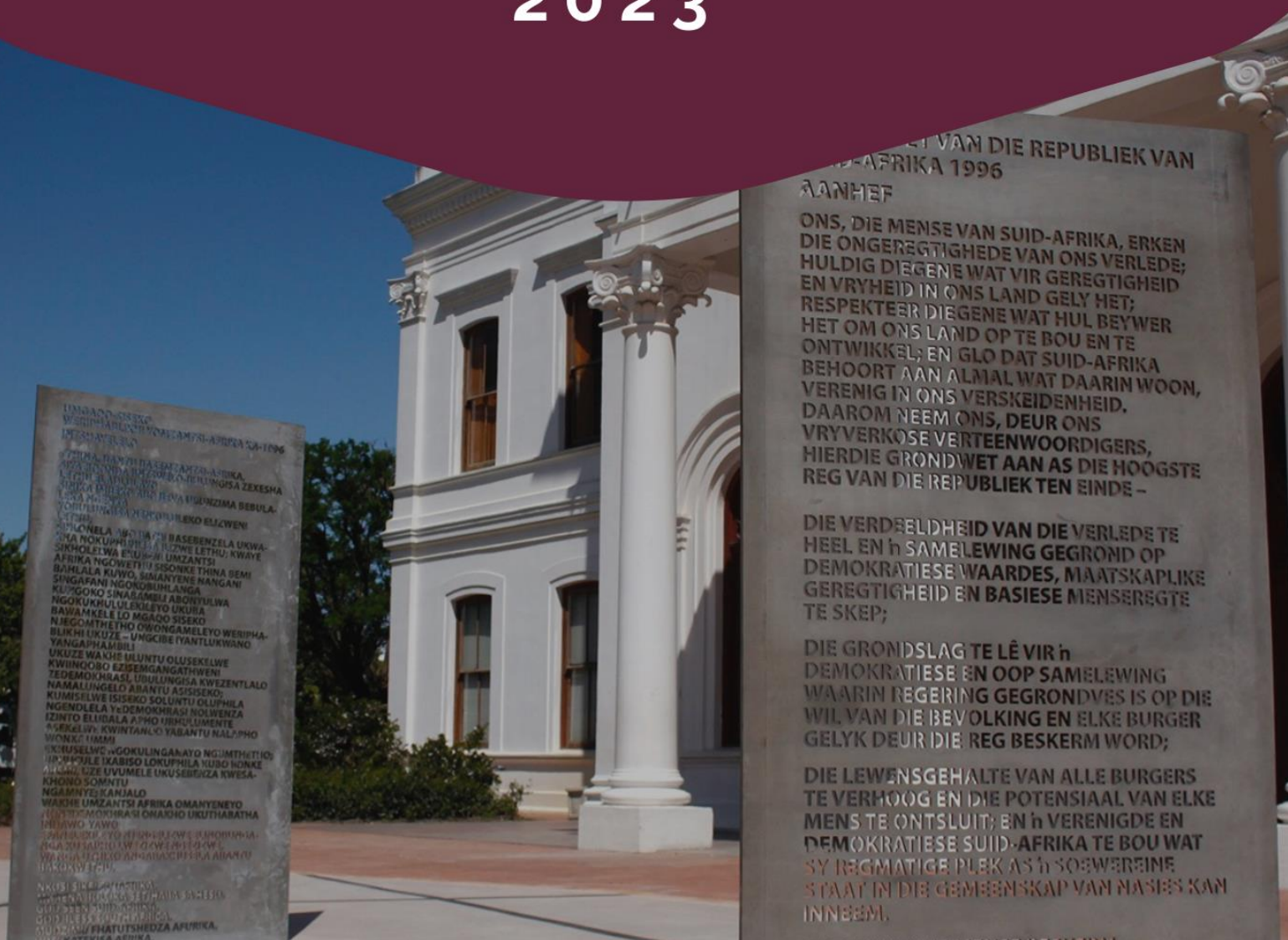




# RULES OF PROCEDURE 2023





TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY  
Stellenbosch University

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## 1 Preface

The Rules of Procedure, 2023 (Rules) have been set up in accordance with s 87 of the Student Constitution, 2021. S 87(1) empowers the Court to “determine its own procedures with due consideration of [...] procedural fairness [and] the need for the Student Court to be accessible.”

