

# STATUTE OF THE COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL

*Adopted by Commonwealth Governments on 1 July 1995 and amended by them on 24 June 1999, 18 February 2004, 14 May 2005, 16 May 2007 and 28 May 2015.*

## PART I ESTABLISHMENT

### ARTICLE I

There is established by Commonwealth Governments under this Statute, the Arbitral Tribunal of the Commonwealth Secretariat, to be known as the Commonwealth Secretariat Arbitral Tribunal.

## PART II JURISDICTION

### ARTICLE II

1. The Tribunal shall hear and determine any application brought by:
  - (a) a member of staff of the Commonwealth Secretariat;
  - (b) The Commonwealth Secretariat;
  - (c) any other person who enters into a contract with the Commonwealth Secretariat;

which alleges the non-observance of a contract in writing with the Commonwealth Secretariat and includes, in relation to a contract of service the non-observance of the contract of employment or terms of appointment of such member of staff, and in relation to a contract for services the non-observance of the terms of the contract.

2. The Tribunal shall also be competent to hear and determine an application involving an international or intergovernmental Commonwealth body or organisation which meets the requirements set out in Annex A to this Statute and which has addressed to the Commonwealth Secretary General a declaration recognising, in accordance with its constitution or internal

administrative arrangements, the exclusive jurisdiction of the Tribunal, as well as its Rules of Procedure and brought by:

- (a) a member of staff of that international or intergovernmental Commonwealth body or organisation;
- (b) that international or intergovernmental Commonwealth body or organisation;
- (c) any other person who enters into a contract with that international or intergovernmental Commonwealth body or organisation;

which alleges the non-observance of a contract in writing with that international or intergovernmental Commonwealth body or organisation including, in relation to a contract of service the non-observance of the contract of employment or terms of appointment of such member of staff, and in relation to a contract for services the non-observance of the terms of the contract.

3. Subject to paragraph 4 of this Article, the Tribunal shall only consider an application if:
  - (a) in relation to a contract of service, the applicant has exhausted all other remedies available within the Commonwealth Secretariat or other body or organisation eligible under Annex A including the redress of grievance procedures specified in the contract or in relevant Staff Rules; and
  - (b) the application is filed within a period of 90 days after the latest of the following:
    - (i) the occurrence of the event giving rise to the application;
    - (ii) receipt of notice, after the applicant has exhausted all other remedies available within the Commonwealth Secretariat or other eligible body or organisation, that the relief asked for or recommended will not be granted; or

- (iii) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within one month after receipt of such notice.
- (c) Notwithstanding the provisions of paragraph 3 (a) the Tribunal may consider an application where all other remedies have not been exhausted where:
  - (i) the Tribunal determines that the remedies available cannot adequately address the issues raised in the application, *or*
  - (ii) the administration fails to initiate the necessary administrative procedure or measures or to take a decision within a reasonable time from the date of notification to it of the grievance or event which gave rise to the application.
  - (iii) if the administration has not initiated the necessary administrative procedure or taken the necessary measures within 80 days from the notification to it of the grievance or event which gave rise to the application, then subject to paragraph (4 ) below, the Tribunal may consider the application whether or not it considers that a reasonable time has elapsed
- 4. (i) The Tribunal may nevertheless consider an application which is out of time where it is satisfied that it was not reasonably practicable for the application to be filed before the end of the period of 90 days.
- (ii) Other than in exceptional circumstances, notwithstanding the provisions of paragraph 3, an application shall not be receivable if it is filed more than one year after the occurrence of any of the events listed in paragraph 3(b) which gave rise to the application.
- 5 For the purpose of this Statute:
  - (a) “contract of employment” and “terms of appointment” include all relevant Regulations and Rules in force at the time of the alleged non-

observance and include the provisions relating to staff gratuity, retirement and end of contract benefits;

- (b) “contract of service” means an agreement between the Commonwealth Secretariat or other eligible body or organisation to which the Tribunal is open under Annex A to this Statute and a member of its staff for work by the staff member over a specified period of time and in relation to which the relevant Regulations, Rules and provisions referred to in paragraph (a) concerning a contract of employment will apply.
- (c) “contract for services” means a contract for the supply of goods or services other than a contract of service.
- (d) “member of staff” means:
  - (i) any current or former member of the headquarters staff of the Commonwealth Secretariat;
  - (ii) a current or former member of staff of a regional office of the Commonwealth Youth Programme (CYP); and current or former office staff of the Commonwealth Small States facility in New York or of any other eligible body or organisation to which the Tribunal is open under Annex A to this Statute; and
  - (iii) any person who is entitled to claim upon a right of a member of the staff as a personal representative
  - (iv) a temporary appointee;

but does not include:

