

# PROTOCOL ON TRIBUNAL AND RULES OF PROCEDURE THEREOF



*SADC Tribunal*

# **PROTOCOL ON TRIBUNAL AND RULES OF PROCEDURE THEREOF**



# Table Of Contents

<b>PREAMBLE</b> .....	<b>1</b>
<b>PART I: Preliminary</b> .....	<b>2</b>
ARTICLE 1: DEFINITIONS.....	2
<b>PART II: Organisation</b> .....	<b>3</b>
ARTICLE 2: CONSTITUTION OF THE TRIBUNAL.....	3
ARTICLE 3: CONSTITUTION AND COMPOSITION .....	3
ARTICLE 4: NOMINATION, SELECTION AND APPOINTMENT OF MEMBERS .....	4
ARTICLE 5: SOLEMN DECLARATION .....	5
ARTICLE 6: TENURE OF OFFICE OF MEMBERS .....	5
ARTICLE 7: THE PRESIDENT.....	6
ARTICLE 8: RESIGNATION AND TERMINATION OF OFFICE.....	6
ARTICLE 9: DISQUALIFICATION OR RECUSAL.....	7
ARTICLE 10: IMMUNITY FROM LEGAL PROCEEDINGS.....	7
ARTICLE 11: TERMS AND CONDITIONS OF SERVICE AND SALARIES OF MEMBERS.....	8
ARTICLE 12: REGISTRAR .....	8
ARTICLE 13: SEAT OF THE TRIBUNAL.....	8
<b>PART III: Jurisdiction</b> .....	<b>9</b>
ARTICLE 14: BASIS OF JURISDICTION.....	9

ARTICLE 15; SCOPE OF JURISDICTION.....	9
ARTICLE 16: PRELIMINARY RULINGS .....	10
ARTICLE 17: DISPUTES BETWEEN MEMBER STATES AND COMMUNITY .....	10
ARTICLE 18: DISPUTES BETWEEN NATURAL OR LEGAL PERSONS AND COMMUNITY .....	11
ARTICLE 19: DISPUTES BETWEEN COMMUNITY AND STAFF .....	11
ARTICLE 20:ADVISORY OPINIONS .....	11
ARTICLE 20A: APPELLATE JURISDICTION.....	12
ARTICLE 21: APPLICABLE LAW.....	13
ARTICLE 22:WORKING LANGUAGES .....	13
<b>PART IV: Procedure of the Tribunal.....</b>	<b>13</b>
ARTICLE 23: RULES OF PROCEDURES .....	13
ARTICLE 24: DECISIONS.....	14
ARTICLE 25: DEFAULT DECISIONS.....	14
ARTICLE 26: APPLICATION FOR REVIEW OF A DECISION .....	14
ARTICLE 27: REPRESENTATION BEFORE THE TRIBUNAL.....	15
ARTICLE 28: INTERIM MEASURES .....	15
ARTICLE 29: LEGAL COSTS.....	15

ARTICLE 30: APPLICATION TO BE JOINED AS A PARTY .....	16
ARTICLE 31: FEES AND LEGAL AID .....	16
ARTICLE 32: ENFORCEMENT AND EXECUTION .....	16
ARTICLE 33: BUDGET .....	17
<b>PART V: Final Provisions.....</b>	<b>17</b>
ARTICLE 34: SIGNATURE.....	17
ARTICLE 35: RATIFICATION.....	17
ARTICLE 36: ACCESSION .....	18
ARTICLE 37:AMENDMENT .....	18
ARTICLE 38: ENTRY INTO FORCE .....	19
ARTICLE 39: DEPOSITARY.....	20



# **PROTOCOL ON TRIBUNAL IN THE SOUTHERN AFRICAN DEVELOPMNT COMMUNITY**

As amended by:

The Agreement Amending the Protocol on Tribunal of 3 October 2002;  
and

The Agreement Amending the Protocol on Tribunal of 17 August 2007;  
and

The Agreement Amending the Protocol on Tribunal of 17 August 2008.



# **PREAMBLE**

WE, the Heads of State or Government of:

The Republic of Angola  
The Republic of Botswana  
The Democratic Republic of Congo  
The Kingdom of Lesotho  
The Republic of Malawi  
The Republic of Mauritius  
The Republic of Mozambique  
The Republic of Namibia  
The Republic of Seychelles  
The Republic of South Africa  
The Kingdom of Swaziland  
The United Republic of Tanzania  
The Republic of Zambia  
The Republic of Zimbabwe

DESIRING to conclude the Protocol on the Tribunal established by Article 9 as read with Article 16 of the Treaty,

HEREBY AGREE as follows:

**PART I**  
**Preliminary**  
**ARTICLE 1<sup>1</sup>**  
**DEFINITIONS**

1. In this Protocol terms and expressions defined in Article 1 of the Treaty shall bear the same meaning unless the context otherwise requires.
2. In this Protocol, unless the context otherwise requires;
  - “Appeal” means a dispute relating to the legal findings and conclusions of a panel established under a Protocol referred to the Tribunal for appellate decision by a party to a dispute in terms of Article 20A<sup>2</sup>;
  - “Member” means a Member of the Tribunal appointed in terms of Article 4 of this Protocol;
  - “President” means President of the Tribunal elected in terms of paragraph 1 of Article 7 of this Protocol;
  - “Rules” means the Rules of Procedure referred to in Article 23 of this Protocol.

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<sup>1</sup> The original text of Article 1 was amended and replaced through Article 1 of Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>2</sup> The definition of ‘appeal’ was added by Article 1 of the Agreement Amending the Protocol on the Tribunal of 17 August, 2007.

## **PART II**

### **Organisation**

#### **ARTICLE 2**

#### **CONSTITUTION OF THE TRIBUNAL**

The Tribunal of the Community (hereinafter referred to as "the Tribunal"), is hereby constituted in terms of Article 16 of the Treaty and shall function in accordance with the provisions of the Treaty and this Protocol.

#### **ARTICLE 3**

#### **CONSTITUTION AND COMPOSITION**

1. The Tribunal shall consist of not less than ten (10) Members, appointed from nationals of Member States who possess the qualifications required for appointment to the highest judicial offices in their respective Member States<sup>3</sup> or who are jurists of recognised competence.
2. The Council shall designate five (5) of the Members as regular Members who shall sit regularly on the Tribunal. The additional five (5) Members shall constitute a pool from which the President may invite a Member to sit on the Tribunal whenever a regular Member is temporarily absent or is otherwise unable to carry out his or her functions.
3. The Tribunal shall be constituted by three (3) Members; provided that the Tribunal may decide to constitute a full bench composed of five (5) Members.
4. The President shall be responsible for selecting the Members who shall constitute the Tribunal for the purpose of hearing any case brought before it.
5. On a proposal from the Tribunal, the Council may increase the number of Members.

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<sup>3</sup> Amended by Article 2 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002

6. No two or more Members<sup>4</sup> may, at any time, be nationals of the same Member State<sup>5</sup>.

## **ARTICLE 4**

### **NOMINATION, SELECTION AND APPOINTMENT OF MEMBERS**

1. Each Member State<sup>6</sup> may nominate one candidate having the qualifications prescribed in Article 3 of this Protocol.
2. Due consideration shall be given to fair gender representation in the nomination and appointment process.
3. The Members shall be selected by the Council from the list of candidates so nominated by Member States<sup>7</sup>. Nominations for the first appointment shall be called within three (3) months, and the selection shall be held within six (6) months, of the date of entry into force of this Protocol.
4. The Members shall be appointed by the Summit upon recommendation of the Council.
5. Where a Member is appointed to replace a Member whose terms of office has not expired, the Member so appointed shall serve for the remainder of his or her predecessor's term.
6. Any appointment to fill a vacancy referred to in paragraph 5 shall be conducted within three (3) months of the vacancy occurring. The procedure referred to in the preceding paragraphs shall apply *mutatis mutandis*.

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<sup>4</sup> Amended by Article 2 of the Agreement Amending the Protocol on the Tribunal of 17 August, 2007

<sup>5</sup> Amended by Article 2 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>6</sup> Amended by Article 2 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002

<sup>7</sup> Amended by Article 2 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

## **ARTICLE 5**

### **SOLEMN DECLARATION**

Every Member shall, before taking up his or her duties, make a solemn declaration in open session that he or she will carry out his or her duties independently, impartially and conscientiously.

## **ARTICLE 6**

### **TENURE OF OFFICE OF MEMBERS**

1. The Members shall be appointed for a term of five (5) years and may only be re-appointed for a further term of five (5) years. However, of the Members initially appointed, the terms of two (2) of the regular and two (2) of the additional Members shall expire at the end of three (3) years. The Members whose term is to expire at the end of three (3) years shall be chosen by a lot to be drawn by the Executive Secretary immediately after the first appointment.
2. In the event that the draw of a lot is not done pursuant to paragraph 1, for Members of the Tribunal whose term of office is to expire at the end of three years, their term of office shall be deemed to be extended for a period that would have elapsed between the date of first appointment and the date of making the draw<sup>8</sup>.
3. The Head of Legal Affairs Unit shall, in consultation with the Head of Human Resources Unit, advise the Executive Secretary to draw a lot as referred to in paragraph 1<sup>9</sup>.
- 4<sup>10</sup> Subject to paragraph 5 of this Article, the Tribunal shall sit when required to consider a case submitted to it. The Members shall, therefore, not be appointed on a full-time basis.

