

# **RULES OF PROCEDURE OF THE ADMINISTRATIVE TRIBUNAL**



**- 2011 Edition -**

**RULES OF PROCEDURE OF THE ADMINISTRATIVE TRIBUNAL OF THE  
AFRICAN DEVELOPMENT BANK MADE UNDER ARTICLE 9 OF THE STATUTE  
OF THE ADMINISTRATIVE TRIBUNAL (ADOPTED ON 9 FEBRUARY, 1998;  
AMENDED IN PLENARY SESSIONS OF 27-30 NOVEMBER, 2006 AND 1-5  
NOVEMBER, 2010)**

**Rule I**

**General:**

1. These Rules of Procedure shall apply to the Administrative Tribunal of the African Development Bank (hereinafter referred to as the "Tribunal") and shall be known as the Rules of Procedure of the Tribunal (hereinafter referred to as the "Rules").
2. These Rules shall be subject to the provisions of:
  - a) the Agreement Establishing the African Development Bank;
  - b) the Statute of the Tribunal (hereinafter referred to as the "Statute").

**Rule II**

**Working Languages:**

The working languages of the Tribunal shall be the working languages of the African Development Bank (hereinafter referred to as the "Bank").

**Rule III**

**Oath of Office:**

Judges shall upon appointment, and prior to participating in the hearing of their first case, subscribe to an oath of office.

**Rule IV (New)**

**President and Vice-President:**

1. **Without prejudice to the provisions of Article VI of the Statute of the Tribunal, the Judges shall elect from among themselves a President and a Vice-President of the Tribunal for terms of three (3) years, renewable only once. The President and Vice-President thus elected shall take up their duties immediately.**
2. **The elections shall be by majority vote.**
3. The President of the Tribunal (hereinafter referred to as the "President") shall:
  - a) establish the panel(s) of Judges for each session of the Tribunal;

- b) preside over the consideration of cases by the Tribunal, chair the oral hearings, ensure decorum during such hearings and take any appropriate measure to that effect;
  - c) direct the Secretariat of the Tribunal in the performance of its functions;
  - d) prepare an annual report on the activities of the Tribunal; and
  - e) perform such other functions as are entrusted to the President by the Rules.
4. The Vice-President of the Tribunal (hereinafter referred to as the “Vice-President”) shall, in the absence of the President, perform the President’s functions, including presiding at a session of the Tribunal in accordance with Article XI (3) of the Statute.
5. **In case of the absence of the President and the Vice-President, the senior member of the Tribunal shall exercise the functions of President at and between sessions.**

#### **Rule V**

##### **Executive Secretary:**

Under the authority of the President, the Executive Secretary of the Tribunal shall:

- a) receive applications instituting proceedings and related documentation of the case;
- b) be responsible for transmitting all documents and making all notifications required in connection with cases before the Tribunal;
- c) make for each case a dossier which shall record all actions taken in connection with the case, the dates thereof, and the dates on which any document or notification forming part of the procedure are received in or dispatched from the Executive Secretary's office;
- d) attend hearings and meetings of the Tribunal as may be instructed by the President;
- e) prepare and keep the minutes of these hearings and meetings as may be instructed by the President; and
- f) expeditiously perform the functions entrusted to the Executive Secretary by the Rules and carry out tasks as assigned by the President.

#### **Rule VI**

##### **Recusal:**

1. Judges of the Tribunal shall with the concurrence of the President, recuse themselves:
- (a) in cases involving persons with whom the Judge has a personal, familial or professional relationship;

- (b) in cases concerning which the said Judge has previously been called upon in another capacity, including as advisor, representative, expert or witness on behalf of a party; or
  - (c) if there exists other circumstances such as to make the Judge's participation seem inappropriate.
2. In the event of a challenge by either of the parties on the ground of a conflict of interest, and the acceptance of such challenge by the President, a Judge shall be excluded from the panel hearing that case.

