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GOVERNMENT NOTICE

GOEWERMENTSKENNISGEWING

DEPARTMENT OF JUSTICE

DEPARTEMENT VAN JUSTISIE

No. R. 5

6 January 1995

No. R. 5

6 Januarie 1995

RULES OF THE CONSTITUTIONAL COURT

REËLS VAN DIE KONSTITUSIONELE HOF

The President of the Constitutional Court in consultation with the Chief Justice has, under section 100 read with section 102(11) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), prescribed the rules contained in the Annexure hereto regulating matters relating to the proceedings of and before the Constitutional Court with effect from **6 January 1995.**

Die President van die Konstitusionele Hof, in ooreenstemming met die Hoofregter, het kragtens artikel 100 gelees met artikel 102(11) van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), die reëls vervat in die Bylae hiervan met betrekking tot die reëling van die verrigtinge van en voor die Konstitusionele Hof, met ingang van **6 Januarie 1995** voorgeskryf.

ANNEXURE

DIVISION OF RULES

These rules are divided as follows:

Definitions (rule 1)

- PART I:** Sessions of the Court (rule 2)
PART II: Registrar (rules 3 and 4)
PART III: Service of process (rules 5 and 6)
PART IV: Representation (rules 7 and 8)
PART V: *Amicus curiae* submissions (rule 9)
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Definitions

1. (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);

“**Appellate Division Rules**” means the rules regulating the conduct of the proceedings of the Appellate Division of the Supreme Court of South Africa published under Government Notice No. R. 1207 of 15 December 1961, as amended;

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

“**Court**” means the Constitutional Court established by section 98(1) of 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;
- “**directions**” means directions given 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 99 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 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 in terms includes a legal representative appearing on behalf of a party, as the context may require;
- “**President**” means the President of the Court appointed under section 97(2)(a) of the Constitution;
- “**registrar**” means the registrar of the Court, and includes any acting or assistant-registrar 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 sheriff 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, immediately before the commencement of the Constitution, in force in any area which forms part of the national territory;
- “**the Constitution**” means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); and
- “**Uniform Rules**” means the rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended.

(2) Any powers or authority vesting in the President in terms of these rules may be exercised by a judge or judges designated by the President 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 with the registrar.

(4) The President may condone non-compliance with, or extend any time limit prescribed in, these rules.

PART I

SESSIONS OF THE COURT

Court terms

2. (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 President 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

Registrar's office hours

3. (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 any time, and shall do so when directed by a judge.

General duties of the registrar

4. (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) A document referred to in subrule (1) is subject to the payment of R75,00 court fees in the form of a revenue stamp: Provided that if an indigent party is assisted or represented by an office or officer of the Human Rights Commission, the Legal Aid Board, a law clinic or *pro Deo* counsel, or 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.

(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) Copies of a record may be made by any person in the presence of the registrar: Provided that the registrar shall at the request of a party make a copy of a recorded order, settlement, judgment or order relating to costs on payment of court fees with revenue stamps of R1,00 for every 100 typed words or part thereof, or on payment with revenue stamps of R0,50 for every photocopy of an A4-size page or part thereof and shall certify that copy or photocopy to be a true copy of the original: Provided further that if an indigent party is assisted or represented by an office or officer of the Human Rights Commission, the Legal Aid Board, a law clinic or *pro Deo* counsel, or satisfies the registrar that he or she is indigent in terms of subrule (5), the payment of court fees may be waived by the registrar.

(7) The registrar shall sign (manually or by machining a facsimile of his or her signature), date and issue all process as sued out by a party.

(8) In any matter 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, and the executive authority responsible for the executive or administrative act or conduct or the threatening thereof or for the administration of any such law is not 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, inform the executive authority concerned in writing of the matter and of the contentions that have been raised.

(9) If the Court declares any law or provision thereof inconsistent with the Constitution under section 98(5) of the Constitution or require that Parliament or any competent authority correct a defect in any law or provision within a specified period, the registrar shall, if such authority is not a party, within five days of such declaration or requirement notify the relevant authority in writing of the Court's order and of any order relating to costs.

