

(1 December 2003 - to date)

## CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

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### RULES OF THE CONSTITUTIONAL COURT

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### GOVERNMENT NOTICE

#### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

*The English text of the Constitutional Court Rules is contained in Government Gazette No 25726 of 31 October 2003 and follows beneath. The Constitutional Court Rules in all other official languages will be available in due course.*

### RULES OF THE CONSTITUTIONAL COURT

The Chief Justice of South Africa has, under section 171 of the Constitution of the Republic of South Africa, 1996, and section 16 of the Constitutional Court Complementary Act, 1995 (Act No. 13 of 1995), as amended, prescribed the rules contained in the Annexure hereto regulating matters relating to the proceedings of and before the Constitutional Court with effect from 1 December 2003.

### ANNEXURE

#### DIVISION OF RULES

**These rules are divided as follows:**

Rule	Definitions (rule 1)
Part I	Court (rule 2)
Part II	Registrar (rule 3 - 4)
Part III	Joinder of organs of state (rule 5)
Part IV	Parties (rule 6 - 9)

Prepared by:

In partnership with:

- Part V *Amici curiae* (rule 10)
- Part VI Applications (rule 11-13)
- Part VII Matters within the exclusive jurisdiction of the Court (rule 14 - 17)
- Part VIII Direct access and appeals (rule 18 - 21)
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## 1. Definitions

- (1) In these rules any word or expression to which a meaning has been assigned in the Constitution shall bear that meaning and, unless the context otherwise indicates-

**'affidavit'** includes an affirmation or a declaration contemplated in section 7 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963);

**'apply'** means apply on notice of motion, and 'application' has a corresponding meaning;

**'Chief Justice'** means the Chief Justice of South Africa appointed in terms of section 174(3) of the Constitution;

**'Constitution'** means the Constitution of the Republic of South Africa, 1996;

**'Court'** means the Constitutional Court established by section 166(a) of the Constitution, read with item 16(2)(a) of Schedule 6 to the Constitution;

**'Court day'** means any day other than a Saturday, Sunday or public holiday, and only Court days shall be included in the computation of any time expressed in days prescribed by these rules or fixed by any order of the Court;

**'Deputy Chief Justice'** means the Deputy Chief Justice appointed in terms of section 174(3) of the Constitution;

**'directions'** means directions given by the Chief Justice with regard to the procedures to be followed in the conduct and disposition of cases;

**'judge'** means a judge or acting judge of the Court appointed under section 174 or 175 of the Constitution, sitting otherwise than in open court;

**'law clinic'** means a centre for the practical legal education of students in the faculty of law at a university in the Republic, and includes a law centre controlled by a non-profit organisation which provides the public with legal services free of charge and is certified as contemplated in section 3(1)(f) of the Attorneys Act, 1979 (Act No. 53 of 1979);

**'legal representative'** means an advocate admitted in terms of section 3 of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), or an attorney admitted in terms of section 15 of the Attorneys Act, 1979 (Act No. 53 of 1979);

**'party'** or any other reference to a litigant includes a legal representative appearing on behalf of a party, as the context may require;

**'President'** means the President of the Supreme Court of Appeal;

**'Registrar'** means the Registrar of the Court, and includes any acting or assistant Registrar of the Court, or in their absence any person designated by the Director of the Court;

**'sheriff'** means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), and includes a person appointed in terms of section 5 or section 6 of that Act as an acting or a deputy sheriff, respectively, and a sheriff, an acting or a deputy sheriff appointed in terms of any law not yet repealed by a competent authority and in force immediately before the commencement of the Constitution, in any area which forms part of the national territory;

**'Supreme Court of Appeal Rules'** means the rules regulating the conduct of the proceedings of the Supreme Court of Appeal published under Government Notice No. R. 1523 of 27 November 1998; and

**'Uniform Rules'** means the rules regulating the conduct of the proceedings of the several provincial and local divisions of the high courts published under Government Notice No. R. 48 of 12 January 1965, as amended.

- (2) Any powers or authority vesting in the Chief Justice in terms of these rules may be exercised by a judge or judges designated by the Chief Justice for that purpose.
- (3) Any reference in these rules to a party having to sign documents shall be construed as including a reference to a legal representative representing such party, and a reference to lodging documents with the Registrar as including prior service of such documents on other parties and the lodging of 25 copies of all relevant documents and an electronic version thereof that is compatible with the software used by the Court, with the Registrar.
- (4) Notices, directions or other communications in terms of these rules may be given or made by registered post or by facsimile or other electronic copy: Provided that, if a notice or other communication is given by electronic copy, the party giving such notice or communication shall forthwith lodge with the Registrar a hard copy of the notice or communication, with a certificate signed by such a party verifying the date of such communication or notice.
- (5) The Chief Justice may extend any time limit prescribed in these rules.

- (6) Written arguments, responses and any other representations to the Court shall be clear and succinct.
- (7) Applications shall be legible and in double-spaced, typewritten format on A4-size paper.
- (8) Subject to rule 5, the provisions of rule 4 of the Uniform Rules shall apply, with such modifications as may be necessary, to the service of any process of the Court.

