**CMC56**, Doc 5, **ANNEX III**



**STATUTE OF THE CARIBBEAN COMMUNITY**

**ADMINISTRATIVE TRIBUNAL**

**PREAMBLE**

The Signatories to this Statute:

*Conscious* of the fact that staff members of Caribbean Community Institutions should have access to appropriate and effective judicial mechanisms for the settlement of disputes regarding their terms and conditions of employment;

*Recalling* the right of these staff members to be treated with fairness and equity;

*Affirming* that the Administrative Tribunal established under this Statute shall be impartial and independent and bound by international principles of due process of law, and that its decisions shall be consistent with the principles of fundamental human rights and taken in accordance with international administrative law;

Have agreed the following.

# PART I

# ESTABLISHMENT

# ARTICLE I

 There is hereby established the Administrative Tribunal of the Caribbean Community to be known as the Caribbean Community Administrative Tribunal.

**PART II**

**DEFINITIONS**

**ARTICLE II**

 For the purpose of this Statute:

* + 1. “member of staff” means:
1. any person subject to the Staff Rules and Regulations of an eligible CARICOM Institution including a current or former member of the staff of an eligible CARICOM Institution; or

(ii) the legal representative of a deceased member of staff;

but does not include:

(iii) a person employed by a staff member; and

(iv) a consultant employed to work under a contract of services by an entity external to the eligible CARICOM Institution.

* + 1. “contract of employment” and “terms of appointment” include all relevant Rules and Regulations in force at the time of the alleged non-observance and include the provisions relating to staff gratuity***,*** pension, retirement and end of contract benefits.
		2. “‘eligible’ CARICOM institution means any entity:
1. that is established by or under the auspices of the Community, or

(ii) that enjoys important functional relationships with the Community and contributes to the achievement of the objectives of the Community, and

(iii) is listed in Annex A as a signatory to this Statute.

**PART III**

**JURISDICTION**

**ARTICLE III**

1. The Tribunal shall be competent to adjudicate upon any grievance or complaint by which a member of the staff of an eligible institution alleges the breach of, or otherwise failure to observe, the contract of employment or terms of appointment of such staff member or of such provisions of the Staff Rules and Regulations as are applicable to the case.

2. (1) Subject to sub-paragraph (2), no such grievance or complaint shall be considered by the Tribunal, unless:

(a) the complainant has exhausted all remedies available within the eligible institution; and

 (b) the complaint is filed within ninety days after:

(i) receipt of notice, that the relief asked for or recommended will not be granted; or

 (ii) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

(2) Notwithstanding the provisions of sub-paragraph (1), the Tribunal

may extend the time for the filing of a complaint in exceptional circumstances where the interests of justice so require.

3. Where the eligible institution fails to take a decision upon receipt of a claim by a staff member within sixty days of the notification of the claim to it, the staff member may file a complaint with the Tribunal and his or her complaint shall treated in the same manner as a complainant who had exhausted all remedies available within the eligible institution. The period of ninety days provided for in paragraph 2, subparagraph (1)(b), above shall run from the expiration of the sixty days allowed for the taking of a decision by the eligible institution.

4. The filing of a complaint shall not operate to suspend the execution of the decision challenged or contested.

**ARTICLE IV**

 Subject to Article XIV, in the event of a dispute as to whether the Tribunal has jurisdiction the matter shall be settled by the Tribunal.

# PART IV

# MEMBERSHIP, APPOINTMENTS AND TENURE

# ARTICLE V

1. The Tribunal shall consist of five members.

2. The members of the Tribunal shall be of high moral character intellectual and analytical ability, sound judgment, integrity and must:

1. have held, hold or be qualified to hold high judicial office in a CARICOM country; or
2. be jurisconsults of recognised competence with experience as such for a period of not less than ten years; or
3. be jurisconsults of recognized competence with particular experience in the field of labour relations for a period of not less than ten years.

3. The members of the Tribunal shall be selected by the Regional Judicial and Legal Services Commission (“RJLSC”) on the basis of equitable geographical distribution with an appropriate gender balance.

4. The members of the Tribunal shall be appointed for four year terms; and shall be eligible for appointment for one further term of four years.

5. The members of the Tribunal shall be paid such allowances and honoraria as are decided by the RJLSC.

**ARTICLE VI**

1. The members of the Tribunal shall elect its president for a term of two years; thereafter the presidency shall be held on rotation every two years on the basis of the order of seniority of its members. In the absence of the President the next most senior member shall serve as President of the Tribunal.

2. The Tribunal hearing a complaint shall be composed of three members empanelled by the President. Unless the President decides otherwise, he or she shall be a member of the panel and shall preside over the proceedings.

3. A member of the Tribunal shall have security of tenure and shall remain in office until the end of his or her term of appointment unless the member resigns, dies or is removed from office for cause. 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 and approved by the RJLSC. A member of the Tribunal, including the President, may at any time resign from the Tribunal by writing under the hand of that member addressed to the Chairman of the RJLSC.

**ARTICLE VII**

1. The RJLSC shall make the administrative arrangements necessary for the functioning of the Tribunal including the appointment of a Registrar who shall be an Attorney-At-Law qualified to practice law for a period of not less than seven years in at least one CARICOM State.

2. In the discharge of his or her duties, the Registrar shall be answerable 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. The costs of the administrative arrangements for the Tribunal shall be satisfied from the annual operating budget of the Tribunal.

## PART V

## PROCEDURE

## ARTICLE VIII

 Subject to the provisions of this Part, the Tribunal shall draw up its Rules and shall determine its procedure.