(10) If the Court declares an executive or administrative act or conduct or threatened executive or administrative act or conduct of any organ of state to be unconstitutional under section 98(7) of the Constitution, and orders the organ of state concerned to refrain from or to correct such act or conduct, the registrar shall, if such organ of state is not a party to the proceedings, within five days of such declaration notify the organ of state concerned in writing of the Court's order and of any order relating to costs.

(11) Declarations in terms of subrules (9) and (10) shall be published by the appropriate organ of state in the *Gazette* or the Provincial Gazette concerned, if the Court so orders.

(12) (a) The registrar shall maintain the Court's records and shall not permit any of them to be removed from the court building, except as authorised by him or her.

(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.

(13) (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 or any law clinic that may be willing to assist such party.

(b) If no assistance is rendered by such Commission, Board or law clinic, the registrar shall assist such unrepresented party in preparing the papers required by these rules or, if directed to do so by the President, request an advocate or attorney to assist such party.

(c) 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

SERVICE OF PROCESS

Sheriff

5. (1) Unless the Court directs otherwise, all process of the Court, at the request of any party, shall be served or executed through a sheriff of the Supreme Court: Provided that a sheriff shall be under an obligation to effect service only if a party who desires the service has remunerated him or her beforehand for the said service according to the tariff for sheriffs prescribed in rule 68 of the Uniform Rules.

(2) Service or execution of judicial process shall, after payment of the remuneration, be effected by the sheriff concerned without delay, and the sheriff may, where resistance to the due service or execution of judicial process is experienced or is reasonably expected, call upon any member of the South African Police Service established in terms of section 214 of the Constitution for assistance.

(3) A sheriff who is entrusted with the service or execution of judicial process shall—

- (a) in writing notify the registrar and the party concerned who sued out the process that service or execution has been duly effected, stating the date and manner of service or the result of execution, and return that process to the registrar; or
- (b) in writing notify the party who sued out the judicial process concerned if he or she has been unable to effect service or execution, and of the reason for such inability, and return that process to the party concerned, and keep a record of any process so returned.

(4) A sheriff shall after service or attempted service of any judicial process specify the total amount of his or her charges on the original of that document and each copy thereof, and the amount of each of his or her charges separately on the return of service.

Service of process

6. The provisions of rule 4 of the Uniform Rules shall apply *mutatis mutandis* to the service of any process of the Court.

PART IV**REPRESENTATION****Representation of parties**

7. (1) Except where the Court or the President 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 Supreme Court of South Africa.

(2) If a party dies or becomes incompetent to continue any proceedings, the proceedings shall thereby be stayed until such time as an executor, curator, trustee, guardian or other competent person has been appointed in his or her place, or until such incompetence ceases to exist.

(3) Where an executor, curator, trustee, guardian or other competent person has been so appointed, the Court may, on application, order that he or she be substituted for the party who has so died or become incompetent.

Power of attorney or authorisation to act

8. (1) The registrar shall not, at the instance of a legal representative, accept any document in the initiation or opposition of any proceedings in the Court unless such legal representative has filed, together with such document, with the registrar a power of attorney or authorisation to act authorising him or her to do so.

(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: Provided that where a power of attorney or authorisation to act is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced to the registrar who shall note that fact on the said power of attorney or authorisation.

(3) No power of attorney or authorisation to act shall be required to be lodged by an attorney-general, a *pro Deo* counsel appointed by the State or the State Attorney, any deputy state attorney or any professional assistant to the State Attorney or any attorney instructed, in writing or by telegram or by fax, by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or a deputy state attorney is acting as such by virtue of any provision of the State Attorney Act, 1957 (Act No. 56 of 1957), or by virtue of any provision of any law not yet repealed by a competent authority and, immediately before the commencement of the Constitution, in force in any area which forms part of the national territory.

PART V**AMICUS CURIAE SUBMISSIONS****Submission by an *amicus curiae***

9. (1) Subject to the provisions of section 102(10) of the Constitution and the provisions of these rules, any person interested in an appeal or a reference or any other 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 ordered by the Court 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 shall, in addition to any other provision, embody the times agreed upon for the lodging of written argument.

(3) The terms and conditions and rights and privileges agreed upon as referred to in subrule (1) may be amended in accordance with the directions given by the President.