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<sup>8</sup> The text of this paragraph was introduced by Article 2 of the Agreement Amending the Protocol on the Tribunal of 17 August, 2008.

<sup>9</sup> The text of this paragraph was introduced by Article 2 of the Agreement Amending the Protocol on the Tribunal of 17 August, 2008

<sup>10</sup> The paragraph was renumbered by Article 2 of the Agreement Amending the Protocol on the Tribunal of 17 August, 2008.

5<sup>11</sup> On the recommendation of the President, the Council may at any time decide that the workload of the Tribunal requires that the Members should serve on a full-time basis. In that event:

- (a) existing Members who elect to serve on a full-time basis shall not hold any other office or employment; and
- (b) the Members subsequently appointed shall not hold any other office or employment.

## **ARTICLE 7 THE PRESIDENT**

1. The Tribunal shall elect its President for a term of three (3) years.
2. If the President is temporarily absent or otherwise unable to carry out his or her functions, the other Members shall elect an Acting President.

## **ARTICLE 8 RESIGNATION AND TERMINATION OF OFFICE**

1. The President may at any time resign his or her office by a letter to the Council delivered through the Executive Secretary.
2. A Member other than the President may at any time resign his or her office by a letter delivered to the President for transmission to the Council through the Executive Secretary.
3. No Member may be dismissed unless in accordance with the rules.
4. Notwithstanding the expiration of his or her term of office, a Member shall continue to hear and to complete those cases partly heard by him or her.

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<sup>11</sup> The paragraph was renumbered by Article 2 of the Agreement Amending the Protocol on the Tribunal of 17 August, 2008.

## **ARTICLE 9**

### **DISQUALIFICATION OR RECUSAL**

1. No Member may exercise any political or administrative function, or may hold any political office or any office in the service of a Member State<sup>12</sup>, the Community or an organisation or engage in any trade, vocation or profession or any other occupation which might interfere with the proper exercise of his or her judicial functions, impartiality or independence.
2. No Member may participate in the decision of any case in which he or she has previously taken part as an agent, a representative or an adviser, or as a member of a national or international court or tribunal or in any other capacity or in any matter in which a Member State<sup>13</sup> of which he or she is a national is a party to a dispute before the Tribunal.
3. Any dispute regarding the provisions of paragraphs 1 and 2 of this Article shall be resolved by a decision of the Tribunal sitting without the Member concerned.

## **ARTICLE 10**

### **IMMUNITY FROM LEGAL PROCEEDINGS**

The Members shall be immune from legal proceedings in respect of anything said or done by them in their judicial capacity. They shall continue to enjoy such immunity after they have ceased to hold office.

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<sup>12</sup> Amended by Article 4 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>13</sup> Amended by Article 4 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

## **ARTICLE 11 TERMS AND CONDITIONS OF SERVICE AND SALARIES OF MEMBERS**

The terms and conditions of service, salaries and benefits of the Members shall be determined by the Council.

## **ARTICLE 12 REGISTRAR**

1. The Tribunal shall appoint a Registrar who shall, subject to overall supervision of the President, be responsible for the day to day administration of the Tribunal.
2. The Tribunal shall employ such other staff as may be required to enable it to perform its functions.
3. The terms and conditions of service, salaries and benefits of the Registrar and other staff shall be determined by the Council on the recommendation of the Tribunal.

## **ARTICLE 13 SEAT OF THE TRIBUNAL**

The Tribunal shall have its seat at a place designated by the Council, provided it may in any particular case sit and exercise its functions anywhere within the Community if it considers it desirable.

## **PART III**

### **Jurisdiction**

#### **ARTICLE 14**

#### **BASIS OF JURISDICTION**

The Tribunal shall have jurisdiction over all disputes and all applications referred to it in accordance with the Treaty and this Protocol which relate to:

- (a) the interpretation and application of the Treaty;
- (b) the interpretation, application or validity of the Protocols, all subsidiary instruments adopted within the framework of the Community, and acts of the institutions of the Community;
- (c) all matters specifically provided for in any other agreements that Member States<sup>14</sup> may conclude among themselves or within the community and which confer jurisdiction on the Tribunal.

#### **ARTICLE 15**

#### **SCOPE OF JURISDICTION**

1. The Tribunal shall have jurisdiction over disputes between Member States<sup>15</sup>, and between natural or legal persons and Member States<sup>16</sup>.
2. No natural or legal person shall bring an action against a Member State<sup>17</sup> unless he or she has exhausted all available remedies or is unable to proceed under the domestic jurisdiction.
3. Where a dispute is referred to the Tribunal by any party the consent of other parties to the dispute shall not be required.

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<sup>14</sup> Amended by Article 5 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002

<sup>15</sup> Amended by Article 6 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002

<sup>16</sup> Amended by Article 6 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002

<sup>17</sup> Amended by Article 6 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002

4. An appeal before the Tribunal pursuant to Article 20A shall be limited to issues of law and legal interpretations developed or covered in the report of a panel established in terms of the relevant Protocol<sup>18</sup>.

## **ARTICLE 16**

### **PRELIMINARY RULINGS**

1. Subject to the provisions of paragraph 2 of this Article, the Tribunal shall have jurisdiction to give preliminary rulings in proceedings of any kind and between any parties before the courts or tribunals of Member States<sup>19</sup>.
2. The Tribunal shall not have original jurisdiction but may rule on a question of interpretation, application or validity of the provisions in issue if the question is referred to it by a court or tribunal of a Member State<sup>20</sup> for a preliminary ruling in accordance with this Protocol.

## **ARTICLE 17<sup>21</sup>**

### **DISPUTES BETWEEN MEMBER STATES AND COMMUNITY**

1. Subject to the provisions of Article 14 of this Protocol, the Tribunal shall have exclusive jurisdiction over all disputes between Member States and the Community.
2. A dispute between a Member State and the Community may be referred to the Tribunal either by the Member State or by the competent institution or organ of the community.

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<sup>18</sup> The text of this paragraph was introduced by Article 3 of the Agreement Amending the Protocol on the Tribunal of 17 August, 2007.

<sup>19</sup> Amended by Article 7 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>20</sup> Amended by Article 7 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>21</sup> The original text of Article 17 was amended and replaced through Article 8 of Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

## **ARTICLE 18<sup>22</sup>**

### **DISPUTES BETWEEN NATURAL OR LEGAL PERSONS AND COMMUNITY**

1. Subject to the provisions of Article 14 of this Protocol, the Tribunal shall have exclusive jurisdiction over all disputes between natural or legal persons and the Community.
2. A dispute between a natural or legal person and the Community may be referred to the Tribunal either by the natural or legal person or by the competent institution or organ of the Community.

## **ARTICLE 19**

### **DISPUTES BETWEEN COMMUNITY AND STAFF**

Subject to the provisions of Article 14 of this Protocol the Tribunal shall have exclusive jurisdiction over all disputes between the Community and its staff relating to their conditions of employment.

## **ARTICLE 20**

### **ADVISORY<sup>23</sup> OPINIONS**

The Tribunal shall have jurisdiction to give advisory opinions, which may be requested by the Summit or by the Council in terms of paragraph 4 of Article 16 of the Treaty.

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<sup>22</sup> The original text of Article 18 was amended and replaced through Article 9 of Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>23</sup> Amended by Article 4 of the Agreement Amending the Protocol on the Tribunal of 17 August, 2007.

## **ARTICLE 20A<sup>24</sup>**

### **APPELLATE JURISDICTION**

1. The Tribunal shall have appellate jurisdiction in any dispute relating to the legal findings and conclusions of a panel established under a Protocol referred to it by a party to the dispute.
2. Only a party to a dispute, may appeal a panel report. Third parties which have notified the Registrar of a substantial interest in the matter pursuant to the Rules may make written submission to, and be given an opportunity to be heard by, the Tribunal.
3. The Tribunal may uphold, modify or reverse the legal findings and conclusions of the panel.
4. In cases of urgency, parties to a dispute and the Tribunal shall make every effort to accelerate the proceedings to the greatest extent possible.
5. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.
6. The Tribunal may call an expert to address them during oral hearings on any matter for the Tribunal's benefit.
7. Disputes relating to the legal findings and conclusions of a panel established under the Protocol on Trade referred to the Tribunal for appellate review by a party to a dispute shall be dealt with in accordance with that Protocol.