## **Rule VII**

### **Plenary Sessions:**

The Tribunal shall hold a plenary session once a year (normally before the Annual Meetings of the Board of Governors of the Bank) for the purpose of adopting its Annual Report and for dealing with matters affecting the administration or the operations of the Tribunal. When, however, there are no cases on the list which in the opinion of the President would justify the holding of a session for their consideration, the President may after consulting the other Judges, decide to postpone the plenary session to a later date.

## **Rule VIII**

### **Counsel:**

1. In accordance with Article IX, Section 4 of the Statute, each party may at any time choose to be assisted by counsel, whose designation shall be notified to the Executive Secretary.
2. The Applicant may personally defend his case or designate a counsel who is staff or former staff of the African Development Bank or a lawyer registered at the Bar of a regional or non-regional ADB member State or, with the authorization of the President of the Tribunal, a person qualified to handle international civil service issues.

## **Rule IX (New)**

### **Applications:**

1. **An Application shall be filed with the Tribunal in one of the working languages of the Bank following the form attached hereto as Annex. If an Applicant wishes to be represented, such Applicant shall complete the "Appointment of Representative and/or Counsel" form contained in the Application.**
2. Applications instituting proceedings shall be submitted to the Tribunal through the Executive Secretary. Each Application shall contain:
  - (a) the name and official status of the Applicant;
  - (b) the name of the Applicant's representative, if any, and whether such representative or another person shall act as Counsel for the Applicant;
  - (c) the decision being challenged, and the authority responsible for the decision;

- (d) the channels of administrative review, as applicable, that the Applicant has pursued and the results thereof;
  - (e) the reasons why the Applicant believes the decision is illegal;
  - (f) a statement of the supporting facts; and
  - (g) the relief or remedy that is being sought, including the amount of compensation, if any, claimed by the Applicant and the specific performance of any obligation which is requested.
3. The Applicant shall attach as annexes all documents cited in the Application in the original form or a certified copy and in a complete text unless part of it is obviously irrelevant. Such documents shall include a copy of any report and recommendation of the Staff Appeals Committee or, where applicable, the Disciplinary Committee or the Pension Appeals Committee in the matter. If a document is not in a working language of the Bank, the Applicant shall attach a translation thereof into one of the Bank's working languages.
  4. The original and all copies of the Application shall be signed on all pages by the Applicant or the representative, if any, whom the Applicant has designated in accordance with Paragraph 1 of this Rule. In the event of the Applicant's incapacity or death, the required signature shall be furnished by the Applicant's legal representative.
  5. Four additional certified copies of the Application and its attachments shall be transmitted by the Applicant to the Executive Secretary.
  6. An Application shall satisfy the provisions of Article XVII (2) of the Statute, and be submitted to the Tribunal within the time limits prescribed by Article III, of the said Statute.
  7. If the Application does not fulfill the requirements established in Paragraphs 1 to 4 of this Rule, the Executive Secretary shall advise the Applicant of the deficiencies and give him a reasonable period of time, not less than fifteen (15) days, in which to make the appropriate corrections or additions. If this is done within the period given, the application shall be considered filed on the original date. Otherwise, the Executive Secretary shall:
    - (i) notify the Applicant that the period of time within which to make the appropriate changes has been extended, indicating the length of time thereof;
    - (ii) make the necessary corrections when the defects in the Application do not affect the substance; or
    - (iii) by order of the President, notify the Applicant that the submission does not constitute an application and cannot be filed as such.
  8. Upon ascertaining that the formal requirements of this Rule have been met, the Executive Secretary shall notify the Director of the Bank's Human Resources Management Department of the Application and shall transmit a copy of it to the General Counsel.

9. Pursuant to Section 1 above, the language chosen shall determine the language to use for all subsequent written submissions.