## **PART I**

### **2. Court**

- (1) There shall be four terms in each year as follows:

15 February to 31 March, inclusive;

1 May to 31 May, inclusive;

15 August to 30 September, inclusive;

1 November to 30 November, inclusive.

- (2) A case may be heard out of term if the Chief Justice so directs.
- (3) If the day fixed for the commencement of a term is not a Court day, the term shall commence on the next succeeding Court day and, if the day fixed for the end of a term is not a Court day, the term shall end on the Court day preceding.

## **PART II REGISTRAR**

### **3. Registrar's office hours**

- (1) The office of the Registrar shall be open from 08:30 to 13:00 and from 14:00 to 15:30 on Court days.
- (2) The Registrar may in exceptional circumstances accept documents at a time outside office hours, and shall do so when directed by a judge.

### **4. General duties of the Registrar**

- (1) A notice of appeal, an order of court referring any matter to the Court by another court, or another document by which proceedings are initiated in the Court in terms of these rules shall be numbered by the Registrar with a consecutive number for the year during which it is filed.

- (2) Every document afterwards lodged in such a case or in any subsequent case in continuation thereof shall be marked with that number by the party lodging it and shall not be received by the Registrar until so marked.
- (3) All documents delivered to the Registrar to be filed in a case shall be filed by the Registrar in a case file under the number of such case.
- (4) All documents referred to in subrule (1) shall be subject to the payment of R75, 00 court fees in the form of a revenue stamp: Provided that if a party satisfies the Registrar in terms of subrule (5) that he or she is indigent, the payment of court fees shall be waived by the Registrar who shall make a note to that effect on the first page of the document in question.
- (5) A party who desires to initiate or oppose proceedings in the Court and who is of the opinion that he or she is indigent, or anybody on behalf of such party, shall satisfy the Registrar that, except for household goods, wearing apparel and tools of trade, such party is not possessed of property to the amount of R20 000 and will not be able within a reasonable time to provide such sum from his or her earnings.
- (6) Where photocopies are made, the fee prescribed in subrule (6)(a) shall be payable. Copies of a record may be made by any person in the presence of the Registrar.
  - (a) The Registrar shall at the request of a party make a copy of any court document on payment of court fees with revenue stamps of R0, 50 for every photocopy of an A4-size page or part thereof and shall against payment of a fee of R1, 00 certify that photocopy to be a true copy of the original.
  - (b) The payment of court fees may be waived by the Registrar in the case of an indigent person referred to in subrules (4) and (5).
- (7) Whenever the Court makes an order declaring or confirming any law or provision thereof to be inconsistent with the Constitution under section 172 of the Constitution, the Registrar shall, not later than 15 days after such order has been made, cause such order to be published in the *Gazette* and in the relevant *Provincial Gazette* if the order relates to provincial legislation.
- (8) The Registrar shall publish a hearing list, which shall be affixed to the notice board at the Court building not less than 15 days before each term for the convenience of the legal representatives and the information of the public.
- (9) Directions with regard to any proceedings shall be furnished by the Registrar to the parties concerned within five days of such directions having been given.

(10)

- (a) The Registrar shall maintain the Court's records and shall not permit any of them to be removed from the court building.
- (b) Any document lodged with the Registrar and made part of the Court's records shall not thereafter be withdrawn permanently from the official court files.
- (c) After the conclusion of the proceedings in the Court, any original records and papers transmitted to the Court by any other court shall be returned to the court from which they were received.

(11)

- (a) If it appears to the Registrar that a party is unrepresented, he or she shall refer such party to the nearest office or officer of the Human Rights Commission, the Legal Aid Board, a law clinic or such other appropriate body or institution that may be willing and in a position to assist such party.
- (b) The State or the Registrar shall not be liable for any damage or loss resulting from assistance given in good faith by that Registrar to such party in proceedings before the Court or in the enforcement of an order in terms of these rules in the form of legal advice or in the compilation or preparation of any process or document.

### **PART III JOINDER OF ORGANS OF STATE**

**5.**

- (1) In any matter, including any appeal, where there is a dispute over the constitutionality of any executive or administrative act or conduct or threatened executive or administrative act or conduct, or in any inquiry into the constitutionality of any law, including any Act of Parliament or that of a provincial legislature, and the authority responsible for the executive or administrative act or conduct or the threatening thereof or for the administration of any such law is not cited as a party to the case, the party challenging the constitutionality of such act or conduct or law shall, within five days of lodging with the Registrar a document in which such contention is raised for the first time in the proceedings before the Court, take steps to join the authority concerned as a party to the proceedings.
- (2) No order declaring such act, conduct or law to be unconstitutional shall be made by the Court in such matter unless the provisions of this rule have been complied with.

### **PART IV PARTIES**

## **6. Representation of Parties**

Except where the Court or the Chief Justice directs otherwise, no person shall be entitled to appear on behalf of any party at any proceedings of the Court unless he or she is entitled to appear in the high courts.

## **7. Change of Parties**

- (1) If a party dies or becomes incompetent to continue any proceedings, the proceedings shall thereby be stayed until such time as an authorised representative or other competent person has been appointed in the place of such party, or until such incompetence ceases to exist.
- (2) Where an authorised or other competent person has been so appointed, the Court may, on application, order that such authorised or competent person be substituted for the party who has so died or become incompetent.

## **8. Intervention of Parties in the proceedings**

- (1) Any person entitled to join as a party or liable to be joined as a party in the proceedings may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a party.
- (2) The Court or the Chief Justice may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the proceedings as may be necessary.