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<sup>24</sup> The text of Article 20A was introduced through Article 5 of the Agreement Amending the Protocol on the Tribunal of 17 August, 2007

**ARTICLE 21**  
**APPLICABLE LAW**  
**The Tribunal shall:**

- (a) apply the Treaty, this Protocol and other Protocols that form part of the Treaty, all subsidiary instruments adopted by the Summit, by the Council or by any other institution or organ of the Community pursuant to the Treaty or Protocols; and
- (b) develop its own Community jurisprudence having regard to applicable treaties, general principles and rules of public international law and any rules and principles of the law of Member States<sup>25</sup>.

**ARTICLE 22**  
**WORKING LANGUAGES**

The working languages of the Tribunal shall be English, Portuguese and French. The Council may determine that any other language be used as a working language.

**PART IV**  
**Procedure of the Tribunal**

**ARTICLE 23**  
**RULES OF PROCEDURES**

The rules annexed to this Protocol shall form an integral part thereof.

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<sup>25</sup> Amended by Article 10 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

## **ARTICLE 24**

### **DECISIONS**

1. Decisions of the Tribunal shall be in writing and delivered in open court and shall state the reasons on which they are based.
2. Decisions of the Tribunal shall be taken by a majority.
3. Decisions and rulings of the Tribunal shall be final and binding.

## **ARTICLE 25**

### **DEFAULT DECISIONS**

1. The Tribunal may give a decision in default.
2. Before giving such decision the Tribunal shall satisfy itself that it has jurisdiction over the dispute and that the claim is well-founded in fact and law.
3. A party against whom a default decision is made may apply to the Tribunal for the rescission of such decision. The applicant shall set out the grounds for such application.

## **ARTICLE 26**

### **APPLICATION FOR REVIEW OF A DECISION**

An application for review of a decision may be made to the Tribunal if it is based upon the discovery of some fact which by its nature might have had a decisive influence on the decision if it had been known to the Tribunal at the time the decision was given, but which fact at the time was unknown to both the Tribunal and the party making the application; provided always that such ignorance was not due to negligence.

## **ARTICLE 27**

### **REPRESENTATION BEFORE THE TRIBUNAL**

1. The Member States<sup>26</sup> and the institutions of the Community shall be represented before the Tribunal by an agent appointed for each case. The agent may be assisted by an advisor.
2. Other parties shall be represented by an agent or other persons before a court of a Member State<sup>27</sup>.
3. Such agents, advisers and representatives shall, when they appear before the Tribunal, enjoy the rights, privileges and immunities necessary for the independent exercise of their duties, under conditions laid down in the rules of procedure.
4. As regards such agents, representatives and advisers who appear before it, the Tribunal shall have the powers normally accorded to courts of law, under conditions laid down in the rules of procedure.

## **ARTICLE 28**

### **INTERIM MEASURES**

The Tribunal or the President may, on good cause, order the suspension of an act challenged before the Tribunal and may take other interim measures as necessary.

## **ARTICLE 29**

### **LEGAL COSTS**

Unless the Tribunal decides otherwise, each party to a dispute shall pay its, his, or her own legal costs.

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<sup>26</sup> Amended by Article 11 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>27</sup> Amended by Article 11 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

## **ARTICLE 30**

### **APPLICATION TO BE JOINED AS A PARTY**

Should a Member State<sup>28</sup>, natural or legal person consider that it or he or she has an interest of a legal nature that may affect or be affected by the subject matter of a dispute before the Tribunal, it or he or she may submit by way of a written application in such a form and manner as the rules of procedure may prescribe a request to be permitted to intervene.

## **ARTICLE 31**

### **FEES AND LEGAL AID**

Fees payable by parties other than Member States<sup>29</sup> and the granting of legal aid, within limits agreed by the budgetary authorities of the Community, may be prescribed by the rules.

## **ARTICLE 32**

### **ENFORCEMENT AND EXECUTION**

1. The law and rules of civil procedure for the registration and enforcement of foreign judgements in force in the territory of the Member State<sup>30</sup> in which the judgement is to be enforced shall govern enforcement.
2. Member States<sup>31</sup> and institutions of the Community shall take forthwith all measures necessary to ensure execution of decisions of the Tribunal.
3. Decisions of the Tribunal shall be binding upon the parties to the dispute in respect of that particular case and enforceable within the

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<sup>28</sup> Amended by Article 12 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>29</sup> Amended by Article 13 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>30</sup> Amended by Article 14 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>31</sup> Amended by Article 14 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

territories of the Member States<sup>32</sup> concerned.

4. Any failure by a Member State<sup>33</sup> to comply with a decision of the Tribunal may be referred to the Tribunal by any party concerned.
5. If the Tribunal establishes the existence of such failure, it shall report its finding to the Summit for the latter to take appropriate action.

## **ARTICLE 33**

### **BUDGET**

The budget of the Tribunal shall be funded through the regular budget of the Community, in accordance with criteria that the Council may, from time to time determine, and from such other sources as may be determined by the Council.

## **PART V**

### **Final Provisions**

## **ARTICLE 34<sup>34</sup>**

### **SIGNATURE**

This Protocol shall be signed by the Heads of Member State or Government, or their duly authorised representatives.

## **ARTICLE 35**

### **RATIFICATION**

[Repealed by Article 16 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002]

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<sup>32</sup> Amended by Article 14 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>33</sup> Amended by Article 14 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

<sup>34</sup> The original text of Article 34 was amended and replaced through Article 15 of Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

## **ARTICLE 36 ACCESSION**

[Repealed by Article 17 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002]

## **ARTICLE 37<sup>35</sup> AMENDMENT**

1. Any Member State may propose an amendment to this Protocol.
2. Proposals for amendment to this Protocol may be made to the Executive Secretary who shall duly notify all Member States of the proposed amendments at least thirty (30) days in advance of consideration of the amendment by Member States but such period of notice may be waived by Member States.
3. Amendments to this Protocol shall be adopted by a decision of three quarters of all the Members of the Summit and shall become effective within thirty (30) days after such adoption.

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<sup>35</sup> The original text of Article 37 was amended and replaced through Article 18 of Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

## **ARTICLE 38: ENTRY INTO FORCE <sup>36</sup>**

[Repealed by Article 19 of the Agreement Amending the Protocol on the Tribunal of 3 October, 2002]

36 Note: The Protocol came into force on August 14, 2001 as a result of its incorporation into the Treaty. See the text of the Agreement Amending the Treaty of the Southern African Development Community. The operative provisions are Articles 18 and 32 which provide, respectively:

### **“Article 18**

#### **AMENDMENT OF ARTICLE 16 OF THE TREATY**

Article 16 of the Treaty is amended, in paragraph 2, by inserting immediately after “Protocol” the words “which shall, notwithstanding the provisions of Article 22 of this Treaty, form an integral part of this Treaty” (emphasis added);

### **“Article 32**

#### **ENTRY INTO FORCE**

This Agreement shall enter into force on the date of its adoption by three quarters of all members of the Summit.”

The Agreement was adopted and signed on August 14, 2001 by all of the SADC Member States at that time (14 in total). Consequently, the agreement came into force on that day and, as a result, the incorporation of the Protocol into the Treaty became effective on that day.

As a result the text of Article 16 paragraph 2 of the Treaty as amended reads as follows:

### **“Article 16**

#### **The Tribunal**

2. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol, which shall, notwithstanding the provisions of Article 22 of this Treaty, form an integral part of this Treaty, adopted by Summit.”

Article 22 of the Treaty provides for; inter alia, the ratification of protocols before they come in to force. It is this requirement that was waived by the Agreement Amending the Treaty of the Southern African Development Community for the Protocol on the SADC Tribunal.

## **ARTICLE 39**

### **DEPOSITARY<sup>37</sup>**

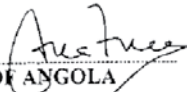
1. The original texts of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary who shall transmit certified copies to all Member States.
2. The Executive Secretary shall register this Protocol with the Secretariat of the United Nations and the Commission of the African Union (AU).

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<sup>37</sup> The original text of Article 37 was amended and replaced through Article 15 of Agreement Amending the Protocol on the Tribunal of 3 October, 2002.

**IN WITNESS WHEREOF, WE,** the Heads of State or Government, or duly authorised representatives, of SADC Member States have signed this Protocol.

Done at *Windhoek* this *7<sup>th</sup>* day of *August* 2000 in three original texts in the English, French and Portuguese languages, all texts being equally authentic.

  
REPUBLIC OF ANGOLA


REPUBLIC OF BOTSWANA

DEMOCRATIC REPUBLIC OF CONGO

  
KINGDOM OF LESOTHO

  
REPUBLIC OF MALAWI

  
REPUBLIC OF MAURITIUS

  
REPUBLIC OF MOZAMBIQUE


  
REPUBLIC OF NAMIBIA

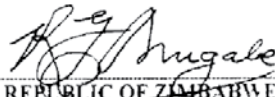
  
REPUBLIC OF SEYCHELLES

  
REPUBLIC OF SOUTH AFRICA

  
KINGDOM OF SWAZILAND

  
UNITED REPUBLIC OF TANZANIA

  
REPUBLIC OF ZAMBIA

  
REPUBLIC OF ZIMBABWE



# **Rules of Procedure**



These Rules are made in terms of Article 23 of the Protocol.