(4) If the written consent referred to in subrule (1) has not been secured, any person who has an interest in an appeal, reference or any other matter before the Court may apply to the President to be admitted therein as an *amicus curiae*, and the President may grant such application upon such terms and conditions and with such rights and privileges as he or she may determine.

(5) An application pursuant to the provisions of subrule (4) shall be made—

- (a) in the case of an appeal or reference, not later than 10 days after the applicant's or appellant's written argument in answer to the respondent's argument has been lodged with the registrar or the time for lodging such argument has expired;
- (b) in the case of an application for leave to appeal to the Court, within 10 days after such application has been lodged with the registrar;
- (c) in any case where the right of direct access to the Court has been invoked, within 10 days of the date upon which the Court became seized of the matter.

(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;
- (c) clearly, succinctly and without unnecessary elaboration 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* has the right to lodge written argument, provided that such written argument—

- (a) is clear, succinct and without unnecessary elaboration;
- (b) does not repeat any matter set forth in the argument of the other parties; and
- (c) raises new contentions which may be useful to the Court.

(8) In the event of new matters or arguments being raised by the *amicus curiae*, any other party shall have the right to file written argument within 10 days from the date upon which the argument of the *amicus curiae* was served on such parties which written argument shall comply with rule 19(3).

(9) Unless otherwise ordered by the Court, an *amicus curiae* shall be limited to the record on appeal or reference and the facts found proved in other proceedings and may not add thereto and shall not present oral argument.

(10) 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.

(11) 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 the *amicus curiae*.

(12) The provisions of rule 1(3) shall apply *mutatis mutandis* to an *amicus curiae*.

PART VI

APPLICATIONS

Application procedure

10. (1) Save where otherwise provided, in any matter in which an application is necessary for any purpose, including 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 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 President 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, otherwise it shall be addressed to the registrar and shall be as near as may be in accordance with Forms 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, give the applicant notice, in writing, that he or she intends to oppose the application, and 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; and
- (iii) if he or she intends to raise a question of law only, lodge notice of his or her intention to do so, within the time stated in subparagraph (ii) setting forth such question.

(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 subparagraph (ii) of paragraph (a).

(c) (i) Where no notice of opposition is given or where no answering affidavit in terms of subparagraph (ii) of paragraph (a) or notice in terms of subparagraph (iii) of paragraph (a) is lodged within the stated time referred to in subparagraph (ii) of paragraph (a), the applicant may within five days of the expiry thereof request the registrar to place the application before the President.

(ii) Where an answering affidavit is lodged, the applicant may request the registrar to place the application before the President within five days of the lodging of his or her replying affidavit or, if no replying affidavit is lodged, within five days of the expiry of the time stated in paragraph (b) and where a notice in terms of subparagraph (iii) of paragraph (a) is lodged, the applicant may request the registrar to place the application before the President within five days after the lodging of such notice.

(iii) If the applicant fails so to request the registrar within the allotted period, the respondent may do so immediately upon the expiry thereof.

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

(4) The President 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.

Oral argument

11. (1) Oral argument shall not be allowed if directions to that effect are given by the President.

(2) (a) Oral argument shall be succinct and relevant to the issues before the Court.

(b) It shall be assumed that all judges have read the written arguments and that there is no need to repeat what is set out therein.

(3) (a) The applicant or appellant shall be entitled to open and conclude the argument.

(b) A cross application shall be argued with the initial application as one case in the time allowed for that one case, and the Court shall advise the parties who shall open and close.

(c) The legal representative having the opening shall present the case fairly and completely and shall not reserve points of substance for rebuttal.

(4) The registrar shall from time to time prepare calendars of cases ready for argument.

(5) The registrar shall advise the legal representatives in writing when they are required to appear for oral argument within five days of directions to that effect having been given, and shall prepare 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.

(6) On the Court's own motion, or on motion 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

DIRECT ACCESS TO THE COURT

Opinion on proposed constitutional text

12. (1) A reference in terms of section 71(4) of the Constitution by the Chairperson of the Constitutional Assembly shall specify precisely which provision or provisions of the proposed constitutional text is or are to be tested against the Constitutional Principles, and shall identify the Constitutional Principle or Principles against which such provision or provisions is or are to be so tested.