The Rules have been adopted by the Student Court, in consultation with the Student Representative Council on 19 January 2023. The Rules were approved by the Appeal Court on 14 April 2023 as required by s 87(2) of the Student Constitution. The Rules are deemed to be in force from the day after it was approved by the Appeal Court, and it revokes and replaces the Rules of Procedure 2020 when it comes into force.



## 2 Definitions

In these Rules, unless the context otherwise indicates -

**“Advisory Opinion”** means an order sought in terms of s 84(1) of the Student Constitution.

**“Appeal Court”** means the Appeal Court constituted in terms of Chapter 7 of the Student Constitution.

**“Chief Justice”** means a Member of the Court designated as the chief presiding officer of the Court, so elected by the remaining members of the Court.

**“Court day”** means any university day as defined in s 1(14) of the Student Constitution, beginning at 08h00 and ending at 17h00.

**“Court”** means the Student Court constituted in terms of Chapter 6 of the Student Constitution.

**“Courts”** means the Student Court and the Appeal Court.

**“Member of the Court” or “Justice(s)”** means Students appointed as members of the Court in accordance with the Student Constitution.

**“Mero motu”** means of the Court’s own will or decision.

**“Mutatis mutandis”** means with all the necessary changes being made with the main point or reason remaining unaltered.

**“Notice”** means it has come to the attention of the recipient. Proof of successful delivery of an email also constitutes Notice within the meaning contemplated in this definition.

**“Prima facie”** means on the face of it.

**“Representative”** means a Student who, according to section 88 of the Student Constitution, has been appointed by a party to assist said party in the proceedings before the Court.

**“Rules of Procedure” or “Rules”** means these Rules which the Court has adopted in terms of section 87 of the Student Constitution.

**“Student Constitution”** means the Stellenbosch University Student Constitution, 2021.



**“Student Representative Council”** or **“SRC”** means the body constituted in terms of Chapter 4 of the Student Constitution.

**“Student”** means a Student, undergraduate or postgraduate, registered at the University.

**“Tygerberg Student Council”** or **“TSC”** means the body constituted by Chapter 13 of the Student Constitution.

**“University holiday”** means any day falling outside of the University terms as indicated in the formal University calendar, or as officially communicated by the University from time to time as the case may be.

**“University”** means Stellenbosch University.

**“Written”** or **“in writing”** means written electronic or physical communication.

### **3 Scope and purpose of the Rules**

- (1) Pursuant to section 87(1) of the Student Constitution, the Court has the authority to adopt and enforce its own Rules of Procedure, with due consideration of the need for the Courts to be accessible and the principles of procedural fairness.
- (2) These Rules regulate the procedure in matters brought before the Courts.
- (3) These Rules shall be construed and administered to secure the just, speedy, and inexpensive determination of any matter before the Court.
- (4) These Rules may be departed from upon the showing of just cause by any party, or at the Court’s discretion if it is in the interest of justice to do so.
- (5) Any submission that fails to comply with the Rules may be dismissed.

### **4 Mandated responsibilities of the Registrar**

- (1) The role, powers, duties, responsibilities, privileges, and authority designated to the Secretary of the Student Court, as per section 80(1)(c) of the Student Constitution, shall be delegated to the Registrar of the Student Court.



- (2) The Registrar shall be the member of the Court who was appointed as the Secretary of the Student Court as per section 80(1)(c) of the Student Constitution.
- (3) After an application is received by the Court, the Registrar must notify any person who may have a material interest in the proceedings.
- (4) The Registrar must advertise the Notice of any hearing in a timeous manner by publication on the website of the Court.