**PART I**  
**Preliminary**  
**Rule 1**

**Title, Interpretation, Commencement**

1. These Rules shall be known as the Rules of Procedure of the Southern African Development Community (SADC) Tribunal.
2. The Tribunal shall function in accordance with the provisions of the Treaty, the Protocol and these Rules.
3. These Rules shall form an integral part of the Protocol and shall come into operation when the Protocol enters into force.
4. In these Rules unless the context otherwise provides:
  - "Agent" means the person representing a party;
  - "Applicant" means a person, Member State or institution that has submitted an application to the Tribunal;
  - "Institution" means an institution of SADC established in terms of Article 9 of the Treaty;
  - "Member" means a Member of the Tribunal appointed in terms of Article 4 of the Protocol;
  - "Person" means natural or legal person;
  - "Pool of Members" means Members who are called upon to sit on the Tribunal whenever a Regular Member is unavailable in terms of Article 3 of the Protocol;
  - "President" means the President of the Tribunal elected in terms of Article 7 of the Protocol;
  - "Protocol" means the Protocol on Tribunal of SADC;
  - "Reference" means a request by a national court or tribunal to the Tribunal for a preliminary ruling on a matter;
  - "Regular Member" means a Member who sits regularly on the Tribunal in terms of Article 3 of the Protocol;
  - "Respondent" means the person, Member State or institution against whom proceedings have been brought by the applicant before the Tribunal;
  - "Special Agreement" means an agreement by parties to refer any dispute to the Tribunal;

"Tribunal" means the Tribunal established in terms of Article 9 of the Treaty and constituted in terms of Article 2 of the Protocol.

## **Rule 2**

### **Scope of Application**

1. These Rules shall apply in all cases where the Tribunal has jurisdiction in terms of Article 16 of the Treaty and Articles 14 and 15 of the Protocol and it shall dispose of such matters in terms of these Rules.
2. Nothing in these Rules shall limit or otherwise affect the inherent power of the Tribunal to make such orders as may be necessary to meet the ends of justice.

## **PART II**

### **Constitution and Functions of The Tribunal**

#### **A. MEMBERS OF THE TRIBUNAL**

## **Rule 3**

### **Solemn Declaration**

1. Before taking up his or her duties, each Member shall in accordance with the provisions of Article 5 of the Protocol, in open session, make a solemn declaration to perform his or her duties impartially, independently and conscientiously and to preserve the secrecy of the Tribunal's deliberations.
2. The solemn declaration referred to in Article 5 of the Protocol shall be in accordance with the form prescribed in Annex 1.

## **Rule 4**

### **Tenure of Office**

1. The term of office of Members of the Tribunal shall begin to run from the date upon which he or she is appointed in accordance with Article 4 of the Protocol.
2. Apart from normal replacement or death, the duties of a Member shall terminate upon his or her resignation.
3. Where a Member resigns, the letter of resignation shall be addressed to the President of the Tribunal.

4. Upon notification of a Member's resignation a vacancy shall arise and the Member shall be replaced in accordance with Article 4 of the Protocol.

### **Rule 5**

#### **Precedence of Members**

1. In terms of status, the President shall rank first and all the other members shall rank in precedence according to their seniority in office.
2. Where there is equal seniority in office, precedence shall be determined by age.
3. Retiring Members who are re-appointed shall retain their former precedence.

## **B. THE PRESIDENCY**

### **Rule 6**

#### **Commencement of Term of Office**

The term of office of the President shall begin to run from the date on which he or she is elected in accordance with Article 7 of the Protocol.

### **Rule 7**

#### **Election of the President**

1. The regular Members of the Tribunal designated in terms of Article 3 of the Protocol shall constitute an electoral college for purposes of electing a President and shall designate one of their Members to preside over the election.
2. The election of the President in accordance with Article 7 (1) of the Protocol shall take place by secret ballot.
3. There shall be no nomination for purposes of the election. The Member of the Tribunal obtaining the votes of a majority of Members shall be declared elected, and shall enter forthwith upon his or her functions.

## **Rule 8**

### **Functions of the President**

1. The President shall preside at all meetings of the Tribunal and shall direct the work and supervise the administration of the Tribunal.
2. In the event of the inability of the President to exercise his or her functions, such functions shall be exercised by a Member elected as Acting President from among the Members in accordance with the provisions of Article 7 (2) of the Protocol and the provisions of subrules 1,2, and 3 of Rule7 shall apply mutatis mutandis.

## **Rule 9**

### **Vacancy in the Presidency**

If a vacancy in the Presidency occurs the electoral college referred to in subrule 1 of Rule 7 shall proceed to elect one of their Members in accordance with the provisions of Article 7 (1) of the Protocol.

## **C. THE REGISTRY**

### **Rule 10**

#### **Election and Appointment of Registrar**

1. Whenever there is a vacancy in the post of a Registrar, the Tribunal shall elect the Registrar by secret ballot from amongst nationals of Member States qualified to hold high judicial office in their respective States from a list referred to in Rule 11.
2. The person elected in terms of subrule 1 shall be appointed Registrar and he or she shall hold office in accordance with Article 12 of the Protocol.

### **Rule 11**

#### **Vacancy in the Office of Registrar**

1. The President shall give notice of a vacancy or impending vacancy to Member States and shall fix a date for the closure of the list of candidates so as to enable nominations and information concerning the candidates to be received by the Tribunal in sufficient time.

2. Nominations shall indicate the relevant information concerning the candidates and in particular information as to age, sex, nationality, present occupation, academic qualifications, knowledge of languages, any previous experience in law, or work in international organisations.

## **Rule 12**

### **Registrar to take Oath or Affirmation of Office**

Before taking up his or her duties, the Registrar shall take an Oath or affirmation of office at a meeting of the Tribunal in accordance with the form prescribed in Annex 2.

## **Rule 13**

### **Appointment of Assistant Registrar**

1. The Tribunal shall appoint an Assistant Registrar and the provisions of Rule 11 shall apply to such appointment of Assistant Registrar.
2. Before taking up his duties, the Assistant Registrar shall take an oath or affirmation of office at a meeting of the Tribunal in accordance with the form prescribed in Annex 2.

## **Rule 14**

### **Other Staff**

The Tribunal may employ such other staff as may be required to enable it to perform its functions on proposals submitted by the Registrar. Such appointments may, however, be made by the Registrar with the approval of the President.

## **Rule 15**

### **Duties of the Registrar**

The Registrar, in the discharge of his duties, shall:

- (a) be the regular channel of communication to and from the Tribunal, and in particular shall effect all communications, notifications and transmission of documents required by these Rules and ensure that the date of dispatch and receipt thereof is readily available;

- (b) keep in such form as may be laid down by the Tribunal, a General List of all cases, entered and numbered in the order in which the document instituting proceedings or requesting an advisory opinion are received in the Registry;
- (c) transmit to the parties copies of all pleadings and documents upon receipt thereof in the Registry;
- (d) communicate to the Government of the State in which the Tribunal is sitting and any other Governments which may be concerned, the necessary information as to the persons from time to time entitled to privileges, immunities or facilities;
- (e) be present in person or by his or her Assistant at meetings and sittings of the Tribunal and be responsible for the preparation of such minutes and records as necessary;
- (f) be responsible for the printing and publication of the Tribunal's advisory opinions, orders, decisions and of such other documents as the Tribunal may direct to be published;
- (g) be responsible for all administrative work and in particular for the accounts and financial administration in accordance with financial procedures prescribed by the Council;
- (h) deal with enquiries concerning the Tribunal and its work; and
- (i) have custody of the seals, stamps and archives of the Registrar.

## **Rule 16**

### **Duties of Assistant Registrar**

1. The Assistant Registrar shall assist the Registrar, act as Registrar in the latter's absence, and in the event of the office becoming vacant, exercise the functions of Registrar until the vacancy has been filled.
2. If both the Registrar and his or her Assistant are unable to carry out the duties of Registrar, the President shall appoint an official of the Registry to discharge those duties for such time as may be necessary.

## **Rule 17**

### **Composition of The Registry**

The Registry shall comprise of the Registrar, the Assistant Registrar and such other staff as are appointed in terms of Rule 14.

## **Rule 18**

### **Organisation of the Registry**

1. The Tribunal shall prescribe the organisation of the Registry.
2. Instructions for the running of the Registry shall be drawn by the Registrar with the approval of the President.
3. The staff of the Registry shall be subject to Staff Regulations drawn by the Tribunal and approved by the Council.