- (v) an expert employed to work under the Commonwealth Fund for Technical Co-operation;
- (vi) a consultant who does not discharge the functions of a substantive post holder at the Commonwealth Secretariat Headquarters or at a regional office of the Commonwealth Youth Programme or at the Commonwealth Small States facility in New York or within any other eligible body or organisation to which the Tribunal is open under Annex A to

this Statute and thereby does not fall within the ordinary meaning of the word “employee”;

- (vii) a person employed in the domestic household of a member of staff.

### ARTICLE III

In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the Tribunal.

## PART III MEMBERSHIP, APPOINTMENTS AND TENURE

### ARTICLE IV

1. The Tribunal shall consist of eight members including the President who shall be nationals of Commonwealth Member States.
2. No two members of the Tribunal may be nationals of the same member State.
3. The members of the Tribunal shall be of high moral character and must:
  - (a) have held, hold or be qualified to hold high judicial office in a Commonwealth country; or
  - (b) be jurisconsults of recognised competence with experience as such for a period of not less than ten years.
4. (a) The President and the other members of the Tribunal shall be selected by Commonwealth Governments on a regionally representative basis with an appropriate gender balance and a appointed in accordance with the provisions of Annex B to this Statute;
  - (b) The President and **the** other members of the Tribunal shall be appointed for four year terms;
  - (c) Member Governments may re-select the President or any other member of the Tribunal for appointment for one

additional term not exceeding four years in accordance with the provisions of Annex B.

5. The Tribunal hearing an application shall be composed of three members empanelled by the President. Unless the President decides otherwise and subject to paragraphs 6 - 8 of this Article and paragraph 8 of Article X1, he or she shall be a member of the panel and shall preside over the proceedings. In the absence of the President the panel shall decide who shall preside.
6. Any member who has an actual or potential conflict of interest in a case shall recuse himself or herself.
7. Where a substantial number of applications have been lodged and have been listed for adjudication, the Tribunal if the President so decides, may be constituted in separate chambers of three members each.
8. If the President resigns or dies, or for whatever reason is unlikely to be able to perform the duties of the office for a period exceeding three months, the remaining members of the Tribunal shall elect another member from among their number to perform the duties of the President during the absence of the President or until a new President is appointed.
9. A member of the Tribunal shall have security of tenure and shall remain in office until the end of his/her term of appointment unless the member resigns or dies. A member may only be removed on the ground of manifest unsuitability or inability to perform the duties of a member of the Tribunal following a recommendation of the majority of the other members of the Tribunal addressed to the Commonwealth Secretary-General for the attention of and approval by Member Governments.
10. In the event of the occurrence of any of the contingencies set out in Annex C to this Statute, the procedure to be followed shall be as specified therein.

## ARTICLE V

1. The Commonwealth Secretary-General shall make the administrative arrangements necessary for the functioning of the Tribunal including the appointment of a suitably qualified lawyer as Executive Secretary, who is qualified to practice law in at least one Member State.

2. In the discharge of his or her duties, the Executive Secretary shall be responsible only to the Tribunal and, subject to the Tribunal Rules, shall keep confidential any information or material related to any matter coming before the Tribunal.
3. If the Secretary is absent or unable to act, the duties of the Secretary shall, during the period of his/her absence or inability to act, be performed by an alternate appointed by the Secretary General and who satisfies the requirements prescribed in paragraph 1. When performing the functions of the Secretary, the alternate Secretary shall be subject to the same duty of confidentiality as the Secretary and responsible only to the Tribunal.
4. The expenses of the Tribunal shall be borne by Member Governments and any body or organisation recognising and submitting to the jurisdiction of the Tribunal pursuant to Article II paragraph 2. The expenses to be borne by any such body or organisation shall be in accordance with Annex A, paragraph 2.