#### **Rule X**

##### **Respondent's Answer:**

1. The Respondent shall answer the Application in writing and submit any additional documentary evidence within fifty (50) days from the date the application has been duly notified by the Executive Secretary to the Respondent, unless upon justified request and exceptionally, the President sets another time limit. The Respondent's answer shall be submitted to the Tribunal and to the Applicant through the Executive Secretary in the same language as the Application. The Respondent shall include as annexes all documents referred to in the Answer and in accordance with the rules established for the Application in Rule IX above.
2. The Answer shall be signed on all of its pages by the representative of the Respondent.
3. Four additional certified copies of the Answer and its attachments shall be submitted to the Executive Secretary.
4. Upon ascertaining that the formal requirements of this Rule have been met, the Executive Secretary shall transmit a copy of the Respondent's Answer to the Applicant.

#### **Rule XI**

##### **Applicant's Reply:**

1. The Applicant may file with the Executive Secretary a written Reply to the Answer within thirty (30) days from the date on which the Answer is transmitted to the Applicant, unless upon justified request and exceptionally, the President sets another time limit.
2. The complete text of any document referred to in the written Reply shall be annexed thereto in accordance with the rules established for the Application in Rule IX.
3. The requirements of Rule IX, Paragraphs 4 and 5, shall apply to the Reply.
4. Upon ascertaining that the formal requirements of this Rule have been met, the Executive Secretary shall transmit a copy of the Applicant's Reply to the Respondent.

#### **Rule XII**

##### **Respondent's Rejoinder:**

1. The Respondent may file with the Executive Secretary a written Rejoinder within thirty (30) days of receiving the Applicant's Reply, unless upon justified request and exceptionally, the President sets another time limit.
2. The complete text of any document referred to in the written Rejoinder shall be annexed thereto in accordance with the rules established for the application in Rule IX.

3. The requirements of Rule X, Paragraphs 2 and 3, shall apply *mutatis mutandis* to the Rejoinder.
4. Upon ascertaining that the formal requirements of this Rule have been met, the Executive Secretary shall transmit a copy of the Respondent's Rejoinder to the Applicant.
5. Without prejudice to Rule XIII, after the Rejoinder has been filed, no further pleadings may be received.

#### **Rule XIII (New)**

##### **Additional Written Statements and Documents:**

1. In exceptional cases, the President may at the request of either party or otherwise, call upon the parties to submit additional written statements or documents within a period which the President shall fix. The additional written statements or documents shall be furnished in the original or a certified copy.
2. **The party submitting the additional written statement or document in one of the Bank's working languages shall ensure that all documents are translated into the Bank's other working language and shall submit said translations with the original.**
3. **Additional written statements or documents submitted by a party in accordance with the requirements of Paragraph 1 above shall be transmitted to the Executive Secretary, who upon receipt shall transmit the statement or document to the other party pending the decision of the President of the Tribunal on their admissibility.**
4. The requirements of Rule IX, Paragraphs 4 and 5, or Rule X, Paragraphs 2 and 3, as the case may be, shall apply to any additional written statements and documents.

#### **Rule XIV**

##### **Admissibility of Applications:**

1. The Respondent may file a motion within thirty (30) days of receipt of an Application alleging non-admissibility of the Application. The filing of the motion shall suspend the period of time for answering the Application until the motion is acted on by the Tribunal.
2. The complete text of any document referred to in such a motion shall be annexed thereto in accordance with the rules established for the Application in Rule IX. The requirements of Rule X, paragraphs 2 and 3, shall apply *mutatis mutandis* to the motion.
3. Upon ascertaining that the motion meets the formal requirements of this Rule, the Executive Secretary shall transmit a copy thereof to the Applicant.
4. The Applicant may file with the Executive Secretary a written Objection to the motion within thirty (30) days from the date on which the motion is transmitted to the Applicant.

5. The complete text of any document referred to in the Objection shall be annexed thereto in accordance with the rules established for the Application in Rule IX. The requirements of Rule IX, Paragraphs 4 and 5, shall apply to the Objection.
6. Upon ascertaining that the Objection meets the formal requirements of this rule, the Executive Secretary shall transmit a copy thereof to the Respondent.
7. There shall be no further pleadings in respect of a motion filed under this Rule unless the President so requests.
8. Upon receipt of all the pleadings under this Rule, the Tribunal shall rule on the admissibility or non-admissibility of the Application.