## **Rule 19**

### **Removal of Registrar and Assistant Registrar**

1. The Registrar may be removed from office only if, in the opinion of two-thirds of the Members of the Tribunal, he or she has either become permanently incapacitated from exercising his functions, or has committed a serious breach of his duties or a serious act of misconduct.
2. Before a decision is taken under this Rule, the Registrar shall be informed by the President of the action contemplated, in writing, giving the ground therefore and any relevant evidence. The Registrar shall be afforded an opportunity to be heard at a meeting of the Tribunal before a decision is taken.
3. The Assistant Registrar may be removed from office only on the same grounds and by the same procedure as the Registrar.

## **D. SEAT, SESSIONS AND SITTINGS OF THE TRIBUNAL**

### **Rule 20**

#### **Dates and Times of Sittings and Duration of Sessions**

1. The dates and times of the sittings of the Tribunal shall be fixed by the President.
2. The duration of the sessions shall be determined by the President having due regard to the business before the Tribunal.

### **Rule 21**

#### **Deliberations of the Tribunal**

1. All deliberations of the Tribunal shall be conducted in closed sessions and shall remain secret.
2. Only those Members who were present at the oral proceedings of the case may take part in the deliberations.
3. Every Member taking part in the deliberations shall give his or her opinion in writing and the reasons for it.
4. The conclusions reached by the majority of the Members of the Tribunal after the final deliberations shall be the decision of the Tribunal.
5. Any differences of view on the substance or wording or order of questions shall be settled by the Tribunal.

### **Rule 22**

#### **General List of Cases**

The list of cases before the Tribunal shall be prepared by the President.

### **Rule 23**

#### **Vacations of the Tribunal**

1. The vacations of the Tribunal shall be determined by the President who shall publish the days of vacation in each calendar year.
2. During such vacations the President shall exercise his or her functions at the Seat of the Tribunal either by himself or through any other Member designated by the President to exercise such functions.

3. In a case of urgency, the President may convene the Tribunal during the vacations.
4. The Tribunal shall observe the official public holidays of the Member State where it has its Seat and those of any Member State where it is holding its sittings during those sittings.
5. The President may in appropriate cases grant leave of absence to any Member after consultation with other Members.

### **PART III**

## **Representation Before The Tribunal**

### **Rule 24**

#### **Agents, Advisors and Other Representatives**

1. Member States and Institutions shall be represented before the Tribunal by an agent appointed for each case.
2. The agent may be assisted by an advisor.
3. Other persons shall be represented by agents or other persons authorised by him or her or it.

### **Rule 25**

#### **Immunities and Privileges**

1. Agents, advisors and other representatives shall, when they appear before the Tribunal enjoy immunity in respect of words spoken or written by them concerning the case or the Parties.
2. Agents, advisors and other representatives shall enjoy the following further privileges and facilities:
  - (a) their papers and documents relating to the proceedings shall be exempt from both search and seizure; in the event of a dispute the customs officials or police may seal the papers and documents and immediately forward them to the Tribunal for inspection in the presence of the Registrar and the parties concerned;
  - (b) they shall be entitled to:
    - (i) such allocation of foreign currency as may be necessary for the performance of their duties;
    - (ii) travel in the course of duty without hindrance.

## **Rule 26**

### **Proof of Status.**

In order to qualify for the privileges, immunities and facilities specified in Rule 25, agents, advisors and other representatives shall furnish proof of their status by producing:

- (a) an official document issued by the Member State or institution or party which they represent; and
- (b) a certificate signed by the Registrar whose validity shall be limited to a specified period. The period may be extended or curtailed by the Registrar according to the length of proceedings.

## **Rule 27**

### **Waiver of Immunities**

1. The privileges, immunities and facilities specified in Rule 25 are granted exclusively in the interest and proper conduct of proceedings.
2. The Tribunal may waive the privileges and immunities where it considers that the proper conduct of proceedings will not be hindered thereby.

## **Rule 28**

### **Exclusion**

1. Any agent, advisor or representative whose conduct towards the Tribunal, a Member or the Registrar is incompatible with the dignity of the Tribunal, or who uses his rights for purposes other than those for which they are granted may, at any time, be excluded from the proceedings by order of the Tribunal after having been given an opportunity to defend himself.
2. An order issued under this Rule shall have immediate effect.
3. Where an agent, advisor or representative is excluded from the proceedings, the proceedings shall be suspended for a period fixed by the President in order to allow the party concerned to appoint another agent, advisor or representative.
4. The Tribunal may rescind a decision made in terms of this Rule on application by the agent, advisor or representative on good cause shown.

**PART IV**  
**Languages**  
**Rule 29**

**Working Languages**

1. In terms of Article 22 of the Protocol the working languages of the Tribunal shall be English, French and Portuguese.
2. The Council may, at any time determine that any other language be used as a working language.
3. The working languages shall be used in the pleadings and oral submissions of the parties, in supporting documents and also in the record and decisions of the Tribunal.
4. Any supporting documents expressed in another language other than a working language of the Tribunal shall be accompanied by a translation into a working language. In the case of lengthy documents, translations may be confined to extracts unless otherwise ordered by the Tribunal on its own motion or at the instance of a party.
5. Where a witness or expert is unable to adequately express himself or herself in one of the working languages, the Tribunal may authorise him to give his or her evidence in another language and the Registrar shall cause any such evidence to be interpreted into a working language.

**Rule 30**  
**Translation**

The Registrar shall, at the request of any Member, or of a party, arrange for anything said or written in the course of proceedings before the Tribunal to be translated into any of the working languages.

**Rule 31**  
**Authentic Text**

The texts of documents drawn up in the working languages of the Tribunal shall be deemed to be authentic.

**PART V**  
**WRITTEN PROCEDURE**  
**Rule 32**

**Institution of Proceedings**

Proceedings before the Tribunal shall be instituted by either an application or a special agreement between the parties to the proceedings.

**Rule 33**

**Proceedings Instituted by An Application**

1. The application shall state:
  - (a) the name and address of the applicant
  - (b) the name, designation and address of the respondent
  - (c) the precise nature of the claim together with a succinct statement of the facts
  - (d) the form of relief or order sought by the applicant
2. The application shall state the name and address of the applicant's agent to whom communications on the case, including service of pleadings and other documents should be directed.
3. Any application which does not comply with the requirements of sub-rules 1 and 2 shall render the application inadmissible.
4. The original of the application shall be signed by the agent of the party submitting it.
5. The original of the application accompanied by all annexes referred to therein shall be filed with the Registrar together with five copies for the Tribunal and a copy for every other party to the proceedings. All copies shall be certified by the party filing them.
6. Where the applications seeks the annulment of a decision, it shall be accompanied by documentary evidence of the decision for which the annulment is sought.
7. An application made by a legal person shall be accompanied by:
  - (a) the instrument regulating the legal person or recent extract from the register of companies, firms or associations or any other proof of its existence in law;
  - (b) proof that the authority granted to the applicant's agent has been properly conferred on him or her by someone authorised for the purpose.

8. (a) If an application does not comply with requirements sent out in sub-rules 4 to 7; the Registrar shall prescribe a reasonable period within which the applicant is to comply with them whether by putting the application itself in order or by producing any of the documents.
- (b) If the applicant fails to put the application in order within the time prescribed, the Tribunal shall, after hearing the agents decide whether the non-compliance renders the application formally inadmissible.

### **Rule 34**

#### **Proceedings Instituted by Special Agreement**

1. The notification may be effected by the parties jointly or by anyone or more of them. If the notification is not a joint one, a certified copy of it shall forthwith be communicated by the Registrar to the other party.
2. The notification shall be accompanied by an original or certified copy of the special agreement and shall to the extent not apparent from the agreement indicate the precise subject of the dispute and identifies the parties. It shall also be accompanied by five copies for the Tribunal.
3. The party making the notification shall state the name of its agent. Any other party to the special agreement, upon receiving from the Registrar a certified copy of such notification or as soon as possible thereafter shall inform the Tribunal of the name of its agent.

### **Rule 35**

#### **Service of Applications and Notifications**

1. The Registrar shall transmit forthwith a certified copy of the application or notification to the respondent or other party to the proceedings.
2. All agents shall have an address for service at the Seat of the Tribunal to which all communications concerning the case are to be sent. Communications addressed to agents of the parties shall be considered as having been addressed to the parties.

## **Rule 36**

### **Defence**

1. The respondent shall file a defence within thirty (30) days of service of the application or notification stating:
  - (a) the name and address of the respondent;
  - (b) the name and address of the respondent's agent;
  - (c) arguments of facts relied upon;
  - (d) the form of order sought by the respondent;
  - (e) the nature of any evidence offered by him or her or it in defence.
2. The time limit prescribed in this Rule may be extended by the President upon application by the respondent giving reasonable explanation for his or her or its inability to comply with the prescribed time limit.

## **Rule 37**

### **Counter-Claim**

1. A respondent may, as part of its, his or her defence make a counter-claim proven that the counter-claim is directly connected with the subject matter of the claim of the other party and that it comes within the jurisdiction of the Tribunal.
2. A counter-claim shall be made in the defence of the party presenting it and shall form part of the submissions of that party.