## **9. Power of attorney or authorisation to act**

- (1) A power of attorney need not be filed, but the authority of a legal practitioner to act on behalf of any party may, within 21 days after it has come to the notice of any party that the legal practitioner is so acting, or with the leave of the Court on good cause shown at any time before judgment, be disputed by notice, whereafter the legal practitioner may no longer so act, unless a power of attorney is lodged with the Registrar within 21 days of such notice.
- (2) Every power of attorney or authorisation to act lodged shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law.
- (3) No power of attorney or authorisation to act shall be required to be lodged by anyone acting on behalf of the State.

## **PART V**

## **10. *Amici curiae***

- (1) Subject to these rules, any person interested in any matter before the Court may, with the written consent of all the parties in the matter before the Court, given not later than the time specified in subrule (5), be admitted therein as an *amicus curiae* upon such terms and conditions and with such rights and privileges as may be agreed upon in writing with all the parties before the Court or as may be directed by the Chief Justice in terms of subrule (3).
- (2) The written consent referred to in subrule (1) shall, within five days of it having been obtained, be lodged with the Registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.
- (3) The Chief Justice may amend the terms, conditions, rights and privileges agreed upon as referred to in subrule (1).
- (4) If the written consent referred to in subrule (1) has not been secured, any person who has an interest in any matter before the Court may apply to the Chief Justice to be admitted therein as an *amicus curiae*, and the Chief Justice may grant such application upon such terms and conditions and with such rights and privileges as he or she may determine.
- (5) If time limits are not otherwise prescribed in the directions given in that matter an application pursuant to the provisions of subrule (4) shall be made not later than five days after the lodging of the respondent's written submissions or after the time for lodging such submissions has expired.
- (6) An application to be admitted as an *amicus curiae* shall-
  - (a) briefly describe the interest of the *amicus curiae* in the proceedings;
  - (b) briefly identify the position to be adopted by the *amicus curiae* in the proceedings; and
  - (c) set out the submissions to be advanced by the *amicus curiae*, their relevance to the proceedings and his or her reasons for believing that the submissions will be useful to the Court and different from those of the other parties.
- (7) An *amicus curiae* shall have the right to lodge written argument, provided that such written argument does not repeat any matter set forth in the argument of the other parties and raises new contentions which may be useful to the Court.
- (8) Subject to the provisions of rule 31, an *amicus curiae* shall be limited to the record on appeal or referral and the facts found proved in other proceedings and shall not add thereto and shall not present oral argument.
- (9) An order granting leave to be admitted as an *amicus curiae* shall specify the date of lodging the written argument of the *amicus curiae* or any other relevant matter.

- (10) An order of Court dealing with costs may make provision for the payment of costs incurred by or as a result of the intervention of an *amicus curiae*.
- (11) The provisions of rule 1(3) shall be applicable, with such modifications as maybe necessary, to an *amicus curiae*.

## PART VI APPLICATIONS

### 11. Application procedure

- (1) Save where otherwise provided, in any matter in which an application is necessary for any purpose, including-
- (a) in respect of a matter contemplated in section 167(4)(a) of the Constitution, and
  - (b) the obtaining of directions from the Court,

such application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief and shall set out an address within 25 kilometres from the office of the Registrar stating the physical and postal address with facsimile, telephone numbers and an e-mail address, where available, at which he or she will accept notice and service of all documents in the proceedings and shall set forth a day, not less than five days after service thereof on the respondent, on or before which such respondent is required to notify the applicant in writing whether he or she intends to oppose such application and shall further state that if no such notification is given, the Registrar will be requested to place the matter before the Chief Justice to be dealt with in terms of subrule (4).

- (2) When relief is claimed against any person, authority, government, organ of state or body, or where it is necessary or proper to give any of the aforementioned notice of an application referred to in subrule (1), the notice of motion shall be addressed to both the Registrar and the aforementioned, and shall set out such particulars, including physical address, facsimile, telephone numbers and an e-mail address, where available, of the party against whom the relief is sought, as will enable the Registrar to communicate with such party, otherwise it shall be addressed to the Registrar and shall be as near as may be in accordance with Form 1 or 2, as the case may be.
- (3)
- (a) Any person opposing the granting of an order sought in the notice of motion shall-
    - (i) within the time stated in the said notice, notify the applicant and the Registrar in writing of his or her intention to oppose the application and shall in such notice appoint an address

within 25 kilometres of the office of the Registrar at which he or she will accept notice and service of all documents in the proceedings;

(ii) within 15 days of notifying the applicant of his or her intention to oppose the application lodge his or her answering affidavit, if any, together with any relevant documents, which may include supporting affidavits.

(b) The applicant may lodge a replying affidavit within 10 days of the service upon him or her of the affidavit and documents referred to in paragraph (a)(ii).

(c)

(i) Where no notice of opposition is given or where no answering affidavit in terms of paragraph (a)(ii) is lodged within the time referred to in paragraph (a)(ii), the Registrar shall within five days of the expiry thereof place the application before the Chief Justice.

(ii) Where an answering affidavit is lodged, the Registrar shall place the application before the Chief Justice within five days of the lodging of the replying affidavit.

(d) The Chief Justice may, when giving directions under subrule (4), permit the lodging of further affidavits.