#### **Rule XV (New)**

##### **Oral Proceedings and Witnesses:**

1. Oral proceedings shall be held if the Tribunal decides that such proceedings are necessary. In such cases, the Tribunal shall hear the oral arguments of the parties and their counsel, and may examine them. Such oral proceedings of the Tribunal shall be open to the **staff members** of the Bank.
2. **At least thirty (30) working days before the commencement of hearings, each party shall submit to the Tribunal a list containing the name and description of any witness or expert whom the party wishes to call. This deadline may be waived in exceptional cases by the President of the Administrative Tribunal. Upon receipt, the Executive Secretary shall transmit the list to the other party. The list of witnesses or experts shall include a summary of their testimony or the points to which the evidence is to refer.**
3. The Tribunal shall decide on any application for the hearing of witnesses or experts and shall determine, in consultation with the parties or their counsel, the sequence of oral proceedings. Where a witness is not in a position to appear before the Tribunal, the Tribunal may decide that the witness shall reply in writing to the questions of the parties. The parties shall, however, retain the right to comment on any such written reply.
4. The parties or their counsel may, under the direction of the President, put questions to the witnesses and experts. The Tribunal may also examine witnesses and experts.
5. Each witness shall make the following declaration before giving evidence: *"I solemnly declare upon my honor and conscience that my testimony will be in accordance with my sincere belief"*.
6. The Tribunal may disregard evidence which it considers irrelevant, frivolous, or lacking in probative value.
7. The Tribunal may limit oral testimony where it considers the written documentation adequate.

8. The President is empowered to issue such orders and decide such matters as are necessary for the orderly disposition of cases, including ruling on objections raised concerning the examination of witnesses or the introduction of documentary evidence.

#### **Rule XVI**

##### **Notice to Bank Community:**

In order to inform the Bank community of proceedings before the Tribunal, the Executive Secretary, shall prior to each session of the Tribunal, unless the President decides otherwise, circulate within the Bank the list of cases for each session and the nature of each application.

#### **Rule XVII**

##### **Interventions:**

1. Any person to whom the Tribunal is open under Article III, Section 1 of the Statute may, after the Respondent has filed an Answer, and before the closure of the written pleadings, apply to intervene in a case on the ground that the party has a right which may be affected by the judgment to be given by the Tribunal. Such person shall for that purpose draw up and file an application to intervene in accordance with the conditions laid down in this Rule.
2. The rules regarding the preparation and submission of applications specified above shall apply *mutatis mutandis* to the application for intervention.
3. Upon ascertaining that the formal requirements of this Rule have been complied with, the Executive Secretary shall transmit a copy of the application for intervention to the Applicant and to the Respondent, each being entitled to present views on the issue of intervention within fifty (50) days. Upon expiration of that deadline, whether or not the parties have replied, the President, in consultation with the other Judges of the Tribunal, shall decide whether to grant the application to intervene. If intervention is admitted, the intervenor shall thereafter participate in the proceedings as a party.

#### **Rule XVIII**

##### **Amicus Curiae:**

The Tribunal may permit any person or representative non-governmental organization with special competence in cases submitted to the Tribunal to file written submissions as Amicus Curiae not later than the date fixed for the filing of the Applicant's reply. It may also permit the duly authorized representatives of the staff Council so to participate. If the Tribunal grants the request, the Executive Secretary shall transmit a copy of the accompanying brief to the parties who may comment thereon, within thirty (30) days of the date on which the brief is transmitted to them.

#### **Rule XIX**

##### **Time Limits:**

1. The calculation of time limits prescribed in these rules, all of which refer to calendar days, shall not include the day of the event from which the period runs, and shall include the next working day of the Bank when the last day of the period is not a working day.

2. For the purpose of determining whether the time limits have been met, the date of dispatch (whether by postal service or courier), when accompanied by proof thereof, shall be accepted as the date of filing the same as if the filing had been effected on that date by hand delivery to the office of the Executive Secretary. In exceptional circumstances, filing of pleading by means other than postal service, courier or hand may be permitted by the Executive Secretary in consultation with the President.