(2) The Chairperson shall also certify that at least one fifth of all the members of the Constitutional Assembly have petitioned such a reference to the Court.

(3) The Chairperson shall, if so required by the President, forward to the registrar the relevant extracts of the debate in the Constitutional Assembly pertaining to the said reference.

(4) Upon receipt of the reference from the Chairperson the matter shall be disposed of in accordance with directions given by the President.

(5) Such directions may include—

- (a) a further reference to the Chairperson for such additional information as is considered by the President to be necessary or expedient to deal with the matter;
- (b) an order directing all interested parties in the Constitutional Assembly who wish to do so to make such written submissions as are relevant to the determination of the issue within a period to be specified, which order shall be brought to the attention of interested parties in the Constitutional Assembly through such means as the Court considers suitable;
- (c) an order directing that, in addition to the written submissions, oral argument will also be allowed;
- (d) an order directing that any written submission made in terms of paragraph (b) be brought to the attention of other interested parties in the Constitutional Assembly through such means as the Court considers suitable.

(6) The order of the Court may include an order for costs to be paid by the State or by a particular party.

Dispute over constitutionality of any Bill

13. (1) A request in terms of section 98(2)(d) and 98(9) of the Constitution by the Speaker of the National Assembly, the President of the Senate, or the Speaker of a provincial legislature, as the case may be, shall specify in writing precisely which provision or provisions of the relevant Bill is or are disputed, and shall certify that the requirements of section 98(9) of the Constitution have been complied with.

(2) A request contemplated in subrule (1) shall also specify the grounds upon which any such provision is disputed.

(3) The Speaker of the National Assembly, the President of the Senate or the Speaker of a provincial legislature, as the case may be, shall, if so required by the President, forward to the registrar the relevant extracts of the debate in the relevant legislature pertaining to the request.

(4) Upon receipt of the request from the Speaker or President referred to in subrule (1), the matter shall be disposed of in accordance with directions given by the President, which directions may *mutatis mutandis* include the matters referred to in rule 12(5).

(5) Rule 12(6) shall apply *mutatis mutandis*.

Constitutional disputes between parties in Parliament or between organs of state

14. (1) A reference by the President of the Republic of South Africa to the Court in terms of section 82(1)(d) shall include the following written information:

- (a) The identity of the parties between whom the dispute concerned has arisen; and
- (b) the exact nature of the dispute and such information, if any, as the President of the Republic of South Africa may consider necessary or desirable to bring to the attention of the Court.

(2) Upon receipt of such reference the matter shall be disposed of in accordance with directions given by the President, which directions may *mutatis mutandis* include the matters referred to in rule 12(5).

(3) Rule 12(6) shall apply *mutatis mutandis*.

Certification of constitutional text

15. (1) The Chairperson of the Constitutional Assembly which has passed a new constitutional text in terms of section 71(1) of the Constitution and which wishes such constitutional text to be certified by the Court shall certify in writing the content of the constitutional text passed by the Constitutional Assembly and submit such text to the registrar with a formal request to the Court to perform its functions in terms of section 71(2) of the Constitution.

(2) The certificate contemplated in subrule (1) shall include a statement specifying that the provisions of the text were passed by the requisite majority.

(3) Upon the receipt of the request referred to in subrule (1), the matter shall be disposed of in accordance with directions given by the President.

(4) The directions referred to in subrule (3) may *mutatis mutandis* include the matters referred to in rule 12(5): Provided that a political party represented in the Constitutional Assembly that wishes to present oral argument to the Court shall be entitled to do so as of right, but such political party may be required to submit written submissions to the Court in advance of the oral argument.

(5) Rule 12(6) shall apply *mutatis mutandis*.

(6) An order of the Court pursuant to section 71(2) may specify the provisions of the constitutional text, if any, which comply and which do not comply with the Constitutional Principles.

Certification of a provincial constitution

16. (1) The Speaker of a provincial legislature which has passed a constitution in terms of section 160(1) of the Constitution and which wishes such constitution to be certified by the Court shall certify in writing the content of the constitution passed by the provincial legislature and submit such constitution to the registrar with a formal request to the Court to perform its functions in terms of section 160(4) of the Constitution.