(4) When an application is placed before the Chief Justice in terms of subrule (3)(c), he or she shall give directions as to how the application shall be dealt with and, in particular, as to whether it shall be set down for hearing or whether it shall be dealt with on the basis of written argument or summarily on the basis of the information contained in the affidavits.

## **12. Urgent applications**

(1) In urgent applications, the Chief Justice may dispense with the forms and service provided for in these rules and may give directions for the matter to be dealt with at such time and in such manner and in accordance with such procedure, which shall as far as is practicable be in accordance with these rules, as may be appropriate.

(2) An application in terms of subrule (1) shall on notice of motion be accompanied by an affidavit setting forth explicitly the circumstances that justify a departure from the ordinary procedures.

## **13. Argument**

(1) Written argument shall be filed timeously and shall contain a table of contents, and a table of authorities with references to the pages in the document on which they are cited.

(2) Oral argument shall not be allowed if directions to that effect are given by the Chief Justice.

- (3)
- (a) Oral argument shall be relevant to the issues before the Court and its duration shall be subject to such time limits as the Chief Justice may impose.
  - (b) The parties shall assume that all the judges have read the written arguments and that there is no need to repeat what is set out therein.
- (4)
- (a) Argument may be addressed to the Court in any official language and the party concerned shall not be responsible for the provision of an interpreter.
  - (b) Should a person wish to address the Court in an official language other than the language in which such person's written argument is couched, such person shall, at least seven days prior to the hearing of the matter in question, give written notice to the Registrar of his or her intention to use another official language and shall indicate what that language is.
- (5) On the Court's own motion, or on the application of one or more parties, the Court may order that two or more cases, involving what appear to be the same or related questions, be argued together as one case or on such other terms as may be prescribed.

## PART VII

### MATTERS WITH IN THE EXCLUSIVE JURISDICTION OF THE COURT

#### 14. Referral of a Bill

- (1) The referral of a Bill in terms of section 79(4)(b) or 121(2)(b) of the Constitution by the President of the Republic of South Africa or by the Premier of a province, as the case may be, shall be in writing and shall be addressed to the Registrar and to the Speaker of the National Assembly and the Chairperson of the National Council of Provinces, or to the Speaker of the provincial legislature in question, as the case may be.
- (2) Such referral shall specify-
- (a) the provision or provisions of the Bill in respect of which the President of the Republic of South Africa or the Premier of a province has reservations;
  - (b) the constitutional provision or provisions relating to such reservations; and
  - (c) the grounds or reasons for such reservations.

- (3) Political parties represented in the national Parliament or the provincial legislature concerned, as the case may be, shall be entitled as of right to make written submissions relevant to the determination of the issue within the time specified in directions given under subrule (4).
- (4) Upon receipt of the referral, the matter shall be dealt with in accordance with directions given by the Chief Justice, which may include a direction-
  - (a) requesting the relevant Speaker or the Chairperson of the National Council of Provinces, as the case may be, for such additional information as the Chief Justice may consider to be necessary or expedient to deal with the matter; and
  - (b) calling upon all interested political parties in the national Parliament or the provincial legislature concerned, as the case may be, who may wish to do so to make such written submissions as are relevant to the determination of the issue within a period to be specified in such direction.

## 15. Constitutionality of an Act

- (1) An application in terms of sections 80(1) and 122(1) of the Constitution by members of the National Assembly or a provincial legislature shall be brought on notice of motion supported by an affidavit as to the contentions upon which the applicants rely for relief and shall be lodged with the Registrar and served on the Speaker of the National Assembly and, where applicable, the Chairperson of the National Council of Provinces, or on the Speaker of the provincial legislature concerned, as the case may be.
- (2) The notice shall request the Speaker and, if relevant, the Chairperson of the National Council of Provinces, to bring the application to the attention of all political parties represented in the relevant house or legislature in writing within five days of the service upon him or her of such application.
- (3) The application referred to in subrule (1) shall be accompanied by a certificate by the Speaker of the legislature concerned that the requirements of section 80(2)(a) or section 122(2)(a) of the Constitution, as the case may be, have been complied with.
- (4) The application referred to in subrule (1) shall also specify-
  - (a) the provision or provisions of the Act being challenged;
  - (b) the relevant provision or provisions of the Constitution relied upon for such challenge;
  - (c) the grounds upon which the respective provisions are deemed to be in conflict; and
  - (d) the relief, including any interim relief, sought.

- (5)
- (a) Any political party in the legislature concerned or any government that wishes to oppose the granting of an order sought in such an application shall notify the Registrar in writing within 15 days of service of such application of such intention to oppose and shall, in such notification, appoint an address at which such party or government will accept notice and service of all documents in the proceedings.
  - (b) If such a notice is given, the application shall be disposed of in accordance with the provisions of rule 11.
- (6) If a notice to oppose is not lodged in terms of subrule (5), the matter shall be disposed of in accordance with directions given by the Chief Justice, which may include a direction-
- (a) calling for such additional information as the Chief Justice may consider necessary or expedient to deal with the matter; and
  - (b) that all interested political parties in the national Parliament or the provincial legislature concerned, as the case may be, who wish to do so make such written submissions as are relevant to the determination of the issue within a period specified in such direction.

