

## FILE TRANSMITTED BY IFAD

### DOCUMENTS RELATING TO QUESTIONS ON WHICH AN ADVISORY OPINION IS REQUESTED BY THE EXECUTIVE BOARD

#### **(Contents)**

- I.** The Agreement Establishing IFAD.
- II.** Records relating to the recognition by IFAD of the jurisdiction of the Administrative Tribunal of the International Labour Organization over disputes between IFAD and its staff:
- (1) Declaration by the President of IFAD, dated 4 October 1988;
  - (2) Declaration by the Director-General of the International Labour Office, dated 29 November 1988;
  - (3) Resolution EB 88/35/R.78 of the Executive Board of IFAD: "The International Labour Organization Administrative Tribunal".
- III.** Statute of the Administrative Tribunal of the International Labour Organization.
- IV.** United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or desertification, Particularly in Africa (UNCCD).
- V.** Records relating to the housing arrangements for the Global Mechanism convened by the Conference of the Parties of the UNCCD and IFAD:
- (4) Decision 24/COP.1 of the Conference of the Parties of the UNCCD with respect to the "Organization to house the Global Mechanism and agreements on its modalities";
  - (5) Decision 10/COP.3 of the Conference of the Parties of the UNCCD entitled "Memorandum of Understanding between the Conference of Parties of the United Nations Convention to Combat Desertification and the International Fund for Agricultural Development Regarding the Modalities and Administrative Operations of the Global Mechanism";
  - (6) Resolution 108/XXI of the Governing Council of IFAD entitled "Housing the Global Mechanism";
  - (7) IFAD President's Bulletin PB/99/10 regarding the Accounts of the Global Mechanism;

(8) IFAD President's Bulletin PB/2004/01 regarding the Global Mechanism; and

(9) the Position Description of the Managing Director of the Global Mechanism.

**VI.** IFAD personnel policies:

(10) Resolution EB 88/33/R.19 of the Executive Board of IFAD entitled "Personnel Matters";

(11) Resolution EB 2004/82/R.28/Rev.1 of the Executive Board of IFAD entitled: "Human Resources Policy".

**VII.** Dossier of the *In re Saez Garcia* case before the Administrative Tribunal of the International Labour Organization:

(12) the Complainant's Brief;

(13) the Reply of the Defendant;

(14) the Complainant's Rejoinder; and

(15) the Surrejoinder of the Defendant.

**VIII.** Judgment No. 2867 rendered by the Administrative Tribunal of the International Labour Organization.

**IX.** Agreement between the United Nations and IFAD.

**X.** Resolution on the request by the Executive Board of IFAD to the International Court of Justice for an advisory opinion with respect to Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization:

(16) Resolution EB 2010/99/R.43 of the Executive Board of IFAD;

(17) Letter by the General Counsel of IFAD to the Counsel for the Complainant dated 5 May 2010.



Enabling poor rural people to overcome poverty

File Transmitted by the International Fund for Agricultural Development  
(Art. 65, Para. 2, of the Statute of the Court)

INTRODUCTORY NOTE

1. The present documentation contains the documents likely to throw light upon the questions which have been submitted to the International Court of Justice for an advisory opinion, by a resolution, dated 22 April 2010, of the Executive Board of the International Fund for Agricultural Development (hereby, "IFAD"). These documents are certified to be either official records or true copies thereof, or true copies of the documents submitted to the Administrative Tribunal of the International Labour Organization and they are transmitted to the Court by the IFAD in accordance with Article 65 of the Statute of the Court.
2. Each document is identified by title and, where applicable, official symbol of IFAD, of the United Nations, or of the International Labour Organization. In addition all documents have, for convenience in use, been numbered consecutively in the order in which they appear in the documentation. A complete list of the documents is found in the table of contents.
3. This documentation consists of ten sections as follows:
  - I. The Agreement Establishing IFAD;
  - II. Records relating to the recognition by IFAD of the jurisdiction of the Administrative Tribunal of the International Labour Organization over disputes between IFAD and its staff;
  - III. Statute of the Administrative Tribunal of the International Labour Organization;
  - IV. United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or desertification, Particularly in Africa (UNCCD);
  - V. Records relating to the housing arrangements convened by the Conference of the Parties of the UNCCD and IFAD regarding the hosting of the Global Mechanism by IFAD;
  - VI. IFAD personnel policies;
  - VII. Dossier of the *In re Saez Garcia* case before the Administrative Tribunal of the International Labour Organization;
  - VIII. Judgment No. 2867 rendered by the Administrative Tribunal of the International Labour Organization;
  - IX. Agreement between the United Nations and IFAD;
  - X. Resolution on the request by the Executive Board of IFAD to the International Court of Justice for an advisory opinion with respect to Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization.
4. Section I contains the text of the Agreement Establishing IFAD as it is currently in force.

5. Section II contains official records bearing on the recognition by IFAD of the competence of the Administrative Tribunal of the International Labour Organization. This section contains: (1) a declaration by the President of IFAD, affirming the Executive Board of IFAD's decision to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization over disputes between IFAD and its staff, (2) a declaration by the Director-General of the International Labour Office affirming the Governing Council of the International Labour Office's approval of IFAD's decision to recognize the jurisdiction of the Administrative Tribunal, and (3) Resolution EB 88/35/R.78 of the Executive Board of IFAD dealing with the recognition of the Jurisdiction of the Administrative Tribunal of the International Labour Organization.

6. Section III of the documentation contains the Statute of the Administrative Tribunal of the International Labour Organization, adopted by the International Labour Conference on 9 October 1946 and amended by the Conference on 29 June 1949, 17 June 1986, 19 June 1992, 16 June 1998 and 11 June 2008.

7. Section IV of the documentation holds the text of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or desertification, Particularly in Africa.

8. Section V comprises the documents relating to the housing arrangements of the Global Mechanism by IFAD. This section includes: (4) Decision 24/COP.1 of the Conference of the Parties of the UNCCD with respect to "Organization to house the Global Mechanism and agreements on its modalities"; (5) Decision 10/COP.3 of the Conference of the Parties of the UNCCD entitled "Memorandum of Understanding between the Conference of Parties of the United Nations Convention to Combat Desertification and the International Fund for Agricultural Development Regarding the Modalities and Administrative Operations of the Global Mechanism"; (6) Resolution 108/XXI of the Governing Council of IFAD entitled "Housing the Global Mechanism"; (7) IFAD President's Bulletin PB/99/10 regarding the Accounts of the Global Mechanism; (8) IFAD President's Bulletin PB/2004/01 regarding the Global Mechanism; and (9) the Position Description of the Managing Director of the Global Mechanism.

9. Section VI incorporates IFAD's relevant personnel policies, including: (10) Resolution EB 88/33/R.19 of the Executive Board of IFAD entitled "Personnel Matters" and (11) IFAD's Human Resources Policy, as they were in force prior to the *In re Saez Garcia* case, enclosed in Resolution EB 2004/82/R.28/Rev.1 of the Executive Board entitled: "Human Resources Policy".

10. Section VII of the documentation contains the written submissions of the *In re Saez Garcia* case, as they were submitted to the Administrative Tribunal of the International Labour Organization, including: (12) the Complainant's Brief, (13) the Reply of the Defendant, (14) the Complainant's Rejoinder, and (15) the Surrejoinder of the Defendant.

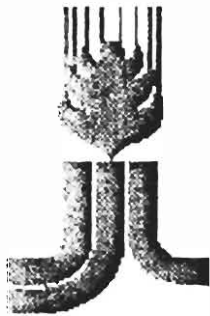
11. Section VIII gives the text of Judgment No. 2867 rendered by the Administrative Tribunal of the International Labour Organization at its 108<sup>th</sup> Session, on 3 February 2010, *In re Saez Garcia*.

12. Section IX contains the Agreement between the United Nations and IFAD reproducing the text of the Article dealing with the relations of IFAD with the International Court of Justice.

13. Section X contains: (16) Resolution EB 2010/99/R.43 of the Executive Board of IFAD, adopted at its 99<sup>th</sup> Session, which concerns the request to the International Court of Justice for an advisory opinion with respect to Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization, and (17) a letter dated 5 May 2010 by the General Counsel of IFAD addressed to the Counsel for the Complainant notifying IFAD's request for an advisory opinion to the International Court of Justice.

## **I. THE AGREEMENT ESTABLISHING IFAD**





**Agreement  
Establishing the  
International  
Fund for  
Agricultural  
Development**

## AGREEMENT ESTABLISHING IFAD

### **Adopted by the United Nations Conference on the Establishment of an International Fund for Agricultural Development on 13 June 1976, in Rome**

- ▶ Opened for signature, in accordance with its Article 13.1(a), on 20 December 1976, in New York.
- ▶ Entered into force, in accordance with its Article 13.3(a), on 30 November 1977.
- ▶ Section 8 of Article 6 amended, in accordance with Article 12, by Resolution 44/X of the Governing Council on 11 December 1986. Amendment entered into force on 11 March 1987.
- ▶ Articles 3.3, 3.4, 4.2, 4.5, 5.1, 6.2, 6.3, 6.5, 6.6, 12(a) and 13.3 and Schedules I, II and III amended, in accordance with Article 12, by Resolution 86/XVIII of the Governing Council on 26 January 1995. Amendments entered into force on 20 February 1997.
- ▶ Article 4.1 amended, in accordance with Article 12, by Resolution 100/XX of the Governing Council on 21 February 1997. Amendment entered into force on 21 February 1997.
- ▶ Articles 7.2 (a) and (b) amended, in accordance with Article 12, by Resolution 124/XXIV of the Governing Council on 21 February 2001 and subsequently by Resolution 141/XXIX on 16 February 2006, as revised by Resolution 141/XXIX/Rev.1. Amendments entered into force on 22 December 2006.
- ▶ Article 7.2 (g) amended by Resolution 143/XXIX of the Governing Council on 16 February 2006. Amendment entered into force on 16 February 2006.



- ▶ **Recognizing** that the continuing food problem of the world is afflicting a large segment of the people of the developing countries and is jeopardizing the most fundamental principles and values associated with the right to life and human dignity;
- ▶ **Considering** the need to improve the conditions of life in the developing countries and to promote socio-economic development within the context of the priorities and objectives of the developing countries, giving due regard to both economic and social benefits;
- ▶ **Bearing in mind** the responsibility of the Food and Agriculture Organization of the United Nations within the United Nations system, to assist the efforts of developing countries to increase food and agricultural production, as well as that organization's technical competence and experience in this field;
- ▶ **Conscious** of the goals and objectives of the International Development Strategy for the Second United Nations Development Decade and especially the need to spread the benefits of assistance to all;
- ▶ **Bearing in mind** paragraph (f) of part 2 ("Food") of Section 1 of General Assembly resolution 3202 (S-VI) on the Programme of Action on the Establishment of a New International Economic Order;
- ▶ **Bearing in mind** also the need for effecting transfer of technology for food and agricultural development and Section V ("Food and Agriculture") of General Assembly resolution 3362 (S-VII) on development and international economic cooperation, with particular reference to paragraph 6 thereof regarding the establishment of an International Fund for Agricultural Development;
- ▶ **Recalling** paragraph 13 of General Assembly resolution 3348 (XXIX) and resolutions I and II of the World Food Conference on the objectives and strategies of food production and on the priorities for agricultural and rural development;
- ▶ **Recalling** resolution XIII of the World Food Conference which recognized:
  - (i) the need for a substantial increase in investment in agriculture for increasing food and agricultural production in the developing countries;
  - (ii) that provision of an adequate supply and proper utilization of food are the common responsibility of all members of the international community; and
  - (iii) that the prospects of the world food situation call for urgent and coordinated measures by all countries;

and which resolved:

that an International Fund for Agricultural Development should be established immediately to finance agricultural development projects primarily for food production in the developing

## AGREEMENT ESTABLISHING IFAD

countries;

- ▶ **The Contracting Parties** have agreed to establish the International Fund for Agricultural Development, which shall be governed by the following provisions:

### DEFINITIONS

For the purposes of this Agreement the terms set out below shall have the following meaning, unless the context otherwise requires:

- (a) “Fund” shall mean the International Fund for Agricultural Development;
  - (b) “food production” shall mean the production of food including the development of fisheries and livestock;
  - (c) “State” shall mean any State, or any grouping of States eligible for membership of the Fund in accordance with Section 1(b) of Article 3;
  - (d) “freely convertible currency” shall mean:
    - (i) currency of a Member which the Fund determines, after consultation with the International Monetary Fund, is adequately convertible into the currencies of other Members for the purposes of the Fund’s operations; or
    - (ii) currency of a Member which such Member agrees, on terms satisfactory to the Fund, to exchange for the currencies of other Members for the purposes of the Fund’s operations.
- “Currency of a Member” shall, in respect of a Member that is a grouping of States, mean the currency of any member of such grouping;
- (e) “Governor” shall mean a person whom a Member has designated as its principal representative at a session of the Governing Council;
  - (f) “votes cast” shall mean affirmative and negative votes.

**OBJECTIVE AND FUNCTIONS**

The objective of the Fund shall be to mobilize additional resources to be made available on concessional terms for agricultural development in developing Member States. In fulfilling this objective the Fund shall provide financing primarily for projects and programmes specifically designed to introduce, expand or improve food production systems and to strengthen related policies and institutions within the framework of national priorities and strategies, taking into consideration: the need to increase food production in the poorest food deficit countries; the potential for increasing food production in other developing countries; and the importance of improving the nutritional level of the poorest populations in developing countries and the conditions of their lives.

**MEMBERSHIP**

**Section 1 -Eligibility for Membership**

- (a) Membership of the Fund shall be open to any State member of the United Nations or of any of its specialized agencies, or of the International Atomic Energy Agency.
- (b) Membership shall also be open to any grouping of States whose members have delegated to it powers in fields falling within the competence of the Fund, and which is able to fulfil all the obligations of a Member of the Fund.

**Section 2 -Original Members and Non-Original Members**

- (a) Original Members of the Fund shall be those States listed in Schedule I, which forms an integral part of this Agreement, that become parties to this Agreement in accordance with Section 1(b) of Article 13.
- (b) Non-original Members of the Fund shall be those other States that, after approval of their membership by the Governing Council, become parties to this Agreement in accordance with Section 1(c) of Article 13.

**Section 3 -Limitation of Liability**

No Member shall be liable, by reason of its membership, for acts or obligations of the Fund.

## **RESOURCES**

### **Section 1 -Resources of the Fund**

The resources of the Fund shall consist of:

- (i) initial contributions;
- (ii) additional contributions;
- (iii) special contributions from non-member States and from other sources;
- (iv) funds derived or to be derived from operations or otherwise accruing to the Fund.

### **Section 2 -Initial Contributions**

(a) The amount of an initial contribution of an original and a non-original Member shall be the amount and in the currency of such contribution specified by the Member in its instrument of ratification, acceptance, approval or accession deposited by that Member pursuant to Section 1(b) and (c) of Article 13 of this Agreement.

(b) The initial contribution of each Member shall be due and payable in the forms set forth in Section 5(b) and (c) of this Article, either in a single sum or, at the option of the Member, in three equal annual instalments. The single sum or the first annual instalment shall be due on the thirtieth day after this Agreement enters into force with respect to that Member; any second and third instalments shall be due on the first and on the second anniversary of the date on which the first instalment was due.

### **Section 3 -Additional Contributions**

In order to assure continuity in the operations of the Fund, the Governing Council shall periodically, at such intervals as it deems appropriate, review the adequacy of the resources available to the Fund; the first such review shall take place not later than three years after the Fund commences operations. If the Governing Council, as a result of such a review, deems it necessary or desirable, it may invite Members to make additional contributions to the resources of the Fund on terms and conditions consistent with Section 5 of this Article. Decisions under this Section shall be taken by a two-thirds majority of the total number of votes.

### **Section 4 -Increases in Contributions**

The Governing Council may authorize, at any time, a Member to increase the amount of any of its contributions.

**Section 5 -Conditions Governing Contributions**

- (a) Contributions shall be made without restriction as to use and shall be refunded to contributing Members only in accordance with Section 4 of Article 9.
- (b) Contributions shall be made in freely convertible currencies.
- (c) Contributions to the Fund shall be made in cash or, to the extent that any part of such contributions is not needed immediately by the Fund in its operations, such part may be paid in the form of non-negotiable, irrevocable, non-interest bearing promissory notes or obligations payable on demand. In order to finance its operations, the Fund shall draw down all contributions (regardless of the form in which they are made) as follows:
- (i) contributions shall be drawn down on a pro rata basis over reasonable periods of time as determined by the Executive Board;
  - (ii) where a contribution is paid partly in cash, the part so paid shall be drawn down, in accordance with paragraph (i), before the rest of the contribution. Except to the extent that the part paid in cash is thus drawn down, it may be deposited or invested by the Fund to produce income to help defray its administrative and other expenditures;
  - (iii) all initial contributions, as well as any increases in them, shall be drawn down before any additional contributions are drawn down. The same rule shall apply to further additional contributions.

**Section 6 -Special Contributions**

The resources of the Fund may be increased by special contributions from non-member States or other sources on such terms and conditions, consistent with Section 5 of this Article, as shall be approved by the Governing Council on the recommendation of the Executive Board.

## **CURRENCIES**

### **Section 1 -Use of Currencies**

(a) Members shall not maintain or impose any restriction on the holding or use by the Fund of freely convertible currencies.

(b) The non-convertible currency contributions of a Member made to the Fund on account of that Member's initial or additional contributions prior to 26 January 1995 may be used by the Fund, in consultation with the Member concerned, for the payment of administrative expenditures and other costs of the Fund in the territories of that Member, or, with the consent of that Member, for the payment of goods or services produced in its territories and required for activities financed by the Fund in other States.

### **Section 2 -Valuation of Currencies**

(a) The unit of account of the Fund shall be the Special Drawing Right of the International Monetary Fund.

(b) For the purposes of this Agreement, the value of a currency in terms of the Special Drawing Right shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, provided that:

(i) in the case of the currency of a member of the International Monetary Fund for which such value is not available on a current basis, the value shall be calculated after consultation with the International Monetary Fund;

(ii) in the case of the currency of a non-member of the International Monetary Fund, the value of the currency in terms of the Special Drawing Right shall be calculated by the Fund on the basis of an appropriate exchange rate relationship between that currency and the currency of a member of the International Monetary Fund for which a value is calculated as specified above.

## ORGANIZATION AND MANAGEMENT

### Section 1 -Structure of the Fund

The Fund shall have:

- (a) a Governing Council;
- (b) an Executive Board;
- (c) a President and such staff as shall be necessary for the Fund to carry out its functions.

### Section 2 -The Governing Council

- (a) Each Member shall be represented on the Governing Council and shall appoint one Governor and an alternate. An alternate may vote only in the absence of his principal.
- (b) All the powers of the Fund shall be vested in the Governing Council.
- (c) The Governing Council may delegate any of its powers to the Executive Board<sup>1</sup> with the exception of the power to:
  - (i) adopt amendments to this Agreement;
  - (ii) approve membership;

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<sup>1</sup> The Governing Council, at its First Session on 16 December 1977, adopted Resolution 77/2, which stated as follows:

“Resolution 77/2

*Delegation of Powers to the Executive Board*

*The Governing Council,*

*Pursuant to Article 6.2(c) of the Agreement Establishing the Fund and to Section 7 of the By-laws of the Fund,*

*Authorizes the Executive Board to exercise all the powers of the Council, with the exception of those specified in Articles 4.3, 4.4, 6.2(e), 6.2(f), 6.5(e), 6.8(a), 6.8(c), 6.9, 6.10, 7.1(e) and 8.1 of the Agreement Establishing the Fund, and those reserved to the Council by Article 6.2(c) (i-vi) thereof.”*

The last paragraph of the above-mentioned Resolution was subsequently amended by Resolution 86/XVIII, adopted by the Governing Council on 26 January 1995 and entered into force on 20 February 1997, to read as follows:

*Authorizes the Executive Board to exercise all the powers of the Council, with the exception of those specified in Articles 4.3, 4.4, 6.2(e), 6.2(f), 6.5(e), 6.8(a), 6.8(b), 6.8(d), 6.9, 6.10, 7.1(e) and 8.1 of the Agreement Establishing the Fund, and those reserved to the Council by Article 6.2(c) (i-vi) thereof.”*

## AGREEMENT ESTABLISHING IFAD

- (iii) suspend a Member;
  - (iv) terminate the operations of the Fund and distribute its assets;
  - (v) decide appeals from decisions made by the Executive Board concerning the interpretation or application of this Agreement;
  - (vi) determine the remuneration of the President.
- (d) The Governing Council shall hold an annual session, and such special sessions as it may decide, or as are called by Members having at least one-fourth of the total number of votes in the Governing Council, or as requested by the Executive Board by a two-thirds majority of the votes cast.
- (e) The Governing Council may by regulation establish a procedure whereby the Executive Board may obtain a vote of the Council on a specific question without calling a meeting of the Council.
- (f) The Governing Council may, by a two-thirds majority of the total number of votes, adopt such regulations and by-laws not inconsistent with this Agreement as may be appropriate to conduct the business of the Fund.
- (g) A quorum for any meeting of the Governing Council shall be constituted by Governors exercising two-thirds of the total votes of all its members.

### Section 3 - Voting in the Governing Council

(a) The total number of votes in the Governing Council shall be comprised of Original Votes and Replenishment Votes. All Members shall have equal access to those votes on the following basis:

(i) **Original Votes** shall consist of a total of one thousand eight hundred (1 800) votes made up of membership votes and contribution votes:

(A) **membership votes** shall be distributed equally among all Members; and

(B) **contribution votes** shall be distributed among all Members in the proportion that each Member's cumulative paid contributions to the resources of the Fund, authorized by the Governing Council prior to 26 January 1995 and made by Members in accordance with Sections 2, 3 and 4 of Article 4 of this Agreement, bear to the aggregate of the total of the said contributions paid by all Members;

(ii) **Replenishment Votes** shall be made up of membership votes and contribution votes in a total amount of votes to be decided by the Governing Council upon each occasion that it calls for additional contributions under Section 3 of Article 4 of this Agreement (a "replenishment") commencing with the fourth such replenishment. Except as the Governing Council shall by a two-thirds majority of the total number of votes otherwise decide, the votes for each replenishment shall be established in the ratio of one hundred (100) votes for the equivalent of each one hundred and fifty eight million United States dollars (USD 158 000 000) contributed to the total amount of that replenishment, or a fraction thereof:

(A) **membership votes** shall be distributed equally among all Members on the same basis as that set forth in provision (i)(A) above; and



(B) **contribution votes** shall be distributed among all Members in the proportion that each Member's paid contribution to the resources contributed to the Fund by Members for each replenishment bears to the aggregate of the total contributions paid by all Members to the said replenishment; and

(iii) The Governing Council shall decide the total number of votes to be allocated as membership votes and contribution votes under paragraphs (i) and (ii) of this Section. Upon any change in the number of Members of the Fund, the membership votes and contribution votes distributed under paragraphs (i) and (ii) of this Section shall be redistributed in accordance with the principles laid down in the said paragraphs. In the allocation of votes, the Governing Council shall ensure that those Members classified as members of Category III before 26 January 1995 receive one-third of the total votes as membership votes.

(b) Except as otherwise specified in this Agreement, decisions of the Governing Council shall be taken by a simple majority of the total number of votes.

#### **Section 4 -Chairman of the Governing Council**

The Governing Council shall elect a Chairman from among the Governors, who shall serve for two years.

#### **Section 5 -Executive Board**

(a) The Executive Board shall be composed of 18 members and up to 18 alternate members, elected from the Members of the Fund at the annual session of the Governing Council. The seats in the Executive Board shall be distributed by the Governing Council from time to time as specified in Schedule II to this Agreement. The members of the Executive Board and their alternates, who may vote only in the absence of a member, shall be elected and appointed in accordance with the procedures set forth in Schedule II hereto, which forms an integral part of this Agreement.

(b) Members of the Executive Board shall serve for a term of three years.

(c) The Executive Board shall be responsible for the conduct of the general operations of the Fund, and for this purpose shall exercise the powers given to it by this Agreement or delegated to it by the Governing Council.

(d) The Executive Board shall meet as often as the business of the Fund may require.

(e) The representatives of a member or of an alternate member of the Executive Board shall serve without remuneration from the Fund. However, the Governing Council may decide the basis on which reasonable travel and subsistence expenses may be granted to one such representative of each member and of each alternate member.

(f) A quorum for any meeting of the Executive Board shall be constituted by members exercising two-thirds of the total votes of all its members.

#### **Section 6 -Voting in the Executive Board**

(a) The Governing Council shall, from time to time, decide the distribution of votes among the members of the Executive Board in accordance with the principles established in Section 3(a) of

Article 6 of this Agreement.

(b) Except as otherwise specified in this Agreement, decisions of the Executive Board shall be taken by a majority of three-fifths of the votes cast, provided that such majority is more than one-half of the total number of votes of all members of the Executive Board.

**Section 7 -Chairman of the Executive Board**

The President of the Fund shall be the Chairman of the Executive Board and shall participate in its meetings without the right to vote.

**Section 8 -President and Staff**

(a) The Governing Council shall appoint the President by a two-thirds majority of the total number of votes. He shall be appointed for a term of four years and shall be eligible for reappointment for only one further term. The appointment of the President may be terminated by the Governing Council by a two-thirds majority of the total number of votes.

(b) Notwithstanding the restriction on the term of office of the President of four years, contained in paragraph (a) of this Section, the Governing Council may, under special circumstances, on the recommendation of the Executive Board, extend the term of office of the President beyond the duration prescribed in paragraph (a) above. Any such extension shall be for no more than six months.

(c) The President may appoint a Vice-President, who shall perform such duties as shall be assigned to him by the President.

(d) The President shall head the staff and, under the control and direction of the Governing Council and the Executive Board, shall be responsible for conducting the business of the Fund. The President shall organize the staff and shall appoint and dismiss members of the staff in accordance with regulations adopted by the Executive Board.

(e) In the employment of the staff and in the determination of the conditions of service, consideration shall be given to the necessity of securing the highest standards of efficiency, competence and integrity as well as to the importance of observing the criterion of equitable geographical distribution.

(f) The President and the staff, in the discharge of their functions, owe their duty exclusively to the Fund and shall neither seek nor receive instructions in regard to the discharge thereof from any authority external to the Fund. Each Member of the Fund shall respect the international character of this duty and shall refrain from any attempt to influence them in the discharge of their duties.

(g) The President and the staff shall not interfere in the political affairs of any Member. Only development policy considerations shall be relevant to their decisions and these considerations shall be weighed impartially in order to achieve the objective for which the Fund was established.

(h) The President shall be the legal representative of the Fund.

(i) The President, or a representative designated by him, may participate, without the right to vote, in all meetings of the Governing Council.

**Section 9 -Seat of the Fund**

The Governing Council shall determine the permanent seat of the Fund by a two-thirds majority of the total number of votes. The provisional seat of the Fund shall be in Rome.

**Section 10 -Administrative Budget**

The President shall prepare an annual administrative budget which he shall submit to the Executive Board for transmission to the Governing Council for approval by a two-thirds majority of the total number of votes.

**Section 11 -Publication of Reports and Provision of Information**

The Fund shall publish an annual report containing an audited statement of its accounts and, at appropriate intervals, a summary statement of its financial position and of the results of its operations. Copies of such reports, statements and other publications connected therewith shall be distributed to all Members.

**OPERATIONS**

**Section 1 -Use of Resources and Conditions of Financing**

- (a) The resources of the Fund shall be used to achieve the objective specified in Article 2.
- (b) Financing by the Fund shall be provided only to developing States that are Members of the Fund or to intergovernmental organizations in which such Members participate. In the case of a loan to an intergovernmental organization, the Fund may require suitable governmental or other guarantees.
- (c) The Fund shall make arrangements to ensure that the proceeds of any financing are used only for the purposes for which the financing was provided, with due attention to considerations of economy, efficiency and social equity.
- (d) In allocating its resources the Fund shall be guided by the following priorities:
  - (i) the need to increase food production and to improve the nutritional level of the poorest populations in the poorest food deficit countries;
  - (ii) the potential for increasing food production in other developing countries. Likewise, emphasis shall be placed on improving the nutritional level of the poorest populations in these countries and the conditions of their lives.

Within the framework of the above-mentioned priorities, eligibility for assistance shall be on the basis of objective economic and social criteria with special emphasis on the needs of the low income countries and their potential for increasing food production, as well as due regard to a fair geographic distribution in the use of such resources.

- (e) Subject to the provisions of this Agreement, financing by the Fund shall be governed by broad policies, criteria and regulations laid down, from time to time, by the Governing Council by a two-thirds majority of the total number of votes.

## **Section 2 -Forms and Terms of Financing**

(a) Financing by the Fund shall take the form of loans, grants and a debt sustainability mechanism, which shall be provided on such terms as the Fund deems appropriate, having regard to the economic situation and prospects of the Member and to the nature and requirements of the activity concerned. The Fund may also provide additional financing for the design and implementation of projects and programmes, financed by the Fund through loans, grants and debt sustainability mechanisms, as the Executive Board shall decide.

(b) The proportion of the Fund's resources to be committed in any financial year for financing operations in any of the forms referred to in subsection (a) shall be decided from time to time by the Executive Board with due regard to the long-term viability of the Fund and the need for continuity in its operations. The proportion of grants shall not normally exceed one-eighth of the resources committed in any financial year. A debt sustainability mechanism and the procedures and modalities therefor shall be established by the Executive Board and financing provided thereunder shall not fall within the above-mentioned grant ceiling. A large proportion of the loans shall be provided on highly concessional terms.

(c) The President shall submit projects and programmes to the Executive Board for consideration and approval.

(d) Decisions with regard to the selection and approval of projects and programmes shall be made by the Executive Board. Such decisions shall be made on the basis of the broad policies, criteria and regulations established by the Governing Council.

(e) For the appraisal of projects and programmes presented to it for financing, the Fund shall, as a general rule, use the services of international institutions and may, where appropriate, use the services of other competent agencies specialized in this field. Such institutions and agencies shall be selected by the Executive Board after consultation with the recipient concerned and shall be directly responsible to the Fund in performing the appraisal.

(f) The loan agreement shall be concluded in each case by the Fund and the recipient, which shall be responsible for the execution of the project or programme concerned.

(g) Except as the Executive Board shall otherwise decide, the Fund shall entrust the administration of loans, for the purposes of the disbursement of the proceeds of the loan and the supervision of the implementation of the project or programme concerned, to competent national, regional,

## AGREEMENT ESTABLISHING IFAD

international or other institutions or entities. Such institutions or entities shall be of a worldwide, regional or national character and shall be selected in each case with the approval of the recipient. Before submitting the loan to the Executive Board for approval, the Fund shall assure itself that the institution or entity to be entrusted with the supervision agrees with the results of the appraisal of the project or programme concerned. This shall be arranged between the Fund and the institution or agency in charge of the appraisal, as well as with the institution or entity to be entrusted with the supervision.

(h) For the purposes of subsections (f) and (g) above, reference to “loans” shall be deemed to include “grants”.

(i) The Fund may extend a line of credit to a national development agency to provide and administer subloans for the financing of projects and programmes within the terms of the loan agreement and the framework agreed to by the Fund. Before the Executive Board approves the extension of such a line of credit, the national development agency concerned and its programme shall be appraised in accordance with the provisions of subsection (e). Implementation of the said programme shall be subject to supervision by the institutions selected in accordance with the provisions of subsection (g).

(j) The Executive Board shall adopt suitable regulations for procuring goods and services to be financed from the resources of the Fund. Such regulations shall, as a general rule, conform to the principles of international competitive bidding and shall give appropriate preference to experts, technicians and supplies from developing countries.

### **Section 3 -Miscellaneous Operations**

In addition to the operations specified elsewhere in this Agreement, the Fund may undertake such ancillary activities and exercise such powers incidental to its operations as shall be necessary in furtherance of its objective.

## **RELATIONS WITH THE UNITED NATIONS AND WITH OTHER ORGANIZATIONS, INSTITUTIONS AND AGENCIES**

### **Section 1 -Relations with the United Nations**

The Fund shall enter into negotiations with the United Nations with a view to concluding an agreement to bring it into relationship with the United Nations as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. Any agreements concluded in

## **AGREEMENT ESTABLISHING IFAD**

accordance with Article 63 of the Charter shall require the approval of the Governing Council, by a two-thirds majority of the total number of votes, upon the recommendation of the Executive Board.

### **Section 2 -Relations with other Organizations, Institutions and Agencies**

The Fund shall cooperate closely with the Food and Agriculture Organization of the United Nations and other organizations of the United Nations system. It shall also cooperate closely with other intergovernmental organizations, international financial institutions, non-governmental organizations and governmental agencies concerned with agricultural development. To this end, the Fund will seek the collaboration in its activities of the Food and Agriculture Organization of the United Nations and the other bodies referred to above, and may enter into agreements or establish working arrangements with such bodies, as may be decided by the Executive Board.

## **WITHDRAWAL, SUSPENSION OF MEMBERSHIP, TERMINATION OF OPERATIONS**

### **Section 1 -Withdrawal**

(a) Except as provided in Section 4(a) of this Article, a Member may withdraw from the Fund by depositing an instrument of denunciation of this Agreement with the Depository.

(b) Withdrawal of a Member shall take effect on the date specified in its instrument of denunciation, but in no event less than six months after deposit of such instrument.

### **Section 2 -Suspension of Membership**

(a) If a Member fails to fulfil any of its obligations to the Fund, the Governing Council may, by a three-fourths majority of the total number of votes, suspend its membership. The Member so suspended shall automatically cease to be a Member one year from the date of its suspension, unless the Council decides by the same majority of the total number of votes to restore the Member to good standing.

(b) While under suspension, a Member shall not be entitled to exercise any rights under this Agreement except the right of withdrawal, but shall remain subject to all of its obligations.

### **Section 3 -Rights and Duties of States Ceasing to be Members**

Whenever a State ceases to be a Member, whether by withdrawal or through the operation of Section 2 of this Article, it shall have no rights under this Agreement except as provided in this Section or in Section 2 of Article 11, but it shall remain liable for all financial obligations undertaken by it to the

Fund, whether as Member, borrower or otherwise.

**Section 4 -Termination of Operations and Distribution of Assets**

(a) The Governing Council may terminate the Fund's operations by a three-fourths majority of the total number of votes. After such termination of operations the Fund shall forthwith cease all activities, except those incidental to the orderly realization and conservation of its assets and the settlement of its obligations. Until final settlement of such obligations and the distribution of such assets, the Fund shall remain in existence and all rights and obligations of the Fund and its Members under this Agreement shall continue unimpaired, except that no Member may be suspended or may withdraw.

(b) No distribution of assets shall be made to Members until all liabilities to creditors have been discharged or provided for. The Fund shall distribute its assets to contributing Members *pro rata* to the contributions that each Member has made to the resources of the Fund. Such distribution shall be decided by the Governing Council by a three-fourths majority of the total number of votes and shall be effected at such times, and in such currencies or other assets as the Governing Council shall deem fair and equitable.

**LEGAL STATUS, PRIVILEGES AND IMMUNITIES**

**Section 1 -Legal Status**

The Fund shall possess international legal personality.

**Section 2 -Privileges and Immunities**

(a) The Fund shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the exercise of its functions and for the fulfilment of its objective. Representatives of Members, the President and the staff of the Fund shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Fund.

(b) The privileges and immunities referred to in paragraph (a) shall:

(i) in the territory of any Member that has acceded to the Convention on the Privileges and Immunities of the Specialized Agencies in respect of the Fund, be as defined in the standard clauses of that Convention as modified by an annex thereto approved by the Governing Council;

(ii) in the territory of any Member that has acceded to the Convention on the Privileges and Immunities of the Specialized Agencies only in respect of agencies other than the Fund, be as defined in the standard clauses of that Convention, except if such Member notifies the

Depository that such clauses shall not apply to the Fund or shall apply subject to such modifications as may be specified in the notification;

(iii) be as defined in other agreements entered into by the Fund.

(c) In respect of a Member that is a grouping of States, it shall ensure that the privileges and immunities referred to in this Article are applied in the territories of all members of the grouping.

## **INTERPRETATION AND ARBITRATION**

### **Section 1 – Interpretation**

(a) Any question of interpretation or application of the provisions of this Agreement arising between any Member and the Fund or between Members of the Fund, shall be submitted to the Executive Board for decision. If the question particularly affects any Member of the Fund not represented on the Executive Board, that Member shall be entitled to be represented in accordance with regulations to be adopted by the Governing Council.

(b) Where the Executive Board has given a decision pursuant to subsection (a), any Member may require that the question be referred to the Governing Council, whose decision shall be final. Pending the decision of the Governing Council, the Fund may, so far as it deems necessary, act on the basis of the decision of the Executive Board.

### **Section 2 – Arbitration**

In the case of a dispute between the Fund and a State that has ceased to be a Member, or between the Fund and any Member upon the termination of the operations of the Fund, such dispute shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the Fund, another by the Member or former Member concerned and the two parties shall appoint the third arbitrator, who shall be the Chairman. If within 45 days of receipt of the request for arbitration, either party has not appointed an arbitrator, or if within 30 days of the appointment of two arbitrators, the third arbitrator has not been appointed, either party may request the President of the International Court of Justice, or such other authority as may have been prescribed by regulations adopted by the Governing Council, to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, but the Chairman shall have full power to settle all questions of procedure in any case of disagreement with respect thereto. A majority vote of the arbitrators shall be sufficient to reach a decision, which shall be final and binding upon the parties.



**AMENDMENTS**

(a) Except in respect of Schedule II:

(i) Any proposal to amend this Agreement made by a Member or by the Executive Board shall be communicated to the President who shall notify all Members. The President shall refer proposals to amend this Agreement made by a Member to the Executive Board, which shall submit its recommendations thereon to the Governing Council.

(ii) Amendments shall be adopted by the Governing Council by a four-fifths majority of the total number of votes. Amendments shall enter into force three months after their adoption unless otherwise specified by the Governing Council, except that any amendment modifying:

- (A) the right to withdraw from the Fund;
- (B) the voting majority requirements provided for in this Agreement;
- (C) the limitation on liability provided for in Section 3 of Article 3;
- (D) the procedure for amending this Agreement;

shall not come into force until written acceptance of such amendment by all Members is received by the President.

(b) In respect of the several parts of Schedule II, amendments shall be proposed and adopted as provided in such parts.

(c) The President shall immediately notify all Members and the Depositary of any amendments that are adopted and of the date of entry into force of any such amendments.

**FINAL CLAUSES**

**Section 1 –Signature, Ratification, Acceptance, Approval and Accession**

(a) This Agreement may be initialled on behalf of the States listed in Schedule I to this Agreement at the United Nations Conference on the Establishment of the Fund and shall be open for signature at the Headquarters of the United Nations in New York by the States listed in that Schedule as soon as

## AGREEMENT ESTABLISHING IFAD

the initial contributions indicated therein to be made in freely convertible currencies amount to at least the equivalent of 1 000 million United States dollars (valued as of 10 June 1976). If the foregoing requirement has not been fulfilled by 30 September 1976 the Preparatory Commission established by that Conference shall convene by 31 January 1977 a meeting of the States listed in Schedule I, which may by a two-thirds majority of each category reduce the above specified amount and may also establish other conditions for the opening of this Agreement for signature.

(b) Signatory States may become parties by depositing an instrument of ratification, acceptance or approval; non-signatory States listed in Schedule I may become parties by depositing an instrument of accession. Instruments of ratification, acceptance, approval and accession by States in Category I or II shall specify the amount of the initial contribution the State undertakes to make. Signatures may be affixed and instruments of ratification, acceptance, approval or accession deposited by such States until one year after the entry into force of this Agreement.

(c) States listed in Schedule I that have not become parties to this Agreement within one year after its entry into force and States that are not so listed, may, after approval of their membership by the Governing Council, become parties by depositing an instrument of accession.

### Section 2 -Depositary

(a) The Secretary-General of the United Nations shall be the Depositary of this Agreement.

(b) The Depositary shall send notifications concerning this Agreement:

(i) until one year after its entry into force, to the States listed in Schedule I to this Agreement, and after such entry into force to all States parties to this Agreement as well as to those approved for membership by the Governing Council;

(ii) to the Preparatory Commission established by the United Nations Conference on the Establishment of the Fund, as long as it remains in existence, and thereafter to the President.

### Section 3 -Entry into Force

(a) This Agreement shall enter into force upon receipt by the Depositary of instruments of ratification, acceptance, approval or accession from at least 6 States in Category I, 6 States in Category II and 24 States in Category III, provided that such instruments have been deposited by States in Categories I and II the aggregate of whose initial contributions specified in such instruments amounts to at least the equivalent of 750 million United States dollars (valued as of 10 June 1976), and further provided that the foregoing requirements have been fulfilled within 18 months of the date on which this Agreement is opened for signature or by such later date as the States that have deposited such instruments by the end of that period may decide, by a two-thirds majority of each category, and as they notify to the Depositary.

(b) For States that deposit an instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Agreement, it shall enter into force on the date of such deposit.

(c) The obligations accepted by original and non-original Members under this Agreement prior to 26 January 1995 shall remain unimpaired and shall be the continuing obligations of each Member to the

## AGREEMENT ESTABLISHING IFAD

Fund.

(d) References throughout this Agreement to categories or to Categories I, II and III shall be deemed to refer to the categories of Members prevailing prior to 26 January 1995, as set out in Schedule III hereto, which forms an integral part of this Agreement.

### **Section 4 –Reservations**

Reservations may only be made to Section 2 of Article 11 of this Agreement.

### **Section 5 -Authoritative Texts**

The versions of this Agreement in the Arabic, English, French and Spanish languages shall each be equally authoritative.

IN WITNESS WHEREOF, the undersigned being duly authorized thereto, have signed this Agreement in a single original in the Arabic, English, French and Spanish languages

**PART I. STATES ELIGIBLE FOR ORIGINAL MEMBERSHIP**

<b>Category I</b>	<b>Category II</b>	<b>Category III</b>	
<i>Australia</i>	<i>Algeria</i>	<i>Argentina</i>	<i>Mexico</i>
<i>Austria</i>	<i>Gabon</i>	<i>Bangladesh</i>	<i>Morocco</i>
<i>Belgium</i>	<i>Indonesia</i>	<i>Bolivia</i>	<i>Nicaragua</i>
<i>Canada</i>	<i>Iran</i>	<i>Botswana</i>	<i>Pakistan</i>
<i>Denmark</i>	<i>Iraq</i>	<i>Brazil</i>	<i>Panama</i>
<i>Finland</i>	<i>Kuwait</i>	<i>Cameroon</i>	<i>Papua New Guinea</i>
<i>France</i>	<i>Libyan Arab Jamahiriya</i>	<i>Cape Verde</i>	<i>Peru</i>
<i>Germany</i>	<i>Nigeria</i>	<i>Chad</i>	<i>Philippines</i>
<i>Ireland</i>	<i>Qatar</i>	<i>Chile</i>	<i>Portugal</i>
<i>Italy</i>	<i>Saudi Arabia</i>	<i>Colombia</i>	<i>Republic of Korea</i>
<i>Luxembourg</i>	<i>United Arab Emirates</i>	<i>Congo</i>	<i>Romania</i>
<i>Japan</i>	<i>Venezuela</i>	<i>Costa Rica</i>	<i>Rwanda</i>
<i>Netherlands</i>		<i>Cuba</i>	<i>Senegal</i>
<i>New Zealand</i>		<i>Dominican Republic</i>	<i>Sierra Leone</i>
<i>Norway</i>		<i>Ecuador</i>	<i>Somalia</i>
<i>Spain</i>		<i>Egypt</i>	<i>Sri Lanka</i>
<i>Sweden</i>		<i>El Salvador</i>	<i>Sudan</i>
<i>Switzerland</i>		<i>Ethiopia</i>	<i>Swaziland</i>
<i>United Kingdom of Great Britain and Northern Ireland</i>		<i>Ghana</i>	<i>Syrian Arab Republic</i>
<i>United States of America</i>		<i>Greece</i>	<i>Thailand</i>
		<i>Guatemala</i>	<i>Tunisia</i>
		<i>Guinea</i>	<i>Turkey</i>
		<i>Haiti</i>	<i>Uganda</i>
		<i>Honduras</i>	<i>United Republic of Tanzania</i>
		<i>India</i>	<i>Uruguay</i>
		<i>Israel 1</i>	<i>Yugoslavia</i>
		<i>Jamaica</i>	<i>Zaire</i>
		<i>Kenya</i>	<i>Zambia</i>
		<i>Liberia</i>	
		<i>Mali</i>	
		<i>Malta</i>	

1 With reference to Article 7, Section 1(b), on the use of resources of the Fund for "developing countries", this country will not be included under this Section and will not seek or receive financing from the Fund.

# AGREEMENT ESTABLISHING IFAD

## PART II. PLEDGES OF INITIAL CONTRIBUTIONS <sup>2</sup>

State	Currency Unit	Amount in Currency	Equivalent in SDRs <sup>3</sup>
<b>Category I</b>			
Australia	Australian dollar	8 000 000 a	8 609 840
Austria	US dollar	4 800 000 a	4 197 864
Belgium	Belgian franc	500 000 000 a	
	US dollar	1 000 000 a	11 930 855
Canada	Canadian dollar	33 000 000 a	29 497 446
Denmark	US dollar	7 500 000 a	6 559 163
Finland	Finnish markka	12 000 000 a	2 692 320
France	US dollar	25 000 000	21 863 875
Germany	US dollar	55 000 000 a/b	48 100 525
Ireland	Pound sterling	570 000 a	883 335
Italy	US dollar	25 000 000 a	21 863 875
Japan	US dollar	55 000 000 a	48 100 525
Luxembourg	Special Drawing Right	320 000 a	320 000
Netherlands	Dutch guilder	100 000 000	
	US dollar	3 000 000	34 594 265
New Zealand	New Zealand dollar	2 000 000 a	1 721 998
Norway	Norwegian kroner	75 000 000 a	
	US dollar	9 981 851 a	20 612 228
Spain	US dollar	2 000 000 c	1 749 110
Sweden	Swedish kroner	100 000 000	
	US dollar	3 000 000	22 325 265
Switzerland	Swiss franc	22 000 000 a	7 720 790
United Kingdom	Pound sterling	18 000 000	27 894 780
United States	US dollar	200 000 000	174 911 000
		<b>subtotal</b>	<b>496 149 059</b>

## Category II

Algeria	US dollar	10 000 000	8 745 550
Gabon	US dollar	500 000	437 278
Indonesia	US dollar	1 250 000	1 093 194
Iran	US dollar	124 750 000	109 100 736
Iraq	US dollar	20 000 000	17 491 100
Kuwait	US dollar	36 000 000	31 483 980
Libyan Arab Jamahiriya	US dollar	20 000 000	17 491 100
Nigeria	US dollar	26 000 000	22 738 430
Qatar	US dollar	9 000 000	7 870 995
Saudi Arabia	US dollar	105 500 000	92 265 553
United Arab Emirates	US dollar	16 500 000	14 430 158
Venezuela	US dollar	66 000 000	57 720 630
		<b>subtotal</b>	<b>380 868 704</b>

2 Subject to obtaining, where required, the necessary legislative approval.

3 Special Drawing Rights (SDRs) of the International Monetary Fund valued as of 10 June 1976. These equivalent values are stated merely for information in the light of Section 2(a) of Article 5 of the Agreement, with the understanding that the initial contributions pledged will be payable in accordance with Section 2(a) of Article 4 of the Agreement in the amount and currency specified by the State concerned.

a Payable in three instalments.

b This amount includes an additional pledge of USD 3 million, which was made subject to the necessary budgetary arrangements in the fiscal year 1977.

c Payable in two instalments.

**AGREEMENT ESTABLISHING IFAD**

State	Currency Unit	Amount in Currency	Equivalent in SDRs <sup>3</sup>	
			Freely Convertible	Not Freely Convertible
<b>Category III</b>				
Argentina	Argentine peso	240 000 000 d		1 499 237
Bangladesh	Taka (equivalent of US dollar)	500 000		437 278
Cameroon	US dollar	10 000	8 746	
Chile	US dollar	50 000	43 728	
Ecuador	US dollar	25 000	21 864	
Egypt	Egyptian pound (equivalent of US dollar)	300 000		262 367
Ghana	US dollar	100 000	87 456	
Guinea	Sily	25 000 000 a		1 012 145
Honduras	US dollar	25 000	21 864	
India	US dollar	2 500 000	2 186 388	
	Indian rupee (equivalent of US dollar)	2 500 000		2 186 388
Israel	Israel pound (equivalent of US dollar)	150 000 a/e		131 183
Kenya	Kenya shilling (equivalent of US dollar)	1 000 000		874 555
Mexico	US dollar	5 000 000	4 372 775	
Nicaragua	Cordobas	200 000		24 894
Pakistan	US dollar	500 000	437 278	
	Pakistan rupee (equivalent of US dollar)	500 000		437 278
Philippines	US dollar f	250 000 f	43 728	174 911
Republic of Korea	US dollar	100 000	87 456	
	Won (equivalent of US dollar)	100 000		87 456
Romania	Lei (equivalent of US dollar)	1 000 000		874 555
Sierra Leone	Leone	20 000		15 497
Sri Lanka	US dollar	500 000	437 278	
	Sri Lanka rupee (equivalent of US dollar)	500 000		437 278
Syrian Arab Republic	Syrian pound	500 000		111 409
Thailand	US dollar	100 000	87 456	
Tunisia	Tunisian dinar	50 000		100 621
Turkey	Turkish lira (equivalent of US dollar)	100 000		87 456
Uganda	Uganda shilling	200 000		20 832
United Republic of Tanzania	Tanzania shilling	300 000		31 056

## AGREEMENT ESTABLISHING IFAD

Yugoslavia	Yugoslav dinar (equivalent of US dollar)	300 000	262 367
		<b>subtotal</b>	<b>7 836 017</b>
			<b>9 068 763</b>
Total freely convertible			884 853 780*
<b>Grand total (freely and not freely convertible)</b>			<b>893 922 543</b>

- d To be spent within the territory of Argentina for goods or services required by the Fund.
- e Usable for technical assistance.
- f USD 200 000 of this pledge was stated to be subject to confirmation, including the terms of payment and the type of currency. This amount has consequently been entered in the "not freely convertible" column.
- \* Equivalent of USD 1 011 776 023 valued as of 10 June 1976.

### DISTRIBUTION OF VOTES AND ELECTION OF EXECUTIVE BOARD MEMBERS

1. The Governing Council, in accordance with the procedures specified in paragraph 29 of this Schedule, shall decide, from time to time, the distribution of seats and alternate seats among the Members of the Fund, taking into account: (i) the need to strengthen and safeguard the mobilization of resources for the Fund; (ii) the equitable geographic distribution of the said seats; and (iii) the role of developing Member Countries in the governance of the Fund.

2. **Distribution of Votes in the Executive Board.** Each member of the Executive Board shall be entitled to cast the votes of all of the Members that it represents. Where the member represents more than one Member, it may cast separately the votes of the Members that it represents.

3. (a) **Lists of Member Countries.** The Member Countries shall be divided, from time to time, into Lists A, B and C for the purposes of this Schedule. Upon joining the Fund, a new Member shall decide on which List it wishes to be placed and, after consultation with the Members of that List, shall provide appropriate notification thereof to the President of the Fund in writing. A Member may, at the time of each election for the members and alternate members representing the List of Member Countries to which it belongs, decide to withdraw from one List of Member Countries and place itself upon another List of Member Countries, with the approval of the Members therein. In such event, the concerned Member shall inform the President of the Fund in writing of such change, who shall, from time to time, inform all Members of the composition of all the Lists of Member Countries.

(b) **Distribution of Seats in the Executive Board.** The eighteen (18) members and up to eighteen (18) alternate members of the Executive Board shall be elected or appointed from the Members of the Fund and of whom:

(i) eight (8) members and up to eight (8) alternate members shall be elected or appointed from among those Members set forth in the List A of Member Countries, to be established from time to time;

(ii) four (4) members and four (4) alternate members shall be elected or appointed from among those Members set forth in the List B of Member Countries, to be established from time to time; and

(iii) six (6) members and six (6) alternate members shall be elected or appointed from among those Members set forth in the List C of Member Countries, to be established from time to time.

**4. Procedures for the Election of Executive Board Members.** The procedures that shall apply for the election or appointment of members and alternate members to vacant seats on the Executive Board shall be those set forth below for the respective Members of each List of Member Countries.

#### **A. ELECTION OF MEMBERS OF THE EXECUTIVE BOARD AND THEIR ALTERNATES**

##### **Part I -List A Member Countries**

**5.** All of the members and alternate members of the Executive Board from List A of Member Countries shall serve for a term of three years.

**6.** List A Member Countries shall form constituencies and, on the basis of procedures agreed by the List A Member Countries and its constituencies, shall appoint eight members to the Executive Board and shall also appoint up to eight alternates.

**7. Amendments.** The Governors representing List A Member Countries may by a unanimous decision amend the provisions of Part I of this Schedule (paragraphs 5 to 6). Unless otherwise decided, the amendment shall have immediate effect. The President of the Fund shall be informed of any amendment to Part I of this Schedule.

##### **Part II -List B Member Countries**

**8.** All of the members and alternate members of the Executive Board from List B of Member Countries shall serve for a term of three years.

**9.** The Members of List B shall form themselves into a number of constituencies equal to the number of seats allocated to the List, with each constituency represented by one member and one alternate member in the Executive Board. The President of the Fund shall be informed of the composition of each constituency and any changes thereto that may be made by the Members of List B from time to time.

**10.** The Members of List B shall decide on the procedures that shall apply for the election or appointment of members and alternate members to vacant seats on the Executive Board and shall



provide a copy thereof to the President of the Fund.

**11. Amendments.** The provisions of Part II of this Schedule (paragraphs 8 to 10) may be amended by a vote of the Governors representing two-thirds of the List B Member Countries whose contributions (made in accordance with Section 5(c) of Article 4) amount to seventy per cent (70%) of the contributions of all List B Member Countries. The President of the Fund shall be informed of any amendments to Part II of this Schedule.

### **Part III -List C Member Countries**

#### **Elections**

**12.** All the members and alternate members of the Executive Board from List C of Member Countries shall serve for a term of three years.

**13.** Except as decided otherwise by the Member Countries of List C, of the six (6) members and six (6) alternate members of the Executive Board elected or appointed from among the List C Member Countries, two (2) members and two (2) alternate members shall be from each of the following regions, as these are set forth in each of the sub-Lists of List C Member Countries:

Africa (sub-List C1);  
Europe, Asia and the Pacific (sub-List C2); and  
Latin America and the Caribbean (sub-List C3).

**14. (a)** In accordance with the provisions contained in paragraphs 1 and 27 of this Schedule, the Member Countries of List C shall elect from the countries of its sub-List two members and two alternate members to represent the interests of the whole of the said sub-List, including at least one member or one alternate member from among the Member Countries in that sub-List making the highest substantial contributions to the resources of the Fund.

**(b)** The Members of List C may review at any time but not later than the Sixth Replenishment of the Fund's Resources, the provisions of sub-paragraph (a) above, taking into account the experience of each sub-List in the implementation of the said sub-paragraph and, if necessary, amended keeping in view the relevant principles contained in Resolution 86/XVIII of the Governing Council.

**15.** Balloting shall first take place for all members to be elected from each sub-List for which there is a vacancy and for which countries from each sub-List shall nominate candidates. Balloting for each seat shall take place among the Members of the List C.

**16.** After all members have been elected, balloting shall take place for electing alternate members in the same orders indicated in paragraph 15 above.

**17.** Election shall require a simple majority of the valid votes cast, not counting abstentions.

**18.** If no candidate obtains in the first ballot the majority specified in paragraph 17 above, successive ballots shall be held, from each of which that candidate shall be eliminated who receives the lowest number of votes in the previous ballot.

**19.** In case of a tie vote, the ballot shall, if necessary, be repeated and, if the tie persists in that ballot and on one subsequent one, a decision shall be taken by drawing lots.

20. If at any stage there is only one candidate for a vacancy, he may be declared elected without a ballot, if no Governor objects.

21. Meetings of the List C Member Countries for electing or appointing members and alternate members of the Executive Board shall be held in private. The Members of the List C shall appoint by consensus a Chairman for these meetings.

22. The Members of each sub-List shall appoint by consensus, the Chairman of the respective sub-List meeting .

23. The names of the members and alternate members elected shall be furnished to the President of the Fund along with the term of office of each member and alternate member and the list of principals and alternates.

#### **Casting of Votes in the Executive Board**

24. For the purpose of casting votes in the Executive Board, the total number of votes of the countries of each sub-List shall be divided equally between the members of the sub-List concerned.

#### **Amendments**

25. Part III of this Schedule (paragraphs 12 to 24) may be amended from time to time by a two-thirds majority of the List C Member Countries. The President of the Fund shall be informed of any amendments to Part III of this Schedule.

#### **B. GENERAL PROVISIONS APPLICABLE TO LIST A, B, AND C**

26. The names of the members and alternate members elected or appointed by Lists A, B and C of Member Countries, respectively, shall be furnished to the President of the Fund.

27. Notwithstanding anything to the contrary in paragraphs 5 to 25 above, at the time of each election, the Members of a List of Member Countries or the members of a constituency within a List may decide to appoint a specified number of Members making the highest substantial contribution to the Fund from that List as a member or alternate member of the Executive Board for that List of Member Countries in order to encourage Members to contribute to the resources of the Fund. In such event, the result of that decision shall be notified in writing to the President of the Fund.

28. Once a new Member Country had joined a List of Member Countries, its Governor may designate an existing member of the Executive Board for that List of Member Countries to represent it and cast its votes until the next election of members of the Executive Board for that List. During such period, a member so designated shall be deemed to have been elected or appointed by the Governor which so designated it and the Member Country shall be deemed to have joined that member's constituency.

29. **Amendments to Paragraphs 1 to 4, 7, 11 and 25 to 29.** The procedures set forth in paragraphs 1 to 4, 7, 11 and 25 to 29 inclusive herein may be amended from time to time by a two-thirds majority of the total votes of the Governing Council. Unless otherwise decided, any amendment of paragraphs 1 to 4, 7, 11 and 25 to 29 inclusive shall take effect immediately upon adoption thereof.