## PART IV PROCEDURE

### ARTICLE VI

1. Subject to the provisions of the present Statute, the Tribunal shall draw up its rules and shall determine its procedure. When amending its Rules, the Tribunal may take into account any views expressed by Commonwealth Governments, the Secretary General and the Commonwealth Secretariat Staff Association.
2. The Rules of the Tribunal shall contain provisions to ensure that applications before the Tribunal are dealt with in a manner that is independent and impartial and consistent with Commonwealth Principles relating to fundamental human rights and independence of the judiciary.
3. Without prejudice to Article XII, in drawing up its Rules the Tribunal shall take into account the practice and procedure of other international administrative tribunals and shall ensure that the Rules permit the hearing of relevant cases in accordance with the law governing international organisations.

4. The Rules shall include provisions concerning:
  - (a) the presentation of applications, including application for anonymity and the procedure to be followed in respect of them;
  - (b) intervention by persons, bodies or organisations to whom the Tribunal is open pursuant to paragraphs 1 and 2 of Article II and as defined in paragraph 5 of Article II, whose rights or obligations may be affected by the judgment;
  - (c) hearing, for the purposes of information, of persons, bodies or organisations to whom the Tribunal is open under paragraphs 1 and 2 of Article II; and
  - (d) other matters relating to the functioning of the Tribunal
5. The Tribunal may require the production of documents held by the Commonwealth Secretariat or other organisation concerned
6. The Secretary General or Head of the body or organisation concerned may object to the production of relevant documents on the grounds that the security of individuals would be endangered or confidentiality of the organisation's discussions or negotiations infringed. Such objection shall be considered by the Tribunal and shall be upheld unless ad to the extent that the Tribunal holds that the objection is unsupported by reasonable and sufficient grounds.
7. For the purpose of making a determination under paragraph 6, the Tribunal may:
  - (i) Inspect the documents which are the subject of the dispute (without disclosing them to the Applicant or the Applicant's representatives), and
  - (ii) To the extent that it is practicable and appropriate in the light of the reasons given for non-disclosure, invite submissions from both parties on questions of principle as to whether the documents should be disclosed.



## ARTICLE VII

1. The Tribunal shall hold sessions and sit on dates and at times to be fixed in accordance with its rules.
2. In dealing with applications before it and subject to its rules, the Tribunal shall proceed as expeditiously as the circumstances permit.
3. The Tribunal shall hold its sessions at the principal office of the Commonwealth Secretariat, unless it considers that the efficient conduct of the proceedings necessitates holding sessions elsewhere and budgetary considerations permit, or where the Respondent is another organisation which has accepted the jurisdiction of the Tribunal under Article 11 paragraph 2 and upon the request of that organisation.
4. In dealing with an application, unless it decides to hold oral proceedings, the Tribunal may dispose of the application on the strength of the documents only by exchange of correspondence and without the need for a formal sitting.

## ARTICLE VIII

1. The Tribunal shall decide whether oral proceedings are warranted and shall so decide if the interests of justice appear to it to require the calling of witnesses.
2. The Tribunal shall hear any witness whose evidence it considers relevant to the hearing and may require any official of the respondent organisation to appear before it as a witness
3. Any party making or responding to an application, or entitled under paragraph 4(b) of Article VI to intervene, may make representations in this regard. Any oral proceedings shall be held in public, unless the Tribunal decides that the interests of justice require that they be held in private, in particular where the Applicant has requested anonymity and the Tribunal grants the request.

## ARTICLE IX

1. The Tribunal shall take all its decisions by a majority of the members of the panel which heard the case. Where a panel has been reduced to two members and the members fail to agree, the presiding member shall order a re-hearing by a new panel.
2. The Tribunal shall state the reasons for its judgment in writing.
3. The Tribunal shall determine who shall bear the costs of the application and in doing so may take into account the means of the parties.
4. In an application where the Tribunal has held oral proceedings the Tribunal may decide, if it considers that circumstances require it, that its judgment shall be delivered at an open sitting by a member of the panel which heard the case.
5. Subject to Article X1, the judgment of the Tribunal shall be final and binding on the parties and shall not be subject to appeal.

## ARTICLE X

1. If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision contested or the specific performance of the obligation invoked, or in addition to, or alternatively to any such remedy, appropriate compensation for any loss or damage occasioned. Where an application is made by a staff member, where relevant, the Tribunal shall, at the same time, fix the amount of compensation to be paid to the applicant for the loss, injury or damage sustained, provided that such compensation shall not normally exceed the equivalent of three years' net remuneration of the applicant. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher amount of compensation. A statement of the specific reason for such an order shall be made.
2. Subject to Article II 3(c), if the Tribunal finds that there has been unreasonable delay in instituting the procedure prescribed in the rules of the Commonwealth Secretariat or other eligible body or organisation or that

the prescribed procedure has not be observed, it may, at the request of the Secretary-General or at the request of the Head of a body or organisation to which Article II paragraph 2 applies, and prior to the determination of the merits, order the case to be remanded for institution of the required procedure or correction of the faulty procedure.

