

# STATUTE OF THE ADMINISTRATIVE TRIBUNAL



# **STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE AFRICAN DEVELOPMENT BANK**

## **ARTICLE I ESTABLISHMENT**

There is hereby established a tribunal of the African Development Bank (hereinafter referred to as the "Bank"), to be known as the Administrative Tribunal of the African Development Bank (hereinafter referred to as the "Tribunal").

## **ARTICLE II DEFINITIONS**

1. For the purposes of this Statute, unless the context otherwise provides, requires or permits, the following expressions shall have the meanings ascribed thereto below:
  - i) "administrative decision" means a determination by the Bank concerning the terms and conditions of employment of a staff member;
  - ii) "member of the staff" means any person whose current or former letter of appointment or similar instrument provides that he shall be a member of the staff of the Bank, any person who is entitled to claim upon a right of a staff member as a personal representative or successor in interest by reason of the staff member's death and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan; and
  - iii) "contract of employment" and "terms of appointment" include all pertinent rules and regulations in force at the time of the alleged non-observance of the contract of employment or the terms of appointment, including the Staff Retirement Plan and the rights and benefits provided for thereunder.
2. As used herein, the masculine pronoun shall include the feminine pronoun.
3. Titles in this Statute are inserted for convenience only and shall be ignored in construing the Statute.

**ARTICLE III**  
**COMPETENCE**

1. The Tribunal shall be competent to hear and pass judgement upon any application by a member of the staff of the Bank contesting an administrative decision for non-observance of the contract of employment or the terms of appointment of such staff member.
2. No application shall be admissible unless:
  - (i) the applicant has exhausted all other administrative review remedies available within the Bank, except in cases where the applicant and the Bank have agreed to submit the application directly to the Tribunal; and
  - (ii) the application is filed within ninety days after the latest of the following:
    - (a) occurrence of the event giving rise to the application,
    - (b) receipt of notice (after the applicant has exhausted all other remedies available within the Bank) that the relief asked for or recommended will not be granted, or
    - (c) receipt of notice that the relief asked for or recommended will be granted, and the expiry of thirty days after receipt of such notice, without such relief being granted.
3. The calculation of a period of time shall not include the day on which the event has occurred, and shall include the next working day of the Bank when the last day of the period is not a working day.
4. Notwithstanding the provisions of paragraph 2 of this Article, the Tribunal may decide in exceptional circumstances, where it considers the delay justified, to waive the time limits prescribed under this Article in order to receive an application that would otherwise be inadmissible.
5. Applications shall be filed in any one of the working languages of the Bank.
6. The filing of an application shall not have the effect of suspending the execution of the contested administrative decision.

**ARTICLE IV**  
**ADVISORY OPINIONS**

The Board of Governors of the Bank may, when it deems it necessary or expedient, request the Tribunal to render an advisory opinion on any question of law concerning the general administration of the Bank.

**ARTICLE V**  
**APPLICABLE LAW**

1. In deciding on an application, the Tribunal shall apply the internal rules and regulations of the Bank, and generally recognized principles of international administrative law concerning the resolution of employment disputes of staff in international organizations.
2. In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the Tribunal in accordance with this Statute.

**ARTICLE VI**  
**APPOINTMENT OF JUDGES**

1. The Tribunal shall be composed of six judges, all of whom shall be nationals of member States of the Bank at the time of their appointment, but no two of whom shall be nationals of the same State. The judges of the Tribunal shall be persons of high moral character and must possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence. Judges shall not be selected from current or former members of staff or elected officers of the Bank, nor shall they become staff members or consultants of the Bank within five years of the end of their service on the Tribunal.
2. The judges shall be appointed by the Board of Directors of the Bank from a list of candidates to be drawn up by the President of the Bank after appropriate consultation, including with the Staff Council.
3. The Tribunal shall elect a President and a Vice-President from among its judges.
4. Judges shall be appointed for a term of office of three years and may be re-appointed, except that the term of office of three of the judges initially appointed shall be two years. The names of such judges shall be chosen by lot by the President of the Bank immediately upon the appointment of the judges by the Board of Directors of the Bank.
5. Judges shall hold office until replaced. A judge appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.
6. The Board of Directors of the Bank, on the recommendation of the President of the Bank, shall terminate the appointment of a judge who, in the unanimous opinion of the other judges, is unsuited for further service.

**ARTICLE VII**  
**STATUS OF JUDGES**

1. In the exercise of their duties, the judges shall be completely independent from the Bank or any other authority. They shall not receive any instructions or be subject to any constraint.
2. The Judges shall, in the discharge of their functions, enjoy the same privileges and immunities as those conferred upon senior officers of the Bank.

**ARTICLE VIII**  
**ADMINISTRATION**

1. The President of the Bank shall make the administrative arrangements necessary for the functioning of the Tribunal, including the designation, in consultation with the President of the Tribunal, of an Executive Secretary who, in the discharge of his duties, shall act only under the direction of, and in accordance with the procedure established by the Tribunal.
2. In the discharge of their duties, the Executive Secretary and other personnel appointed by the President of the Bank to service the secretariat of the Tribunal shall be solely responsible to the Tribunal. They shall not, at any time, disclose confidential information received in the performance of their duties.
3. The expenses of the Tribunal shall be borne by the Bank.