# AGREEMENT ESTABLISHING IFAD

<b>Category I</b>				
<b>DISTRIBUTION OF MEMBER STATES AMONG CATEGORIES AS AT 26 JANUARY 1995</b>	Australia	France	Luxembourg	Sweden
	Austria	Germany	Netherlands	Switzerland
	Belgium	Greece	New Zealand	United Kingdom
	Canada	Ireland	Norway	United States
	Denmark	Italy	Portugal	
	Finland	Japan	Spain	
<b>Category II</b>				
	Algeria	Iran	Libyan Arab Jamahiriya	Saudi Arabia
	Gabon	Iraq	Nigeria	United Arab Emirates
	Indonesia	Kuwait	Qatar	Venezuela
<b>Category III</b>				
	Afghanistan	Cuba	Liberia	Sao Tome and Principe
	Albania	Cyprus	Madagascar	Senegal
	Angola	D.P.R. Korea	Malawi	Seychelles
	Antigua and Barbuda	Djibouti	Malaysia	Sierra Leone
	Argentina	Dominica	Maldives	Solomon Islands
	Armenia	Dominican Republic	Mali	Somalia
	Azerbaijan	Ecuador	Malta	Sri Lanka
	Bangladesh	Egypt	Mauritania	Sudan
	Barbados	El Salvador	Mauritius	Suriname
	Belize	Equatorial Guinea	Mexico	Swaziland
	Benin	Eritrea	Mongolia	Syria
	Bhutan	Etiopia	Morocco	Tajikistan
	Bolivia	Fiji	Mozambique	Tanzania, United
	Bosnia and Herzegovina	Gambia,	Myanmar	Republic of
	Botswana	Georgia	Namibia	Thailand
	Brazil	Ghana	Nepal	The Former Yugoslav
	Burkina Faso	Grenada	Nicaragua	Republic of Macedonia
	Burundi	Guatemala	Niger	Togo
	Cambodia	Guinea	Oman	Tonga
	Cameroon	Guinea-Bissau	Pakistan	Trinidad and Tobago
	Cape Verde	Guyana	Panama	Tunisia
	Central African Republic	Haiti	Papua New Guinea	Turkey
	Chad	Honduras	Paraguay	Uganda
	Chile	India	Peru	Uruguay
	China	Israel	Philippines	Viet Nam
	Colombia	Jamaica	Republic of Korea	Western Samoa
	Comoros	Jordan	Romania	Yemen
	Congo	Kenya	Rwanda	Yugoslavia
	Cook Islands	Kyrgyzstan	Saint Christopher and Nevis	Zaire
	Costa Rica	Laos	Saint Lucia	Zambia
	Côte d'Ivoire	Lebanon	Saint Vincent and the	Zimbabwe
	Croatia	Lesotho	Grenadines	

## AGREEMENT ESTABLISHING IFAD

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- ▶ **Second revised printing 30 March 1988**
- ▶ **Third printing 23 January 1990**
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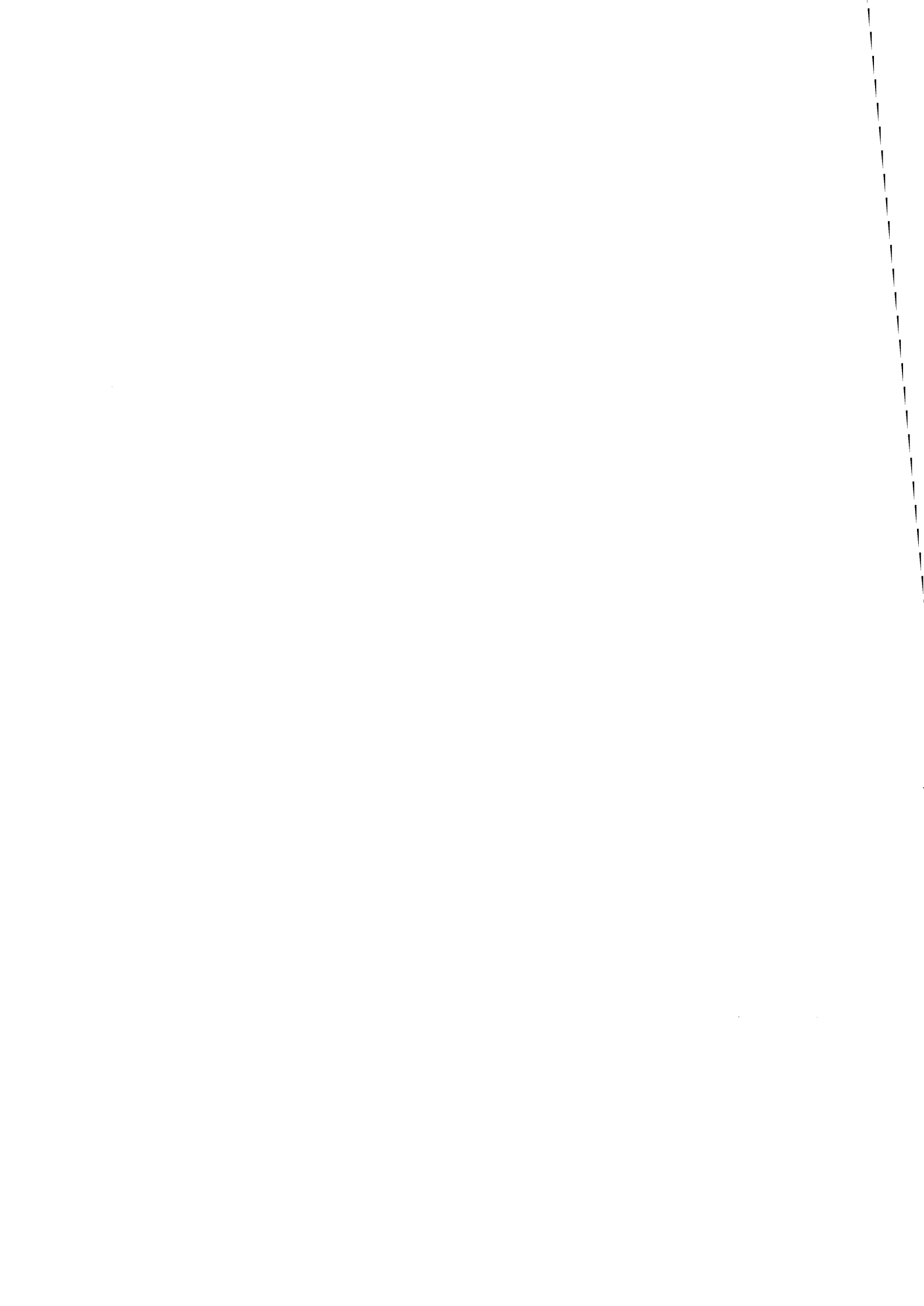
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00142 Rome, Italy  
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**II. RECORDS RELATING TO THE RECOGNITION BY  
IFAD OF THE JURISDICTION OF THE ADMINISTRATIVE  
TRIBUNAL OF THE INTERNATIONAL LABOUR  
ORGANIZATION OVER DISPUTES BETWEEN IFAD AND  
ITS STAFF**





4 October 88

THE PRESIDENT

Dear Mr. Blanchard,

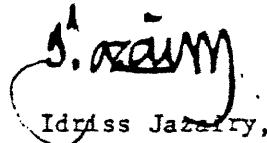
The Executive Board of the International Fund for Agricultural Development, at its meeting held from 26 to 28 April 1988, adopted a decision authorising the President of the Fund to recognise the jurisdiction of an Administrative Tribunal over disputes between the Fund and its employees.

In accordance with that decision and with Article II, paragraph 5, of the Statute of the Administrative Tribunal of the International Labour Organisation and with the Annex to that Statute, I have the honour to inform you that the Fund recognises the Tribunal's competence to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of staff of the Fund and of the provisions of the Personnel Policies Manual which are applicable to them and that the Fund likewise accepts the Tribunal's Rules of Procedure.

I should be grateful if you would submit the matter to the Governing Body of the International Labour Office and invite it, in accordance with Article II(5) of the Statute to approve the Fund's declaration of recognition of the Tribunal's jurisdiction and acceptance of its Rules of Procedure with effect from 1 January 1989.

Our Executive Board has already amended the Personnel Policies Manual of the Fund to provide for referral to an Administrative Tribunal.

Yours sincerely,

  
Idriss Jazairy,

Mr. Francis Blanchard,  
Director-General,  
International Labour Office,  
4, route des Morillons,  
CH-1211 Geneva 22,  
Switzerland





UN 205.00



INTERNATIONAL LABOUR OFFICE  
GENEVA

THE DIRECTOR-GENERAL



READ  
8  
2226 T

29 NOV. 1988

Dear Sir,

By your letter of 4 October 1988 you addressed to me a declaration by the International Fund for Agricultural Development that as from 1 January 1989 it wished to recognise the jurisdiction of the Administrative Tribunal of the International Labour Organisation, the declaration being the one required by Article II(5) of the Tribunal's Statute.

The Governing Body of the International Labour Office approved the declaration on 18 November, at its 241st Session and the Tribunal will accordingly be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of staff regulations of the Fund.

The Registrar of the Tribunal will be pleased to advise you on any administrative matters that may arise.

Yours faithfully,

**IFAD**  
Legal Services  
Division  
16 DEC 1988  
Received: *[Signature]*

IFAD REGISTRY  
- 8 DEC 1988  
ACTION  
~~SECRET~~  
INFORMATION  
*[Handwritten notes]*

*[Signature]*  
Francis Blanchard.  
REGISTRY & COMMUNICATIONS

*NAWA Za*

The President,  
International Fund for  
Agricultural Development,  
107, Via del Serafico,  
00142 ROME





Executive Board

Thirty-Fifth Session  
Rome, 29 November - 2 December 1988

Agenda Item 9(b)

THE INTERNATIONAL LABOUR ORGANIZATION ADMINISTRATIVE TRIBUNAL (ILOAT)

1. The Executive Board, at its Thirty-Third Session in April 1988, after considering document EB 88/33/R.19, approved an amendment to IFAD's Personnel Policies Manual (PPM) permitting IFAD to join an administrative tribunal. During the discussions there were a number of members of the Board who suggested that the International Labour Organization Administrative Tribunal (ILOAT) might be the most appropriate choice.
2. Accordingly, as reported by the President in his opening statement to the Thirty-Fourth Session of the Board in September 1988, the President had further reviewed the various possibilities and the Secretariat entered into discussions with the Secretariat of ILOAT to work out the necessary arrangements. Subsequently the President wrote to the Director-General of the International Labour Organization (ILO), formally indicating IFAD's intention to recognise the jurisdiction of the ILOAT.
3. IFAD has been informed that its declaration of recognition should be approved at the next session of the ILO governing body, which takes place from 3 to 18 November 1988. Thus, by the time of the Thirty-Fifth Session of the Board, IFAD's declaration of recognition should have been approved.

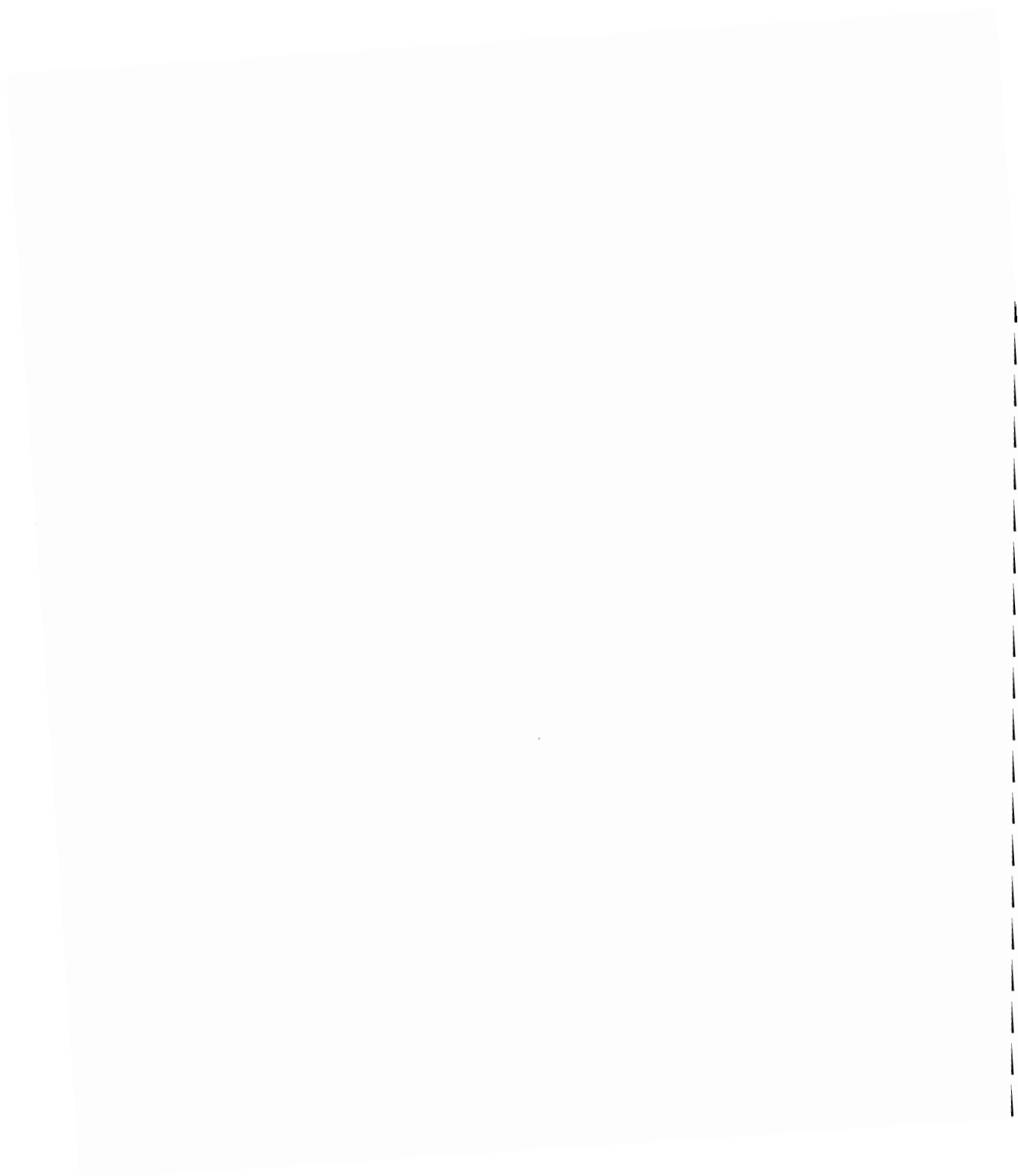
Recommendation

4. To finalise this procedure on IFAD's part, the ILOAT Secretariat has advised IFAD that it should consequently now further amend the PPM so as to specify the name of the tribunal. It is therefore recommended that the Board approve the following amendment to paragraph 4.10.2 (b), as amended by the Board at its Thirty-Third Session, to read as follows:

"(b) Should a matter affecting an individual employee not be resolved as a result of representation under this procedure, the employee may refer the matter for final determination to the International Labour Organization Administrative Tribunal (ILOAT)."



**III. STATUTE OF THE  
ADMINISTRATIVE TRIBUNAL OF THE  
INTERNATIONAL LABOUR ORGANIZATION**



# **Statute of the Administrative Tribunal of the International Labour Organization**

(Adopted by the International Labour Conference on 9 October 1946 and amended by the Conference on 29 June 1949, 17 June 1986, 19 June 1992, 16 June 1998 and 11 June 2008)

## **Article I**

There is established by the present Statute a Tribunal to be known as the International Labour Organization Administrative Tribunal.

## **Article II**

1. The Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case.

2. The Tribunal shall be competent to settle any dispute concerning the compensation provided for in cases of invalidity, injury or disease incurred by an official in the course of his employment and to fix finally the amount of compensation, if any, which is to be paid.

3. The Tribunal shall be competent to hear any complaint of non-observance of the Staff Pensions Regulations or of rules made in virtue thereof in regard to an official or the wife, husband or children of an official, or in regard to any class of officials to which the said Regulations or the said rules apply.

4. The Tribunal shall be competent to hear disputes arising out of contracts to which the International Labour Organization is a party and which provide for the competence of the Tribunal in any case of dispute with regard to their execution.

5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex hereto which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure, and which is approved by the Governing Body.

6. The Tribunal shall be open:

(a) to the official, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death;

(b) to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

7. Any dispute as to the competence of the Tribunal shall be decided by it, subject to the provisions of article XII.

### **Article III**

1. The Tribunal shall consist of seven judges who shall all be of different nationalities.
2. The judges shall be appointed for a period of three years by the Conference of the International Labour Organization.
3. A meeting of the Tribunal shall be composed of three judges or, in exceptional circumstances, five, to be designated by the President, or all seven.

### **Article IV**

The Tribunal shall hold ordinary sessions at dates to be fixed by the Rules of Court, subject to there being cases on its list and to such cases being, in the opinion of the President, of a character to justify holding the session. An extraordinary session may be convened at the request of the Chairman of the Governing Body of the International Labour Office.

### **Article V**

The Tribunal, at its discretion, may decide or decline to hold oral proceedings, including upon request of a party. The Tribunal shall decide in each case whether the oral proceedings before it or any part of them shall be public or in camera.

### **Article VI**

1. The Tribunal shall take decisions by a majority vote; judgments shall be final and without appeal.
2. The reasons for a judgment shall be stated. The judgment shall be communicated in writing to the Director-General of the International Labour Office and to the complainant.
3. Judgments shall be drawn up in a single copy, which shall be filed in the archives of the International Labour Office, where it shall be available for consultation by any person concerned.

### **Article VII**

1. A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations.
2. To be receivable, a complaint must also have been filed within ninety days after the complainant was notified of the decision impugned or, in the case of a decision affecting a class of officials, after the decision was published.



3. Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration.

4. The filing of a complaint shall not involve suspension of the execution of the decision impugned.

### **Article VIII**

In cases falling under article II, the Tribunal, if satisfied that the complaint was well founded, shall order the rescinding of the decision impugned or the performance of the obligation relied upon. If such rescinding of a decision or execution of an obligation is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to him.

### **Article IX**

1. The administrative arrangements necessary for the operation of the Tribunal shall be made by the International Labour Office in consultation with the Tribunal.

2. Expenses occasioned by sessions of the Tribunal shall be borne by the International Labour Office.

3. Any compensation awarded by the Tribunal shall be chargeable to the budget of the International Labour Organization.

### **Article X**

1. Subject to the provisions of the present Statute, the Tribunal shall draw up Rules of Court covering:

(a) the election of the President and Vice-President;

(b) the convening and conduct of its sessions;

(c) the rules to be followed in presenting complaints and in the subsequent procedure including intervention in the proceedings before the Tribunal by persons whose rights as officials may be affected by the judgment;

(d) the procedure to be followed with regard to complaints and disputes submitted to the Tribunal by virtue of paragraphs 3 and 4 of article II;

(e) and, generally, all matters relating to the operation of the Tribunal which are not settled by the present Statute.

2. The Tribunal may amend the Rules of Court.

## **Article XI**

The present Statute shall remain in force during the pleasure of the General Conference of the International Labour Organization. It may be amended by the Conference or such other organ of the Organization as the Conference may determine.

## **Article XII**

1. In any case in which the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Governing Body, for an advisory opinion, to the International Court of Justice.

2. The opinion given by the Court shall be binding.

## **ANNEX TO THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANIZATION**

To be entitled to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization in accordance with paragraph 5 of article II of its Statute, an international organization must either be intergovernmental in character, or fulfil the following conditions:

- a) it shall be clearly international in character, having regard to its membership, structure and scope of activity;
- b) it shall not 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 a permanent nature at the international level and offer, in the opinion of the Governing Body, sufficient guarantees as to its institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal's judgments.

The Statute of the Tribunal applies in its entirety to such international organizations subject to the following provisions which, in cases affecting any one of these organizations, are applicable as follows:

### **Article VI, paragraph 2**

The reasons for a judgment shall be stated. The judgment shall be communicated in writing to the Director-General of the International Labour Office, to the Director-General of the international organization against which the complaint is filed, and to the complainant.

**Article VI, paragraph 3**

Judgments shall be drawn up in two copies, of which one shall be filed in the archives of the International Labour Office and the other in the archives of the international organization against which the complaint is filed, where they shall be available for consultation by any person concerned.

**Article IX, paragraph 2**

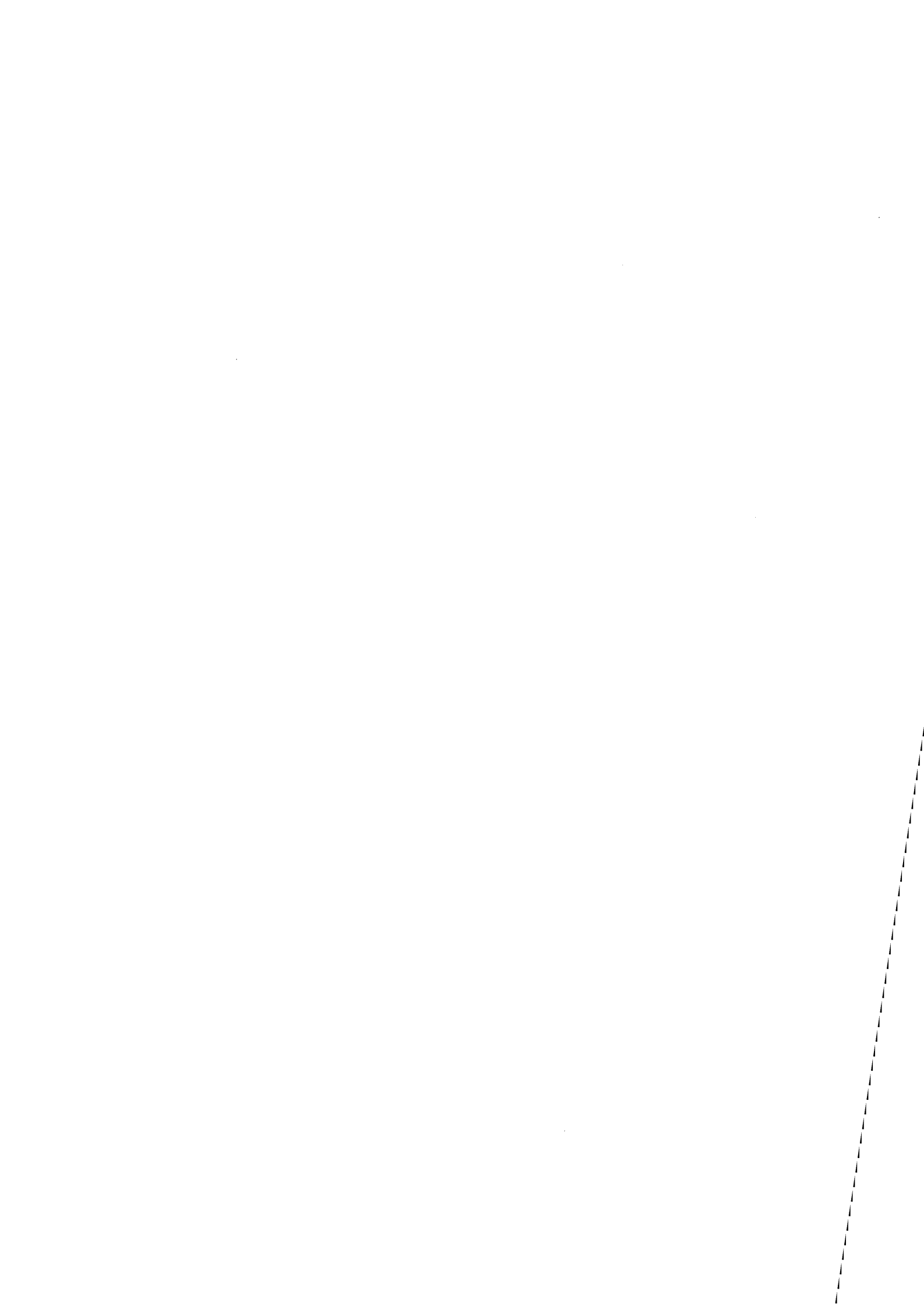
Expenses occasioned by the sessions or hearings of the Administrative Tribunal shall be borne by the international organization against which the complaint is filed.

**Article IX, paragraph 3**

Any compensation awarded by the Tribunal shall be chargeable to the budget of the international organization against which the complaint is filed.

**Article XII, paragraph 1**

In any case in which the Executive Board of an international organization which has made the declaration specified in article II. paragraph 5, of the Statute of the Tribunal challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Executive Board concerned, for an advisory opinion, to the International Court of Justice.



**IV. UNITED NATIONS CONVENTION TO COMBAT  
DESERTIFICATION IN COUNTRIES EXPERIENCING  
SERIOUS DROUGHT AND/OR DESERTIFICATION,  
PARTICULARLY IN AFRICA (UNCCD)**





**General Assembly**

Distr.  
GENERAL

A/AC.241/27  
12 September 1994

ENGLISH  
Original: ENGLISH

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INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR  
THE ELABORATION OF AN INTERNATIONAL CONVENTION  
TO COMBAT DESERTIFICATION IN THOSE COUNTRIES  
EXPERIENCING SERIOUS DROUGHT AND/OR  
DESERTIFICATION, PARTICULARLY IN AFRICA

ELABORATION OF AN INTERNATIONAL CONVENTION TO COMBAT DESERTIFICATION  
IN COUNTRIES EXPERIENCING SERIOUS DROUGHT AND/OR DESERTIFICATION,  
PARTICULARLY IN AFRICA

Final text of the Convention

Note by the Secretariat

Attached is the final text of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, following completion of the verification processes as requested by the INCED upon adoption of the Convention at its fifth session, on 17 June 1994.

The final text has been forwarded to the Office of Legal Affairs of the United Nations, which acts as Depositary, in order to prepare for the signing ceremony to be held in Paris, on 14-15 October 1994.

UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION  
IN THOSE COUNTRIES EXPERIENCING SERIOUS DROUGHT AND/OR  
DESERTIFICATION, PARTICULARLY IN AFRICA

The Parties to this Convention,

*Affirming* that human beings in affected or threatened areas are at the centre of concerns to combat desertification and mitigate the effects of drought,

*Reflecting* the urgent concern of the international community, including States and international organizations, about the adverse impacts of desertification and drought,

*Aware* that arid, semi-arid and dry sub-humid areas together account for a significant proportion of the Earth's land area and are the habitat and source of livelihood for a large segment of its population,

*Acknowledging* that desertification and drought are problems of global dimension in that they affect all regions of the world and that joint action of the international community is needed to combat desertification and/or mitigate the effects of drought,

*Noting* the high concentration of developing countries, notably the least developed countries, among those experiencing serious drought and/or desertification, and the particularly tragic consequences of these phenomena in Africa,

*Noting also* that desertification is caused by complex interactions among physical, biological, political, social, cultural and economic factors,

*Considering* the impact of trade and relevant aspects of international economic relations on the ability of affected countries to combat desertification adequately,

*Conscious* that sustainable economic growth, social development and poverty eradication are priorities of affected developing countries, particularly in Africa, and are essential to meeting sustainability objectives,

*Mindful* that desertification and drought affect sustainable development through their interrelationships with important social problems such as poverty, poor health and nutrition, lack of food security, and those arising from migration, displacement of persons and demographic dynamics,

*Appreciating* the significance of the past efforts and experience of States and international organizations in combating desertification and mitigating the effects of drought, particularly in implementing the Plan of Action to Combat Desertification which was adopted at the United Nations Conference on Desertification in 1977,



*Realizing* that, despite efforts in the past, progress in combating desertification and mitigating the effects of drought has not met expectations and that a new and more effective approach is needed at all levels within the framework of sustainable development,

*Recognizing* the validity and relevance of decisions adopted at the United Nations Conference on Environment and Development, particularly of Agenda 21 and its chapter 12, which provide a basis for combating desertification,

*Reaffirming* in this light the commitments of developed countries as contained in paragraph 13 of chapter 33 of Agenda 21,

*Recalling* General Assembly resolution 47/188, particularly the priority in it prescribed for Africa, and all other relevant United Nations resolutions, decisions and programmes on desertification and drought, as well as relevant declarations by African countries and those from other regions,

*Reaffirming* the Rio Declaration on Environment and Development which states, in its Principle 2, that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

*Recognizing* that national Governments play a critical role in combating desertification and mitigating the effects of drought and that progress in that respect depends on local implementation of action programmes in affected areas,

*Recognizing* also the importance and necessity of international cooperation and partnership in combating desertification and mitigating the effects of drought,

*Recognizing* further the importance of the provision to affected developing countries, particularly in Africa, of effective means, inter alia substantial financial resources, including new and additional funding, and access to technology, without which it will be difficult for them to implement fully their commitments under this Convention,

*Expressing* concern over the impact of desertification and drought on affected countries in Central Asia and the Transcaucasus,

*Stressing* the important role played by women in regions affected by desertification and/or drought, particularly in rural areas of developing countries, and the importance of ensuring the full participation of both men and women at all levels in programmes to combat desertification and mitigate the effects of drought,

*Emphasizing* the special role of non-governmental organizations and other major groups in programmes to combat desertification and mitigate the effects of drought,

*Bearing in mind* the relationship between desertification and other environmental problems of global dimension facing the international and national communities,

*Bearing also in mind* the contribution that combating desertification can make to achieving the objectives of the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity and other related environmental conventions,

*Believing* that strategies to combat desertification and mitigate the effects of drought will be most effective if they are based on sound systematic observation and rigorous scientific knowledge and if they are continuously re-evaluated,

*Recognizing* the urgent need to improve the effectiveness and coordination of international cooperation to facilitate the implementation of national plans and priorities,

*Determined* to take appropriate action in combating desertification and mitigating the effects of drought for the benefit of present and future generations,

*Have agreed* as follows:

## PART I

### INTRODUCTION

#### Article 1

##### *Use of terms*

For the purposes of this Convention:

- (a) "desertification" means land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities;
- (b) "combating desertification" includes activities which are part of the integrated development of land in arid, semi-arid and dry sub-humid areas for sustainable development which are aimed at:
  - (i) prevention and/or reduction of land degradation;
  - (ii) rehabilitation of partly degraded land; and
  - (iii) reclamation of desertified land;

- (c) "drought" means the naturally occurring phenomenon that exists when precipitation has been significantly below normal recorded levels, causing serious hydrological imbalances that adversely affect land resource production systems;
- (d) "mitigating the effects of drought" means activities related to the prediction of drought and intended to reduce the vulnerability of society and natural systems to drought as it relates to combating desertification;
- (e) "land" means the terrestrial bio-productive system that comprises soil, vegetation, other biota, and the ecological and hydrological processes that operate within the system;
- (f) "land degradation" means reduction or loss, in arid, semi-arid and dry sub-humid areas, of the biological or economic productivity and complexity of rainfed cropland, irrigated cropland, or range, pasture, forest and woodlands resulting from land uses or from a process or combination of processes, including processes arising from human activities and habitation patterns, such as:
  - (i) soil erosion caused by wind and/or water;
  - (ii) deterioration of the physical, chemical and biological or economic properties of soil; and
  - (iii) long-term loss of natural vegetation;
- (g) "arid, semi-arid and dry sub-humid areas" means areas, other than polar and sub-polar regions, in which the ratio of annual precipitation to potential evapotranspiration falls within the range from 0.05 to 0.65;
- (h) "affected areas" means arid, semi-arid and/or dry sub-humid areas affected or threatened by desertification;
- (i) "affected countries" means countries whose lands include, in whole or in part, affected areas;
- (j) "regional economic integration organization" means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention;
- (k) "developed country Parties" means developed country Parties and regional economic integration organizations constituted by developed countries.

## Article 2

### *Objective*

1. The objective of this Convention is to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa, through effective action at all levels, supported by international cooperation and partnership arrangements, in the framework of an integrated approach which is consistent with Agenda 21, with a view to contributing to the achievement of sustainable development in affected areas.

2. Achieving this objective will involve long-term integrated strategies that focus simultaneously, in affected areas, on improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources, leading to improved living conditions, in particular at the community level.

## Article 3

### *Principles*

In order to achieve the objective of this Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

- (a) the Parties should ensure that decisions on the design and implementation of programmes to combat desertification and/or mitigate the effects of drought are taken with the participation of populations and local communities and that an enabling environment is created at higher levels to facilitate action at national and local levels;
- (b) the Parties should, in a spirit of international solidarity and partnership, improve cooperation and coordination at subregional, regional and international levels, and better focus financial, human, organizational and technical resources where they are needed;
- (c) the Parties should develop, in a spirit of partnership, cooperation among all levels of government, communities, non-governmental organizations and landholders to establish a better understanding of the nature and value of land and scarce water resources in affected areas and to work towards their sustainable use; and
- (d) the Parties should take into full consideration the special needs and circumstances of affected developing country Parties, particularly the least developed among them.

PART II

GENERAL PROVISIONS

Article 4

*General obligations*

1. The Parties shall implement their obligations under this Convention, individually or jointly, either through existing or prospective bilateral and multilateral arrangements or a combination thereof, as appropriate, emphasizing the need to coordinate efforts and develop a coherent long-term strategy at all levels.

2. In pursuing the objective of this Convention, the Parties shall:

- (a) adopt an integrated approach addressing the physical, biological and socio-economic aspects of the processes of desertification and drought;
- (b) give due attention, within the relevant international and regional bodies, to the situation of affected developing country Parties with regard to international trade, marketing arrangements and debt with a view to establishing an enabling international economic environment conducive to the promotion of sustainable development;
- (c) integrate strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought;
- (d) promote cooperation among affected country Parties in the fields of environmental protection and the conservation of land and water resources, as they relate to desertification and drought;
- (e) strengthen subregional, regional and international cooperation;
- (f) cooperate within relevant intergovernmental organizations;
- (g) determine institutional mechanisms, if appropriate, keeping in mind the need to avoid duplication; and
- (h) promote the use of existing bilateral and multilateral financial mechanisms and arrangements that mobilize and channel substantial financial resources to affected developing country Parties in combating desertification and mitigating the effects of drought.

3. Affected developing country Parties are eligible for assistance in the implementation of the Convention.

Article 5

*Obligations of affected country Parties*

In addition to their obligations pursuant to article 4, affected country Parties undertake to:

- (a) give due priority to combating desertification and mitigating the effects of drought, and allocate adequate resources in accordance with their circumstances and capabilities;
- (b) establish strategies and priorities, within the framework of sustainable development plans and/or policies, to combat desertification and mitigate the effects of drought;
- (c) address the underlying causes of desertification and pay special attention to the socio-economic factors contributing to desertification processes;
- (d) promote awareness and facilitate the participation of local populations, particularly women and youth, with the support of non-governmental organizations, in efforts to combat desertification and mitigate the effects of drought; and
- (e) provide an enabling environment by strengthening, as appropriate, relevant existing legislation and, where they do not exist, enacting new laws and establishing long-term policies and action programmes.

Article 6

*Obligations of developed country Parties*

In addition to their general obligations pursuant to article 4, developed country Parties undertake to:

- (a) actively support, as agreed, individually or jointly, the efforts of affected developing country Parties, particularly those in Africa, and the least developed countries, to combat desertification and mitigate the effects of drought;
- (b) provide substantial financial resources and other forms of support to assist affected developing country Parties, particularly those in Africa, effectively to develop and implement their own long-term plans and strategies to combat desertification and mitigate the effects of drought;
- (c) promote the mobilization of new and additional funding pursuant to article 20, paragraph 2 (b);
- (d) encourage the mobilization of funding from the private sector and other non-governmental sources; and

- (e) promote and facilitate access by affected country Parties, particularly affected developing country Parties, to appropriate technology, knowledge and know-how.

Article 7

*Priority for Africa*

In implementing this Convention, the Parties shall give priority to affected African country Parties, in the light of the particular situation prevailing in that region, while not neglecting affected developing country Parties in other regions.

Article 8

*Relationship with other conventions*

1. The Parties shall encourage the coordination of activities carried out under this Convention and, if they are Parties to them, under other relevant international agreements, particularly the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, in order to derive maximum benefit from activities under each agreement while avoiding duplication of effort. The Parties shall encourage the conduct of joint programmes, particularly in the fields of research, training, systematic observation and information collection and exchange, to the extent that such activities may contribute to achieving the objectives of the agreements concerned.

2. The provisions of this Convention shall not affect the rights and obligations of any Party deriving from a bilateral, regional or international agreement into which it has entered prior to the entry into force of this Convention for it.

PART III

ACTION PROGRAMMES, SCIENTIFIC AND TECHNICAL COOPERATION  
AND SUPPORTING MEASURES

Section 1: Action programmes

Article 9

*Basic approach*

1. In carrying out their obligations pursuant to article 5, affected developing country Parties and any other affected country Party in the framework of its regional implementation annex or, otherwise, that has notified the Permanent Secretariat in writing of its intention to prepare a national action

programme, shall, as appropriate, prepare, make public and implement national action programmes, utilizing and building, to the extent possible, on existing relevant successful plans and programmes, and subregional and regional action programmes, as the central element of the strategy to combat desertification and mitigate the effects of drought. Such programmes shall be updated through a continuing participatory process on the basis of lessons from field action, as well as the results of research. The preparation of national action programmes shall be closely interlinked with other efforts to formulate national policies for sustainable development.

2. In the provision by developed country Parties of different forms of assistance under the terms of article 6, priority shall be given to supporting, as agreed, national, subregional and regional action programmes of affected developing country Parties, particularly those in Africa, either directly or through relevant multilateral organizations or both.

3. The Parties shall encourage organs, funds and programmes of the United Nations system and other relevant intergovernmental organizations, academic institutions, the scientific community and non-governmental organizations in a position to cooperate, in accordance with their mandates and capabilities, to support the elaboration, implementation and follow-up of action programmes.

#### Article 10

##### *National action programmes*

1. The purpose of national action programmes is to identify the factors contributing to desertification and practical measures necessary to combat desertification and mitigate the effects of drought.

2. National action programmes shall specify the respective roles of government, local communities and land users and the resources available and needed. They shall, inter alia:

- (a) incorporate long-term strategies to combat desertification and mitigate the effects of drought, emphasize implementation and be integrated with national policies for sustainable development;
- (b) allow for modifications to be made in response to changing circumstances and be sufficiently flexible at the local level to cope with different socio-economic, biological and geo-physical conditions;
- (c) give particular attention to the implementation of preventive measures for lands that are not yet degraded or which are only slightly degraded;
- (d) enhance national climatological, meteorological and hydrological capabilities and the means to provide for drought early warning;



- (e) promote policies and strengthen institutional frameworks which develop cooperation and coordination, in a spirit of partnership, between the donor community, governments at all levels, local populations and community groups, and facilitate access by local populations to appropriate information and technology;
- (f) provide for effective participation at the local, national and regional levels of non-governmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes; and
- (g) require regular review of, and progress reports on, their implementation.

3. National action programmes may include, inter alia, some or all of the following measures to prepare for and mitigate the effects of drought:

- (a) establishment and/or strengthening, as appropriate, of early warning systems, including local and national facilities and joint systems at the subregional and regional levels, and mechanisms for assisting environmentally displaced persons;
- (b) strengthening of drought preparedness and management, including drought contingency plans at the local, national, subregional and regional levels, which take into consideration seasonal to interannual climate predictions;
- (c) establishment and/or strengthening, as appropriate, of food security systems, including storage and marketing facilities, particularly in rural areas;
- (d) establishment of alternative livelihood projects that could provide incomes in drought prone areas; and
- (e) development of sustainable irrigation programmes for both crops and livestock.

4. Taking into account the circumstances and requirements specific to each affected country Party, national action programmes include, as appropriate, inter alia, measures in some or all of the following priority fields as they relate to combating desertification and mitigating the effects of drought in affected areas and to their populations: promotion of alternative livelihoods and improvement of national economic environments with a view to strengthening programmes aimed at the eradication of poverty and at ensuring food security; demographic dynamics; sustainable management of natural resources; sustainable agricultural practices; development and efficient use of various energy sources; institutional and legal frameworks; strengthening of capabilities for assessment and systematic observation, including hydrological and meteorological services, and capacity building, education and public awareness.

Article 11

*Subregional and regional action programmes*

Affected country Parties shall consult and cooperate to prepare, as appropriate, in accordance with relevant regional implementation annexes, subregional and/or regional action programmes to harmonize, complement and increase the efficiency of national programmes. The provisions of article 10 shall apply mutatis mutandis to subregional and regional programmes. Such cooperation may include agreed joint programmes for the sustainable management of transboundary natural resources, scientific and technical cooperation, and strengthening of relevant institutions.

Article 12

*International cooperation*

Affected country Parties, in collaboration with other Parties and the international community, should cooperate to ensure the promotion of an enabling international environment in the implementation of the Convention. Such cooperation should also cover fields of technology transfer as well as scientific research and development, information collection and dissemination and financial resources.

Article 13

*Support for the elaboration and implementation of action programmes*

1. Measures to support action programmes pursuant to article 9 include, inter alia:

- (a) financial cooperation to provide predictability for action programmes, allowing for necessary long-term planning;
- (b) elaboration and use of cooperation mechanisms which better enable support at the local level, including action through non-governmental organizations, in order to promote the replicability of successful pilot programme activities where relevant;
- (c) increased flexibility in project design, funding and implementation in keeping with the experimental, iterative approach indicated for participatory action at the local community level; and
- (d) as appropriate, administrative and budgetary procedures that increase the efficiency of cooperation and of support programmes.

2. In providing such support to affected developing country Parties, priority shall be given to African country Parties and to least developed country Parties.

## Article 14

*Coordination in the elaboration and implementation  
of action programmes*

1. The Parties shall work closely together, directly and through relevant intergovernmental organizations, in the elaboration and implementation of action programmes.

2. The Parties shall develop operational mechanisms, particularly at the national and field levels, to ensure the fullest possible coordination among developed country Parties, developing country Parties and relevant intergovernmental and non-governmental organizations, in order to avoid duplication, harmonize interventions and approaches, and maximize the impact of assistance. In affected developing country Parties, priority will be given to coordinating activities related to international cooperation in order to maximize the efficient use of resources, to ensure responsive assistance, and to facilitate the implementation of national action programmes and priorities under this Convention.

## Article 15

*Regional implementation annexes*

Elements for incorporation in action programmes shall be selected and adapted to the socio-economic, geographical and climatic factors applicable to affected country Parties or regions, as well as to their level of development. Guidelines for the preparation of action programmes and their exact focus and content for particular subregions and regions are set out in the regional implementation annexes.

## Section 2: Scientific and technical cooperation

## Article 16

*Information collection, analysis and exchange*

The Parties agree, according to their respective capabilities, to integrate and coordinate the collection, analysis and exchange of relevant short term and long term data and information to ensure systematic observation of land degradation in affected areas and to understand better and assess the processes and effects of drought and desertification. This would help accomplish, inter alia, early warning and advance planning for periods of adverse climatic variation in a form suited for practical application by users at all levels, including especially local populations. To this end, they shall, as appropriate:

- (a) facilitate and strengthen the functioning of the global network of institutions and facilities for the collection, analysis and exchange of information, as well as for systematic observation at all levels, which shall, inter alia:

- (i) aim to use compatible standards and systems;
  - (ii) encompass relevant data and stations, including in remote areas;
  - (iii) use and disseminate modern technology for data collection, transmission and assessment on land degradation; and
  - (iv) link national, subregional and regional data and information centres more closely with global information sources;
- (b) ensure that the collection, analysis and exchange of information address the needs of local communities and those of decision makers, with a view to resolving specific problems, and that local communities are involved in these activities;
- (c) support and further develop bilateral and multilateral programmes and projects aimed at defining, conducting, assessing and financing the collection, analysis and exchange of data and information, including, inter alia, integrated sets of physical, biological, social and economic indicators;
- (d) make full use of the expertise of competent intergovernmental and non-governmental organizations, particularly to disseminate relevant information and experiences among target groups in different regions;
- (e) give full weight to the collection, analysis and exchange of socio-economic data, and their integration with physical and biological data;
- (f) exchange and make fully, openly and promptly available information from all publicly available sources relevant to combating desertification and mitigating the effects of drought; and
- (g) subject to their respective national legislation and/or policies, exchange information on local and traditional knowledge, ensuring adequate protection for it and providing appropriate return from the benefits derived from it, on an equitable basis and on mutually agreed terms, to the local populations concerned.

#### Article 17

##### *Research and development*

1. The Parties undertake, according to their respective capabilities, to promote technical and scientific cooperation in the fields of combating desertification and mitigating the effects of drought through appropriate national, subregional, regional and international institutions. To this end, they shall support research activities that:

- (a) contribute to increased knowledge of the processes leading to desertification and drought and the impact of, and distinction between, causal factors, both natural and human, with a view to combating desertification and mitigating the effects of drought, and achieving improved productivity as well as sustainable use and management of resources;
- (b) respond to well defined objectives, address the specific needs of local populations and lead to the identification and implementation of solutions that improve the living standards of people in affected areas;
- (c) protect, integrate, enhance and validate traditional and local knowledge, know-how and practices, ensuring, subject to their respective national legislation and/or policies, that the owners of that knowledge will directly benefit on an equitable basis and on mutually agreed terms from any commercial utilization of it or from any technological development derived from that knowledge;
- (d) develop and strengthen national, subregional and regional research capabilities in affected developing country Parties, particularly in Africa, including the development of local skills and the strengthening of appropriate capacities, especially in countries with a weak research base, giving particular attention to multidisciplinary and participative socio-economic research;
- (e) take into account, where relevant, the relationship between poverty, migration caused by environmental factors, and desertification;
- (f) promote the conduct of joint research programmes between national, subregional, regional and international research organizations, in both the public and private sectors, for the development of improved, affordable and accessible technologies for sustainable development through effective participation of local populations and communities; and
- (g) enhance the availability of water resources in affected areas, by means of, inter alia, cloud-seeding.

2. Research priorities for particular regions and subregions, reflecting different local conditions, should be included in action programmes. The Conference of the Parties shall review research priorities periodically on the advice of the Committee on Science and Technology.

#### Article 18

##### *Transfer, acquisition, adaptation and development of technology*

1. The Parties undertake, as mutually agreed and in accordance with their respective national legislation and/or policies, to promote, finance and/or facilitate the financing of the transfer, acquisition, adaptation and development of environmentally sound, economically viable and socially acceptable

technologies relevant to combating desertification and/or mitigating the effects of drought, with a view to contributing to the achievement of sustainable development in affected areas. Such cooperation shall be conducted bilaterally or multilaterally, as appropriate, making full use of the expertise of intergovernmental and non-governmental organizations. The Parties shall, in particular:

- (a) fully utilize relevant existing national, subregional, regional and international information systems and clearing-houses for the dissemination of information on available technologies, their sources, their environmental risks and the broad terms under which they may be acquired;
- (b) facilitate access, in particular by affected developing country Parties, on favourable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights, to technologies most suitable to practical application for specific needs of local populations, paying special attention to the social, cultural, economic and environmental impact of such technology;
- (c) facilitate technology cooperation among affected country Parties through financial assistance or other appropriate means;
- (d) extend technology cooperation with affected developing country Parties, including, where relevant, joint ventures, especially to sectors which foster alternative livelihoods; and
- (e) take appropriate measures to create domestic market conditions and incentives, fiscal or otherwise, conducive to the development, transfer, acquisition and adaptation of suitable technology, knowledge, know-how and practices, including measures to ensure adequate and effective protection of intellectual property rights.

2. The Parties shall, according to their respective capabilities, and subject to their respective national legislation and/or policies, protect, promote and use in particular relevant traditional and local technology, knowledge, know-how and practices and, to that end, they undertake to:

- (a) make inventories of such technology, knowledge, know-how and practices and their potential uses with the participation of local populations, and disseminate such information, where appropriate, in cooperation with relevant intergovernmental and non-governmental organizations;
- (b) ensure that such technology, knowledge, know-how and practices are adequately protected and that local populations benefit directly, on an equitable basis and as mutually agreed, from any commercial utilization of them or from any technological development derived therefrom;
- (c) encourage and actively support the improvement and dissemination of such technology, knowledge, know-how and practices or of the development of new technology based on them; and

- (d) facilitate, as appropriate, the adaptation of such technology, knowledge, know-how and practices to wide use and integrate them with modern technology, as appropriate.

Section 3: Supporting measures

Article 19

*Capacity building, education and public awareness*

1. The Parties recognize the significance of capacity building -- that is to say, institution building, training and development of relevant local and national capacities -- in efforts to combat desertification and mitigate the effects of drought. They shall promote, as appropriate, capacity-building:

- (a) through the full participation at all levels of local people, particularly at the local level, especially women and youth, with the cooperation of non-governmental and local organizations;
- (b) by strengthening training and research capacity at the national level in the field of desertification and drought;
- (c) by establishing and/or strengthening support and extension services to disseminate relevant technology methods and techniques more effectively, and by training field agents and members of rural organizations in participatory approaches for the conservation and sustainable use of natural resources;
- (d) by fostering the use and dissemination of the knowledge, know-how and practices of local people in technical cooperation programmes, wherever possible;
- (e) by adapting, where necessary, relevant environmentally sound technology and traditional methods of agriculture and pastoralism to modern socio-economic conditions;
- (f) by providing appropriate training and technology in the use of alternative energy sources, particularly renewable energy resources, aimed particularly at reducing dependence on wood for fuel;
- (g) through cooperation, as mutually agreed, to strengthen the capacity of affected developing country Parties to develop and implement programmes in the field of collection, analysis and exchange of information pursuant to article 16;
- (h) through innovative ways of promoting alternative livelihoods, including training in new skills;
- (i) by training of decision makers, managers, and personnel who are responsible for the collection and analysis of data for the dissemination and use of early warning information on drought conditions and for food production;

- (j) through more effective operation of existing national institutions and legal frameworks and, where necessary, creation of new ones, along with strengthening of strategic planning and management; and
- (k) by means of exchange visitor programmes to enhance capacity building in affected country Parties through a long-term, interactive process of learning and study.

2. Affected developing country Parties shall conduct, in cooperation with other Parties and competent intergovernmental and non-governmental organizations, as appropriate, an interdisciplinary review of available capacity and facilities at the local and national levels, and the potential for strengthening them.

3. The Parties shall cooperate with each other and through competent intergovernmental organizations, as well as with non-governmental organizations, in undertaking and supporting public awareness and educational programmes in both affected and, where relevant, unaffected country Parties to promote understanding of the causes and effects of desertification and drought and of the importance of meeting the objective of this Convention. To that end, they shall:

- (a) organize awareness campaigns for the general public;
- (b) promote, on a permanent basis, access by the public to relevant information, and wide public participation in education and awareness activities;
- (c) encourage the establishment of associations that contribute to public awareness;
- (d) develop and exchange educational and public awareness material, where possible in local languages, exchange and second experts to train personnel of affected developing country Parties in carrying out relevant education and awareness programmes, and fully utilize relevant educational material available in competent international bodies;
- (e) assess educational needs in affected areas, elaborate appropriate school curricula and expand, as needed, educational and adult literacy programmes and opportunities for all, in particular for girls and women, on the identification, conservation and sustainable use and management of the natural resources of affected areas; and
- (f) develop interdisciplinary participatory programmes integrating desertification and drought awareness into educational systems and in non-formal, adult, distance and practical educational programmes.

4. The Conference of the Parties shall establish and/or strengthen networks of regional education and training centres to combat desertification and mitigate the effects of drought. These networks shall be coordinated by an institution created or designated for that purpose, in order to train scientific, technical and management personnel and to strengthen existing institutions responsible for education and training in affected country Parties, where appropriate, with a view to harmonizing programmes and to organizing exchanges



of experience among them. These networks shall cooperate closely with relevant intergovernmental and non-governmental organizations to avoid duplication of effort.

## Article 20

### *Financial resources*

1. Given the central importance of financing to the achievement of the objective of the Convention, the Parties, taking into account their capabilities, shall make every effort to ensure that adequate financial resources are available for programmes to combat desertification and mitigate the effects of drought.

2. In this connection, developed country Parties, while giving priority to affected African country Parties without neglecting affected developing country Parties in other regions, in accordance with article 7, undertake to:

- (a) mobilize substantial financial resources, including grants and concessional loans, in order to support the implementation of programmes to combat desertification and mitigate the effects of drought;
- (b) promote the mobilization of adequate, timely and predictable financial resources, including new and additional funding from the Global Environment Facility of the agreed incremental costs of those activities concerning desertification that relate to its four focal areas, in conformity with the relevant provisions of the Instrument establishing the Global Environment Facility;
- (c) facilitate through international cooperation the transfer of technology, knowledge and know-how; and
- (d) explore, in cooperation with affected developing country Parties, innovative methods and incentives for mobilizing and channelling resources, including those of foundations, non-governmental organizations and other private sector entities, particularly debt swaps and other innovative means which increase financing by reducing the external debt burden of affected developing country Parties, particularly those in Africa.

3. Affected developing country Parties, taking into account their capabilities, undertake to mobilize adequate financial resources for the implementation of their national action programmes.

4. In mobilizing financial resources, the Parties shall seek full use and continued qualitative improvement of all national, bilateral and multilateral funding sources and mechanisms, using consortia, joint programmes and parallel financing, and shall seek to involve private sector funding sources and mechanisms, including those of non-governmental organizations. To this end, the Parties shall fully utilize the operational mechanisms developed pursuant to article 14.

5. In order to mobilize the financial resources necessary for affected developing country Parties to combat desertification and mitigate the effects of drought, the Parties shall:

- (a) rationalize and strengthen the management of resources already allocated for combating desertification and mitigating the effects of drought by using them more effectively and efficiently, assessing their successes and shortcomings, removing hindrances to their effective use and, where necessary, reorienting programmes in light of the integrated long-term approach adopted pursuant to this Convention;
- (b) give due priority and attention within the governing bodies of multilateral financial institutions, facilities and funds, including regional development banks and funds, to supporting affected developing country Parties, particularly those in Africa, in activities which advance implementation of the Convention, notably action programmes they undertake in the framework of regional implementation annexes; and
- (c) examine ways in which regional and subregional cooperation can be strengthened to support efforts undertaken at the national level.

6. Other Parties are encouraged to provide, on a voluntary basis, knowledge, know-how and techniques related to desertification and/or financial resources to affected developing country Parties.

7. The full implementation by affected developing country Parties, particularly those in Africa, of their obligations under the Convention will be greatly assisted by the fulfilment by developed country Parties of their obligations under the Convention, including in particular those regarding financial resources and transfer of technology. In fulfilling their obligations, developed country Parties should take fully into account that economic and social development and poverty eradication are the first priorities of affected developing country Parties, particularly those in Africa.

#### Article 21

##### *Financial mechanisms*

1. The Conference of the Parties shall promote the availability of financial mechanisms and shall encourage such mechanisms to seek to maximize the availability of funding for affected developing country Parties, particularly those in Africa, to implement the Convention. To this end, the Conference of the Parties shall consider for adoption inter alia approaches and policies that:

- (a) facilitate the provision of necessary funding at the national, subregional, regional and global levels for activities pursuant to relevant provisions of the Convention;
- (b) promote multiple-source funding approaches, mechanisms and arrangements and their assessment, consistent with article 20;

- (c) provide on a regular basis, to interested Parties and relevant intergovernmental and non-governmental organizations, information on available sources of funds and on funding patterns in order to facilitate coordination among them;
- (d) facilitate the establishment, as appropriate, of mechanisms, such as national desertification funds, including those involving the participation of non-governmental organizations, to channel financial resources rapidly and efficiently to the local level in affected developing country Parties; and
- (e) strengthen existing funds and financial mechanisms at the subregional and regional levels, particularly in Africa, to support more effectively the implementation of the Convention.

2. The Conference of the Parties shall also encourage the provision, through various mechanisms within the United Nations system and through multilateral financial institutions, of support at the national, subregional and regional levels to activities that enable developing country Parties to meet their obligations under the Convention.

3. Affected developing country Parties shall utilize, and where necessary, establish and/or strengthen, national coordinating mechanisms, integrated in national development programmes, that would ensure the efficient use of all available financial resources. They shall also utilize participatory processes involving non-governmental organizations, local groups and the private sector, in raising funds, in elaborating as well as implementing programmes and in assuring access to funding by groups at the local level. These actions can be enhanced by improved coordination and flexible programming on the part of those providing assistance.

4. In order to increase the effectiveness and efficiency of existing financial mechanisms, a Global Mechanism to promote actions leading to the mobilization and channelling of substantial financial resources, including for the transfer of technology, on a grant basis, and/or on concessional or other terms, to affected developing country Parties, is hereby established. This Global Mechanism shall function under the authority and guidance of the Conference of the Parties and be accountable to it.

5. The Conference of the Parties shall identify, at its first ordinary session, an organization to house the Global Mechanism. The Conference of the Parties and the organization it has identified shall agree upon modalities for this Global Mechanism to ensure inter alia that such Mechanism:

- (a) identifies and draws up an inventory of relevant bilateral and multilateral cooperation programmes that are available to implement the Convention;
- (b) provides advice, on request, to Parties on innovative methods of financing and sources of financial assistance and on improving the coordination of cooperation activities at the national level;

- (c) provides interested Parties and relevant intergovernmental and non-governmental organizations with information on available sources of funds and on funding patterns in order to facilitate coordination among them; and
- (d) reports to the Conference of the Parties, beginning at its second ordinary session, on its activities.

6. The Conference of the Parties shall, at its first session, make appropriate arrangements with the organization it has identified to house the Global Mechanism for the administrative operations of such Mechanism, drawing to the extent possible on existing budgetary and human resources.

7. The Conference of the Parties shall, at its third ordinary session, review the policies, operational modalities and activities of the Global Mechanism accountable to it pursuant to paragraph 4, taking into account the provisions of article 7. On the basis of this review, it shall consider and take appropriate action.

#### PART IV

#### INSTITUTIONS

#### Article 22

#### *Conference of the Parties*

1. A Conference of the Parties is hereby established.
2. The Conference of the Parties is the supreme body of the Convention. It shall make, within its mandate, the decisions necessary to promote its effective implementation. In particular, it shall:
  - (a) regularly review the implementation of the Convention and the functioning of its institutional arrangements in the light of the experience gained at the national, subregional, regional and international levels and on the basis of the evolution of scientific and technological knowledge;
  - (b) promote and facilitate the exchange of information on measures adopted by the Parties, and determine the form and timetable for transmitting the information to be submitted pursuant to article 26, review the reports and make recommendations on them;
  - (c) establish such subsidiary bodies as are deemed necessary for the implementation of the Convention;
  - (d) review reports submitted by its subsidiary bodies and provide guidance to them;

- (e) agree upon and adopt, by consensus, rules of procedure and financial rules for itself and any subsidiary bodies;
- (f) adopt amendments to the Convention pursuant to articles 30 and 31;
- (g) approve a programme and budget for its activities, including those of its subsidiary bodies, and undertake necessary arrangements for their financing;
- (h) as appropriate, seek the cooperation of, and utilize the services of and information provided by, competent bodies or agencies, whether national or international, intergovernmental or non-governmental;
- (i) promote and strengthen the relationship with other relevant conventions while avoiding duplication of effort; and
- (j) exercise such other functions as may be necessary for the achievement of the objective of the Convention.

3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure, by consensus, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. Such procedures may include specified majorities required for the adoption of particular decisions.

4. The first session of the Conference of the Parties shall be convened by the interim secretariat referred to in article 35 and shall take place not later than one year after the date of entry into force of the Convention. Unless otherwise decided by the Conference of the Parties, the second, third and fourth ordinary sessions shall be held yearly, and thereafter, ordinary sessions shall be held every two years.

5. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be decided either by the Conference of the Parties in ordinary session or at the written request of any Party, provided that, within three months of the request being communicated to the Parties by the Permanent Secretariat, it is supported by at least one third of the Parties.

6. At each ordinary session, the Conference of the Parties shall elect a Bureau. The structure and functions of the Bureau shall be determined in the rules of procedure. In appointing the Bureau, due regard shall be paid to the need to ensure equitable geographical distribution and adequate representation of affected country Parties, particularly those in Africa.

7. The United Nations, its specialized agencies and any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the Permanent Secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one

third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

8. The Conference of the Parties may request competent national and international organizations which have relevant expertise to provide it with information relevant to article 16, paragraph (g), article 17, paragraph 1 (c) and article 18, paragraph 2(b).

### Article 23

#### *Permanent Secretariat*

1. A Permanent Secretariat is hereby established.
2. The functions of the Permanent Secretariat shall be:
  - (a) to make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;
  - (b) to compile and transmit reports submitted to it;
  - (c) to facilitate assistance to affected developing country Parties, on request, particularly those in Africa, in the compilation and communication of information required under the Convention;
  - (d) to coordinate its activities with the secretariats of other relevant international bodies and conventions;
  - (e) to enter, under the guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
  - (f) to prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties; and
  - (g) to perform such other secretariat functions as may be determined by the Conference of the Parties.
3. The Conference of the Parties, at its first session, shall designate a Permanent Secretariat and make arrangements for its functioning.

### Article 24

#### *Committee on Science and Technology*

1. A Committee on Science and Technology is hereby established as a subsidiary body of the Conference of the Parties to provide it with information and advice on scientific and technological matters relating to combating desertification and mitigating the effects of drought. The Committee shall meet

in conjunction with the ordinary sessions of the Conference of the Parties and shall be multidisciplinary and open to the participation of all Parties. It shall be composed of government representatives competent in the relevant fields of expertise. The Conference of the Parties shall decide, at its first session, on the terms of reference of the Committee.

2. The Conference of the Parties shall establish and maintain a roster of independent experts with expertise and experience in the relevant fields. The roster shall be based on nominations received in writing from the Parties, taking into account the need for a multidisciplinary approach and broad geographical representation.

3. The Conference of the Parties may, as necessary, appoint ad hoc panels to provide it, through the Committee, with information and advice on specific issues regarding the state of the art in fields of science and technology relevant to combating desertification and mitigating the effects of drought. These panels shall be composed of experts whose names are taken from the roster, taking into account the need for a multidisciplinary approach and broad geographical representation. These experts shall have scientific backgrounds and field experience and shall be appointed by the Conference of the Parties on the recommendation of the Committee. The Conference of the Parties shall decide on the terms of reference and the modalities of work of these panels.

#### Article 25

##### *Networking of institutions, agencies and bodies*

1. The Committee on Science and Technology shall, under the supervision of the Conference of the Parties, make provision for the undertaking of a survey and evaluation of the relevant existing networks, institutions, agencies and bodies willing to become units of a network. Such a network shall support the implementation of the Convention.

2. On the basis of the results of the survey and evaluation referred to in paragraph 1, the Committee on Science and Technology shall make recommendations to the Conference of the Parties on ways and means to facilitate and strengthen networking of the units at the local, national and other levels, with a view to ensuring that the thematic needs set out in articles 16 to 19 are addressed.

3. Taking into account these recommendations, the Conference of the Parties shall:

- (a) identify those national, subregional, regional and international units that are most appropriate for networking, and recommend operational procedures, and a time frame, for them; and
- (b) identify the units best suited to facilitating and strengthening such networking at all levels.

PART V

PROCEDURES

Article 26

*Communication of information*

1. Each Party shall communicate to the Conference of the Parties for consideration at its ordinary sessions, through the Permanent Secretariat, reports on the measures which it has taken for the implementation of the Convention. The Conference of the Parties shall determine the timetable for submission and the format of such reports.

2. Affected country Parties shall provide a description of the strategies established pursuant to article 5 and of any relevant information on their implementation.

3. Affected country Parties which implement action programmes pursuant to articles 9 to 15 shall provide a detailed description of the programmes and of their implementation.

4. Any group of affected country Parties may make a joint communication on measures taken at the subregional and/or regional levels in the framework of action programmes.

5. Developed country Parties shall report on measures taken to assist in the preparation and implementation of action programmes, including information on the financial resources they have provided, or are providing, under the Convention.

6. Information communicated pursuant to paragraphs 1 to 4 shall be transmitted by the Permanent Secretariat as soon as possible to the Conference of the Parties and to any relevant subsidiary body.

7. The Conference of the Parties shall facilitate the provision to affected developing countries, particularly those in Africa, on request, of technical and financial support in compiling and communicating information in accordance with this article, as well as identifying the technical and financial needs associated with action programmes.

Article 27

*Measures to resolve questions on implementation*

The Conference of the Parties shall consider and adopt procedures and institutional mechanisms for the resolution of questions that may arise with regard to the implementation of the Convention.



## Article 28

### *Settlement of disputes*

1. Parties shall settle any dispute between them concerning the interpretation or application of the Convention through negotiation or other peaceful means of their own choice.

2. When ratifying, accepting, approving, or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

- (a) arbitration in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable;
- (b) submission of the dispute to the International Court of Justice.

3. A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedure referred to in paragraph 2 (a).

4. A declaration made pursuant to paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

5. The expiry of a declaration, a notice of revocation or a new declaration shall not in any way affect proceedings pending before an arbitral tribunal or the International Court of Justice unless the Parties to the dispute otherwise agree.