## **5 Sitting of the Court and recess periods**

- (1) Notice of the terms of the Court shall be published on the Court's website, and shall also be available at the SRC and TSC offices.
- (2) Terms and recess periods must be made available by the start of the academic year.
- (3) The Court may publish the notice in sub-rule (1) in any other manner.
- (4) If it is convenient for the majority of Members of the Court, the Court may sit at any place or time other than a time prescribed in terms of these Rules.

## **6 Filing of Court papers and other documents**

- (1) All parties must file the necessary documents with the Court in accordance with these Rules by addressing an email to the Registrar of the Court and all other parties to the matter carbon copied (“CC”) to that email. The Registrar’s email shall be the one as designated by the Court for such purposes.
- (2) Any document filed after 17:00 on any day will be deemed to have been filed at the start of the next Court day.
- (3) A document is considered as filed for the purposes of sub-rule (1) when there has been Notice.
- (4) All parties must inform the Court of any other parties (other than the applicants and respondents) who may have a material interest in the proceedings when they file their first document with the Court.



- (5) All pleadings submitted to the Court must be signed by the party or that party's Representative.
- (6) Signature by the party confirms that they have read the document, and that there are legitimate grounds to support it.
- (7) All documents must be filed in English.
- (8) Any document that is filed at the Court which does not comply with any one or more of the requirements outlined in the Rules may be deemed to be defective by the Court.

## **7 Commencement of an application to the Court**

- (1) Every application shall be in accordance with the forms provided for by the Court and shall be -
  - (a) Brought via a Notice of motion as outlined in sub-rule (2);
  - (b) Supported by a Founding Affidavit as outlined in sub-rule (3), and;
  - (c) Supported by documentary evidence.
- (2) Every Notice of Motion shall set out -
  - (a) The order that the applicant wishes the Court to grant;
  - (b) The full names of all the persons whose Affidavits will support the motion;
  - (c) The time periods within which the respondent(s) are required to file a Notice of Intention to oppose and Answering Affidavit(s) in accordance with Rule 9;
  - (d) The applicant's preferred email address for service of documents related to the matter, and;
  - (e) A list of documentary evidence that will be brought in support of the application.
- (3) Every Founding Affidavit shall set out -
  - (a) The applicant's full name, student number, and the capacity in which they approach the Court;
  - (b) The capacity in which the respondent(s) are cited;



- (c) Whether each of the applicants and each of the cited respondent(s), if any, have standing before the Court with specific reference to section 86 of the Student Constitution;
  - (d) Whether the Court has jurisdiction with specific reference to section 84 of the Student Constitution;
  - (e) A statement of facts as it pertains to the dispute, with each averment/ allegation made in distinct paragraphs;
  - (f) References to documentary evidence to support the averment(s)/ allegations, and the facts;
  - (g) A concise legal argument showing why the applicant is entitled to relief, and;
  - (h) The relief sought with specific reference to section 85 of the Student Constitution.
- (4) If the Court is of the opinion that any party cited by the applicant should not be cited as either an applicant or respondent, because -
- (a) The cited party has no standing before the Court;
  - (b) The party cited has not evidenced their consent to be an applicant by means of a Founding Affidavit or Confirmatory Affidavit; or
  - (c) No *prima facie* case has been made out against the party cited as respondent,
- the Court may remove that party from the matter via Notice to all the parties.

## **8 Urgency**

- (1) An applicant must explicitly set forth the circumstances which render the matter urgent, if at all, as well as the reasons why the applicant will be prejudiced if there is no deviation from the Rules.
- (2) If the Court deems the matter urgent, it may dispense with any of the Rules to the extent that is provided for in Rule 3(5), including condoning non-compliance with the Notice requirement in Rule 6(1).





