



# The SADC Tribunal in 20 Questions



A Guide to SADCT

## **1 The SADC Tribunal -what is it?**

The SADC Tribunal (the Tribunal) is the judicial arm of the regional economic community (REC) known as the Southern African Development Community (SADC). The Tribunal is an institution of SADC and is established by Article 9 as read with Article 16 of the Treaty Establishing the Southern African Development Community (the SADC Treaty).

The Tribunal is constituted by 10 judges who are not known as judges but as Members. Of these ten, five are regular Members whilst the other five constitute a reserve pool should any one of the five regular judges be unable to perform his/her duties. A full bench of the Tribunal will be made up of five Members but ordinarily the Tribunal will sit with three Members.

Members of the Tribunal are citizens of the Member States and are jurists who are qualified to appointment of the highest judicial office. They are nominated by Member States and recommended to Summit by the Council. It is Summit that then appoints the Members.

## **2 What is the status of the SADC Tribunal under international law?**

The manner in which the Tribunal operates is regulated by the

Protocol on the SADC Tribunal. As an international organization, SADC makes its own laws through protocols which are similar to Acts of Parliament in the domestic law sense. The Protocol on the SADC Tribunal is an integral part of the SADC Treaty and as there are no reservations to the SADC Treaty all member states to the SADC Treaty are automatically state parties to the Protocol on the SADC Tribunal as well.

Under international law the Tribunal is considered an international court just like the European Court of Justice or the East African Court of Justice. Although it is called a tribunal it must be distinguished from other international tribunals that are *ad hoc* in nature e.g. the International Criminal Tribunal for Rwanda (ICTR). The SADC Tribunal is a permanent court.

The Member States of SADC and the SADC Tribunal are Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

## **3 What cases can be brought to the SADC Tribunal?**

According to Article 16 of the Treaty, the main objective of the Tribunal is

to ensure that Member States are adhering to the provisions of the Treaty and other subsidiary instruments. In other words, the Tribunal should ensure Member States do not fall foul of SADC law.

SADC law includes the SADC Treaty, all protocols that have been duly ratified and are in force, SADC Declarations, Principles, Communiqués and other such instruments.

As such, when one brings a case to the Tribunal there must be an averment that a Member State of SADC has violated SADC law.

**4 How does one commence proceedings in the SADC Tribunal?** There are two ways in which proceedings are instituted in the Tribunal. The first is by application and the second is by agreement. Naturally, most cases will be instituted by application.

According to Rule 33, an application must state the particulars of both applicant and respondent, the precise nature of the claim, succinct statement of facts and the form of relief or order that is sought by the applicant. The Registry of the Tribunal has devised Form 1 to assist litigants to comply with the requirements of Rule 33.

This form, which is not peremptory, can be downloaded from the Tribunal website.

Proceedings instituted by special agreement can be commenced by either of the parties to the agreement. The agreement must form part of the notification and must clearly state the subject of the dispute.

**5 Is the SADC Tribunal a human rights court?** The SADC Tribunal is not a human rights court *per se*. The Tribunal has ruled that it does have jurisdiction to entertain human rights matters as one of the principles of SADC is the observance of human rights, democracy and rule of law. On this basis it is possible to bring a violation of human rights before the Tribunal.

**6 Can the SADC Tribunal deal with criminal cases?** The Tribunal is not a criminal court and does not have criminal jurisdiction. In theory, however, it may be able to review the conduct of Member States in how they have dealt with criminal cases and whether such conduct was in compliance with SADC law.

**7 Who can bring a matter before the SADC Tribunal?** Any person (natural or juristic) can bring

a matter before the Tribunal alleging a violation of SADC law by a Member State. Such person need not be a citizen of a Member State.

Employees of SADC can also bring their labour disputes to the Tribunal as the Tribunal has exclusive jurisdiction over such disputes.

The Tribunal also has exclusive jurisdiction where Member States have disputes with SADC or its institutions.

SADC Summit or the Council of Ministers can also bring a matter to the Tribunal where they are seeking an advisory opinion. Member States or persons cannot by themselves seek an advisory opinion from the Tribunal.

**8 What is the relationship between the SADC Tribunal and domestic courts?** The Tribunal is not a court of appeal for domestic courts. However, like other international courts the requirement that a litigant must have exhausted all local remedies before approaching the Tribunal also applies. The Tribunal applies this rule with the necessary exceptions and flexibilities as is the case with other international courts.

Domestic courts will normally have their domestic standards as

a benchmark and will attempt to determine whether the state has lived up to those standards. The Tribunal, on the other hand, will have SADC law and international law as its standard. A Member State may therefore be in conformity of its own laws but those laws may be a stark violation of SADC law. It is in this regard that a decision of the Tribunal may have the effect of overturning that of a domestic court.

