

Rules of the Constitutional Court

**GOVERNMENT NOTICE
DEPARTMENT OF JUSTICE**

No. R. 757
29 May 1998

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA (108/1996): RULES

The President of the Constitutional Court in consultation with the Chief Justice has, under section 171 of the Constitution of the Republic of South Africa, 1996 (Act No.108 of 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 29 May 1998.

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;

"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;

"directions" means directions given by the President 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 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 174(3) read with item 16(2)(b) of Schedule 6 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 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;

"Supreme Court of Appeal Rules" means the rules regulating the conduct of the proceedings of the Supreme Court of Appeal published under Government Gazette No. R.1207 of 15 December 1961, as amended;

"the Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); and

"Uniform Rules" means the rules regulating the conduct of the proceedings of the several high courts 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) 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.

(5) The President 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.

PART I

Sessions of the Court

2. Court terms

(1) There shall be 4 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

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 any time, 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 an indigent party is assisted or represented by an office or officer of the Human Rights Commission, the Public

Protector, 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 and he or she 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/hat, 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 officer or officer of the Human Rights Commission, the Public Protector, 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) 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 provincial gazette concerned if the order relates to provincial legislation.

(9) 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.

(10) 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.

(11)(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.

(12)(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) If no assistance is rendered by such Commission, Board, law clinic or other body or institution, 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

5. Sheriff

(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 High Court:

Provided that a sheriff shall be under an obligation to effect service only if the 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 referred to in sections 199 and 205 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 identity of the person upon whom the

process was served, 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.

6. Service of process

(1) Subject to subrule (2), 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.

(2) 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 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, serve on the authority concerned a copy of such document and lodge proof of such service with the registrar, and 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

Representation

7. Representation of parties

(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 high courts.

(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.

8. 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 register 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 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 facsimile, by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or 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

9. Submissions by an amicus 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 President 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 President 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 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 application for leave to appeal to the Court, and in any case where the right of direct access to the Court has been invoked, within 10 days after such application has been lodged with the registrar,

(b) in any other matter, not later than 10 days after he 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;

(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) Unless otherwise ordered by the Court, 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 may be necessary, to an amicus curiae.

PART VI

Applications

10. 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 1 67(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 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 Form 1 or 2, as the case may be.

(3)(e) 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 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).

(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) When an application is placed before the President 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.

11. Urgent applications

(1) In urgent applications, the President 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 be on notice of motion accompanied by an affidavit setting forth explicitly the circumstances which justify a departure from the ordinary procedures.

12. Argument

(1) Written argument shall be filed timeously.

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

(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 President 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 in 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 within the exclusive jurisdiction of the Court

13. 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 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 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 President, 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 President 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.

14. 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 her or him 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 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 10.
- (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 President, which may include a direction
 - (a) calling for such additional information as the President may consider to be 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.

15. 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 21 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 President.

(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 what 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 21 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 President.

(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 President.

16. Certification of a provincial constitution

(1) The Speaker of a provincial 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 President, which may include -
- (a) referral to the Speaker for such additional information as is considered by the President 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 President 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

17. Direct access in the interests of justice

- (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 President, 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.

18. Appeals from courts other than the Supreme Court of Appeal

(1) The procedure set out in this rule shall be followed in an application for leave to appeal directly to the Constitutional 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 other than the Supreme Court of Appeal irrespective of whether the Chief Justice 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 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, apply to the court which gave the decision to certify that it is in the interests of justice for the matter to be brought directly to the Constitutional Court 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 matter.

(3) The application referred to in subrule (2) shall be in writing, signed by the appellant, and shall set out clearly and succinctly the constitutional matter raised in the case, the decision against which the appeal is made and the grounds on which such decision is disputed.

(4) The respondent or respondents may, within 10 days from the date upon which such application is served upon him, her or them, respond thereto in writing.

(5) The response shall be signed by the respondent or respondents.

(6) (a) If it appears to the court hearing the application made in terms of subrule (2) that -

(i) the constitutional matter 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 court concerned for further evidence; and

(iii) there is a reasonable prospect that the Court will reverse or materially alter the judgment if permission to bring the appeal is given, such court shall certify on the application that in its opinion, the requirements of subparagraphs (i), (ii) and (iii) have been satisfied or, failing which, which of such requirements have been satisfied and which have not been so satisfied.