#### **Rule XX**

##### **Production of Documents:**

1. The Applicant may, before the closure of the pleadings, request the Tribunal to order the production of documents or other evidence which he has requested and to which the Applicant has been denied access by the Respondent, accompanied by any relevant documentation bearing upon the request and the denial or lack of access. The Respondent shall be given an opportunity to present its views on the matter to the Tribunal.
2. The Tribunal may reject the request to the extent that it finds that the documents or other evidence requested are clearly irrelevant to the case, or that compliance with the request would be unduly burdensome or would infringe on the privacy of individuals. For purposes of assessing the issue of privacy, the Tribunal may examine *in camera* the documents requested.
3. The Tribunal may, subject to Article IX, Section 1 of the Statute, order the production of documents or other evidence in the possession of the Respondent, and may request information which it deems useful to its judgment.
4. When the Tribunal is not in session, the President shall exercise the powers set forth in this Rule.

#### **Rule XXI**

##### **Judgments:**

1. All deliberations of the Tribunal shall be *in camera*. The judgment shall be adopted by majority vote.
2. Once the final text of the judgment has been approved and adopted, the judgment shall be signed by the President and the Executive Secretary and shall contain the names of the Judges who have taken part in the decision.
3. The judgment shall be transmitted to the parties and to *amici curiae*. The judgment shall be available to interested persons upon request to the Executive Secretary, who shall arrange for their publication.
4. The text of the judgment delivered in the language chosen by the Applicant shall be authentic.

## **Rule XXII (New)**

### **Revision of Judgments:**

1. A party may request revision of a judgment issued by the Tribunal, but only in the event that a fact or a document is discovered which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time of the judgment was unknown to the Tribunal and to the party to the case making application for the revision and such ignorance was not the responsibility of that party.
2. The revision must be requested within **six (6) months** from the date on which the fact or document is discovered. In any event, the revision must be requested within **one (1) year** from the date on which the party requesting the revision was notified of the judgment unless, upon request, the President sets another time limit.
3. The procedure set forth in Rules X to XIII shall be applied, *mutatis mutandis*, to the request for revision.
4. The Tribunal shall decide whether to admit the application for revision. If the application is admitted, the Tribunal shall pass judgment on the matter at issue in accordance with these Rules.

## **Rule XXIII**

### **Interpretation of Judgments:**

1. In accordance with Article XII, Section 3 of the Statute, after a judgment has been rendered, a party may within sixty (60) days of notification of the judgment, apply to the Tribunal requesting an interpretation of the operative provisions of the judgment.
2. The Application shall be admissible only if it states with sufficient particularity in what respect the operative provisions of the judgment appear obscure or incomplete.
3. The Tribunal shall, after giving the other party or parties a reasonable opportunity to present its or their views on the matter, decide whether to admit the application for interpretation. If the application is admitted, the Tribunal shall issue its interpretation, which shall thereupon become part of the original judgment.

## **Rule XXIV (New)**

### **Anonymity:**

1. **An Applicant may request at any stage of the proceedings, that his/her name shall not be made public by the Tribunal when the judgment is published by completing the “Publication of Judgment” form in the Application.**
2. **The Respondent may request at any stage of the proceedings that the name of any other individual or official shall not be made public by the Tribunal when the judgment is published.**

3. In accordance with Rule XVII (1), any intervenor may request at any stage of the proceedings that his/her name shall not be made public by the Tribunal when the judgment is published.

#### **Rule XXV**

##### **Miscellaneous Provisions:**

1. The President shall, in consultation with the other Judges of the Tribunal, set the dates of the Tribunal's sessions.
2. The Tribunal or, when the Tribunal is not in session, the President, may deal with any matter not expressly provided for in the present Rules.

#### **Rule XXVI**

##### **Amendments:**

These Rules may be amended by the Tribunal in plenary session.