## **Rule 38**

### **Reply and Rejoinder**

1. The application initiating proceedings and the defence may be supplemented by a reply from the applicant and a rejoinder from the respondent provided that no new issues may be raised through a reply or a rejoinder.
2. The President shall determine the time-limits within which a reply and rejoinder, if any, are filed.
3. The introduction of any new facts may only be permitted by way of an amendment to the pleadings if it relates to matters that only came to the knowledge of the party seeking to introduce them in the course of the proceedings. In such a case, the Tribunal shall

allow the other party to answer to the new facts within time-limits prescribed by the President.

### **Rule 39**

#### **Joinder of Cases**

The Tribunal may at anytime direct that the proceedings in two or more cases be joined for purposes of written or oral submissions or of the final decisions.

### **Rule 40**

#### **Documents**

1. The Tribunal may require the parties to produce all documents and to supply additional information which the Tribunal considers desirable. Formal note shall be taken of any refusal.
2. The Tribunal may also require Member States and institutions not parties to the case to supply all information which the Tribunal considers necessary for the proceedings.

### **Rule 41**

#### **Closure of Pleadings**

1. Pleadings shall close after the completion of written proceedings.
2. No further documents may be submitted to the Tribunal by either party after the closure of pleadings except with the consent of the other party.

## **PART VI**

### **Commencement Of Oral Proceedings**

#### **Rule 42**

##### **Date of Hearing**

1. Upon the closure of pleadings the case shall be ready for hearing. The President shall fix the date for the opening of oral proceedings.
2. The Tribunal may also decide, should the occasion arise, that the opening or the continuance of the oral proceedings be postponed.

## **Rule 43**

### **Priority of Cases**

1. When fixing the date for, or postponing the opening of the oral proceedings, the Tribunal shall have regard to the circumstances of each particular case including the urgency of a particular case.
2. Where the pleadings in several cases are completed simultaneously, the order in which they are to be dealt with shall be determined by the date of entry in the register of applications initiating them.
3. The President may in special circumstances order that a case be given priority over others.
4. The President may in special circumstances, after hearing the parties, either on his or her own initiative or at the request of one of the parties, defer a case to be dealt with at a later date.

## **Rule 44**

### **Place of Hearing**

The Tribunal may, if it considers it desirable, decide pursuant to Article 13 of the Protocol that all or part of the proceedings in a case shall be held at a place other than the seat of the Tribunal. Before so deciding the Tribunal shall ascertain the views of the parties.

## **Rule 45**

### **Conduct of Proceedings.**

1. The proceedings shall be held in public unless the Tribunal otherwise directs either on its own motion or the application of any of the parties. Such a decision may concern either the whole or part of the hearing and may be made at any time.
2. The proceedings shall be commenced and presided over by the President or an acting President who shall be responsible for the proper conduct of the hearing.
3. No reference may be made during the oral proceedings to the contents of any document which has not been produced as part of the pleadings or produced in accordance with Rule 40, unless the document is part of a publication readily available.
4. Without prejudice to the provisions of these Rules concerning the production of documents, each party shall communicate to the

Registrar, in sufficient time before the opening of the proceedings, information regarding any evidence which it intends to produce or which it intends to request the Tribunal to obtain. This communication shall contain a list of all names, nationalities, description and places of residence of the witnesses and experts whom the party intends to call.

## **Rule 46**

### **Order of Proceedings**

The order in which the parties will be heard, the method of handling the evidence and examining of any witnesses and experts, and the number of agents or representatives to be heard on behalf of each party, shall be settled by the Tribunal.

## **Rule 47**

### **Questions by Members**

The President and the other Members may in the course of the hearing put questions to the agents, representatives or advisors of the parties.

## **Rule 48**

### **Calling of Witnesses**

1. The parties may call any witnesses or experts appearing on the list communicated to the Tribunal pursuant to sub-rule 4, Rule 45.
2. If at anytime during the hearing a party wishes to call a witness or expert whose name was not on the list it shall so inform the Tribunal and the other party and shall supply the information required by Rule 45 sub-rule 4. A witness or expert may be called if the other party makes no objection or if the Tribunal is satisfied that his or her evidence seems likely to prove relevant.
3. Every witness called to testify shall take the oath or affirmation prescribed in terms of Annex 3.
4. Witnesses and experts shall be examined by the agents or representatives of the parties under the control of the President. Questions may be put to the witnesses and experts by the President and by other Members.

## **Rule 49**

### **Summoning of Witnesses**

1. (a) The Tribunal may either of its own motion or on application by a party direct that certain facts be proved by oral testimony.  
(b) The order of the Tribunal shall set out the facts to be established.
2. The Tribunal may summon a witness of its own motion or on application by a party.
3. Where an application for the examination of a witness is made by a party, such application shall state precisely about what facts and for what reasons the witness should be examined.
4. (a) The witnesses shall be summoned by an order of the Tribunal stating the following information:
  - (i) the names, description and address of the witness;
  - (ii) the precise facts the witness is to be examined on;
  - (iii) in appropriate cases particulars of the arrangements by the Tribunal for the reimbursement of expenses incurred by the witness and the penalties for failure to comply with the other;  
(b) The order shall be served on the parties and the witnesses.
5. (a) The Tribunal may make the summoning of the witness at the instance of a party conditional upon such party, depositing with the Registrar a sum sufficient to cover expenses of calling such a witness.  
(b) The quantum of the deposit shall be determined by the Tribunal.
6. Once the witness is located the parties shall be notified of the date and time when the witness is to appear before the Tribunal.

## **Rule 50**

### **Examination of Witnesses.**

1. The Tribunal may impose a pecuniary penalty upon a witness who having been duly summoned fails to appear or having appeared, refuses without good reason, to give evidence or to take the oath or affirmation.
2. The imposition of the penalty shall not absolve the witness from

the obligation to give evidence. The Tribunal may order that further summons be served on the witness at such witness's own expense.

3. The Tribunal may cancel the pecuniary penalty imposed on a witness if the witness proffers a valid excuse. It may also reduce the pecuniary penalty at the request of the witness where the witness established that the penalty is disproportionate to his or her income.
4. Witnesses and experts may be heard on oath or affirmation taken in the manner laid down by the law of their country of residence.
5. (a) A Member State shall treat any violation of an oath or affirmation by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings.  
(b) The Member State concerned shall prosecute the offender before its competent court at the instance of the Tribunal.

## **Rule 51**

### **Expenses of Witnesses and Experts**

1. Witnesses and experts called by the Tribunal on its motion shall be entitled to reimbursement of their travel and subsistence expenses. These payments may be made in advance by the Registrar.
2. In addition, witnesses and experts referred to in sub-rule 1 may claim compensation for actual loss of earnings or reasonable expert fees for their services.
3. The Registrar shall pay witnesses and experts their compensation or fees after they have carried out their respective duties or tasks.

## **Rule 52**

### **Address by Parties**

1. A party may address the Tribunal only through his or her agent, advisor or representative.
2. The oral statements made on behalf of each party shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings, or merely repeat the facts and arguments these contain.

## **Rule 53**

### **Closure of Proceedings**

After the agents or advisors or representatives have made their submissions the President shall declare the proceedings closed.

## **Rule 54**

### **Expert Witness**

The Tribunal may call an expert to address them during oral hearings on any technical matter for the Tribunal's benefit.

## **Rule 55**

### **Resumption of Oral Proceedings**

The Tribunal may after hearing the agents, order the resumption of the proceedings.

## **Rule 56**

### **Record of the Proceedings**

1. (a)The Registrar shall keep the record of every hearing.  
(b)The record shall be signed by the President and by the Registrar and shall constitute an official record.
2. The parties may inspect the record at the Registry and obtain copies at their own expense.

## **PART VII**

### **Decisions**

#### **Rule 57**

##### **Delivery of Decisions**

1. When the Tribunal has completed its deliberations and adopted its decisions the parties shall be notified of the date upon which it shall be delivered.
2. The decision shall be delivered at a public sitting of the Tribunal.

## **Rule 58**

### **Content of Decision.**

1. The Decision shall contain, inter alia, the following information:
  - (a) the date on which and the place where it was delivered;
  - (b) the names of Members of the Tribunal who participated in the case;
  - (c) the names of the parties;
  - (d) the names of agents, advisors and representatives of the parties;
  - (e) a summary of the proceedings;
  - (f) the submissions of the parties;
  - (g) a statement of facts;
  - (h) the applicable law;
  - (i) the operative provisions of the decision;
  - (j) the decision in regard to costs; and
  - (k) the number and names of Members constituting the majority of the decision.
2. Every opinion written by any Member in any matter shall be attached to the decision of the Tribunal.
3. One copy of the decision duly signed and sealed, shall be placed in the archives of the Tribunal and other copies shall be transmitted to each of the parties.
4. The Registrar shall send copies of the decision to:
  - (a) the Council; and
  - (b) other States entitled to appear before the Tribunal.