**16. Confirmation of an order of constitutional invalidity**

- (1) The Registrar of a court which has made an order of constitutional invalidity as contemplated in section 172 of the Constitution shall, within 15 days of such order, lodge with the Registrar of the Court a copy of such order.
- (2) A person or organ of state entitled to do so and desirous of appealing against such an order in terms of section 172(2)(d) of the Constitution shall, within 15 days of the making of such order, lodge a notice of appeal with the Registrar and a copy thereof with the Registrar of the court which made the order, whereupon the matter shall be disposed of in accordance with directions given by the Chief Justice.
- (3) The appellant shall in such notice of appeal set forth clearly the grounds on which the appeal is brought, indicating which findings of fact and/or law are appealed against and the order it is contended ought to have been made.
- (4) A person or organ of state entitled to do so and desirous of applying for the confirmation of an order in terms of section 172(2)(d) of the Constitution shall, within 15 days of the making of such order, lodge an application for such confirmation with the Registrar and a copy thereof with the Registrar of the court which made the order, whereupon the matter shall be disposed of in accordance with directions given by the Chief Justice.

- (5) If no notice or application as contemplated in subrules (2) and (4), respectively, has been lodged within the time prescribed, the matter of the confirmation of the order of invalidity shall be disposed of in accordance with directions given by the Chief Justice.

#### **17. Certification of a provincial constitution**

- (1) The Speaker of a provisional legislature which has passed or amended a constitution in terms of sections 142 and 144(2) of the Constitution and which wishes such constitution or constitutional amendment to be certified by the Court shall certify in writing the content of the constitution or amendment passed by the provincial legislature and submit such constitution or constitutional amendment to the Registrar with a formal request to the Court to perform its functions in terms of section 144 of the Constitution.
- (2) The certificate contemplated in subrule (1) shall include a statement specifying that the constitution or the constitutional amendment was passed by the requisite majority.
- (3) Any political party represented in the provincial legislature shall be entitled as of right to present oral argument to the Court, provided that such political party may be required to submit a written submission to the Court in advance of the oral argument.
- (4) Upon the receipt of the request referred to in subrule (1), the matter shall be disposed of in accordance with directions given by the Chief Justice, which may include-
- (a) referral to the Speaker for such additional information as is considered by the Chief Justice to be necessary or expedient to deal with the matter;
  - (b) a direction, specifying the time within which written submissions from interested political parties shall be made;
  - (c) a direction that any written submissions made in terms paragraph (b) should be brought to the attention of other political parties in the provincial legislature by such means as the Chief Justice considers suitable.
- (5) An order of the Court pursuant to section 144 of the Constitution may specify the provisions of the provincial constitution or of the constitutional amendment, if any, which comply and which do not comply with the Constitution.

### **PART VIII DIRECT ACCESS AND APPEALS**

#### **18. Direct access**

- (1) An application for direct access as contemplated in section 167(6)(a) of the Constitution shall be brought on notice of motion, which shall be supported by an affidavit, which shall set forth the facts upon which the applicant relies for relief.
- (2) An application in terms of subrule (1) shall be lodged with the Registrar and served on all parties with a direct or substantial interest in the relief claimed and shall set out-
  - (a) the grounds on which it is contended that it is in the interests of justice that an order for direct access be granted;
  - (b) the nature of the relief sought and the grounds upon which such relief is based;
  - (c) whether the matter can be dealt with by the Court without the hearing of oral evidence and, if it cannot,
  - (d) how such evidence should be adduced and conflicts of fact resolved.
- (3) Any person or party wishing to oppose the application shall, within 10 days after the lodging of such application, notify the applicant and the Registrar in writing of his or her intention to oppose.
- (4) After such notice of intention to oppose has been received by the Registrar or where the time for the lodging of such notice has expired, the matter shall be disposed of in accordance with directions given by the Chief Justice, which may include-
  - (a) a direction calling upon the respondents to make written submissions to the Court within a specified time as to whether or not direct access should be granted; or
  - (b) a direction indicating that no written submissions or affidavits need be filed.
- (5) Applications for direct access may be dealt with summarily, without hearing oral or written argument other than that contained in the application itself: Provided that where the respondent has indicated his or her intention to oppose in terms of subrule (3), an application for direct access shall be granted only after the provisions of subrule (4)(a) have been complied with.

## **19. Appeals**

- (1) The procedure set out in this rule shall be followed in an application for leave to appeal to the Court where a decision on a constitutional matter, other than an order of constitutional invalidity under section 172(2)(a) of the Constitution, has been given by any court including the Supreme Court of Appeal, and irrespective of whether the President has refused leave or special leave to appeal.

