another person may be in danger of harm. The mediator may only break confidentiality by informing the Executive Committee of the Constitutional Tribunal, who will decide on how to handle the situation after consultation with the mediator and the mediating parties. The same rule applies where the mediator is an Executive Committee member of the Constitutional Tribunal
 - ix. 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 their own dispute.

- (e) After the instituting party has presented their dispute, the Judge will allow the respondent to present their own dispute.
- (f) After the instituting party has presented their dispute, the Judge will allow the parties to present their subjective response orderly and respectfully. The Judge is responsible for facilitating the discussion between the mediating parties, but not directing it in a particular course or towards a particular outcome.
- (g) Paragraph (f) directly above must not be read to be in conflict with (2)(d) directly above and the Judge's discretion to make suggestions, to ask questions, or to provide clarity.
- (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 discussions, the Judge will enter the negotiation process, by recommending a course of action to the parties, based on the law (where applicable) 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; or
 - iii. That the Judge choose to exercise their discretion in terms of (2)(d) directly above.
- (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, or where the Judge

exercises their discretion in terms of (2)(d) directly above), 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. In the case where the Judge exercised their discretion in terms of (2)(d) directly above, the Judge is required to provide reasons for exercising such discretion.
- 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.

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 adjudication, 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

do not apply to adjudications before the Tribunal.

- (b) Adjudication proceedings before the Tribunal are inquisitorial and the judges may ascertain any relevant fact in such manner as they may deem fit and which is in line with section 9(2) of this Constitution.
- (c) The standard of proof is “on a balance of probabilities”.
- (d) Parties and their witnesses are required to give oral evidence under oath or solemn declaration, as detailed below.
- (e) 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; and
 - iii. Reminds the parties of the implications of testifying under oath before the Constitutional Tribunal in regard to (fA) - (fC) below.
- (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.
- (fA) If, in the opinion of the judges, there exists material inconsistencies between the oral evidence given by a witness and their sworn affidavit, the judges must determine whether such witness is merely mistaken, or whether such witness is intentionally deviating from the facts in their sworn affidavit.
- (fB) Should the judges determine by majority that a witness is intentionally deviating from the facts in their sworn affidavit, and is being untruthful, in accordance to (fA) directly above, then the presiding judge must refer the matter to the Disciplinary Committee (Students) for investigation according to section 27 of the CSG.
- (fC) All the evidence presented, recordings and notes taken during proceedings must be furnished to Legal Services for purposes of such investigation.
- (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

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

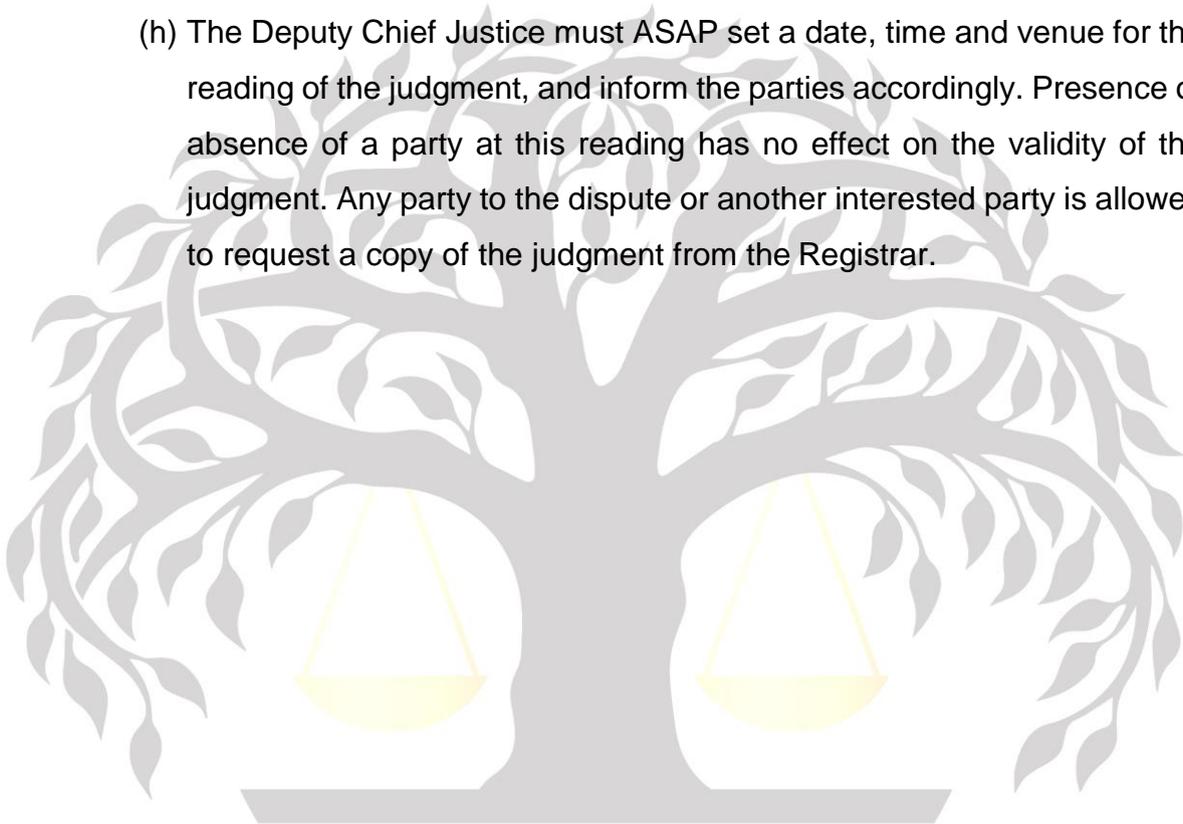
- (a) As a general rule, no new evidence may be lead at the appeal and / or review proceedings, unless if the interest of justice demand the admission of such evidence.
- (b) In the instance that evidence is admitted, the ordinary rules of evidence as applied in the Republic of South Africa apply to 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. 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.
- (b) 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.
- (c) 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.
- (d) The proceedings may be postponed at any time, if the interests of justice

so demands.

- (e) After these arguments, the Judges may deliberate their decision in chambers.
- (f) 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.
- (g) The written judgment is emailed to the Chief Justice, Deputy Chief Justice, Registrar and the SRC.
- (h) 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"² 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 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

² As used in section 30 of the CSG.

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.

Approved by the SRC

President of the SRC

Date