## **9 Responses to an application**

- (1) Within three (3) Court days of receiving the applicant's Notice of Motion and Founding Affidavit in terms of Rule 7(1), the respondents must file their Notice of Intention to Oppose.
- (2) Within eight (8) Court days of receiving the applicant's Notice of Motion and Founding Affidavit in terms of Rule 7(1), the respondents must file their Answering Affidavits.
- (3) Every Notice of Intention to Oppose shall set out -
  - (a) The respondent's intention to oppose, and;
  - (b) Their preferred email address for service of documents related to the matter.
- (4) Every Answering Affidavit shall set out -
  - (a) The respondent's full name, student number and the capacity in which they appear before the Court;
  - (b) Which facts in the applicant's Founding Affidavit are disputed by the respondent, which facts are common cause, and any other material facts that are pertinent to the matter;
  - (c) References to documentary evidence, and;
  - (d) A concise statement of the respondent's legal argument.
- (5) In the event that there is more than one respondent, the respondents may elect to -
  - (a) File a Notice of Intention to Oppose jointly, and/or;
  - (b) File an Answering Affidavit jointly, or alternatively, file a Confirmatory Affidavit that supports the Answering Affidavit of another respondent.

## **10 Replying Affidavit**

An applicant may file a Replying Affidavit within three (3) Court days of service of an Answering Affidavit if new facts were introduced in the Answering Affidavit.



## **11 Failure to respond**

Any party that fails to file a response, or if such a response is disregarded in terms Rule 6(3), is deemed to have admitted to the facts averred by the applicant or respondent, as the case may be.

## **12 Application for extension**

- (1) Any party to a matter may make written submissions to the Court requesting an extension to any time period in these Rules, if they are of the view that they may be prejudiced by the time periods as they are.
- (2) Such submission must comply with Rule 6.
- (3) Such a submission must be -
  - (a) Brought to the attention of all parties by the party requesting the extension, and;
  - (b) Supported by the reasons for such an extension and the number of days required.
- (4) The Court holds the discretion to approve or deny the request wholly or to the extent they deem appropriate to avoid prejudice.
- (5) The Registrar will notify all parties to the proceedings as to the decision and effect thereof on the forthcoming proceedings.

## **13 Amendment to Court papers by parties**

- (1) Any party who wishes to amend any document in respect of their application or response to proceedings in the Courts may do so in accordance with the following:
  - (a) The amendment may not materially alter the basis for the application;
  - (b) All parties with a material interest in the proceedings must be notified of the intention to amend via Notice with the particulars included in such Notice, and;
  - (c) The Registrar must be provided with the amendment and Notice in addition to the other parties.



- (2) An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded and must be provided to all parties with a material interest in the matter and the Registrar, within five (5) business days from receipt of the Notice.
- (3) After the period in sub-rule (2) has lapsed, the Court will make a determination as to whether the amendment is allowed, or dismissed, within five (5) business days;
  - (a) The Registrar must provide a document, signed by the Chief Justice or their delegated Member, outlining the reasons for the decision and the factors that were taken into account to come to such decision by the end of this period, and;
  - (b) The Court's decision in respect of amendments is final.
- (4) The Court maintains the sole discretion whether to allow or dismiss an amendment.
- (5) Amendments may be made at any time before commencement of proceedings.
- (6) If the Court allows such amendment, all parties with a material interest in the matter, including the Registrar, must be furnished with the amended documentation, in accordance with the Notice and the decision of the Court within three (3) business days.
- (7) Should an amendment be allowed, opposing counsel will have the opportunity to respond to whichever document was amended in the usual manner. They may also be allowed to apply to amend their corresponding documentation in line with the amendments made; such amendments will be considered in terms of this Rule and must comply with Rule 9.

#### **14 Joinder of Parties and causes of action**

- (1) Parties may apply to join actions if they are instituting proceedings on the same causes of action, subject to the discretion of the Court.