Where a case is remanded, the Tribunal may order the payment of compensation, not exceeding the equivalent of three months' net remuneration, to the applicant for such loss as may have been caused by the procedural delay.

3. The filing of an application shall not have the effect of suspending execution of the decision contested, unless in the interests of justice the President otherwise decides.

## ARTICLE XI

1. The Tribunal may, of its own motion or at the request of a party, correct any clerical, typographical, computational or any other errors of a similar nature discovered in a judgment within 60 days of such judgment.
2. A party to a case in which judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, apply to the Tribunal, within a period of 180 days after the judgment was delivered, to revise the judgment.
3. An application to revise a judgment of the Tribunal shall contain the information necessary to show that the conditions laid down in paragraph 2 of this Article have been complied with. The application shall be accompanied by the original or a certified copy of all supporting documents.
4. The Tribunal, sitting as the original panel that heard the initial application, before considering the application for revision shall invite the other party to submit a response to the application.
5. A party to a case in which judgment has been delivered who challenges the judgment on the ground that the Tribunal has exceeded or failed to exercise

its jurisdiction or competence, or has erred on a question of fact or law or both, or that there has been a fundamental error in procedure which has resulted in a failure of justice or that the Tribunal has acted unreasonably having regard to the material placed before it, may apply to the Tribunal, within a period of 60 days after the judgment was delivered, for a review of the judgment.

6. Where the limitation period for an application for revision or review has expired the Tribunal may, in the interests of justice, enlarge time for the application to be submitted, where exceptional circumstances led to the failure to file an application within time.
7. An application to review a judgment under paragraph 5 shall contain a statement of the grounds on which the allegation of error of law or fact or unreasonableness is based and shall set out the legal and factual arguments in support of the application.
8. The President, if satisfied that the requirements of paragraph 5 have been met, shall constitute a panel comprising the five members who did not sit on the initial panel that delivered the judgment in question, to sit as a Review Board to review the judgment.
9. In determining an application for revision or review the Tribunal shall follow the procedure outlined in Articles VIII, IX paragraphs 1 to 3 and Article X1 paragraph 11 as may be appropriate.
10. In determining an application for revision or review, the panel or the Review Board, as applicable, may affirm or rescind in whole or in part the judgment in question.
11. Where the Review Board rescinds a judgment in whole or in part, it shall have the power to:
  - (a) substitute its own determination and may make an order granting a remedy;
  - (b) refuse to make any order granting a remedy;
  - (c) order a re-hearing before a different panel comprising only members who did not sit on the initial panel.

12. Where the Review Board rescinds a judgment in part only, it may substitute its own determination to the extent only of the rescission and may make an order granting a remedy.
1213. Subject to paragraph 11(c), the judgment of the Tribunal sitting as a Review Board shall be final and binding on the parties and shall not be subject to appeal. This provision shall constitute an “exclusion agreement” within the meaning of the laws of any member State requiring arbitration or as those laws may be amended or replaced.

## PART V MISCELLANEOUS

### ARTICLE XII

1. In dealing with a case relating to a contract of service, and subject to paragraph 2 of Article VI, the Tribunal shall be bound by the principles of international administrative law which shall apply to the exclusion of the national laws of individual member countries.
2. In all other cases, the Tribunal shall apply the law specified in the contract. Failing that, it shall apply the law most closely connected with the contract in question.
3. For the purposes of this Article, contracts with Applicants referred to in Article II 5(d) (v) and (vi) shall be treated as contracts of service.

### ARTICLE XIII

1. The original of each judgment shall be filed in the archives of the Secretariat. Where the dispute involves another international or intergovernmental Commonwealth body or organisation pursuant to Article II, paragraph 2(a) a judgment shall be drawn up in two originals, one of which shall be filed in the archives of the Commonwealth Secretariat and the other in the archives of the body or organization involved. A copy of the judgment shall be delivered to each of the other parties to the dispute. Copies shall also be made available by the Secretary to other persons on request.
2. The Statute, Rules and Judgments of the Tribunal shall be published on the official website of the Tribunal.

