

Rules of Procedure of the Independent Employment Tribunal of the Square Kilometre Array
Observatory

Rule 1: Submitting an application at first instance

- (a) Applications at first instance must be submitted to the Tribunal Secretariat within 90 calendar days following communication of the final decision by or on behalf of the Director-General on a matter subject to SKAO's internal appeals process.
- (b) Without prejudice to Rule 1(a), the parties may in writing agree to suspend the limitation period in Rule 1(a) above to explore mediation or other alternative dispute resolution. Such suspension shall be no longer than 30 calendar days.
- (c) Documents prepared for, and oral statements made during such mediation, or any other alternative dispute resolution process are absolutely privileged and confidential and shall never be disclosed to the Tribunal. No mention shall be made of any mediation efforts in documents or written or oral pleadings before the Tribunal or in the Tribunal's decision.
- (d) Should an application be lodged after the expiry of the time limit specified in Rule 1(a) as a result of such suspension agreed in accordance with Rule 1(b), the applicant is required to provide the Tribunal with proof of the date of commencement of the suspension and its termination.
- (e) Applications may only be lodged by email sent to the Secretariat's officially announced email address.
- (f) The date of receipt at the Secretariat is the date of lodgement.
- (g) Applications must be made in writing. They must state all the grounds put forward by the applicant and be accompanied by all documentary evidence in support thereof. They must indicate the remedy sought and the grounds for such remedy.
- (h) The applicant must also state the name and capacity of any other person they wish the Tribunal to call to support their case and the subject on which they are called to testify. A witness may only testify on matters of which they have direct knowledge.
- (i) In responding to the application, SKAO must indicate any witnesses it wishes the Tribunal to call, and the subject on which they are called to testify. SKAO may also make a reasoned objection to any witnesses proposed by the claimant. The claimant shall be afforded the possibility to respond to SKAO's objections and to make a reasoned objection to any witnesses proposed by SKAO.
- (j) Upon request, the Secretariat will make documents of the SKAO available to the applicant (or their heirs and assigns if applicable) if such documents are reasonably available to current employees.

- (k) Either party may choose to be represented, including by legal counsel, at any stage of the case at their own expense, and may present written and oral submissions through a representative. In order to be entitled to participate in proceedings before the Tribunal, representatives must present a letter of representation or power of attorney to the Secretariat as soon as practicable after their nomination.
- (l) The Secretariat will provide a copy of the application and all other submissions to the President of the Tribunal, who appoints the judge in line with Article 17 of the Tribunal Regulations.
- (m)
 - (i) Either party to the case may file a motion to recuse a judge from hearing an application where there are concerns about a lack of impartiality or a conflict of interest, and the judge in question has not recused themselves. Evidence must be produced to support the motion.
 - (ii) Any such motion must be filed within 15 calendar days of the notification to the parties of the identity of the member of the Tribunal who is hearing the application.
 - (iii) Where a party comes into possession of evidence which would lead them to doubt the impartiality of a judge after the expiry of this time limit, it may request authorisation of the Tribunal to file such a motion, providing reasons why it was unable to do so within the time limit.
 - (iv) The other party may file their own written submissions on the motion within 15 calendar days after notification.
- (n) A recusal motion filed by a party stops any time limits running until it is decided by a ruling. A ruling can only be taken by majority decision of the other judges of the Tribunal, excluding the judge concerned. The ruling will be provided within 30 calendar days from the date of the filing of the recusal motion. The ruling will be final.
- (o) The Tribunal will seek to resolve the case using the procedure set out in Rule 3.

Rule 2: Case Management

1. The Tribunal will manage cases fairly, within a reasonable period of time, and in the interests of justice.
2. The Tribunal may at any time, in writing, or at the request of one of the parties, providing reasons for its request, or on its own motion, do any of the following;
 - (a) Order a party to provide further information or evidence in support of its position. Documents so produced will also be communicated to the other party;
 - (b) Extend the time limit laid down in the present Rules of Procedure for any procedural step. Where the urgency of the matter requires it, the Tribunal may set a shorter time limit than that laid down in the present Rules of Procedure for any procedural step;
 - (c) Determine any evidence to be given;
 - (d) Invite any person to attend to provide witness testimony at a hearing;