- (2) The Court may, *mero motu*, direct that separate actions be joined if they were instituted on the same causes of action.

## 15 Consolidation of actions

Where separate actions have been instituted and it appears to the court convenient to do so, it may *mero motu*, or upon the application of any party thereto, and after Notice to all interested parties, make an order consolidating such actions, whereupon—

- (a) the said actions shall proceed as one action;
- (b) the provision of Rule 14 shall *mutatis mutandis* apply with regard to the action so consolidated; and
- (c) the court may make an order determining further procedure that will be applicable to that consolidated action, if it deems it necessary and in the interests of justice, and may give one judgment disposing of all matters in dispute in the consolidated action.

## 16 Application to institute proceedings against Members of the Court

- (1) If any person wishes to bring an application against a Member of the Court that person must first request permission, supported by reasons therefore, from the Dean of the Law Faculty to bring such an application.
- (2) The Dean of the Law Faculty may, if they are of the opinion that there are sufficient *prima facie* grounds, grant permission in writing to proceed with the application.
- (3) The applicant must attach proof of permission granted in sub-rule (2) to their Founding Affidavit. Failure to do so will result in the application being dismissed insofar as it relates to that member.
- (4) The member who is litigated against will not be a Member of the Court for the purposes of that matter.



## **17 Recusal of Members and applications for recusal**

(1) Any Member of the Court may recuse themselves from deciding a matter, by Notice to the Chief Justice and Registrar, if they are of the opinion that they cannot conduct themselves impartially, and without fear, favour, or prejudice.

(a) Members must recuse themselves if there is a real or reasonably perceived conflict of interest or prejudice, other than knowing one or more of the applicant(s) or respondent(s).

i. Should a Member know one or more of the applicant(s) or Respondent(s), they must disclose the fact to the other Members, whereafter;

ii. The other Members may recommend that the Member recuse themselves if the majority of them are of the opinion that the relationship constitutes a real or reasonably perceived conflict of interest or prejudice.

(b) Members may not recuse themselves on insubstantial grounds.

(c) The test for impartiality is to be interpreted according to sub-rule (2)(a).

(2) Any party to a matter may make an application to the Court to have any Member of the Court recused from deciding that matter.

(a) In such an application, the applicant to the recusal matter must show that the reasonable, informed, person would, on the proper facts, reasonably come to the conclusion that the Member has not been, or will not, be impartial in the matter.

## **18 Commissioning of affidavits**

All affidavits filed at the Court must be signed in full and deposed to under oath or affirmation by the relevant party.



## 19 Advisory opinions

A request for an Advisory Opinion shall be in the form of a Notice of Motion and shall, in plain and clear language with sufficient detail set forth -

- (a) the applicable provision(s), and;
- (b) any question of law or potential conflict with other law.

## 20 Rules governing proceedings

(1) Proceedings shall take place in an open Court unless it is in the interests of the administration of justice or the request of one or more of the parties to the matter for reasons considered sufficient by the Court, that the proceedings are to be held behind closed doors.

(2) Proceedings shall take place in person unless it is in the interests of the administration of justice to take place on an online platform or be decided solely on the papers.

(a) The Chief Justice may, upon recommendation by Members, direct that proceedings be held via an online platform or be decided on the papers before the Court.

(b) When conducted online, special measures must be taken to ensure compliance with sub-rule (1), including that the proceedings are recorded and made available to members of the student community.

(c) Parties bear the onus of ensuring a stable internet connection for themselves.

(d) Online proceedings are also subject to Rule 21.

(3) The Court has the discretion to request that the parties present oral arguments at a hearing.

(4) The date, time, and venue for proceedings will be determined by the Court after consultation with all the parties.