Where SADC law is argued in domestic courts of Member States, such courts may also refer the matter to the Tribunal for a preliminary ruling. Such preliminary ruling may be on the interpretation, application or validity of provisions of SADC law.

**9 Does the SADC Tribunal consider domestic law?** International law as applied in international courts is not as developed as domestic law. It is normally necessary for international courts to borrow from domestic courts. In any case, judges in international courts obtain their experience from domestic courts. The Protocol on the Tribunal allows the Tribunal to develop its own jurisprudence with regard to the principles of law of the Member States. As such, lawyers who appear before the Tribunal can argue that the Tribunal should follow the practice of a certain Member State.

## **10 What are the costs for bringing a case to the SADC Tribunal?**

At present the Tribunal does not charge anything for filing. Costs that one will incur for filing relate to making copies. The Tribunal requires that all documents filed be in quintuple (i.e. five copies) for the Tribunal and a copy for every other party involved in the suit. All copies and annexures should be certified as well.

Other costs that will be incurred by a litigant include travel and subsistence to the Tribunal where one does not reside at the seat of the Tribunal which is in Windhoek, Namibia.

With regard to legal costs, these can be verified from local law/bar societies or from enquiring from individual lawyers. Namibia has a number of lawyers that are engaged with cases with the Tribunal. Such lawyers may also give reliable information on the estimate of legal costs.

## **11 What of languages and translation?**

The working languages of the Tribunal are English, French and Portuguese. The Registrar is mandated to translate anything said or done in the course of proceedings before the Tribunal to any of the working languages should

he/she be so requested by a Member or party to the proceedings. At present the Tribunal has no costs for such translations but where the Registrar considers the costs to be excessive, such excess will be borne by the party concerned.

## **12 Is there legal aid?**

The Tribunal does not yet have a legal aid scheme but in the near future it is expected that such scheme will be put in place.

## **13 Can costs be awarded for or against a litigant?**

The Tribunal will only award costs to a winning party or against a losing party in 'exceptional circumstances'. As such, in the normal course of events, each litigant has to bear their own costs.

## **14 How long does it take for The Tribunal to decide a matter?**

Members of the Tribunal work part time and at present they have an average of five sittings per year. Were one to file an urgent application with the Tribunal it could be set down at the next closest sitting, subject to service of process to the other party(ies).

An urgent application will normally be heard within three months of filing. At

the hearing of the urgent application it is likely that the final matter will be argued either at the next sitting or the one that follows after that. Judgment will then follow on the next session.

A fair estimate will be one year from date of filing to date of final judgment if all parties are acting expeditiously.

**15 Can papers be filed electronically?** At present papers can not be filed electronically and as such all papers are filed manually. In future it is hoped papers can be filed by parties without such parties actually coming to the Tribunal.

**16 How is the Tribunal process (official court papers) served?** The Registrar has the duty to ensure that all parties to a matter are served with process that is filed with the Tribunal. At present the Registrar has engaged the services of DHL which serves the papers with its courier service. Where an Agent assumes agency in a particular matter he/she must give an address that is at the seat of the Tribunal (Windhoek) for the purposes of service of process.

**17 Does one need a lawyer to bring a case?** It is not a legal necessity to have a lawyer but due to the complexity of the issues it is normally practically necessary to have a lawyer. Such complexity relates to pre-trial issues of filing and then to trial issues which may involve answering complex legal questions.

**18 Can any lawyer appear before the Tribunal?** Registered lawyers in the Member States have right of appearance before the Tribunal. Lawyers are referred to as 'Agents' before the Tribunal and when they appear on behalf of any party they have to show proof that they have been authorized to act on that party's behalf.

**19 How are Tribunal decisions enforced?** Decisions of the Tribunal are to be enforced in Member States in accordance with the Member State's laws and rules of civil procedure for the enforcement of foreign judgments. A party applying for the recognition or enforcement of a decision of the Tribunal must supply the relevant authority with the Tribunal decision and the original application that was submitted

to the Tribunal.

**20 Will the Tribunal's decision be enforced, if not, then what?** The Tribunal's decision is final and binding upon the parties involved in that particular matter. There is no appeal against the Tribunal's decision. Where there has been a refusal to abide by the decision, the aggrieved party can approach

the Tribunal again where The Tribunal will proceed to enquire on the circumstances relating to non-compliance.

If the Tribunal is of the view that the other party does not intend to comply with the decision, it must report the matter to the Summit, where the latter is under a legal duty to take 'appropriate action' against the recalcitrant party.

## Disclaimer

Although this guide has been drafted by the Tribunal Registry, it does not form part of the basic documents of the Tribunal and is not binding on the Tribunal. All care has been observed in ensuring accuracy and it is hoped that it will positively contribute to providing access to the Tribunal.



**For more information please feel  
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