6. If the Parties to a dispute have not accepted the same or any procedure pursuant to paragraph 2 and if they have not been able to settle their dispute within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to conciliation at the request of any Party to the dispute, in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable.

## Article 29

### *Status of annexes*

1. Annexes form an integral part of the Convention and, unless expressly provided otherwise, a reference to the Convention also constitutes a reference to its annexes.

2. The Parties shall interpret the provisions of the annexes in a manner that is in conformity with their rights and obligations under the articles of this Convention.

## Article 30

### *Amendments to the Convention*

1. Any Party may propose amendments to the Convention.
2. Amendments to the Convention shall be adopted at an ordinary session of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Permanent Secretariat at least six months before the meeting at which it is proposed for adoption. The Permanent Secretariat shall also communicate proposed amendments to the signatories to the Convention.
3. The Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted and no agreement reached, the amendment shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the Permanent Secretariat to the Depositary, who shall circulate it to all Parties for their ratification, acceptance, approval or accession.
4. Instruments of ratification, acceptance, approval or accession in respect of an amendment shall be deposited with the Depositary. An amendment adopted pursuant to paragraph 3 shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of ratification, acceptance, approval or accession by at least two thirds of the Parties to the Convention which were Parties at the time of the adoption of the amendment.
5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of ratification, acceptance or approval of, or accession to the said amendment.
6. For the purposes of this article and article 31, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

## Article 31

### *Adoption and amendment of annexes*

1. Any additional annex to the Convention and any amendment to an annex shall be proposed and adopted in accordance with the procedure for amendment of the Convention set forth in article 30, provided that, in adopting an additional regional implementation annex or amendment to any regional implementation annex, the majority provided for in that article shall include a two-thirds majority vote of the Parties of the region concerned present and voting. The adoption or amendment of an annex shall be communicated by the Depositary to all Parties.

2. An annex, other than an additional regional implementation annex, or an amendment to an annex, other than an amendment to any regional implementation annex, that has been adopted in accordance with paragraph 1, shall enter into force for all Parties to the Convention six months after the date of communication by the Depositary to such Parties of the adoption of such annex or amendment, except for those Parties that have notified the Depositary in writing within that period of their non-acceptance of such annex or amendment. Such annex or amendment shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

3. An additional regional implementation annex or amendment to any regional implementation annex that has been adopted in accordance with paragraph 1, shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of such annex or amendment, except with respect to:

- (a) any Party that has notified the Depositary in writing, within such six month period, of its non-acceptance of that additional regional implementation annex or of the amendment to the regional implementation annex, in which case such annex or amendment shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary; and
- (b) any Party that has made a declaration with respect to additional regional implementation annexes or amendments to regional implementation annexes in accordance with article 34, paragraph 4, in which case any such annex or amendment shall enter into force for such a Party on the ninetieth day after the date of deposit with the Depositary of its instrument of ratification, acceptance, approval or accession with respect to such annex or amendment.

4. If the adoption of an annex or an amendment to an annex involves an amendment to the Convention, that annex or amendment to an annex shall not enter into force until such time as the amendment to the Convention enters into force.

#### Article 32

##### *Right to vote*

1. Except as provided for in paragraph 2, each Party to the Convention shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

PART VI

FINAL PROVISIONS

Article 33

*Signature*

This Convention shall be opened for signature at Paris, on 14-15 October 1994, by States Members of the United Nations or any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations. It shall remain open for signature, thereafter, at the United Nations Headquarters in New York until 13 October 1995.

Article 34

*Ratification, acceptance, approval and accession*

1. The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization which becomes a Party to the Convention without any of its member States being a Party to the Convention shall be bound by all the obligations under the Convention. Where one or more member States of such an organization are also Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. They shall also promptly inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

4. In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with respect to it, any additional regional implementation annex or any amendment to any regional implementation annex shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.

Article 35

*Interim arrangements*

The secretariat functions referred to in article 23 will be carried out on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 47/188 of 22 December 1992, until the completion of the first session of the Conference of the Parties.

Article 36

*Entry into force*

1. The Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to the Convention after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

Article 37

*Reservations*

No reservations may be made to this Convention.

Article 38

*Withdrawal*

1. At any time after three years from the date on which the Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

Article 39

*Depositary*

The Secretary-General of the United Nations shall be the Depositary of the Convention.

Article 40

*Authentic texts*

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed the present Convention.

DONE AT Paris, this 17th day of June one thousand nine hundred and ninety-four.

ANNEX I

REGIONAL IMPLEMENTATION ANNEX FOR AFRICA

Article 1

*Scope*

This Annex applies to Africa, in relation to each Party and in conformity with the Convention, in particular its article 7, for the purpose of combating desertification and/or mitigating the effects of drought in its arid, semi-arid and dry sub-humid areas.

Article 2

*Purpose*

The purpose of this Annex, at the national, subregional and regional levels in Africa and in the light of its particular conditions, is to:

- (a) identify measures and arrangements, including the nature and processes of assistance provided by developed country Parties, in accordance with the relevant provisions of the Convention;
- (b) provide for the efficient and practical implementation of the Convention to address conditions specific to Africa; and
- (c) promote processes and activities relating to combating desertification and/or mitigating the effects of drought within the arid, semi-arid and dry sub-humid areas of Africa.

Article 3

*Particular conditions of the African region*

In carrying out their obligations under the Convention, the Parties shall, in the implementation of this Annex, adopt a basic approach that takes into consideration the following particular conditions of Africa:

- (a) the high proportion of arid, semi-arid and dry sub-humid areas;
- (b) the substantial number of countries and populations adversely affected by desertification and by the frequent recurrence of severe drought;
- (c) the large number of affected countries that are landlocked;

- (d) the widespread poverty prevalent in most affected countries, the large number of least developed countries among them, and their need for significant amounts of external assistance, in the form of grants and loans on concessional terms, to pursue their development objectives;
- (e) the difficult socio-economic conditions, exacerbated by deteriorating and fluctuating terms of trade, external indebtedness and political instability, which induce internal, regional and international migrations;
- (f) the heavy reliance of populations on natural resources for subsistence which, compounded by the effects of demographic trends and factors, a weak technological base and unsustainable production practices, contributes to serious resource degradation;
- (g) the insufficient institutional and legal frameworks, the weak infrastructural base and the insufficient scientific, technical and educational capacity, leading to substantial capacity building requirements; and
- (h) the central role of actions to combat desertification and/or mitigate the effects of drought in the national development priorities of affected African countries.

#### Article 4

##### *Commitments and obligations of African country Parties*

1. In accordance with their respective capabilities, African country Parties undertake to:
  - (a) adopt the combating of desertification and/or the mitigation of the effects of drought as a central strategy in their efforts to eradicate poverty;
  - (b) promote regional cooperation and integration, in a spirit of solidarity and partnership based on mutual interest, in programmes and activities to combat desertification and/or mitigate the effects of drought;
  - (c) rationalize and strengthen existing institutions concerned with desertification and drought and involve other existing institutions, as appropriate, in order to make them more effective and to ensure more efficient use of resources;
  - (d) promote the exchange of information on appropriate technology, knowledge, know-how and practices between and among them; and
  - (e) develop contingency plans for mitigating the effects of drought in areas degraded by desertification and/or drought.



2. Pursuant to the general and specific obligations set out in articles 4 and 5 of the Convention, affected African country Parties shall aim to:

- (a) make appropriate financial allocations from their national budgets consistent with national conditions and capabilities and reflecting the new priority Africa has accorded to the phenomenon of desertification and/or drought;
- (b) sustain and strengthen reforms currently in progress toward greater decentralization and resource tenure as well as reinforce participation of local populations and communities; and
- (c) identify and mobilize new and additional national financial resources, and expand, as a matter of priority, existing national capabilities and facilities to mobilize domestic financial resources.

#### Article 5

##### *Commitments and obligations of developed country Parties*

1. In fulfilling their obligations pursuant to articles 4, 6 and 7 of the Convention, developed country Parties shall give priority to affected African country Parties and, in this context, shall:

- (a) assist them to combat desertification and/or mitigate the effects of drought by, inter alia, providing and/or facilitating access to financial and/or other resources, and promoting, financing and/or facilitating the financing of the transfer, adaptation and access to appropriate environmental technologies and know-how, as mutually agreed and in accordance with national policies, taking into account their adoption of poverty eradication as a central strategy;
- (b) continue to allocate significant resources and/or increase resources to combat desertification and/or mitigate the effects of drought; and
- (c) assist them in strengthening capacities to enable them to improve their institutional frameworks, as well as their scientific and technical capabilities, information collection and analysis, and research and development for the purpose of combating desertification and/or mitigating the effects of drought.

2. Other country Parties may provide, on a voluntary basis, technology, knowledge and know-how relating to desertification and/or financial resources, to affected African country Parties. The transfer of such knowledge, know-how and techniques is facilitated by international cooperation.

## Article 6

### *Strategic planning framework for sustainable development*

1. National action programmes shall be a central and integral part of a broader process of formulating national policies for the sustainable development of affected African country Parties.

2. A consultative and participatory process involving appropriate levels of government, local populations, communities and non-governmental organizations shall be undertaken to provide guidance on a strategy with flexible planning to allow maximum participation from local populations and communities. As appropriate, bilateral and multilateral assistance agencies may be involved in this process at the request of an affected African country Party.

## Article 7

### *Timetable for preparation of action programmes*

Pending entry into force of this Convention, the African country Parties, in cooperation with other members of the international community, as appropriate, shall, to the extent possible, provisionally apply those provisions of the Convention relating to the preparation of national, subregional and regional action programmes.

## Article 8

### *Content of national action programmes*

1. Consistent with article 10 of the Convention, the overall strategy of national action programmes shall emphasize integrated local development programmes for affected areas, based on participatory mechanisms and on integration of strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought. The programmes shall aim at strengthening the capacity of local authorities and ensuring the active involvement of local populations, communities and groups, with emphasis on education and training, mobilization of non-governmental organizations with proven expertise and strengthening of decentralized governmental structures.

2. National action programmes shall, as appropriate, include the following general features:

- (a) the use, in developing and implementing national action programmes, of past experiences in combating desertification and/or mitigating the effects of drought, taking into account social, economic and ecological conditions;

- (b) the identification of factors contributing to desertification and/or drought and the resources and capacities available and required, and the setting up of appropriate policies and institutional and other responses and measures necessary to combat those phenomena and/or mitigate their effects; and
  - (c) the increase in participation of local populations and communities, including women, farmers and pastoralists, and delegation to them of more responsibility for management.
3. National action programmes shall also, as appropriate, include the following:
- (a) measures to improve the economic environment with a view to eradicating poverty:
    - (i) increasing incomes and employment opportunities, especially for the poorest members of the community, by:
      - developing markets for farm and livestock products;
      - creating financial instruments suited to local needs;
      - encouraging diversification in agriculture and the setting-up of agricultural enterprises; and
      - developing economic activities of a para-agricultural or non-agricultural type;
    - (ii) improving the long-term prospects of rural economies by the creation of:
      - incentives for productive investment and access to the means of production; and
      - price and tax policies and commercial practices that promote growth;
    - (iii) defining and applying population and migration policies to reduce population pressure on land; and
    - (iv) promoting the use of drought resistant crops and the application of integrated dry-land farming systems for food security purposes;
  - (b) measures to conserve natural resources:
    - (i) ensuring integrated and sustainable management of natural resources, including:
      - agricultural land and pastoral land;
      - vegetation cover and wildlife;
      - forests;
      - water resources; and
      - biological diversity;

- (ii) training with regard to, and strengthening, public awareness and environmental education campaigns and disseminating knowledge of techniques relating to the sustainable management of natural resources; and
  - (iii) ensuring the development and efficient use of diverse energy sources, the promotion of alternative sources of energy, particularly solar energy, wind energy and bio-gas, and specific arrangements for the transfer, acquisition and adaptation of relevant technology to alleviate the pressure on fragile natural resources;
- (c) measures to improve institutional organization:
- (i) defining the roles and responsibilities of central government and local authorities within the framework of a land use planning policy;
  - (ii) encouraging a policy of active decentralization, devolving responsibility for management and decision-making to local authorities, and encouraging initiatives and the assumption of responsibility by local communities and the establishment of local structures; and
  - (iii) adjusting, as appropriate, the institutional and regulatory framework of natural resource management to provide security of land tenure for local populations;
- (d) measures to improve knowledge of desertification:
- (i) promoting research and the collection, processing and exchange of information on the scientific, technical and socio-economic aspects of desertification;
  - (ii) improving national capabilities in research and in the collection, processing, exchange and analysis of information so as to increase understanding and to translate the results of the analysis into operational terms; and
  - (iii) encouraging the medium and long term study of:
    - socio-economic and cultural trends in affected areas;
    - qualitative and quantitative trends in natural resources; and
    - the interaction between climate and desertification; and
- (e) measures to monitor and assess the effects of drought:
- (i) developing strategies to evaluate the impacts of natural climate variability on regional drought and

desertification and/or to utilize predictions of climate variability on seasonal to interannual time scales in efforts to mitigate the effects of drought;

- (ii) improving early warning and response capacity, efficiently managing emergency relief and food aid, and improving food stocking and distribution systems, cattle protection schemes and public works and alternative livelihoods for drought prone areas; and
- (iii) monitoring and assessing ecological degradation to provide reliable and timely information on the process and dynamics of resource degradation in order to facilitate better policy formulations and responses.

#### Article 9

##### *Preparation of national action programmes and implementation and evaluation indicators*

Each affected African country Party shall designate an appropriate national coordinating body to function as a catalyst in the preparation, implementation and evaluation of its national action programme. This coordinating body shall, in the light of article 3 and as appropriate:

- (a) undertake an identification and review of actions, beginning with a locally driven consultation process, involving local populations and communities and with the cooperation of local administrative authorities, developed country Parties and intergovernmental and non-governmental organizations, on the basis of initial consultations of those concerned at the national level;
- (b) identify and analyze the constraints, needs and gaps affecting development and sustainable land use and recommend practical measures to avoid duplication by making full use of relevant ongoing efforts and promote implementation of results;
- (c) facilitate, design and formulate project activities based on interactive, flexible approaches in order to ensure active participation of the population in affected areas, to minimize the negative impact of such activities, and to identify and prioritize requirements for financial assistance and technical cooperation;
- (d) establish pertinent, quantifiable and readily verifiable indicators to ensure the assessment and evaluation of national action programmes, which encompass actions in the short, medium and long terms, and of the implementation of such programmes; and
- (e) prepare progress reports on the implementation of the national action programmes.

#### Article 10

##### *Organizational framework of subregional action programmes*

1. Pursuant to article 4 of the Convention, African country Parties shall cooperate in the preparation and implementation of subregional action programmes for central, eastern, northern, southern and western Africa and, in that regard, may delegate the following responsibilities to relevant subregional intergovernmental organizations:

- (a) acting as focal points for preparatory activities and coordinating the implementation of the subregional action programmes;
- (b) assisting in the preparation and implementation of national action programmes;
- (c) facilitating the exchange of information, experience and know-how as well as providing advice on the review of national legislation; and
- (d) any other responsibilities relating to the implementation of subregional action programmes.

2. Specialized subregional institutions may provide support, upon request, and/or be entrusted with the responsibility to coordinate activities in their respective fields of competence.

#### Article 11

##### *Content and preparation of subregional action programmes*

Subregional action programmes shall focus on issues that are better addressed at the subregional level. They shall establish, where necessary, mechanisms for the management of shared natural resources. Such mechanisms shall effectively handle transboundary problems associated with desertification and/or drought and shall provide support for the harmonious implementation of national action programmes. Priority areas for subregional action programmes shall, as appropriate, focus on:

- (a) joint programmes for the sustainable management of transboundary natural resources through bilateral and multilateral mechanisms, as appropriate;
- (b) coordination of programmes to develop alternative energy sources;
- (c) cooperation in the management and control of pests as well as of plant and animal diseases;
- (d) capacity building, education and public awareness activities that are better carried out or supported at the subregional level;

- (e) scientific and technical cooperation, particularly in the climatological, meteorological and hydrological fields, including networking for data collection and assessment, information sharing and project monitoring, and coordination and prioritization of research and development activities;
- (f) early warning systems and joint planning for mitigating the effects of drought, including measures to address the problems resulting from environmentally induced migrations;
- (g) exploration of ways of sharing experiences, particularly regarding participation of local populations and communities, and creation of an enabling environment for improved land use management and for use of appropriate technologies;
- (h) strengthening of the capacity of subregional organizations to coordinate and provide technical services, as well as establishment, reorientation and strengthening of subregional centres and institutions; and
- (i) development of policies in fields, such as trade, which have impact upon affected areas and populations, including policies for the coordination of regional marketing regimes and for common infrastructure.

#### Article 12

##### *Organizational framework of the regional action programme*

1. Pursuant to article 11 of the Convention, African country Parties shall jointly determine the procedures for preparing and implementing the regional action programme.

2. The Parties may provide appropriate support to relevant African regional institutions and organizations to enable them to assist African country Parties to fulfil their responsibilities under the Convention.

#### Article 13

##### *Content of the regional action programme*

The regional action programme includes measures relating to combating desertification and/or mitigating the effects of drought in the following priority areas, as appropriate:

- (a) development of regional cooperation and coordination of sub-regional action programmes for building regional consensus on key policy areas, including through regular consultations of sub-regional organizations;
- (b) promotion of capacity building in activities which are better implemented at the regional level;

- (c) the seeking of solutions with the international community to global economic and social issues that have an impact on affected areas taking into account article 4, paragraph 2 (b) of the Convention;
- (d) promotion among the affected country Parties of Africa and its subregions, as well as with other affected regions, of exchange of information and appropriate techniques, technical know-how and relevant experience; promotion of scientific and technological cooperation particularly in the fields of climatology, meteorology, hydrology, water resource development and alternative energy sources; coordination of sub-regional and regional research activities; and identification of regional priorities for research and development;
- (e) coordination of networks for systematic observation and assessment and information exchange, as well as their integration into world wide networks; and
- (f) coordination of and reinforcement of sub-regional and regional early warning systems and drought contingency plans.

#### Article 14

##### *Financial resources*

1. Pursuant to article 20 of the Convention and article 4, paragraph 2, affected African country Parties shall endeavour to provide a macroeconomic framework conducive to the mobilization of financial resources and shall develop policies and establish procedures to channel resources more effectively to local development programmes, including through non-governmental organizations, as appropriate.

2. Pursuant to article 21, paragraphs 4 and 5 of the Convention, the Parties agree to establish an inventory of sources of funding at the national, subregional, regional and international levels to ensure the rational use of existing resources and to identify gaps in resource allocation, to facilitate implementation of the action programmes. The inventory shall be regularly reviewed and updated.

3. Consistent with article 7 of the Convention, the developed country Parties shall continue to allocate significant resources and/or increased resources as well as other forms of assistance to affected African country Parties on the basis of partnership agreements and arrangements referred to in article 18, giving, *inter alia*, due attention to matters related to debt, international trade and marketing arrangements in accordance with article 4, paragraph 2 (b) of the Convention.



Article 15

*Financial Mechanisms*

1. Consistent with article 7 of the Convention underscoring the priority to affected African country Parties and considering the particular situation prevailing in this region, the Parties shall pay special attention to the implementation in Africa of the provisions of article 21, paragraph 1 (d) and (e) of the Convention, notably by:

- (a) facilitating the establishment of mechanisms, such as national desertification funds, to channel financial resources to the local level; and
- (b) strengthening existing funds and financial mechanisms at the subregional and regional levels.

2. Consistent with articles 20 and 21 of the Convention, the Parties which are also members of the governing bodies of relevant regional and subregional financial institutions, including the African Development Bank and the African Development Fund, shall promote efforts to give due priority and attention to the activities of those institutions that advance the implementation of this Annex.

3. The Parties shall streamline, to the extent possible, procedures for channelling funds to affected African country Parties.

Article 16

*Technical assistance and cooperation*

The Parties undertake, in accordance with their respective capabilities, to rationalize technical assistance to, and cooperation with, African country Parties with a view to increasing project and programme effectiveness by, inter alia:

- (a) limiting the costs of support measures and backstopping, especially overhead costs; in any case, such costs shall only represent an appropriately low percentage of the total cost of the project so as to maximize project efficiency;
- (b) giving preference to the utilization of competent national experts or, where necessary, competent experts from within the subregion and/or region, in project design, preparation and implementation, and to the building of local expertise where it does not exist; and
- (c) effectively managing and coordinating, as well as efficiently utilizing, technical assistance to be provided.

Article 17

*Transfer, acquisition, adaptation and access to  
environmentally sound technology*

In implementing article 18 of the Convention relating to transfer, acquisition, adaptation and development of technology, the Parties undertake to give priority to African country Parties and, as necessary, to develop with them new models of partnership and cooperation with a view to strengthening capacity building in the fields of scientific research and development and information collection and dissemination to enable them to implement their strategies to combat desertification and mitigate the effects of drought.

Article 18

*Coordination and partnership agreements*

1. African country Parties shall coordinate the preparation, negotiation and implementation of national, subregional and regional action programmes. They may involve, as appropriate, other Parties and relevant intergovernmental and non-governmental organizations in this process.

2. The objectives of such coordination shall be to ensure that financial and technical cooperation is consistent with the Convention and to provide the necessary continuity in the use and administration of resources.

3. African country Parties shall organize consultative processes at the national, subregional and regional levels. These consultative processes may:

- (a) serve as a forum to negotiate and conclude partnership agreements based on national, subregional and regional action programmes; and
- (b) specify the contribution of African country Parties and other members of the consultative groups to the programmes and identify priorities and agreements on implementation and evaluation indicators, as well as funding arrangements for implementation.

4. The Permanent Secretariat may, at the request of African country Parties, pursuant to article 23 of the Convention, facilitate the convocation of such consultative processes by:

- (a) providing advice on the organization of effective consultative arrangements, drawing on experiences from other such arrangements;
- (b) providing information to relevant bilateral and multilateral agencies concerning consultative meetings or processes, and encouraging their active involvement; and
- (c) providing other information that may be relevant in establishing or improving consultative arrangements.

5. The subregional and regional coordinating bodies shall, inter alia:
- (a) recommend appropriate adjustments to partnership agreements;
  - (b) monitor, assess and report on the implementation of the agreed subregional and regional programmes; and
  - (c) aim to ensure efficient communication and cooperation among African country Parties.

6. Participation in the consultative groups shall, as appropriate, be open to Governments, interested groups and donors, relevant organs, funds and programmes of the United Nations system, relevant subregional and regional organizations, and representatives of relevant non-governmental organizations. Participants of each consultative group shall determine the modalities of its management and operation.

7. Pursuant to article 14 of the Convention, developed country Parties are encouraged to develop, on their own initiative, an informal process of consultation and coordination among themselves, at the national, subregional and regional levels, and, at the request of an affected African country Party or of an appropriate subregional or regional organization, to participate in a national, subregional or regional consultative process that would evaluate and respond to assistance needs in order to facilitate implementation.

#### Article 19

##### *Follow-up arrangements*

Follow-up of this Annex shall be carried out by African country Parties in accordance with the Convention as follows:

- (a) at the national level, by a mechanism the composition of which should be determined by each affected African country Party and which shall include representatives of local communities and shall function under the supervision of the national coordinating body referred to in article 9;
- (b) at the subregional level, by a multidisciplinary scientific and technical consultative committee, the composition and modalities of operation of which shall be determined by the African country Parties of the subregion concerned; and
- (c) at the regional level, by mechanisms defined in accordance with the relevant provisions of the Treaty establishing the African Economic Community, and by an African Scientific and Technical Advisory Committee.

ANNEX II

REGIONAL IMPLEMENTATION ANNEX FOR ASIA

Article 1

*Purpose*

The purpose of this Annex is to provide guidelines and arrangements for the effective implementation of the Convention in the affected country Parties of the Asian region in the light of its particular conditions.

Article 2

*Particular conditions of the Asian region*

In carrying out their obligations under the Convention, the Parties shall, as appropriate, take into consideration the following particular conditions which apply in varying degrees to the affected country Parties of the region:

- (a) the high proportion of areas in their territories affected by, or vulnerable to, desertification and drought and the broad diversity of these areas with regard to climate, topography, land use and socio-economic systems;
- (b) the heavy pressure on natural resources for livelihoods;
- (c) the existence of production systems, directly related to widespread poverty, leading to land degradation and to pressure on scarce water resources;
- (d) the significant impact of conditions in the world economy and social problems such as poverty, poor health and nutrition, lack of food security, migration, displaced persons and demographic dynamics;
- (e) their expanding, but still insufficient, capacity and institutional frameworks to deal with national desertification and drought problems; and
- (f) their need for international cooperation to pursue sustainable development objectives relating to combating desertification and mitigating the effects of drought.

Article 3

*Framework for national action programmes*

1. National action programmes shall be an integral part of broader national policies for sustainable development of the affected country Parties of the region.

2. The affected country Parties shall, as appropriate, develop national action programmes pursuant to articles 9 to 11 of the Convention, paying special attention to article 10, paragraph 2 (f). As appropriate, bilateral and multilateral cooperation agencies may be involved in this process at the request of the affected country Party concerned.

#### Article 4

##### *National action programmes*

1. In preparing and implementing national action programmes, the affected country Parties of the region, consistent with their respective circumstances and policies, may, inter alia, as appropriate:

- (a) designate appropriate bodies responsible for the preparation, coordination and implementation of their action programmes;
- (b) involve affected populations, including local communities, in the elaboration, coordination and implementation of their action programmes through a locally driven consultative process, with the cooperation of local authorities and relevant national and non-governmental organizations;
- (c) survey the state of the environment in affected areas to assess the causes and consequences of desertification and to determine priority areas for action;
- (d) evaluate, with the participation of affected populations, past and current programmes for combating desertification and mitigating the effects of drought, in order to design a strategy and elaborate activities in their action programmes;
- (e) prepare technical and financial programmes based on the information derived from the activities in subparagraphs (a) to (d);
- (f) develop and utilize procedures and benchmarks for evaluating implementation of their action programmes;
- (g) promote the integrated management of drainage basins, the conservation of soil resources, and the enhancement and efficient use of water resources;
- (h) strengthen and/or establish information, evaluation and follow up and early warning systems in regions prone to desertification and drought, taking account of climatological, meteorological, hydrological, biological and other relevant factors; and
- (i) formulate in a spirit of partnership, where international cooperation, including financial and technical resources, is involved, appropriate arrangements supporting their action programmes.

2. Consistent with article 10 of the Convention, the overall strategy of national action programmes shall emphasize integrated local development programmes for affected areas, based on participatory mechanisms and on the integration of strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought. Sectoral measures in the action programmes shall be grouped in priority fields which take account of the broad diversity of affected areas in the region referred to in article 2 (a).

## Article 5

### *Subregional and joint action programmes*

1. Pursuant to article 11 of the Convention, affected country Parties in Asia may mutually agree to consult and cooperate with other Parties, as appropriate, to prepare and implement subregional or joint action programmes, as appropriate, in order to complement, and increase effectiveness in the implementation of, national action programmes. In either case, the relevant Parties may jointly agree to entrust subregional, including bilateral or national organizations, or specialized institutions, with responsibilities relating to the preparation, coordination and implementation of programmes. Such organizations or institutions may also act as focal points for the promotion and coordination of actions pursuant to articles 16 to 18 of the Convention.

2. In preparing and implementing subregional or joint action programmes, the affected country Parties of the region shall, inter alia, as appropriate:

- (a) identify, in cooperation with national institutions, priorities relating to combating desertification and mitigating the effects of drought which can better be met by such programmes, as well as relevant activities which could be effectively carried out through them;
- (b) evaluate the operational capacities and activities of relevant regional, subregional and national institutions;
- (c) assess existing programmes relating to desertification and drought among all or some parties of the region or subregion and their relationship with national action programmes; and
- (d) formulate in a spirit of partnership, where international cooperation, including financial and technical resources, is involved, appropriate bilateral and/or multilateral arrangements supporting the programmes.

3. Subregional or joint action programmes may include agreed joint programmes for the sustainable management of transboundary natural resources relating to desertification, priorities for coordination and other activities in the fields of capacity building, scientific and technical cooperation, particularly drought early warning systems and information sharing, and means of strengthening the relevant subregional and other organizations or institutions.

Article 6

*Regional activities*

Regional activities for the enhancement of subregional or joint action programmes may include, *inter alia*, measures to strengthen institutions and mechanisms for coordination and cooperation at the national, subregional and regional levels, and to promote the implementation of articles 16 to 19 of the Convention. These activities may also include:

- (a) promoting and strengthening technical cooperation networks;
- (b) preparing inventories of technologies, knowledge, know-how and practices, as well as traditional and local technologies and know-how, and promoting their dissemination and use;
- (c) evaluating the requirements for technology transfer and promoting the adaptation and use of such technologies; and
- (d) encouraging public awareness programmes and promoting capacity building at all levels, strengthening training, research and development and building systems for human resource development.

Article 7

*Financial resources and mechanisms*

1. The Parties shall, in view of the importance of combating desertification and mitigating the effects of drought in the Asian region, promote the mobilization of substantial financial resources and the availability of financial mechanisms, pursuant to articles 20 and 21 of the Convention.

2. In conformity with the Convention and on the basis of the coordinating mechanism provided for in article 8 and in accordance with their national development policies, affected country Parties of the region shall, individually or jointly:

- (a) adopt measures to rationalize and strengthen mechanisms to supply funds through public and private investment with a view to achieving specific results in action to combat desertification and mitigate the effects of drought;
- (b) identify international cooperation requirements in support of national efforts, particularly financial, technical and technological; and
- (c) promote the participation of bilateral and/or multilateral financial cooperation institutions with a view to ensuring implementation of the Convention.

3. The Parties shall streamline, to the extent possible, procedures for channelling funds to affected country Parties in the region.

Article 8

*Cooperation and coordination mechanisms*

1. Affected country Parties, through the appropriate bodies designated pursuant to article 4, paragraph 1 (a), and other Parties in the region, may, as appropriate, set up a mechanism for, inter alia, the following purposes:

- (a) exchange of information, experience, knowledge and know-how;
- (b) cooperation and coordination of actions, including bilateral and multilateral arrangements, at the subregional and regional levels;
- (c) promotion of scientific, technical, technological and financial cooperation pursuant to articles 5 to 7;
- (d) identification of external cooperation requirements; and
- (e) follow-up and evaluation of the implementation of action programmes.

2. Affected country Parties, through the appropriate bodies designated pursuant to article 4, paragraph 1 (a), and other Parties in the region, may also, as appropriate, consult and coordinate as regards the national, subregional and joint action programmes. They may involve, as appropriate, other Parties and relevant intergovernmental and non-governmental organizations in this process. Such coordination shall, inter alia, seek to secure agreement on opportunities for international cooperation in accordance with articles 20 and 21 of the Convention, enhance technical cooperation and channel resources so that they are used effectively.

3. Affected country Parties of the region shall hold periodic coordination meetings, and the Permanent Secretariat may, at their request, pursuant to article 23 of the Convention, facilitate the convocation of such coordination meetings by:

- (a) providing advice on the organization of effective coordination arrangements, drawing on experience from other such arrangements;
- (b) providing information to relevant bilateral and multilateral agencies concerning coordination meetings, and encouraging their active involvement; and
- (c) providing other information that may be relevant in establishing or improving coordination processes.



ANNEX III

REGIONAL IMPLEMENTATION ANNEX  
FOR LATIN AMERICA AND THE CARIBBEAN

Article 1

*Purpose*

The purpose of this Annex is to provide general guidelines for the implementation of the Convention in the Latin American and Caribbean region, in light of its particular conditions.

Article 2

*Particular conditions of the Latin American and Caribbean region*

The Parties shall, in accordance with the provisions of the Convention, take into consideration the following particular conditions of the region:

- (a) the existence of broad expanses which are vulnerable and have been severely affected by desertification and/or drought and in which diverse characteristics may be observed, depending on the area in which they occur; this cumulative and intensifying process has negative social, cultural, economic and environmental effects which are all the more serious in that the region contains one of the largest resources of biological diversity in the world;
- (b) the frequent use of unsustainable development practices in affected areas as a result of complex interactions among physical, biological, political, social, cultural and economic factors, including international economic factors such as external indebtedness, deteriorating terms of trade and trade practices which affect markets for agricultural, fishery and forestry products; and
- (c) a sharp drop in the productivity of ecosystems being the main consequence of desertification and drought, taking the form of a decline in agricultural, livestock and forestry yields and a loss of biological diversity; from the social point of view, the results are impoverishment, migration, internal population movements, and the deterioration of the quality of life; the region will therefore have to adopt an integrated approach to problems of desertification and drought by promoting sustainable development models that are in keeping with the environmental, economic and social situation in each country.

### Article 3

#### *Action programmes*

1. In conformity with the Convention, in particular its articles 9 to 11, and in accordance with their national development policies, affected country Parties of the region shall, as appropriate, prepare and implement national action programmes to combat desertification and mitigate the effects of drought as an integral part of their national policies for sustainable development. Subregional and regional programmes may be prepared and implemented in accordance with the requirements of the region.

2. In the preparation of their national action programmes, affected country Parties of the region shall pay particular attention to article 10, paragraph 2 (f) of the Convention.

### Article 4

#### *Content of national action programmes*

In the light of their respective situations, the affected country Parties of the region may take account, *inter alia*, of the following thematic issues in developing their national strategies for action to combat desertification and/or mitigate the effects of drought, pursuant to article 5 of the Convention:

- (a) increasing capacities, education and public awareness, technical, scientific and technological cooperation and financial resources and mechanisms;
- (b) eradicating poverty and improving the quality of human life;
- (c) achieving food security and sustainable development and management of agricultural, livestock-rearing, forestry and multipurpose activities;
- (d) sustainable management of natural resources, especially the rational management of drainage basins;
- (e) sustainable management of natural resources in high-altitude areas;
- (f) rational management and conservation of soil resources and exploitation and efficient use of water resources;
- (g) formulation and application of emergency plans to mitigate the effects of drought;
- (h) strengthening and/or establishing information, evaluation and follow-up and early warning systems in areas prone to desertification and drought, taking account of climatological, meteorological, hydrological, biological, soil, economic and social factors;
- (i) developing, managing and efficiently using diverse sources of energy, including the promotion of alternative sources;

- (j) conservation and sustainable use of biodiversity in accordance with the provisions of the Convention on Biological Diversity;
- (k) consideration of demographic aspects related to desertification and drought; and
- (l) establishing or strengthening institutional and legal frameworks permitting application of the Convention and aimed, inter alia, at decentralizing administrative structures and functions relating to desertification and drought, with the participation of affected communities and society in general.

#### Article 5

##### *Technical, scientific and technological cooperation*

In conformity with the Convention, in particular its articles 16 to 18, and on the basis of the coordinating mechanism provided for in article 7, affected country Parties of the region shall, individually or jointly:

- (a) promote the strengthening of technical cooperation networks and national, subregional and regional information systems, as well as their integration, as appropriate, in worldwide sources of information;
- (b) prepare an inventory of available technologies and know-how and promote their dissemination and use;
- (c) promote the use of traditional technology, knowledge, know-how and practices pursuant to article 18, paragraph 2 (b), of the Convention;
- (d) identify transfer of technology requirements; and
- (e) promote the development, adaptation, adoption and transfer of relevant existing and new environmentally sound technologies.

#### Article 6

##### *Financial resources and mechanisms*

In conformity with the Convention, in particular its articles 20 and 21, on the basis of the coordinating mechanism provided for in article 7 and in accordance with their national development policies, affected country Parties of the region shall, individually or jointly:

- (a) adopt measures to rationalize and strengthen mechanisms to supply funds through public and private investment with a view to achieving specific results in action to combat desertification and mitigate the effects of drought;

- (b) identify international cooperation requirements in support of national efforts; and
- (c) promote the participation of bilateral and/or multilateral financial cooperation institutions with a view to ensuring implementation of the Convention.

## Article 7

### *Institutional framework*

1. In order to give effect to this Annex, affected country Parties of the region shall:

- (a) establish and/or strengthen national focal points to coordinate action to combat desertification and/or mitigate the effects of drought; and
- (b) set up a mechanism to coordinate the national focal points for the following purposes:
  - (i) exchanges of information and experience;
  - (ii) coordination of activities at the subregional and regional levels;
  - (iii) promotion of technical, scientific, technological and financial cooperation;
  - (iv) identification of external cooperation requirements; and
  - (v) follow-up and evaluation of the implementation of action programmes.

2. Affected country Parties of the region shall hold periodic coordination meetings and the Permanent Secretariat may, at their request, pursuant to article 23 of the Convention, facilitate the convocation of such coordination meetings, by:

- (a) providing advice on the organization of effective coordination arrangements, drawing on experience from other such arrangements;
- (b) providing information to relevant bilateral and multilateral agencies concerning coordination meetings, and encouraging their active involvement; and
- (c) providing other information that may be relevant in establishing or improving coordination processes.

ANNEX IV

REGIONAL IMPLEMENTATION ANNEX  
FOR THE NORTHERN MEDITERRANEAN

Article 1

*Purpose*

The purpose of this Annex is to provide guidelines and arrangements necessary for the effective implementation of the Convention in affected country Parties of the northern Mediterranean region in the light of its particular conditions.

Article 2

*Particular conditions of the northern Mediterranean region*

The particular conditions of the northern Mediterranean region referred to in article 1 include:

- (a) semi-arid climatic conditions affecting large areas, seasonal droughts, very high rainfall variability and sudden and high-intensity rainfall;
- (b) poor and highly erodible soils, prone to develop surface crusts;
- (c) uneven relief with steep slopes and very diversified landscapes;
- (d) extensive forest coverage losses due to frequent wildfires;
- (e) crisis conditions in traditional agriculture with associated land abandonment and deterioration of soil and water conservation structures;
- (f) unsustainable exploitation of water resources leading to serious environmental damage, including chemical pollution, salinization and exhaustion of aquifers; and
- (g) concentration of economic activity in coastal areas as a result of urban growth, industrial activities, tourism and irrigated agriculture.

Article 3

*Strategic planning framework for sustainable development*

1. National action programmes shall be a central and integral part of the strategic planning framework for sustainable development of the affected country Parties of the northern Mediterranean.

2. A consultative and participatory process, involving appropriate levels of government, local communities and non-governmental organizations, shall be undertaken to provide guidance on a strategy with flexible planning to allow maximum local participation, pursuant to article 10, paragraph 2 (f) of the Convention.

#### Article 4

##### *Obligation to prepare national action programmes and timetable*

Affected country Parties of the northern Mediterranean region shall prepare national action programmes and, as appropriate, subregional, regional or joint action programmes. The preparation of such programmes shall be finalized as soon as practicable.

#### Article 5

##### *Preparation and implementation of national action programmes*

In preparing and implementing national action programmes pursuant to articles 9 and 10 of the Convention, each affected country Party of the region shall, as appropriate:

- (a) designate appropriate bodies responsible for the preparation, coordination and implementation of its programme;
- (b) involve affected populations, including local communities, in the elaboration, coordination and implementation of the programme through a locally driven consultative process, with the cooperation of local authorities and relevant non-governmental organizations;
- (c) survey the state of the environment in affected areas to assess the causes and consequences of desertification and to determine priority areas for action;
- (d) evaluate, with the participation of affected populations, past and current programmes in order to design a strategy and elaborate activities in the action programme;
- (e) prepare technical and financial programmes based on the information gained through the activities in subparagraphs (a) to (d); and
- (f) develop and utilize procedures and benchmarks for monitoring and evaluating the implementation of the programme.

Article 6

*Content of national action programmes*

Affected country Parties of the region may include, in their national action programmes, measures relating to:

- (a) legislative, institutional and administrative areas;
- (b) land use patterns, management of water resources, soil conservation, forestry, agricultural activities and pasture and range management;
- (c) management and conservation of wildlife and other forms of biological diversity;
- (d) protection against forest fires;
- (e) promotion of alternative livelihoods; and
- (f) research, training and public awareness.

Article 7

*Subregional, regional and joint action programmes*

1. Affected country Parties of the region may, in accordance with article 11 of the Convention, prepare and implement subregional and/or regional action programmes in order to complement and increase the efficiency of national action programmes. Two or more affected country Parties of the region, may similarly agree to prepare a joint action programme between or among them.

2. The provisions of articles 5 and 6 shall apply *mutatis mutandis* to the preparation and implementation of subregional, regional and joint action programmes. In addition, such programmes may include the conduct of research and development activities concerning selected ecosystems in affected areas.

3. In preparing and implementing subregional, regional or joint action programmes, affected country Parties of the region shall, as appropriate:

- (a) identify, in cooperation with national institutions, national objectives relating to desertification which can better be met by such programmes and relevant activities which could be effectively carried out through them;
- (b) evaluate the operational capacities and activities of relevant regional, subregional and national institutions; and
- (c) assess existing programmes relating to desertification among Parties of the region and their relationship with national action programmes.

Article 8

*Coordination of subregional, regional  
and joint action programmes*

Affected country Parties preparing a subregional, regional or joint action programme may establish a coordination committee composed of representatives of each affected country Party concerned to review progress in combating desertification, harmonize national action programmes, make recommendations at the various stages of preparation and implementation of the subregional, regional or joint action programme, and act as a focal point for the promotion and coordination of technical cooperation pursuant to articles 16 to 19 of the Convention.

Article 9

*Non-eligibility for financial assistance*

In implementing national, subregional, regional and joint action programmes, affected developed country Parties of the region are not eligible to receive financial assistance under this Convention.

Article 10

*Coordination with other subregions and regions*

Subregional, regional and joint action programmes in the northern Mediterranean region may be prepared and implemented in collaboration with those of other subregions or regions, particularly with those of the subregion of northern Africa.

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**V. RECORDS RELATING TO THE HOUSING  
ARRANGEMENTS FOR THE GLOBAL MECHANISM  
CONVENED BY THE CONFERENCE OF THE PARTIES OF  
THE UNCCD AND IFAD**



**Decision 24/COP.1**

Organization to house the Global Mechanism  
and agreement on its modalities

The Conference of the Parties,

Recalling that the Conference of the Parties (COP), in accordance with article 21, paragraphs 5 and 6, of the Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, shall:

- (a) identify, at its first ordinary session an organization to house the Global Mechanism established under article 21, paragraph 4, of the Convention;
- (b) agree with the organization it has identified upon the modalities for the Global Mechanism; and
- (c) make, at its first session, appropriate arrangements with the organization it has identified to house the Global Mechanism for the administrative operations of such Mechanism, drawing to the extent possible on existing budgetary and human resources,

Having examined the recommendations of the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (INCD) regarding the functions of the Global Mechanism, and the criteria for selecting an institution to house it, as reflected in Appendix I of document ICCD/COP(1)/5 and in paragraphs 1 and 2 of the Committee's decision 10/3, taken at the first part of its tenth session, with the amendment contained in document ICCD/COP(1)/5/Add.1,

Recalling decision 10/18 of the INCD, taken at its resumed tenth session, which, inter alia:

- (a) requests the COP at its first session to consider the offers of the International Fund for Agricultural Development (IFAD) and the United Nations Development Programme (UNDP), including any suggestions they deem necessary, and to take appropriate action on the matters related to the selection of an institution to house the Global Mechanism; and
- (b) requests the Permanent Secretariat of the Convention, in consultation with IFAD and UNDP, to develop proposals on administrative and operational modalities of the Global Mechanism for consideration and adoption by the COP at its first session,

Noting with appreciation the revised offer of IFAD to house the Global Mechanism, contained in Appendix II of document ICCD/COP(1)/5, as supplemented by document ICCD/COP(1)/CRP.3, prepared in response to operative paragraph 1 of INCD decision 10/18,

Also noting with appreciation the revised offer of UNDP to house the Global Mechanism, contained in Appendix III of document ICCD/COP(1)/5, as supplemented by document ICCD/COP(1)/CRP.2, prepared in response to operative paragraph 1 of INCD decision 10/18,

Noting further document ICCD/COP(1)/5/Add.2/Rev.1, which contains proposals developed by the Permanent Secretariat, in consultation with IFAD and UNDP regarding the administrative and operational modalities of the Global Mechanism,

1. Decides to select IFAD to house the Global Mechanism on the basis of criteria agreed on in Section B of the Annex to INCD decision 10/3;

2. Decides also that the Global Mechanism, in carrying out its mandate, under the authority and guidance of the COP, should perform the functions described in the annex to this decision;

3. Requests the Permanent Secretariat, in consultation with the organization to house the Global Mechanism, as well as the other two collaborating institutions referred to in decision 25/COP.1, to develop a memorandum of understanding between the COP and appropriate body or organization for consideration and adoption at the second session of the COP;

4. Requests also the Permanent Secretariat and the organization housing the Global Mechanism, in consultation with the two other collaborating institutions, in developing the memorandum of understanding referred to in paragraph 3 above, to take fully into account document ICCD/COP(1)/5 and other related documents, including document ICCD/COP(1)/CRP.1, to address, inter alia, the following:

- (a) the separate identity of the Global Mechanism within the housing organization;
- (b) the measures to be taken to assure full accountability and full reporting to the COP;
- (c) the field office support available for Global Mechanism activities;
- (d) the administrative infrastructure available to support the Global Mechanism; and
- (e) arrangements for the handling of resources made available for Global Mechanism functioning and activities;

5. Further requests the organization housing the Global Mechanism and the Permanent Secretariat to work out appropriate arrangements for liaison and cooperation between the Permanent Secretariat and the Global Mechanism in order to avoid duplication and to enhance the effectiveness of Convention implementation in accordance with their respective roles in implementation;

6. Invites relevant institutions, programmes and bodies of the United Nations system, including the United Nations Food and Agriculture Organization (FAO), the Global Environment Facility (GEF), the United Nations Environment Programme (UNEP) and the World Food Programme (WFP), intergovernmental, regional and subregional organizations and regional development banks, as well as interested non-governmental organizations (NGOs) and the private sector, to actively support the activities of the Global Mechanism;

7. Urges Governments and all interested organizations, including non-governmental organizations and the private sector, to make promptly the voluntary contributions necessary to ensure that the Global Mechanism can begin operating on 1 January 1998 on the basis of Section A of Appendix I of document ICCD/COP(1)/5 and continue effective operations on the basis of the memorandum of understanding referred to in paragraph 3 above after its adoption by the second session of the COP;

8. Reiterates that, in accordance with article 21, paragraph 7 of the Convention, the COP shall, at its third ordinary session, review the policies, operational modalities and activities of the Global Mechanism and, on the basis of this review, shall consider and take appropriate action.

## ANNEX

### FUNCTIONS OF THE GLOBAL MECHANISM

In order to increase the effectiveness and efficiency of existing financial mechanisms, a global mechanism is established to promote actions leading to the mobilization and channelling of substantial financial resources.

In accordance with the relevant provisions of the Convention, in particular articles 7, 20 and 21, and the financial provisions of relevant regional implementation annexes, the global mechanism shall function under the authority and guidance of the Conference of the Parties, including on policies, operational modalities and activities, and be accountable and make regular reports to it, according to the principles of transparency, neutrality and universality. The global mechanism, in carrying out its mandate under article 21, paragraph 4, should perform the following functions:

#### 1. Collecting and disseminating information

- (a) Identify potential sources of financing from bilateral donors, the United Nations system, multilateral financial institutions, regional and subregional financial mechanisms, and non-governmental organizations, foundations and other private sector entities, and establish relationships and maintain contacts with them.
- (b) Establish and update an inventory of the financial needs of affected developing country Parties for carrying out action programmes, as well as other relevant activities related to the implementation of the Convention, on the basis of information provided under relevant articles of the Convention.
- (c) Identify and draw up an inventory of relevant bilateral and multilateral cooperation programmes and available financial resources in the form of a comprehensive database, incorporating information both from Parties and from various financial mechanisms, comprising:
  - (i) Sources of available financing through bilateral and multilateral agencies, including their funding patterns and eligibility criteria, using reports to the Conference of the Parties by Parties and all other available data;
  - (ii) Sources of financing from non-governmental organizations, foundations, academic institutions and other private sector entities that might be encouraged to provide funding, including their funding patterns and eligibility criteria;
  - (iii) National funding in affected country Parties to finance actions designed to combat desertification and/or mitigate the effects of drought.
- (d) Disseminate information collected in accordance with paragraphs (a), (b) and (c) to Parties on a regular basis and make it available, on request, to interested intergovernmental and non-governmental organizations.

## 2. Analyzing and advising on request

- (a) Promote the matching of available resources to the projects and programmes of affected developing countries related to combating desertification, including assisting them to find new and additional resources for the implementation of the Convention.
- (b) Analyze and provide advice on sources of financial assistance and on mechanisms to channel resources to the local, national and subregional levels, including through non-governmental organizations and private sector entities.
- (c) Provide advice on the establishment, financing and management of national desertification funds.
- (d) Identify, promote and provide advice about innovative methods and incentives for mobilizing and channelling resources.

## 3. Promoting actions leading to cooperation and coordination

- (a) Disseminate information it collects so as to facilitate the assessment of, and exchange of information on, the effectiveness of financial assistance, including its accessibility, predictability, flexibility, quality and local-level orientation.
- (b) Provide identified United Nations agencies, funds and programmes, and multilateral financial institutions, with information and stimulate coordination among them, including in multiple-source financing.
- (c) Encourage, and facilitate coordination through the provision of information and other measures concerning relevant multiple-source financing approaches, mechanisms and arrangements, such as co-financing, parallel financing, consortia and joint programmes.
- (d) Increase awareness of the Convention, and promote the participation in its implementation, of identified foundations, academic institutions, non-governmental organizations and other private sector entities and facilitate contacts with them by interested Parties, in order to contribute to the mobilization and channelling of substantial financial resources.
- (e) Provide information, making use of the Conference of the Parties and other relevant existing forums, that will:
  - (i) Facilitate discussion of relevant issues in the governing bodies of multilateral financial institutions;
  - (ii) Inform Parties about the eligibility criteria and projects of international financial instruments and mechanisms, including particularly the Global Environment Facility (GEF), as they relate to implementation of the Convention;

- (iii) Inform affected country Parties about each other's relevant activities;
  - (iv) Disseminate methodologies developed by Parties to identify and prioritize the financial needs of action programmes at all levels;
  - (v) Promote full use and continued improvement of the funding sources to be utilized for the implementation of the Convention referred to in relevant articles of the Convention.
- (f) Identify and then provide information and advice on financing sources for the transfer, acquisition, adaptation and development of environmentally sound, economically viable and socially acceptable technologies relevant to combating desertification and/or mitigating the effects of drought.
- (g) Promote partnership building as it relates to the support of the mobilization of financial resources for the implementation of the Convention at the local, national, subregional and regional levels.
- (h) Facilitate the financing of information exchange on best practices utilized in combating desertification and/or mitigating the effects of drought at the local level in affected developing country Parties.

#### 4. Mobilizing and channelling financial resources

- (a) Promote actions leading to the mobilization and channelling of financial resources to all levels in accordance with the provisions of the Convention.
- (b) Undertake actions and/or activities, in partnership particularly with developed country Parties, and relevant institutions, that shall, consistent with the Convention, mobilize and maximize for the purpose of the Convention adequate and substantial financial resources, including, as agreed in the Convention, new and additional resources, on a grant or, if necessary, concessional basis, to fund activities under action programmes of affected developing country Parties, particularly those in Africa, at all levels in conformity with the Convention and with the particular conditions of the regions of relevant regional implementation annexes.
- (c) Promote the use of existing bilateral and multilateral financial mechanisms and arrangements that mobilize and channel substantial financial resources to affected developing country Parties in combating desertification and mitigating the effects of drought.
- (d) Undertake actions and/or activities for the mobilization of adequate, timely and predictable financial resources, including new and additional funding from the Global Environment Facility of the agreed incremental costs of those activities concerning desertification that relate to its four focal areas, in conformity with the relevant provisions of the instrument establishing the Global Environment Facility.



- (e) Guide and direct, as requested and as appropriate, the channelling and allocation of resources mobilized for the purpose of the Convention from bilateral and multilateral sources through the host, and other organizations in an adequate, predictable and timely fashion to local, national, subregional and regional levels for the implementation of action programmes, projects and activities to combat desertification and/or mitigate the effects of drought in affected developing country Parties, particularly in Africa.
- (f) Use, as requested and appropriate, its own resources made available to it through trust fund(s) and/or equivalent arrangements established by the host organization for the Global Mechanism's functioning and activities, as defined in this annex, from bilateral and multilateral sources through the host organization and from the budget of the Convention.
- (g) Encourage, in conjunction with the Conference of the Parties, the provision, through various mechanisms within the United Nations system and through multilateral financial institutions, of support at the national, subregional and regional levels to activities that enable developing country Parties to meet their obligations under the Convention.
- (h) Increase the efficiency and effectiveness of existing financial mechanisms and collaborate with them to facilitate and catalyse the mobilization and channelling by them of adequate and substantial financial resources, including new and additional resources, for implementation of the Convention.
- (i) Play, among other functions, a catalytic role, in ensuring the availability of resources for project and programme design and implementation from bilateral and multilateral sources.
- (j) Promote and facilitate, through the actions in paragraphs (a) to (i):
  - (i) The transfer, acquisition, adaptation and development of environmentally sound, economically viable and socially acceptable technologies, knowledge, know-how and practices relevant to combating desertification and/or mitigating the effects of drought in affected developing countries, in conformity with the Convention.
  - (ii) The use of indigenous and traditional knowledge and technologies, as well as local expertise, at all levels in affected developing countries.

#### 5. Reporting to the Conference of the Parties

- (a) Provide reports to the sessions of the Conference of the Parties on its activities, including in those reports the following:
  - (i) The operations and activities of the global mechanism, including the effectiveness of its activities in promoting the mobilization and channelling of the substantial financial resources referred to in paragraph 4 (a) above to affected developing country Parties;

- (ii) The assessment of future availability of funds for implementation of the Convention, as well as assessment and proposals for effective ways and means of providing such funds.



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**CONFERENCE OF THE PARTIES**

Third session

Recife, 15-26 November 1999

Item 10(b) of the provisional agenda

**GLOBAL MECHANISM**

**CONSIDERATION OF, WITH A VIEW TO ADOPTING, THE REVISED DRAFT  
MEMORANDUM OF UNDERSTANDING BETWEEN THE CONFERENCE OF THE PARTIES  
AND THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT**

Note by the secretariat

1. By decision 24/COP.1, paragraph 3, the Conference of the Parties (COP) requested the secretariat, in consultation with the International Fund for Agricultural Development (IFAD), as well as the United Nations Development Programme (UNDP) and the World Bank, to develop a memorandum of understanding (MOU) between the COP and the appropriate body or organization on the Global Mechanism (GM) for consideration and adoption at the second session of the COP.
2. The COP also requested the secretariat and IFAD, in consultation with the UNDP and the World Bank, in developing such MOU, to take fully into account document ICCD/COP(1)/5 and other related documents, including ICCD/COP(1)/CRP.1.
3. In conformity with decision 24/COP.1, a draft memorandum of understanding was proposed to the Conference of the Parties for consideration at its second session (ICCD/COP(2)/4/Add.1).
4. By decision 19/COP.2, the Conference of the Parties took note of the draft memorandum of understanding and requested the secretariat to continue consultations on the text, in order to ensure that comments made by Parties were taken into account, and to submit a revised draft of the memorandum of understanding for consideration and decision by the Conference of the Parties at its third session.
5. The Conference of the Parties, by the same decision, decided also to transmit to its third session the draft decision ICCD/COP(2)/L.19 submitted by Indonesia on behalf of the Group of 77 and China.

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6. Following consultations with the concerned Parties and IFAD, a revised draft of the MOU was prepared by the secretariat. The new text was approved by the Executive Board of IFAD at its session on 28 and 29 April 1999.

7. In accordance with decision 19/COP.2 of the Conference of the Parties, the draft memorandum of understanding and draft decision ICCD/COP(2)/L.19 are annexed, for consideration and decision by the Conference of the Parties (see annexes I and III, respectively), together with the text of decision 19/COP.2 (annex II).

Annex I

MEMORANDUM OF UNDERSTANDING BETWEEN THE  
CONFERENCE OF THE PARTIES OF THE CONVENTION TO COMBAT  
DESERTIFICATION AND THE INTERNATIONAL FUND FOR AGRICULTURAL  
DEVELOPMENT REGARDING THE MODALITIES AND ADMINISTRATIVE  
OPERATIONS OF THE GLOBAL MECHANISM

MEMORANDUM OF UNDERSTANDING, dated \_\_\_\_\_, between the Conference of the Parties (hereinafter called "the Conference") of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (hereinafter called "the Convention" or "CCD") and the International Fund for Agricultural Development (hereinafter called "the Fund" or "IFAD") regarding the modalities and administrative operations of the Global Mechanism.

WHEREAS the Conference was required, in accordance with Article 21, paragraphs 5 and 6, of the Convention, to identify at its first ordinary session, an organization to house the Global Mechanism established under Article 21, paragraph 4, and whereas the Fund submitted a revised offer to house the Global Mechanism, contained in Appendix II of the document ICCD/COP(1)/5 and supplemented by document ICCD/COP(1)/CRP.3;

WHEREAS the Conference, in paragraph 1 of its decision 24/COP.1, taken at its first session, selected the Fund to house the Global Mechanism established under Article 21, paragraph 4, of the Convention;

WHEREAS the Conference, in paragraphs 1 and 2 of its decision 25/COP.1, also taken at its first session, decided that, in support of the functions of the Global Mechanism, the organization to house the Global Mechanism shall, as the lead organization, fully cooperate with the United Nations Development Programme (UNDP) and the World Bank and other relevant international organizations; and

WHEREAS the Conference, in paragraphs 3 and 4 of its decision 24/COP.1, requested the secretariat of the Convention, in consultation with the Fund, UNDP and the World Bank, to develop a memorandum of understanding between the Conference and an appropriate body of the Fund;

NOW THEREFORE it is hereby understood that the modalities and administrative operations of the Global Mechanism will be as follows:

## I. FUNCTIONS OF THE GLOBAL MECHANISM

In carrying out its mandate, under the authority and guidance of the Conference, the Global Mechanism will, in accordance with paragraph 2 of decision 24/COP.1 of the Conference, perform the functions described in the annex to that decision. As the housing institution, the Fund will support the Global Mechanism in performing these functions in the framework of the mandate and policies of the Fund.

## II. STATUS OF THE GLOBAL MECHANISM WITHIN THE FUND

### A. Separate identity of the Global Mechanism

While the Global Mechanism will have a separate identity within the Fund, it will be an organic part of the structure of the Fund directly under the President of the Fund.

### B. Resources of the Global Mechanism

The resources of the Global Mechanism will comprise the following:

(a) Amounts received from allocations of the core budget of the Convention by the Conference to meet the administrative and operational expenditures of the Global Mechanism. These amounts will be held by the Fund upon receipt in an account termed "Core Budget Administrative Account";

(b) Amounts contributed voluntarily by multilateral and bilateral donors as well as other sources, including non-governmental organizations and the private sector, to meet the administrative and operational expenditures of the Global Mechanism and remuneration to the Global Mechanism for services rendered to a specific donor or group of donors. Such amounts will be held by the Fund upon receipt in an account termed "Voluntary Contributions Administrative Expenses Account"; and

(c) In accordance with section 4(f) of the annex to decision 24/COP.1 of the Conference, amounts made available for the use, as requested and appropriate, of the Global Mechanism ("Global Mechanism's own resources") for its functioning and activities from bilateral and multilateral resources through trust fund(s) and/or equivalent arrangements established by the Fund, including the proceeds of cost-sharing arrangements with the Global Mechanism. All these amounts will be held by the Fund upon receipt in an account termed "Special Resources for CCD Finance (SRCF) Account". The Fund will provide a grant contribution as part of the initial capitalization of the SRCF Account and seek matching financing from interested donors, taking into account the offer made by IFAD at the first ordinary session of the Conference in paragraph 48 of document ICCD/COP(1)/5.

### C. Management of the Global Mechanism resources

With respect to the funds allocated from the core budget of the Convention and received by the Fund under (a) above, the rules of procedure and financial rules adopted by the Conference will apply to the transfer to IFAD of the said funds. With respect to the funds received by IFAD under (a), (b) and (c) above, all these amounts will be received, held and disbursed and the said accounts will be administered by the Fund in accordance with the rules and procedures of the Fund, including those applicable to the management of the Fund's own supplementary funds (trust funds).

### D. Management of the Global Mechanism

The Managing Director of the Global Mechanism (hereinafter called "the Managing Director") will be nominated by the Administrator of UNDP and appointed by the President of the Fund. The Managing Director, in discharging his or her responsibilities, will report directly to the President of IFAD. The Managing Director will cooperate with the Executive Secretary of the CCD pursuant to decision 9/COP.1.

## III. RELATIONSHIP OF THE GLOBAL MECHANISM TO THE CONFERENCE

### A. Accountability to the Conference

- (1) The Global Mechanism will function under the authority of the Conference and be fully accountable to the Conference.
- (2) The chain of accountability will run directly from the Managing Director to the President of the Fund to the Conference of the Parties. The Managing Director will submit reports to the Conference on behalf of the President of the Fund.
- (3) The Conference will provide policy and operational guidance as necessary, including guidance resulting from the review of the policies, operational modalities and activities of the Global Mechanism to take place at its third ordinary session in accordance with Article 21, paragraph 7 of the Convention.
- (4) The Managing Director will be responsible for preparing the programme of work and budget of the Global Mechanism, including proposed staffing, which will be reviewed and approved by the President of the Fund before being forwarded to the Executive Secretary of the Convention for consideration in the preparation of the budget estimates of the Convention, in accordance with the financial rules of the Conference.
- (5) The budget estimates for the Global Mechanism, which will be shown in a separate section of the Convention budget, may include administrative and operational expenditures to be financed both from the core budget of the Convention, and, if appropriate, from the Voluntary Contributions Administrative Expenses Account.