- (2) A litigant who is aggrieved by the decision of a court and who wishes to appeal against it directly to the Court on a constitutional matter shall, within 15 days of the order against which the appeal is sought to be brought and after giving notice to the other party or parties concerned, lodge with the Registrar an application for leave to appeal: Provided that where the President has refused leave to appeal the period prescribed in this rule shall run from the date of the order refusing leave.
- (3) An application referred to in subrule (2) shall be signed by the applicant or his or her legal representative and shall contain-
- (a) the decision against which the appeal is brought and the grounds upon which such decision is disputed;
  - (b) a statement setting out clearly and succinctly the constitutional matter raised in the decision; and any other issues including issues that are alleged to be connected with a decision on the constitutional matter;
  - (c) such supplementary information or argument as the applicant considers necessary to bring to the attention of the Court; and
  - (d) a statement indicating whether the applicant has applied or intends to apply for leave or special leave to appeal to any other court, and if so-
    - (i) which court;
    - (ii) whether such application is conditional upon the application to the Court being refused; and
    - (iii) the outcome of such application, if known at the time of the application to the Court.
- (4)
- (a) Within 10 days from the date upon which an application referred to in subrule (2) is lodged, the respondent or respondents may respond thereto in writing, indicating whether or not the application for leave to appeal is being opposed, and if so the grounds for such opposition.
  - (b) The response shall be signed by the respondent or respondents or his or her or their legal representative.
- (5)
- (a) A respondent or respondents wishing to lodge a cross-appeal to the Court on a constitutional matter shall, within 10 days from the date upon which an application in subrule (2) is lodged, lodge with the Registrar an application for leave to cross-appeal:

- (b) The provisions of these rules with regard to appeals shall apply, with necessary modifications, to cross-appeals.
- (6)
- (a) The Court shall decide whether or not to grant the appellant leave to appeal.
  - (b) Applications for leave to appeal may be dealt with summarily, without receiving oral or written argument other than that contained in the application itself
  - (c) The Court may order that the application for leave to appeal be set down for argument and direct that the written argument of the parties deal not only with the question whether the application for leave to appeal should be granted, but also with the merits of the dispute. The provisions of rule 20 shall, with necessary modifications, apply to the procedure to be followed in such procedures.

## **20. Procedure on appeal**

- (1) If leave to appeal is given in terms of rule 19, the appellant shall note and prosecute the appeal as follows:
- (a) The appellant shall prepare and lodge the appeal record with the Registrar within such time as may be fixed by the Chief Justice in directions.
  - (b) Subject to the provisions of subrule (1)(c) below, the appeal record shall consist of the judgment of the court from which the appeal is noted, together with all the documentation lodged by the parties in that court and all the evidence which may have been led in the proceedings and which may be relevant to the issues that are to be determined.
  - (c)
    - (i) The parties shall endeavour to reach agreement on what should be included in the record and, in the absence of such agreement, the appellant shall apply to the Chief Justice for directions to be given in regard to the compilation of the record.
    - (ii) Such application shall be made in writing and shall set out the nature of the dispute between the parties in regard to the compilation of the record and the reasons for the appellant's contentions.
    - (iii) The respondent may respond to the application within 10 days of being served with the application and shall set out the reasons for the respondent's contentions.

- (iv) The Chief Justice may assign the application to one or more judges, who may deal with the matter on the papers or require the parties to appear before him or her or them on a specified day and at a specified time to debate the compilation of the record.
- (v) The judge or judges concerned shall give directions in regard to the compilation of the record, the time within which the record is to be lodged with the Registrar and any other matters which may be deemed by him or her or them to be necessary for the purpose of enabling the Court to deal with the appeal, which directions may include that the matter be referred back to the court a quo for the hearing of additional evidence specified in the directions, or that additional evidence be put before the Court by way of affidavit or otherwise for the purpose of the appeal

(2)

- (a) One of the copies of the record lodged with the Registrar shall be certified as correct by the Registrar of the court appealed from.
- (b) Copies of the record shall be clearly typed on stout A4-size paper, double-spaced in black record ink, on one side of the paper only.
- (c) Legible documents that were typed or printed in their original form such as cheques and the like shall not be retyped and clear photocopies on A4-size paper shall be provided instead.
- (d) The pages shall be numbered clearly and consecutively and every tenth line on each page shall be numbered and the pagination used in the court a quo shall be retained where possible.
- (e) Bulky records shall be divided into separate conveniently-sized volumes of approximately 100 pages each. The record shall be securely bound in book format to withstand constant use and shall be so bound that upon being used will lie open without manual or other restraint.
- (f) All records shall be securely bound in suitable covers disclosing the case number, names of the parties, the volume number and the numbers of the pages contained in that volume, the total number of volumes, the court a quo and the names of the attorneys of the parties.
- (g) The binding required by this rule shall be sufficiently secure to ensure the stability of the papers contained within the volume; and where the record consists of more than one volume, the number of each volume and the number of the pages contained in a volume shall appear on the upper third of the spine of the volume.
- (h) Where documents are lodged with the Registrar, and such documents are recorded on a computer disk, the party lodging the document shall where possible also make available to the Registrar a disk containing the file in which the document is contained, or transmit an electronic copy of the document concerned by e-mail in a format determined by the Registrar which is

compatible with software that is used by the Court at the time of lodgement, to the Registrar at: registrar@concourt.org.za: Provided that the transmission of such copy shall not relieve the party concerned from the obligation under rule 1(3) to lodge the prescribed number of hard copies of the documents so lodged.