These amendments shall enter into force on 1 January 2011.

Tunis, 4 November 2010

The President of the Administrative Tribunal  
Professor Yadh BEN ACHOUR

# Application

to the Administrative Tribunal  
of the African Development Bank

## **I. INFORMATION CONCERNING THE APPLICANT:**

- 1) Full name of Applicant (first name(s) and surname)
- 2) Date and place of birth
- 3) Civil status
- 4) Nationality
- 5) Date of recruitment
- 6) Professional status at date of contested decision (type of appointment, title and grade, active service or retirement)
- 7) Duty station
- 8) Addresses
  - a) Postal address
  - b) Telephone
  - c) Fax
  - d) E-mail
- 9) If so wished by Applicant: Other address to which any document of the proceedings should be sent.

## **II. IF NECESSARY: INFORMATION ON OTHER PERSON(S) WHOSE RIGHTS ARE INVOKED BEFORE THE TRIBUNAL:**

- 1) Full name of Applicant (first name(s) and surname)
- 2) Date and place of birth, if applicable: date of death
- 3) Civil status
- 4) Nationality
- 5) Date of recruitment
- 6) Professional status at date of contested decision (type of appointment, title and grade, active service or retirement)
- 7) (Last) Duty station
- 8) Addresses (if applicable)
  - e) Postal address
  - f) Telephone
  - g) Fax
  - h) E-mail

- III. **DECISION BEING CHALLENGED:** Date of the decision and the authority responsible therefore:
- Summarize the facts which gave rise to the appeal. All documents submitted must be referred to in the summary of the facts and annexed to this form of application.
- IV. **CHANNELS OF ADMINISTRATIVE REVIEW** of the decision that Applicant has pursued and results therefrom:
- V. **REASONS** why Applicant challenges the decision and its legality:
- VI. **STATEMENT OF FACTS** supporting the application:
- VII. **RELIEF OR REMEDY** that is being sought, including the amount of compensation, if any, claimed by Applicant:
- VIII. **ANNEXES** to be attached pursuant to Rule IX (3) of the Tribunal's Rules of Procedure:
- «3. The Applicant shall attach as annexes all documents cited in the Application in the original form or a certified true copy and in a complete text unless part of it is obviously irrelevant. Such documents shall include a copy of any report and recommendation of the Staff Appeals Committee or, where applicable, the Disciplinary Committee or the Pension Appeals Committee, in the matter. If a document is not in a working language of the Bank, the Applicant shall attach a translation thereof into one of the Bank's working languages.»*
- IX. Any **ADDITIONAL INFORMATION** that Applicant wishes to present to the Tribunal:

# FORM OF APPOINTMENT OF REPRESENTATIVE AND/OR COUNSEL\*

## APPOINTMENT OF REPRESENTATIVE AND/OR COUNSEL\*

I

.....  
do hereby designate (Name) .....

address .....

as my duly authorized representative and/or counsel to file/maintain an application with the Administrative Tribunal of the African Development Bank. (If known, give case number.) To this end, the above named representative and/or counsel is authorized to sign pleadings, appear before the Tribunal, and take all other necessary action in connection with the pursuance of the case on my behalf. This designation shall take effect immediately and shall remain in effect until revoked by me and the Tribunal has been so informed in writing.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\* Underline the appropriate word, whether a representative or a counsel.

# **AUTHORIZATION TO PUBLISH\* JUDGMENT OR ORDER**

I the undersigned .....

Hereby authorize the Administrative Tribunal to publish the Judgment/Order delivered on the case between me and the African Development Bank:

- \*\* with my full names clearly mentioned
- \*\* with my initials alone, without revealing my names

I understand that this Judgment/Order is part of the Tribunal's jurisprudence and will be published as a matter of course according to the preference indicated above.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\* Please note that all judgments will be published bearing the names of the parties on the Bank's Intranet (internal website). This authorization only applies to publication on the Bank's external website (Internet) and in the bound volumes of the judgments.

\*\* Please check the appropriate box.