(6) The Conference will approve the programme of work and budget of the Global Mechanism, authorize the Executive Secretary to transfer resources from the General Fund of the Convention to the Fund for all or a portion of the Global Mechanism's approved operating expenses and reimburse the United Nations for any administrative support costs incurred in this process.

(7) The Fund will, as soon as practicable following the end of the financial year of the Convention, provide the Conference with an audited financial statement of the Core Budget Administrative Account in accordance with the Fund's normal audit procedures.

#### B. Reporting to the Conference

The Managing Director, on behalf of the President of the Fund, will submit a report to each ordinary session of the Conference on the activities of the Global Mechanism. Such reports which will be submitted to the Executive Secretary for circulation to the Conference, will encompass the following:

(a) The operations and activities of the Global Mechanism, including the effectiveness of its activities in promoting the mobilization and channelling of the substantial financial resources referred to in section 4(a) of the annex to decision 24/COP.1 of the Conference;

(b) An assessment of the future availability of funds for implementation of the Convention, as well as proposals for effective ways and means of providing such funds; and

(c) The activities of the Fund, UNDP and the World Bank as well as other relevant organizations in supporting the Global Mechanism.

### IV. COLLABORATIVE INSTITUTIONAL ARRANGEMENTS

#### A. General collaborative arrangements

The Fund will, in accordance with paragraphs 2 and 3 of decision 25/COP.1 of the Conference, fully cooperate with UNDP and the World Bank to proceed with, actively pursue and develop further the collaborative institutional arrangements described in document ICCD/COP(1)/CRP.1, including the establishment of a Facilitation Committee. Pursuant to paragraph 5 of decision 24/COP.1, the Facilitation Committee will include the Executive Secretary as its member.

#### B. Cooperation with the Convention secretariat

(1) The Fund and the secretariat of the Convention will cooperate and exchange on a regular basis views and experiences necessary to facilitate the effectiveness of the Global Mechanism in assisting the Parties to implement the Convention.



(2) In accordance with paragraph 5 of decision 24/COP.1 of the Conference, the Fund will work out with the secretariat of the Convention appropriate arrangements for liaison and cooperation between the secretariat and the Global Mechanism in order to avoid duplication and to enhance the effectiveness of Convention implementation in accordance with their respective roles in implementation. Such collaboration between the Managing Director and the Executive Secretary will ensure the continuity and coherence of existing and future programmes of the Fund and the CCD.

#### C. Cooperation with other relevant organizations

The Fund will, in accordance with paragraph 6 of decision 24/COP.1 of the Conference and paragraph 4 of decision 25/COP.1, encourage active support for the Global Mechanism, as well as the establishment or strengthening of programmes to combat desertification in affected developing countries, by relevant institutions, programmes and bodies of the United Nations system, including the Food and Agriculture Organization of the United Nations (FAO), the Global Environment Facility (GEF), the United Nations Environment Programme (UNEP) and the World Food Programme (WFP), and by regional and subregional organizations and regional development banks such as the African Development Bank (AfDB), the Asian Development Bank (AsDB), the Inter-American Development Bank (IADB), the Islamic Development Bank (IsDB), the Central American Bank for Economic Integration (CABEI) and the Caribbean Development Bank (CDB), as well as interested non-governmental organizations and the private sector.

#### V. FIELD OFFICE SUPPORT FOR THE GLOBAL MECHANISM

The Fund will make appropriate arrangements to obtain supporting services from the United Nations country team, operating under the leadership of the United Nations resident coordinators within the framework of the resident coordinator system.

#### VI. ADMINISTRATIVE INFRASTRUCTURE

The Global Mechanism will be located at the headquarters of the Fund in Rome, where it shall enjoy full access to all of the administrative infrastructure available to the Fund offices, including appropriate office space, as well as personnel, financial, communications and information management services. Any direct costs and associated service charges reimbursable to IFAD will be reflected in the budget of the Global Mechanism.

#### VII. FINAL PROVISIONS

##### A. Entry into operation

The present Memorandum of Understanding will enter into operation immediately upon its approval by the Conference and the Fund.

B. Implementation of the Memorandum of Understanding

The Conference and the Fund may enter in such supplementary arrangements for the implementation of the present Memorandum of Understanding as may be found desirable.

C. Termination

The present Memorandum of Understanding may be terminated at the initiative of the Conference or the Fund with prior written notice of at least one year. In the event of termination, the Conference and IFAD will jointly reach an understanding on the most practical and effective means of carrying out any responsibilities assumed under the present Memorandum of Understanding.

D. Amendment

The present Memorandum of Understanding may be revised by mutual consent in writing between the Conference and the Fund.

E. Interpretation

If differences arise in the interpretation of the present Memorandum of Understanding, the Conference and the Fund shall reach a mutually acceptable solution on the basis of the English text thereof.

FOR THE CONFERENCE OF THE PARTIES TO THE  
CONVENTION TO COMBAT DESERTIFICATION

Signed by: \_\_\_\_\_  
Executive Secretary

FOR THE INTERNATIONAL FUND FOR  
AGRICULTURAL DEVELOPMENT

Signed by: \_\_\_\_\_  
President

Annex II**Decision 19/COP.2**

Memorandum of understanding  
between the Conference of the Parties to  
the United Nations Convention to Combat Desertification and  
the International Fund for Agricultural Development  
regarding the modalities and administrative operations of the  
Global Mechanism

*The Conference of the Parties*

1. Takes note of the draft memorandum of understanding between the Conference of the Parties to the United Nations Convention to Combat Desertification and the International Fund for Agricultural Development regarding the modalities and administrative operations of the Global Mechanism<sup>1/</sup>, jointly prepared by the secretariat of the Convention and the International Fund for Agricultural Development, and requests the secretariat of the Convention to continue consultations on the text of the draft memorandum of understanding, in order to ensure that comments by Parties are taken into account, and to submit a revised draft of the memorandum of understanding for consideration and decision by the Conference of the Parties at its third session;

2. Decides to transmit to its third session the draft decision ICCD/COP(2)/L.19 submitted by Indonesia on behalf of the Group of 77 and China;

3. Calls upon all those to whom the draft memorandum of understanding is addressed to act, pending its entry into operation, as if it were already in effect.

12<sup>th</sup> Plenary  
11 December 1998

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<sup>1/</sup> ICCD/COP(2)/4/Add.1, annex.

Annex III

Memorandum of understanding between the Conference of the Parties and the International Fund for Agricultural Development regarding the modalities and administrative operations of the Global Mechanism

Indonesia\*/: draft decision

The Conference of the Parties,

Recalling its decision 24/COP.1 on the organization to house the Global Mechanism and agreement on its modalities,

Having considered the draft memorandum of understanding with the International Fund for Agricultural Development on the Global Mechanism, 1/

1. Adopts the memorandum of understanding annexed to the present decision, thereby bringing it into force; 2/

2. Requests the Convention secretariat and the International Fund for Agricultural Development to take, jointly and/or separately, all necessary measures for the full and timely implementation of the memorandum of understanding.

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1/ On behalf of the States Members of the United Nations that are members of the Group of 77 and China.

1/ ICCD/COP(2)/4/Add.1.

2/ ICCD/COP(2)/4/Add.1, annex, to be annexed to the decision, upon adoption, in the final report of the Conference.

HOUSING OF THE GLOBAL MECHANISM OF THE UNITED NATIONS  
CONVENTION TO COMBAT DESERTIFICATION

Resolution 108/XXI

The Housing of the Global Mechanism of the United Nations Convention to Combat Desertification

The Governing Council of IFAD,

Noting the decision of the Conference of the Parties (COP) to the United Nations Convention to Combat Desertification (CCD), at its First Session, to invite IFAD to house the Global Mechanism of the CCD (Decision 24/COP.1);

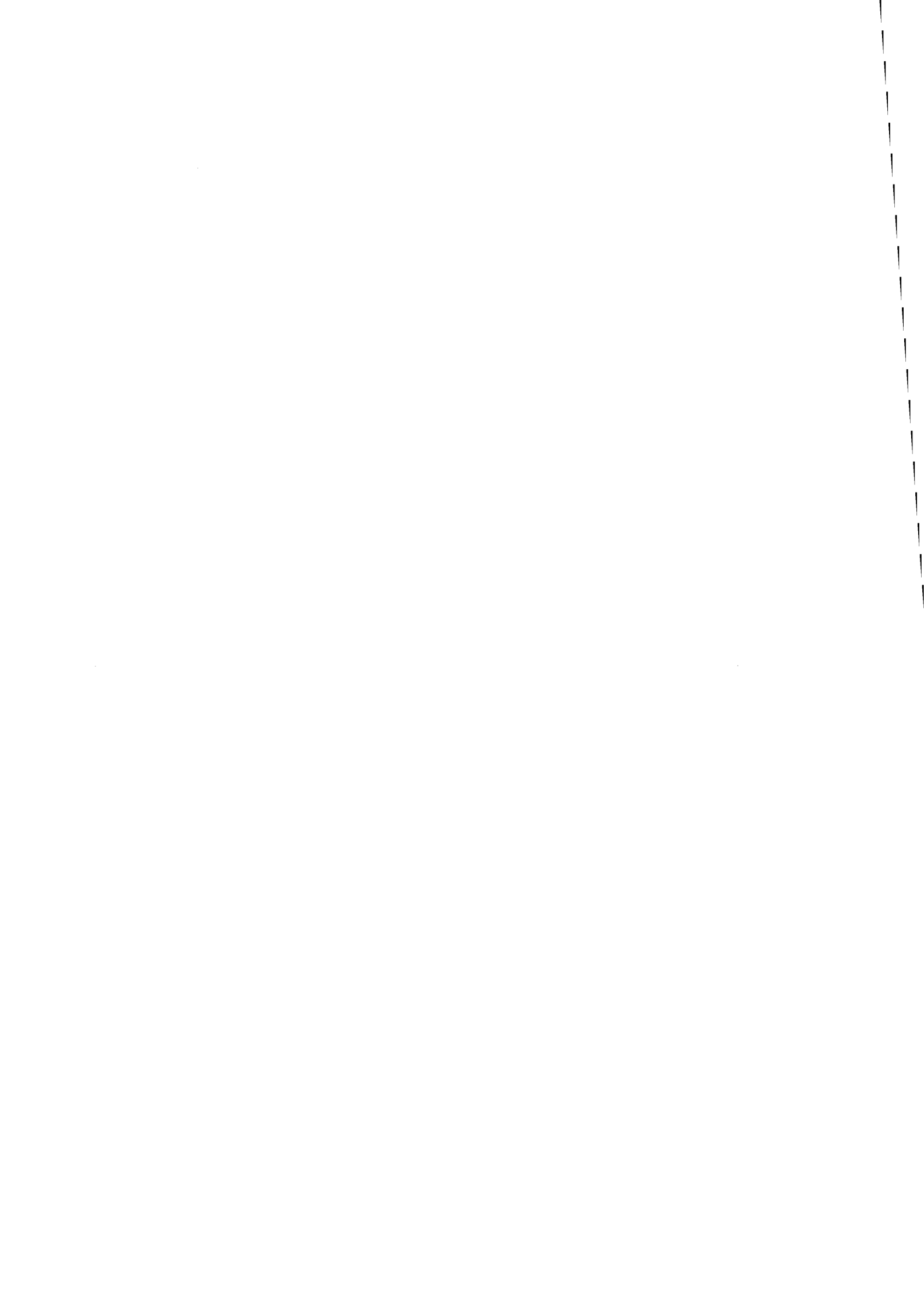
Further noting the important role played by IFAD in the first twenty years of its existence in combatting desertification;

Welcoming the collaborative institutional arrangement among IFAD, UNDP and the World Bank to support the effective implementation of the Global Mechanism;

Having considered document GC 21/L.10 and its Addendum on the Housing of the Global Mechanism of the CCD, the recommendations of the Executive Board thereon and the draft Resolution contained in the said documents;

Decides that:

1. IFAD shall accept the decision of the Conference of the Parties (COP) of the CCD at its First Session to select IFAD to house the Global Mechanism thereof.
2. The Executive Board is authorized to approve the modalities, procedures and administrative arrangements to be contained in a Memorandum of Understanding between the COP and IFAD for the housing of the Global Mechanism by IFAD.
3. The President of IFAD is authorized to sign a Memorandum of Understanding between COP and IFAD, containing such arrangements as the Executive Board may approve for the housing of the Global Mechanism.
4. The President of IFAD is requested to report periodically to the Executive Board on the administrative arrangements for the housing of the said Global Mechanism in IFAD and on such activities as IFAD may undertake in support of the Global Mechanism, while also keeping the Executive Board informed of the activities of the Global Mechanism.



The President



IFAD  
INTERNATIONAL  
FUND FOR  
AGRICULTURAL  
DEVELOPMENT

PB No. 99/10

4 October 1999

### PRESIDENT'S BULLETIN

**Subject: Accounts of the Global Mechanism**

1. The resources of the Global Mechanism are managed through three different accounts. These are referred to under section II, sub-section B, "The Resources of the Global Mechanism", in the Memorandum of Understanding (MOU) between IFAD and the Conference of the Parties (COP) of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (CCD).
2. Attachment I describes the three accounts and the procedures and regulations for their operation. Attachment II sets out the Basic Framework on the Special Resources for the CCD Finance (SRCF) Account.
3. This Bulletin takes effect as of the date written above.

A handwritten signature in black ink, appearing to read 'Fawzi H. Al-Sultan', is written over a horizontal line.

Fawzi H. Al-Sultan  
President





**GLOBAL MECHANISM  
OF THE UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION  
IN THOSE COUNTRIES EXPERIENCING SERIOUS  
DROUGHT AND/OR DESERTIFICATION, PARTICULARLY IN AFRICA**

**ACCOUNTS OF THE GLOBAL MECHANISM**

## ACCOUNTS OF THE GLOBAL MECHANISM

### **The First Account: Core Budget Administrative Account**

The first account is defined as follows in the MOU: *amounts received from allocations of the core budget of the Convention by the COP to meet the administrative and operational expenditures of the Global Mechanism. These amounts shall be held by the Fund upon receipt in an account termed "Core Budget Administrative Account".*

The operative words in this text are "to meet the administrative and operational expenditures of the Global Mechanism".

By administrative expenditures, the following should be understood: all costs related to staff employed by the Global Mechanism, including recruitment and salary-related costs. It also includes travel costs for such staff, purchase/rental of equipment and supplies required to perform the tasks defined for such posts and other related services rendered, such as audit costs and service charges.

By operational expenditures, the following should be understood: all costs related to the implementation of the functions of the Global Mechanism as defined in article 21 of the CCD Convention and in decisions 24/COP.1 with its annex and 25/COP.1 with its annex. Included in such costs are: (i) the employment of consultants to assist Parties to the Convention and its partners in civil society in preparing action plans and programmes for subsequent implementation; (ii) costs related to the marketing and awareness-raising functions of the Global Mechanism; and (iii) the organization of financing conferences aimed at generating funds for the implementation of investment programmes and CCD Convention-related activities.

In short, all costs leading up to the preparation of activities and programmes required to implement the CCD Convention.

**Budgeting:** The proposed work programme and core budget for the Global Mechanism shall be prepared by the Managing Director of the Global Mechanism in full consultation with the Controller's Office of IFAD (VC). Following the President of IFAD's approval, the proposal shall be submitted to the CCD Secretariat for presentation to the Conference of the Parties of the CCD Convention (COP) for final approval.

**Approval** of the work programme and core budget for the Global Mechanism and of the yearly amount to be deposited into this account shall be undertaken by the COP. Actual payment to IFAD shall be made in instalments. Authority for the use of this account lies with the Managing Director of the Global Mechanism, except for the expenditures related to the Managing Director of the Global Mechanism which shall be approved by the President of IFAD. In the absence of the Managing Director of the Global Mechanism, his/her responsibilities may be delegated.

**Investment:** IFAD may invest funds held in this account which are not currently required for disbursement. The income therefrom shall be credited to this account and used for the purposes of the account.

**Reporting** to the COP on the use of the funds in this account shall be through the CCD Secretariat. Accounts shall be maintained by the Controller's Office of IFAD (VC) to show the use of budgetary allocations against this account. The financial statements shall be prepared annually by VC and approved for audit by the Managing Director of the Global Mechanism and the President of IFAD for submission to the Conference of the Parties of the CCD Convention for approval.

## **The Second Account: Voluntary Contributions Administrative Expenses Account**

The second account is defined as follows in the MOU: *amounts contributed voluntarily by multilateral and bilateral donors as well as other sources including non-governmental organizations and the private sector to meet the administrative and operational expenditures of the Global Mechanism and the remuneration to the Global Mechanism for services rendered to a specific donor or group of donors. Such amounts shall be held by the Fund upon receipt in an account termed "Voluntary Contributions Administrative Expenses Account".*

The operative words in this text are "administrative and operational expenditures of the Global Mechanism and the remuneration to the Global Mechanism for services rendered to a specific donor or group of donors."

Administrative and operational expenditures are defined as for the First Account above. Funds contributed to this account are therefore used for the same purposes as those deposited in the First Account. Donors, however, have the option of earmarking their contributions to the Second Account for administrative and operational expenditures linked to a specific initiative being pursued or to be pursued by the Global Mechanism.

Budgeting: The budget estimates against these funds shall be prepared by the Global Mechanism, in full consultation with the Controller's Office of IFAD (VC), and approved by the President of IFAD. These estimates may, if appropriate, be included in a separate section of the CCD Convention budget. In the case of an earmarked contribution, budget estimates shall be prepared in co-operation with the donor(s) concerned.

Approval: Authority for the use of this account lies with the Managing Director of the Global Mechanism, except for the expenditures related to the Managing Director of the Global Mechanism which shall be approved by the President of IFAD. In the absence of the Managing Director of the Global Mechanism, his/her responsibilities may be delegated.

Investment: IFAD may invest funds held in this account which are not currently required for disbursement. The income therefrom shall be credited to this account and used for the purposes of the account, unless a donor states otherwise when earmarking their contribution.

Reporting on the overall use of these funds is to each individual donor through the Controller's Office of IFAD (VC). Accounts shall be maintained by VC to show the use of budgetary allocations against this account. The financial statements shall be prepared annually by VC and approved for audit by the Managing Director of the Global Mechanism and the President of IFAD. In the case of earmarked contributions, a special report shall be provided. This may incur extra costs that will be deducted from the donor's or group of donors' contribution(s).

## **The Third Account: Special Resources for the CCD Finance (SRCF) Account**

The third account is defined as follows in the MOU: *in accordance with paragraph 4(f) of the Annex to Decision 24/COP.1 of the Conference, amounts made available for the use, as requested and appropriate, of the Global Mechanism ("Global Mechanism's own resources") for its functioning and activities from bilateral and multilateral resources through trust fund(s) and/or equivalent arrangements established by the Fund, including the proceeds of cost sharing arrangements with the Global Mechanism. All these amounts shall be held by the Fund upon receipt in an account termed "Special Resources for the CCD Finance (SRCF) Account". The Fund shall provide a grant contribution as part of the initial capitalisation of the SRCF Account and seek matching financing from interested donors, taking into account the offer made by IFAD at the first ordinary session of the COP in paragraph 48 of document ICCD/COP(1), 5.*

The Basic Framework on the SRCF Account sets out the details in relation to this account (See Attachment II).

**GLOBAL MECHANISM  
OF THE UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION  
IN THOSE COUNTRIES EXPERIENCING SERIOUS  
DROUGHT AND/OR DESERTIFICATION, PARTICULARLY IN AFRICA**

**BASIC FRAMEWORK  
ON THE SPECIAL RESOURCES FOR THE CCD FINANCE (SRCF) ACCOUNT**

## **BASIC FRAMEWORK ON THE SPECIAL RESOURCES FOR THE CCD FINANCE (SRCF) ACCOUNT**

### **Introduction**

1. As specified in paragraph II.B. (c) of the Memorandum of Understanding between the Conference of the Parties of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, ("the Convention" or "CCD") and the International Fund for Agricultural Development (IFAD) regarding the modalities and administrative operations of the Global Mechanism of the CCD, IFAD has opened a "Special Resources for the CCD Finance (SRCF) Account" to receive "amounts made available for the use, as requested and appropriate, of the Global Mechanism... for its functioning and activities from bilateral and multilateral resources through trust fund(s) and/or equivalent arrangements established by [IFAD], including the proceeds of cost-sharing arrangements with the Global Mechanism". The SRCF Account has been opened in conformity with paragraph 4(f) of the Annex to Decision 24/COP.1 of the Conference of the Parties to the Convention.

2. The SRCF Account shall be used to support the development of national, regional and sub-regional Action Programmes in accordance with Article 9 of the Convention. Resources held in the SRCF Account shall also be used for the implementation of initiatives, activities and the design of projects and programmes derived from such Action Programmes, either in their totality or on a cost sharing arrangement with one or several other sources of funding. The initiatives, activities and design of projects and programmes eligible for financial support from the SRCF Account may or may not have been developed with support from the Global Mechanism. They shall, however, form part of a coherent set of interventions designed to foster the efficient implementation of the Convention at national, regional or sub-regional levels. In conformity with the Convention, funds held in the SRCF Account may benefit Parties to Annexes I, II and III of the Convention and/or its partners in civil society, as well as organisations and entities involved in the transfer of science and technology.

### **Definitions**

3. Wherever used in this Basic Framework, unless the context otherwise requires, the following terms shall have the following meanings:

- (i) "the Account" means the SRCF Account opened by the Fund for the Global Mechanism;
- (ii) "CCD" or "the Convention" means the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa;
- (iii) "COP" means the Conference of the Parties to the Convention;
- (iv) "Global Mechanism" means the Global Mechanism facility established under the Convention and housed by IFAD;
- (v) "IFAD" means the International Fund for Agricultural Development, a specialised agency of the United Nations based in Rome;
- (vi) "MOU" means the Memorandum of Understanding between the COP and IFAD concerning the housing of the Global Mechanism; and
- (vii) "SRCF" means the Special Resources for CCD Finance.

### Mobilisation of Resources

4. The SRCF shall be open to contributions from Parties to the Convention, multilateral organizations, bilateral organizations, non-governmental organizations, the private sector and such other sources as the President of IFAD shall approve.
5. Except as the President of IFAD shall otherwise decide, the SRCF may accept contributions, subject to the provisions of paragraph 6 below, that:
  - (i) are free of limitations on the use thereof; or
  - (ii) indicate that the use of that contribution shall be for given countries and/or regions and/or specific beneficiaries and/or specific thematic activities provided that not less than thirty percent (30%) of the contribution shall be free of limitations on the use thereof.

### Payment of Contributions

6. (a) Except as the Managing Director of the Global Mechanism may otherwise decide, on an exceptional basis, contributions to the SRCF shall be paid in freely convertible currencies. If the said contributions are not paid in a freely convertible currency, the amounts thereof shall be deposited into an account readily accessible to the Global Mechanism for use in accordance with its mandate.

(b) Contributions shall be paid in cash or in non-negotiable, non-interest bearing irrevocable promissory notes or other similar obligations of the contributor concerned, payable at par on demand by the Global Mechanism.

(c) Contributions to the SRCF shall be confirmed by deposit with IFAD of an Instrument of Contribution to the SRCF, satisfactory to IFAD; and

(d) Each contribution confirmed by an Instrument of Contribution to the SRCF deposited with IFAD for the Global Mechanism shall be paid according to a schedule to be agreed with the Managing Director of the Global Mechanism, who, in turn, shall secure the consent of the President of IFAD therefor.

7. (a) Each instalment or part thereof of a contribution shall be recorded in the currency received and, for accounting purposes, shall be translated into United States dollars at the exchange rate of the International Monetary Fund (IMF) prevailing on the date of receipt and thereafter at current IMF rates as required from time to time.

(b) For the purposes of paragraph 8 below, the contributions or parts thereof to be drawn down shall be translated into United States dollars at the exchange rate of the IMF prevailing on a convenient date immediately preceding the date of the drawdown.

### Drawdown of Contributions

8. The Global Mechanism, on the authorization of the President of IFAD, shall draw down on the cash, promissory notes and other similar obligations paid for making all disbursements and providing a reasonable working balance for the SRCF in an orderly manner, so as to meet such commitments of the SRCF as may have been made, as follows:

- (i) except for those Instruments of Contribution to the SRCF falling under the provisions of sub-paragraph (ii) below, all cash, promissory notes and other similar obligations paid to the SRCF in freely convertible currencies shall be drawn down on an approximate pro rata basis in such a manner that such drawdowns over a reasonable period of time shall be uniform in percentage as far as possible; and
- (ii) where a limited Instrument of Contribution to the SRCF is made under the provisions of sub-paragraph 5 (ii) above, drawdowns on the cash, promissory notes and other similar obligations paid thereunder shall be carried out as expeditiously as possible.

#### Uses of the SRCF

9. The SRCF shall be used for the objectives of the Global Mechanism and, in particular, for the following activities:

- (i) financing assistance to governments and regional/sub-regional bodies for the preparation of national, regional and sub-regional Action Programmes;
- (ii) financing assistance for the preparation of local area development programmes that respond to National Action Programmes;
- (iii) providing catalytic finance for National Desertification Funds designed within the context of National Action Programmes;
- (iv) financing initiatives of non-governmental organizations and community-based organizations in support of the Convention;
- (v) financing critical activities that will influence the direction and magnitude of resources for the transfer of technology; and
- (vi) financing innovative approaches in selected areas in order to explore new and additional sources of funding (strategic initiatives) and to influence policy (enabling activities) to the benefit of the Convention.

10. The SRCF shall be used solely for financing enabling activities concerned with those specified in paragraph 9 above and shall not be used to finance independently specific investment projects. Subject to such limitation, the SRCF may be used to cofinance projects, programmes and technical assistance with the Parties to the Convention and other entities.

11. The SRCF shall provide the said financing on a grant basis. The President of IFAD, upon the recommendation of the Managing Director of the Global Mechanism, shall approve all such provision of financing for each grant proposal.

12. The processing of each proposal and the priority given to it shall be the responsibility of the Managing Director of the Global Mechanism. In so doing, he shall benefit from the advice of a Technical Advisory Group (TAG). The TAG, chaired by the Managing Director of the Global Mechanism, shall consist of: two representatives of the Programme Management Department (IFAD); one representative of the Office of Evaluation and Studies (IFAD); two additional Global Mechanism staff members; one staff member of the Food and Agriculture Organization of the United Nations (FAO) Investment Centre and one representative of the Executive Secretariat of the CCD. In addition, the Managing Director of the Global Mechanism may, at his discretion, draw upon other institutions and experts in the review process.

13. Priority shall be given to the African country Parties to the Convention, in line with the spirit and the objectives of the Convention.

14. Each grant shall be provided to the selected recipient under a specific grant agreement. Such agreements shall be concluded by the Managing Director of the Global Mechanism with the selected recipient.

15. The Global Mechanism shall not undertake the implementation or supervision or administration of any of the approved grants. Instead, it shall use the capacity of existing institutions, such as FAO, the United Nations Environment Programme (UNEP), the United Nations Office for Project Services (UNOPS), and the United Nations Development Programme (UNDP). The Global Mechanism shall, however, monitor the implementation process through, *inter alia*, appropriate progress, technical and financial reports.

#### Management of the SRCF

16. Except as otherwise specified herein, the SRCF shall be managed by the Managing Director of the Global Mechanism.

17. A separate account shall be opened and maintained by IFAD for the SRCF, which shall be subject to an audit by IFAD's External Auditor and the audit report shall be submitted to the President of IFAD in accordance with IFAD's rules and procedures. Copies of the said audit reports shall be provided by IFAD to the Global Mechanism and, upon request, to contributors to the SRCF.

18. Commitments under paragraphs 9 above plus a reasonable working balance shall not exceed the value of cash, promissory notes and other similar obligations paid into the SRCF.

19. IFAD may invest funds held in the Account which are not currently required for disbursement. The income therefrom shall be credited to the Account.

20. The accounting, disbursement and operation of the Account shall be carried out by IFAD on behalf of the Global Mechanism in accordance with the rules and procedures applied by IFAD to its own resources. Disbursements against withdrawal requests from each grantee shall be made by IFAD upon the approval therefor of the Managing Director of the Global Mechanism.

21. An account of the mobilization of resources for the SRCF and the use of its proceeds shall be provided through an annual report that the Managing Director of the Global Mechanism shall submit to the COP. All contributors to the SRCF shall receive a copy of the said annual report. Reports on the use of individual contributions shall be made by agreement with each contributor to the SRCF.

22. (a) Contributions to the SRCF shall be used for the procurement of goods, services and consultant services necessary for the Global Mechanism in accordance with the procedures applied by IFAD, subject to the requirements laid down in sub-paragraph (b) below.

(b) Without prejudice to sub-paragraph (a) above, the procurement of goods, services and consultant services necessary for the Global Mechanism shall be limited to:

- (i) all Members of IFAD and those Parties to the Convention that are not Members of IFAD; or

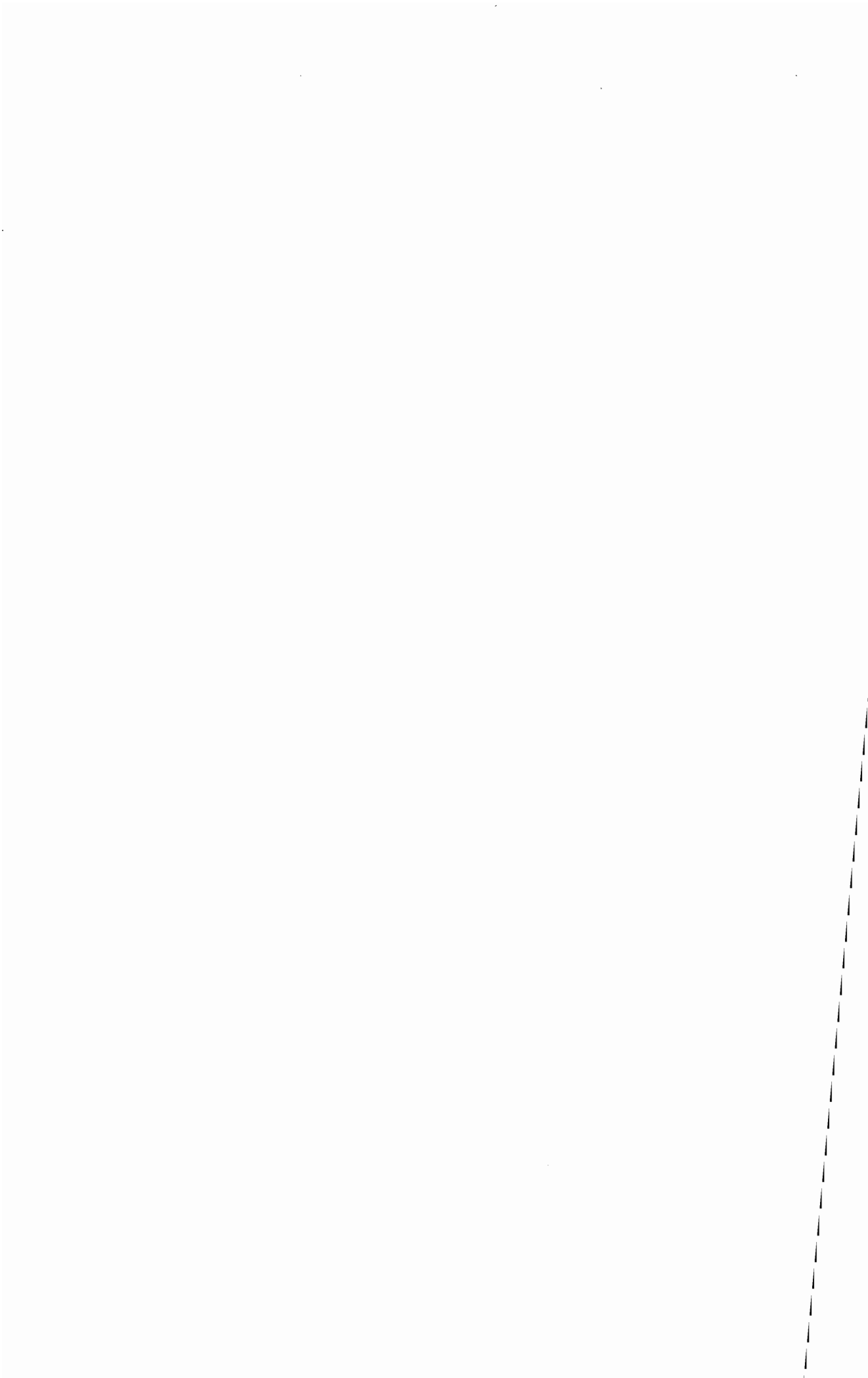


- (ii) in the event of a third party providing the services for an SRCF-financed project or activity, the Managing Director of the Global Mechanism may authorise that third party to apply its own rules concerning the procurement of services.

#### **Other Arrangements and Termination**

23. Without prejudice to the provisions of the Basic Framework herein, the Global Mechanism may enter into arrangements, including cofinancing, with the Parties to the Convention and other entities, that are consistent with the objectives of the Global Mechanism.

24. The SRCF may be terminated at any time by agreement in writing between IFAD and the Global Mechanism upon terms and conditions to be decided by IFAD and the Global Mechanism.





**IFAD**  
INTERNATIONAL  
FUND FOR  
AGRICULTURAL  
DEVELOPMENT

*The President*

21 January 2004

Ref: PB/04/01

## **PRESIDENT'S BULLETIN**

**Distribution:** All Staff  
**Subject:** The Global Mechanism

### **Introduction**

1. The Global Mechanism was established as an organ of the United Nations Convention to Combat Desertification (UNCCD) in those countries experiencing serious drought and/or desertification, particularly in Africa. UNCCD was one of the direct outcomes of the Earth Summit held in Rio de Janeiro in 1992. In October 1997 the first conference of the Parties to the UNCCD (COP) selected IFAD to house the Global Mechanism. A Memorandum of Understanding (MOU) between IFAD and the COP regarding the modalities and administrative operations of the Global Mechanism, including the modalities for its housing in IFAD, was subsequently concluded. The MOU, *inter alia*, stated that "While the Global Mechanism shall have a separate identity within the Fund, it shall be an organic part of the Fund directly under the President of the Fund".

2. President's Bulletin No. PB99/10 of 4 October 1999 sets out the procedures and regulations relating to the three accounts of the Global Mechanism in line with the MOU. Operational experience since 1997 and consultations within the Facilitation Committee have led me to believe that the relationship of the Global Mechanism to IFAD requires further reinforcement and clarification.

### **Overall Management Structure for the Global Mechanism in IFAD**

3. To strengthen further the relationship between IFAD and the Global Mechanism, a Global Mechanism Advisory Group is established, chaired by the Assistant President (PMD), with representatives from EC, ER, NALO, FC, FH and PT as well as the Managing Director of the Global Mechanism or his/her representative as an observer. The secretariat of the Global Mechanism Advisory Group shall be placed in PMD. The Global Mechanism Advisory Group shall be responsible for all aspects of collaboration between IFAD and the Global Mechanism and its chair shall report to and advise, the President on GM matters.

### **Project and Programme Development**

4. The Global Mechanism and PMD shall designate professional staff to ensure effective collaboration. They shall meet on a regular basis to consider forthcoming COSOPs/Inception Memoranda and ongoing project and programme development work with a view to strengthening

programmatic collaboration between IFAD and GM. The Assistant President (PMD), as the focal point within IFAD for the Global Environment Facility (GEF), will also lead the effective engagement of IFAD with the GEF and will oversee the tripartite relationship between IFAD, GM and the GEF.

5. The Assistant President (PMD) will also be responsible for IFAD's engagement with the Facilitation Committee of the Global Mechanism and will, in close consultation with the Managing Director of the Global Mechanism, seek to ensure that the agreed Business Plan for the GM is effectively implemented.

6. The chairmanship of the Facilitation Committee (FC) rotates among three founding members, namely IFAD, the United Nations Development Programme (UNDP) and the World Bank (WB). The Assistant President (PMD) will represent IFAD and will request other IFAD Divisions, as appropriate, to participate in FC meetings.

#### **Communication**

7. A plan will be developed in collaboration with the Communications Division (EC) and NALO for communication activities based on the agreed Business Plan. Based on this plan, roles and responsibilities for implementation will be defined and financial resources will be allocated by the Global Mechanism and IFAD as appropriate. A staff member of the Global Mechanism will be designated as a focal point to work with EC on development and implementation of the plan.

#### **Resources Mobilisation and Co-financing**

8. The Resource Mobilisation Division (ER) of IFAD and PMD shall collaborate through the Advisory Committee so as to maximise the resources raised for common projects and programmes to achieve the UNCCD. A joint IFAD/GM medium-term resource mobilization strategy and a co-financing strategy will be developed for periodic review and endorsement by the Global Mechanism Advisory Group.

#### **Policy and Programmes Documents**

9. All major policy and programme documents of the Global Mechanism shall be submitted to the IFAD review process before finalisation, in the same manner as those of IFAD.

#### **Human Resources**

10. As a matter of principle and where there is an absence of a specific provision to the contrary, as specified below, the Global Mechanism shall be subject to all the provisions of IFAD's Personnel Policies Manual (PPM) and Human Resources Handbook (HRH), as they may be amended.

11. Notwithstanding the above, the following variations to the PPM, the HRH and IFAD's rules and regulations pertaining to human resources shall apply:


- (a) The recruitment and appointment of the Managing Director of the Global Mechanism shall be subject to the procedures established by the MOU (namely that the Administrator of UNDP will nominate candidates and the President of IFAD will appoint the Managing Director). The grade of the post has been established by the COP. All other terms and conditions for employment with IFAD shall apply.
- (b) Recruitment and terms and conditions for all posts in the Global Mechanism, with the exception of that for the Managing Director of the Global Mechanism, shall follow IFAD's rules and regulations.

- (c) All fixed-term contracts of employment for the Global Mechanism shall be for a maximum of two years, renewable, and subject to the availability of resources. IFAD's rules and regulations on the provision of career contracts for fixed-term staff shall not apply to the staff of the Global Mechanism, except for those that have already received a career contract as a result of their earlier employment with IFAD.
- (d) IFAD's rules and regulations on the promotion of incumbents shall apply subject to the availability of funding and position level from the COP.
- (e) IFAD staff members applying for and being appointed to Global Mechanism posts shall have the right to return to employment within IFAD at the same grade as that with which they leave the Global Mechanism, subject to the availability of posts and the application of IFAD rules and regulations for the filling of such posts.
- (f) IFAD and Global Mechanism staff, with the exception of the Managing Director of the Global Mechanism, shall have the right to be treated as internal candidates when applying for vacancies in the other entity as well as regarding mobility of staff between the two entities.
- (g) Global Mechanism staff shall be recruited only from States that are Members of IFAD and/or States that have ratified the UNCCD.
- (h) The Global Mechanism and its staff shall not be subject to any interim or temporary management measures imposed on recruitment, post classification and promotion of the remainder of IFAD staff. However, in specific cases, IFAD may, after consultation with the Managing Director of the Global Mechanism, opt to apply such a measure to the Global Mechanism when IFAD determines that not to do so would compromise its human resource policies.

#### **Financial Matters**

11. President's Bulletin No. PB 99/10 of 4 October 1999 shall continue to apply to the three accounts of the Global Mechanism.

12. Notwithstanding the paragraph above, the Global Mechanism shall prepare its annual work plans and budget proposals in a comparable manner to other units in IFAD as part of IFAD's Strategic Budgeting and Resource Allocation process, so as to ensure complementarity between the work of the Global Mechanism and that of other units in IFAD with a view to reach programmatic collaboration as set out in paragraph 4 above.



Lennart Båge





Enabling the  
rural poor to  
overcome poverty

Permettre aux ruraux  
pauvres d'échapper  
à la pauvreté

Dar a los pobres de las zonas  
rurales la oportunidad  
de salir de la pobreza

تمكين قراة الريف من  
الغلب على الفقر

13 January 2005

## POSITION DESCRIPTION

**NAME:** Mr. Christian Mersmann  
**TITLE:** Managing Director of the Global Mechanism  
of the Convention to Combat Desertification  
**GRADE:** D-2  
**DEPARTMENT:** Office of the President

**Duties and responsibilities:** Under the direction of the President of the International Fund for Agricultural Development (IFAD), or his designate, the principal responsibility of the Managing Director of the Global Mechanism (GM) will be to ensure that the GM fulfils the mission entrusted to it, i.e., to promote the mobilization of resources to support affected developing country Parties to implement the Convention to Combat Desertification (CCD). Specifically, the incumbent shall undertake the following tasks:

1. Lead and manage all GM operations and activities in line with the functions and provisions of the MOU established between IFAD and the Conference of the Parties to the UNCCD on the operational modalities for the GM as well as those in the approved GM Business Plans;
2. Provide leadership to staff as well as good financial management in order to develop, monitor, deliver and update the GM Business Plan, and operational strategy. Lead, manage and develop a close liaison with appropriate organizational units of the housing institution (IFAD) to ensure synergy with its operations;
3. Develop and maintain productive partnerships with key stakeholders, including developing and developed country Parties, bilateral and multilateral organizations, private sector, NGO and other relevant partners, to ensure that the GM is responsive to emerging needs and opportunities;
4. Mobilize financial resources to support UNCCD implementation in collaboration with the interagency "Facilitation Committee" by:

- facilitating the substantive inputs and support of UNDP, World Bank and IFAD to GM activities, as well as other relevant agencies, in particular FAO, WFP, GEF, UNEP, regional development banks, and relevant regional and sub-regional organizations, following the Collaborative Institutional Arrangement adopted by CCD COP-1 and the modalities of cooperation agreed by the Facilitation Committee;
- broadening the funding basis for CCD implementation including private sector and various foundations, and making proposals on how future needs for implementation of the CCD might be met;
- ensuring development of a knowledge and communication strategy and information system, centred on resource mobilization for the CCD, including a financial information tracking system;
- advocate and liaise with the development agencies of developed country Parties, the OECD and the European Commission to facilitate action taken under Article 6 of the Convention; and to support country level partnerships and action programmes, and maintain an effective working relationship with the Permanent Secretariat of the CCD to contribute to the successful implementation of the CCD.



## **VI. IFAD PERSONNEL POLICIES**





Executive Board

Thirty-Third Session  
Rome, 26-28 April 1988

Agenda Item 9

#### PERSONNEL MATTERS

1. This document contains four personnel matters, which are submitted to the Executive Board for its attention, as indicated in the respective sections below: Financial Assistance to IFAD Staff Members Facing Hardship Circumstances, Career Development, Administrative Tribunal and the Cooperation Agreement with the IFAD Staff Association.

##### I. Financial Assistance to IFAD Staff Members Facing Hardship Circumstances

2. IFAD staff members have been facing increasing financial constraints because of the slow movement on a number of personnel issues within the United Nations Common System. For example, Post Adjustment (other than for exchange rate adjustments) has been frozen since December 1984 despite substantial annual increases in inflation in Rome.

3. A constraint of particular concern to many IFAD staff members is that of educational costs.

4. At present, the United Nations (UN) education grant system provides for the reimbursement of 75% of allowable costs not exceeding US\$ 6 000; i.e. reimbursement levels not to exceed US\$ 4 500. This level has not changed since 1983 and has become increasingly inadequate in meeting educational costs incurred by a growing number of IFAD staff. This is due to two factors: (a) fees in many educational institutions have been rising rapidly, in line with typical cost escalation; and (b) although the level of allowable reimbursement has remained constant in US Dollar terms, the amount reimbursable in local currencies (e.g. Italian Lire) has decreased as a result of the weakening US Dollar.

5. On the first point, the Consultative Committee on Administrative Questions (CCAQ), the body representing 15 organizations of the United Nations Common System, has estimated that tuition fees have increased in Rome by 85% in local currency terms since 1983 when the education grant was last adjusted. This is substantially higher than increases incurred in New York, London, Vienna and Geneva. On the second point, the

weakening US Dollar/Italian Lire exchange rate has meant that the maximum reimbursement of educational costs in Italian Lire has declined from Italian Lire 8.9 million per child in the academic year 1985/86 to Italian Lire 6.3 million in the academic year 1987/88, compared with fees which are now, in some cases, as high as Italian Lire 13.3 million.

6. The impact of this situation is particularly severe for staff members whose children attend English language schools in Rome, none of which are subsidized. While the cost of attendance at German, Italian and French language schools in Rome are subsidized and have remained largely within the level of reimbursable costs, only three primary schools among the 14 English language schools (with a total of 20 primary and secondary sections) have costs which do not exceed the maximum reimbursable amount.

7. As a consequence of this, several IFAD employees face heavy education costs which are not reimbursed and are financed out of their pockets. There are at present at least seven employees who spend more than 15% of their total earnings (net base salary, post adjustment and allowances, less compulsory deductions) on out of pocket educational costs. For one employee, this figure reaches approximately US\$ 18 300, which is 37% of the staff members' total earnings. In contrast, according to the statistics produced by the International Civil Service Commission (ICSC) place-to-place survey conducted in 1983, it was estimated that, on average, staff members were at that time expending only 2.7% of their UN earnings for education costs above and beyond the expenditures covered by the education grant.

8. Recognizing the increasing difference between educational costs and allowable reimbursements, the CCAQ strongly recommended to the ICSC that allowable educational expenses be increased from US\$ 6 000 to US\$ 8 000, permitting actual reimbursement of up to US\$ 6 000 (75%) of these expenses. The ICSC considered this matter at its July 1987 session but decided not to recommend an increase in the grant at that time, reporting that:

"Based on the statistics provided, the Commission considered that there would be justification for a revision of the level of the grants..... Because of the financial difficulties facing the United Nations system, however, most members of the Commission preferred to defer a recommendation on the overall level of the grant until 1988..... Several members of the Commission called for this issue to be given priority consideration at its next review."

9. The lack of action on this matter leaves IFAD staff facing continuing heavy educational costs in the current academic year. This has already led one professional staff member to decide to resign from IFAD. It is estimated that the typical costs for replacing an employee is at least US\$ 40 000 for travel, transportation and other payments, quite apart from the loss of experience which an employee has gained with the Fund. While this is the only specific case of an employee departing over high educational costs, a number of others who left have cited educational costs as a factor.

10. It should be noted that other International Financial Institutions (IFIs), with which IFAD competes for some of its key professional staff, provide greater support for educational costs than is

possible for IFAD. The World Bank, for example, uses a formula similar to the UN but adjusts its base amounts by movements in the UN Post Adjustment. This allows the World Bank to reimburse 75% of US\$ 7 416 in allowable expenses in Rome compared to IFAD's maximum of 75% of US\$ 6 000.

11. Thus certain IFAD employees face two disparities: one in the costs associated with children attending non-subsidized schools (largely a language factor) as compared to subsidized schools and the other between what IFAD can offer its employees compared to the support provided by other IFIs.

12. It is in the light of these circumstances that the President proposes to provide financial assistance to those facing particular hardship caused by these educational costs, based on Section 6.1 of IFAD's Personnel Policies Manual (PPM), which reads:

"6.1. Financial Assistance

6.1.1. The Fund recognizes that it may be necessary to make arrangements to provide financial assistance to staff members for certain specified purposes when their reasonable needs cannot be met through normal sources of financing.

6.1.2. With this in mind, the President may propose the introduction of such arrangements."

13. To date, this section of the PPM has been used only for providing emergency hardship loans. In this instance, the President proposes to use his discretionary authority under this section, if there is no objection by the Executive Board, to extend for the current school year (1987/88) a limited number of emergency hardship grants to those staff members carrying the highest financial burdens for educational purposes. It is estimated that on the basis of the present exchange rate such grants related to the 1987/88 school year would amount to US\$ 30 000, which is considerably less than the cost of replacing an employee, as indicated in paragraph 9 above.

14. It is requested, in accordance with Section 6.1.2. of the PPM set out in paragraph 12 above, that the Executive Board note the President's intention to grant this special relief in extreme hardship situations, as set out in paragraph 13 above.

II. Career Development

15. After a decade of operation, the Fund has begun to experience instances of several of its present staff members reaching the top of their grade but having extremely limited opportunities for movement into the next grade, due to the relatively small number of staff positions, especially in the senior grades, in the approved Budget. IFAD's competitive position vis à vis the other IFIs, particularly with respect to the professional categories, gives cause for concern. The salary scales and grading structure of several other IFIs are shown in the Annex. It will be seen that, particularly in the senior professional ranks, the opportunities for advancement are better in the World Bank and the three regional development banks than in IFAD. Since the IFIs are most similar to the Fund in attracting the professional talents required by IFAD, these dissimilarities in treatment can be detrimental to IFAD's interest.

16. The President therefore proposes to enhance career prospects by establishing, on a very restricted basis, a P-6 grade similar to that which is used by the World Health Organization (WHO) and, as will be seen from the Annex, by the African Development Bank (AfDB).

17. WHO uses the P-6 grade specifically for a number of highly qualified and well-experienced staff members who do not necessarily have the "directorial" duties normally assigned to a Director of a Division or Unit at the D-1 level, but who receive emoluments precisely equal to that of a staff member at the D-1 level. Similarly, IFAD would propose using the P-6 grade for some long standing staff members with a high degree of specialization who are currently unable to move to the Director level because of the very limited number of such positions. The President would intend to use this provision on a carefully restricted basis and to ensure that, at the maximum, only a few such appointments to the P-6 level would occur at any one time. If the Executive Board approves the establishment of the P-6 grade, the Fund would be able to retain valuable and experienced staff members who might otherwise leave the organisation or retire earlier than expected, given what they perceive as a limited structure for career advancement prospects as compared to other IFIs. Promotion of an employee to the P-6 level would in no way preclude that employee from applying for a normal D-1 position which might become open for competition.

18. The Executive Board is therefore invited to approve the establishment of the P-6 grade of staff position, with emoluments precisely equal to that of the D-1 grade.

### III. Administrative Tribunal

19. The provisions of the IFAD Personnel Policies Manual (PPM) do not provide for IFAD belonging to an Administrative Tribunal. This is unusual, as all other United Nations Common System organisations and the World Bank do have such a tribunal to objectively arbitrate and rule upon disputes which, from time to time, may arise between staff members and the administration.

20. The PPM provides, at the moment, for "representation" provisions, the text of which is as follows:

#### "4.10.2. Representation

(a) The President shall institute and maintain a simple procedure whereby the views of employees, individually or collectively, may be represented to him on any matter arising from or in connection with the conditions and terms of their employment.

Such representation shall be subject to the understanding that the President will retain, under the provisions governing his constitutional responsibility as expressed in the Agreement and in these policies, the right of final determination of matters within his authority.

(b) Should a matter affecting an individual employee not be resolved as a result of representation under this procedure, the employee or the President may refer the matter for final determination to a three member tribunal comprising one member nominated by the employee, one member nominated by the President and an independent Chairman agreed between the two parties. The decision of the Tribunal shall be binding on the parties."

21. Sub-paragraph (a) of Section 4.10.2. of the PPM has, over the years, been the vehicle by which consultations have been held with staff representatives, originally through the medium of a Staff Consultative Committee and now through the conclusion of a Cooperation Agreement between IFAD and the IFAD Staff Association. Sub-paragraph (b) has never been used to date. The President and the IFAD Staff Association have, from time to time, discussed the possibility of IFAD's adherence to an appropriate Administrative Tribunal. The concept of an internal tribunal, as provided in the PPM, may not be equitable as far as a staff member is concerned because, *inter alia*, of the difficulties which an individual staff member could face in engaging any knowledgeable or prominent person to represent her/him in such an internal tribunal. Furthermore, an internal tribunal in a small organisation like IFAD would lack previous case law, procedure, precedent, etc. Thus consideration has been given to IFAD's participation in an external tribunal.

22. The existing Administrative Tribunals which IFAD could consider joining are: (i) the International Labour Organisation Administrative Tribunal (ILOAT); (ii) the United Nations Administrative Tribunal (UNAT); and (iii) the World Bank Administrative Tribunal (WBAT). The various provisions of each of these have been reviewed by the Legal Services Division and the Personnel Services Division. Based on this review, it is the intention of the President to arrange for IFAD to join the WBAT if the Executive Board approves the enabling provisions. It is felt that the WBAT would be the most appropriate tribunal, since IFAD has close associations and working relationships with the other IFIs, and the occupational groupings of IFAD staff members are similar. The administrative procedures for the various tribunals are very similar and rely more on written presentations, with little use of oral procedures.

23. The Executive Board is invited to approve the amendment of the PPM, to enable the Fund to join an Administrative Tribunal when detailed provisions have been worked out with the appropriate authorities concerned, by deleting sub-paragraph (b) of Section 4.10.2. of the PPM, set out in paragraph 20 above, and by replacing it with the following sub-paragraph:

"(b) Should a matter affecting an individual employee not be resolved as a result of representation under this procedure, the employee or the President may refer the matter for final determination to an Administrative Tribunal, membership in which shall be arranged by the Fund."

#### IV. Cooperation Agreement with the IFAD Staff Association

24. At its Twenty-Eighth Session in September 1986, the Executive Board discussed a draft Cooperation Agreement between IFAD and the IFAD Staff Association. After some discussion, it was generally agreed that

the President could proceed with the conclusion of such an Agreement with the IFAD Staff Association on the understanding that, as stated in the Minutes of the Twenty-Eighth Session of the Executive Board:

"the President would ensure that the Cooperation Agreement was in conformity with the Personnel Policies Manual and all applicable United Nations regulations and that no additional financial implications for the Fund were entailed thereby."

Subsequently, after the President had satisfied himself that those conditions had been met, the Cooperation Agreement was accordingly concluded on 21 September 1987. Copies of the Cooperation Agreement between IFAD and the IFAD Staff Association will be made available, upon request, at the documents desk to the members of the Board during its Thirty-Third Session.



SALARY SCALES AND GRADING STRUCTURE  
OF OTHER INTERNATIONAL FINANCIAL INSTITUTIONS

A. African Development Bank

Salary Scales

(Converted to US\$ at exchange rate as of 9 September 1987:  
CFA F 299.95 = US\$ 1.00)

<u>Grade</u>	<u>Minimum</u>	<u>Maximum</u>
D-2	96 161	104 104
D-1	85 015	92 352
P-S	75 396	90 370
P-6	76 480	81 944
P-5	66 822	75 814
P-4	57 055	64 064
P-3	47 282	54 299
P-2	39 866	45 320
P-1	32 050	35 166

Sub-Professional Category

S-3	41 417	47 533
S-2	32 713	38 774
S-1	25 188	31 250

General Service

G-6	25 474	29 059
G-5	21 488	25 076
G-4	17 242	20 350
G-3	13 397	16 266
G-2	8 622	11 011
G-1	7 291	9 204

A-2

B. World Bank/International Finance Corporation (IFC)

Salary Structure  
Effective 1 May 1987  
(in US\$)

<u>Grade</u>	<u>UN Rough Equivalent</u>	<u>Minimum</u>	<u>Median</u>	<u>Maximum</u>	<u>Extended Maximum</u>
29	VP	81 250	92 460	103 670	
28	AP	73 690	85 425	97 160	
27	D-2	67 440	79 180	90 920	
26	D-1	61 440	73 355	85 270	
25	P-5	56 930	68 310	79 690	
24	P-4	52 640	63 255	73 870	
23	P-3	42 780	54 295	65 810	71 790 <sup>1/</sup>
22	P-2	36 980	45 120	53 260	
21	P-1	29 330	36 980	44 630	
20	P-1	29 330	36 980	44 630	
19		26 200	31 440	36 680	
18		25 350	30 185	35 020	
17		24 070	28 500	32 930	34 880 <sup>2/</sup>
16		20 970	25 040	29 110	31 010 <sup>2/</sup>
15		18 540	22 160	25 780	27 360 <sup>2/</sup>
14		16 100	19 340	22 580	24 080 <sup>2/</sup>
13		15 020	17 580	20 140	21 770 <sup>2/</sup>
12		13 720	16 525	19 330	20 140 <sup>2/</sup>
11		13 720	15 315	16 910	17 710 <sup>2/</sup>

<sup>1/</sup> The extended maximum of the salary range for Grade 23 applies only to Technical Specialists who, prior to 30 September 1985, were assigned to positions graded L(T). It does not apply to new entrants to Grade 23 after that date.

<sup>2/</sup> The extended maximum for Grades 11 to 17 (including the equivalent grades in the former grade structure) is applied only to staff who meet the following three conditions:

- (a) have at least 15 years of continuous service with the Bank and IFC;
- (b) have an entry on duty date on or before 30 May 1975; and
- (c) have not been promoted since 30 May 1975.

World Bank  
Compensation Statistics 1/  
31 March 1985

<u>Grade</u>	<u>No. of Staff</u>
28 2/	24
27	52
26	78
25	336
24	1 124
23	279
22	786
21	320
20	77

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1/ Comprises Regular, Fixed Term, and Part-time regular staff, Bank and International Finance Corporation.

2/ Excluding the Senior Vice-Presidents (2).

A-4

C. Inter-American Development Bank

Salary Scales  
Effective 1 August 1987  
(in US\$)

<u>Grade</u>	<u>Minimum</u>	<u>Median</u>	<u>Maximum</u>
I	67 656	75 114	82 572
II	59 640	69 480	79 320
III	52 296	63 930	75 564
IV	45 612	56 214	66 816
V	40 020	49 404	58 788
VI	35 076	43 320	51 564
VII	31 188	38 568	45 948
VIII	27 744	34 194	40 644
IX	24 696	30 462	36 228
X	21 420	26 358	31 296
XI	19 176	23 508	27 840
XII	17 040	20 850	24 660
XIII	15 120	18 654	22 188
XIV	13 404	16 428	19 452
XV	12 072	14 820	17 568

D. Asian Development Bank  
Professional Staff Salary Scales  
(Effective 1 August 1987)

<u>Illustrative Positions</u>	<u>Level</u>	<u>S A L A R Y</u>	
		<u>US\$ per annum</u>	
		<u>Minimum</u>	<u>Maximum</u>
Director or Equivalent	10	79 325	86 125*
Deputy Director, Office Chief or Equivalent	9	75 165	82 665*
Assistant Director, Manager or Equivalent	( 8	65 065	79 325
	( 7	60 735	74 055
	( 6	52 000	69 285
Senior Specialist/Officer and Section Head or Equivalent	( 5	48 770	65 010
	( 4	45 925	61 225
	( 3	42 315	56 430
Specialist/Officer and Unit Head or Equivalent	( 2	37 190	52 055
	1	27 580	45 250

\* Subject to applicable ceiling currently US\$ 82 600.

A-6

E. UN Salary & Post Adjustment (at 41 points,  
which is actual Washington Post Adjustment)

	<u>S A L A R Y</u> <u>US\$ per annum</u>	
	<u>Minimum</u>	<u>Maximum</u>
VP	89 044	100 250
AP	72 105	79 226
D-2	60 699	70 318
D-1	54 053	65 982
P-5	49 220	62 220
P-4	41 201	55 850
P-3	34 694	48 864
P-2	28 953	39 630
P-1	23 078	31 945



**IFAD**  
**INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT**  
**Executive Board – Eighty-Second Session**  
Rome, 8-9 September 2004

**HUMAN RESOURCES POLICY**

1. Pursuant to Article 6, Section 8(d), of the *Agreement Establishing IFAD*, the President heads and organizes the staff in accordance with regulations adopted by the Executive Board. The Executive Board at its Third Session in 1978 approved the Personnel Policies Manual (PPM). It subsequently amended the PPM at its Ninth, Tenth, Seventeenth, Thirty-Third, Thirty-Fifth and Forty-Second Sessions. The PPM embodies the fundamental general conditions and terms of employment with the Fund as well as the Fund's and employees' respective duties and obligations. The conditions and definitions relating to eligibility to benefits were developed in accordance with the rules set forth in the PPM. In 2000, the rules and procedures on human resources issues were compiled and consolidated in the Human Resources Handbook (HRH).
2. On 27 September 2001, the President established an internal review committee for modernizing human resources policy and procedures. The objective of the review was to propose a modern, clear and transparent set of rules, policies and procedures that supported the Fund's overall objectives. The committee had the mandate to review four distinct areas of human resources policy and procedures: recruitment; career development; performance evaluation; and recourse and appeals. It concluded that modernizing human resources practices is supported by three pillars: (a) a dynamic and strategic human resources function; (b) the quality of managers and their leadership capacity; and (c) modern policies and procedures. Following the committee's recommendations, the President approved an action plan. One of the actions specified in this plan was the redrafting/rewriting of the PPM and the HRH. The committee recommended that the PPM be transformed from a regulatory document into a general statement of principles to guide human resources management.



3. The attached draft Human Resources Policy (HRP), which is being submitted to the Executive Board for approval, is the result of a team effort and is meant to replace the current PPM. A draft of the HRP was circulated to all staff for review and discussion. The attached HRP reflects these discussions. In addition it:

- (a) provides guiding principles, focusing on policies, rights and obligations, for the human resources management processes under which the President will manage IFAD staff;
- (b) places the responsibility for policy decisions on the Executive Board and for human resources management procedures on the President;
- (c) introduces required new policies in areas of career development, alternative work arrangements, personal conduct, harassment, grievance, discipline and separation;
- (d) allows for scope to amend and adapt procedures to any changes that arise;
- (e) is brief and provides easy tracking and amendment of policy statements; and
- (f) bears a different title, which reflects a more contemporary reference to human resources.