(b) The certificate shall also indicate whether, in the opinion of the court concerned, it is in the interests of justice for the appeal to be brought directly to the Constitutional Court.

(7) Within 10 days of the date on which a positive or negative certificate is given in terms of subrule (6) an appellant wishing to appeal to the Court on a constitutional matter shall lodge with the registrar an application for leave to appeal.

(8) An application referred to in subrule (7) shall be signed by the appellant and shall contain -

(a) those portions of the judgment concerned that deal with the constitutional issue;

(b) the application for the judge's certificate brought in terms of subrule (2);

(c) the judge's certificate; and

(d) such supplementary information or argument that the appellant considers necessary to bring to the attention of the Court.

(9) (a) Within 10 days from the date upon which an application referred to in subrule (7) is 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.

(b) The response shall be signed by the respondent or respondents.

(10)(a) The Court shall decide whether or not to grant the appellant leave to appeal: Provided that in matters of urgency and when the Court is out of term, the President may grant but not refuse leave to appeal.

(b) Applications for leave to appeal may be dealt with summarily, without hearing oral or written argument other than that contained in the application itself.

19. Procedure on appeal

(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 such time as may be fixed by the President in directions.

(b) 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 fed 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 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 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 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)(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 standard 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 shall be provided instead.

- (d) All records shall be securely bound in suitable covers disclosing the names of the parties, the court appealed from and the names of the attorneys of the parties.
- (e) Bulky records shall be divided into separate conveniently-sized volumes.
- (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 President 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 President, 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 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 registered post or facsimile.

20. Appeal against a decision of the Supreme Court of Appeal

- (1) An appeal to the Court on a constitutional matter against a judgment or order of the Supreme Court of Appeal shall be granted only with the special leave of the Court on application made to it.
- (2) A litigant who is aggrieved by the decision of the Supreme Court of Appeal on a constitutional matter and who wishes to appeal against it to the Court shall, within 15 days of the judgment against which the appeal is sought to be brought and after giving notice to the other party or parties concerned, lodge with the registrar of the Court an application for leave to appeal.
- (3) (a) The application referred to in subrule (2) shall be in writing, signed by the appellant, and shall set out the constitutional matter raised in the case, the decision against which the appeal is made and the grounds on which such decision is disputed.
 - (b) Such application shall contain -

(l) the judgment of the Supreme Court of Appeal or, if such judgment is not yet available, the order issued by the Supreme Court of Appeal;

(ll) such supplementary information or argument that the appellant considers necessary to bring to the attention of the Court.

(4) (a) Within 10 days from the date upon which the application referred to in subrule (2) is 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.

(b) The response shall be signed by the respondent or respondents.

(5) The provisions of rule 18(10) shall be equally applicable.

PART IX

Fees and costs

21. Taxation of costs and attorneys' fees

(1) Rules 9 and 10 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.

22. 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) of the Supreme Court of Appeal Rules shall apply, with such modifications as may be necessary.

PART X

Miscellaneous provisions

23. 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 librarian in consultation with the President.

24. Translations

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 High Court into a language or languages which will be understood by such judges, and shall supply the parties with a copy of such translations.

25. 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.

26. 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 President so directs, enter such withdrawal, whereupon the Court shall no longer be seized of the matter.

27. Format of documents

(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:

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 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.

28. 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:

Rule No	Subject
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

29. 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:

Section	Subject
19 bis	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 of service originating from foreign countries

30. 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 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.

31. General

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.

32. Execution

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 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.

33. 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.

34. Repeal of rules

The Rules of the Constitutional Court published under Government Notice No. R. 5 in Regulation Gazette 5450 of 6 January 1995 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.

35. Short title

These rules shall be called the Constitutional Court Rules, 1998.

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

Dated at, this..... day of19..

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

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

To: Applicant or attorney

(1)
(Respondent)

.....
(Address)

(2) The Registrar of the above Court

Schedule 2

FEES

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 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