- (e) Request any person to disclose documents (including electronic documents) or any other evidence which may be relevant for the resolution of an application;
- (f) Add, substitute, remove claimants (from a multiple party case), or invite (or agree to the application of) another person to participate in the proceedings;
- (g) Designate a lead case where it considers common issues arise;
- (h) Issue a reasoned order dismissing a case on the ground that it is manifestly inadmissible and/or manifestly unfounded;
- (i) Issue an order that specifies that if it is not complied with by the date specified, the application or response shall be dismissed without further order;
- (j) Identify and determine of its own motion preliminary issues;
- (k) Fix the date and location of any hearing, and modify these if need be;
- (l) Refer some or all of the application to mediation, with or without conditions;
- (m) Decide that some or all of the oral hearing on an application shall be held *in camera*;
- (n) Seek expert evidence;
- (o) Strike out a case or adopt a judgment in default of an event that a time limit laid down by the Rules of Procedure or in a case management order has not been complied with and no valid reason was given.

The Tribunal may decide that the application should be communicated to a third party who should be invited to participate in the proceedings and shall fix the time limit within which such third party may submit comments. Should the third party accept this invitation and submit comments within the time limit fixed, they shall become a party to the proceedings and have the same rights, *mutatis mutandis*, as the applicant and SKAO. The third party's comments shall be communicated by the Secretariat to the judge and to the parties.

3. Any person who could be materially affected by the judgment and who wishes to express views on an issue or issues in a case potentially affecting their interests, may draw up an application for intervention and file it with the Secretariat.
 - (a) Applications in intervention must be filed no later than 30 days after the filing of the reply or the date on which the intervening party learned of the filing of the application, whichever is the earlier.
 - (b) The Tribunal shall rule on such a request in its judgment.
 - (c) The Secretariat shall send a copy of the intervention document to the judge and to the parties.
 - (d) The intervener is not a party to the case, may not file documents, and is not bound by the judgment solely by reason of having intervened.
4. The Tribunal may, at its discretion, permit any person or persons, including the duly authorised staff representatives, to communicate written views to the Tribunal *amici curiae*. The Tribunal may permit an *amicus curiae* access to the pleadings of the parties. The Tribunal shall enable the parties to submit timely observations on an *amicus* brief.
5. The Tribunal may, acting on its own motion or on a reasoned request by the other party, require a party to the application to disclose to it any documents or information. Documents produced by one party at the instruction of the Tribunal will be communicated to the other party. On a reasoned request by a party the Tribunal may decide that the

documents disclosed, or parts thereof, will not be disclosed to the other party or its representative or only disclosed on conditions of confidentiality.

6. Whilst the SKAO Convention provides both SKAO and its employees the inviolability of their official papers and documents relating to the exercise of their function within the scope of the official activities of SKAO, in order that neither party is disadvantaged in the course of this Tribunal process, neither party may use the inviolability of their official papers and documents further to Rule 2.2 unless those documents:
 - (a) Have been drawn up in the context of relations between either party and their legal advisors (including SKAO's in-house lawyers) for the dominant purpose of seeking or receiving legal advice; or
 - (b) Were created by or on behalf of either party or their legal advisors (including SKAO's in-house lawyers) for the dominant purpose of obtaining legal advice, evidence, or communication where litigation has been initiated or is being contemplated or in the perspective of avoiding or settling, as well as defending or resisting, such litigation.
7. The Tribunal has the discretion to make any procedural order it considers is required to further the proper course of the proceedings. This includes, (but is not limited to) an order to vary, suspend, or set aside.

Rule 3: Written Procedure

1. The written procedure will aim to resolve the application on the basis of the following written pleadings only:
 - (a) The application;
 - (b) A response to the application by SKAO;
 - (c) A reply to SKAO's response by the applicant; and
 - (d) A final response from SKAO, if any.
2. The application will be transmitted by the Secretariat to SKAO who will submit a response to the application to the Secretariat within 30 calendar days from the date of submission of the application, unless the judge extends this period. This response will be communicated by the Secretariat to the applicant.
3. The applicant may, within 20 calendar days from the date of receipt of the SKAO response to the application, submit a written reply to SKAO's comments to the Secretariat. The judge may extend this period. The reply, if any, will be communicated by the Secretariat to SKAO.
4. SKAO may, within 10 calendar days from the date of receipt of any such reply submit a final response in writing to the Secretariat. The judge may extend this period.
5. The case and each submission, along with the documentary evidence in support, will be communicated to the judge by the Secretariat.
6. The judge will provide their decision within a reasonable period commensurate with the nature and complexity of the case, following receipt of all remaining evidence provided under Rule 3.5.