#### **Recommendation**

4. The Executive Board is invited to consider and approve the Human Resources Policy (HRP) attached hereto and to authorize the President to amend the procedures accordingly. The HRP shall enter into force as soon as the President has approved the supporting procedures. The Personnel Policies Manual (PPM) shall be repealed.





INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

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## **HUMAN RESOURCES POLICY**





## TABLE OF CONTENTS

	<b>Page</b>
<b>DEFINITIONS</b> .....	<b>iii</b>
<b>INTRODUCTION</b> .....	<b>v</b>
<b>PURPOSE OF THE POLICY</b> .....	<b>v</b>
<b>COMMITMENT TO STAFF</b> .....	<b>vi</b>
<b>APPLICATION</b> .....	<b>vi</b>
<b>CHANGES</b> .....	<b>vi</b>
<b>GENERAL PROVISIONS</b> .....	<b>1</b>
Mandate .....	1
Obligations of the Fund .....	1
Obligations of Staff .....	1
Oath or Declaration .....	1
Duties of Staff.....	2
Transferability and Travel .....	2
Representation .....	2
Recruitment and Appointments .....	2
Remuneration.....	3
Hours of Work, Official Holidays and Leave.....	3
Performance Evaluation System.....	3
Career Development .....	4
Alternative Work Arrangements.....	4
Personal Conduct.....	4
Harassment and Discrimination.....	4
Grievance Resolution .....	4
Separation .....	5





## DEFINITIONS

Agreement	The Agreement Establishing IFAD
Consultant	An individual holding a contract to provide services to IFAD
Fund or IFAD	The International Fund for Agricultural Development
Governing Council	The Governing Council of the Fund
Executive Board	The Executive Board of the Fund
President	The President of the Fund
Staff Member or Staff	A person or persons holding a regular, career, fixed-term, temporary or indefinite contract with the Fund





## **INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD) HUMAN RESOURCES POLICY**

### **INTRODUCTION**

IFAD's mission is "to enable the rural poor to overcome their poverty".

IFAD concentrates its investments, research and knowledge management efforts, policy dialogue and advocacy on the attainment of three strategic objectives: strengthening the capacity of the rural poor and their organizations; improving equitable access to productive natural resources and technology; and increasing access to financial services and markets.

It draws on the creative energy and talents of its people to generate success in achieving its mission and objectives.

The IFAD headquarters seat is located in Rome, Italy, but it undertakes field activities in various countries in collaboration with partners, governments, non-governmental organizations and other United Nations organizations.

A Governing Council and an Executive Board, consisting of representatives from Member States, provide policy direction to the Fund. A President serves as the chief executive officer and reports to the Executive Board and the Governing Council.

In accordance with the Agreement, the Headquarters Agreement and other conventions, IFAD enjoys such privileges and immunities as may be necessary for the exercise of its functions and fulfillment of its purpose. Those privileges and immunities granted to staff and consultants under Article 10 of the Agreement or under the Headquarters Agreement or under the Convention on Privileges and Immunities of the Specialized Agencies of the United Nations, 1947, are provided to them to facilitate the carrying out of their work. They shall not furnish an excuse to the staff or consultants who enjoy them to use them for the non-performance of their private obligations or failure to observe laws and police regulations.

### **PURPOSE OF THE POLICY**

IFAD exists in a rapidly changing political, economic, social and technological environment. It needs to adapt to diverse and changing requirements by continuously developing organizational capability, improving performance by empowering staff, stimulating their creativity, rewarding risks and innovation and investing in continuous improvement through knowledge sharing and training.

The Human Resources Policy provides guiding principles of the various human resources management processes, in accordance with which the President shall manage the employees of IFAD. The policy is part of its framework to transform IFAD into a 21<sup>st</sup> century organization – an organization in which the principles of openness, transparency and accountability are imbedded in the culture of IFAD and where performance is driven by values.

The new Human Resources Policy also reflects an evolution in IFAD's human resources management system, which is based on competencies and values. It recognizes people as IFAD's most important knowledge resource and acknowledges the link between good human resources management and delivery of programme results. The new policy will: strengthen the performance management



framework focusing on accountability, simplify processes and enable the human resources management system to be a service function in transforming IFAD into a continuously learning organization.

The Human Resources Policy sets out the conditions of service and the basic rights, duties and obligations of all staff and consultants of IFAD. It is designed to be fair to all those concerned and create the foundation of support that will enable staff and consultants to take a sincere interest and pride in IFAD and effectively achieve objectives, while responding to the needs of the rural poor.

### **COMMITMENT TO STAFF**

IFAD recognizes staff as its most valuable asset and is committed to establishing a productive and creative work environment to achieve the objectives of the Fund, ensure staff well-being and a respect for the work/life balance.

It is the aim of the Executive Board and management to attract and retain staff of the highest quality by: establishing conditions of employment that are fully competitive within the respective labour markets from which IFAD draws its staff, providing a work environment that is intellectually stimulating and professionally rewarding, offering a safe and well equipped work environment and most importantly providing opportunity for staff participation in matters that affect them and their work.

### **APPLICATION**

This policy applies to all staff appointed by the President to perform services for IFAD and to consultants.

### **CHANGES**

The Executive Board shall approve changes to the Human Resources Policy, as deemed necessary. In proposing changes to the Human Resources Policy, the President shall consult with relevant staff and give due consideration to their comments and advice. Changes approved by the Executive Board will be reported promptly to staff and the Human Resources Policy updated.





## GENERAL PROVISIONS

### 1. **Mandate**

1.1 In accordance with Article 6, Section 8(d), of the Agreement Establishing IFAD, the President shall head the staff and, under the control and direction of the Governing Council and the Executive Board, shall be responsible for conducting the business of the Fund. The President shall organize the staff and consultants and shall appoint and dismiss staff and consultants in compliance with this policy, as adopted by the Executive Board.

1.2 The President shall ensure the observance of this policy and shall develop, provide and maintain such programmes, rules and procedures consistent with this policy as she/he considers necessary for the efficient and effective conduct of IFAD's business.

1.3 Any matter of human resources management not specifically treated in this policy will be decided by the President in the light of practices, rules and procedures adopted in the United Nations Common System as well as other similar financial institutions.

1.4 The President may delegate all or part of these responsibilities and authorities accorded to him in this policy unless expressly stated otherwise.

### 2. **Obligations of the Fund**

2.1 The Fund shall at all times act with impartiality in its relationship with staff and consultants and shall make adequate financial provision to meet the terms of their employment.

2.2 The application of this policy to staff and consultants shall be made without discrimination as to ethnic, social or political background, colour, nationality, religion, age, sex, disability, marital status, family size or sexual orientation.

### 3. **Obligations of Staff**

3.1 The status of staff for the duration of their employment with the Fund is that of international civil servants. Their responsibilities are exclusively international and, by accepting appointment, they pledge themselves to discharge their functions and regulate their conduct solely with the interest and objectives of the Fund in view.

### 4. **Oath or Declaration**

4.1 In accepting IFAD's appointment, staff members signify their intention to abide by IFAD's Human Resources Policy and procedures and accept the responsibilities set forth. Each staff member shall subscribe to the following oath or declaration:

*"I solemnly undertake:*

*That, to the best of my ability, I will at all times discharge my duties with efficiency, diligence and fidelity and work honestly and conscientiously for IFAD.*

*That I have read and understood the Human Resources Policy and Human Resources Policy and Procedures Manual of the Fund and agree to abide by their provisions and any additions or alterations to them that may be adopted from time to time.*



*That I will accept no instructions in regard to the performance of my duties from any government or authority external to the Fund nor will I provide or permit to be provided any confidential information to such governments or authorities nor will I request such governments or authorities to take actions on my behalf.”*

## 5. Duties of Staff

5.1 Staff are subject to the authority of the President and to assignment to any of the activities of the Fund.

5.2 Staff shall comply fully with the requirement of this policy, the provisions of their contract of employment and such procedures, rules and orders as the President may promulgate.

## 6. Transferability and Travel

6.1 Staff are subject to transfer away from the location of their initial appointment to the Fund and to official travel on behalf of the Fund to any part of the world at any time.

## 7. Representation

7.1 The President shall develop and maintain mechanisms of representation whereby she/he may be apprised of staff ideas and suggestions about the views of employees, individually or collectively, on any matter arising from or in connection with the conditions and terms of their employment.

7.2 Such representation shall be subject to the understanding that the President will retain, under the provisions governing his responsibility as expressed in the Agreement and in this policy, the right of final determination of matters within his authority.

## 8. Recruitment and Appointments

8.1 Paramount in the appointment of staff, consideration shall be given to the necessity of securing the highest levels of competence, technical ability and integrity<sup>1</sup> available, and to do so by ensuring competition among candidates. The recruitment of professional staff will result in the selection of the individual judged to be the best person for the position, taking into account the criteria of equitable geographical distribution and gender balance. IFAD believes that such diversity contributes to its intellectual strength and effectiveness. The President's appointment decisions shall be final.

8.2 IFAD recruits staff and consultants only from Member States.

8.3 Recruitment and appointment procedures shall be developed that are transparent and consistent so as to ensure that applicants have an equal opportunity to fill job openings.

8.4 Recruitment and appointment at IFAD shall be conducted in accordance with the Agreement and procedures based upon open competition, merit, and respect for the following elements:

- (a) **adequate publicity** – vacancies publicized to provide potential candidates with every reasonable opportunity to apply;

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<sup>1</sup> Article 6, Section 8(e), of the Agreement Establishing IFAD.



- (b) **absence of discrimination** – selections for interview made impartially through a process that neither discriminates nor unduly favours candidates on the basis of ethnic, social or political background, colour, nationality, religion, age, sex, disability, marital status, family size or sexual orientation; and
- (c) **highest standards** – candidates assessed on the basis of the highest standards of competence, integrity, and appropriate experience to carry out IFAD's objectives.

## 9. **Remuneration**

9.1 The objective of IFAD's salary programme is to attract, retain, motivate and reward the best possible workforce in ways that are cost effective, bearing in mind IFAD's responsibility to Member States. To meet this objective, IFAD uses a salary programme that:

- (a) pays each staff member a salary;
- (b) rewards an individual's performance with performance-based increases; and
- (c) is clear and easy to administer.

9.2 A benefits programme that will support IFAD in the goal to attract and retain the best qualified and experienced people shall be developed.

9.3 The salary and benefit levels shall follow the methodology followed by the United Nations Common System, as applied to various duty stations.

9.4 Staff shall become participants in the United Nations Joint Staff Pension Fund (UNJSPF) in accordance with the rules and regulations of the UNJSPF, unless excluded by the terms of their contract or by the rules and regulations of the UNJSPF. Claims from staff alleging non-observance of the rules and regulations of the UNJSPF shall be considered by the United Nations Administrative Tribunal (UNAT) under the procedures prescribed in the Administrative Rules of the UNJSPF.

## 10. **Hours of Work, Official Holidays and Leave**

10.1 Staff and consultants shall devote all time and energy during office hours to fulfilling the requirements of their appointment. To this end, rules and procedures regarding working hours, overtime, official holidays and leave (vacation, compensatory, sick, maternity and paternity) shall be established.

## 11. **Performance Evaluation System**

11.1 A Performance Evaluation System (PES) shall be established as one of the management systems for planning, developing and evaluating staff performance. The purpose of the PES will be to establish a culture in which managers, individuals and groups take responsibility for continuous improvement. Through performance management, IFAD will seek to:

- (a) provide greater clarity of job/role requirements to holders;
- (b) encourage dialogue through self-evaluation and by offering regular feedback to individuals for their encouragement, improvement and personal recognition;
- (c) identify competency-development needs;

- (d) establish a proper basis for making promotion and performance-based salary increase decisions;
- (e) strengthen managerial capabilities;
- (f) continuously improve the working culture of IFAD; and
- (g) ensure that supervisors are accountable for their decisions.

## **12. Career Development**

12.1 Procedures shall be developed to provide staff with opportunities for professional growth and advancement as driven by the business needs of IFAD and contributing to the achievement of IFAD's strategic objectives. These procedures will encourage staff to use their abilities to the fullest and to grow in their jobs and careers through the use of their own initiative.

## **13. Alternative Work Arrangements**

13.1 Alternative work arrangements are to allow IFAD to develop a strong, flexible, more viable workforce and a workplace with productive and committed staff. These work options will help meet staff needs and promote staff commitment by helping them balance work and family responsibilities. At the same time, they will foster better staffing levels to meet IFAD objectives. Such alternative work arrangements may include, but are not limited to: flexitime, teleworking and part-time schedules.

13.2 Appropriate rules and procedures concerning these alternative work arrangements shall be developed.

## **14. Personal Conduct**

14.1 A Code of Conduct shall be established that will regulate the conduct of staff and consultants, aligning it with the interests of IFAD.

## **15. Harassment and Discrimination**

15.1 IFAD will not tolerate any form of harassment, within the workplace or associated with the work performed on behalf of the organization at headquarters or in the field. No staff or consultants shall be harassed or intimidated, nor discriminated against because of ethnic, social or political background, colour, nationality, religion, age, sex, disability, marital status, family size or sexual orientation. No staff or consultants shall be subject to any abuse of power due to a supervisor/supervisee relationship. Procedures to counter harassment and discrimination shall be developed.

## **16. Grievance Resolution**

16.1 It is of primary concern to IFAD that all staff and consultants should be treated fairly and equitably. Occasions may arise when staff or consultants feel that they have not received treatment or obtained the satisfaction expected either from IFAD, their supervisor or a colleague. In such situations, it is important that staff or consultants have the opportunity to voice their dissatisfaction and to seek redress. Grievance and disciplinary procedures shall be developed.



16.2 Should a matter affecting an individual not be resolved as a result of representation under this procedure, staff or consultants may refer the matter for final determination to the International Labour Organization Administrative Tribunal (ILOAT).

17. **Separation**

17.1 It is the policy of IFAD to ensure that all staff and consultants leaving IFAD, whether voluntarily or involuntarily feel that they were treated with respect, equity and dignity. Rules and procedures for separation shall be developed.



**VII. DOSSIER OF THE *IN RE* SAEX GARCIA CASE  
BEFORE THE ADMINISTRATIVE TRIBUNAL OF THE  
INTERNATIONAL LABOUR ORGANIZATION**

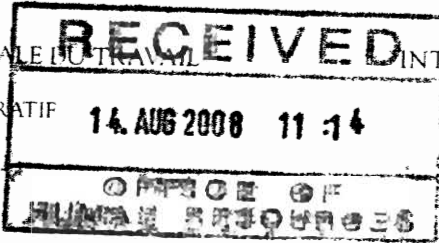




TRIBUNAL ADMINISTRATIF

CH-1211 GENEVE 2

www.ilo.org/tub  
E-mail: tub@ilo.org



ADMINISTRATIVE TRIBUNAL

RECEIVED  
CH-1211 GENEVA 22  
OFFICE OF THE PRESIDENT

14-AUG-2008 09:13  
Téléphone (+41 22) 799 87 37  
Fax (+41 22) 799 87 37

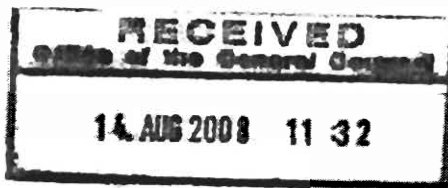
Dans la réponse, prière de rappeler le:

When replying, please quote reference:

No.

AT 5-2568

REGISTERED R.R.



28 July 2008

Dear Sir,

In re Saez Garcia

I enclose a complaint that Mrs Ana Teresa Saez Garcia has brought against the International Fund for Agricultural Development.

The complaint forms, duly filled up and with brief and appendices, were delivered to me on 9 July in a DHL parcel whose receipt was dated 8 July 2008. I also enclose a photocopy of the receipt.

In accordance with Articles 6(4) and 8 of the Tribunal's Rules, I ask you to send me the Fund's reply, in English and sixfold, within thirty days of the date of receipt of this letter.

Yours faithfully,

Catherine Comtet  
Registrar

The President  
International Fund for  
Agricultural Development  
via del Serafico 107  
I-00142 Rome

## **APPENDIX 1**

### **COMPLAINANT'S BRIEF**

#### **1. Statement of Facts**

##### **A. Complainant's Position**

1. The complainant entered on duty with IFAD on 15 March 2000 as a programme officer P-4 in the Global Mechanism of the United Nations Conference to Combat Desertification and Drought (UNCCD), housed in the Office of the President of IFAD (attachment 3). She was later appointed Programme Manager for Latin America and the Caribbean (attachment 4 and 6).

2. The complainant's performance during this period was fully satisfactory. In her last performance evaluation (attachment 8) she was recommended for promotion to P-5, the level at which the post had been approved in the programme of work and budget of the Global Mechanism even though filled at P-4.

##### **B. The Global Mechanism**

3. The Global Mechanism was created by the Conference of Parties (COP) of the UNCCD at its first meeting. In order to ensure several institutional services, the COP entered into a Memorandum of Understanding (MoU) with IFAD (attachment 1), whereby IFAD agreed to host the Global Mechanism and to provide administrative support to it. The staff of the Global Mechanism is subject to IFAD personnel rules (attachments 1, 2, 3, 4, 6 and attachment 7 para. 10 and 11) and during the complainant's tenure all the staff at the Global Mechanism received IFAD contracts.

4. The management of the Global Mechanism is clearly stipulated in the MoU (attachment 1 sections I, II and III). The Managing Director is subordinate to both the COP and the President of IFAD. The COP is the highest authority of the Global Mechanism. The Managing Director is appointed by the President of IFAD upon nomination by UNDP. The Managing Director's line of accountability is explained in the MoU.

5. The Managing Director reports to the COP by submitting for approval by the President of IFAD the programme of work and budget of the Global Mechanism, 'including proposed staffing', and then on behalf of the President of IFAD he submits it to the UNCCD Secretariat for approval by the COP (attachment 1 section III para. 4 and attachment 10a.). Within IFAD he is to participate in the Global Mechanism Advisory Group, whose chair reports to the President of IFAD and advises him on Global Mechanism matters (attachment 7 para. 3).

6. In October 2005 the Conference of Parties (COP) of the Desertification Convention received a proposed programme of work and budget for the 2006-2007 biennium (attachment 12 official document ICCD/COP(7) ). The related staffing proposal for the core budget was for nine professional posts, including that of the complainant which was proposed at a P-5 level as proposed to the COP by the Managing Director on attachment 10b ( ICCD/COP(7)/2/Add.1(B) paras. 15 to 17, para. 20) . The COP approved the programme of work and staffing proposal (attachment 12), but it reduced the requested "core budget" by 15 per cent, as reported by the Managing Director. This continued a trend of the COPs under funding the core budget while allowing the Secretariat of the UNCCD, including the Global Mechanism, to utilize funds from previous years and from voluntary

contributions to fund ongoing activities (attachment 5 para. 21 and attachment 9) and as attachment 10a. shows the Managing Director reported on July 8 2005 'the assessed contributions approved by the UNCCD Conference of Parties for the Global Mechanism core budget have in the past two years covered about one third of its total operational budget... This was submitted to the COP for approval in attachment 10b. ICCD/COP(7)/2/Add.1(B) paras. 15 to 26.).

#### **7. C. Non-Renewal of Complainant's Contract**

8. On 30 October 2005 the Managing Director held a staff meeting to convey the results of the COP, including the reduced core budget. He reassured the staff that this would not represent any adverse consequences for them, but would be met by savings on other expenditures such as travel and participation in major events. This was later on reiterated at the meeting that took place on 12 and 13 December (attachment 14).

9. On 12 and 13 December 2005 the Managing Director of the Global Mechanism presented to the staff laying out the plans and staffing for the biennium with a New Organization Chart announcing 6 new positions, chart to be effective on the 1<sup>st</sup> January 2006 (attachment 14). The new organization chart included the complainant's position and name against that position of Programme Manager for Latin America and the Caribbean.

10. On 15 December 2005 the Managing Director had scheduled a meeting with the complainant to finalise her performance evaluation for the year (attachment 13). When the complainant arrived the Managing Director announced that the purpose of the meeting was not performance evaluation; he handed the complainant the letter stating that her contract, to expire 15 March 2006, would not be renewed (attachment 15). He said that the reason was the reduction in the core budget decided in October, which translated into 1 professional and 2 general service positions not to be paid by the core budget, in response to which he had decided to abolish the post for the Programme Manager for the Latin America and the Caribbean. On the last day before the three-month notice required by IFAD, this was the first information or exchange that the complainant had had of her non-renewal.

11. Later that day the Managing Director distributed a 'revised' version of the new organizational chart to all staff, to the effective the 1<sup>st</sup> of January, in which the complainant's name and position were eliminated (attachment 16).

#### **D. Internal Proceedings**

12. The complainant requested administrative review of the decision (attachments 22 and 23) but she was notified by Office Memorandum two days prior to her separation that the only recourse was to request Facilitation in accordance with the Human Resources Procedures Manual (HRPM) chapter 10 (attachment 24). The complainant requested Facilitation (attachment 26), which concluded on 22 May 2007 without agreement (attachment 28). The complainant therefore appealed to the Joint Appeals Board of IFAD seeking reinstatement with a contract of two years, lost salary, allowances and entitlements, and moral damages of US\$ 50,000 (attachment 29)

13. The Joint Appeals Board found unanimously that the Managing Director of the Global Mechanism had acted beyond his authority in not renewing the complainant's contract, that it had found no material evidence of consultation with the President of IFAD, that the complainant was denied due process by IFAD and that the actions of the Managing Director were heedless of the career and human feelings (attachment 30 paras. 31-32-33). The Joint Appeals Board unanimously

recommended that the complainant be reinstated with a contract for two years and that she be paid all salaries, allowances and entitlements that she had lost since March 2006. (attachment 30 para. 34)

14. The President of IFAD rejected the Joint Appeals Board recommendations and denied all of the complainant's claims (attachment 31). This is the decision impugned.

## **2. Complainant's Pleas**

### **A. Receivability**

15. The decision impugned was issued by memorandum of the President of IFAD dated 4 April 2008 (attachment 31) and received by the complainant on April 11 2008 (attachment 32). The present complaint is filed within 90 days.

16. No objection has been raised to the receivability of the internal appeal in IFAD.

### **B. Merits**

(1) The Managing Director exceeded his authority in deciding not to renew the complainant's contract

17. The authority of the Managing Director is limited by the Memorandum of Understanding between IFAD and the COP (attachment 1). He is clearly subordinate to both the COP and the President of IFAD. He has no authority to invent his own programme of work independently of the COP and the President of IFAD.

18. In the present case, the Managing Director was obligated to implement the programme and staffing approved by the COP with the core budget resources including extra-budgetary resources, which the COP had indicated (attachment 12). If he contemplated a major shift in programme emphasis he was clearly bound to inform the President of IFAD, obtain his sanction and obtain endorsement by the COP as per the procedures stipulated in the MoU (attachment 1 section III para.6). He neither informed nor obtained endorsement from either, except perhaps after having abolished the post.

19. If *force majeure* had really required the Managing Director to reduce the programme and staff, which the Joint Appeals Board report and the complainant had demonstrated was not the case; he was obligated by the Memorandum of Understanding to obtain the approval of the President of IFAD. The Managing Director has claimed that he did consult with Senior Management but that there is no record of the discussion because of its sensitivity. The Joint Appeals Board's findings on this point are eloquent (attachment 30 para. 23-24):

- There is no indication that the Managing Director submitted a new budget requesting the reduction of a single professional post for the President of IFAD's approval . . . .
- Similarly, there is no evidence that the Managing Director consulted or obtained approval from the President to change the GM's strategic direction by abolishing the post of [complainant] prior to informing the Appellant of the non-renewal of her contract.

20. It is also significant that the Global Mechanism Advisory Committee created under the President Bulletin PB/04/01 (attachment 7 para.3) was never even informed nor convened prior to the decision making. It had last met in September 2005 and discussed the submission to the COP with the announcement of the Managing Director of 16 new positions, but it was not convened to discuss a major change in direction which affected a staff member (attachment 11). The formal minutes of this meeting, held on September 14 2005, was to 'discuss the reorientation of the GM's priorities and organizational modalities beyond 1 January 2006 (attachment 11 para.1). Then the Managing Director indicated that 'an additional 16 posts will be required to adequately Manage GM's portfolio'

21. The Managing Director has attempted to distinguish between the "guidance" that he receives from the COP and his managerial role to transform the COP guidance into operations. The Memorandum of Understanding does not really reflect this dichotomy. Although it does not use the word "managerial", it does say that the COP will provide "policy and operational guidance".

22. Finally, the COP itself requested the Executive Secretary of the convention (the decision does not mention the Managing Director) 'to consult with the Bureau of the COP on any adjustments that may be necessary in the programme of work as foreseen in the core budget for the biennium 2006-2007, in the event that sufficient resources are not available to the secretariat in a timely fashion from the approved budget' (attachment 12, para. 32). This was not done.

(2) The approved core budget did not require elimination of complainant's post

23. There is ample evidence that the modest budget cuts imposed by the COP did not require the abolition of the complainant's post.. The COP authorized \$ 3,886,000, slightly more than in 2004-2005. It also authorized the Global Mechanism to continue the practice of previous years of using non-core resources to carry out the core programme (attachments 5 and 9) and as stated by the Managing Director in attachment 10a. and 10b.

24. The Managing Director does have full power to approve expenditures from the voluntary contributions account, the "second account" of the Global Mechanism, which holds voluntary contributions for administrative expenses (attachment 2). This can be demonstrated by the reports of former Managing Directors to IFAD's Governing Council and IFAD Executive Board in which they exercise their authority to transfer resources from voluntary contributions into the core budget to safeguard the core budget positions approved by the COP. This is reported by the Managing Director of the Global Mechanism to IFAD's Executive Board at its 80<sup>th</sup> Session 'The core budget approved by COP 6 for the biennium 2004-2005...creates a resource gap of about 1.2 million per year in comparison with the requested budget. Therefore, to fulfill its mandate, the GM will have to raise additional voluntary contributions'(attachment 9 ). Similarly, in 2005 the Managing Director reported to IFAD's 28<sup>th</sup> Session of its Governing Council the shortfall of 1.2 million per year. It is to be noted that the gap was covered by voluntary contributions and savings were made in other expenditures with no changes in the terms and conditions of employment of the COP approved positions. In his submission of the programme of work and budget to the President on July 8 2005, the Managing Director requested for approval: 'In this zero-growth scenario, the core budget will continue to finance 9 professional staff and 5 general service staff. The staff training, including temporary professional officers and consultants, will have to be financed through voluntary contributions to avoid a decrease in support to affected countries.'(attachment 10a.). Evidence shows that as late as 13 December 2005 the Managing Director stated his intention to use the voluntary contributions account to cover any budgetary shortfalls and reported to staff the

recruitment process of the new 6 professional positions of the New Organizational Chart to be effective as of January 1 2006. (attachment 14). And in fact he transferred two general service posts from the core budget to voluntary contributions in 2006 as confirmed by the Managing Director in his reply to the Director of Personnel on February 7 2006 'the argument that two GS (general service) staff were equally affected are not valid, since I found temporary employment for them through voluntary financial contributions at the GM (Global Mechanism).'(attachment 21). It is to be noted that the mentioned staff was just transferred from one budget line, core budget, to another budget line, voluntary contributions 'second account', and their contractual terms were not changed. There has never been any explanation by the Managing Director nor a request from IFAD for justification of why he did not do the same for the complainant's post as he had the authority to use the voluntary contributions under the 'second account' as per the President Bulletin PB No. 99/10 Accounts of the Global Mechanism 'First account and Second Account (attachment 2).

25. The real financial situation of the Global Mechanism can best be appreciated by the new additional professionals hired in 2006, in particular during the 6 months following the non-renewal of the complainant's contract and throughout the biennium 2006-2007. The Joint Appeals Board findings clearly stated the increasing work force of the whole organization by the recruiting of 3 new professionals with a two year-fixed term contract, the recruiting of 'a number' of consultancy contracts 'to work for the Latin America region in contradiction to the claims made by the Managing Director of his decision to deemphasise the support to the region. Attachment 27 contains the contracts of these consultancies, travel expenditures, and terms of reference in Objectives of the consultancy. It is to be noted that the Managing Director in his response to the Appeal quoted these consultancies services were hired to 'avoid major disruption and to cover some of the work in Latin America and the Caribbean' The Joint Appeals Board findings are clear in this issue (attachment 30 para.29) . . . The substance review of budget showed no evidence of the Managing Director's claims. It has been demonstrated that the terms of reference very like those of the complainant's functions (as reported in the complainant's Performance evaluation PES 2004-2005, attachment 16.) proved that there was no reduction in work force but rather a pronounced increase. As the Joint Appeals Board found, "there is no evidence of a true budget shortfall."

(3) IFAD did not exercise its duty of care towards the complainant

26. Supposing that the budget restriction truly influenced the abolition of the complainant's post, it did not require the non-renewal of the complainant's contract (Joint Appeals Board report: attachment 30). She had had exemplary performance (PES) at IFAD and the second-most seniority in the Global Mechanism. She had quite specific qualifications in the areas that the Managing Director said he wished to emphasize in the future (attachment 13 PES part II). The complainant was not considered for any of the new positions in the Global Mechanism, nor for any training that might be required to make her more qualified, as indicated in the HRPM chapter 11.3.9(b).

27. The Joint Appeals Board unanimously found that the complainant was not seriously considered for any other position in IFAD (attachment 30). Even though she had an IFAD contract, IFAD preferred to treat her as a Global Mechanism problem, not an IFAD obligation. IFAD's ambivalent attitude toward the Global Mechanism staff is indicated in the formal minutes of a meeting of the Staff association with the President and IFAD's Senior management (attachment 25) reads '..On the second issue, ECSA (staff association) explained that the status of the staff in the hosted organizations (such as the Global Mechanism, .) and the obligation of IFAD management with regards to Human Resources Management in this organizations need to be clarified. This issue has come to the fore front in the wake of re-organization and abolition of one post taking place in the Global Mechanism. On the one hand, the staff of these organizations is offered

employment with IFAD under the terms and conditions of the HRPM. On the other hand, while 'FH (IFAD's Personnel Division) feels it can provide administrative support to GM staff it does not consider them the staff of IFAD.'

28. The way in which the complainant was told of her separation at the last possible minute (exactly 90 days before the expiry of her contract) in the absence of any exchange nor discussion is indicative. It is significant that the Managing Director presented the biennium work programme and the New Organizational Chart only two days before to all staff on December 13 and to professional staff on December 12, (attachment 14), "suggests," according to the Joint Appeals Board, "that there was not a careful deliberation of actions taken or of obligations to staff. It also suggests that the non-renewal was not undertaken in a manner that was consistent with IFAD's human resource policies and procedures." (attachment 30). The formal Minutes of December 20 2005 with the Director of Personnel demonstrate the haste and the unilateralism of his decision (attachment 17).

29. The President of IFAD has found that due process was followed in this case because the complainant received three months notice, was offered a six-month consultancy contract and was given "due consideration" for nine vacancies (attachment 31). The Joint Appeals Board found that the decision was "contrary to the rules and spirit of the HRPM." (attachments 30 para. 31).

30. Three months notice is required in any case, but it does not exhaust the process required. The 6 months consultancy contract was offered with the letter of notice but only at the end of February was the complainant given the Terms of Reference of the consultancy (attachment 27) and therefore no serious consideration could have been given. It was designed as an insulting offer, a "training" contract as defined by the Managing Director's response to the Appeal which would not have enhanced her qualifications for any position. She was expressly denied the possibility of extending her current contract for six months (attachments 21 and 24) to allow for the review of the decision-making leading that affected her. The damage to her professional reputation of having been separated in such abrupt and unjustified manner from IFAD would not have been diminished by such a consultancy.

31. As for the claim that the complainant received "due consideration" for nine vacancies this is directly contradicted by the Joint Appeals Board's finding (attachment 30 para. 28) that "nor is there evidence of any attempts to relocate the complainant elsewhere in the GM or IFAD". Significantly, the President does not refer to this finding. In fact the nine vacancies all arose after the complainant's termination; she applied for them as an external candidate.

(4) IFAD did not apply its own HRPM procedures to the complainant

32. It is true that IFAD's HRPM states that fixed-term contracts expire on the date mentioned in the contract. But non-renewal is not automatic. As the Tribunal has frequently found, the decision not to renew a fixed-term contract should be based on valid reasons and no flaws on the implementation of the procedures.

33. The IFAD HRPM specifies that the staff member's performance, the need for the post and the existence of funding all determine whether it will be renewed (HRPM para. 1.21.1). As has been demonstrated above by the Joint Appeals Board, all of these factors indicated that the complainant's contract should be renewed. The performance evaluation concluded in February 2005 and approved by the Management Review Group (MRG) recommended renewal of the complainant's contract for 2006-2007 (attachment 8) with a recommendation for promotion.

34. It is to be noted that the HRPM specifies the procedures applicable within the performance evaluation (PES) process for the non-renewal and for work force reduction. In case of doubt about renewal, the department head (in this case the Managing Director) must consult with the President about the course of action to follow (HRPM para. 1.21.4). As the Joint Appeals Board has found, 'no evidence was presented or found to support the Respondent's claim that the decision was made in consultation with IFAD's Management', prior to the decision.

35. IFAD's policy toward separation is set out in the heading to HRPM chapter 11 on termination: "It is the policy of IFAD to ensure that all staff and consultants leaving IFAD, whether voluntarily or involuntarily, feel that they were treated with respect, equity and dignity." These were grossly lacking in this case.

36. In cases of redundancy, the HPRM provides (para. 11.3.9) that every effort should be made to absorb redundancy through natural wastage, to find alternative employment and provide training if necessary and give as much advance notice as possible. It also provides a review process (para. 11.3.12), which the complainant requested (attachments 17 and 23) and which the chair of the Staff Association requested in different occasions (attachments 18, 19 and 20). The Joint Appeals Board found that all these procedures were applicable to this case and that they were not applied, denying the complainant due process (attachment 30 para. 27).

(5) The President failed to give reasons for rejecting the Joint Appeals Board's recommendations

37. The Joint Appeals Board arrived at detailed findings in the complainant's appeal and it recommended a series of actions, including reinstatement and back pay. The President simply noted that fixed-term contracts expire by their own terms and that due process was followed. He makes no reference to any of the Joint Appeals Board's findings in particular that the budget did not justify the non-renewal of the complainant's contract. He makes no reference to the multiple findings concerning the applicability of chapter 11 of the HRPM nor those concerning IFAD's duty of care and the heedlessness of the actions against the complainant. He claims that the complainant received due consideration for other posts without appearing to be aware of the Board's finding that she had not.

38. The Tribunal has consistently ruled that when a final decision-maker rejects a recommendation of the internal appeals body, in this case the Joint Appeals Board, he is obliged to state his reasons. The President of IFAD failed to provide any reasons or explanations on the Joint Appeals Board findings and recommendations (attachment 31).

**The Complainant states:**

- I. That the decision of the Managing Director for the non-renewal of her contract is unlawful, discriminatory and displayed an abuse of authority (as per the findings of the Joint Appeals Board report) ;
- II. That IFAD breached procedures, tainted with prejudice as judged as the Global Mechanism staff member not having the same rights of IFAD staff members,( attachment 25) denying due process in the reviewing of the decision (attachment 24) against the complainant and in the application of the HRMP Chapter 11. ;
- III. the Managing Director breached the duty of consideration it owes its staff, under the HRPM, of the principle of good faith that a staff member has the right to be kept informed of any



action that may affect her rights, protecting staff against arbitrary decision-making which jeopardises the staff career development and long-term interests (Joint Appeals Board report attachment 30 para. 33).

- IV. The heedless administrative decisions had impinged on the complainant's career, creating difficulties for finding job which would offer her equivalent career development and financial security for her and her family.

### **3. Complainant's Claims**

1. In light of the foregoing, the complainant respectfully requests the Tribunal to:
- a. quash the decision of the President of IFAD rejecting the complainant's appeal;
  - b. order the defendant to reinstate the complainant in her post or an equivalent post in IFAD, recognising the complainant's acquired prospects for career development, with retroactive effect from 15 March 2006 and with a duration of not less than two years from the date of reinstatement;
  - c. order the defendant to reimburse the complainant for loss of salary, allowances and entitlements, including but not limited to contributions to the United Nations Joint Staff Pension Fund, potential promotion;
  - d. order IFAD to pay further compensation for US\$ 50,000 for the prejudice of the organisation against her which caused suffering by the heedless manner in which IFAD had handled this decision with the denial of due process and regardless of the complainant's rights, career aspirations and human feelings;
  - e. Order IFAD to pay to the complainant the amount of € 5000 in respect of legal fees and other costs of the present proceedings and the IFAD internal proceedings.

NUMBER	D	M	Y	NATURE	AUTHOR	ADDRESSEE
1	28	4	98	<b>Memorandum of Understanding between the Conference of the Parties of the United Nations to Combat Desertification and the International Fund for Agricultural Development</b> regarding the modalities and administrative operations of the Global Mechanism	IFAD Document approved by the Executive Board EB99/66/INF.10	Public domain
2	4	10	99	<b>President Bulletin PB No. 99/10 Subject: Accounts of the Global Mechanism</b>	The President	All staff
3	1	3	00	<b>IFAD Letter of appointment</b> for a two years fixed-term as Programme Officer at a P4 level.	IFAD Director of Personnel Division	The Complainant
4	22	3	02	<b>IFAD Letter of extension of appointment</b> for a two years fixed-term as Programme Manager for the Latin America region.	IFAD Personnel Officer, Personnel Division	The Complainant
5	17-18	12	03	<b>IFAD Executive Board document. EB 2003/80/R.44</b>	IFAD	IFAD Executive Board
6	5	3	04	<b>IFAD Letter of extension of your appointment</b> for a two years fixed-term as Programme Manager for the Latin America.	IFAD Personnel Officer, Personnel Division	The Complainant
7	21	1	04	<b>IFAD President Bulletin PB/04/01. Subject: The Global Mechanism</b>	IFAD President	To all staff
8	7	2	05	<b>IFAD Performance Evaluation (PES) 2004-2005</b>	Signed by the Managing Director of the GM and approved by the Management Review Group (MRG)	IFAD procedure HRPM*
9	16/17	2	05	<b>Official Report presented at IFAD's Governing Council 28<sup>th</sup> Session.</b> Progress Report of the Global Mechanism of the United Nations Convention to combat desertification. Reported the resource gap on core budget covered by voluntary contributions.	Managing Director (former) of the Global Mechanism (GM)	IFAD's Governing Council
10a.	8	7	05	<b>Office Memorandum. Subject: Documentation of the Global Mechanisms to the Conference of the Parties of the UN Convention to Combat desertification (UNCCD) at its Seventh Session. Decision 23</b>	The President	Managing Director of the Global Mechanism

10b.	3	8	05	Official Document. ICCD/COP(7)/Add.1(B)	The COP	Public domain
11	14	9	05	Formal Minutes of the <b>Global Mechanism Advisory Group</b>	Assistant President of Programme Management Department (AP PM)-the Chair-; Assistant President of Finance and Administration Department (AP FAD); Director of Personnel (FH); Director of Technical Division (PT); Director of Communication (EC); 2 Legal Officers (OL); Managing Director of the Global Mechanism (GM)	Distribution to the GM Advisory Group
12	30	10	05	<b>Seventh Conference of the Parties of the UNCCD. Decision 23/COP.7</b>	The COP	Public domain
13	12	12	05	<b>Email. Scheduling of the PES meeting and the prepared PES 2005</b>	Managing director's secretary	The complainant
14 (a)	12	12	05	Power Point Presentation 'New Organizational Chart of the Global Mechanism' to be effective January 1, 2006	Managing Director of the GM	Professional staff of the GM
(b)	13	12	05		Managing Director of the GM	All GM staff (professional and general service)
15	15	12	05	<b>Letter of Notice – Non-renewal of the contract from the core budget</b>	Managing Director of the GM	The Complainant
16	15	12	05	Office Memorandum. Subject: <b>New Organisational Chart and workflow within the Global Mechanism to be effective January 1, 2006</b>	Managing Director of the GM	All GM staff
17	20	12	05	<b>Minutes of the Meeting with the Director of Personnel (FH)</b>	Prepared by the Complainant and Approved by the Director of Personnel	Human Resources division
18	19	1	06	<b>Email. Subject: Discussion this</b>	The Chairperson of	Assistant President

				<b>morning about Ana Saez (the Complainant)</b>	the Staff Association (ECSA)	for Finance and Administration Department (AP FAD). Copy to the Director of Personnel
19	2	2	06	<b>Email. Subject: Reorganisation within the Global Mechanism and post abolishment-Request for feedback</b>	The Chairperson of the Staff Association (ECSA)	Assistant President for Finance and Administration Department (AP FAD) and the Director of Personnel
20	6	2	06	<b>Email. Subject: Global Mechanism (GM), IFAD, Ms Saez (the Complainant)</b>	The Chairperson of the Staff Association (ECSA)	The Director of Personnel. Copied to: The Assistant President for Finance and Administration Department (AP FAD), the complainant, Staff Association
21	7	2	06	<b>Email. Subject : GM, IFAD and Ms Saez</b>	The Managing Director	Director of Personnel
22	9	2	06	<b>Office Memorandum. Subject: Job redundancy for the Programme Manager of the Latin America and the Caribbean</b>	The Complainant	Managing Director of the GM. Copied to: The President, Vice President, Assistant Presidents for Finance and Administration Department (AP FAD), and Assistant President for Programme Management (AP PMD), Director of Personnel
23	15	2	06	<b>Office Memorandum. Subject: Job redundancy for the Programme Manager of the Latin America and the Caribbean</b>	The Complainant	The Assistant President for Finance and Administration Department (AP FAD). Copied to: The president, the Vice President, the Director of Personnel,

						Assistant President of Programme Management Department (AP PMD)
24	13	3	06	<b>Office Memorandum. Subject: Non renewal of your contract with the Global Mechanism</b>	The Director of Personnel	The Complainant
25	17	3	06	<b>Formal Minutes of the Staff Association (ECSA) Meeting with Senior Management held on 17<sup>th</sup> March 2006. Minutes distributed on May 10, 2006</b>	Staff Association (ECSA)	Members of the IFAD Staff Association
26	10	5	06	<b>Letter. Request for Facilitation.</b>	The Complainant	The President
27				<b>Personnel action. Contract and ToR of consultants</b>	The Managing Director	consultants
28	22	5	07	<b>Office Memorandum. Subject: Facilitation Process –Non renewal of the contract of Ms Ana Saez (the Complainant), Programme Manager, Global Mechanism, Office of the President, IFAD. Received on May 29, 2007.</b>	The Facilitator: Senior Director for Strategic Planning and Resource Management	The Vice-president. Copied to: The President
29	27	6	07	<b>Letter. Subject: Statement of Appeal</b>	The Complainant	Joint Appeals Board (JAB) through its Secretary
30	13	12	07	<b>Joint Appeals Board Report. Subject: Case No. 1/1007 – Ms Ana Teresa SAEZ GARCIA (the Complainant). Received by the Complainant on April 11, 2008</b>	Presiding Officer of the Joint Appeals Board	The President The complainant
31	4	4	08	<b>Letter with the President' response to the Appeal. Subject: Your appeal to the Joint Appeals Board (JAB), Case Nor. 1/2007. Received by the Complainant on April 11, 2008</b>	The President	The Complainant
32	11	4	08	<b>Email. Confirmation of receipt of the President's response and JAB report</b>	The President	The Complainant

AP Assistant President  
 AP FAD Assistant President Finance and Administration Department  
 AP PMD Assistant President Programme Management Department  
 COP Conference of the Parties (to the Convention to Combat Desertification and drought)  
 GM Global Mechanism  
 HR Human Resources  
 HRPM IFAD Human Resources Procedure Manual  
 IFAD International Fund for Agriculture Development  
 JAB IFAD Joint Appeals Board  
 MRG IFAD Management Review Group  
 OL IFAD Legal Office  
 PES IFAD Performance Evaluation system  
 PT IFAD Technical Division  
 UNCCD United Nations Convention to Combat Desertification and Drought

**INTERNATIONAL LABOUR ORGANIZATION  
ADMINISTRATIVE TRIBUNAL**

**COMPLAINT FORM**  
(Article 6(1)(a) of the Tribunal's Rules)

<p><b>IMPORTANT:</b> Give the required information in the relevant boxes. If a section is not applicable, say so (or put <i>NA</i>).</p> <p>The submissions will consist of (1) the complaint form, (2) the brief and (3) any supporting documents, in that order.</p>	<p style="text-align: center;">TO BE ENTERED BY THE REGISTRY OF THE TRIBUNAL</p> <p>Date of filing: <b>- 8 JUL. 2008</b></p>
--	--

**1 THE COMPLAINANT**

Family name (surname)	Forename(s) ( <i>in full</i> )	Mr./Mrs./Miss/...
Saez Garcia	Ana Teresa	Mrs.

*Do not put mere initials.*

Date of birth:	Day	Month	Year	Place of birth	Nationality
	26	03	1958	Caracas, Venezuela	Venezuelan

Status	1	<input type="checkbox"/>	Serving official. Enter the complainant's present grade here. ....	
<i>Tick one.</i>	2	<input checked="" type="checkbox"/>	Former official. Enter the complainant's final grade here. ....	P4-6
	3	<input type="checkbox"/>	Other. Enter the name of the official whose rights the complainant is relying on.	
			Family name	Forename(s)
			Mr./Mrs./Miss/...	
Complainant's relationship to that official: .....				

*See Article II(6) of the Tribunal's Statute.*

The complainant's representative\*, if any, under Article 5(1) of the Rules

Family name	Forename(s)	Qualification
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\* Representatives must supply the original or a duly certified copy of the power of attorney required by Article 5(2) of the Rules and identify the bar they belong to or the international organisation they have served in (cf. Article 5(1) of the Rules).

Postal address of the complainant or the representative

Casella Postale 64221, Roma 64, 00100 ROMA, Italy

.....

.....

**2 THE DEFENDANT ORGANISATION: IFAD**

**3 THE CHALLENGED DECISION**

(a) If the organisation has taken an *express* final decision within the meaning of Article VII(1) of the Tribunal's Statute

*Fill in either (a) or (b).*

(i) Date borne by the text of that decision:

Day	Month	Year
04	04	2008

*Fill up both 3(a)(i) and 3(a)(ii) even if the date is the same.*

(ii) Date at which the complainant received the text of the decision (or date of publication of the decision if it affects a class of officials):

Day	Month	Year
11	04	2008

(b) If no express decision has been taken upon a claim within the time limit in Article VII(3) of the Statute, date at which the complainant notified such claim to the organisation:

Day	Month	Year
-	-	-

**4 THE PLEADINGS**

**Brief**

In a brief, to be placed after this form, set out (1) the facts of the case and (2) the complainant's arguments.

**Relief claimed**

In light of the foregoing, the complainant respectfully requests the Tribunal to:

- a. quash the decision of the President of IFAD rejecting the complainant's appeal;
- b. order the defendant to reinstate the complainant in her post or an equivalent post in IFAD, recognising the complainant's acquired prospects for career development, with retroactive effect from 15 March 2006 and with a duration of not less than two years from the date of reinstatement;
- c. order the defendant to reimburse the complainant for loss of salary, allowances and entitlements, including but not limited to contributions to the United Nations Joint Staff Pension Fund, potential promotion;
- d. order IFAD to pay further compensation for US\$ 50,000 for the prejudice of the organisation against her which caused suffering by the heedless manner in which IFAD had handled this decision with the denial of due process and regardless of the complainants rights, career aspirations and human feelings;
- e. Order IFAD to pay to the complainant the amount of € 5000 in respect of legal fees and other costs of the present proceedings and the IFAD internal proceedings.

*The claims may include, for example, the quashing of the challenged decision, reinstatement, material damages, moral damages, costs.*

*List the claims in the box: do not put entries such as "see document appended".*

*The list should not contain arguments, explanations or allegations.*

**Supporting documents**

Number each of the supporting documents you append to your brief and list them in the schedule at the end of this form.

**5 SPECIAL APPLICATIONS**

Does the complainant want hearings under Article 12(1) of the Rules?

Yes

No

*State the grounds for such application in the brief.*

Witness(es), if any, that the complainant wants the Tribunal to hear

Name

Position or title

Issues to be addressed

**SIGNATURE**

In signing below the complainant or his/her representative certifies:

- (a) that the five copies of this form and of the appended texts are true (Article 6(1)(d) of the Rules);
- (b) that all appended texts that are not originals (transcripts, photocopies, etc.) are true copies (Article (6)(1)(b)); and
- (c) that the required translations into English or French of any appended texts written in neither of those languages are true to the originals (Article 6(1)(c)).

Date 8-07-2008 Signature [Handwritten Signature]

*Sign the original and each of the five copies of this form; a mere photocopy of the signature will not do.*

**SCHEDULE**

**SUPPORTING DOCUMENTS** (in chronological order so far as possible)

**Examples**

Number	Date			Nature	Author*	Addressee*
	D	M	Y			
1	4	4	97	Letter	Director of Personnel	Complainant
2	12	5	97	Performance appraisal report	-	-
3	20	5	97	Memorandum	Complainant's supervisor	Chief, Publications Branch
4	12	6	97	Report on internal appeal	Joint Appeals Board	-
5	9	7	97	Letter (Impugned decision)	Director-General	Complainant

*Number every single document separately.*

*The list should ordinarily include the texts of the decision impugned under Article VII(1) and of the report of the internal appeals body, if any.*

**List of documents supporting the complaint** See List Attached

*When identifying the author of an item of correspondence or the addressee, use official titles, e.g. Director of Personnel, rather than names.*

Number	Date			Nature	Author*	Addressee*
	D	M	Y			

\* So far as possible.



List of documents (continued from previous page)

If further space is necessary, append a photocopy of this sheet.

Number	Date			Nature	Author*	Addressee*
	D	M	Y			

\* So far as possible.

CS.





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Dar a la población rural pobre la oportunidad de salir de la pobreza  
تمكين السكان الريفيين الفقراء من التغلب على الفقر

12 September 2008

Subject: *In re Saez*, AT 5-2568

Dear Ms. Comtet,

The International Fund for Agricultural Development, the Defendant Organization in the above-mentioned case, is pleased to submit its Reply to the International Labour Organization Administrative Tribunal in six copies on 12 September 2008 in accordance with the provisions of the Statute and Rules of the Administrative Tribunal of the International Labour Organization.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Rutzel S. J. Martha".

Rutzel S. J. Martha  
General Counsel  
Office of the General Counsel

Mme Catherine Comtet,  
Registrar  
International Labour Organization Administrative  
Tribunal  
Ch. 1211 Geneva 22  
Switzerland

**DOX** DDU



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**Pcs: 2**

**FROM:IFAD**

RUTSEL, MARTHA  
VIA PAOLO DI DONO 44

**TO: INTERNATIONAL LABOUR ORGANIZATION**  
**ADMINISTRATIVE TRIBUNAL**  
**CATHERINE CONTET**  
**REGISTRAR**

ROMA,  
00142 Italy  
Ph: 0664591 Fax:  
UID:

**GENÈVE 21,**  
**1211 Switzerland**  
**Ph: 0041227995726 Fax:**  
**UID:**

**Description: DOX**

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**SIGNATURE:RUTSEL, MARTHA**

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**INTERNATIONAL LABOUR  
ORGANIZATION ADMINISTRATIVE TRIBUNAL (ILOAT)  
AT 5-2568**

**BETWEEN**

**ANA TERESA SAEZ GARCIA  
Complainant**

**-and-**

**THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT  
Defendant**

---

**REPLY OF THE DEFENDANT**

---

**I INTRODUCTION**

1. On 9 July 2008 Ms Ana Teresa Saez Garcia, hereinafter "the Complainant", brought a complaint against the International Fund for Agricultural Development, (hereinafter "the Fund" or "IFAD").
2. By letter dated 28 July 2008, delivered to the Fund on 14 August 2008, the Fund was asked to submit its reply to the complaint.
3. The present memorandum and appendices constitute the Fund's reply to the complaint and provide the grounds upon which the Tribunal should dismiss the complaint.
4. The Tribunal is respectfully requested to note that unless the Fund expressly acknowledges otherwise in the present memorandum, all description of facts and pleas entered by the Complainant are contested by the Fund.

**II. FACTS**

5. In recognition of the fact that desertification is a major economic, social and environmental problem of concern to many countries in all regions of the world, the United Nations Conference on Environment and Development (UNCED), which was held in Rio de Janeiro in 1992, called for a new, integrated approach to

tackle the problem, emphasizing action to promote sustainable development at the community level. It also called on the United Nations General Assembly to establish an Intergovernmental Negotiating Committee to prepare, by June 1994, a Convention to Combat Desertification, particularly in Africa. To this end, in December 1992, the General Assembly agreed and adopted resolution A/RES/47/188.

6. The United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereinafter "The Convention" or "UNCCD") was adopted in Paris on 17 June 1994 and opened for signature on 14-15 October 1994 (Attachment A). It entered into force on 26 December 1996, 90 days after the fiftieth ratification was received. Over 179 countries were Parties as at March 2002. The Conference of the Parties (COP), which is the Convention's supreme governing body, held its first session in October 1997 in Rome, Italy; the second in December 1998 in Dakar, Senegal; the third in November 1999 in Recife, Brazil; the fourth in December 2000 in Bonn, Germany; and the fifth in October 2001 in Geneva, Switzerland. As of 2001, COP sessions are held on a biennial basis.
7. The Global Mechanism (GM), which is an integral part of the Convention was established under Article 21 of the Convention and began its operations in October 1997.
8. Acting under Article 21, paragraph 6 of the Convention, the Conference of the Parties to the Convention adopted "Decision 24/COP.1- Organization to house the Global Mechanism and agreement on its modalities", according to which the role of the Fund is restricted to housing the Global Mechanism pursuant to the terms of that decision (Attachment B).
9. In order to implement this decision a Memorandum of Understanding was agreed between the Conference of the Parties of the Convention and the Fund Regarding the Modalities and Administrative Operations of the Global Mechanism and was approved at the Third Conference of the Parties (15-26 November 1999) (Attachment C)
10. Consistent with its undertaking under the Memorandum of Understanding to host the Global Mechanism and at the behest of the latter:
  - a) In March 2000, the Complainant was offered a 2 year fixed-term contract at P4 level to serve as Programme Manager for the Latin America and Caribbean (LAC) Region with the Global Mechanism. Her contract was renewed in March 2002 and March 2004 respectively, for a two-year period (Attachments D, E, F).
  - b) The 1 March 2000 contract states as follows:

*"The position you are being offered is that of Programme Officer in the Global Mechanism of the Convention to Combat Desertification....."* (Attachment D)
  - c) On 15 December 2005, the Managing Director of the Global Mechanism notified the Complainant of the non-renewal of her contract. The notice

stated that the Managing Director had decided to abolish the post of programme manager for Global Mechanism's regional desk for Latin America and the Caribbean, and consequently the Complainant's fixed-term contract, which was due to end on 15 March 2006, would not have been further extended. The reason given for the abolition of the position was the decision of the UNCCD Conference of the Parties, at its Seventh Session (October 2005), to "decrease the budget of the GM for the Biennium 2006-2007 by effectively 15% in Euro terms." (Attachment G).

- d) On 10 May 2006, the Complainant requested a facilitation process which ended with no settlement.
- e) On 27 June 2007, the Complainant submitted an appeal to the Joint Appeals Board (JAB). The main issues raised by the Complainant were that: (i) the decision of the Managing Director of Global Mechanism to reduce activities in the regional desk for LAC and abolish a post included in the budget approved by COP, was beyond his managerial authority; (ii) the Human Resources Procedures Manual (HRPM) rules and regulations on redundancy were not followed and IFAD was bound to seek alternative solutions. The Complainant specifically requested: (i) reinstatement in IFAD; (ii) payment of all salary and allowances from 15 March 2006 to the date of reinstatement; (iii) damages in the amount of USD 50,000.
- f) On 21 September 2007, the Managing Director of Global Mechanism replied to the appeal submitted by the Complainant (Attachment H).
- g) The report and recommendations of the JAB were submitted to the President on 13 December 2007 (Attachment I). The deadline for the final decision of the President, 13 February 2008, was extended to 5 March 2008.
- h) The JAB Findings and Recommendations can be summarized as follows:
  - (i) The decision not to renew the contract was beyond the authority of the Managing Director of the Global Mechanism and should have been confirmed by the President.
  - (ii) The Complainant was denied "due process" in accordance with Sections 11.3.11 and 12 of the HRPM.
  - (iii) The HRPM rules on redundancy were not followed and there is no evidence of any serious attempt having been made to relocate her elsewhere in the Global Mechanism or with the Fund or to provide her with additional training for different positions.
  - (iv) The relation between the Global Mechanism's budgetary situation and the non-renewal of the Complainant's contract "cannot be seen as necessary and inevitable" and there was no evidence of a "true budget shortfall."
  - (v) The JAB unanimously recommended that: (a) the Complainant be reinstated to a position in the Global Mechanism with a two-year

fixed term contract; (b) the Complainant be awarded a payment by the Global Mechanism of all salaries, allowances and entitlements lost since March 2006.

11. The President of the Fund did not accept the JAB recommendations and on 4 April 2008 issued the decision which is being impugned (Attachment J).

### III COMPETENCE OF THE COURT

#### (1) The Fund and the Global Mechanism are separate legal entities

12. The Conference of the Parties to the United Nations Convention to Combat Desertification is not an organ of the Fund within the meaning of the Agreement Establishing the International Fund for Agricultural Development, nor is Global Mechanism, being a subsidiary organ of the said Conference of the Parties
13. By virtue of the Fund's acceptance of the jurisdiction of the International Labour Organization Administrative Tribunal, the Statute of the Tribunal applies in its entirety to the Fund, but it does not extend to organizations, entities or bodies that may be hosted by the Fund pursuant to international agreements with third parties.
14. The Global Mechanism was established under Article 21 of the United Nations Convention to Combat Desertification ("Convention"), and began its operations in October 1997. As far as is relevant for the present purposes, Article 21 of the Convention provides that:

*"4. In order to increase the effectiveness and efficiency of existing financial mechanisms, a Global Mechanism to promote actions leading to the mobilization and channelling of substantial financial resources, including for the transfer of technology, on a grant basis, and/or on concessional or other terms, to affected developing country Parties, is hereby established. This Global Mechanism shall function under the authority and guidance of the Conference of the Parties and be accountable to it.*

*5. The Conference of the Parties shall identify, at its first ordinary session, an organization to house the Global Mechanism. The Conference of the Parties and the organization it has identified shall agree upon modalities for this Global Mechanism to ensure inter alia that such Mechanism:*

*(a) identifies and draws up an inventory of relevant bilateral and multilateral cooperation programmes that are available to implement the Convention;*

*(b) provides advice, on request, to Parties on innovative methods of financing and sources of financial assistance and on improving the coordination of cooperation activities at the national level;*

*(c) provides interested Parties and relevant intergovernmental and non-governmental organizations with information on available sources of*



*funds and on funding patterns in order to facilitate coordination among them; and*

*(d) reports to the Conference of the Parties, beginning at its second ordinary session, on its activities.*

*6. The Conference of the Parties shall, at its first session, make appropriate arrangements with the organization it has identified to house the Global Mechanism for the administrative operations of such Mechanism, drawing to the extent possible on existing budgetary and human resources.*

*7. The Conference of the Parties shall, at its third ordinary session, review the policies, operational modalities and activities of the Global Mechanism accountable to it pursuant to paragraph 4, taking into account the provisions of article 7. On the basis of this review, it shall consider and take appropriate action." (Attachment A)*

15. As it appears from Article 21, paragraphs 4-7 above, the Global Mechanism is an integral part of the Convention and is not an organ of the Fund. Moreover, as is clear from the decision of the Conference of the Parties 24/COP.1 (Attachment B) adopted pursuant to Article 21, paragraph 6 of the Convention, the role of the Fund is restricted to housing the Global Mechanism in accordance with the terms of that decision:

*"Decision 24/COP.1*

*Organization to house the Global Mechanism and agreement on its modalities*

*The Conference of the Parties,*

*Recalling that the Conference of the Parties (COP), in accordance with article 21, paragraphs 5 and 6, of the Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, shall:*

*(a) identify, at its first ordinary session an organization to house the Global Mechanism established under article 21, paragraph 4, of the Convention;*

*(b) agree with the organization it has identified upon the modalities for the Global Mechanism; and*

*(c) make, at its first session, appropriate arrangements with the organization it has identified to house the Global Mechanism for the administrative operations of such Mechanism, drawing to the extent possible on existing budgetary and human resources.*

*Having examined the recommendations of the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (INCD) regarding the functions of the Global Mechanism, and the criteria for*

*selecting an institution to house it, as reflected in Appendix I of document ICCD/COP(1)/5 and in paragraphs 1 and 2 of the Committee's decision 10/3, taken at the first part of its tenth session, with the amendment contained in document ICCD/COP(1)/5/Add.1.*

*Recalling decision 10/18 of the INC'D, taken at its resumed tenth session, which, inter alia:*

*(a) requests the COP at its first session to consider the offers of the International Fund for Agricultural Development (IFAD) and the United Nations Development Programme (UNDP), including any suggestions they deem necessary, and to take appropriate action on the matters related to the selection of an institution to house the Global Mechanism; and*

*(b) requests the Permanent Secretariat of the Convention, in consultation with IFAD and UNDP, to develop proposals on administrative and operational modalities of the Global Mechanism for consideration and adoption by the COP at its first session.*

*Noting with appreciation the revised offer of IFAD to house the Global Mechanism, contained in Appendix II of document ICCD/COP(1)/5, as supplemented by document ICCD/COP(1)/CRP.3, prepared in response to operative paragraph 1 of INC'D decision 10/18,*

*Also noting with appreciation the revised offer of UNDP to house the Global Mechanism, contained in Appendix III of document ICCD/COP(1)/5, as supplemented by document ICCD/COP(1)/CRP.2, prepared in response to operative paragraph 1 of INC'D decision 10/18,*

*Noting further document ICCD/COP(1)/5/Add.2/Rev.1, which contains proposals developed by the Permanent Secretariat, in consultation with IFAD and UNDP regarding the administrative and operational modalities of the Global Mechanism,*

*1. Decides to select IFAD to house the Global Mechanism on the basis of criteria agreed on in Section B of the Annex to INC'D decision 10/3;*

*2. Decides also that the Global Mechanism, in carrying out its mandate, under the authority and guidance of the COP, should perform the functions described in the annex to this decision;*

*3. Requests the Permanent Secretariat, in consultation with the organization to house the Global Mechanism, as well as the other two collaborating institutions referred to in decision 25 COP I, to develop a memorandum of understanding between the COP and appropriate body or organization for consideration and adoption at the second session of the COP;*

*4. Requests also the Permanent Secretariat and the organization housing the Global Mechanism, in consultation with the two other collaborating*

*institutions, in developing the memorandum of understanding referred to in paragraph 3 above, to take fully into account document ICCD/COP(1)/5 and other related documents, including document CCD/COP(1)/CRP.1, to address, inter alia, the following:*

- (a) the separate identity of the Global Mechanism within the housing organization;*
- (b) the measures to be taken to assure full accountability and full reporting to the COP;*
- (c) the field office support available for Global Mechanism activities;*
- (d) the administrative infrastructure available to support the Global Mechanism; and*
- (e) arrangements for the handling of resources made available for Global Mechanism functioning and activities;*

*5. Further requests the organization housing the Global Mechanism and the Permanent Secretariat to work out appropriate arrangements for liaison and cooperation between the Permanent Secretariat and the Global Mechanism in order to avoid duplication and to enhance the effectiveness of Convention implementation in accordance with their respective roles in implementation;*

*6. Invites relevant institutions, programmes and bodies of the United Nations system, including the United Nations Food and Agriculture Organization (FAO), the Global Environment Facility (GEF), the United Nations Environment Programme (UNEP) and the World Food Programme (WFP), intergovernmental, regional and sub regional organizations and regional development banks, as well as international nongovernmental organizations (NGOs) and the private sector, to actively support the activities of the Global Mechanism;*

*7. Urges Governments and all interested organizations, including nongovernmental organizations and the private sector, to make promptly the voluntary contributions necessary to ensure that the Global Mechanism can begin operating on 1 January 1998 on the basis of Section A of Appendix I of document ICCD/COP(1)/5 and continue effective operations on the basis of the memorandum of understanding referred to in paragraph 3 above after its adoption by the second session of the COP;*

*8. Reiterates that, in accordance with article 21, paragraph 7 of the Convention, the COP shall, at its third ordinary session, review the policies, operational modalities and activities of the Global Mechanism and, on the basis of this review, shall consider and take appropriate action." (Attachment B)*

16. As can be read in paragraph 4(a) of the foregoing decision, one of the terms for housing the Global Mechanism in the Fund is "the separate identity of the Global Mechanism within the housing organization".