**ARTICLE IX**  
**PROCEEDINGS**

1. The Tribunal may require the production of documents held by the Bank, except that the President of the Bank may withhold evidence if he determines that the introduction of such evidence might hinder the operation of the Bank because of the secret or confidential nature of the document. Such a determination shall be binding on the Tribunal, provided that the applicant's allegations concerning the contents of any document so withheld shall be deemed to have been demonstrated in the absence of probative evidence to the contrary. The Tribunal may examine witnesses and experts, subject to the same qualification.
2. Subject to the provisions of the present Statute, the Tribunal shall establish its rules of procedure.
  - (a) election of the President and Vice-President;
  - (b) presentation of applications and the procedure to be followed in respect thereof;

- (c) hearing of, and intervention by, persons to whom the Tribunal is open under sub-paragraph (iii) of Article II and whose rights may be affected by the judgement;
  - (d) presentation of testimony and other evidence;
  - (e) other matters relating to the functioning of the Tribunal.
4. The Bank or, as the case may be, the respondent institution and the applicant may be assisted in the proceedings by counsel of their choice and each party shall bear its own costs. Notwithstanding the foregoing, if the Tribunal determines that an application is well founded in whole or in part, it may order that the reasonable costs incurred by the applicant, including legal fees and expenses of the applicant, be totally or partially borne by the Bank or, as the case may be by the respondent institution.

**ARTICLE X**  
**ABUSE OF PROCESS**

1. The Tribunal may order that reasonable compensation be made by the applicant to the Bank for all or part of the cost of defending the case, if it finds that:
- (a) the application was manifestly without foundation either in fact or under existing law, unless the applicant demonstrates that the application was based on a good faith argument for an extension, modification, or reversal of existing law; or
  - (b) the applicant intended to delay the resolution of the case or to harass the Bank or any of its officers or employees.
2. The amount awarded by the Tribunal shall be collected by way of deductions from payments owed by the Bank to the applicant or otherwise, as determined by the President of the Bank, who may, in particular cases, waive the claim of the Bank against the applicant.

**ARTICLE XI**  
**SESSIONS OF THE TRIBUNAL**

- 1. The Tribunal shall hold sessions at the principal office of the Bank at dates to be fixed in accordance with its rules of procedure.
- 2. The Tribunal shall be constituted by three judges sitting at a session of the Tribunal.
- 3. In the event that the President of the Tribunal is absent, the Vice President shall preside at a session of the Tribunal.
- 4. The Tribunal shall decide in each case whether oral proceedings are warranted. Unless otherwise decided by the Tribunal, oral proceedings shall be held in public.
- 5. The deliberations of the judges shall be confidential.

6. The Tribunal shall take all its decisions by a majority of the Judges sitting at a session of the Tribunal.
7. The Tribunal shall report annually to the Board of Directors of the Bank on the progress of its work.

**ARTICLE XII**  
**JUDGEMENTS OF THE TRIBUNAL**

1. Judgements of the Tribunal shall be binding, final and without appeal.
2. Each judgement shall be in writing and state the reasons on which it is based. It shall be drawn up in any one of the working languages of the Bank.
3. The Tribunal may interpret or rectify any of its judgements whose terms appear obscure or incomplete, or which contains a typographical or arithmetical error.
4. In the event of the discovery of a fact which by its nature might have had a decisive influence on the judgement of the Tribunal and which at the time the judgement was delivered was unknown both to the Tribunal and any party, any interested party may request the Tribunal, within a period of six months after it has acquired knowledge of such fact, to revise the judgement. The request for revision shall contain the information necessary to show that the afore-mentioned conditions have been satisfied. It shall be accompanied by the original or a copy of all supporting documents.

**ARTICLE XIII**  
**REMEDIES**

1. If the Tribunal concludes that an application contesting an administrative decision is well-founded, it shall order the rescission of such a decision, and may order any other measures, whether involving the payment of money or otherwise, required to correct the effects of that decision.
2. When prescribing measures under paragraph 1 of this Article other than payment of money, the Tribunal shall fix an amount of compensation to be paid to the applicant should the President of the Bank or, as the case may be, the legal representative of the respondent institution, within one month of the notification of the judgement, that such measures shall not be implemented. The amount of such compensation shall not exceed the equivalent of three years of the annual salary of the concerned person received from the Bank or the respondent institution.
3. Should the Tribunal find that the procedure prescribed in the rules and regulations of the Bank or the respondent institution has not been observed, it may, prior to the determination of the merits, order the case remanded for institution or correction of the required procedure.

**ARTICLE XIV  
RECORDS**

1. The original text of each judgement, attested by the Executive Secretary, shall be filed in the archives of the Bank. A copy of the judgement shall be delivered to each of the parties concerned.
2. A copy of the judgement shall, on request, be made available by the Secretariat to any interest person, provided that the President may decide that the identification of the applicant or other persons mentioned in the judgement shall be deleted from such copies.

**ARTICLE XV  
ADHESION**

The Bank may make agreements with any other international organization for the submission of applications of members of their staff to the Tribunal. Each such agreement shall provide that the organization concerned shall be bound by the judgements of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member of that organization. The agreement shall also include, inter alia, provisions concerning the organization's participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing of the expenses of the Tribunal.

**ARTICLE XVI  
AMENDMENTS**

1. The present Statute may be amended by the Board of Directors of the Bank.
2. Any amendment to this Statute shall be subject to review by the Board of Governors of the Bank in accordance with the provisions of Article 5 of the General Regulations of the Bank.

**ARTICLE XVII  
EFFECTIVE DATE OF JURISDICTION**

1. The present Statute shall enter into force on 1 January, 1998.
2. Notwithstanding any provision contained in this Statute, the Tribunal shall not be competent to hear or pass judgement upon any application contesting an administrative decision where the cause of such application arose prior to the establishment of the Tribunal. This shall be the case, irrespective of whether or not such an application is pending as of 1 January, 1998 at any level of the administrative review process or the Staff Appeals Committee.

Adopted by the Board of Directors on 16 July, 1997.