7. Within 15 calendar days from the date of notification to it of the submission of the application, SKAO may file a request for summary dismissal of the application on the grounds of manifest inadmissibility, or on the grounds that it has no reasonable prospect of success. The Secretariat will inform the applicant and submit the application, together with the request for summary dismissal, to the judge immediately, with a copy to the applicant. The applicant may submit a reasoned objection to the request for summary dismissal to the Secretariat within 15 calendar days. After considering the application and SKAO's request for summary dismissal, along with any objection received from the applicant, the judge may either summarily dismiss the case as being manifestly inadmissible or manifestly unfounded and stating the grounds thereof or decide to proceed with the application. The Secretariat will notify the parties accordingly. Upon such notification of the Tribunal's decision to proceed with the application, the written procedure will resume, and SKAO will submit a response to the case to the Secretariat within 20 calendar days. The judge may extend this period.
8. Either party may request the judge dispense with the written procedure detailed in Rule 3 and convene an oral hearing under Rule 4. The judge, in their sole discretion, may agree to the request.

Rule 4: Convening of the oral hearing

1. The Tribunal will convene the oral hearing, which shall be in person or via electronic means (including video conference or telephone conference) or hybrid;
2. The Tribunal will seek to resolve applications submitted to it within a reasonable time from the date of submission of the application.
3. The judge may, in fixing hearing dates for the Tribunal, depart from the general rule in 4.2, when appropriate to do so, including where there are more than two similar applications that the Tribunal has opted to combine, under Article 18 of the Tribunal Regulations.

Rule 5: Hearings and Deliberations of the Tribunal

1. Unless exceptional circumstances apply or hearings relate solely to case management, all hearings are public. The Secretariat shall attend every hearing and produce a summary record of the hearing for the Tribunal and the parties.
2. A hearing is convened by the judge with a notice period to the parties and witnesses of no fewer than 20 calendar days.
3. At the hearing the parties may make oral statements in support of the arguments put forward in their written submissions.
4. The Tribunal may limit the oral hearing to matters concerning which it considers the written record to be inadequate.

5. The Tribunal will issue an order 20 calendar days before the hearing is scheduled to take place. The order will contain the date and time of the hearing and an indication of the facts about which the witness is to be heard. Should a witness be unable for imperious reasons duly attested to attend the hearing, they may be invited to reply in writing to questions put to them, or the Tribunal may postpone the hearing until such time as the witness is able to attend.
6. The judge may allow the parties to direct questions to those witnesses. Any employee of SKAO called as a witness will appear before the Tribunal and may not refuse to give the required information. The judge will instruct each witness to answer truthfully.
7. If the applicant or their representative, or the SKAO representative or a witness, although duly summoned/requested, fails to appear before the Tribunal without producing a valid reason, the Tribunal may proceed with the hearing and render a final decision.
8. Where the conduct of the applicant or their representative, or the SKAO representative or witness, interferes to a significant degree with the proper functioning of the hearing of the Tribunal, the Tribunal shall issue that person with a warning. Should that person persist in such conduct, the Tribunal may exclude the person from the hearing.
9. No person attending a non-public hearing of the Tribunal may afterwards divulge any evidence of fact or opinions which come to their knowledge during the hearing, and which are not contained in the judgment.
10. When hearing an appeal in accordance with Article 23 of the Tribunal Regulations, the judges of the Tribunal may deliberate in private. The Tribunal may decide to hold such deliberations in person virtually, including by way of videoconference or teleconference.
11. Should the applicant withdraw the application, the judge may accept the withdrawal, provided the withdrawal is unconditional.

Rule 6: Stay of Execution

1. Exceptionally, the Tribunal may, of its own motion, or on the basis of a reasoned request by either party, make an interim order (on such conditions as it may consider appropriate) staying the execution of the decision complained of, pending a final decision of the Tribunal in accordance with Rule 7.