(2) The certificate contemplated in subrule (1) shall include a statement specifying that the constitution was passed by the requisite majority.

(3) Upon the receipt of the request referred to in subrule (1), the matter shall be disposed of in accordance with directions given by the President.

(4) The directions referred to in subrule (3) may *mutatis mutandis* include the matters referred to in rule 12(5): Provided that a political party represented in the provincial legislature that wishes to present oral argument to the Court shall be entitled to do so as of right, but such political party may be required to submit written submissions to the Court in advance of the oral argument.

(5) Rule 12(6) shall apply *mutatis mutandis*.

(6) An order of the Court pursuant to section 160(4) of the Constitution may specify the provisions of the constitution, if any, which comply and which do not comply with the Constitutional Principles.

Direct access in the interest of justice

17. (1) The Court shall allow direct access in terms of section 100(2) of the Constitution in exceptional circumstances only, which will ordinarily exist only where the matter is of such urgency, or otherwise of such public importance, that the delay necessitated by the use of the ordinary procedures would prejudice the public interest or prejudice the ends of justice and good government.

(2) The special procedure referred to in subrule (1) may be sanctioned by the Court on application made to it in terms of these rules.

(3) An application in terms of subrule (2) shall set out—

- (a) the grounds on which it is contended that such special circumstances exist;
- (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.

(4) The application referred to in subrule (3) shall be lodged with the registrar and served on all parties with a direct or substantial interest in the relief claimed.

(5) Upon receipt of the application, the matter shall be disposed of in accordance with directions given by the President.

- (6) The directions referred to in subrule (5) may include—
- (a) a direction that the matter concerned is not a proper one for the exercise of the special power of the Court in terms of section 100(2); of the Constitution
 - (b) directions *mutatis mutandis* of the kind referred to in rule 12(5).
- (7) Rule 12(6) shall apply *mutatis mutandis*.

PART VIII

APPEALS AND TRANSFERRED MATTERS FROM OTHER COURTS

Procedure for an application for leave to appeal

18. In any proceedings other than those referred to in rules 20 and 21 where a constitutional issue is the only issue in the case or the only issue on which an appeal will be brought, the following procedure shall be followed:

- (a) The appellant shall within 15 days of the judgment given by the provincial or local division of the Supreme Court which heard the case and after giving notice to the other party or parties concerned, apply to the judge or judges of that provincial or local division who gave the judgment or, if such judge or judges are not available, to another judge or judges of that provincial or local division to certify that the only issue (or issues) remaining in the case is (or are) of a constitutional nature and that there is reason to believe that the Court may give leave to the appellant to note an appeal against the decision on such issue given by the provincial or local division concerned.
- (b) The application referred to in paragraph (a) shall be in writing, signed by the appellant, and shall set out briefly and succinctly and without any unnecessary elaboration the constitutional issue raised in the case, the decision given by the provincial or local division of the Supreme Court thereon, and the grounds on which the decision of such division thereon is disputed.
- (c) The respondent or respondents may, within 10 days from the date upon which such application is served upon him or her or them, respond thereto in writing.
- (d) The response shall be brief and succinct and without any unnecessary elaboration and shall be signed by the respondent or respondents.
- (e) If it appears to the judge or judges of the division of the Supreme Court concerned, hearing the application made in terms of paragraph (a), that—
 - (i) the constitutional issue is one of substance on which a ruling by the Court is desirable; and
 - (ii) the evidence in the proceedings is sufficient to enable the Court to deal with and dispose of the matter without having to refer the case back to the division concerned for further evidence; and
 - (iii) there is a reasonable prospect that the Court will reverse or materially alter the decision given by the division concerned if permission to bring the appeal is given,

such judge or judges of the division concerned shall certify on the application that in his or her or their opinion, the requirements of subparagraphs (i), (ii) and (iii) have been satisfied or, failing which, the judge or judges shall certify which of such requirements have been satisfied, and which have not been satisfied.