## **Rule 59**

### **Rectification of Decision**

1. Without prejudice to the provisions relating to the interpretation of decisions, the Tribunal may, of its own motion or on application by a party made within two weeks after the delivery of its decision, rectify clerical mistakes, errors in calculation and other such matters.
2. Where the decision has been rectified in terms of sub-rule 1 Registrar shall duly notify the parties concerned of such rectification and they may file with the Registrar their written objections or observations within the period specified in the notice.

3. The Tribunal shall give its decision on any objections filed under sub-rule 2.
4. The original of the rectification order shall be annexed to the original of the rectified decision and a note of the order shall be made in the margin of the original of the rectified decision.

## **PART VIII**

### **Stay Of Proceedings**

#### **Rule 60**

##### **Application for Stay of Proceedings**

1. At any stage of the proceedings, the Tribunal may at its own instance or on the application of a party to the proceedings or a party which not being a party to the proceedings establishes that it has substantial interest in the subject matter of the action or will be adversely affected by the decision in the matter, may order that the proceedings be stayed where:
  - (a) a national court is already seized of the matter and the same relief is sought;
  - (b) a party fails to give security for costs ordered by the Tribunal;
  - (c) a party to the proceedings dies or becomes mentally incompetent or insolvent;
  - (d) the respondent relies on a counter claim or set off which extinguishes wholly the applicant's claim;
  - (e) an agreement between the parties provides for submission of the subject matter of the action to arbitration and the other party pleads the question of going to arbitration first and applies for a stay of proceedings pending arbitration; and
  - (f) the Tribunal finds it appropriate.
2. Where the proceedings have been stayed for failure by a party to comply with an order of the Tribunal or a condition for the commencement or continuation of the action, they may be resumed once the order or condition has been satisfied.
3. The stay of proceedings shall take effect on the date on which the order or decision is taken.
4. Unless the stay of proceedings is for a specified period, no further action, including the filing of pleadings, shall be taken until an order

for the resumption has been made by the Tribunal.

5. The order for stay of proceedings for an indefinite period shall end on the date on which a decision for the resumption of proceedings is made.
6. From the date of resumption, time shall begin to run afresh for the purposes of the time limits as set out in these Rules.
7. The orders and decisions referred to in this Rule shall be served on the parties.

## **PART IX**

### **Special Proceedings**

#### **Rule 61**

##### **Suspension of Operation**

1. An application to suspend the operation of any measure adopted by a Member State or an institution made pursuant to the Treaty shall be admissible only if the applicant is challenging that measure in proceedings before the Tribunal.
2. An application for any other interim measure shall be admissible only if it is made by a party to a case before the Tribunal and relates to that case.
3. The application may be made at any time during the course of the proceedings in the case in connection with which the request is made.
4. The application shall state the subject-matter of the proceedings, the reasons for the application, the possible consequences if it is not granted and the interim measure requested.
5. The application for an interim measure shall take priority over all other cases.

#### **Rule 62**

##### **Service of Application**

1. The application referred in Rule 61 shall be served on the other party and the President shall prescribe shorter periods for the making of written or oral submissions by the parties.
2. (a) In urgent cases the President may grant, the application even before the submissions or observations of the other party have

been submitted;

- (b) A decision under this sub-rule may be varied or cancelled even without any application being made by the other party.

## **Rule 63**

### **President to Decide on Application**

1. The President shall fix a date for the hearing of the application which will afford the parties an opportunity of being represented at the hearing.
2. The President shall either decide on the application himself or herself or refer it to the Tribunal.
3. If the President is absent or prevented from attending, the Acting President shall decide on the application in accordance with sub-rule 2.
4. Where the application is referred to the Tribunal, the Tribunal shall, in accordance with sub-rule 5 of Rule 61 postpone all other cases and shall give a decision on the application.

## **Rule 64**

### **Decision on the Application**

1. The decision on the application shall take the form of a reasoned order which shall be final and served on the parties forthwith.
2. The enforcement of the order may be made conditional on the lodging of security of an amount and nature to be determined in the light of the circumstances of the case.
3. Unless otherwise stated in the order, the interim measure shall lapse when final decision is delivered. The Tribunal may, however, revoke or modify any decision upon application of a party it, in its opinion, some change in the situation justifies such revocation or modification.
4. The order shall have only an interim effect without prejudice to the decision of the Tribunal on the substance of the case.

## **Rule 65**

### **Rejection of Application**

The rejection of an application for an interim measure shall not act as a bar to the party who made it from making a further application on the basis of new facts which were not within the knowledge of that party at the time the first application was made.

## **Rule 66**

### **Suspension of Enforcement of Interim Measure**

The Tribunal may suspend the enforcement of its decision on any measure adopted by a Member State or institution referred to in Rule 61 sub-rule 1 either of its own motion or upon application by a party affected by the decision for any good cause.

## **Rule 67**

### **Preliminary Application**

1. A party to the proceedings may apply to the Tribunal on a preliminary objection or preliminary plea not going to the substance of the case. Such application shall be made by a separate document.
2. The application shall set out the facts and law on which the objection is based, the form of order sought by the applicant and be accompanied by any supporting documents.
3. As soon as the application has been filed, the President shall prescribe the period within which the opposite party may file a written statement of its observations and submissions and any documents in support.
4. Unless otherwise decided by the Tribunal, further proceedings shall be oral.
5. (a) The Tribunal shall decide on the application.  
(b) If the application is refused the President shall prescribe new time limits for further steps in the proceedings.

**PART X**  
**Default Decisions**

**Rule 68**  
**Decision by Default**

1. Where a respondent on whom an application initiating proceedings has been duly served fails to file a defence to the application in the proper form within the time prescribed in the rules, the applicant may apply for decision by default.
2. The application shall be served on the respondent and the President shall fix the date for the hearing of the application.
3. (a) Before granting the application, the Tribunal must be satisfied that the application initiating the proceedings is properly before it, discloses a cause of action and that appropriate formalities have been complied with.  
(b) A decision by default shall be enforceable in the same manner as any other decision or order of the Tribunal.

**Rule 69**  
**Application to Set Aside a Decision by Default**

1. The respondent may apply to set aside a default decision.
2. The application setting out the grounds upon which it is made, must be made within one month from the date of service of the decision upon the respondent and must be filed in the form prescribed by Rule 38.
3. After the application has been filed, the President shall prescribe the period within which the other party may file its submissions.
4. In determining the application, the Tribunal shall consider:
  - (i) Whether the applicant had good and reasonable cause for his or her or its failure to comply or file a defence;
  - (ii) Whether the respondent has a reasonable defence on the merits of the matter;
  - (iii) Any other material fact that may affect the consequences of either setting aside the decision or confirm it.
5. The Tribunal may by way of decision set aside the default decision or dismiss the application.

**PART XI**  
**Third Party Proceedings**

**Rule 70**  
**Intervention**

1. A Member State, Institution, or person may apply to intervene in any proceedings.
2. An application in terms of this Rule shall be made as soon as possible and not later than the closure of the written proceedings or in exceptional cases, and upon good cause shown, not later than the date set for the oral hearing.
3. The application shall specify the following:
  - (a) the case to which it relates;
  - (b) the precise object of the intervention;
  - (c) the interest, which must be of a legal nature, which the intervener considers may be affected by the decision of the case;
  - (d) any basis for jurisdiction; and
  - (e) a list of documents in support of the application.
4. The application must be made against all parties to the proceedings.
5. The Tribunal shall decide whether or not to grant the application.
6. If the application to intervene in terms of this Rule is granted then the intervener shall be supplied with copies of the pleadings and documents produced and shall be entitled to submit a written statement within the time limit set by the Tribunal.

**PART XII**  
**Application For Revision Of A Decision**

**Rule 71**

**When Application May be Made**

1. Where a party discovers a fact which by its nature might have had a decisive influence on the decision of the Tribunal had it been known at the time that the decision was given, that party may make an application for revision of the decision of the Tribunal.
2. Rule 38 and Rule 41 shall apply to an application for revision of a decision.
3. The application shall also include the following:
  - (a) a copy of the decision being contested;
  - (b) the points upon which the decision is being contested;
  - (c) the facts upon which the application is based.
4. The application shall be made within 3 (three) months from the date upon which the facts on which the application is based came to the applicant's knowledge.
5. The application must be made against all parties to the case in which revision of decision is sought.

**Rule 72**

**Powers of the Tribunal on Revision of Decision**

1. The Tribunal shall, in closed session, consider the written observations of the applications and shall decide on the admissibility of the application.
2. If the Tribunal finds the application admissible, it shall consider the substance of the application and proceed to give its decision in accordance with Rules 57 and 58.
3. The original of the revised decision shall be annexed to the original of the first decision handed down by the Tribunal

**PART XIII**  
**Interpretation Of Decisions**

**Rule 73**  
**Application for Interpretation**

1. An application for interpretation of a decision may be made where there is a dispute as to the meaning and scope of a decision of the Tribunal.
2. The application must be made against all the parties to the case in which the decision was given.
3. The application must be in accordance with Rule 33.
4. In addition, the application shall specify:
  - (a) the decision to be interpreted; and
  - (b) the passages on which interpretation is sought.
5. The Tribunal shall give the parties an opportunity to submit their written observations and may hear oral submission from the agents, representatives or advisors.
6. The Tribunal shall give its decision in accordance with Rules 57 and 58 and the original of the interpreting decisions shall be annexed to the original of the decision interpreted.