17. Accordingly, Section II.A of the Memorandum of Understanding, concluded between the Conference of the Parties to the Convention and the Fund regarding the modalities and administrative operations of the Global Mechanism, stipulates that "While the Global Mechanism will have a separate identity within the Fund, it will be an organic part of the structure of the Fund directly under the President of the Fund" (Attachment K).

18. Clearly, the object and purpose of Section II.A. is of course not to convert the Global Mechanism into an organ of the Fund. Not only because that would require both an amendment of the Convention as well as the Agreement Establishing IFAD (Attachment L), but primarily because Section I, reiterates the decision of the Conference of the Parties and underlines that as the housing institution, the Fund will support the Global Mechanism in performing its function in the framework of the mandate and policies of the Fund.

**(2) The Complainant is not a staff member of the Fund**

19. The complaint is based on a fundamental mischaracterization of the Complainant's legal status with the sole purpose of invoking a legal regime that is supposedly more favourable for the Complainant. The Tribunal is invited to reject this mischaracterization and to refer to the actual legal regime that applies to the relationship between the Fund and the personnel assigned to work for the Global Mechanism.

20. It is recalled that the Global Mechanism is not an organ of the Fund. The Fund serves only as a hosting institution for the Global Mechanism and provides services for the Conference of the Parties to the Convention as it relates to certain administrative and financial matters concerning the Global Mechanism.

21. Similar to the Tribunal's conclusions in Judgment No. 1509<sup>1</sup>, the fact that the Fund administers the Global Mechanism does not make the Complainant a staff member of the Fund for all intents and purposes. In administering the Global Mechanism the Fund applied the HRPM partly to the Complainant, who did not on that account become a staff member of the Fund. The Complainant's legal status in relation to the Fund is defined in President's Bulletin No. PB/04/01 of 21 of January 2004 (Attachment M), which in its paragraph 2, last sentence, makes it explicit that it purports to clarify the existing relation of the Fund with the Global Mechanism.

22. According to paragraph 10 of the President's Bulletin No. PB/04/01, the application of the HRPM to Global Mechanism personnel, is subject to the limitations and conditions spelled out by the President in paragraph 11 thereof. In the event that Global Mechanism personnel were considered staff members of the Fund, the President would not have the authority to limit nor qualify the application of the HRPM rules (and thus exclude the Human Resources Policy, HRP adopted by the Executive Board under Article 6, Section 8(d) of the

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<sup>1</sup> *In re ZHC, Judgment 1509 H.C.A.F.*

Agreement Establishing the International Fund for Agricultural Development, Attachment N) vis-a-vis Global Mechanism staff.

23. For the purposes of the present case, the condition and limitation that applies to the Complainant is set forth in paragraph 11(c), according to which:

*"All fixed-term contracts of employment for the Global Mechanism shall be for a maximum of two years, renewable, and subject to the availability of resources. IFAD's rules and regulations on the provision of career contracts for fixed-term staff shall not apply to the staff of the Global Mechanism, except for those that have already received a career contract as a result of their earlier employment with IFAD" (Attachment M)*

24. Not holding a career contract as a result of an earlier employment with the Fund, the Complainant neither benefitted from IFAD's rules and regulations on career contracts for fixed-term staff, nor qualified for the treatment envisaged by paragraph 11(e), which provides that:

*"IFAD staff members applying for and being appointed to Global Mechanism posts shall have the right to return to employment within the IFAD at the same grade as that with which they leave the Global Mechanism, subject to availability of posts and the application of IFAD rules and regulations for the filling of such posts" (Attachment M)*

25. However, as mentioned in the President's letter of 4 April 2008 to the Complainant (Attachment J), she was offered a consultancy contract by the Global Mechanism and was seriously considered by the Fund for nine (9) different vacancies in the Fund and treated as an internal candidate as required by paragraph 11(f) of the President's Bulletin No. PB/04/01:

*"IFAD and Global Mechanism staff, with exception of the Managing Director of the Global Mechanism, shall have the right to be treated as an internal candidate when applying for vacancies in the other entity as well as regarding mobility of staff between the two entities" (Attachment M)*

26. The Defendant Organization therefore reiterates that the Complainant erroneously infers that as the HIRPM was declared applicable to her contract she was deemed to be an IFAD staff member within the meaning of the Agreement Establishing IFAD. In fact, in paragraph 27 of the Complainant's Brief, she shows awareness of this fact in the following words:

*"On the second issue, ECISA (staff association) explained that the status of the staff in the hosted organizations (such as the Global Mechanism) and the obligation of the IFAD management with regards to Human Resources Management in this organization need to be clarified. This issue has come to the fore front in the wake of re-organization and abolition of one post taking place in the Global Mechanism. On the one hand, the staff of these organizations is offered employment with IFAD under terms and conditions of the HIRPM. On*

the other hand, while *'FH (IFAD's Personnel Division) feels it can provide administrative support to GM staff it does not consider them staff of IFAD.'* " (Attachment O)

27. As the Complainant was a staff member of the Global Mechanism the decision not to extend her appointment was taken by the Global Mechanism.

28. Furthermore, similar to the Tribunal's conclusions in Judgment No. 1509, even the fact the Fund did apply its own staff regulations, rules and policies to the Complainant she did not on that account become a member of its staff for all intents and purposes. This means that only those rules that have been declared applicable to the Complainant can be considered by the Tribunal, and subject to the conditions under which they have been declared applicable.

**(3) The Tribunal may not entertain pleas of flaws in the decision-making process of the Global Mechanism**

29. The Complainant's first plea is that the Managing Director of the Global Mechanism exceeded his authority in deciding not to renew her contract. This alleged excess of authority is said to consist of a decision of the Managing Director of the Global Mechanism not to implement the programme of work and the staffing approved by the Conference of the Parties to the United Nations Convention to Combat Desertification. The Complainant considers that to be a breach of the Memorandum of Understanding concluded between the Conference of the Parties to the Convention and the Fund (Part B (1) of the Complainant's Brief, Attachment O.).

30. Accordingly, through her plea the Complainant is effectively inviting the Tribunal to exceed its jurisdiction, which would create a situation as contemplated in Article XII, paragraph 1 of the Annex to the Statute of the Administrative Tribunal of the International Labour Organization. The Fund, respectfully submits that the Tribunal should decline this invitation and declare that it has no jurisdiction to entertain pleas of flaws in the decision-making process of the Global Mechanism.

**(4) The Tribunal may not entertain pleas of flaws in the decision-making process of the Fund which may entail examining the decision-making process in the Global Mechanism**

31. The Complainant's second plea is that the core budget of the Global Mechanism did not require the abolition of the complainant's post by the Director of the Global Mechanism (Part B (2) of the Complainant's Brief, Attachment O). In case the Tribunal were to consider the decision not to renew the Complainant's contract as an act attributable to the Fund, the Fund wishes to point out that in order to entertain this plea the Tribunal would be required to determine whether there were flaws in the decision-making process of the Fund which may entail examining the decision-making process in the Global Mechanism.

32. As explained by the International Court of Justice in the *Eastern Timor Case*, an international court or tribunal may not entertain pleas of breach of an obligation of the respondent party to a dispute which may entail examining the legality of the acts of an absent and indispensable third party<sup>2</sup>. This principle applies to international tribunals because of their inherent limited jurisdiction, irrespective of whether the third party is an international organization or group of States, which have not recognized the Tribunal's jurisdiction<sup>1</sup>.
33. As revealed in paragraphs 23-30 of the report of the Joint Appeals Board, in the present case, in order to determine whether the post of the Complainant became redundant, it is necessary to examine the budget and related practices of the Global Mechanism, its reporting and other interactions with the Conference of the Parties to the Convention, as well as the terms of the Memorandum of Understanding between the latter and the Fund. Clearly, the Tribunal would only be able to undertake such exercise if the Conference of the Parties or at least the Global Mechanism had accepted the Tribunal's jurisdiction, *quod non*.
34. In fact, the plea raises issues of accountability for the exercise of discretionary powers of the Managing Director of the Global Mechanism, which according to Article 21, paragraph 1 of the Convention as well as paragraph 1 of Decision 24/COP.1 of the Conference of the Parties to the Convention, is reserved to the Conference of the Parties. This is implemented in Section III of the Memorandum of Understanding between the Conference of the Parties to the Convention and the Fund, which reiterates the exclusive competence of the Conference of the Parties in this regard.
- (5) The acts complaint are not attributable to the Fund**
35. The acts of the Managing Director of the Global Mechanism referred to by the Complainant are not attributable to the Fund.
36. To understand this assertion, it is necessary to briefly refer to the general rule for the attribution of wrongful acts to an international organization. According to the prevailing doctrine and international practice accepted as law, one may attribute to an international organization only acts and omissions of its organs of all ranks and nature and of its agents in the exercise of their competencies. The articulation of this general rule for the purpose of codification is currently the object of the work the United Nations International Law Commission, which has adopted (provisionally) the following wording of that rule:

<sup>1</sup> *Case Concerning East Timor (Portugal v. Australia)*, Judgment of June 30, 1995, ICJ, paragraphs 23-35. (Attachment P)

<sup>2</sup> Cf. Neri Sybesma-Knoel, *The Indispensable Parties Rule in the East Timor Case*, in Erik Denters & Nico Schrijvers (eds.), *REFLECTIONS ON INTERNATIONAL LAW FROM THE LOW COUNTRIES - IN HONOUR OF PAUL DE WAART* (Martinus Nijhoff Publishers, 1998), pp. 142-157 (Attachment Q)

***"General rule on attribution of conduct to an international organization"***

*1. The conduct of an organ of an international organization, of one of its officials or another person entrusted with part of the organization's functions shall be considered as an act of that organization under international law, whatever position the organ, official or person holds in the structure of the organization.*

*2. Organs, officials and persons referred to in the preceding paragraph are those so characterized under the rules of the organization.*

*3. For the purpose of this article, "rules of the organization" means, in particular, the constituent instruments, [decisions and resolutions] [acts of the organization] adopted in accordance with them, and [established] [generally accepted] practice of the organization."<sup>4</sup>*

37. The acts complaint in the present case are the acts in pleas B(1) and B(2) in the Complainant's Brief, are the decision of the Managing Director of the Global Mechanism not to renew the Complainant's contract and his appraisal that the core budget of the Global Mechanism required such action.

38. These pleas overlook the fact that the Managing Director of the Global Mechanism is neither an organ of the Fund, or one of its officials nor a person entrusted with part of the Fund's functions within the meaning of the general rule on attribution of conduct to an international organization.

39. Firstly, the Agreement Establishing the International Fund for Agricultural Development does not list the Managing Director of the Global Mechanism as one of the organs or officials of the Fund. Secondly, the Managing Director of the Global Mechanism is not a staff member of the Fund within the meaning of Article 6, Section 8 of the Agreement Establishing the International Fund for Agricultural Development as he is not appointed by the President pursuant to the said provision, but pursuant to the Memorandum of Understanding with the Conference of the Parties. (Attachments K and L)

40. This is a result of the fact that according to Article 21, paragraph 4, last sentence of the Convention, the Global Mechanism shall function under the authority and guidance of the Conference of the Parties and be accountable to it. Accordingly, Section II.D of the Memorandum of Understanding between the Conference of the Parties to the Convention and the Fund stipulates that the Managing Director of the Global Mechanism will be nominated by the Administrator of the UNDP and appointed by the President of the Fund. (Attachments A and K)

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<sup>4</sup>United Nations International Law Commission, Report on the work of its fifty-sixth session (3 May to 4 June and 3 July to 6 August 2004), General Assembly, Official Records, Fifty-ninth Session Supplement No. 10 (A/59/10) <http://untreaty.un.org/ilc/reports/2004/2004report.htm>



41. The Managing Director of the Global Mechanism is not entrusted with any part of the functions of the Fund but exclusively with the functions of the Global Mechanism and the Conference of the Parties to the Convention. Indeed, in deciding not to renew the Complainant's contract and his appraisal that the core budget of the Global Mechanism required such action, he could not and did not invoke the interests of the Fund, but only those of the Global Mechanism and the Conference of Parties to the Convention. These acts are therefore acts that cannot be attributed to the Fund. Consequently, the Fund cannot be held accountable for these acts before the Tribunal.
42. The foregoing applies also to the Complainant's plea set forth in, paragraph 26 of the Complainant's Brief. She submits that even supposing that the budget restriction truly influenced the abolition of her post – a matter, which the Fund reminds the Tribunal that it may not examine – it did not require the non-renewal of her contract. She invokes Chapter 11.3.9(b) of the HRPM in order to substantiate her claim that she was not considered for any new positions in the Global Mechanism, nor for any training that might have been required to make her qualified (Part B (3) of the Complainant's Brief, paragraph 26, Attachment O.).
43. As is the case with pleas B(1) and B(2) in the Complainant's Brief, any decision not to consider her for any new positions in the Global Mechanism, nor for any training that that might have been required to make her qualified, even if true, were acts of the Managing Director of the Global Mechanism, as referred to in paragraph 26 of the Complainant's Brief, which cannot be attributed to the Fund.

#### **IV. MERITS**

##### **(1) The Fund discharged its duty of care towards the Complainant**

44. Even assuming that the decision not to consider her for any new position in the Global Mechanism, nor for any training that that might have been required to make her qualified is attributable to the Fund, still submission that the budget restriction did not require the non-renewal of her contract, lacks merit. She invokes Chapter 11.3.9(b) of the HRPM in order to substantiate her claim that she was not considered for any new positions in the Global Mechanism, nor for any training that that might have been required to make her qualified (Part B (3) of the Complainant's Brief, paragraph 26, Attachment O).
45. However, like the Joint Appeals Board, in making this submission, the Complainant ignores the fact that Chapter 11.3.9(b) of the HRPM does not apply to her by virtue of the exclusion enshrined in paragraph 11(c) of the President's Bulletin No. PB-04-01 of 21 of January 2004. The Complainant had no earlier employment with the Fund when she was contracted to work for the Global Mechanism, and therefore did not hold a career contract as a result of her earlier

employment with IFAD. Accordingly, like the Joint Appeals Board, the Complainant erroneously represents and claims that Chapter 11.3.9(b) of the HRPM applies to her. (Attachments M and R)

46. Notwithstanding the foregoing, the Tribunal is requested to note that according to the response of the Managing Director of the Global Mechanism, submitted to the Joint Appeals Board on 21 September 2007, the Complainant was offered a six-month consultancy contract with the Global Mechanism, which she refused. Reportedly the six-month consultancy was meant to build the Complainant's capacity and to train her. In making this offer the Global Mechanism applied the relevant IFAD rules concerning the duty of care *mutatis mutandis* to the Complainant. Therefore *de facto* the Global Mechanism accorded her the same treatment that she would have been given by the Fund, had she been an IFAD staff member. (Attachment H)

**(2) The Fund applied its HRPM procedures to the Complainant**

47. In Part B (3) of the Complainant's Brief, paragraph 32, she invokes the Tribunal's jurisprudence which states that the decision not to renew a fixed term contract should be based on valid reasons and no flaws on the implementation on the procedures. Based on that she alleges that the Fund did not follow the procedures regarding the redundancy as stated in the HRPM.

48. Similar to the Joint Appeals Board, this submission ignores the fact that those procedures cannot apply to staff of other legal entities that are hosted by the Fund. It is precisely for that reason that paragraph 11(c) of the President's Bulletin No. PB/04/01 excludes the application of those provisions from the HRPM rules and procedures that have been declared applicable on the relationship between the Fund and the personnel of the Global Mechanism. (Attachment M)

49. Clearly the Fund cannot be required to apply its procedures regarding redundancy to personnel that it employs for the Global Mechanism, unless the attendant costs are shouldered by the said entity or the Conference of the Parties to the Convention. This explains why it was necessary to exclude those procedures under paragraph 11(c) of the President's Bulletin No. PB/04/01.

**(3) The President stated the reasons for rejecting the Joint Appeals Board recommendations**

50. The Fund is fully aware of the case law of the Tribunal, which makes it clear that when rejecting a recommendation of an internal appeals body that favours a complainant, the final decision-maker must give clear and cogent reasons for such a decision (see ILOAF Judgments, No. 2092, 2261, 2347, 2355 and 2699).

51. In the present case, the Joint Appeals Board based its recommendations on the mistaken impression that the Fund can impose a staff member on the Global Mechanism. It ignored the fact that in the context of the relevant arrangements

regarding the hosting of the Global Mechanism by the Fund the functional needs and availability of resources are determined by the Global Mechanism. The Joint Appeals Board was therefore incorrect in recommending that the Complainant should be "reinstated to a position in the Global Mechanism.". Given that the Global Mechanism is a separate entity from the Fund such recommendation extends beyond the reach of the Fund. The same is true for the Joint Appeals Board's recommendation that the Complainant "be awarded a payment by the GM of all salaries, allowances and entitlements that she has lost since March 2006". Clearly the Fund cannot unilaterally impose such an obligation on the Global Mechanism. For that reason the in his letter of 4 April 2008, the President reiterated paragraph 11(c) of the President's Bulletin No. PB/04/01 which makes the renewal of contracts for employment with the Global Mechanism subject to the functional needs and availability of resources. (Attachment M)

52. The Fund believes that in the context of the hosting arrangements for the Global Mechanism, the letter of 4 April 2008 meets the standards set by the Tribunal for substantiating a decision not to renew a fixed-term contract, in particular the approach adopted in Judgment No.2699. (Attachment J)

53. Furthermore, during a meeting with the Counsel of the Complainant on 25 June 2008, the issue of non-renewal was discussed, which gave to the Fund reasons to believe that its decision could benefit from further clarification. Therefore, following that meeting, the General Counsel of the Fund reiterated in writing on 3 July 2008 that "the abolition of Ms. Saez' post by the Global Mechanism and the consequent non-renewal of her contract in accordance with the relevant arrangements regarding the hosting of the latter body by IFAD did not reflect in any way on her abilities or her performance". In this way the Fund added further clarification to the Complainant by emphasizing the fact that the Fund and the Global Mechanism cannot be assimilated. (Attachment S)

54. Under these circumstances, it cannot be held that the Fund failed to state the reasons for rejecting the Joint Appeals Board recommendations.

**(4) The Managing Director acted within his authority in deciding not to renew the complainant's contract**

55. Even if the Tribunal were competent to entertain the plea that the Managing Director exceeded his authority in deciding not to renew the complainant's contract (Part B(1) of the Complainant's Brief), the Complainant could not prevail because the Managing Director of the Global Mechanism acted within his authority.

56. It is recalled that according to Article 21(4) of the Convention as well as paragraph 2 of Decision 24/COP.1 of the Conference of the Parties, the Global Mechanism shall function under the authority and guidance of the Conference of Parties and be accountable to it. It follows that any question regarding the authority of the Managing Director of the Global Mechanism has to be answered

by considering the arrangements made by the Conference of the Parties regarding his authority. (Attachments A and B)

57. Section III.A.4 of the Memorandum of Understanding between the Conference of the Parties and the Fund provides that the Managing Director of the Global Mechanism shall be responsible for preparing proposed staffing. More generally, as is confirmed in his Post Description, he is responsible for leading the Global Mechanism with managerial responses, including budget administration and staffing. (Attachment T)

58. Accordingly, within the budgetary limits established by the Conference of the Parties, he is fully authorized to assess and decide on the workforce required by the Global Mechanism, which he did in the present case.

59. But even if one were to conclude that he did not have the authority to decide on the non-renewal of the Complainant's contract, the irregularity has been removed by the fact that the President confirmed the decision. (Attachment J)

**(5) The Fund has to defer to the Managing Director on the issue of the justification of the non-renewal of contract**

60. Even if the Tribunal were competent to entertain the plea in Part B (2) of the Complainant's Brief (i.e. "The approved core budget did not require elimination of complainant's post") the Complainant could not prevail.

61. It is recalled that decisions regarding the staffing and budget of the Global Mechanism are a prerogative of the Conference of the Parties to the Convention. As stated in Section III.A.6 of the Memorandum of Understanding between the Fund and the Conference of the Parties, the Conference approves the programme of work and budget of the Global Mechanism, authorizes the Executive Secretary of the Convention to Combat Desertification to transfer resources from the General Fund of the Convention to the Fund. These funds are administered by IFAD upon the instructions of the Managing Director who informs the Fund of the staff needed, the cost of which shall be reimbursed to the Fund under Section VI of the MOU. Therefore, the Fund has no authority to examine whether the core budget approved by the Conference of the Parties required elimination of Complainant's post. Otherwise the Fund would be in the position to impose staff on the Global Mechanism and claim reimbursement for staff that the latter may consider that it no longer requires. (Attachment K)

**V. CONCLUSIONS**

62. Based on the grounds set forth under Paragraph III above, the Fund asks the Tribunal to declare that it lacks jurisdiction to entertain the following pleas of the Complainant:

- a. Part B (1) of the Complainant's Brief:  
"The Managing Director exceeded his authority in deciding not to renew the complainant's contract"
- b. Part B (2) of the Complainant's Brief:  
"The approved core budget did not require elimination of complainant's post"

63. Based on the grounds set forth under Paragraph IV above, the Fund asks the Tribunal to declare that:

- (a) The Fund discharged its duty of care towards the Complainant
- (b) The Fund applied its HRPM procedures to the Complainant
- (c) The President stated the reasons for rejecting the Joint Appeals Board recommendation.
- (d) The Managing Director acted within his authority in deciding not to renew the complainant's contract.
- (e) The Fund has to defer to the Managing Director on the issue of the justification of the non-renewal of contract

**64. FOR THESE REASONS, THE DEFENDANT ORGANIZATION RESPECTFULLY REQUESTS THE TRIBUNAL TO:**

**DISMISS the Complainant's complaint.**

Rome, 12 September 2008  
International Fund for Agricultural Development

  
Rutsel Martha  
General Counsel

## **LIST OF ATTACHMENTS**

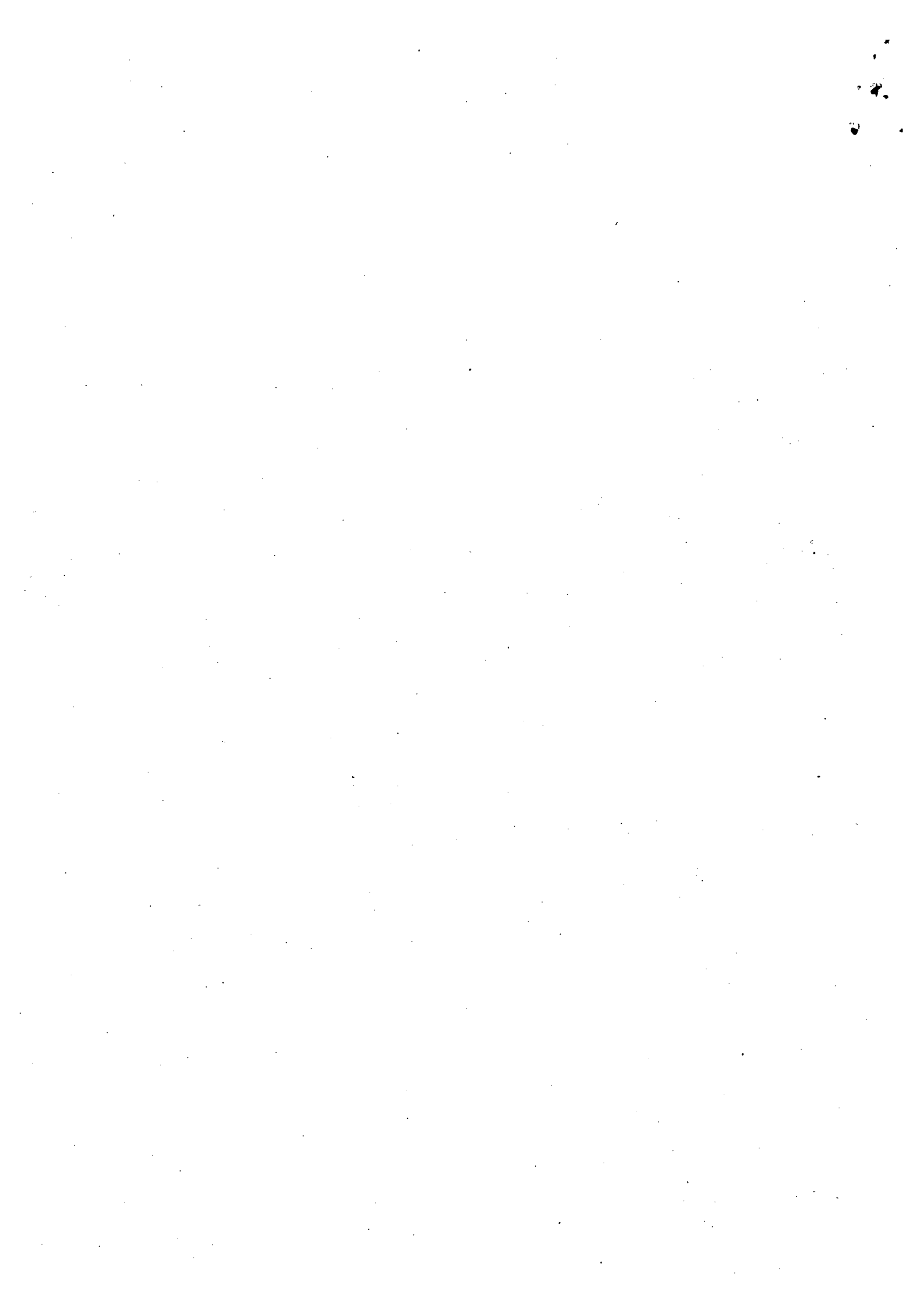
- Attachment A:** United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD)
- Attachment B:** Decision 24/COP.1. Organization to house the Global Mechanism and agreement on its modalities
- Attachment C:** Decision 10/COP.3. Memorandum of Understanding Between the Conference of the Parties of the United Nations Convention to Combat Desertification and the International Fund for Agricultural Development Regarding the Modalities and Administrative Operations of the Global Mechanism.
- Attachment D:** 01 March 2000 contract
- Attachment E:** 22 March 2002 contract
- Attachment F:** 05 March 2004 contract
- Attachment G:** Letter of Notification of Non-renewal of Contract from the Managing Director of the Global Mechanism
- Attachment H:** Response of the Managing Director of the Global Mechanism to Ms. Suez' Statement of Appeal to the JAB
- Attachment I:** Report of the JAB
- Attachment J:** Letter from the President of the Fund
- Attachment K:** Memorandum of Understanding Between the Conference of the Parties of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, and the International Fund for Agricultural Development Regarding the Modalities and Administrative Operations of the Global Mechanism.
- Attachment L:** Agreement Establishing the International Fund for Agricultural Development
- Attachment M:** President's Bulletin (PB.04.01)
- Attachment N:** Human Resources Policy (HRP)
- Attachment O:** Complainant's Brief to the ILOAF

- Attachment P:** Case Concerning East Timor (*Portugal v. Australia*), Judgment of June 30, 1995, ICJ
- Attachment Q:** Neri Sybesma-Knol, The Indispensable Parties Rule in the East Timor Case in Erik Denters & Nico Schrijvers (eds.), *Reflections on International Law from the Low Countries – In honour of Paul De Waart* (Martinus Nijhoff Publishers, 1998), pp. 442-457
- Attachment R:** Human Resources Procedures Manual, Chapter 11, Section 11.3.9
- Attachment S:** Letter from the General Counsel of the International Fund for Agricultural Development
- Attachment T:** Position Description of the Managing Director of the Global Mechanism

#### **LIST OF CASES**

- ILOAT Judgment No. 1509
- ILOAT Judgment, No. 2092,
- ILOAT Judgment No. 2261,
- ILOAT Judgment No. 2347,
- ILOAT Judgment No. 2355
- ILOAT Judgment No. 2699

ICJ Judgment (*Portugal v. Australia*),





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Fax (41 22) 799 87 37

Dans la réponse, prière de rappeler le:

When replying, please quote reference:

No.

AT 5-2568  
REGISTERED R.R.

4 November 2008

Dear Ms Martha,

In re Saez Garcia

— Here is Ms Ana Teresa Saez Garcia's rejoinder on her complaint against the International Fund for Agricultural Development.

In accordance with Article 9(3) of the Tribunal's Rules, I invite you, if the Fund cares to file a surrejoinder, to send it to me sixfold, within thirty days from the date of receipt of this letter.

Yours sincerely,



Catherine Comtet  
Registrar

Ms Rutsel S. J. Martha  
General Counsel  
Office of the General Counsel  
International Fund for Agricultural Development  
Via Paolo di Dono, 44  
I-00142 Rome

**ADMINISTRATIVE TRIBUNAL OF  
THE INTERNATIONAL LABOUR ORGANIZATION**

**No. AT 5-2568**

**In re Saez**

**Rejoinder by the Complainant**

**Contents**

<b>A. Argument concerning the Tribunal's jurisdiction</b>	<b>1</b>
<b>B. Argument on the merits</b>	<b>3</b>
<b>C. Additional arguments concerning moral damages</b>	<b>6</b>
<b>D. Conclusion</b>	<b>7</b>

**Attachments**

Attachments to the complainant's brief are referred to by number (1-32); attachments to the defendant's reply are referred to by letter (A-T) as used in the reply.

**A. Argument concerning the Tribunal's jurisdiction**

1. The defendant's reply has gone to considerable length to argue that the Tribunal lacks jurisdiction to hear the present complaint. The complainant must assume that the relevant pleas are made in good faith, but nonetheless she is astonished that the argument should be raised at this date.
2. In the extensive exchange of correspondence and pleadings between the complainant and IFAD, beginning 15 December 2005, the defendant has never suggested that it was not the proper party to the complainant's claims. Its Director of Human Resources Management advised that "facilitation," which is prerequisite to an administrative appeal in IFAD, was the proper procedure and IFAD conducted a facilitation procedure that lasted until 22 May 2007 without result. The complainant then appealed to the Joint Appeals Board (JAB) in a further proceeding that concluded with the President of IFAD's rejection of her appeal, received 11 April 2008 (attachment 31). That letter did not suggest that she had applied to the wrong court. In July 2008 the Legal Counsel of IFAD wrote the complainant's counsel concerning the case (attachment S). He did not mention jurisdiction.
3. If IFAD had doubts about the appropriateness of its procedures, of which complaint to the ILO Administrative Tribunal is the last stage, it surely had a duty to inform the complainant at the beginning of this arduous process, not at the end. Its failure to do so would be an unacceptable way to treat anybody, much less a staff member. The Tribunal is requested to find the defendant's pleas on jurisdiction irreceivable due to the defendant's failure to raise them in a timely manner.
4. In addition to her objection to the receivability of the pleas concerning jurisdiction, the complainant wishes to make the following observations on the defendant's argument.

**(1) Separate legal entities**

5. The complainant has no reason to dispute the separateness of IFAD and the Global Mechanism.

**(2) Complainant's status as a staff member of IFAD**

6. The complainant was a staff member of IFAD throughout the relevant period until her separation on 15 March 2006. Her letters of appointment all offered her an "*appointment with the International Fund for Agricultural Development*" (attachments 3, 4, 5). According to the initial letter, "*The appointment will be made in accordance with the general provisions of the IFAD Personnel Policies Manual.*" The renewals stated, "*Your appointment will continue to be governed by the Personnel Policies Manual, together with the provisions of the Human Resources Handbook regarding the application of the Manual.*" The Manual has since been retitled the Human Resources Procedures Manual (HRPM). Contrary to the defendant's claim in paragraph 21 that the HRPM only applies "partly" to the complainant, the offer of appointment makes it entirely applicable.

7. This is only reinforced by the President's Bulletin PB/04/01 which sets out exceptions to the IFAD rules (attachment 7), including that for continuing contracts. The lead paragraph of the section on human resources states, "*As a matter of principle and where there is an absence of a specific provision to the contrary, as specified below, the Global Mechanism shall be subject to all the provisions of IFAD's Personnel Policies Manual (PPM) and Human Resources Handbook (HRH) as they may be amended.*"

8. This is precisely the opposite of the situation in Judgment 1509 cited by the defendant, where the complainant against UNIDO had a contract with United Nations, not UNIDO, and "*according to his letters of appointment . . . was subject to the Staff Regulations . . . of the United Nations, not of UNIDO.*"

**(3) Tribunal's jurisdiction to examine the actions of the Managing Director of the Global Mechanism**

9. The defendant makes three related arguments on this subject. One is that the Tribunal cannot examine whether the Managing Director of the Global Mechanism exceeded his authority, the second that the Tribunal cannot examine the decision making of IFAD if this would require examining the correctness of the Managing Director's actions and finally that the actions of the Managing Director cannot be attributed to IFAD.

10. It is perhaps clearer to discuss the last argument first. This essentially depends on the thesis that the Managing Director is not an official of IFAD. In fact the Managing Director, like the complainant, has an appointment with IFAD. He is appointed by the President of IFAD on nomination by UNDP. His terms of reference begin "*Under the direction of the President of the International Fund for Agricultural Development (IFAD)*" (attachment T). His draft programme of work and budget must be approved by the President of IFAD (attachment 1), and he reports to the Conference of Parties on behalf of the President of IFAD (attachment 10a.).

11. In addition to being an official of IFAD, the Managing Director is, to quote the defendant's reply at paragraph 38, "*a person charged with part of the Fund's functions*". He is responsible for the supervision of a large number of IFAD staff, whence the present complaint. He is responsible to the President of IFAD for carrying out IFAD's responsibilities under the Memorandum of Understanding (attachment 1).

12. As a staff member under “the direction” of IFAD’s President, the Managing Director’s actions are very clearly within the jurisdiction of the Tribunal. Even if this were not so, however, the Tribunal would still be competent to examine the actions of the Managing Director to the extent that they affected the complainant’s rights as a staff member of IFAD.

13. The defendant has presented a learned treatise on indispensable parties in international proceedings without mentioning the Tribunal’s long practice of examining the actions of non-parties when these are alleged to be the basis of action by the employing organization. In a recent case it has even reviewed the decision making of the General Assembly in order to determine the legality of FAO’s salary scale based on a General Assembly resolution (see Judgment 2420). It is no different for the Tribunal to review the lawfulness of IFAD’s decision based upon the actions of the Managing Director. This would be so even if his actions resulted from decisions of the Conference of the Parties, which in this case they did not.

14. For the Tribunal to depart from its consistent practice and agree with the defendant’s thesis would deprive the complainant, an international civil servant, of any legal redress for administrative decisions that violate her contract with IFAD.

## **B. Argument on the merits**

15. The complainant invites the Tribunal to refer to her original statement, which she reaffirms. She would only like briefly to rebut certain misleading passages in the defendant’s reply.

### **(1) IFAD’s duty of care**

16. The Joint Appeals Board found clearly that IFAD had not discharged its duty of care to the complainant. The defendant first argues that it has no duty under HRPM Chapter 11.3.9(a) and (b) because of paragraph 11(c) of the President’s Bulletin PB/04/01 (attachment 7). Paragraph 11(c) creates an exception to the HRPM in respect of “career contracts”; Chapter 11.3.9(b) provides for reassignment of redundant staff without regard to the length of contract. Indeed the heading of chapter 11 emphatically does not make such a distinction as it reads, “*It is the policy of IFAD to ensure that all staff and consultants leaving IFAD, whether voluntarily or involuntarily feel that they were treated with respect, equity and dignity.*”

17. The defendant argues that the redundancy provisions “cannot” apply to Global Mechanism staff. The complainant can only say that if this is so, the President’s Bulletin should have listed those provisions among the exceptions of paragraph 11

18. The defendant also argues that the six-month consultancy contract fulfilled any duty that IFAD did have. This has already been dealt with in the complainant’s statement at paragraph 30. The Tribunal is invited to note that the Director of Personnel suggestions as recorded by the Chairperson of the staff association “...*As for your suggestion that Ms Saez accept a temporary assignment pending clarification of the situation, surely the appropriate principle is that no change be made in job status until the appropriate process has been completed.*” (attachments 19 and 20.)

### **(2) IFAD’s application of its HRPM**

19. The complainant asserts that a decision not to renew an appointment, though discretionary, this does not mean that it can be arbitrary or irrational. It is an implication or principle of law that

it must be taken for proper reasons. The complainant has demonstrated in her Brief to the Tribunal that the non-renewal as a result of the abolition of the post was tainted with a mistake of law.

20. The defendant uses the same argument that the provisions on redundancy were not applicable because of paragraph 11(c) of the President's Bulletin. Again, the exception in the Bulletin applies to career contracts, not to redundancy as used in the HRPM. Throughout the reply the defendant insists that the complainant's claims are based on her belief that she had a career contract. The Tribunal must note that the complainant does not claim to have a 'career contract'.

21. On the other hand, the complainant had a legitimate expectation of a contract renewal in 2006. She had been proposed for upgrading in the 2005 performance evaluation (attachment 8). She had written confirmation on December 12 and 13 2005 with the New organizational chart – effective January 1, 2006- that her post was to continue to be as for the last 6 years (attachments 14 (a) and 14 (b)). This is reported by the JAB in para 30 (attachment 30). The complainant considers that by overlooking these facts IFAD has undermined the principles of good faith, legitimate expectations and trust, which should be expected from it.

22. There is another respect in which the defendant failed to apply its procedures, and that is the protection in case of extension of fixed term contracts set out in sections 1.21.3-4 of the HRPM. That provides that the department head must ensure that extension is proper according to certain criteria, and

In cases of doubt on one or all these aspects, the department head should consult with the President before any action is taken. The above authority may not be delegated by the President to any official who is below the level of Assistant President.

As already set out in the complainant's Brief and in the JAB report (attachment 30 para 23), there is no evidence that the Managing Director consulted or obtained approved – prior to his decision of 15 December 2005 - with the President or with an Assistant President concerning the decision not to renew the complainant's contract. Indeed, the Managing Director in his letter of notice states, "*I have decided to abolish the post....As a consequence, your fixed-term contract ...can not be extended*" (attachment 15).

23. In Judgment 946 interpreting very similar language in UNESCO's staff manual, the Tribunal found that a decision not to renew a contract should have been taken by the Deputy Director-General. In the event it was taken by the Chief of the Staff Administrative Division, which the Tribunal ruled was not the "competent authority". In the present case, neither was the Managing Director the competent authority for the decision not to extend the complainant's contract. The complainant therefore considers as unlawful the non-renewal of her contract as it was not taken by the competent authority and in line with the set rules of procedure. The decision was vitiated by mistakes of law and of fact, and it constituted an abuse of authority.

### **(3) The President's reasons for rejecting the recommendations of the Joint Appeals Board**

24. The defendant has argued in paragraph 51 that the President's letter rejecting the appeal "reiterated paragraph 11(c) of the President's Bulletin". It then asserts in paragraph 52 that the letter meets the standards set by the Tribunal for substantiating a decision. The Tribunal is invited to review carefully the President's letter (attachment 31). It will find that there is no mention of the President's Bulletin. Nor is there even a hint of the peculiarities of the Global Mechanism which the defendant now argues justify the decision. The only textual reference is to

the provision that fixed-term contracts expire on the date mentioned in the contract (HRPM section 1.21.1). There is not even a bald statement that he did not think section 11.3.9 on redundancies applied, much less any reason why he might have thought so.

25. He did not refer to the JAB's unanimously recommendations that the non-renewal was beyond the Managing Director's authority and contrary to the rules of the HRPM. The President's final decision was careless; he ignored the JAB's unanimous findings that the manner in which the non-extension was conducted was heedless of her career and human feelings.

26. The standards of the Tribunal are set in judgement 2092: "*When the executive head of an organisation accepts and adopts the recommendations of an internal appeal body he is under no obligation to give any further reasons than those given by the appeal body itself. Where, however, [...] he rejects those recommendations his duty to give reasons is not fulfilled by simply saying that he does not agree with the appeal body.*"

27. The defendant also makes the peculiar statement in para. 53 of its reply that the Legal Counsel's letter to the complainant's counsel "added further clarification to the Complainant by emphasizing the fact that the Fund and the Global Mechanism cannot be assimilated." If the Tribunal will examine the Legal Counsel's letter (attachment S), it will see that no reference is made to the supposed distinction between the Global Mechanism and IFAD. Only now with the defendant's reply has the complainant begun to receive an elucidation of the President's reasoning.

#### **(4) The Managing Director's authority**

28. The complainant's Brief has already demonstrated that the Managing Director exceeded his authority by unilaterally deciding not to extend the complainant's contract. Paragraphs 17-22 refer. This is confirmed by the JAB report in paras. 23 - 30 and 31 (attachment 30). The defendant has argued that even if the Managing Director did not have the authority so to act, the President's decision rejecting the complainant's appeal, received two years and five months after the fact, cured any defect. This reasoning would make nonsense of all procedural protections of the international civil service.

29. The complainant would not have questioned the discretionary power of the Managing Director in making a proposal on the non-renewal of a contract, if the Fund would have observed its rules and procedures as they apply to the complainant. The Tribunal has established that despite this discretionary power, a staff member is not immune from review when proposing an administrative decision affecting another staff member.

#### **(5) Deferral to the Managing Director**

30. The defendant argues that "*decisions regarding the staffing and budget of the Global Mechanism are a prerogative of the Conference of Parties*" (para. 61). It is only necessary to point out in this regard that the Conference of Parties decided on the staffing of the Global Mechanism according to the proposal that included the complainant's position (attachment 12). It was only the Managing Director on his own initiative who decided to alter the staffing approved by the Conference of Parties (attachment H). However, if the need for savings could have been a consideration, it affords no proper excuse for breach of the principles that protect the staff against arbitrary decision-making.

31. In this case, IFAD had the legal duty to its staff to ensure that administrative decisions affecting a staff member were properly taken and that the reasons for them were both legitimate and openly declared. IFAD also had the power - through its direction of the Managing Director

and its approval of the proposed staffing and budget - to ensure that decisions were properly carried out.

32. The defendant has argued that if IFAD exerted any control over the Managing Director, it would amount to its imposing staff on the Global Mechanism. To the extent that staff have enforceable contracts and rules that protect them, they can indeed be "imposed," without regard to whether it is IFAD, the Tribunal or another court that does so. In this case, as mentioned above, the Conference of Parties did not decide to eliminate the complainant's post, but if it had, it would still have legal obligations to the complainant. And IFAD, as the employing organization, would have to ensure that those obligations were met.

33. In short, the Fund acted as if the Managing Director's acts were free from any review of the exercise of his authority. Additionally the Tribunal has ruled, an administrative decision is reviewable even if it is based on political considerations. "*The fact that it emanates from the Organisation's highest decision-making body cannot exempt it from the necessary review applying to all individual decisions which are alleged to be in breach of the terms of an appointment or contract, or of statutory provisions.*" (Judgment 2232.)

34. The complainant does not believe that this case requires the Tribunal to sort out obligations between the Conference of Parties and IFAD. The complainant was employed only by IFAD and seeks redress from IFAD. IFAD and the Conference of Parties will themselves determine how the costs of illegality are to be borne.

### **C. Additional arguments concerning moral damages**

35. The moral damages that the complainant has suffered have at least two significant components. One is the lack of proper notice, heedless treatment and dilatory procedures of IFAD. The other concerns the damage to the complainant's career.

#### **(1) IFAD's Procedures**

36. As has been pointed out already, IFAD's HRPM provides both for a high-level decision if a fixed-term contract is not to be renewed and for a review where staff are to become redundant. On 15 December 2005 the complainant received a notice of non-renewal from the Managing Director; it took her until 13 March 2006 to receive an official communication from a personnel officer (the Director of IFAD) stating that her contract, which expired in two days, would not be renewed. The same communication also erroneously informed her that the review procedure in HRPM section 11.3.12 had been abolished. (attachment 24) and on the JAB report paras. 26 and 27 (attachment 30)

37. The complainant thus had two days' notice, not three months as provided in the HRPM. She was denied the review to which she was entitled. She was directed to a fruitless procedure, facilitation, that consumed one year. Proceedings before the Joint Appeals Board went faster, but then the President took four months to reject the recommendations.

#### **(2) The complainant's career**

38. The complainant wishes to further explain to the Tribunal the distress caused by IFAD and the aggravating circumstances which have impaired her career development for the loss of employment expectation. For family reasons the complainant's priority was to remain with her

children and husband in Rome. However due to the financial commitments acquired she had faced great financial strain.

39. As a Venezuelan citizen, the complainant had an IFAD working permit and 'carte de sejour' from the Italian Ministry of Foreign Affairs. This permit, requested by IFAD, gave the official the right to stay in the country. However, due to the abrupt decision of the non-renewal, the complainant was required immediately to return the permit. This left her without a legal status in Italy. She tried to get a working permit 'permesso di soggiorno' however this required to have an employer requesting the procedure for the incumbent. Since she did not possess a legal document she could not look for a job within the Italian institutional context. She had to resort to be under her husband's permit to have a legal right to be in the country. By doing this she could not work in Italy and could only apply to international agencies.

40. Then she was left to apply either to the World Food Programme (WFP), FAO or IFAD's vacancies. WFP has had no vacancies announced, FAO was and still is undertaking a substantive restructuring and there were no suitable vacancies, which could offer her equivalent or enhanced career development. She applied as external candidate to some vacancies in IFAD however there is no evidence that she was 'seriously considered'. This was unanimously reported by the JAB (attachment 30, para. 33).

41. It goes without saying that her career has been mutilated as the result of the actions taken against her and that for those who had known her professionalism such behaviour towards her was inexplicable. For those that did not know her skills, experience and professional background but could only learn it from a Personal History Form (as an external applicant) it is most likely it gave an uncomfortable feeling to seriously consider somebody who appears to be a performer but was made redundant without the organization's seeking redeployment. This abrupt termination threatens to ruin the career of an international civil servant and play havoc with her personal life.

#### **D. Conclusion**

42. For the reasons set out above and in the complainant's brief, the complainant respectfully requests the Tribunal to:

- find that the complaint is receivable;
- quash the decision of the President of IFAD rejecting the complainant's appeal;
- order the defendant to reinstate the complainant in her post or an equivalent post in IFAD, recognizing the complainant's acquired prospects for career development, with retroactive effect from 15 March 2006 and with a duration of not less than two years from the date of reinstatement;
- order the defendant to reimburse the complainant for loss of salary, allowances and entitlements, including but not limited to contributions to the United Nations Joint Staff Pension Fund, potential promotion;
- order IFAD to pay further compensation for US\$ 50,000 for the prejudice of the Fund against her which caused suffering by the heedless manner in which IFAD had handled this decision with the denial of due process and regardless of the complainants rights, career aspirations and human feelings;
- Order IFAD to pay to the complainant the amount of € 5000 in respect of legal fees and other costs of the present proceedings and the IFAD internal proceedings.



**INTERNATIONAL LABOUR ORGANIZATION  
ADMINISTRATIVE TRIBUNAL  
AT 5-2568**

**BETWEEN**

**ANA THERESA SAEZ GRACIA  
Complainant**

**-and-**

**THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT  
Defendant**

---

**SURREJOINDER OF THE DEFENDANT**

---

**I. INTRODUCTION**

1. This constitutes the response of the International Fund for Agricultural Development ("the Fund") to the Rejoinder of **Ana Theresa Saez-Garcia** ("the Complainant") that was transmitted by the Registrar on 4 November 2008 and was delivered to the Fund on 19 November 2008.
2. The Tribunal is respectfully requested to note that unless the Fund expressly acknowledges otherwise in the present Surrejoinder, all description of facts and arguments presented by the Complainant are contested by the Fund.
3. The Tribunal is further requested to consider the Fund's Reply to be reiterated and included in the present Surrejoinder.

**II. ARGUMENTS CONCERNING THE TRIBUNAL'S JURISDICTION**

***a. General***

4. In paragraph 1 of the Rejoinder, the Complainant wrongly alleges that the Fund argues that the Tribunal lacks jurisdiction to hear the present complaint. As summarized in paragraph 62 of the Fund's Reply, the Fund's argument is that based on the grounds set forth under Paragraph III of the Reply, the Tribunal lacks jurisdiction to entertain the pleas stated in Part B (1) and Part B(2) of the Complainant's Brief. The Tribunal is therefore respectfully requested to take note of the fact that the Fund raises no other issue concerning the jurisdiction of the Tribunal.
5. In paragraphs 2 and 3 of the Rejoinder the Complainant argues and requests the Tribunal to find the Fund's pleas on jurisdiction irreceivable due to the Fund's failure to raise them in a timely manner. The Fund

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**Airwaybill:**

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**Ref: HQ**

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**Customs Value: 0.00 EUR**

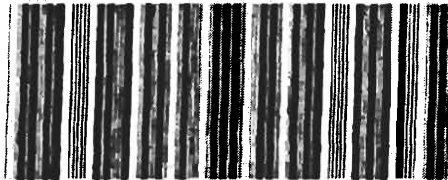
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GVA

**Origin: ROM**

**Pcs: 1**

**FROM: IFAD**

MARTHA, RUKSEL

VIA P. DI DONO N 44

**TO: INTL LABOUR ORGANIZ. ADM TRIBUNAL**

**C.COMTET**

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**GENEVA,**

**1211 Switzerland**

**Ph: 41/227998726 Fax:**

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**Description: DOX**

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wishes to point out that the peremptory preliminary objection of lack of competence cannot be raised until a party actually seizes the court or tribunal concerned. Moreover, being an international tribunal of limited competence *ratione materiae* and *ratione personae* it is incumbent upon the Tribunal to examine its own competence *sua sponte* and decline to exercise jurisdiction in respect of those pleas that require it to exceed its limited competence, irrespective of whether and at what stage a party invokes a peremptory objection for lack of jurisdiction. For these reasons, the Complainant's argument and request regarding the tardiness of the objection is therefore without merit and cannot be conceded by the Tribunal.

**b. Separate legal entities**

6. The Fund takes note of the fact that in paragraph 5 of the Rejoinder, the Complainant concedes that the Fund and the Global Mechanism are separate legal entities by stating that there is no reason to dispute the separateness of the two aforementioned institutions. The Tribunal is invited to take note of this significant concurrence of views between the parties to the present dispute as it has far reaching consequences for the following critical issues regarding the Tribunal's competence and the rules that the Complainant can rely on before the Tribunal:
  - (i) The status of the Complainant *vis-à-vis* the Fund (see Paragraph III (2) of the Reply);
  - (ii) The competence of the Tribunal to entertain pleas of flaws in the decision-making process of the Global Mechanism (see Paragraph III (3) of the Reply);
  - (iii) The competence of the Tribunal to entertain pleas of flaws in the decision-making of the Fund, which may entail examining the decision-making process in the Global Mechanism (see Paragraph III (4) of the Reply); and,
  - (iv) The extent to which the acts complaint are attributable to the Fund (see Paragraph III (5) of the Reply).

**c. The Complainant's status vis-à-vis the Fund**

7. The question of the Complainant's status *vis-à-vis* the Fund is of critical importance because it determines which rules she can rely on before the Tribunal. If she were a regular staff member of the Fund within the meaning of the Agreement Establishing IFAD, *quod non*, then she would be able to invoke all the staff rules and regulations that apply to the Fund's staff. However, if on the other hand, she is merely a person on which some of the Fund's staff rules and regulations have been declared applicable, she could only invoke those rules before the Tribunal.
8. As explained in Paragraph III (2) of the Reply, contrary to what the Complainant claims in paragraphs 6-8 of the Rejoinder, she is merely a person on which some of the Fund's staff rules and regulations have been declared applicable by the President's Bulletin PB/04/01 (see Attachment

M to the Fund's Reply). As will be seen below in the part concerning the merits of the complaint, where paragraphs 19-23 of the Rejoinder are addressed, the distinction made here impacts significantly on the question of whether the Complainant can expect to be employed by the Fund upon having been terminated by the Global Mechanism.

d. *The Tribunal's lack of jurisdiction to examine the actions of the Managing Director of the Global Mechanism*

9. **Non-attribution of acts of the Global Mechanism to the Fund:** In paragraph 10 of the Rejoinder the Complainant asserts that the question of whether the decision of the Director of the Global Mechanism is attributable to the Fund essentially depends on the thesis that the former is not an official of the latter. The Fund wishes to point out that this is not a correct portrayal of either the law on the responsibility of international organizations or of the arguments presented in the Reply.
10. While the law on the responsibility of international organizations presumes that acts of an official of an international organization are in principle attributable to the organization concerned, that presumption is not irrefutable. The very notion of *dédoublement fonctionnelle* in international law implies that an international official may have more than one capacity and therefore whether his or her acts are attributable to one subject of international law or the other depends on which function he or she was exercising.
11. In the present case, apart from the fact that the Managing Director of the Global Mechanism is not an official of the Fund, as explained in paragraphs 36-43 of the Reply, but even if that were the case, still the acts complained of would not be attributable to the Fund because the Managing Director was exercising a function of the Global Mechanism. Given that - as the Complainant concedes - the Global Mechanism and the Fund are separate legal entities, all acts of the Managing Director in the exercise of that function should be attributed to the Global Mechanism, not to the Fund. Moreover, the foregoing applies *mutatis mutandis* to the actions of the President in relation to the Conference of Parties to the UNCCD. Those actions, including the reporting, are actions undertaken for the Conference of Parties. Therefore, unlike as suggested in paragraph 10 of the Rejoinder, the fact that the Managing Director of the Global Mechanism performs under the direction of the President and that the latter approves his program of work and budget, is not because he is a Fund staff member but because the Fund agreed that the President may perform these functions for and on behalf of the Conference of Parties.
12. The foregoing analysis also serves to refute the argument set out in paragraphs 11 and 12 of the Rejoinder. This conclusion is not affected by the Complainant's assertion in paragraph 12 of the Rejoinder that even if the Managing Director were not a Fund staff member, the Tribunal would still be competent to examine his action to the extent that they affect her rights as a staff member of the Fund. It is to be noted, however, that the

Complainant overlooks the fact that, as explained above, she is not a Fund staff member for all intents and purposes.

13. **Lack of competence to review of flaws in the decision-making by the Global Mechanism.** In paragraph 13 of the Rejoinder the Complainant invokes Judgement No. 2420 of the Tribunal in order to counter the Fund's arguments that the Tribunal lacks competence to entertain pleas of flaws in the decision-making process of the Global Mechanism (see Paragraph III (3) of the Reply), as well as the competence to entertain pleas of flaws in the decision-making of the Fund, which may entail examining the decision-making process in the Global Mechanism (see Paragraph III (4) of the Reply).
14. It should be pointed out that in the said Judgment the Tribunal did not declare itself competent to either entertain pleas of flaws in the decision-making process of an organization over which it has no jurisdiction (the United Nations) nor to entertain pleas of flaws in the decision-making of the defendant organization (FAO), which may entail examining the decision-making process of an organization over which it has no jurisdiction (the United Nations). Considerations 11 and 12 of Judgment No. 2420 make it clear that the Tribunal examined whether the fact that the FAO belonged to the common system enabled it to decline or limit its own responsibility toward the members of its staff or lessen the judicial protection it owes to them.
15. The question in that case was whether when the FAO introduced the common system salary scales into its own rules it had discharged its duty to ensure that the text that it thereby imported was lawful. The measure to determine the lawfulness was not by reviewing the legality of the imported rule under the laws of the organization of origin, but – as made clear in consideration 12 of Judgment 2420 – whether the decision concerned complied with the “principles of law of the international civil service”. Accordingly, the subsequent review by the Tribunal purported to establish whether that was the case and it concluded affirmatively. In other words, Judgment No. 2420 does not support the Complainant's thesis that the Tribunal is competent to either entertain pleas of flaws in the decision-making process of the Global Mechanism, or to entertain pleas of flaws in the decision-making of the Fund, which may entail examining the decision-making process in the Global Mechanism.
16. Finally, in paragraph 14 of the Rejoinder the Complainant suggests that the Tribunal is required to entertain the pleas involving the decision-making in the Global Mechanism because otherwise the Complainant would be deprived from any legal redress. Please note that the Fund's preliminary objection is limited to only the pleas concerning the decision-making in the Global Mechanism, and thus does not affect the rest of the Complainant's pleas. It should be stressed that no international administrative tribunal is required to exercise jurisdiction over a claim that lies beyond its limited jurisdictional competence on the ground that

otherwise the applicant's complaint may escape review by an impartial adjudicatory body<sup>1</sup> (See Attachment I to this Surrejoinder).

### III. ARGUMENTS CONCERNING THE MERITS

#### *a. Interpretation of paragraph 11(c) of President's Bulletin PB/04/01 of 21 January 2004*

17. The Complainant's arguments on the merits of the complaint bring to the fore the need to examine her status *vis-à-vis* the Fund in more details. As stated above, the question of the Complainant's status *vis-à-vis* the Fund is of critical importance because it determines which rules she can rely on before the Tribunal. The Complainant implies that she was a regular staff member of the Fund or at least a staff member that enjoyed benefits of the rules regarding non-renewal of fixed term contracts. Admittedly, if she were a regular staff member of the Fund within the meaning of the Agreement Establishing IFAD (see Attachment L to the Fund's Reply), *quod non*, then she would indeed be able to rely on those rules before the Tribunal, including on the attendant jurisprudence.
18. The point is however that her contractual arrangement did not amount to that of a regular staff member of the Fund within the meaning of the Agreement Establishing IFAD. Therefore, in order for her to rely on the rules regarding non-renewal of fixed term contract, it must be found that her contractual arrangements entitled her to a treatment by the Fund in accordance with those rules. As will be explained once again in the following paragraphs, the President's Bulletin PB/04/01 of 21 January 2004 constitutes an insurmountable barrier to such a finding. By virtue of the said President's Bulletin the Complainant is merely a person on which some of the Fund's staff rules and regulations have been declared applicable.
19. In paragraphs 16-18 of the Rejoinder the Complainant concedes the principle that the Fund's staff rules and regulations that have been excluded by paragraph 11 of paragraph 11(c) of President's Bulletin PB/04/01 of 21 January 2004 do not apply to her. However, she considers that the Fund owed her the duty of care as reflected in the Human Resources Procedures Manual Chapter 11.3.9(a) and (b) (see Attachment R to the Fund's Reply) because she asserts that, unlike the Fund has explained in Paragraphs III (2) and IV of the Reply, paragraph 11(c) of President's Bulletin PB/04/01 of 21 January 2004 does not have the effect of excluding those provisions from the rules that were applicable to her contractual arrangement. The Complainant bases this assertion on the view that paragraph 11(c) of President's Bulletin PB/04/01 of 21 January 2004 creates an exception to the HRPM in respect of "career contracts", but not to the principle of reassignment of redundant staff.

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<sup>1</sup> Cf. International Monetary Fund Administrative Tribunal, Judgment No. 1999-1, paras. 87-95, Attachment I to this Surrejoinder.