#### **ARTICLE XIV**

Neither the President nor any member of the Tribunal or the Secretary and other staff of the Tribunal or an expert witness called by the Tribunal shall be liable to any person for any act or omission in connection with arbitration under this Statute.

#### **ARTICLE XV**

This Statute may be amended by Commonwealth Governments. When amending the Statute, Commonwealth Governments may consider any views expressed by the President, the Secretary General and the Commonwealth Secretariat Staff Association.

## ANNEX A

### REQUIREMENTS FOR AN INTERNATIONAL OR INTERGOVERNMENTAL COMMONWEALTH BODY OR ORGANIZATIONS TO BE ELIGIBLE TO ACCESS THE COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL

1. To be eligible to recognize the jurisdiction of the Commonwealth Secretariat Arbitral Tribunal in accordance with paragraph 2 of Article II of this Statute, an organization must be an international or intergovernmental Commonwealth body or organization that fulfils the following conditions:
  - (a) it shall be clearly international or intergovernmental in character, having regard to its membership, structure and scope of activity;
  - (b) it shall not specifically be required to apply any national law in its relations with its officials, and shall enjoy immunity from legal process as evidenced by a headquarters agreement concluded with the host country; and
  - (c) it shall be endowed with functions of such nature at the international level as, in the opinion of its Governing Body, offer sufficient guarantees as to its institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal's judgments.
2. Article V paragraph 4 of the Statute shall apply to require that the expenses to be borne by a body or organisation recognising and submitting to the jurisdiction of the Tribunal under Article II paragraph 2 shall only be the expenses occasioned by the sessions or hearings relating to a complaint filed involving such body or organisation.
3. Any compensation awarded against a body or organization by the Tribunal shall be chargeable to the budget of the international body or organization against which the complaint is filed.

## ANNEX B

### PROCEDURE FOR THE SELECTION AND APPOINTMENT OF MEMBERS OF THE TRIBUNAL

1. When a vacancy is about to occur in the Tribunal, the Commonwealth Secretariat shall notify Member Governments in the Region(s) concerned and the Commonwealth Secretariat Staff Association of the impending vacancy and invite nominations of suitable candidates from Member Governments within the time period specified.
2. The Commonwealth Secretariat shall also notify the recognised representatives of the Commonwealth legal fraternity of the impending vacancy and invite them to express any views they may have either directly or through their regional branches to the relevant member governments concerning their nomination of candidates.
3. At the end of the specified time period the Commonwealth Secretariat shall compile a list of the nominees proposed by Member Governments and shall circulate the list to Member Governments for their consideration. The Commonwealth Secretariat shall also send a copy of the list to the Commonwealth Secretariat Staff Association for its information.
4. Member Governments shall meet to select the President and the other members of the **Tribunal**. Member Governments shall select the members of the Tribunal on a regionally representative basis taking into account the need for continuity and the maintenance of an appropriate gender balance in the Tribunal. In selecting or re-selecting members of the Tribunal, Member Governments may take into account any views expressed by the Commonwealth Secretary General and the Commonwealth Secretariat Staff Association.
5. In the interests of continuity of Tribunal membership, where possible, selection of Tribunal members should be so structured that no more than four members of the Tribunal conclude their four year term within the same year.
6. Thereafter, the Commonwealth Secretary General shall formally appoint the President and the other members of the Tribunal, selected or re-selected by



Member Governments to serve for such period not exceeding four years as determined by Member Governments, by a letter of appointment signed by him or her or by a duly authorised representative.

## ANNEX C

### CONTINGENCIES AFFECTING THE TRIBUNAL

1. If, during the course of the hearing of any proceedings, a member dies or is, for any reason, unable to continue participating in the proceedings, the President or in the absence of the President the Presiding member, may, if that inability seems likely to be of short duration, adjourn the proceedings; otherwise the President, or in the absence of the President the Presiding member shall, with the consent of the parties order that the remaining member or members of the panel proceed with the case or failing such consent shall dissolve the panel and order a rehearing before a new panel.
2. Notwithstanding the expiry of his or her term of office, a member of the Tribunal shall continue to discharge the responsibilities of a member of the Tribunal in respect of a hearing other than the hearing of an interlocutory matter, commenced before a panel of which he or she was a member, until the disposal of the matter.

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