Rule 7: Judgments of the Tribunal

1. Judgments of the Tribunal will be made by the judge hearing the case, or by majority vote on appeal, or if the application at first instance is heard by a panel. The judgment and, where applicable, any dissenting or concurring opinion, will be delivered in writing and will state the grounds and the reasons on which they are based.

2. The Tribunal shall follow the precedent of its previous judgments except where it appears to the Tribunal that the previous case law is clearly wrong, or that its application would lead to injustice in resolving the application before it.
3. The Tribunal may, but is not obliged to, depart from its existing precedent where both parties to a case request it to do so.
4. The Tribunal shall apply the balance of probabilities as the standard of proof in all cases before it.
5. Where the Tribunal does not fully uphold the decision of the Director-General, it shall annul the decision, in whole or in part. It may provide elements for an alternative decision.
6. As part of the award, the Tribunal may also order that SKAO compensates the claimant for damages suffered as a result of the Director-General's final decision. An award of more than two years' pay will only be made in exceptional circumstances, and the total award shall have regards to typical awards within the country the employee is employed in. The Tribunal may invite the parties to provide it with information that is of relevance in determining the amount of such awards.
7. The Tribunal will request that SKAO reimburse the applicant for:
 - (a) Reasonable travel and subsistence expenses incurred, except where it is shown that the applicant was not acting in good faith.
 - (b) Reasonable legal costs incurred by the applicant to the extent that a case is successful.
8. The Tribunal may also order that SKAO reimburse reasonable travel and subsistence expenses incurred by witnesses who have been heard, the amount to be calculated based on the relevant provisions of the Staff Regulations governing the reimbursement of such expenses, as updated from time to time. In taking such decisions, the Tribunal will consider the nature of the dispute and the amount involved.
9. Where the Director-General's decision has been annulled in whole or in part, SKAO shall provide the Tribunal with an implementation report within 30 calendar days of the notification of the judgment.
10. The text of judgment will be archived by the Secretariat. The Secretariat will notify the parties of the judgment by delivering one certified true copy to each party.
11. The Secretariat will publish the judgment with such anonymisations as are approved by the judge. Either party may submit to the Tribunal a reasoned request in this respect in their application or in their response respectively.
12. The parties may reach settlement on the application at any time during the proceedings before the Tribunal, prior to the handing down of the judgment. The settlement of the application between the parties will bring the application to an end. The case will then

be removed from the roll by order of the judge. The judge may give a decision as to costs in accordance with the agreement or, failing that, at their discretion.

Rule 8: Communications

1. The Tribunal and the parties may only communicate with each other on a case, through the Secretariat, through the Secretariat's designated email address, unless requested otherwise by the judge or the President.
2. All communications by the Tribunal with either party, and all communications which the Tribunal receives from either party must be shared with the other party. The parties agree to exchange direct privileged communications, including without prejudice settlement discussions, without involving the Tribunal or the Secretariat.

Rule 9: Interpretation of Rules

1. The Tribunal will be the sole authority for the interpretation of these Rules.
2. In the event of conflict between any provision of these Rules and the SKAO Convention and its Protocols, the following order of precedence will apply:
 - (a) SKAO Convention and Protocols; and
 - (b) The Regulations and Rules of Procedure for the Tribunal.
3. In exercising its judicial function, the Tribunal may have regard to general principles of international administration law as applied by other international tribunals, particularly where the SKAO Convention and its Protocols and the Regulations and Rules of Procedure of the Tribunal do not provide any guidance.

Rule 10: Calculation of time limits

1. The following provisions apply to the calculation of all time limits contained within the Regulations of the Tribunal and these Rules of Procedure:
 - (a) All the time limits will run from 12am local time (midnight) at SKAO headquarters of the first day of each time limit.
 - (b) Where a time limit runs from submission or notification, it will begin only from the day following the date of receipt of the submission or notification.
 - (c) If the last day of a time limit set for the applicant is a Saturday, Sunday or public holiday in the applicant's working place, the relevant time limit shall expire at the end of the next working day. If the last day of a time limit set for SKAO is a Saturday, Sunday or public holiday in SKAO headquarters, the relevant time limit shall expire at the end of the next working day.
 - (d) The Secretariat and the parties will acknowledge receipt of submissions and notifications.