20. Therefore it is important to examine paragraph 11(c) of President's Bulletin PB/04/01 of 21 January 2004. That provision stipulates:

*"All fixed-term contracts of employment for the Global Mechanism shall be for a maximum of two years, renewable, and subject to the availability of resources. IFAD's rules and regulations on the provision of career contracts for fix-term staff shall not apply to the staff of the Global Mechanism, except for those that have already a career contract as a result of their previous employment with IFAD"*

21. The purpose of the foregoing provision is to ensure that the scheme provided in the HRPM Chapter 1.17.1 (See Attachment II to this Surrejoinder) does not apply to the Global Mechanism staff to which the HRPM has been declared applicable by paragraph 10 of President's Bulletin PB/04/01 of 21 January 2004. According to that scheme a continuous appointment may be granted through three consequent contracts: first- 2 years fixed term; second - 5 years fixed term; third - conversion to continuous after seven years. The expectation of renewal of fixed term contracts built into this scheme, needed to be excluded in order to avoid the effect that would otherwise follow from paragraph 10 of President's Bulletin PB/04/01 of 21 January 2004. This was necessary because the Fund cannot impose continuing appointments on the Global Mechanism by allowing the scheme to run its course, nor can the Fund permit an expectation of a continuing appointment to a Fund staff member to develop by not limiting the operation of the HRPM Chapter 1.17.1, first row.

*b. Effects on the duty of care.*

22. The consequences of paragraph 11(c) of President's Bulletin PB/04/01 of 21 January 2004 are not limited to the HRPM Chapter 1.17.1, first row but extends also to all the other parts of the HRPM which deal with the many aspects of fixed-term contracts, including HRPM Chapter 11.3.9(a) and (b) on the duty of care in the case of redundancy. The phrase "*rules and regulations on the provision of career contracts for fix-term staff*" in paragraph 11(c) of President's Bulletin PB/04/01 of 21 January 2004 purports to convey that. The wording is intentionally broad in order to achieve precisely the objective that the Complainant attempts to avoid in paragraph 17 of the Rejoinder.
23. Based on the foregoing the Fund wishes to reiterate what it said in paragraph 45 of its Reply, i.e. that like the Joint Appeals Board, the Complainant erroneously represents and claims that the HRPM Chapter 11.3.9(a) and (b) on the duty of care in the case of redundancy applies to her situation.

*c. Effects on the expectation of contract renewal.*

24. The question that follows from the Complainant's argument in paragraphs 19-23 of the Rejoinder is whether the jurisprudence of the Tribunal regarding the expectation of renewal of fixed-term contracts is suitable for application to situations like the present one where an organization that hosts another organization and acts as an agent of the latter in matters of human resource management. The Tribunal never dealt with that situation before and the Fund therefore rejects the Complainant's assumption that the said jurisprudence apply. The Tribunal itself qualified the reach of the said jurisprudence in its Judgment No. 703 in a situation concerning a seconded official from one international organization (UN) to another international organization (FAO). The Tribunal held in that case that though a seconded official holds a fixed-term contract which implies an expectation of renewal, his or her position is out of the ordinary, and that he/she cannot expect to be renewed unless the organizations involved decide differently.
25. In the present case the situation is even more extra-ordinary. Unlike FAO in the aforementioned case, the Fund did not employ the Complainant itself, but acted as a host organization to the Global Mechanism and has declared part of its rules applicable on the resulting relations between the Global Mechanism and the Complainant as well as making some of its tools, officers (the President) and procedures available to the Global Mechanism for the purpose of the latter's human resources management. As it cannot impose the rule on expectation of renewal of fixed term contracts on the Global Mechanism nor can it take over staff no longer needed by the Global Mechanism, through 11(c) of President's Bulletin PB/04/01 of 21 January 2004, the Fund excluded the possibility that an expectation to be renewed as either a Global Mechanism staff or be given an IFAD appointment can arise. Like in Judgment No. 703, because this situation is out of the ordinary, the rule on the expectation of renewal of fixed term contracts cannot apply. In sum, as the Presidential Bulletin specifically bars the granting of continuous/career contracts to employees of the Global Mechanism, the Complainant's alleged expectation of renewal of her contract cannot stand. Notwithstanding the foregoing, the Global Mechanism did offer the Complainant a six month consultancy contract, which she refused.
26. As regards to the question of whether the Managing Director of the Global Mechanism could decide on the non-renewal without the President's approval or involvement that is raised in paragraphs 22-23 and 28-29 of the Rejoinder, the Fund would like to reiterates its argument set forth in paragraphs 55-59 of its Reply.

*d. President's reasons for rejecting the JAB recommendations*

27. The Fund wishes to point out that in paragraphs 24-27 of the Rejoinder the Complainant persists in ignoring the particularities of the hosting arrangements for the Global Mechanism, which make that the letter of the



President of 4 April 2008 meets the standards set by the Tribunal for substantiating a decision not to renew a fixed-term contract. Therefore, the Fund invites the Tribunal to consider its explanations provided in paragraphs 50-54 of the Fund's Reply. The Tribunal's attention is particularly drawn to paragraph 53 of the Reply. Contrary to the Complainant's assertions, the second and third sentences of the General Counsel's letter referred to therein and reproduced as Attachment S to the Fund's Reply, clearly refer to the particularities of the hosting arrangements for the Global Mechanisms. The sentences read as follows:

"As I said in the meeting, the abolition of Ms Saez's post by the Global Mechanism and the consequent non-renewal of her contract in accordance with the relevant arrangements regarding the hosting of the latter body by IFAD did not reflect in any way on her abilities or her performance. Therefore, it is our position that the non-renewal of Ms. Saez' contract was in conformity with the applicable rules and regulations, and therefore we are not in a position to accept the recommendations of the Joint Appeals Board to offer Ms. Saez any compensation" [underlining added] (See Attachment S to the Fund's Reply)

28. The above quote from the General Counsel's letter shows clearly that the following statement of the Complainant in paragraph 27 of the Reply is not in conformity with the reality:

"... no reference is made to the supposed distinction between the Global Mechanism and IFAD. Only now with the defendant's reply has the complainant begun to receive an elucidation of the President's reasoning"

29. The above mentioned quote from Attachment S demonstrates that the Complainant's representation is wrong.

*e. Authority of and deferral to the Managing Director*

30. In paragraphs 28-34 of the Rejoinder the Complainant repeats her arguments concerning the authority of the Managing Director which are based on her wrong interpretation of the status of the Global Mechanism and the arrangements for its hosting by the Global Mechanism.
31. The Tribunal is referred to Part III as well as Part IV(4) of the Fund's Reply for the Fund's response to those arguments.

#### **IV. ARGUMENTS CONCERNING MORAL DAMAGES**

32. According to paragraphs 35-41 of the Rejoinder, the Complainant bases her claim for moral damages to the amount of US\$ 50,000 on two grounds: a) lack of proper notice, heedless treatment and dilatory procedures of the Fund, and b) damage to the Complainant's career.

***a. The Fund's procedures***

33. Based on the relevant provisions of the President's Bulletin PB/04/01 of 21 January 2004, which declares parts of the Fund's staff rules, regulations and procedures to the persons employed by the Global Mechanism, the Complainant was informed on 15 December 2005 by the Director of the Global Mechanism that her contract, which was about to expire on 15 March 2006, would not be renewed. It is therefore unclear to the Fund what is meant by the Complainant in paragraphs 36 and 37 of the Rejoinder, where it is stated that the notice was only given two days before the expiry of her contract. In fact, in paragraph 36 of the Rejoinder the Complainant acknowledges to have received the notice of non-renewal by the Global Mechanism on 15 December 2005.
34. Moreover, it is also not clear in what sense the Fund's facilitation procedures can be considered and is unduly dilatory as alleged by the Complainant in paragraph 37 of the Rejoinder. As a matter of fact, facilitation is a modern tool in the arsenal of alternative dispute settlement that aims at resolving differences and reduces the need to recur to judicial settlement.

***b. The Complainant's career***

35. The Complainant's claims for damages on the grounds set forth in paragraphs 38- 41 of the Rejoinder are without merit as her fixed-term contractual relationship with the Global Mechanism did not cease prematurely. It is the essence of fixed-term appointment that the official shall cease to be employed with the organisation upon expiry of the agreed term. Since the Complainant was aware of such terms of employment, the Complainant cannot be entitled to moral or compensatory damages. The Tribunal has repeatedly held that career prospects within an international organisation are not something that exists independently of all the rights and duties of its staff, that if the non-renewal of a contract is lawful, so is the career hiatus and that when a contract is concluded for a fixed term, the staff member's career ends lawfully on expiry of this period (see Judgement 1610, consideration 24, and Judgement No. 2694, consideration 7).

**V. CONCLUSION**

36. For the reasons set forth in the present Surrejoinder as well as those set forth in the Fund's Reply, may it please the Tribunal to adjudge and declare that:
- a. the Tribunal lacks jurisdiction to entertain the Complainant's plea that the Managing Director of the Global Mechanism exceeded his authority in deciding not to renew the Complainant's contract (Part B.1 of the Complainant's Brief);

- b. the Tribunal lacks jurisdiction to entertain the Complainant's plea that the core budget of the Global Mechanism did not require elimination of the Complainant's post;
- c. the Fund duly discharged its duty of care towards the Complainant;
- d. the President adequately stated the reasons for rejecting the recommendations of the Joint Appeals Board;
- e. the Managing Director of the Global Mechanism acted within his authority in deciding not to renew the Complainant's contract;
- f. the Fund has to defer to the Managing Director of the Global Mechanism on the issue of the justification of the non-renewal of the Complainant's contract.

37. **ACCORDINGLY, THE DEFENDANT ORGANIZATION RESPECTFULLY REQUESTS THE TRIBUNAL TO DISMISS THE COMPLAINT.**

Rome, 18 December 2008

International Fund for Agricultural Development



Dr. R.S.J. Martha  
General Counsel

# ATTACHMENT I

**Judgment No. 1999-1**

**Mr. "A", Applicant v. International Monetary Fund, Respondent**

**(August 12, 1999)**

## Introduction

1. On August 11 and 12, 1999, the Administrative Tribunal of the International Monetary Fund, composed of Judge Stephen M. Schwebel, President, and Judges Nisuke Ando and Agustin Gordillo, Associate Judges, met to adjudge the case brought against the International Monetary Fund by Mr. "A", a former contractual employee of the Fund.

2. Mr. "A" contends that the Fund violated its internal law and principles of international administrative law when it engaged him on a contractual basis to perform functions of the same nature as those performed by staff members, renewed his contract several times over a continuous period of nine years, and then allowed his contract to expire. Applicant seeks as relief that he be installed as a member of the staff, retroactive to 1993, with all attendant rights and benefits.

3. The Fund has responded to Mr. "A"'s Application with a Motion for Summary Dismissal, contending that the Administrative Tribunal lacks jurisdiction *ratione personae* and *ratione materiae* over Applicant's claim because its Statute limits access to those individuals who are members of the staff and to those claims that challenge decisions taken in the administration of the staff. Applicant has filed an Objection to the Motion, arguing that the Fund's allegedly illegal classification of Applicant as a contractual employee, rather than as a member of the staff, should not determine whether the Tribunal has jurisdiction to decide the issue of that alleged illegality.

## The procedure

4. On April 16, Mr. "A" filed an Application with the Administrative Tribunal. In accordance with the Tribunal's Rules of Procedure, the Application was transmitted to the Respondent on April 19, 1999. On April 22, 1999, pursuant to Rule XIV, para. 4<sup>1</sup>, the Office of the Registrar issued a summary of the Application within the Fund.

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<sup>1</sup> Rules XIV, para. 4 provides:

"In order to inform the Fund community of proceedings pending before the Tribunal, the Registrar, upon the notification of an application to the Fund, shall, unless the President decides otherwise, issue a summary of the application, without disclosing the name of the Applicant, for circulation within the Fund."

5. On May 18, 1999, the Respondent filed a Motion for Summary Dismissal under Rule XII<sup>2</sup> of the Rules of Procedure, seeking dismissal of the Application for lack of jurisdiction under Article II, para. 1 and para. 2 a, b, and c.<sup>3</sup> On May 19, 1999, the Motion was transmitted to Applicant.

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<sup>2</sup> Rule XII provides:

*"Summary Dismissal*

1. Pursuant to Article X, Section 2(d) of the Statute, the Tribunal may, on its own initiative or upon a motion by the Fund, decide summarily to dismiss the application if it is clearly inadmissible.
2. The Fund may file such a motion within thirty days of its receipt of the application. The filing of the motion shall suspend the period of time for answering the application until the motion is acted on by the Tribunal.
3. The complete text of any document referred to in the motion shall be annexed thereto in accordance with the rules established for the application in Rule VII. The requirements of Rule VIII, paragraphs 2 and 3, shall apply to the motion.
4. Upon ascertaining that the motion meets the formal requirements of this Rule, the Registrar shall transmit a copy thereof to the Applicant.
5. The Applicant may file with the Registrar a written objection to the motion within thirty days from the date on which the motion is transmitted to him.
6. The complete text of any document referred to in the objection shall be annexed thereto in accordance with the rules established for the application in Rule VII. The requirements of Rule VII, Paragraphs 4 and 8, shall apply to the objection to the motion.
7. Upon ascertaining that the objection meets the formal requirements of this Rule, the Registrar shall transmit a copy thereof to the Fund.
8. There shall be no further pleadings in respect of a motion for summary dismissal unless the President so requests."

<sup>3</sup> Article II provides in pertinent part:

1. The Tribunal shall be competent to pass judgment upon any application:
  - a. by a member of the staff challenging the legality of an administrative act adversely affecting him; or
  - b. by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant.
2. For purposes of this Statute:
  - a. the expression 'administrative act' shall mean any individual or regulatory decision taken in the administration of the staff of the Fund;

(continued)

6. Under Rule XII, para. 5<sup>4</sup>, the Applicant may file an Objection to a Motion for Summary Dismissal within thirty days from the date on which the Motion is transmitted to him. Applicant's Objection was filed on June 18, 1999.

7. The Tribunal decided on August 2, 1999 that oral proceedings, which Applicant had requested, would not be held, as the condition laid down in Rule XIII, para. 1<sup>5</sup> that they be "necessary for the disposition of the case" had not been met.

8. Pursuant to para. 2 of Rule XII, a Motion for Summary Dismissal suspends the period of time for answering the Application until the Motion is acted on by the Tribunal. Hence, the present consideration of the claim is confined to the jurisdictional issues of the case. Its substantive aspects are referred to only to the extent necessary for disposition of the jurisdictional issues.

The factual background of the case

9. Mr. "A" was initially engaged by the Fund as a consultant under its Technical Assistance Program for a two-year period commencing in January 1990. His letter of appointment provided:

"You will not be a staff member of the Fund and will not be eligible for any benefits other than those specified in this letter."

It stated in addition:

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b. the expression "regulatory decision" shall mean any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund;

c. the expression "member of the staff" shall mean:

(i) any person whose current or former letter of appointment, whether regular or fixed-term, provides that he shall be a member of the staff;

(ii) any current or former assistant to an Executive Director; and

(iii) any successor in interest to a deceased member of the staff as defined in (i) or (ii) above to the extent that he is entitled to assert a right of such staff member against the Fund; ..."

<sup>4</sup> Rule XII, para. 5 provides:

"The Applicant may file with the Registrar a written objection to the motion within thirty days from the date on which the motion is transmitted to him."

<sup>5</sup> Rule XIII, para. 1 provides:

"Oral proceedings shall be held if the Tribunal decides that such proceedings are necessary for the disposition of the case. In such cases, the Tribunal shall hear the oral arguments of the parties and their counsel, and may examine them."

"This appointment can be terminated by you or the Fund on one month's notice, or by mutual agreement."

This basic contract was renewed several times, and apart from increases in Mr. "A"'s remuneration, the terms of his appointment remained unchanged.

10. Applicant's contract also provided that he would keep the same working hours and accrue annual leave on the same basis as a regular staff member. Likewise, he would be entitled, on the same terms as regular staff, to participate in the Fund's medical benefits plan; to receive employer contributions to medical and group life insurance plans; and to be eligible for spouse and dependency allowances, travel allowance, and travel insurance coverage. Mr. "A"'s remuneration was stated on the basis of annual gross salary, and -- unlike regular staff -- the contract included the proviso that the Fund would not reimburse Applicant for any national, state or other taxes arising in respect of his remuneration.

11. Applicant was initially assigned to Department "1"<sup>6</sup>, where he served until September 1993. There he headed missions; administered technical assistance for member countries; and commented on staff papers on behalf of the Department. Department "1"'s Director stated that in performing these functions, "Mr. ["A"] performed essentially the same work as the regular staff members who were Advisors in the Department during his tenure..."

12. Mr. "A" asserts that when he was first recruited in December 1989, he was told both by an Advisor in Department "1" and by an official of the Recruitment Division of the Administration Department that if his work was satisfactory he could be converted to regular staff at the end of the initial two-year period. When he inquired with his Department Head in November 1991 about a regular staff appointment, Applicant alleges that he was told that he would have to continue for one more year before a decision could be made.

13. Later, according to Mr. "A", it was suggested to him that if he were interested in obtaining a permanent position with the Fund, he should undertake "mobility" within the organization. To that end, Applicant in May 1993 wrote to an official of Department "2", expressing his interest in transferring to that Department. Applicant was reassigned to Department "2" in October 1993, where he continued his work as a headquarters-based consultant under the Technical Assistance Program until his final contract expired in February 1999.

14. In Department "2", Applicant served as the only consultant among the five members of his profession in his unit. The official in Department "2" responsible for supervising Mr. "A"'s work stated:

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<sup>6</sup> Pursuant to the Fund's Decision on the protection of privacy and method of publication (December 23, 1997), the Fund departments in which Applicant worked will be designated by numerals.

"Mr. [ "A" ]'s work was materially the same as work done by other headquarters based full-time consultants and regular IMF staff members alike, on [Applicant's area of expertise], including going on missions to IMF member countries and providing advice to their government or central bank officials, alone or together with other IMF staff, preparing mission reports and memoranda . . . , and commenting on behalf of [Department "2"] on papers prepared by staff of other IMF Departments."

One of Applicant's Department "2" colleagues concluded that Applicant "performed essentially the same function as his colleagues who are regular staff members" and acted as a representative of Department "2" "in a manner indistinguishable" from these staff. Another commented that Mr. "A" was a "fully integrated member of the Department".

15. According to Applicant, shortly before transferring to Department "2" in 1993, the official charged with coordinating his unit of that Department held out the prospect of Mr. "A"'s being promoted to a supervisory position following an anticipated retirement in the Department in 1998. In March 1998, however, Applicant's Department Head allegedly told him that that position would not be filled and that any vacancies in the Department for new regular staff would be lower level positions likely not to be of interest to Applicant.

16. In August 1998, Applicant's Department Head allegedly informed him that the Fund intended to end his contractual employment. By letter of September 14, 1998, Applicant received another extension of his contract, with the notation that "this will be the final extension of your contract". This final contract expired by its terms February 26, 1999.

17. Applicant sought redress through several channels before filing his Application with the Administrative Tribunal on April 16, 1999. On January 14, 1999, in a letter to the Fund's Director of Administration, Applicant attempted to invoke the administrative review procedures prerequisite to filing a grievance, and asked that the Fund "formally recognize my status as regular staff." The Director of Administration replied on January 25, 1999, advising Applicant that (1) the grievance procedures did not apply to contractual employees such as himself; and (2) while Applicant would be entitled to arbitration under the established procedure for dispute settlement for contractual employees, if he sought to invoke that procedure, the Fund would take the position that the decision not to extend his employment contract fell outside the scope of the arbitration process, which is limited to claims that the Fund has failed to meet an obligation under the contract itself.

18. Thereafter, on February 4, 1999, Applicant requested that the Managing Director agree to submit the dispute directly to the Administrative Tribunal pursuant to Article V, para. 4<sup>7</sup> of the Statute. That request was denied on February 24, 1999. The following day,

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Article V, para. 4 provides:

"For purposes of this Statute, all channels of administrative review shall be deemed to have been exhausted when the Managing Director and the applicant have agreed to submit the dispute directly to the Tribunal."



Applicant filed a submission with the Fund's Grievance Committee, challenging the Fund's decision not to renew his contract and seeking that his status be converted to regular staff. On March 1, 1999, the Grievance Committee's Chairman replied, stating that recourse to the grievance procedures of GAO No. 31 are not available to contractual employees such as Applicant,<sup>8</sup> and noting also that a decision not to extend the contract of a contractual employee does not fall within the scope of the Fund's arbitration procedures.<sup>9</sup>

Summary of parties' principal contentions

Applicant's principal contentions

19. The principal arguments presented by Applicant in his Application and his Objection to the International Monetary Fund's Motion for Summary Dismissal are summarized below.

Applicant's contentions on the merits

20. The Fund's categorization of Applicant's employment status as a "contractual employee" is arbitrary and belies the actual nature of his work.

21. The Fund's termination of its employment relationship with Applicant is contrary to the Fund's Employment Guidelines on staff appointments under which he should have been categorized as a regular staff member. The position occupied by Applicant supported the basic institutional mission of the Fund; the basic skills required were those that do not change dramatically over a short period of time; and there was a need for continuity among staff performing these tasks. Contractual appointments, by contrast, are reserved by the Guidelines for the filling of temporary needs requiring specialized skills that Fund staff does not possess or for which there is not a continuing need.

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<sup>8</sup> GAO No. 31, Section 7.01.1 (i) limits the Grievance Committee's jurisdiction in terms almost identical to those of Art. II of the Statute of the Administrative Tribunal.

GAO No. 31, Section 7.01.1 (i) provides:

*"7.01 Who May Submit a Grievance*

*7.01.1 Present and Former Staff Members. Any present or former staff member shall have access to the Grievance Committee. For this purpose, the expression "staff member" shall mean (i) any person currently or formerly employed by the Fund whose letter of appointment, whether regular or fixed-term, states or stated that he or she shall be a member of the staff; . . ."*

<sup>9</sup> The Grievance Committee Chairman presently also serves as the designated arbitrator for the Fund's contractual employees.

22. Principles of international administrative law require that international organizations not classify as an independent contractor an individual doing the work of an employee when that classification does not reflect the actual relationship of the parties.

23. On a number of occasions the Fund created and then disappointed Applicant's expectations of continued employment, on which he relied to his detriment.

24. Equity requires that Applicant's employment with the Fund not be terminated, as the expiration of his contractual appointment and associated medical insurance is a particular hardship to Applicant who must provide coverage for an ailing family member.

25. Applicant seeks the following relief: a) conversion of his status to regular staff as of January 2, 1993; b) "reinstatement" as a regular staff member with all attendant rights, privileges and benefits; c) the right to seek another Fund position if reinstatement in Department "2" is refused; d) severance pay "if no other position materializes"; e) retroactive payment for long-term service annual leave days; f) participation in the Fund's retirement program when he departs from the Fund; and g) such other relief as the Tribunal deems appropriate.

#### Applicant's contentions on jurisdiction

26. The Fund's classification of Applicant as a contractual employee was an arbitrary administrative act that ignores the facts and should not determine the exercise of the Tribunal's jurisdiction. The argument that the Tribunal does not have jurisdiction because Applicant was not a staff member presumes as true the very fact at issue.

27. The Tribunal should exercise jurisdiction over Applicant's claim because, if it does not, he will have no opportunity for review on the merits by any impartial adjudicatory body.

28. The international administrative law doctrine of *audi alteram partem*, i.e. every disputant is entitled to be heard, which is incorporated into the internal law of the Fund, requires that the Tribunal exercise jurisdiction over Applicant's claim.

#### Respondent's contentions set forth in its Motion for Summary Dismissal

29. The Application should be dismissed as irreceivable because the Tribunal has jurisdiction only over "any person whose current or former letter of appointment, whether regular or fixed-term, provides that he shall be a member of the staff" (Article II, para. 2.c.(i)). Applicant does not fall within this category of persons because his letter of appointment provided that he would not be a member of the staff. This limitation on the Tribunal's jurisdiction is both explicit and intentional.

30. The Application should be dismissed as irreceivable because the Tribunal's jurisdiction is limited to challenges to decisions "taken in the administration of the staff of the Fund" (Article II, para. 2.a.) and therefore precludes judicial interference with the recruitment and selection of Fund staff.

31. The IMFAT is a tribunal of limited jurisdiction. Article III<sup>10</sup> makes clear that the Tribunal shall not have any powers beyond those conferred under the Statute. Therefore, it has no general jurisdiction based on equity or any other grounds not expressly provided for by the Statute.

32. The remedy sought by Applicant, retroactive appointment to a regular staff position, is not contemplated by the IMFAT Statute and would undermine the Fund's employment regime.

33. The dual employment scheme of contractual and regular staff exists for legitimate organizational reasons, providing flexibility with respect to the deployment of human resources.

34. Applicant is bound by the terms and conditions of his letter of appointment as a contractual employee. The Fund must be able to rely on the terms of employment contracts as they are written and agreed upon.

35. The Fund's Employment Guidelines on categories of employment are guidelines to assist Fund departments and the Recruitment Division; they do not give rise to a legal entitlement on the part of an individual that he or she be appointed to the staff.

36. Applicant's appointment as a contractual employee was not subject to the procedural and substantive conditions required for appointment to a staff position, and therefore his claim that he should be classified retroactively as a staff member bypasses the prerequisites for career appointment, including that of due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

#### Consideration of the issues of the case

##### Categories of Fund employment

37. Three principal categories of employment exist within the Fund: staff appointments (both regular and fixed-term); contractual appointments; and vendor arrangements. The gravamen of Mr. "A"'s complaint is that, although he was employed on a contractual basis,

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<sup>10</sup> Article III

The Tribunal shall not have any powers beyond those conferred under this Statute. . . .

the nature and continuity of his work indicate that he should have held a staff appointment of indefinite duration.<sup>11</sup>

38. The Fund has adopted Guidelines, in 1989 and again in January of this year, designed to clarify the allocation of functions among staff members, contractual employees and vendor personnel. The 1989 Guidelines distinguish between staff and contractual appointments as follows. Positions that normally should be filled by staff members are those carrying out the basic institutional mission of the Fund; those supporting that mission and requiring skills that will not change dramatically over a short period of time and for which there is a need for continuity of staff; those in which the individual is required to act on behalf of the Fund; and those involving supervisory responsibilities. By contrast, positions that normally are to be filled on a contractual basis are those in which the Fund has little or no expertise, or the skills required are likely to change dramatically over time, and continuity within the staff

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<sup>11</sup> Within the Fund, the classification "staff appointments" encompasses two sub-categories: appointments of finite duration ("fixed-term staff") and appointments of indefinite duration ("regular staff"). These are set forth in GAO No. 3, Rev. 6 (May 1, 1989) (Employment of Staff Members):

*"Section 3. Types of Appointments*

3.01 *Regular Appointments.* Regular appointments shall be appointments for an indefinite period. Persons holding such appointments shall be designated as regular staff members.

3.02 *Fixed-term Appointments.* Fixed-term appointments shall be appointments for a specified period of time. Persons holding fixed-term appointments shall be designated as fixed-term staff members."

Fixed-term appointments are generally used as a probation to test employees who are seen as having potential for a career with the Fund. Conversion to regular status depends on individual performance and the staffing needs of the organization. (Guidelines for Conversion of Fixed-Term Appointments.)

It is not disputed that both fixed-term and regular staff are within the definition of "member of the staff" for purposes of the jurisdiction *ratione persone* of the Administrative Tribunal, which includes "any person whose current or former letter of appointment, whether regular or fixed-term, provides that he shall be a member of the staff." (Statute, Art. II, 2.c(i) ) In Ms. "C", Applicant v. International Monetary Fund, Respondent, Judgment No. 1997-1 (August 22, 1997), the Tribunal entertained a challenge to the Fund's decision not to convert a fixed-term appointment to a regular staff appointment.

Applicant has made certain assertions apparently designed to suggest that he initially held a "fixed-term" rather than a "contractual" appointment with the Fund, thereby providing a predicate for his request for relief --- conversion to regular staff as of January 2, 1993. These assertions are not borne out by the terms of his contract or by the fact that his performance was regularly evaluated by way of the "Contractual Appointments Performance Report" rather than the Annual Performance Reports completed for "staff", fixed-term and regular alike. Applicant's reliance on the Guidelines for Conversion of Fixed-Term Appointments is misplaced; and, furthermore, any complaint that Mr. "A" should have been converted to regular staff as of January 1993 would now be untimely.

performing these tasks is not critical to their effective performance, as well as positions in which services are needed for only a relatively short period of time. According to the 1989 Guidelines, contractual appointees and vendor personnel generally should not perform the same tasks as staff members, except on a short-term basis or where individual circumstances warrant.

39. The Fund in its Motion for Summary Dismissal maintains that these Guidelines are intended to provide guidance to the Recruitment Division and Fund departments, but that they do not give rise to any legal entitlements on the part of individuals. The Fund's Motion, nonetheless, echoes the Guidelines' basic principles:

"Appointments to the regular staff are intended to meet the long-term needs of the organization; in comparison, contractual employment is more flexible, in order to meet a particular work requirement, often in a specialized area for which there may be no long-term need."

The Fund also notes that "... staff members and contractual employees are both considered as employees of the Fund. ..."

40. According to Respondent, the employment of staff and contractual employees differs with regard to a number of factors. For example, with respect to recruitment, no constraints exist regarding the geographical distribution of contractuales. Likewise, these employees are not subject to a competitive appointment process. With regard to compensation, greater flexibility is afforded to contractual employees, who are exempt from the salary structure that governs the remuneration of members of the staff.

41. In addition, staff members are subject to the strictures of the Fund's N Rules which, for example, restrict staff in engaging in political activity and outside employment, whereas contractual employees are not. Finally, staff members and contractuales have access to different avenues of dispute resolution: contractual employees have recourse to an arbitration procedure, while staff have access to the grievance procedure and the Administrative Tribunal.

42. In Department "2", asserts the Fund, Applicant provided technical assistance ("TA") functions as a contractual employee "... because the long-term need for these functions, and the particular ... specialities in question, is uncertain; the use of contractual employees permits sufficient flexibility to adjust to changes in the demand for TA services by member countries". The Fund also points out that contractual employees performing TA services in Department "2" do not receive the same training, supervisory authority or career development opportunities as do members of the staff.

43. The appropriate allocation of personnel functions among the various categories of Fund employment has long been a matter of some controversy within the Fund<sup>12</sup> and presently is undergoing revision. Both the adoption of the 1989 Guidelines and the revised Policy on Categories of Employment<sup>13</sup> approved January 20, 1999 by the Fund's Executive Board have been prompted by concerns that contractual and vendor personnel may be performing functions for which there is a long-term need and that should be performed by Fund staff. The Fund in its Motion for Summary Dismissal acknowledges "anomalies in the current system of contractual employment", but maintains that these difficulties must continue to be addressed on a systemic basis rather than through the litigation of individual cases.

The Administrative Tribunal's jurisdiction *ratione personæ*

44. In its Motion for Summary Dismissal, the Fund contends that the Application should be dismissed as irreceivable on the grounds that, as a former contractual employee, Mr. "A" does not have standing to bring a case before the Administrative Tribunal. Therefore, argues the Fund, Applicant is not within the Tribunal's jurisdiction *ratione personæ*

45. The Tribunal's jurisdiction *ratione personæ* is prescribed by the following provision of Article II of the Statute:

"Article II

1. The Tribunal shall be competent to pass judgment upon any application:

a. by a member of the staff challenging the legality of an administrative act adversely affecting him;

2. For purposes of this Statute:

c. the expression 'member of the staff' shall mean:

<sup>12</sup> For example, the Fund's Ombudsperson has referred to "... the arbitrary and unfair treatment of contractual and vendor employees as a major systemic problem at the Fund..." (Nineteenth Annual Report of the Ombudsperson, December 10, 1998, pp. 7-8.)

<sup>13</sup> The 1999 revised Policy limits the cumulative duration of contractual appointments to a four-year maximum. While functions that are expected to be needed for two years or more are normally to be performed by employees on staff appointments, the Policy maintains flexibility with respect to headquarters-based TA experts, for whom individual circumstances may justify hiring on a contractual basis for more than two years. (Policy on Categories of Employment, January 20, 1999.)

- (i) any person whose current or former letter of appointment, whether regular or fixed-term, provides that he shall be a member of the staff;
- (ii) any current or former assistant to an Executive Director; and
- (iii) any successor in interest to a deceased member of the staff as defined in (i) or (ii) above to the extent that he is entitled to assert a right of such staff member against the Fund;"

46. The question presented, therefore, is whether Applicant is a "person whose current or former letter of appointment, whether regular or fixed-term, provides that he shall be a member of the staff". (Art. II, para. 2.c.(i).) As noted above, Applicant's contract of employment expressly provided:

"You will not be a staff member of the Fund and will not be eligible for any benefits other than those specified in this letter."

47. The Fund points out that exclusion of contractual employees from the Tribunal's jurisdiction is not only explicit, but also intentional. The Report of the Executive Board accompanying the Tribunal's Statute notes with respect to Article II:

"Nor would persons employed under contract to the Fund have access to the tribunal."

(Report of the Executive Board, p. 15.) This view finds further support in the Statute's legislative history, which suggests that the exclusion of contractual employees from the Tribunal's jurisdiction *ratione personae* was a considered choice of its drafters, reflecting a recognition that a separate dispute settlement mechanism exists for resolution of disputes with contractual employees. These disputes are likely to be of a different character than those with members of the staff, as their employment is governed by the terms of their contracts. By contrast, the terms and conditions of staff members' employment are fixed by the Fund's generally applicable regulations.<sup>14</sup>

48. Finally, it should be noted that the statutory provision defining the IMFAT's jurisdiction *ratione personae* appears to be unique among international administrative tribunals in expressly predicating the Tribunal's jurisdiction on the language of the letter of

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<sup>14</sup> GAO No. 3, Rev. 6 (May 1, 1989) Section 7 02(3) provides that the letter of appointment of each staff member shall include *inter alia*:

"The statement that the staff member shall be subject to the Fund's administrative regulations, as amended and supplemented from time to time."

appointment, thereby leaving little room for doubt as to whether a particular individual is or is not a "member of the staff".<sup>15</sup> Applicant, nonetheless, has asked the Tribunal to look beyond the language of his letter of appointment to determine that he was a "de facto" member of the staff entitled to bring his complaint to the Administrative Tribunal.

The Administrative Tribunal's jurisdiction *ratione materie*

49. Respondent also contends that the Application should be dismissed as not falling within the Tribunal's jurisdiction *ratione materie*.

50. Article II limits the IMFAT's subject matter jurisdiction to challenges by a staff member to "the legality of an administrative act adversely affecting him". (Art. II, para. 1.a.) "Administrative act" is defined as follows:

"Article II

2. For purposes of this Statute,
  - a. the expression 'administrative act' shall mean any individual or regulatory decision taken in the administration of the staff of the Fund;"

The accompanying Report of the Executive Board comments:

"This definition is intended to encompass all decisions affecting the terms and conditions of employment at the Fund, whether related to a staff member's career, benefits, or other aspects of Fund appointment, including the staff regulations set forth in the N Rules."<sup>16</sup>

(Report of the Executive Board, p. 14.)

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<sup>15</sup> For example, the jurisdictional provision of the Asian Development Bank Administrative Tribunal, which is also quite narrowly drawn, is not as explicit as that of the IMFAT. It provides:

"For the purpose of this statute, the expression "member of the staff" means any current or former member of the Bank staff who holds or has held a regular appointment or a fixed-term appointment of two years or more, ..." (Statute of the ADBAT, Art. II, para. 2.)

<sup>16</sup> The By-Laws, Rules and Regulations of the Fund contain a Section N, "Staff Regulations", which sets out fundamental provisions governing recruitment and performance of staff members.



51. The limitations on the Tribunal's jurisdiction *ratione personae* and *ratione materiae* appear to be closely intertwined. By the terms of the Statute, actions constituting "administrative acts" are defined as restricted to those taken in the administration of the "staff". Hence, Fund actions taken with respect to others, for example, contractuels, are outside the scope of the Tribunal's jurisdiction *ratione materiae*. Moreover, the "administrative act" at issue must adversely affect the "member of the staff" bringing the challenge to its legality. (Art. II, para. 1.a.).

52. The Fund notes the following comment in the Executive Board Report:

"The statute would not allow unsuccessful candidates to the staff to bring claims before the tribunal."

(Report of the Executive Board, p. 15.) On the basis of this comment, the Fund argues that the Statute's jurisdictional provisions preclude "judicial interference with the recruitment and selection of staff" and that "staff appointments are not within the Tribunal's competence *ratione materiae*."

53. In Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent, Judgment No. 1996-1 (April 2, 1996), the IMFAT had occasion to consider the scope of its jurisdiction over matters preliminary to the hiring of a member of the staff. Although the Tribunal framed the question as one of jurisdiction *ratione personae*, the decision is relevant to the issue of jurisdiction *ratione materiae* as well.

54. In D'Aoust there was no question that the applicant was a member of the staff. Nonetheless, at the time of the act complained of, i.e. the decision to offer him a particular grade and salary, he was not yet a staff member. The Tribunal observed that once Mr. D'Aoust accepted the offer and thereby became a member of the staff, the grade and salary under which he was employed were determined by that offer:

"It is therefore concluded that since the offer and acceptance of a particular grade and salary thereupon and thereafter affected him as a member of the staff, the Tribunal is competent to adjudge his case." (Para. 10.)

55. The Tribunal's decision in D'Aoust reveals that decisions taken by the Fund preliminary to an applicant's becoming a staff member may indeed be within the Tribunal's competence *ratione materiae* as long as the challenged act affects the adversely affected individual in his capacity as a member of the staff. Mr. "A", by contrast, has never become a member of the Fund's staff.<sup>17</sup>

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<sup>17</sup> In this respect, Applicant's case is distinguishable from that considered in Jorge O. Amora v. Asian Development Bank, Asian Development Bank Administrative Tribunal ("ADBAT") Decision No. 24 (1997), in

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The Administrative Tribunal as a tribunal of limited jurisdiction

56. In considering the issue of jurisdiction in this case, the Tribunal is mindful that international administrative tribunals are tribunals of limited jurisdiction and may not exercise powers beyond those granted by their statutes. This principle is enunciated in the first sentence of Article III of the IMFAT's Statute, which states:

"Article III

The Tribunal shall not have any powers beyond those conferred under this Statute. . . ."

According to the Report of the Executive Board:

"The first sentence of this Article, in providing that the powers of the tribunal are limited to those set forth in the statute, states the general principle recognized in international administrative law that tribunals have limited jurisdiction rather than general jurisdiction.<sup>4</sup> As a consequence, administrative tribunals have competence only to the extent that their statutes or governing instruments confer authority to decide disputes. Thus, the statutory provision defining the competence of the tribunal is, at the same time, a prohibition on the exercise of competence outside the jurisdiction conferred.

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<sup>4</sup> See, e.g., the advisory opinion of the ICJ concerning the competence of the ILOAT in *Judgments of the Administrative Tribunal of the International Labour Organisation*, ICJ Reports (1956) 77, at p. 97."

(Report of the Executive Board, p. 16.)

57. Article IV of the Statute applies this general limitation on the IMFAT's powers to the specific issue of the Tribunal's competence to adjudge particular cases. While granting the Administrative Tribunal power to decide issues regarding its own competence, Article IV requires that these be settled "in accordance with this Statute":

"Article IV

Any issue concerning the competence of the Tribunal shall be settled by the Tribunal in accordance with this Statute."

The commentary notes that the Tribunal's task is to "interpret but not expand" its statutory authority:

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which the applicant had already become a staff member before bringing a claim that he was entitled to the benefits of staff membership for a period preceding his appointment to the staff.

"The tribunal would have the authority to determine its own competence within the terms of its statute. Comparable authority has been accorded to virtually every international administrative tribunal,<sup>18</sup> which is intended to allow the tribunal to interpret but not expand its competence with respect to a particular case."

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<sup>18</sup> E.g., UNAT Statute, Article 2(3); ILOAT Statute, Article II(7); WBAF Statute, Article III."

(Report of the Executive Board, p. 21.)

58. Finally, other limitations on the jurisdiction of the IMFAT are set forth in the third sentence of Article III, which provides for distribution of power among the Administrative Tribunal and the legislative and executive organs of the Fund, and in Article XIX, which grants to the Board of Governors the power to amend the Tribunal's Statute.

The third sentence of Article III provides:

"Article III

Nothing in this Statute shall limit or modify the powers of the organs of the Fund under the Articles of Agreement, including the lawful exercise of their discretionary authority in the taking of individual or regulatory decisions, such as those establishing or amending the terms and conditions of employment with the Fund."

The commentary emphasizes that the Tribunal "...must respect the mandate of the legislative or executive organs to formulate employment policies appropriate to the needs and purposes of the organization."<sup>18</sup>

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<sup>18</sup> "The third sentence of Article III incorporates, as part of the governing instrument of the tribunal, the concept of separation of power between the tribunal, on the one hand, and the legislative and executive organs of the institution, on the other hand, by stating that the establishment of the tribunal would not in any way affect the authority conferred on other organs of the Fund under the Articles of Agreement. This provision would be particularly significant with respect to the authority conferred under Article XII, Section 3(a), which authorizes the Executive Board to conduct the business of the Fund, and under Section 4(b) of that Article, which instructs the Managing Director to conduct the ordinary business of the Fund, subject to the general control of the Executive Board.

This provision is consistent with well-established case law in which judicial bodies have repeatedly affirmed their incapacity to substitute their own judgments for those of the authorities in which the discretion has been conferred. [Footnote omitted.] Thus, although a tribunal may decide whether a discretionary act was lawful, it must respect the mandate of the legislative or executive organs to formulate employment policies appropriate to

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59. That the Administrative Tribunal may not exercise powers beyond those conferred on it by the Statute is underscored by the fact that the IMFAT's Statute was adopted by the Board of Governors of the Fund (Resolution No. 48-1, Establishment of the Administrative Tribunal of the International Monetary Fund), and Article XIX provides that it may be amended only by that body:

"Article XIX

This Statute may be amended only by the Board of Governors of the Fund."

The accompanying commentary states:

"This provision is similar to its counterpart in the WBAT Statute. It would thus remain open to the Board of Governors, as the organ responsible for formally authorizing the establishment of a tribunal and approving the statute, to amend or abrogate the statute of the tribunal after its establishment. In this fashion, the nature of the judicial function performed by the tribunal could be limited or altered with respect to future cases."

(Report of the Executive Board, p. 41.)

Does the nature of Applicant's allegation on the merits require the Tribunal to exercise jurisdiction in this case?

60. The principal issue raised by this case is whether the nature of Applicant's allegation on the merits, i.e. that he was illegally classified as a contractual employee when he should have been hired as a member of the staff of the Fund, requires the Administrative Tribunal to exercise jurisdiction over his claim even though its jurisdiction *ratione personae* is limited to claims brought by members of the staff and its jurisdiction *ratione materiae* is limited to challenges to the legality of decisions taken in the administration of the staff.

61. As reviewed above, the terms of the Statute's jurisdictional provision expressly define a "member of the staff" as "any person whose current or former letter of appointment, whether regular or fixed-term, provides that he shall be a member of the staff" (Art. II, para. 1.a.) and Applicant's letter of appointment expressly states that he "will not be a staff member of the Fund". Nonetheless, Applicant asks the Tribunal to look beyond the language of his letter of appointment to determine that he was a "de facto" member of the staff. He contends, furthermore, that the view that the Tribunal does not have jurisdiction because Applicant was not a staff member presumes as true the very fact at issue. Applicant argues

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the needs and purposes of the organization. Similarly, a tribunal is not competent to question the advisability of policy decisions. [Footnote omitted.]

(Report of the Executive Board, p. 20.)

that the Fund's allegedly illegal classification of him as a contractual employee should not control the exercise of the Tribunal's jurisdiction.

62. On the Motion for Summary Dismissal, the question before the Administrative Tribunal is whether it shall exercise jurisdiction in this case. In making this determination, the Administrative Tribunal is presented with two alternatives. One is to enforce the language of the contract and deny jurisdiction on the basis of the narrowly drawn wording of the IMFAT Statute and the express language of Applicant's letter of appointment. The other alternative is for the Tribunal first to examine the merits of Applicant's claim, i.e. that he should be accorded the benefits of staff membership based on the nature and continuity of his work, and then decide as the result of that examination whether it may exercise jurisdiction *ratione persone* and *ratione materie*, despite the language of the letter of appointment to the contrary.

Must the Administrative Tribunal reach the merits of Applicant's claim in order to decide whether to exercise jurisdiction or may it rely on the language of Applicant's letter of appointment and the applicable jurisdictional provision of the Statute?

63. Other international administrative tribunals, interpreting different jurisdictional provisions, on occasion have determined that it was necessary to consider the merits of a claim in order to determine whether to exercise jurisdiction. In Joel B. Justin, Applicant v. The World Bank, Respondent, World Bank Administrative Tribunal ("WBAT") Decision No. 15 (1984), the WBAT was seized by an application alleging breach of contract, brought by an individual who had been notified of his "selection" for a particular post, but who later was denied employment by the Bank on the basis of his age and medical condition. The WBAT considered that:

"23. The question whether or not the Applicant holds a contract of employment with the Respondent and, therefore, is a staff member under Article II of the Statute can be decided only after a substantive consideration of the case. . . ."

64. The WBAT concluded after a detailed examination of the factual circumstances, principles of contract law, and the Bank's personnel practices that a contract with applicant had, in fact, been formed but that it later came to an end when he was officially informed that he was no longer eligible for the appointment. (Para. 39.) Hence, Justin is significant not only because the tribunal chose to examine the merits of the case in order to determine its jurisdiction but also because it determined to exercise jurisdiction over the claim even though applicant never actually became employed with the Bank.

65. A similar approach was taken by the International Labour Organisation Administrative Tribunal ("ILOAT") in In re Labarthe, ILOAT Judgment No. 307 (1977). The ILOAT noted the congruence of the jurisdictional question and the question on the merits:

"If the complainant does establish that he has such a contract, it is not disputed that in the circumstances of this case his claim must succeed. Thus, the issue between the parties on jurisdiction is also the issue between them on the merits, and it is convenient to deal with it under the latter head."  
(Para. 4.(d).)

After examining the facts, the tribunal found that a contract had existed to appoint applicant to the post and awarded compensation for its breach.

66. The same approach was taken by the United Nations Administrative Tribunal ("UNAT") in Camargo v. The Secretary-General of the United Nations, UNAT Judgement No. 96 (1965), although with different results:

"The question whether or not the Applicant must be regarded as the holder of a contract of employment with the United Nations can therefore be decided only after a substantive consideration of the case, which it is incumbent on the Tribunal to carry out." (p. 87.)

In Camargo, the UNAT decided that the applicant had not made a valid acceptance of a valid offer of employment and therefore was not the holder of a contract of employment. (p. 88.)

67. While international administrative tribunals thus occasionally have found it necessary to examine the merits of a case before determining whether to exercise jurisdiction, there is also support for the view that jurisdiction may be denied on the basis of the language of the applicant's contract of employment and the applicable statutory provision. In addition, some decisions have rejected on the merits claims that contractual employees have employment rights beyond those prescribed by their contracts. Still others have come to the opposite conclusion, sometimes taking a broad view of jurisdictional prerogatives.

68. In In re Privitera, ILOAT Judgment No. 75 (1964), the applicant sought "restoration of his rights as a staff member" after he received notice that the organization did not intend to offer him a third contract on the expiry of his second. The ILOAT observed that the applicant's legal status was defined by his contract, which stipulated "the present contract does not confer upon the holder the title of official of the World Health Organization" (para. 2.) and declined jurisdiction. The tribunal emphasized:

"2. In order to determine, in the present case, the legal nature of the relations between the complainant and the Organisation, only the contract concluded between them on 27 December 1961 must be taken into account. The complainant signed this contract voluntarily and with full knowledge of its terms...."

69. It should be noted that in Privitera, unlike the case presently before the IMFAT, the applicant apparently alleged no factual basis for his claim of staff status, apart from the fact

that previously he had held a contract governed by the Staff Rules. The tribunal observed that the contract at issue was of a "special character" and the "...tasks entrusted to the complainant were outside the scope of the normal functions of the Organisation and were connected with an exceptional, as well as a temporary, mission." (Para. 3.)

70. In *In re Darricades*, ILOAT Judgment No. 67 (1962), the ILOAT also denied jurisdiction on the basis of the language of a contract of employment and the applicable statutory provisions. In that case, the tribunal had occasion to interpret the following provisions of Article II of its Statute:

"1. The Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case.

...

5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other intergovernmental international organization approved by the Governing Body which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure."

71. In *Darricades*, the applicant's employment relationship was with UNESCO rather than with the ILO. Hence, the ILOAT was required to apply the Staff Regulations and Rules of that agency in deciding the matter of the tribunal's jurisdiction. These Staff Regulations and Rules granted the right to appeal to the Administrative Tribunal to a "staff member", defined as "...a person engaged by the Director-General other than...a person specifically engaged for a conference or meeting." (Para. 1.) In denying jurisdiction over applicant's complaint, the ILOAT enforced this specific definition of "staff member", finding that the evidence confirmed that the applicant entered the service of UNESCO "solely and specifically" for the duration of a month-long meeting. The tribunal noted as well that the contract of appointment had specified that "the undersigned shall not be regarded as a staff member". The ILOAT concluded that the applicant was "a purely casual employee" and not subject to its jurisdiction. (Para. 2.)

72. In *In re Amezketa*, ILOAT Judgment No. 1034 (1990), the tribunal considered the complaint of an applicant who formerly had been employed under a series of "special services agreements" and later became a staff member. Following abolition of his post, applicant complained that the amount of his termination indemnity and pension entitlements improperly excluded his periods of service under the special services agreements. The tribunal dismissed his claims on the merits.

73. Although no jurisdictional issue arose in Amezketá, presumably because he was a staff member at the time his employment was terminated, the case is instructive in upholding the terms of the employment agreements despite claims that the agreements were a "legal fiction" unsuited to the functions applicant was performing. (Under the agreements, he had been employed as a teacher of Spanish; as a staff member, he was a "language-training officer".) In rejecting applicant's contentions, the ILOAT noted that any rights arising during applicant's period of service under the special services agreements were limited to those set forth in the agreements themselves, and that disputes thereunder were subject to arbitration procedures:

"3. ...Under the provisions of Section 319 of the FAO Administrative Manual the holder of a special services agreement is referred to as a 'subscriber'. A subscriber is not considered to be a staff member, and the Staff Regulations and Staff Rules do not apply to him: his rights and obligations as such are strictly limited to the terms and conditions set out in the agreement and any dispute that may arise is to be settled by arbitration."

74. In Teixeira v. The Secretary-General of the United Nations, UNAT Judgement No. 233 (1978), the applicant sought a ruling from the tribunal that "he had in fact become a staff member" of the employing organization, while it had, for improper purposes, continued to employ him under a special service agreement even though he performed work that formed part of the normal functioning of the organization. Jurisdiction over Teixeira's complaint had been established in an earlier decision, Teixeira v. The Secretary-General of the United Nations, UNAT Judgement No. 230 (1977). In that decision, the UNAT ruled that because the applicant claimed certain rights under the Staff Regulations and Rules, the dispute could be heard by the consent of the parties "...without [the tribunal's] affirmation of its competence leading to the conclusion that the Applicant is a staff member or former staff member of the United Nations". (Para. IV., citing, *inter alia*, Camargo.)

75. In its decision on the merits, the UNAT rejected Teixeira's attempt to "...use his factual situation as an argument to claim a legal status different from his contractual status." (Para. IV.) In so deciding, the tribunal noted that the applicant shared responsibility with the organization for his contractual status and that the contract itself expressly deprived him of staff member status:

"II. The Tribunal notes that the Applicant himself at least contributed to the creation and renewal of that situation by agreeing to conclude with the Administration, during a period of almost 10 years, special service agreements under which he accepted the legal status of an independent contractor and expressly and unambiguously waived being 'considered in any respect as being a staff member of the United Nations.'

III. ...On this point, it suffices for the Tribunal to observe that in law the Applicant was free to refrain from entering into those agreements...."



76. The tribunal reached its conclusion despite noting the organization's acknowledgement that use of the special service agreements in applicant's case was contrary to its own personnel directives; the agency for which the applicant worked had been unable to obtain the necessary funding from Headquarters to offer him a regular post and hence continued to have recourse to these agreements. In the tribunal's view, however, applicant had not shown that he was adversely affected by this improper practice:

"VI...although improper, this practice, which is criticized by the Applicant, was favourable to him, since it enabled him to continue rendering services and receiving remuneration.

VIII. In these circumstances, the Tribunal considers that the Applicant is not entitled to claim that he sustained any injury...."

The tribunal therefore rejected the claim that the applicant was treated unequally vis-a-vis staff members with respect to his remuneration, right to rest, or social security. (Para. XI.) Claims of unequal treatment, noted the tribunal, could be made only vis-a-vis other individuals employed on special service agreements. (Para. X.) The UNAT did, nonetheless, award a termination indemnity based on Teixeira's length of service and the quality of his work. (Para. XII.)

77. In *In re Bustos*, ILOAT Judgment No. 701 (1985), by contrast, the ILOAT took a different view, looking beyond the language of a continuous series of short-term employment contracts renewed over a period of eleven years between the applicant and the Pan American Health Organization (PAHO), holding that these formed a single contract of indefinite duration.

78. The organization challenged the tribunal's jurisdiction on the grounds that the applicant was an independent contractor whose contract expressly stated that it was "a lease of work and not a relation of subordination" (para. 4.) The tribunal chose not to answer the question of whether the true relationship of the parties was as an "independent contractor" or as "master and servant", observing that there were facts supporting either view. (Para. 6.) Instead, it took a broad view of its jurisdictional mandate, declaring that jurisdiction need not depend on staff membership, but rather could be exercised here because applicant's link with the organization was "more than a purely casual one":

"1. The Organization objects to the jurisdiction of the Tribunal on the ground that the complainant was never a staff member. But in the jurisprudence of the Tribunal its jurisdiction does not depend upon staff membership. In *re Chadsey* (Judgement 122) the Tribunal said:

"While the Staff Regulations of any organisation are, as a whole, applicable only to those categories of persons expressly specified

therein, some of their provisions are merely the translation into written form of general principles of international civil service law; these principles correspond at the present time to such evident needs and are recognized so generally that they must be considered applicable to any employees having any link other than a purely casual one with a given organisation, and consequently may not lawfully be ignored in individual contracts. This applies in particular to the principle that any employee is entitled in the event of a dispute with his employer to the safeguard of some appeals procedure.'

The facts hereinafter set out show that the complainant's link with the Organization was more than a purely casual one. Accordingly the objection is overruled."

79. The ILOAT framed the question on the merits in Bustos as "whether the relationship between the parties was truly expressed by a series of separate contracts for fixed periods or whether it could be properly expressed only by a single contract for an indefinite period" (para. 6.), and answered as follows:

"9. The mutual intention, formed... was that the complainant should be employed for as long as his services were required and he was willing to give them. To an agreement of such character the law adds the term that reasonable notice of termination must be given...."

80. It should be noted that in Bustos the tribunal awarded compensation, but did not order retroactive reinstatement as the applicant had sought. Likewise, it rejected the claim that compensation should be assessed as a sum equal to the difference between the amount he received during the contract period and that which he would have received as a regular employee, noting that "[t]he Tribunal has no power to reconstruct the contract retroactively nor to reform the version of it in which until its termination the complainant acquiesced." (Para. 11.)

81. The ILOAT in Bustos also underscored the exceptional nature of its decision to override the express language of the short-term contracts under which the applicant had been engaged:

"5. The function of a court of law is to interpret and apply a contract in accordance with the intention of the parties. When a contract is expressed in writing, the intention is normally to be ascertained from the documents produced. In some cases, however, the parties - or at any rate the party which is in a position to formulate the document - do not desire that the true relationship should be revealed. The reason for this is that, if the true relationship was made manifest, the law would impose consequences which the parties - or at any rate the stronger of them - do not wish to face.... In the circumstances in which the parties to the present case operate, the situation

might be that the parties – or one or other of them – do not wish the contracts to be governed by the Staff Regulations: the easiest way of achieving that is for the parties to exhibit in the document a relationship which does not make the employee a staff member....

...  
10. The present case is of a very exceptional, if not unique, character. It can only be very rarely indeed that a case comes before the Tribunal in which it will look behind the documents to ascertain the intention of the parties...In any event the Tribunal's decision does not affect short-term appointments in general."

82. Finally, in Jorge O. Amora v. Asian Development Bank, Asian Development Bank Administrative Tribunal ("ADBAT") Decision No. 24 (1997), the ADBAT also looked behind the express language of a contract of employment to afford the applicant the benefits of staff membership. In Amora, the applicant worked from 1979 until 1993 under a series of contractual agreements, until he was appointed as a regular staff member in 1993. Upon reaching mandatory retirement age in 1995, he sought retirement and other benefits on the basis of his service dating back to 1979. The tribunal upheld his claims.

83. Among the terms of Amora's contracts of employment were the following provisions:

"Nothing contained in the terms and conditions herein..shall be construed as establishing or creating any relationship other than that of independent contractor between the Bank and [him]."

"[He] shall not be entitled to any compensation, allowances, benefits or rights from or against the Bank other than expressly provided therein...."

(Para. 3.) Nonetheless, examining the facts, the tribunal held that the applicant had been a staff member in regular employment of indefinite duration since 1979 and, as such, could not be excluded from the benefits of staff membership. Hence, the ADBAT declared the above clauses of the contract "inoperative". (Para. 44.) The tribunal explained its decision as follows:

"22. Usually, a contract signed by the parties is binding upon them. There are, however, some circumstances in which a contract may be set aside or varied by a competent tribunal. This happens, for example, when the contract fundamentally disregards reality.

23. It is the Tribunal's conclusion that in the present cases, the MOAs [Memoranda of Agreement] did not reflect the true relationship between the Bank and the Applicant. "

27. The Tribunal holds that recourse to successive short-term or temporary contractual appointments to jobs which are essentially of a permanent nature is not a fair employment practice, particularly if such appointments can be shown to have been made only to deny employees security of tenure or other conditions and benefits of service. Such appointments are permissible only if they have a clear functional justification and rationale in the exigencies of management and the nature of the job in question, and are subject to limitations based on norms of good administration."

84. In reaching its decision, the tribunal first considered whether Amora was an independent contractor or an employee of the Bank:

"31. Although every MOA under which the Applicant worked contained references to his 'services', it is quite clear that he was not engaged under a contract for 'services' to perform a specified piece of work, for a stipulated fee or price, under his own responsibility and according to his own methods, without being subject to the control of the Bank (except as to the results of his work), and investing his own resources, in regard to tools, equipment, materials and the like.

32. The MOAs did not describe the work which the Applicant was required to do; he was to work, in the Bank's premises, under the direction of the Bank's officers and in accordance with their instructions; he was not to be paid for the job or the result, but was to receive a regular, stated monthly remuneration; indeed, he even received increments mid-way through several contracts, just like an ordinary employee; he had to work full-time in accordance with the Bank's working hours, and could even be required to work overtime or on shifts; and he was entitled to annual, medical and casual leave. One of his obligations was 'at all times [to] refrain from actively engaging in any political activity' (emphasis supplied). All along, the Applicant was neither carrying on an independent business nor could he assign the performance of the work to anyone else. On the contrary, his work was part of, or ancillary to, the Bank's business."

Concluding on the basis of the above evidence that the applicant was a staff member and not an independent contractor, the ADBAT went on to decide that he was not a staff member "appointed on contractual basis" but rather held a regular appointment of indefinite duration. It was this distinction that meant that Amora could not be excluded from coverage of the Staff Regulations:

"41. .... In the light of the successive extensions and renewals of the Applicant's service with the Bank for an unbroken term of almost 14 years, the Tribunal, in the absence of any convincing explanation by the Bank, holds that the Applicant's employment was intended to be of indefinite duration.

42. In the present case, the Tribunal finds no functional reason whatsoever, justifying the recourse to short-term contracts, in the face of a continuing relationship. It is clear that the work done by the Applicant for the Bank was a continuous whole, even though he had held different positions during his career in the Bank, just as regular staff members do. Thus the separation of his work with the Bank into individual yearly contracts was a pure fiction.

43. . . . Here, as no reason exists objectively, and no good reason was provided by the Bank, for the use of annual contracts for what was in reality a long-term employment, the Tribunal concludes that the use of annual contracts without any functional justification is an abuse of power. Thus, the true legal relationship of the Applicant to the Bank was that of a staff member holding a regular appointment." (emphasis in original)

45. The Tribunal holds that it has jurisdiction *ratione personæ* as the Applicant was member of the Bank's staff holding a regular appointment within the meaning of Article II of the Statute of the Tribunal."

85. It is important to observe that in Amora the question of jurisdiction *ratione personæ* arguably was never really at issue, since by the time the applicant filed his application with the tribunal he had indisputably acquired the status of a regular staff member of indefinite duration by virtue of his new appointment in 1993. Nonetheless, it may be of some significance that the ADBAT chose to place its holding on jurisdiction following its conclusions on the merits. Moreover, the exercise of jurisdiction over issues arising before Amora's formal staff appointment in 1993 perhaps suggests an expansive approach to the ADBAT's jurisdiction *ratione materiæ*.

86. While the Tribunal finds the interplay of the cases of other administrative tribunals of interest, the case before it falls to be decided on the basis of the particular provisions of this Tribunal's Statute and its *travaux préparatoires*, and of the specifications of the Applicant's contract. The Administrative Tribunal concludes that it lacks jurisdiction in this case in view of the express language of that contract, which denies Applicant staff membership, and of the explicit wording of the IMFAT Statute, granting the Tribunal jurisdiction only over complaints brought by a "member of the staff" (Article II, 2.c. (i) of the Statute, *supra*, para. 45) challenging a "decision taken in the administration of the staff".