(5) The Chief Justice, or their nominated Member of the Student Court -

(a) Chairs the hearing and is empowered to ensure there is a forum for sensible, and orderly adjudication;



- (b) Shall more than 24 hours before the hearing, give Notice to all the parties to the dispute of -
  - i. The rules of engagement, and;
  - ii. The proposed structure of the hearing, and;
- (c) May deviate from the Rule or structure in sub-rule 5(b)(ii) upon good cause shown by any of the parties at the hearing.
- (6) Hearings shall be conducted before a full bench of Members of the Court competent and able to serve on the bench at the time for that particular matter.
- (7) Parties may not communicate with Members or *vice versa* privately about any aspect of a case.
  - (a) Any enquiries regarding any aspect of a case must be done via the official communication channels for proceedings of the Court.

## 21 Presence at court hearings

- (1) All parties shall be present at proceedings before the Court.
- (2) Pursuant to section 88 of the Student Constitution -
  - (a) Any party before the Court may appear with or without representation, however;
  - (b) Only students of Stellenbosch University may act as Representatives before the Court.
- (3) A party shall notify the Court, via the Registrar, prior to the proceedings if he or she is unable to attend due to good reason, and may be excused if good cause is shown.
- (4) If any party fails to attend the hearing, the matter may proceed *in absentia*.

## 22 Directives

- (1) The Court has the power to issue a directive.
- (2) Such directives will not be valid for longer than six (6) months.



- (3) Such directives may only be issued if:
  - (a) The majority of the Court agrees to the need, and content, of such directive;
  - (b) There is a material gap in the Rules which could result in prejudice or protracted legal proceedings, and;
  - (c) The Court will begin a process of making provision for such a gap in the Rules via section 87 of the Student Constitution within six (6) months from the date of issuing of the directive.
- (4) Directives will have the same status as the Rules. However, the Rules will take precedence over any directive should any inconsistencies or contradictions be present.
- (5) Should the term of office of the court end before the period of validity expires, the incoming bench are required to finalise any outstanding matters in respect of this Rule. The validity period in sub-rule (2) shall not be extended.

## **23 Appeal proceedings**

- (1) Any party who wishes to appeal any decision by the Court shall notify the Court, the Dean of the Law Faculty of the University, and all other parties to the dispute within five Court days of the Court's decision having been communicated to the parties.
- (2) The Appellant's Notice of Appeal must -
  - (a) State what part of the judgment or order is appealed against;
  - (b) Clear reasons for the appeal which must illustrate a reasonable prospect of success, and;
  - (c) state the alternative finding or order that is being sought.
- (3) The Respondents to the appeal may file a cross-appeal with the Court, the Dean of the Law Faculty of the University, and all other parties to the dispute within five (5) Court days of receiving the Notice of Appeal.





- (4) The Appeal Court will only decide the appeal and cross-appeal on the basis of the documents filed and the Court’s judgment and order.

## **24 Cases pending during Court transition**

- (1) Should the outgoing bench be reasonably unable to conclude any case before they leave office, the case must be transferred to the incoming bench.
- (2) The outgoing Chief Justice must -
- (a) Write to the parties in a particular matter informing them of such transfer and include -
    - (i) The reasons for being reasonably unable to conclude the case;
    - (ii) The identity, and contact information of the incoming Chief Justice, and;
    - (iii) Carbon copy the incoming Chief Justice in such communication.
  - (b) Meet with the incoming Chief Justice and inform them of the case, contact information of the parties, and important aspects of such case, and;
  - (c) Ensure that the incoming Chief Justice is provided with all the documentation that has been submitted up until that point.
- (3) The incoming Chief Justice must, as soon as reasonably possible -
- (a) Write to the parties confirming the transfer, provide the identity and contact information of the incoming bench, provide a list of documentation they received, and detailing any important matters to mitigate uncertainty and confusion, and;
  - (b) Provide parties the opportunity to confirm the accuracy of the list of documentation.
- (4) Such cases must as far as reasonably possible enjoy priority on the Court roll, except insofar as there are urgent applications requiring decision.