- (f) Within 10 days from the date on which a positive or negative certificate is given in terms of paragraph (e) by the judge or judges of the division of the Supreme Court concerned, an appellant wishing to appeal to the Court against the decision of the division concerned on the constitutional issue shall lodge with the registrar an application for leave to appeal.
- (g) The application referred to in paragraph (f) shall be signed by the appellant, and shall contain—
 - (i) those portions of the judgment of the provincial or local division of the Supreme Court concerned that deal with the constitutional issue;
 - (ii) the application for the judge's certificate brought in terms of sub-rule (1);
 - (iii) the judge's certificate; and
 - (iv) such supplementary information or argument that the appellant considers necessary to bring to the attention of the Court, which information or argument shall be brief and succinct and without any unnecessary elaboration.
- (h) (i) Within 10 days from the date upon which the application referred to in paragraph (f) was lodged, the respondent or respondents may respond thereto in writing, indicating whether or not the parties concerned consent to leave to appeal being given and, if the application is opposed, the grounds for such opposition.
- (ii) The response shall be brief and succinct and without any unnecessary elaboration and shall be signed by the respondent or respondents.
- (i) (i) The President, after consulting the judges, shall decide whether or not to grant the appellant leave to appeal.
- (ii) Applications for leave to appeal may be dealt with summarily, without hearing oral or written argument other than that contained in the application itself.

Appeal under section 102(12), (16) and (17) of the Constitution

19. (1) If leave to appeal is given in terms of rule 18, the appellant shall note and prosecute the appeal as follows:

- (a) The appellant shall prepare and lodge the appeal record with the registrar within four months of the date on which leave to appeal has been given.
- (b) The appeal record shall consist of—
 - (i) those portions of the judgment of the court *a quo*, and all relevant documentation lodged by the parties in the court *a quo* pertaining to the issues that are to be determined; and
 - (ii) only such evidence and exhibits or affidavits and annexures as may be relevant for the purpose of the appeal.
- (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 President 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 briefly and succinctly and without any unnecessary elaboration 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 or respondents may respond to the application within 10 days of the application being served on him or her or them, setting out briefly and succinctly and without any unnecessary elaboration the reasons for his or her or their contentions.
- (iv) The President 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) 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 posted or faxed 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 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 subsequent to the date on which the appellant's argument was served on the respondent.

(3) 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.

(4) The written arguments referred to in subrules (2) and (3) shall be succinct and concise, and without any unnecessary elaboration.

(5) The President 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 President 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 post or fax.

Appeal on a constitutional issue from a conviction at a criminal trial held in a provincial or local division of the Supreme Court

20. (1) If an accused person who has been convicted and sentenced at a criminal trial before a provincial or local division of the Supreme Court, wishes to appeal against such conviction or sentence only on a constitutional issue and no other court has jurisdiction to hear and determine such appeal, the accused person shall be entitled to appeal to the Court.

(2) A notice of appeal shall be lodged with the registrar and served on the registrar of the court appealed from and on the Attorney-General within whose jurisdiction the trial was conducted, within 15 days of the conviction and sentence.

(3) A notice of appeal referred to in subrule (2) shall set out clearly and succinctly—

- (a) the constitutional issue in respect of which the appeal has been noted and that it is the only issue in respect of which the accused person wishes to appeal; and
- (b) where the constitutional issue was within the jurisdiction of the court that convicted the accused person—
 - (i) the decision given thereon by such court; and
 - (ii) the grounds on which such decision is disputed.

(4) An appeal noted in terms of subrule (2) shall be prosecuted in accordance with the provisions of rule 19.

Appeal on a constitutional issue from a decision given on appeal by a provincial or local division of the Supreme Court

21. (1) If—

- (a) an accused has appealed unsuccessfully to a provincial or local division of the Supreme Court against a conviction or sentence imposed on him or her in the magistrate's court; and
- (b) the grounds of appeal include a constitutional issue within the exclusive jurisdiction of the Court; and
- (c) the accused wishes to appeal against the conviction or sentence solely on the grounds of such constitutional issue,

the accused shall be entitled to appeal on such grounds to the Court against the conviction or sentence.

(2) The appeal shall be noted and prosecuted in accordance with the provisions of rule 20(2), (3) and (4).