- (i) If a disk is made available to the Registrar the file will be copied and the disk will be returned to the party concerned. Where a disk or an electronic copy of a document other than a record is provided, the party need lodge only 13 copies of the document concerned with the Registrar.
- (3) If a record has been lodged in accordance with the provisions of paragraphs (b) and (c) of subrule (1), the Registrar shall cause a notice to be given to the parties to the appeal requiring-
- (a) the appellant to lodge with the Registrar written argument in support of the appeal within a period determined by the Chief Justice and specified in such notice; and
  - (b) the respondent to lodge with the Registrar written argument in reply to the appellant's argument by a specified date determined by the Chief Justice, which shall be subsequent to the date on which the appellant's argument was served on the respondent.
- (4) The appellant may lodge with the Registrar written argument in answer to the respondent's argument within 10 days from the date on which the respondent's argument was served on the appellant.
- (5) The Chief Justice may decide whether the appeal shall be dealt with on the basis of written arguments only.
- (6) Subject to the provisions of subrule (5), the Chief Justice shall determine the date on which oral argument will be heard, and the Registrar shall within five days of such determination notify all parties to the appeal of the date of the hearing by registered post or facsimile.

## **21. Additional information to be furnished to the Registrar**

When an application for confirmation of an order of constitutional invalidity or a notice of appeal against such order is lodged with the Registrar in terms of rule 16, or an application for leave to appeal is lodged in terms of rule 19, the applicant or appellant shall at the same time provide the Registrar with a note-

- (a) setting out the length of the record, or if the record consists of evidence that has not been transcribed, an estimate of the length of the record and the time required for transcription;
- (b) whether there are any special circumstances that may require a hearing of more than one day or which might otherwise be relevant to the directions to be given by the Chief Justice.

**PART IX  
FEES AND COSTS**

**22. Taxation of costs and attorneys' fees**

- (1) Rules 17 and 18 of the Supreme Court of Appeal Rules regarding taxation and attorneys' fees shall apply, with such modifications as may be necessary.
- (2) In the event of oral and written argument, a fee for written argument may in appropriate circumstances be allowed as a separate item.

**23. Fees of the Court**

- (1) In addition to the Court fees already prescribed in these rules the fees in Schedule 2 shall be the fees of the court payable with revenue stamps.
- (2) The proviso to rule 4(4) and the provisions of rule 4(5) shall apply, with such modifications as may be necessary.

**PART X  
MISCELLANEOUS PROVISIONS**

**24. Library**

- (1) The Court's library shall be available for use by the judges, the staff of the Court and other persons who have permission from the librarian for the purposes of constitutional research.
- (2) The library shall be open during such times as the reasonable needs of the Court may require and its operation shall be governed by the rules made by the Court's Library Committee in consultation with the Chief Justice.

**25. Translations**

Where any record or other document lodged with the Registrar contains material written in an official language that is not understood by all the judges, the Registrar shall have the portions of such record or document concerned translated by a sworn translator of the High Court into a language or languages that will be understood by such judges, and shall supply the parties with a copy of such translations.

**26. Models, diagrams and exhibits**

- (1) Models, diagrams and exhibits of material forming part of the evidence taken in a case and brought to the Court for its inspection shall be placed in the custody of the Registrar at least 10 days before the case is to be heard or submitted.
- (2) All models, diagrams and exhibits of material placed in the custody of the Registrar shall be removed by the parties within 40 days after the case is decided.
- (3) When this is not done, the Registrar shall notify the party concerned to remove the articles forthwith and if they are not removed within six months thereafter, the Registrar shall destroy them or otherwise appropriately dispose of them.

## **27. Withdrawal of cases**

Whenever all parties, at any stage of the proceedings, lodge with the Registrar an agreement in writing that a case be withdrawn, specifying the terms relating to the payment of costs and payment to the Registrar of any fees that may be due, the Registrar shall, if the Chief Justice so directs, enter such withdrawal, whereupon the Court shall no longer be seized of the matter.

## **28. Format of documents**

- (1) Every document that exceeds 15 pages shall, regardless of the method of duplication, contain a table of contents with correct references.
- (2) Every document at its close shall bear the name of the party or his or her attorney, the postal and physical address, facsimile, telephone number and an e-mail address, where available, and the original document shall be signed by the party or his or her attorney.
- (3)
  - (a) The Registrar shall not accept for lodging any document presented in a form not in compliance with these rules, but shall return it to the defaulting party indicating respects in which there has been a failure to comply: Provided that if new and proper copies of any such document are resubmitted within five days of receiving written notification, such lodging shall not be deemed late.
  - (b) If the Court finds that the provisions of these rules have not been complied with, it may impose, in its discretion, appropriate sanctions.

## **29. Application of certain rules of the Uniform Rules**

The following rules of the Uniform Rules shall, with such modifications as may be necessary, apply to the proceedings in the Court:

<b>Rule No.</b>	<b>Subject</b>
6(7) to 6(15)	Joinder of parties on application and related matters
28	Amendments to pleadings and documents
35(13)	Discovery, inspection and production of documents
38(3) to 38(8)	Procuring evidence for trial
42	Variation and rescission of orders
59	Sworn translators
61	Interpretation of evidence
62	Filing, preparation and inspection of documents
63	Authentication of documents executed outside the Republic for use within the Republic
64	Destruction of documents
65	Commissioners of the Court

### **30. Application of certain sections of the Supreme Court Act, 1959 (Act No. 59 of 1959)**

The following sections of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply, with such modifications as may be necessary, to proceedings of and before the Court as if they were rules of their court.

