

REPORT TO THE STUDENT COURT RELATED TO THE INTERIM COURT ORDER HANDED DOWN ON 1 AUGUST 2016.

1. The Election Committee (“**EC**”) appointed to execute the Student Representative Council (“**SRC**”) election for 2016 hereby submits the report mandated by the student court in paragraph 8 (b) of the interim order handed down on 1 August 2016.
2. The complaints from Mr Neil du Toit with respect to the respondents (Ashwin Maloy, Netanje van Niekerk, Bernard Pieters, Jacobus Maass, Francois Henning, Thea Bester and Selmie Crous) having contravened the rules of the SRC elections of 2016 were received on e-mail by the election Convenor (Mr Links) at 12:41 am and 12:51 am on the morning of 1 August 2016 whilst he was asleep. The Convenor also received on e-mail the Applicants' Student Court application from Mr du Toit on the same morning (1 August 2016) at 04:52 am – also while the Convenor was asleep. Consequently, the Convenor did not have the mandated 24-hour response time allowed/permitted to investigate a complaint, as stipulated in Schedule 1, Section 26 (1) of the Student Constitution (“**SC**”), before the Court hearing.
3. Before commenting on the events which occurred on 1 August 2016 and thereafter, the following events are highlighted:
 - 3.1. On 21 July 2016 a complaint was filed by a student indicating that (certain of) the Respondents had contravened certain provisions of the SC with regard to campaigning.
 - 3.2. After receipt of the complaint, the Convenor interviewed the party complained of (i.e. the respondents) to provide both parties with the opportunity to state their versions. The respondents were also requested to provide their written comments on the complaint after this interview had been conducted.
 - 3.3. Had the Convenor been provided with an opportunity to consider the complaint submitted by the Applicants on 1 August 2016 (within a reasonable time), the Convenor would have again interviewed all of the affected parties (being the Applicants and the Respondents) to ensure that the EC has a full grasp of the complaint submitted by the Applicants and the Respondents' response to the complaint.
 - 3.4. It has always been the Convenor's modus operandi to provide all affected parties with an opportunity to state their case to ensure that the EC gives effect



to the principle of hearing the other side (also known as the principle of *audi alteram partem*).

- 3.5. Due to the Applicants submitting their complaint to the Student Court before the Convenor had sight of the complaint, the Convenor was deprived of the opportunity to investigate the matter and to hear both sides (without his judgement [possibly] being influenced by an interim court order). Had the Convenor been provided with an opportunity to investigate the matter, he would have followed the same procedure as he had followed on 21 July 2016, i.e. interviewing the relevant stakeholders to ensure that both parties' cases were heard. The Convenor would then also have brought out its decision after hearing both sides, as it had done on the previous occasion.
- 3.6. It is unfortunate that the Applicants escalated this matter to the Student Court prior to exhausting the (mandatory) internal remedies contained in the SC and thereby depriving the Convenor of a fair and reasonable opportunity to investigate the matter. Also, the version of events of the other eight Respondents was not heard at the hearing.
4. As indicated previously, the correct process as prescribed by the SC was not followed by the Applicants. The Convenor appeared before the Student Court where the application was heard at 16:00 on the afternoon of 1 August 2016. The Convenor was the only respondent present. The Student Court issued its interim ruling.
5. In terms of paragraph 8(b) of the judgment the EC is requested to file a formal report pertaining to, *inter alia*, campaign posters, electioneering, monetary limits and attendance of caucuses, compliance with election rules and the SC, to be compiled and presented to the court for ratification within five (5) academic days.
6. The Applicants should have to ("**must**") exhaust their internal remedies as required in Schedule 1, Section 26 (1) of the SC, before approaching the Student Court with a complaint. They did not. The EC could, for example, in terms of its powers, have delayed the commencement of the SRC elections pending the finalisation of the investigations into the complaint received from Mr Du Toit on 1 August 2016.
7. Due to developments the EC is at this stage not in a position to conduct an investigation in the midst of an adversarial court process. No finding made by the EC at this stage will be deemed as objective in light of the court having already been convinced "on a balance of probabilities" and without the Convenor being adequately informed, as he was not provided with an opportunity to hear the other side (before and/or during the



Student Court hearing). The EC is not in a position to make any recommendation as envisaged in section 22 (3) of Schedule 1 of the SC.

8. In the view of the EC the only way to remedy this (contaminated) process is to start the election process (referred to in the interim order handed down on 1 August 2016) afresh.

**THE CONVENOR: C LINKS
ELECTION COMMISSION OF STELLENBOSCH UNIVERSITY
5 AUGUST 2016**