Referral of issues by a provincial or local division of the Supreme Court

22. (1) Where an issue or dispute is referred to the Court by a provincial or local division of the Supreme Court in terms of section 102(1), 102(14) or 103(4) of the Constitution, the party who requested such issue or dispute to be referred or the registrar of the provincial or local division concerned, if the issue has been referred by such court *mero motu*, shall within 15 days of such order lodge with the registrar a notice as near as may be in accordance with Form 3, to which shall be attached the order of court directing that the matter be referred.

(2) Where an issue has been referred by a judge or judges of a provincial or local division of the Supreme Court, the judge or judges concerned shall formulate in writing the issue or issues on which a ruling is required from the Court and the reason why he or she or they consider it to be in the interest of justice that the matter be referred.

(3) (a) Where an issue has been referred *mero motu* by a judge or judges of a provincial or local division of the Supreme Court, the judge or judges shall direct the registrar of the provincial or local division concerned to compile and forward to the registrar such portions of the record as he or she or they consider to be necessary for the determination of such issue.

(b) The matter shall thereafter be dealt with in accordance with directions given by the President.

(4) In any other case, the matter shall thereafter be dealt with in accordance with the provisions of rule 19 as if the party who requested the reference were the appellant and the other party or parties the respondent or respondents.

Referral of issues by the Appellate Division

23. (1) Where an issue is referred to the Court by the Appellate Division in terms of section 102(6) of the Constitution, the party who raised the issue to be referred to the Court shall within 15 days of such order lodge with the registrar a copy of the order of referral by the Appellate Division.

(2) The matter shall thereafter be dealt with in accordance with the provisions of rule 19 as if the party who raised the issue to be referred were the appellant and the other party or parties the respondent or respondents: Provided that if the Appellate Division so decides, the issue may be referred to the Court either as a stated case, or as a question of law for decision by the Court, in which event the record to be lodged with the registrar shall consist only of the order made by the said Division, and such parts of the judgment of the court *a quo* as may be relevant to the issue referred by the said Division.

(3) If the Chief Justice, in consultation with the President, is of the opinion that it is in the interest of justice that a constitutional issue raised in an appeal be determined before the appeal is dealt with by the Appellate Division, he or she shall make an order directing the appellant to proceed first with the appeal on the constitutional issue and to prosecute the appeal to the said Division only if it is necessary to do so after the constitutional issue has been decided and, if such an order is made, the appellant shall proceed in accordance with the provisions of rule 19.

(4) If an issue is referred to the Court by the Appellate Division *mero motu*, rule 22 (2) shall apply *mutatis mutandis*.

Referral of issues in terms of section 102(8) of the Constitution

24. (1) If an issue is referred to the Court by a provincial or local division of the Supreme Court in terms of section 102(8) of the Constitution, the division referring such issue shall do so either in the form of a stated case or formulate a question of law for decision by the Court and shall instruct its registrar to forward the stated case or the question of law to the registrar.

(2) On receipt of the stated case or the question of law, the registrar shall establish whether or not the parties to the matter which was disposed of by the division concerned wish to make representations to the Court in regard to the matter that has been referred to it.

(3) When this has been established, the President shall give directions as to how the matter should be dealt with.

PART IX

FEES AND COSTS

Taxation of costs and attorneys' fees

25. (1) Rules 9 and 10 of the Appellate Division Rules regarding taxation and attorneys' fees shall apply *mutatis mutandis*.

(2) In the event of oral and written argument, a fee for written argument may in appropriate circumstances be allowed as a separate item.

Fees of the Court

26. (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 *mutatis mutandis*.

PART X

MISCELLANEOUS PROVISIONS

Library

27. (1) The Court's library is available for use by the judges, the staff of the Court and other persons who have permission from a judge for the purposes of a particular case or 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 librarian in consultation with the President.

Translations

28. Where any record or other document lodged with the registrar contains material written in an official language which 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 Supreme Court into a language or languages which will be understood by such judges, and shall supply the parties with a copy of such translations.

Models, diagrams and exhibits

29. (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.

Withdrawal of cases

30. 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 without further reference to the Court enter such withdrawal.

Format of documents

31. (1) Every document which exceeds five pages shall, regardless of the method of duplication, contain a table of contents and a table of authorities with correct references to the pages in the document on which they are cited.