**ARTICLE IX**

1. The Tribunal shall hold sessions at dates to be fixed in accordance with its Rules.

2. The Tribunal shall hold its sessions at the Seat of the Tribunal unless, upon an application, it considers that the efficient conduct of the proceedings necessitates holding sessions elsewhere.

**ARTICLE X**

1. The Tribunal shall take all its decisions by consensus or, if consensus cannot be achieved, by majority vote.

2. The Tribunal shall state the reasons for its judgment. The judgment shall be communicated in writing to the eligible institution and to the complainant.

3. Subject to Articles XII and XIV, the judgment of the Tribunal shall be final and binding on the parties and shall not be subject to appeal.

**ARTICLE XI**

 The judgments of the Tribunal shall be executed promptly and the parties involved shall comply with its decision without delay.

## ARTICLE XII

1. 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 ninety days after the judgment was delivered, to revise the judgment.

2. The application for revision shall not operate to suspend the execution of the judgment.

**PART VI**

**REMEDIES**

**ARTICLE XIII**

1. Where the Tribunal finds that the complaint is well founded it shall order the rescission of the decision contested or the specific performance of the obligation invoked. In the event that specific performance is not available or practicable, the Tribunal shall, instead, order the institution to pay compensation to the complainant for the loss, injury or damage sustained provided that such compensation shall not normally exceed the equivalent of one year’s net remuneration of the complainant.

2. Where the Tribunal finds that the internal grievance procedure prescribed in the Staff Rules and Regulations of the eligible institution has not been fully observed, it may, at the request of the institution and prior to a determination on the merits, order that the case be remanded to the eligible institution.

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

**ARTICLE XIV**

1. A party to a case in which judgment has been delivered may with the leave of the Caribbean Court of Justice (the Court), appeal to the Court on the ground that the Tribunal has exceeded or failed to exercise its jurisdiction, or has erred on a question of fact or law or both. An application for leave shall be made within a period of sixty days after the judgment was delivered.

2. The Court shall grant leave to appeal only in exceptional cases in the interest of justice or the international functioning of the eligible CARICOM Institutions.

3. An application for leave shall be made pursuant, mutatis mutandis, to the original jurisdiction rules of the Court.

4. An application for leave shall not automatically operate to suspend the execution of the judgment.

# PART VII

**FINANCIAL ARRANGEMENTS**

**ARTICLE XV**

The operating costs of the Tribunal shall be borne by the signatory Institutions and Associate Institutions of the Caribbean Community in accordance with the terms stated in Annex B.

**PART VIII**

# MISCELLANEOUS

# ARTICLE XVI

In its determination of rights and obligations under the contract of employment or in respect of claims of discrimination, the Tribunal shall apply the principles of international administrative law to the exclusion of the national laws of individual staff members or host countries.

# ARTICLE XVII

1. An original copy of each judgment shall be filed in the archives of the Tribunal.

2. The Statute, Rules and Judgments of the Tribunal shall be published on the official website of the Tribunal.

## ARTICLE XVIII

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

**ARTICLE XIX**

This Statute shall enter into force upon signature of two or more of the eligible institutions.

# ARTICLE XX

 This Statute may be amended by the Signatories. Amendments shall be approved by a majority of not less than two-thirds of signatories.

**ARTICLE XXI**

1. The Tribunal shall have full juridical personality.

2. The President of the Tribunal shall represent the Tribunal for the purpose of concluding agreements with international organizations or with States.

2. The Registrar of the Tribunal shall represent the Tribunal for the purpose of concluding commercial contracts agreements on behalf of the Tribunal.

**ARTICLE XXII**

The judges and officials of the Tribunal shall enjoy such privileges and immunities in the discharge of their duties as are extended to them under the Protocol on Privileges and Immunities concluded between the Member States of the Caribbean Community in connection with the Caribbean Community and Common Market.

**ARTICLE XXIII**

 The official language of the Tribunal shall be English, the official language of the Caribbean Community.

 **ARTICLE XXIV**

 The Seat of the Tribunal shall be Port-of-Spain, Trinidad and Tobago.

 As adopted on ……….

 Signatories…………………………………………… Signatories……………………………………..

 NOTES:

1. The Signatories should be **ALL** CARICOM Institutions interested in establishment of the Tribunal

2. Eligible CARICOM Institutions are those institutions that (a) have signed the Statute (b) agree to participate in the Tribunal and therefore who are (i) subject to the jurisdiction of the Tribunal and (ii) subject to contributing to the budget of the Tribunal

**ANNEX A**

**Eligible InstitutionS**

 The following entities, having met the relevant requirements set forth in Article II, Paragraph C, (i) and (ii), are hereby listed as ‘eligible CARICOM Institutions’ for the purposes of the Paragraph 1 (C) of Article II of the Statute.

Name of Institution Date of Acceptance of the Tribunal

1.

**ANNEX B**

**FORMULA FOR CONTRIBUTION TO CCAT BUDGET**

1. CCJ to provide significant annual in-kind contribution for the first 5 years

AND

EITHER

1. Modest annual contribution from participating institutions plus the cost of disputes referred from the referring institution

OR

1. Equal contribution to annual budget from each participating institution

OR

1. Contributions to annual budget to be based on formula to be agreed

NOTES:

1. There are suggestions from CRFM in relation to 4 (above). Suggestions are attached.

2. CCJ estimate of budget for CCAT for the first 5 years attached.