**Part XIV**  
**Enforcement Of Decisions**

**Rule 74**  
**Enforcement**

A party applying for recognition or enforcement of a decision of the Tribunal in accordance with the provisions of Article 32(3) of the Protocol shall supply the following:

- (a) the duly authenticated original decision by the Tribunal; and
- (b) the original application or special agreement submitting the matter to the Tribunal.

## **PART XV**

### **Preliminary Rulings In National Courts Or Tribunals**

#### **Rule 75**

##### **Reference by National Court to the Tribunal**

1. Where a question is raised before a court or tribunal of a Member State concerning the application or interpretation of the Treaty or its Protocols, directives and decisions of the Community or its Institutions, such a court or tribunal shall, if it considers that a ruling on the question is necessary to enable it to give judgement, request Tribunal to give a preliminary ruling thereon.
2. A court or tribunal of a Member State against whose judgment there are no judicial remedies under national law, shall refer to the Tribunal a case pending before it where any question as that referred to in sub-rule 1 of this Rule is raised.

#### **Rule 76**

##### **Transmission of Decisions**

The decisions of the Tribunal shall be communicated to the national court or tribunal concerned in the original version, accompanied by a translation where necessary, into one of the working languages of the Tribunal.

#### **Rule 77**

##### **The Hearing**

1. The Tribunal shall take account of the rules of procedure of the national court or tribunal which made the reference as regards representation and attendance of the parties to the main proceedings in the preliminary ruling procedure.
2. Where a question referred to the tribunal for a preliminary ruling is substantially identical to a question on which the Tribunal has already ruled, the Tribunal may after informing the court or Tribunal which referred the question to it and considering any observations submitted by the parties to it, give its reasoned order making reference to its previous decision.

3. (a) Without prejudice to sub-rule 2, the procedure before the Tribunal shall also include an oral part.  
(b) The Tribunal may, however, decide otherwise, after considering the submissions referred to in sub-rule 2 of this Rule and acting on a report from a judge or judges of the court or tribunal which referred the case, provided that none of the parties has asked to present oral arguments.
4. The costs of the reference shall be determined by the national court or tribunal.
5. In special circumstances, the Tribunal may grant by way of legal aid, assistance for purpose of facilitating the representation or attendance of a party.

## **PART XVI**

### **Costs**

#### **Rule 78**

#### **Party and Party Legal Costs**

1. Each party to the proceedings shall pay its own legal costs.
2. The Tribunal may, in exceptional circumstances, order a party to the proceedings to pay costs incurred by the other party.

#### **Rule 79**

#### **Costs of Proceedings**

Proceedings before the Tribunal shall be free of charge, except that:

- (a) Where a party has caused the Tribunal to incur unnecessary considerable costs, the Tribunal may order that such party reimburse the expenses incurred by the Tribunal.
- (b) Where the copying or translation work is carried out at the request of a party, the costs shall, in so far as the Registrar considers excessive, be paid for by that party.

**Rule 80**  
**Currency of Payment**

1. Sums due to the Tribunal shall be paid in the currency of the Member State where the Tribunal has its seat.
2. Any sum due to any other person shall be paid in the currency of the Member State in which the expenses was incurred.
3. Conversion of currency shall be made at the prevailing market exchange rate ruling on the day of payment in the Member State where the Tribunal has its seat.

**PART XVII**  
**DISCONTINUANCE**

**Rule 81**  
**Tribunal May Discontinue case**

1. If at any time before the final decision on the merits has been delivered the parties, either jointly or separately notify the Tribunal in writing that they have agreed to discontinue the proceedings, the Tribunal shall make an order directing that the case be removed from the list.
2. If the parties have agreed to discontinue the proceedings in consequence of having reached a settlement of the dispute and if they so desire, the Tribunal shall record this fact in the order for the removal of the case from the list.
3. If the Tribunal is not sitting, any order under this Rule may be made by the President.

**Rule 82**  
**Discontinuance in Proceedings Instituted by Application**

1. If in the course of proceedings instituted by means of an application, the applicant informs the Tribunal in writing that he or she or it is not continuing with the proceedings, and if, at the date on which this communication is received in the Registry the respondent has not as yet taken any step in the proceedings, the Tribunal shall make an order officially recording the discontinuance of the proceedings

- and directing the removal of the case from the list. A copy of such order shall be sent by the Registrar to the respondent.
2. If at the time when notice of discontinuance is received, the respondent has already taken some steps in the proceedings:
    - (a) the Tribunal shall fix a time-limit which the respondent may indicate whether it, he or she opposes the discontinuance;
    - (b) if no objection is made to the discontinuance before the expiration of the time-limits, acquiescence will be presumed and the Tribunal shall order the discontinuance of the proceedings and removal of the case from the list; and
    - (c) if objection is made, the proceedings shall continue.
  3. The powers of the Tribunal under this Rule may be exercised by the President when the Tribunal is not sitting.

## **PART XVIII**

### **Service**

#### **Rule 83**

##### **Method of Service**

1. (a) Any notice or other document which is required to be served by these Rules shall be served by registered post with a form for acknowledgement of receipt or by personal delivery of the copy against a receipt.
  - (b) A notice shall be deemed to have been served if there is proof of personal delivery or registered postage in terms of paragraph (a).
2. The Registrar shall certify copies to be served, save where the parties themselves supply the copies in accordance with sub-rule 5 of Rule 33.
3. All communications addressed or delivered, to the representatives of the parties or institutions shall be deemed to be addressed or delivered, as the case may be, to the parties or institutions.

**PART XIX**  
**Time Limits**  
**Rule 84**  
**Time Limits**

1. Any period of time prescribed in terms of these Rules for the taking of any procedural step shall be reckoned as follows:
  - (a) A period expressed in days, weeks or months or years shall be calculated from the moment at which an event occurs or an action takes place, provided that the day during which that event occurs or action takes place, shall not be counted as falling within the period in question;
  - (b) Where the period is expressed in months and days, it shall first be reckoned in whole months, then in days;
  - (c) Periods shall include official holidays, Saturdays and Sundays;
  - (d) Periods shall not be suspended during the judicial vacations.
2. If the period would otherwise end on a Saturday, Sunday or an official holiday, it shall be automatically extended until the end of the first following working day.

**Rule 85**  
**Extension of Time Limits**

1. Any time limit prescribed under these Rules may be extended by whoever prescribed it.
2. No right shall be prejudiced in consequence of the expiry of a time limit if the party concerned proves the existence of unforeseeable circumstances.

**PART XX**  
**Advisory Opinions**

**Rule 86**  
**Request for Opinion**

1. (a)The Summit or the Council may request the Tribunal for an opinion in accordance with Article 16(4) of the Treaty and Article 20 of the Protocol.
- 2 (a)The President shall prescribe the period within which the Summit and the Council may submit their written submission.  
(b)The written submissions shall be served on the Summit or the Council, as the case may be.

**Rule 87**  
**Deliberations on the Request**

Deliberations on the Request shall be in closed session and shall remain secret.

**Rule 88**  
**Delivery of Opinion**

When the Tribunal has completed its deliberations and adopted its advisory opinion, the opinion shall be read at a public sitting of the Tribunal.

**Rule 89**  
**Content of Opinion**

1. The Advisory opinion shall contain:
  - (i) the date on which it is delivered;
  - (ii) the names of the Members participating;
  - (iii) a summary of the proceedings;
  - (iv) a statement of the facts;
  - (v) the reasons in point of law;
  - (vi) the number and names of the Members constituting the majority.

2. Every advisory opinion written by any member in any matter shall be attached to the advisory opinion of the Tribunal.

## **Rule 90**

### **Submission of Opinion**

The opinion shall be communicated to the Summit and the Council.

**PART XXI**  
**Annexes**

**ANNEX 1**

**(In terms of Rule 3)**

"I solemnly declare that I shall perform my duties and exercise my powers as Member of the Tribunal honourably, faithfully, impartially, independently and conscientiously".

---

SIGNATURE OF MEMBER

---

SIGNATURE OF PRESIDENT

---

SIGNATURE OF REGISTRAR

## **ANNEX 2**

### **(In terms of Rule 12)**

"I solemnly declare that I shall perform the duties incumbent upon me as Registrar of the Tribunal in all loyalty, discretion and good conscience and that I shall faithfully observe all the provisions of the Protocol and the Rules of the Tribunal".

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SIGNATURE OF REGISTRAR

---

SIGNATURE OF PRESIDENT

## **ANNEX 3**

### **(In terms of Rule 48)**

"I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth".

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