(2) The body of every document at its close shall bear the name of the party or his or her attorney, if applicable, 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 this rule, but shall return it to the defaulting party indicating the instance in which there has been a failure to comply.

(b) Provided that if new and proper copies of the documents referred to in paragraph (a) are resubmitted within five days of receiving written notification, such lodging shall not be deemed untimely.

(c) If the Court finds that the provisions of this rule have not been complied with, it may impose, in its discretion, appropriate sanctions, including but not limited to dismissal of the action or imposition of costs.

Application of certain rules of the Uniform Rules

32. The following rules of the Uniform Rules shall *mutatis mutandis* apply to the proceedings in the Court:

| <i>Rule No.</i> | <i>Subject</i> |
|----------------------|---|
| 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 |

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

33. The following sections of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply *mutatis mutandis* to proceedings of and before the Court:

| <i>Section</i> | <i>Subject</i> |
|----------------|---|
| 19bis..... | Reference of particular matters for investigation by referee |
| 22..... | Powers of Court on hearing of appeals |
| 32..... | Examination 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 |

Documents lodged to canvass factual material

34. (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 which is relevant to the determination of the issues before the Court and which do 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.

General

35. The Court may, on sufficient cause shown, excuse the parties from compliance with any of the foregoing rules and may give such directions in matters of practice and procedure as it may consider just and expedient.

Execution

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

- (a) 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.
- (b) 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.

- (c) The registrar shall, after having inspected the particular Court file to verify the contents of the affidavit, furnish the party referred to in paragraph (b) with a certified copy of the costs order concerned and shall record such furnishing on the Court file.
- (d) The party referred to in paragraph (b) 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.
- (e) Such order shall be executed according to the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the Magistrates Courts Rules published under Government Notice No. 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: Provided that no magistrate's court shall be entitled to grant an order for the committal of a judgment debtor.

Transitional provisions

37. 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.

Repeal of rules

38. The Rules of the Constitutional Court published under Government Notice No. R. 1584 of 16 September 1994 shall be repealed on the date on which these rules come into operation: Provided that any directions in writing in terms of rule 3 of such rules 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 President.

Short title

39. These rules shall be called the **Constitutional Court Rules, 1995**.

SCHEDULE 1 — FORMS

Form No.

- 1. Notice of motion (to registrar)
- 2. Notice of motion (to registrar and respondent)
- 3. Notice of referral of issues in terms of rule 22

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 President to be dealt with in terms of rule 10(4).

Dated at, this day of 19.....

.....
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 affidavits, 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 President to be dealt with in terms of rule 10(4).

Dated at, this day of 19.....

.....
Applicant or attorney

To:

(1)
(Respondent)

.....

.....

.....

(Address)

(2) The registrar of the above Court
.....

FORM 3

**NOTICE OF REFERRAL OF ISSUES
IN TERMS OF RULE 22
IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

Case No.

In the matter between:

..... (Plaintiff/Applicant)

and

.....(Defendant/Respondent)

To the registrar of the Constitutional Court:

1. Take notice that the..... *Provincial/Local Division of the Supreme Court of South Africa has referred the following issue/dispute in terms of—

*section 102(1)/

*section 102(14)/

*section 103(4)

of the Constitution to the Constitutional Court:

(set out briefly the issue/dispute).....

.....

.....

2. The order of the court directing the referral of the issue/dispute is attached.

3. If referred by the court *a quo mero motu*, the following are attached:

(a) The written formulations in terms of rule 22(2).

(b) Copies of the relevant portions of the record considered to be necessary in terms of rule 22(3)(a).

Dated at, on this.....day of.....19.....

*A.
Applicant or attorney

.....
Address of applicant or attorney

*B.

*Registrar of the.....
Provincial / Local Division of the
Supreme Court of South Africa

* Delete what is not applicable.

Names and addresses of all the parties or legal representatives involved in the case to whom directions should be given:

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

SCHEDULE 2—FEES

| | R |
|---|----------|
| Lodging of any petition (other than the first document) | 10,00 |
| Lodging of an answering affidavit (each) | 10,00 |
| Lodging of a notice of appeal or cross-appeal (each)..... | 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 |

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