<b>Section</b>	<b>Subject</b>
19bis	Reference of particular matters for investigation by referee
22	Powers of court on hearing of appeals
32	Examinations by interrogatories of persons whose evidence is required in civil cases
33	Manner of dealing with commissions rogatoire, letters of request and documents for service originating from foreign countries: Provided that this provision shall apply subject to the replacement of English or Afrikaans with the phrase "any official language".

**31. Documents lodged to canvass factual material**

- (1) Any party to any proceedings before the Court and an amicus curiae properly admitted by the Court in any proceedings shall be entitled, in documents lodged with the Registrar in terms of these rules, to canvass factual material that is relevant to the determination of the issues before- the Court and that does not specifically appear on the record: Provided that such facts-
  - (a) are common cause or otherwise incontrovertible; or
  - (b) are of an official, scientific, technical or statistical nature capable of easy verification.
- (2) All other parties shall be entitled, within the time allowed by these rules for responding to such document, to admit, deny, controvert or elaborate upon such facts to the extent necessary and appropriate for a proper decision by the Court.

**32. Non-compliance with the rules**

The Court or the Chief Justice may-

- (1) of their own accord or on application and on sufficient cause shown, extend or reduce any time period prescribed in these rules and may condone non-compliance with these rules; and
- (2) give such directions in matters of practice, procedure and the disposal of any appeal, application or other matter as the Court or Chief Justice may consider just and expedient.

**33. Execution: Section 3 of the Constitutional Court Complementary Act, 1995 (Act No. 13 of 1995)**

Costs orders of the Court shall be executed in the magistrate's court as follows:

- (1) The costs order shall have the effect of a civil judgment of the magistrate's court and the party in whose favour a costs order was made shall be deemed the judgment creditor and the party against whom such order was made shall be deemed the judgment debtor.
- (2) The party in whose favour a costs order was made shall, where a costs order has not been complied with, file with the Registrar an affidavit setting out the details of the costs order and stating that the costs order has not been complied with or has not been complied with in full, as the case may be, and the amount outstanding, and shall request- the Registrar to furnish him or her with a certified copy of such costs order.

- (3) The Registrar shall, after having inspected the court file concerned to verify the contents of the affidavit, furnish the party referred to in subrule (2) with a certified copy of the costs order concerned and shall record such furnishing on the Court file.
- (4) The party referred to in subrule (2) shall file the said copy with the clerk of the civil court of the district in which he or she resides, carries on business or is employed.
- (5) Such order shall be executed in accordance with the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the Magistrates' Courts Rules published under Government Notice R. 1108 of 21 June 1968, as amended, regarding warrants of execution against movable and immovable property and the issuing of emolument attachment orders and garnishee orders only.

#### **34. Transitional provisions**

When a time is prescribed for any purpose in terms of these rules, and such time would otherwise have commenced to run prior to the commencement of these rules, such time shall begin to run only on the date on which these rules come into operation.

#### **35. Repeal of rules**

The Rules of the Constitutional Court previously published shall be repealed on the date on which these rules come into operation: Provided that any directions in writing pertaining to the procedures to be followed in the determination of a dispute or an issue in cases already instituted shall remain in force, unless repealed in writing by the Chief Justice.

#### **36. Short title**

These rules shall be called the Constitutional Court Rules, 2003.

### **Schedule 1 - FORMS**

#### **Form**

#### **No.**

1. Notice of motion (to Registrar)
2. Notice of motion (to Registrar and respondent)

**FORM 1**

**NOTICE OF MOTION**

**(to Registrar)**

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

Case No. ....

In the matter of:

..... (Applicant)

Take notice that the above-named applicant applies to the Court for an order in the following terms:

- (a) .....
- (b) .....
- (c) .....

and that the affidavit of ....., annexed hereto, will be used in support thereof.

Kindly place the matter before the Chief Justice to be dealt with in terms of rule 11(4).

Date at....., this ..... day of ..... 20.....

.....

Applicant or attorney

To the Registrar of the above-named Court.

**FORM 2**

**NOTICE OF MOTION**

**(to Registrar and Respondent)**

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

Case No. ....

In the matter between:

..... (Applicant)

and

..... (Respondent)

Take notice that ..... (hereinafter called the applicant) intends to make application to this Court for an order (a) ..... (b) ..... (c) ..... (here set forth the form of order prayed) and that the accompanying affidavit of ..... will be used in support thereof.

Take notice further that the applicant has appointed ..... (here set forth an address) as the address at which he or she will accept notice and service of all process in these proceedings.

Take notice further that if you intend opposing this application you are required (a) to notify applicant's attorney in writing on or before ..... (date) and (b) within 15 days after you have so given notice of your intention to oppose the application to file your answering affidavit, if any; and further that you are required to appoint in such notification an address at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose is given, the applicant will request the Registrar to place the matter before the Chief Justice to be dealt with in terms of rule 11(4).

Date at....., this ..... day of ..... 20.....

.....

Applicant or attorney

To: (1) .....

Prepared by:



In partnership with:



(Respondent)

.....  
.....  
.....

(Address)

(2) The Registrar of the above Court

.....

**Schedule 2  
FEES**

	<b>R</b>
Lodging of any application (other than the first document)	10,00
Lodging of an answering affidavit (each)	10,00
Lodging of a notice of appeal or cross-appeal	15,00
Order of the court granting leave to appeal	15,00
For the Registrar's certificate on certified copies of documents (each)	1,00
Taxing fee in any matter	25,00