**Is the Administrative Tribunal required to exercise jurisdiction in this case on the ground that otherwise Applicant's complaint may escape review by an impartial adjudicatory body?**

87. Applicant has also argued that the Administrative Tribunal is required to exercise jurisdiction in this case because otherwise his claim will escape judicial review. In support of this view, he has invoked the principle of *audi alteram partem*.

88. Applicant has cited Shkukani v. The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), UNAT Judgement No. 628 (1993) and related cases for the proposition that the IMFAT should exercise jurisdiction over his claim because he otherwise would be left without judicial redress for his grievance. Shkukani, however, did not involve the expiration of an agreement with a contractual employee. Rather, in Shkukani, the applicant sought review of the termination of his staff appointment for alleged misconduct. At the time of that termination, regulations governing the Area Staff of UNRWA did not provide for recourse to the UNAT, whereas those governing International Staff did.

89. In considering its power to interpret its statute so as to afford judicial redress equitably to all staff members of UNRWA, the UNAT in Shkukani referred to the advisory opinion of the International Court of Justice concerning the competence of the ILOAT, Judgments of the Administrative Tribunal of the International Labour Organisation, ICJ Reports (1956) 77, at p. 97, which it quoted as follows:

"X... 'However, the question submitted to the Tribunal was not a dispute between States. It was a controversy between UNESCO and one of its officials. The arguments, deduced from the sovereignty of States, which might have been invoked in favour of a restrictive interpretation of provisions governing the jurisdiction of a tribunal adjudicating between States are not relevant to a situation in which a tribunal is called upon to adjudicate upon a complaint of an official against an international organization.'

The Tribunal therefore has consistently held the view that it is competent to entertain cases, such as this one, where the primary concern is the absence of any judicial procedure established by the Area Staff Regulations and Rules for the settlement of disputes submitted to JAB."

90. Unlike the situation in the case of Mr. "A", involving a contractual employee, in Shkukani the tribunal's concern was the differing treatment of different categories of staff members (international staff v. area staff) with respect to the procedures available for redress of their grievances:

"XI... The bodies to which the Applicant had recourse were both internal bodies as indicated by the method of appointment of their members. The Applicant should have had available to him, in fairness and equity, an external judicial body to which he could have appealed. Indeed, the fact that the international staff members of UNRWA had such recourse, shows even more starkly the bias which existed against the Applicant and his class of staff

members. Why should not all staff have similar protection? The Tribunal, therefore, rejects the Respondent's first argument."<sup>19</sup>

91. By contrast, in *Darricades* (*supra*, paras. 70-71), a case involving a contractual employee, the ILOAT was not persuaded by the argument that by denying jurisdiction the applicant would be left without any forum in which to press her claim. The ILOAT also referred to the principle that international administrative tribunals are forums of limited jurisdiction, but used that principle in support of its refusal to exercise jurisdiction:

"3. The Tribunal recognises that as a result of holding that it lacks jurisdiction, complainant is thereby regrettably deprived of any means of judicial redress against the injury sustained as a result of the alleged violations of her contract but the Tribunal, being a Court of limited jurisdiction, is bound to apply the mandatory provisions governing its competence."

92. Applicant also cites the principle of *audi alteram partem*, and the Administrative Tribunal's obligation to apply generally recognized principles of international administrative law, in support of his contention that the Administrative Tribunal must exercise jurisdiction over his claim so that it will not escape judicial review. Applicant specifically refers to the second sentence of Article III of the Tribunal's Statute and accompanying commentary. Article III provides in pertinent part:

"Article III

...

In deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts."

According to the commentary:

"... There are two unwritten sources of law within the internal law of the Fund. First, the administrative practice of the organization may, in certain

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<sup>19</sup> *Zafari v. The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UNAT Judgement No. 461 (1990), also cited by Applicant, likewise concerns extending rights to tribunal review to staff members who are governed by Area Staff Regulations. In *Bohn v. The United Nations Joint Staff Pension Board*, UNAT Judgement No. 378 (1986) and *Gilbert v. The United Nations Joint Staff Pension Board*, UNAT Judgement No. 379 (1986), the UNAT exercised jurisdiction over complaints by UNESCO staff relating to the pension adjustment system because these were "related to" the Regulations of the Joint Pension Fund. Allegations concerning the non-observance of the Regulations of the Joint Pension Fund fell expressly within the terms of the tribunal's jurisdiction under the agreement extending jurisdiction of the UNAT to UNESCO staff. In exercising jurisdiction, the tribunal considered that otherwise these complaints would not be subject to redress.

circumstances, give rise to legal rights and obligations. [Footnote omitted.] Second, certain general principles of international administrative law, such as the right to be heard (the doctrine of *audi alteram partem*) are so widely accepted and well-established in different legal systems that they are regarded as generally applicable to all decisions taken by international organizations, including the Fund."

(Report of the Executive Board, p. 18.)

93. Applicant's reliance on the principle of *audi alteram partem*, as incorporated in the internal law of the Fund, to contend that the IMFAT should exercise jurisdiction over his complaint would appear to be misplaced. The purpose of the second sentence of Article III of the Tribunal's Statute is to prescribe what law the IMFAT "shall apply", i.e. "the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts." This statutory provision does not relate to the Tribunal's jurisdiction, but rather states what law should be applied by the Tribunal in carrying out its judicial functions in those cases in which it has jurisdiction.

94. The principle of *audi alteram partem* is, in Applicant's own words, applicable to "decisions taken by the Fund." That principle provides a standard for assessing the legality of an administrative act of the Fund that comes before Administrative Tribunal for review. For example, the principle of *audi alteram partem* has been applied by international administrative tribunals in considering challenges by staff members to the legality of particular disciplinary procedures. (C. F. Amerasinghe, The Law of International Civil Service, Vol. II, pp. 210-11 (2<sup>nd</sup> ed. 1994).) Likewise, the IMFAT in Ms. "C.", Applicant v. International Monetary Fund, Respondent, Judgment No. 1997-1 (August 22, 1997), adverted to the same principle, although not employing the term "*audi alteram partem*", when it concluded that a lapse in due process giving rise to a compensable claim occurred when Ms. "C." was not afforded meaningful opportunity to rebut adverse evidence regarding her performance. (Paras. 41-43.)

95. The Administrative Tribunal concludes that the fact that Applicant's claim will otherwise not be judicially examined does not require or entitle the Tribunal to exercise jurisdiction in this case. The complaint lies outside the Tribunal's limited grant of jurisdictional competence.

96. The Administrative Tribunal also concludes that, while the principle of *audi alteram partem* may supply a standard for judging the legality of a decision of the Fund that comes within the Tribunal's jurisdiction, this principle does not determine which decisions are justiciable. Nor does it require that jurisdiction of this Tribunal be extended because a claim otherwise may or will escape review by an adjudicatory body. The jurisdiction of the Administrative Tribunal is conferred exclusively by the Statute itself. This Tribunal is not free to extend its jurisdiction on equitable grounds, however compelling they may be.



97. At the same time, the Tribunal feels bound to express its disquiet and concern at a practice that may leave employees of the Fund without judicial recourse. Such a result is not consonant with norms accepted and generally applied by international governmental organizations. It is for the policy-making organs of the Fund to consider and adopt means of providing contractual employees of the Fund with appropriate avenues of judicial or arbitral resolution of disputes of the kind at issue in this case, notably disputes over whether the functions performed by a contractual employee met the criteria for a staff appointment rather than those for contractual status.

98. It is pertinent to note that, on January 20, 1999, the Fund's Executive Board approved a Policy on Categories of Employment which provides, *inter alia*, that:

"Functions that are needed for two years or more would be performed by employees on staff appointments. Functions that are expected to be performed for less than two years would be performed by contractual employees. Contractual appointments are used only for short-term employment, and can be extended if needed to a maximum cumulative period of four years. Extensions beyond two years require the approval of the Director of Administration."

This Policy has been communicated to the employees of the Fund by its placement on the Fund's internal website. This Policy mirrors a similar Policy promulgated in 1989, with the critical difference that the 1989 Policy did not prescribe the two-year and four-year limitations embodied in the 1999 Policy.

99. Had the foregoing Policy been in force and implemented in the course of Mr. "A"'s tenure, the matter now at issue before the Tribunal presumably would not have arisen. In respect, however, of headquarters-based technical assistance experts, the 1999 Policy retains an option for "long-term contracts when such an approach is justified"; in this regard, the 1999 Policy states that it "may need to be applied flexibly". In view of the revised Policy, Mr. "A"'s kind of predicament, and that of any other contractual employees in similar circumstances, may be transient. That, however, provides no solace for Mr. "A". The adoption of the new Policy on Categories of Employment nonetheless strengthens the equitable basis of certain of Mr. "A"'s contentions, which the Fund should, in the Tribunal's view, endeavor to respond to insofar as governing regulations and practical possibilities permit. In that regard, the Tribunal notes that Mr. "A" has the benefit of maintenance of group medical coverage for eighteen months after the expiration of his contract, without however financial contribution by the Fund.

100. On the basis of the considerations set forth above, the Tribunal decides:

1. The Administrative Tribunal does not have jurisdiction to decide whether the Fund acted illegally when it entered into a series of contracts for contractual employment of the Applicant, allegedly in violation of its 1989 Employment Guidelines and principles of international administrative law, because Applicant apparently performed the same work as

regular staff under contracts renewed several times in the course of nine years and then allowed to expire.

2. The Administrative Tribunal does not have jurisdiction *ratione personae* over Applicant's complaint since his letter of appointment stated that he "will not be a staff member of the Fund" and the Administrative Tribunal's jurisdiction is restricted by its Statute to applications brought by a "member of the staff" (Art. II, para. 1.a.), defined as "any person whose current or former letter of appointment, whether regular or fixed-term, provides that he shall be a member of the staff" (Art. II, para. 2.c.(i)).

3. The Administrative Tribunal does not have jurisdiction *ratione materiae* over Applicant's claim; the Fund's decision to enter into a contract or series of contracts with an individual to serve as a contractual employee, rather than as a member of the staff, is not a "decision taken in the administration of the staff" (Art. II, para. 2.a.).

4. Equitable or other considerations do not enable the Administrative Tribunal to extend its jurisdiction to claims falling outside the express language of Article II of its Statute, when Articles III, IV, and XIX limit its powers to those conferred by the Statute.

5. The Administrative Tribunal is not entitled to exercise jurisdiction in this case because otherwise Applicant's complaint may escape examination by an impartial adjudicatory body. The principle of *audi alteram partem* does not authorize or require this Administrative Tribunal to exercise jurisdiction in this case.

6. The Administrative Tribunal need not examine the merits of Applicant's claim in order to decide whether it has jurisdiction in this case. It may base that decision on the language of Applicant's letter of appointment and the Statutory provisions governing jurisdiction.

Decision

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that the Fund's Motion for Summary Dismissal is granted.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

AgustPn Gordillo, Associate Judge

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Stephen M. Schwebel, President

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Celia Goldman, Acting Registrar

Washington, D.C.  
August 12, 1999

Human Resources Procedures Manual – Chapter I

1.15.3 Offers of appointment, indicating the terms and conditions of employment, base salary and benefits, will be made in writing. The President delegates authority for signing appointment letters to the Director, FH. A copy of the Human Resource Policies and Procedures Manual will be included with such letters and will be considered an integral part of the employment contract.

1.15.4 An appointment is not effective until the offer of appointment has been signed by both parties and returned, together with a full medical clearance by an IFAD medical advisor.

1.15.5 Should the selected candidate(s) decline the offer, then the recruiting supervisor in consultation with Director, FH will recommend further action to the President.

1.15.6 Appointments of General Service support staff members are made by the Assistant President of the recruiting department, upon recommendation by the panel.

1.16 EFFECTIVE DATE OF APPOINTMENT

1.16.1 The appointment for internationally recruited staff takes effect from the date of commencement of travel to the duty station. The travel time shall be limited to a maximum of two working days and the staff member must report to duty on the third day following the travel period.

1.16.2 For locally recruited staff, the effective date of employment is the day they report for duty.

1.17 CONTRACTUAL ARRANGEMENTS

1.17.1 All appointments are contingent upon funding, the continuing need for service, satisfactory performance and compliance with the code of conduct.

Type of contract	Duration	Budget type
Continuing appointments	First – 2 years Fixed-Term Second – 5 years Fixed-Term Third – Conversion to Continuing after seven years	Regular, staff on established posts
Fixed -term	One to six years  After six years, a thorough review of continued need for the position and therefore retention of the incumbent will be carried out. If extended, justify need for post to Executive Board to convert to continuing after seven years.	Extra budgetary including Project Development Facility Fund (PDFF) for defined periods of time depending on the purpose. This appointment shall not carry any expectation of renewal.
Short- term	One day up to eleven months	Either budgetary or replacement of extra budgetary

**VIII. JUDGEMENT NO. 2867 RENDERED  
BY THE ADMINISTRATIVE TRIBUNAL  
OF THE INTERNATIONAL LABOUR ORGANIZATION**



**108th Session**

**Judgment No. 2867**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs A. T. S. G. against the International Fund for Agricultural Development (IFAD) on 8 July 2008, IFAD's reply of 12 September, the complainant's rejoinder of 31 October and the Fund's surrejoinder of 18 December 2008;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereinafter "the Convention") entered into force on 26 December 1996. By decision 24/COP.1 the Conference of the Parties, which is the Convention's supreme body, established the Global Mechanism, which is responsible for increasing the effectiveness and efficiency of existing financial mechanisms with a view to assisting country Parties in implementing the Convention. The Global Mechanism is housed by IFAD, and its modalities and administrative operations are set out in a Memorandum of Understanding (hereinafter "the MOU") signed between the

Conference of the Parties and IFAD on 26 November 1999. The MOU provides in Section II.A that the Global Mechanism has a separate identity within IFAD and is an organic part of the structure of the Fund directly under the President of the Fund. According to Section III.A, paragraph 4, the Managing Director of the Global Mechanism is responsible for preparing the Global Mechanism's programme of work and budget, including proposed staffing, and his proposals are reviewed and approved by the President of the Fund before being forwarded to the Executive Secretary of the Convention for consideration in the preparation of the budget estimates of the Convention. Section III.B states that the Managing Director, on behalf of the President of the Fund, will submit a report to each ordinary session of the Conference on the activities of the Global Mechanism.

The complainant is a Venezuelan born in 1958. On 1 March 2000 she was offered a two-year fixed-term appointment with IFAD as a Programme Officer in the Global Mechanism at grade P-4. Her contract was subsequently renewed several times up to 15 March 2006. By a memorandum of 15 December 2005 the Managing Director of the Global Mechanism informed her that the Conference had decided to cut the Global Mechanism's budget for 2006-2007 by 15 per cent. As a result, the number of staff paid through the core budget had to be reduced. He explained that the regional programme for which the complainant was working had become less attractive to donors and that he had decided to cut down the costs related to it; consequently, her post would be abolished and her contract would not be renewed upon expiry on 15 March 2006. He offered her a six-month contract from 16 March to 15 September 2006 as "an attempt to relocate [her] and find a suitable alternative employment". On 15 February 2006 the complainant wrote to the Assistant President of the Finance and Administration Department of IFAD requesting that the President of IFAD establish a review process, as provided for under Chapter 11 of the Human Resources Procedures Manual, to determine whether the "declared post redundancy" was appropriate. The Director of IFAD's Office of Human Resources informed her on



13 March that the decision not to renew her contract was in line with the provisions of the Manual and that the review process had been replaced by a facilitation process.

The complainant wrote to the President of the Fund on 10 May 2006 requesting facilitation. The facilitator concluded on 22 May 2007 that no agreement was likely to be reached between the parties. The complainant filed an appeal with the Joint Appeals Board on 27 June 2007 challenging the Managing Director's decision of 15 December 2005.

In its report of 13 December 2007 the Board held that, in the absence of evidence showing that the Managing Director had consulted or obtained the approval of the President of the Fund before deciding to abolish the complainant's post, the decision not to renew the complainant's appointment was tainted with abuse of authority. It also found that the decision had been taken in breach of the provisions of the Manual concerning redundancy, since the possibility of renewing her contract had not been seriously considered and no attempt had been made to relocate her or to provide her with additional training. In addition, she had been denied due process as the Director of the Office of Human Resources had incorrectly advised her that the review process for job redundancies had been abolished. The Board therefore recommended that the complainant be reinstated within the Global Mechanism under a two-year fixed-term contract and that the Global Mechanism pay her an amount equivalent to all the salaries, allowances and entitlements she had lost since March 2006.

By a memorandum of 4 April 2008, which is the impugned decision, the President of the Fund informed the complainant that he had decided to reject her appeal. He considered that the decision not to renew her contract had been taken in accordance with section 1.21.1 of the Manual, which provides that a fixed-term contract expires on the date mentioned in the contract. Noting that she had been given three months' notice, that she had been offered a six-month consultancy contract to enable her to search for alternative employment, that a facilitation process had been conducted and that

her applications for vacancies within IFAD had been given due consideration, he concluded that she had been afforded due process.

B. The complainant contends that the decision not to renew her contract was tainted with abuse of authority. Indeed, according to the MOU, the Managing Director was not entitled to determine the Global Mechanism's programme of work independently of the Conference of the Parties and of the President of the Fund. According to the 2006-2007 programme of work and budget approved by the Conference, the staffing proposal to be financed by the Global Mechanism's core budget was for nine professional posts, which included her post. Consequently, the Managing Director's decision was not in line with the approved programme of work and budget; if he deemed it necessary to modify the programme by suppressing her post, he should have obtained the prior approval of both the President of the Fund and the Conference, but he did not do so. She adds that even though the Conference agreed to a 15 per cent reduction in the core budget, there is no evidence that such "modest budget cuts" required the abolition of her post. She explains that beside the core budget, the activities of the Global Mechanism are financed by voluntary contributions and that the Managing Director has the authority to approve expenditure to be deducted from the voluntary contributions account. She points out that in 2006 several consultants and three professional staff were recruited to work for her programme, the latter under fixed-term contracts.

The complainant alleges that IFAD acted in breach of its duty of care and good faith. The termination of her contract was abrupt and unjustified and it damaged her professional reputation. According to section 1.21.1 of the Manual, consideration should be given to a staff member's performance, the need for the post and the availability of funding when deciding not to renew a contract. On the basis of these factors, the Joint Appeals Board concluded that her contract should have been renewed. She adds that, in accordance with section 11.3.9(b) of the Manual, the Fund had a duty to consider her for the new positions to be filled in the Global Mechanism or to provide her with additional training in order to enable her to find suitable alternative employment. Although she had exemplary

performance appraisals and was one of the most senior staff of the Global Mechanism, the Fund did not assist her in finding alternative employment. The vacancies for which, according to the President of the Fund, she was given due consideration, arose after she had separated from service; consequently, she had to apply as an external candidate. She stresses that the only employment she was offered was a consultancy contract for which she did not receive the terms of reference until after having separated from service.

In addition, she criticises the Fund's ambivalent attitude towards the staff working in the Global Mechanism. She states that she had an "IFAD contract" but that the defendant preferred to treat her as a "Global Mechanism problem".

Lastly, she indicates that, contrary to the Tribunal's case law, the President of the Fund did not give reasons for departing from the Joint Appeals Board's recommendations.

The complainant asks the Tribunal to quash the impugned decision and to order IFAD to reinstate her, for a minimum of two years, in her previous post or in an equivalent post in IFAD with retroactive effect from 15 March 2006. She also claims reimbursement for "loss of salary, allowances and entitlements, including [...] contributions to the United Nations Joint Staff Pension Fund, potential promotion". She seeks compensation in the amount of 50,000 United States dollars for the suffering caused by the heedless manner in which she was treated by IFAD, and 5,000 euros in costs.

C. In its reply IFAD contends that the Tribunal has no jurisdiction to entertain the argument that the Managing Director of the Global Mechanism abused his authority in deciding not to renew the complainant's contract. Neither is it competent to entertain the argument that the decision-making process of the Fund was flawed, as this may entail examining the decision-making process in the Global Mechanism. IFAD explains that the Global Mechanism is not an organ of the Fund; it is accountable to the Conference, and acts of its Managing Director are not attributable to the Fund. It is indeed clearly stated in decision 24/COP.1 that the role of the Fund is restricted

to housing the Global Mechanism. Moreover, Section II.A of the MOU stipulates that the Global Mechanism will have a separate identity within the Fund; thus, the latter merely supports the Global Mechanism in performing its functions in the framework of the mandate and policies of the Fund. The defendant consequently takes the view that IFAD's acceptance of the jurisdiction of the Tribunal does not extend to entities that it may host pursuant to international agreements with third parties. It adds that neither the Conference of the Parties nor the Global Mechanism has recognised the jurisdiction of the Tribunal.

On the merits the Fund denies having acted in breach of its duty of care. In its view, the complainant is mistaken in considering that she is a staff member of the Fund and that the procedures concerning redundancy laid down in the Manual applied to her. Her legal status is defined in the President's Bulletin No. PB/04/01 of 21 January 2004, according to which the application of the aforementioned Manual is subject to limitations and conditions. In particular, the provisions of the Manual concerning redundancy do not apply to her because paragraph 11(c) of the bulletin provides that "IFAD's rules and regulations on the provision of career contracts for fixed-term staff shall not apply to staff of the Global Mechanism". The defendant indicates that the complainant was nevertheless offered a six-month consultancy contract and that she refused it. Thus, the complainant was *de facto* granted by the Global Mechanism the same protection that she would have been given by the Fund had she been an IFAD staff member.

In the event that the Tribunal considers that it is competent to rule on the allegation of abuse of authority, IFAD asserts that the Managing Director had the authority to decide not to renew the complainant's contract. To support its view, it refers to Section III.A, paragraph 4, of the MOU, which provides that the Managing Director is responsible for preparing the programme of work and budget of the Global Mechanism, which includes proposed staffing. Thus, he was authorised to assess and make decisions in relation to the staffing needs of the Global Mechanism insofar as his decisions complied with the budgetary limits established by the Conference. It further submits that the Fund has no authority to examine whether the core

budget approved by the Conference warranted the abolition of the complainant's post, because decisions concerning the staffing and budget of the Global Mechanism are not taken by the Fund but by the Conference. It therefore argues that IFAD cannot be held responsible for the Managing Director's decision.

The defendant also rejects the complainant's plea that the President of the Fund failed to give reasons for rejecting the Joint Appeals Board's recommendations. It points out that, in his letter of 4 April 2008, the President explained that he had decided to reject these recommendations on the basis of paragraph 11(c) of his Bulletin No. PB/04/01, according to which the renewal of contracts is subject to the functional needs and availability of resources.

D. In her rejoinder the complainant contests the Fund's position regarding the Tribunal's jurisdiction. At no stage during the internal appeal procedure did the defendant suggest that she was mistaken as to the fact that it was competent to consider her appeal. On the contrary, the IFAD Administration advised her to undertake the facilitation process, which was a prerequisite to filing an internal appeal with IFAD. Moreover, the President of the Fund did not state in the impugned decision that the Fund was not competent to deal with her case. She adds that if the Tribunal declines jurisdiction to hear her case, she will be deprived of any legal redress.

Contrary to the defendant's assertion, she contends that she was a staff member of IFAD until her separation from service on 15 March 2006. Indeed, all her letters of appointment provided that she was offered an "appointment with the International Fund for Agricultural Development", and the first also indicated that "the appointment w[ould] be made in accordance with the general provisions of the IFAD Personnel Policies Manual".

With regard to the contention that the Fund cannot be held responsible for decisions taken by the Managing Director, she indicates that such contention is based on the incorrect assumption that he was not a staff member of IFAD. She points out that, according to the

Managing Director's job description, he works "under the direction of the President of the [...] Fund".

She maintains that the provisions of the Manual on redundancy were applicable. Paragraph 11(c) of the President's Bulletin No. PB/04/01 provides for exceptions to the application of the Manual to staff members working within the Global Mechanism only with regard to the provisions on career contracts, and not those concerning redundancy. Moreover, the President of the Fund made no reference to that paragraph in the impugned decision.

The complainant expands on her claim for compensation, arguing that she was prejudiced by lack of "proper notice", "heedless treatment" and "dilatatory procedures". She contests that she was given three months' notice before separating from service. She received a notice of non-renewal from the Managing Director on 15 December 2005, but it was only on 13 March 2006, i.e. two days before the expiry date of her contract, that she received an "official communication from a personnel officer" stating that her contract would not be renewed.

E. In its surrejoinder IFAD maintains its position. It specifies that it does not challenge the Tribunal's jurisdiction to hear the complaint, but only its jurisdiction to entertain the plea concerning abuse of authority by the Managing Director, the allegation that the abolition of the complainant's post was not required on financial grounds and the allegation that the decision-making process of the Global Mechanism was flawed.

With regard to the notice given, the defendant reiterates that the Managing Director informed the complainant on 15 December 2005 that her contract would not be renewed upon expiry on 15 March 2006. It denies that her contract was ended prematurely, explaining that it is of the essence of a fixed-term contract that it ends at the expiry date set in the letter of appointment. The complainant's claim for damages on that basis must therefore be rejected.

## CONSIDERATIONS

1. The complainant challenges a decision of the President of the International Fund for Agricultural Development dismissing her internal appeal with respect to a decision not to renew her fixed-term contract as Programme Manager for Latin America and the Caribbean within the Global Mechanism. That decision was contrary to the recommendation of the Joint Appeals Board. The earlier decision not to renew the complainant's contract was taken by Mr M., who described himself as "Managing Director, Global Mechanism, IFAD Rome", and was based on the abolition of the complainant's post for reasons of budgetary constraint. A preliminary question arises as to the extent to which the Tribunal may review that earlier decision. The arguments go to the powers and jurisdiction of the Tribunal and, on that account, must be dealt with even though raised for the first time in these proceedings.

2. The Global Mechanism was established by the United Nations Convention to Combat Desertification in Those Countries Experiencing Severe Drought and/or Desertification, Particularly in Africa. Article 21, paragraph 4, of the Convention provides that the Global Mechanism functions "under the authority [...] of the Conference of the Parties and [is] accountable to it". In accordance with paragraph 6 of that article, a Memorandum of Understanding (the MOU) was later reached with the Fund for it "to house the Global Mechanism for the administrative operations of such Mechanism". The MOU provides that the Global Mechanism is to be housed in Rome "where it shall enjoy full access to all of the administrative infrastructure available to the Fund offices, including appropriate office space, as well as personnel, financial, communications and information management services" (Section VI).

3. The MOU also provides that "[w]hile the Global Mechanism will have a separate identity within the Fund, it will be an organic part of the structure of the Fund directly under the President of the Fund" (Section II.A), and that its Managing Director, "in discharging his or

her responsibilities, will report directly to the President of [the Fund ... and] will cooperate with the Executive Secretary of [the Convention]" (Section II.D). Further provision is made in Section III.A with respect to the relationship of the Global Mechanism to the Conference of the Parties, which is the supreme body of the Convention. Relevantly, it is provided that the Mechanism functions under the authority of the Conference and is accountable to it, that "[t]he chain of accountability [runs] directly from the Managing Director to the President of the Fund to the Conference", and that the Managing Director is to "submit reports to the Conference on behalf of the President of the Fund".

4. Two other provisions of the MOU should also be noted. Paragraph 4 of Section III.A, provides:

"The Managing Director will be responsible for preparing the programme of work and budget of the Global Mechanism, including proposed staffing, which will be reviewed and approved by the President of the Fund before being forwarded to the Executive Secretary of the Convention for consideration in the preparation of the budget estimates of the Convention, in accordance with the financial rules of the Conference." (Emphasis added.)

Paragraph 6 provides for the Conference to "approve the programme of work and budget of the Global Mechanism" and to authorise the transfer of resources to the Fund "for all or a portion of the Global Mechanism's approved operating expenses". The complainant relies on these two provisions to argue, firstly, that the Managing Director exceeded his authority in deciding not to renew her contract and, secondly, that the "core budget" approved by the Conference did not require the abolition of her post. The Fund contends that the Tribunal lacks jurisdiction to entertain these arguments.

5. The argument with respect to the Tribunal's jurisdiction is based, in the main, on the proposition that "[t]he Fund and the Global Mechanism are separate legal identities". In this regard, the Fund claims, correctly, that the Conference of the Parties is not an organ of the Fund and that the Global Mechanism is an integral part of the Convention accountable to the Conference. It also points to the



statement in the MOU that the Global Mechanism is to have a separate identity and contends that the statement that it is to “be an organic part of the structure of the Fund” does not make it an organ of the Fund. In this last regard, it contends that to treat the Global Mechanism as an organ of the Fund would require amendment both to the Convention and to the Agreement Establishing IFAD.

6. The fact that the Global Mechanism is an integral part of the Convention and is accountable to the Conference does not necessitate the conclusion that it has its own legal identity. Rather, and as the term “Global Mechanism” suggests, it merely indicates that it is the nominated mechanism by which the Conference gives effect to certain obligations created by the Convention. Nor does the stipulation in the MOU that the Global Mechanism is to have a “separate identity” indicate that it has a separate legal identity or, more precisely for present purposes, that it has separate legal personality. In this last regard, the difference may conveniently be illustrated by reference to a distinct trade name under which a person or corporation carries on business. The trade name frequently constitutes “the identity” or, perhaps, one of “the identities” of the person or corporation concerned, but it is the person or corporation that has legal personality for the purposes of suing and being sued. It is in this context that the statement that the Global Mechanism is to be “an organic part of the structure of the Fund” is to be construed.

7. The words “an organic part of the structure of the Fund” do not fall for consideration in isolation from other provisions of the MOU. It is significant that, according to the MOU, the Managing Director is to report to the President of the Fund. Moreover, the chain of accountability does not run directly from the Managing Director of the Global Mechanism to the Conference but “directly from the Managing Director to the President of the Fund to the Conference”. Similarly, “[t]he Managing Director [...] reports to the Conference on behalf of the President of the Fund” (emphasis added). The President of the Fund is to review the programme of work and the budget prepared by the Managing Director of the Global Mechanism before it

is forwarded to the Executive Secretary of the Convention for consideration. Additionally, the Global Mechanism is not financially autonomous. Rather, the Conference authorises the transfer of resources to the Fund for the operating expenses of the Global Mechanism. When regard is had to these provisions in the MOU, it is clear that the words “an organic part of the structure of the Fund” indicate that the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes. The effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund. Given this, it is wrong to say that to treat the Global Mechanism as part of the Fund would require an amendment to the Convention and, also, to the Agreement Establishing IFAD.

8. The Fund makes three further submissions relating to the powers and jurisdiction of the Tribunal. The first is that the Tribunal may not entertain flaws in the decision-making process of the Global Mechanism; the second is that the Tribunal may not entertain flaws in the decision-making process of the Fund if it entails examining the decision-making process of the Global Mechanism and the third is that acts of the Managing Director of the Global Mechanism are not attributable to the Fund. Because decisions of the Managing Director relating to staff in the Global Mechanism are, in law, decisions of the Fund, these submissions must be rejected.

9. The Fund makes a further argument that the complainant was not a staff member of the Fund which, if correct, would mean that the Tribunal has no jurisdiction to entertain the complaint. That argument is made in the face of the terms of the complainant’s appointment. Her appointment followed her acceptance of an offer of 1 March 2000, written on the letterhead of the Fund, of “a fixed-term appointment for a period of two years with the International Fund for Agricultural Development (IFAD)”. The offer stipulated a probationary period and that, in the event that the complainant’s performance in that period was not satisfactory, her employment could

“be terminated by IFAD with one month’s written notice”. Similarly, it was stated that should the complainant wish to terminate her employment during the probationary period, she was “required to give written notice of at least one month to IFAD”. In March 2002 and, again, in March 2004 the complainant accepted offers written on the letterhead of the Fund for the extension of her “appointment with the International Fund for Agricultural Development”. Those written offers and their subsequent acceptance clearly constituted the complainant a staff member of the Fund. As the complainant was employed by and remained in the employ of the Fund, its reliance on Judgment 1509 is misplaced. In that case, the complainant’s terms of appointment made it clear that he was not a staff member of the defendant organisation.

10. IFAD also relies on the President’s Bulletin No. PB/04/01 of 21 January 2004 in support of its argument that the complainant was not a staff member of the Fund. Paragraph 11 of that bulletin specifies certain differences in the terms of appointment and in the conditions relating to staff of the Fund and those of the Global Mechanism, including, in subparagraph (c), that:

“All fixed-term contracts of employment for the Global Mechanism shall be for a maximum of two years, renewable, and subject to the availability of resources. [The Fund’s] rules and regulations on the provision of career contracts for fixed-term staff shall not apply to the staff of the Global Mechanism, except for those that have already received a career contract as a result of their earlier employment with [the Fund].”

It will later be necessary to return to this provision. For the moment, it is sufficient to note the somewhat curious argument that it establishes that the complainant was not a staff member of the Fund because “[if] Global Mechanism personnel were considered staff members of the Fund, the President would not have the authority to limit nor qualify the application of the [Human Resources Procedures Manual] rules [of the Fund]”. In fact, the MOU confers no power on the President to determine the conditions of appointment of the personnel of the Global Mechanism and, thus, the President has authority to do so only if they are staff members of the Fund.

11. Given that the personnel of the Global Mechanism are staff members of the Fund and that the decisions of the Managing Director relating to them are, in law, decisions of the Fund, adverse administrative decisions affecting them are subject to internal review and appeal in the same way and on the same grounds as are decisions relating to other staff members of the Fund. So too, they may be the subject of a complaint to this Tribunal in the same way and on the same grounds as decisions relating to other staff members.

12. As already indicated, the complainant argues that the decision to abolish her post was taken without authority and was not required by budgetary constraints. At this stage it is convenient to note that that decision and the decision not to renew her contract are discretionary decisions that may be reviewed only on limited grounds. Those grounds include that the decision in question was taken without authority or was based on an error of law.

13. The question of the Managing Director's authority to abolish the complainant's post depends on whether, in the circumstances, that course was impliedly prohibited by the terms of the MOU and the decision of the Conference relating to staffing and budget for the 2006-2007 biennium. As already indicated, the MOU requires the Managing Director to prepare a programme of work and budget for the Global Mechanism to be reviewed by the President of the Fund and submitted for consideration by the Conference, which is "to approve [its] programme of work and budget". It is clear from paragraph 4 of Section III.A of the MOU that approval of "the programme of work and budget" includes approval of "proposed staffing".

14. It is not disputed that in October 2005 a proposed programme of work and budget for the 2006-2007 biennium was submitted to the Conference and that the proposed staffing expressly allowed for the continuation of nine professional posts, including that of the complainant. The Conference approved the proposed staffing but reduced the proposed core budget. The Conference also noted,

amongst other things, that the Global Mechanism “must be managed on the basis of the [...] approved biennium core budget [...] and that this takes precedence over all other tables or figures [...], unless amended by [the Conference]”. In this regard, it may be noted that progress reports on the Global Mechanism in November 2003 and February 2005 indicated that the core budget left “a resource gap of about USD 1.2 million per year” for the 2004-2005 biennium, a shortfall that was apparently covered from other sources.

15. Given the previous practice of a shortfall in the core budget of the Global Mechanism and the Conference’s express approval of the proposed staffing, the Conference decision to reduce the proposed core budget can only be seen as a directive that the approved posts were to be maintained and that the “resource gap” was to be made good from other sources, possibly by savings in other areas. Indeed, it is not disputed that the Managing Director indicated in staff meetings in October and, again, in December 2005, shortly before informing the complainant that her post was to be abolished and her contract would not be renewed, that the “resource gap” would, in fact, be covered by savings in other areas.

16. The MOU makes it clear that the Global Mechanism functions under the authority of the Conference. Thus, the conclusion that the Conference decision required the continuation of the approved posts, including that of the complainant, directs the further conclusion that the abolition of her post was impliedly forbidden by the Conference decision. Accordingly, the decision of the Managing Director to abolish it was taken without authority. That conclusion makes it unnecessary to consider the complainant’s further argument that the reduction in the proposed core budget did not necessitate the abolition of her post. However, the conclusion that the effect of the Conference decision was that her post was to be maintained also directs the conclusion that it did not necessitate its abolition.

17. Because the Managing Director had no authority to abolish the complainant’s post, his decision not to renew the complainant’s

contract on the ground of its abolition constituted an error of law. The President of the Fund erred in law in not so finding when considering her internal appeal. It follows that the President's decision of 4 April 2008 dismissing the complainant's internal appeal must be set aside.

18. Although the Joint Appeals Board recommended that the complainant be reinstated in a post in the Global Mechanism, there is no evidence that her contract would have been renewed for the 2008-2009 biennium. Accordingly, reinstatement will not be ordered. However, as the abolition of her post was the only reason advanced for the non-renewal of the complainant's contract and there is nothing to suggest that her contract would not otherwise have been extended for two years, she is entitled to material damages in the amount of salary and other benefits she would have received had her contract been renewed for a further two years, together with interest at the rate of 8 per cent per annum from due dates until the date of payment. The complainant must give credit for wages or salary received in that period.

19. The complainant makes a further argument that the Fund did not comply with its duty of care and did not apply the redundancy provisions applicable to other staff members. The argument, if correct, would not add to material damages but is relevant to moral damages.

20. It is not disputed that the complainant was not considered for other positions within the Global Mechanism or for training that might otherwise have qualified her for those positions, as would be the case for other staff members in relation to positions within the Fund. Nor is it disputed that, as found by the Joint Appeals Board, when the complainant requested "the establishment of a review process", she was incorrectly informed that that "process [...] ha[d] been abolished and replaced by a facilitation process". The Fund contends that, by reason of paragraph 11(c) of the President's Bulletin No. PB/04/01

of 21 January 2004, the redundancy procedures applicable to other staff members of the Fund are not applicable to staff members employed in the Global Mechanism. That argument must be rejected. Paragraph 11(c) provides, in effect, that staff members employed in the Global Mechanism are not eligible for career contracts. It says nothing about their entitlement to have the redundancy provisions set out in the Human Resources Procedures Manual applied to them. Moreover, those provisions (section 11.3.9) are not restricted to staff members with career contracts.

21. The Fund further contends that it complied with its duty of care and *de facto* observed its redundancy procedures in that “the complainant was offered a six-month consultancy contract with the Global Mechanism”. This, it is said, was “meant to build [her] capacity and to train her”. The offer of a six-month consultancy contract may mitigate but does not excuse the failure of the Fund to abide by the redundancy provisions applicable to staff members.

22. One other matter is relevant to moral damages. The President rejected the substance of the complainant’s internal appeal on the ground that proper notice had been given of the non-renewal of her contract. That neither addressed the authority of the Managing Director of the Global Mechanism to abolish her post nor adverted to the issue whether the question of his authority could be considered. The arguments relating to that last issue were as relevant to the Joint Appeals Board as they are to the Tribunal. This and the other matters referred to in considerations 19 and 20 above entitle the complainant to an award of moral damages over and above those flowing from the illegality of the decision to abolish her post. The Tribunal awards her 10,000 euros in moral damages.

23. The complainant is also entitled to costs in the amount of 5,000 euros in respect of these and the internal appeal proceedings.

DECISION

For the above reasons,

1. The President's decision of 4 April 2008 is set aside.
2. IFAD shall pay the complainant material damages equivalent to the salary and other allowances she would have received if her contract had been extended for two years from 16 March 2006, together with interest at the rate of 8 per cent per annum from due dates until the date of payment. The complainant is to give credit for wages or salary earned within that period.
3. IFAD shall pay the complainant moral damages in the sum of 10,000 euros.
4. It shall also pay her costs in the amount of 5,000 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 4 November 2009, Ms Mary G. Gaudron, President of the Tribunal, Mr Seydou Ba, Vice-President, Mr Giuseppe Barbagallo, Judge, Ms Dolores M. Hansen, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2010.

Mary G. Gaudron  
Seydou Ba  
Giuseppe Barbagallo  
Dolores M. Hansen  
Patrick Frydman  
Catherine Comtet



**IX. AGREEMENT BETWEEN  
THE UNITED NATIONS AND IFAD**





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**PROTOCOL CONCERNING THE ENTRY INTO FORCE OF THE  
AGREEMENT BETWEEN THE UNITED NATIONS AND THE  
INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT**

Article 59 of its Charter calls on the United Nations to initiate, where appropriate, negotiations among the States concerned for the creation of any new specialised agencies required for the accomplishment of the purpose set forth in Article 55. Article 57 of the Charter provides that specialised agencies established by intergovernmental agreement and having wide international responsibilities as defined in their basic instruments in economic, social, cultural, educational, health and related fields shall be brought into relationship with the United Nations. Article 63 of the Charter provides that the Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations, and specifies that such agreements shall be subject to approval by the General Assembly.

Acting on the basis of a resolution adopted by the World Food Conference on 16 November 1974, the General Assembly of the United Nations on 17 December 1974 requested the Secretary-General to convene urgently a meeting of all interested countries to work out the details of an international fund for agricultural development as envisaged in the resolution of the Conference. At its second session, the Meeting of Interested Countries on the Establishment of an International Fund for Agricultural Development recommended that the Fund be established as a specialised agency within the United Nations system with autonomy in policy formulation and operations.

Acting on the recommendation of the Meeting of Interested Countries, the General Assembly on 15 December 1975 adopted a resolution requesting the Secretary-General to convene a conference of plenipotentiaries on the establishment of an International Fund for Agricultural Development. By the same resolution the Assembly also requested the Economic and Social Council to arrange for the negotiation with the Preparatory Commission for the Fund, to be established by the conference, of an agreement with the Fund to

constitute it as a specialised agency in accordance with Articles 57 and 63 of the Charter and to enter into such agreement subject to the approval of the General Assembly.

Responding to the aforementioned resolution of the General Assembly, the Economic and Social Council on 13 May 1976 invited the Preparatory Commission for the Fund to prepare and submit to the Council's Committee on Negotiations with Intergovernmental Agencies proposals for bringing the Fund into relationship with the United Nations, taking into account the agreements previously concluded between the United Nations and the specialised agencies. It also requested the Committee on Negotiations to submit its report to the Council, including the text of a draft relationship agreement.

The Conference on the Establishment of an International Fund for Agricultural Development met in Rome from 10 to 13 June 1976 and adopted the Agreement Establishing the International Fund for Agricultural Development. Article 8, Section 1 of the Agreement provides that the Fund is to enter into negotiations with the United Nations with a view to concluding an agreement to bring it into relationship with the United Nations as one of the specialised agencies referred to in Article 57 of the Charter, and specifies that any such agreement concluded in accordance with Article 63 of the Charter requires the approval of the Governing Council of the Fund, by a two-thirds majority of the total number of votes, upon the recommendation of the Executive Board of the Fund. The Conference also established a Preparatory Commission for the Fund, which it charged, inter alia, with entering into appropriate consultations in respect of a relationship agreement with the United Nations, as foreseen in the Agreement Establishing the Fund.

At its first session the Preparatory Commission on 30 September 1976 took note of the aforementioned invitation of the Economic and Social Council and requested the interim secretariat of the Commission to submit to it at its second session a draft of a relationship agreement with the United Nations. At its second session the Commission on 16 December 1976 authorized its Chairman to transmit to the Council's Committee on Negotiations with

Intergovernmental Agencies a draft of the Relationship Agreement and further authorized its Chairman to supply to the Committee any clarifications that it might seek concerning that draft. At its third session the Commission on 7 April 1977 recognized the need to explain to the Committee the full rationale for the proposal incorporated in the Commission's draft of the Relationship Agreement and approved an Explanatory Note on that Agreement which it authorized its Chairman to transmit to the Secretary-General of the United Nations for submission to the Committee; it further authorized its Chairman, assisted by the two Vice-Chairmen, to present on behalf of the Commission any clarification that the Committee might seek concerning the draft Relationship Agreement and to agree to any amendments in that draft within the framework of the Explanatory Note.

The Committee for Negotiations with Intergovernmental Agencies of the Economic and Social Council met between 14 April and 11 May 1977, with the participation of the Chairman and the two Vice-Chairmen of the Preparatory Commission for the Fund. At the conclusion of its meetings it submitted a report to the Council containing a revised text of a draft Relationship Agreement and indicating with regard to Article IX thereof (entitled "Personnel Arrangements") that the Chairman of the Commission had stated that his agreement with the text of the draft of this article was subject to endorsement by the Commission. The Council at its sixty-second session on 13 May 1977 took note with appreciation of the report of the Committee and decided to transmit to the Fund, for its approval the draft Relationship Agreement proposed by the Committee, and the summary record of the Council's discussion.

At its fourth session the Preparatory Commission for the Fund on 13 July 1977 noted the report of its officers on the negotiations concerning the draft Relationship Agreement that they had conducted with the Committee on Negotiations with Intergovernmental Agencies, and approved the draft of the Relationship Agreement annexed to the report of the Committee.

The Economic and Social Council at its sixty-third session, on the basis of a report of its Policy and Programme Co-ordination Committee,



decided on 3 August 1977 to recommend to the General Assembly that the Assembly approve at its thirty-second session the text of the draft Relationship Agreement in the form that had been negotiated by the Committee on Negotiations with Intergovernmental Agencies and the Preparatory Commission for the Fund.

At the thirty-second session of the General Assembly, the Administrative and Budgetary Committee of the Assembly, taking note of a report of the Assembly's Advisory Committee on Administrative and Budgetary Questions that commented on the proposed personnel arrangements as contained in Article IX of the draft Agreement, recommended to the General Assembly that it invite the Fund, once constituted, to participate in the United Nations common system for the regulation and co-ordination of the conditions of employment of staff and, in particular, to accept the statute of the International Civil Service Commission, which it noted aimed at the development of a single, unified international civil service through the application of common personnel, standards, methods and arrangements. The Assembly accepted this recommendation and addressed a resolution to this effect to the Fund on 13 December 1977.

The Executive Board of the Fund at its first session on 14 December 1977 considered the proposals of the Preparatory Commission concerning the personnel practices of the Fund in the light of the resolution that had just been addressed to the Fund by the General Assembly; thereupon the Board approved, in connection with its recommendation that the Governing Council of the Fund approve the draft Relationship Agreement with the United Nations, the text of a communication that the President of the Fund was to make to the Secretary-General announcing the approval of that Agreement, in which message it was to be stated that the Executive Board of the Fund had approved the adoption of the United Nations common system for determining the initial salary structure of the staff of the Fund and had authorized the President of the Fund to initiate discussions with the Chairman of the International Civil Service Commission to secure a certain degree of flexibility within the common system, required for a new financing institution with a small staff. Acting on the recommendation of



the Board, the Governing Council on 14 December 1977 approved the Relationship Agreement, and the President of the Fund communicated this approval to the Secretary-General of the United Nations in the message the text of which had been approved by the Executive Board.

After the receipt of the communication from the President of the Fund, the General Assembly, acting on the recommendation of its Administrative and Budgetary Committee, on 15 December 1977 approved Articles VII, VIII and IX of the draft Relationship Agreement and on the same date, acting on the recommendation of its Economic and Financial Committee, approved the draft Relationship Agreement.

Article XVIII of the Agreement provides that the Agreement shall enter into force on its approval by the General Assembly of the United Nations and the Governing Council of the International Fund for Agricultural Development.

The Agreement accordingly came into force on 15 December 1977.

A copy of the authentic text of the Agreement is attached hereto.



Agreement between the United Nations and the International  
Fund for Agricultural Development

Preamble

In accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations and of section 1 of article 8 of the Agreement Establishing the International Fund for Agricultural Development (hereinafter called the "Agreement"), the United Nations and the International Fund for Agricultural Development (hereinafter called the "Fund") agree as follows:

Article I

Recognition

The United Nations recognizes the Fund as a specialized agency, operating in accordance with the Agreement concluded among its member States with the objective of mobilizing additional resources to be made available on concessional terms for agricultural development in developing member States.

Article II

Reciprocal representation

1. Representatives of the United Nations shall be:
  - (a) Entitled to attend, and to participate without vote in, meetings of the Governing Council of the Fund;
  - (b) Invited to participate without vote in broad policy-making meetings of other organs and committees of the Fund.
2. Representatives of the Fund shall be:
  - (a) Entitled to attend meetings of the General Assembly of the United Nations for purposes of consultations;
  - (b) Entitled to attend, and to participate without vote in, meetings of the Main Committees and other organs of the General Assembly, in particular the World Food Council, as well as meetings of the Economic and Social Council and of the Trusteeship Council and of their respective subsidiary bodies dealing with matters in which the Fund has an interest.





3. Sufficient advance notice of these meetings and their agendas shall be given so that, in consultation, arrangements can be made for adequate representation.

4. Written statements presented by either organization to the other shall be distributed by the secretariat of the latter to the members of the appropriate bodies in accordance with their rules of procedure.

### Article III

#### Proposal of agenda items

Subject to such preliminary consultation as may be necessary, the Fund shall include in the provisional agenda of the appropriate organ of the Fund items proposed by the United Nations. Similarly, the Economic and Social Council and the World Food Council and their subsidiary bodies, as appropriate, shall include in their provisional agendas items proposed by the Fund.

### Article IV

#### Co-ordination and co-operation

1. In view of the co-ordinating role and global responsibilities of the United Nations in promoting economic and social development and the need for positive and effective co-operation between the United Nations and the Fund, the Fund agrees to co-operate closely with the United Nations in making co-ordination of the policies and activities of the United Nations and those of the organs and agencies within the United Nations system fully effective. The Fund agrees further to participate in the work of the United Nations aimed at enhancing such co-operation and co-ordination, in particular through membership in the Administrative Committee on Co-ordination, and, as appropriate, in the work of such other United Nations bodies that have been established or may be established for that purpose.

2. In its financing operations, the Fund shall exercise its own independent judgment in accordance with the Agreement, taking fully into account the over-all policy guidelines established by the United Nations in the field of economic and social, and particularly agricultural, development.



Article V

Consultation and recommendations

1. The Fund, having regard to the obligations of the United Nations to promote the objectives set forth in Article 55 of the Charter and the functions and powers of the United Nations and its appropriate organs, in particular to make recommendations for the co-ordination of the policies and activities of the specialized agencies, agrees to arrange for the consideration as soon as possible, by the appropriate organ of the Fund, of all formal recommendations which the United Nations may make to it.
2. The Fund agrees to enter into consultation with the United Nations upon request with respect to such recommendations, and in due course to report to the United Nations on the action taken by the Fund to give effect to such recommendations, or on the other results of their consideration.

Article VI

Exchange of information and documents

1. Subject to such arrangements as may be necessary between the United Nations and the Fund for the safeguarding of confidential material furnished to them by their members or other sources, full and prompt exchange of information and documents shall be made between the United Nations and the Fund.
2. Without prejudice to the generality of the provisions of paragraph 1 of this article:
  - (a) The Fund agrees to transmit to the United Nations regular reports on the activities of the Fund;
  - (b) To the fullest extent practicable, the Fund agrees to furnish upon request to the United Nations any special reports, studies or information;
  - (c) The United Nations shall upon request furnish to the Fund such information as may be of special interest to the Fund.

Article VII

Budgetary and financial arrangements

1. The Fund recognizes the desirability of establishing close budgetary and financial co-operation in administrative matters with the United Nations in order that the administrative operations of the United Nations and the agencies within the United Nations system shall be carried out in the most efficient and economical manner possible and that the maximum measure of co-ordination and uniformity with respect to these operations shall be secured.
2. Any financial and budgetary arrangement entered into between the United Nations and the Fund shall be subject to the approval of the General Assembly of the United Nations and the Governing Council of the Fund.
3. The Fund shall transmit its administrative budget to the United Nations so as to enable the General Assembly of the United Nations to examine it and make recommendations, in accordance with paragraph 3 of Article 17 of the Charter of the United Nations.

Article VIII

Administrative co-operation

1. The United Nations and the Fund recognize the desirability, in the interest of administrative and technical uniformity and of the most efficient use of personnel and resources, of avoiding, whenever possible, the establishment and operation of competitive or overlapping facilities and services among the United Nations and the specialized agencies.
2. Accordingly, the United Nations and the Fund shall consult together concerning the establishment and use of common administrative and technical services and facilities, in addition to those referred to in articles IV, V, IX, X and XII of the present Agreement in so far as the establishment and use of such services may from time to time be found practicable and appropriate.
3. The consultations referred to in this article shall be utilized to establish the most equitable manner of financing any special services or assistance furnished, upon request, by the Fund to the United Nations or by the United Nations to the Fund.



Article IX

Personnel arrangements

1. The Fund agrees to co-operate with the International Civil Service Commission on matters concerning the regulation and co-ordination of the conditions of service of staff.
2. The United Nations and the Fund agree:
  - (a) To consult together concerning matters of mutual interest relating to the employment of staff, with a view to securing as much uniformity in these matters as may be feasible;
  - (b) To co-operate in the interchange of staff when desirable, on a temporary or permanent basis;
  - (c) That the Fund may participate in the United Nations Joint Staff Pension Fund in accordance with the Regulations of the Pension Fund.
3. The terms and conditions on which any facilities or services of the United Nations or the Fund in connexion with the matters referred to in this article are to be extended to the other shall, where necessary, be the subject of subsidiary agreements concluded for this purpose.

Article X

Statistical services

1. The Fund recognizes the United Nations as the central agency for the collection, analysis, publication, standardisation and improvement of statistics serving the general purposes of international organizations, without prejudice to the right of the Fund to concern itself with any statistics so far as they may be essential for its own purposes.
2. The United Nations and the Fund agree to strive for the maximum co-operation, the elimination of all undesirable duplication between them and the most efficient use of their technical personnel in their respective processes of collection, analysis, publication and dissemination of statistical information. They shall combine their efforts to secure the greatest possible usefulness and utilization of statistical information and to minimize the burden placed upon Governments and on other organizations from which such information may be collected.

3. The United Nations and the Fund agree to furnish each other promptly with all appropriate non-confidential statistical information.

4. The United Nations shall, in consultation with the Fund and other agencies within the United Nations system, continue to develop administrative instruments and procedures through which effective statistical co-operation may be secured among all these organizations.

Article XI

Assistance to the United Nations

Within the field of its competence and based upon its Agreement, the Fund shall co-operate with and render such assistance to the United Nations as the latter may request under its Charter, particularly for the accomplishment of the principles and purposes set forth in Article 55 thereof.

Article XII

Technical assistance

1. The United Nations and the Fund shall co-operate in the provision of technical assistance for agricultural development, shall avoid undesirable duplication of activities and services relating to such technical assistance and shall take such action as may be necessary to achieve the effective co-ordination of their technical assistance activities, within the framework of co-ordination machinery in the field of technical assistance.

2. Within the field of its competence and based upon its relevant instruments, the Fund agrees to co-operate with the United Nations and its organs, as well as the agencies within the United Nations system, in promoting and facilitating the transfer of technology for food and agricultural development from developed to developing countries, the development of indigenous technology and technical co-operation among developing countries in such a manner as to assist these countries in attaining their objectives in these fields.

Article XIII

International Court of Justice

1. The Fund shall furnish any information that may be requested by the International Court of Justice pursuant to Article 34 of the Statute of the Court.
2. The General Assembly of the United Nations authorizes the Fund to request advisory opinions of the International Court of Justice on legal questions arising within the scope of the Fund's activities, other than questions concerning the mutual relationships of the Fund and the United Nations or other specialized agencies. Such requests may be addressed to the Court by the Governing Council of the Fund, or by its Executive Board acting pursuant to an authorization by the Governing Council. The Fund shall inform the Economic and Social Council of any such request it addresses to the Court.

Article XIV

Relations with other international organizations

The Fund shall inform the Economic and Social Council of any formal agreement which the Fund shall enter into with any specialized agency, and in particular agrees to inform the Council of the nature and scope of any such agreement before it is concluded.

Article XV

United Nations laissez-passes

The officials of the Fund shall be entitled to use the laissez-passes of the United Nations in accordance with such special arrangements as may be concluded between the Secretary-General of the United Nations and the President of the Fund.

Article XVI

Implementation of the Agreement

The Secretary-General of the United Nations and the President of the Fund may enter into such supplementary arrangements for the implementation of the present Agreement as may be found desirable.

Article XVII

Amendment and revision

The present Agreement may be amended or revised by agreement between the United Nations and the Fund, and any such amendment or revision shall enter into force upon approval by the General Assembly of the United Nations and the Governing Council of the Fund.

Article XVIII

Entry into force

The present Agreement shall enter into force upon its approval by the General Assembly of the United Nations and the Governing Council of the Fund.



IN FAITH WHEREOF we have appended our signatures this sixth day of April one thousand nine hundred and seventy-eight at London to two original copies of the present Protocol in the English and French languages. One of the original copies will be filed and recorded with the Secretariat of the United Nations and the other will be deposited in the archives of the International Fund for Agricultural Development.

EN FOI DE QUOI nous avons apposé nos signatures le six avril mil neuf cent soixante dix-huit à Londres aux deux exemplaires originaux du présent Protocole, en langues française et anglaise. L'un des exemplaires originaux sera classé et enregistré auprès du Secrétariat de l'Organisation des Nations Unies et l'autre sera déposé dans les archives du Fonds international de développement agricole.

Le Secrétaire général de l'Organisation  
des Nations Unies

KURT WALDHEIM

Secretary-General of the  
United Nations

Le Président du Fonds international  
de développement agricole

ABDELMUSSIN M. AL-SUDARY

President of the International Fund  
for Agricultural Development



**X. RESOLUTION ON THE REQUEST BY THE  
EXECUTIVE BOARD OF IFAD TO THE  
INTERNATIONAL COURT OF JUSTICE FOR AN  
ADVISORY OPINION WITH RESPECT TO  
JUDGEMENT NO. 2867 OF THE  
ADMINISTRATIVE TRIBUNAL OF THE  
INTERNATIONAL LABOUR ORGANIZATION**



## **Resolution on the request by the Executive Board to the International Court of Justice for an advisory opinion with respect to Judgment No. 2867 of the International Labour Organisation Administrative Tribunal**

The Executive Board of the International Fund for Agricultural Development, at its ninety-ninth session held on 21-22 April 2010:

**Whereas**, by its Judgment No. 2867 of 3 February 2010, the Administrative Tribunal of the International Labour Organisation (ILOAT) confirmed its jurisdiction in the complaint introduced by Ms A.T.S.G. against the International Fund for Agricultural Development,

**Whereas** Article XII of the Annex of the Statute of the Administrative Tribunal of the International Labour Organisation provides as follows:

"1. In any case in which the Executive Board of an international organization which has made the declaration specified in Article II, paragraph 5, of the Statute of the Tribunal challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Executive Board concerned, for an advisory opinion, to the International Court of Justice

2. The opinion given by the Court shall be binding."

**Whereas** the Executive Board, after consideration, wishes to avail itself of the provisions of the said Article,

**Decides** to submit the following legal questions to the International Court of Justice for an advisory opinion:

**I.** Was the ILOAT competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development (hereby the Fund) on 8 July 2008 by Ms. A.T.S.G., an individual who was a member of the staff of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereby the Convention) for which the Fund acts merely as housing organization?

**II.** Given that the record shows that the parties to the dispute underlying the ILOAT's Judgment No. 2867 were in agreement that the Fund and the Global Mechanism are separate legal entities and that the Complainant was a member of the staff of the Global Mechanism, and considering all the relevant documents, rules and principles, was the ILOAT's statement, made



in support of its decision confirming its jurisdiction, that "the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes" and that the "effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund" outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**III.** Was the ILOAT's general statement, made in support of its decision confirming its jurisdiction, that "the personnel of the Global Mechanism are staff members of the Fund" outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**IV.** Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea alleging an abuse of authority by the Global Mechanism's Managing Director outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**V.** Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea that the Managing Director's decision not to renew the Complainant's contract constituted an error of law outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

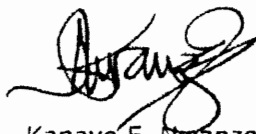
**VI.** Was the ILOAT's decision confirming its jurisdiction to interpret the Memorandum of Understanding between the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and IFAD (hereby the MoU), the Convention, and the Agreement Establishing IFAD beyond its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**VII.** Was the ILOAT's decision confirming its jurisdiction to determine that by discharging an intermediary and supporting role under the MoU, the President was acting on behalf of IFAD outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**VIII.** Was the ILOAT's decision confirming its jurisdiction to substitute the discretionary decision of the Managing Director of the Global Mechanism with its own outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**IX.** What is the validity of the decision given by the ILOAT in its Judgment No. 2867?

Rome, 22 April 2010



Kanayo F. Nwanze  
Chairman of the Executive Board



Paolo Ciocca  
Secretary of the Executive Board



Enabling poor rural people to overcome poverty

5 May 2010

Dear Sir,

Further to your electronic message dated 13 April 2010, I refer to Judgment No. 2867 decided by the International Labour Organization Administrative Tribunal (ILOAT) at its 108<sup>th</sup> Session on 3 February 2010, in which, the Tribunal ruled in favour of your client Mrs Ana Teresa Saez Garcia (the "Complainant") and ordered the International Fund for Agricultural Development (the "Fund") to pay the Complainant: (i) material damages equivalent to the salary and other allowances the Complainant would have received if her contract had been extended for two years from 16 March 2006, together with interest at the rate of 8 per cent per annum from due dates until the date of payment (the Complainant is to give credit for wages and salary earned within that period); (ii) moral damages in the sum of 10,000 Euros; and (iii) costs in the amount of 5 000 Euros.

I further refer to my letter dated 15 February 2010 to the Complainant, notifying her of the Fund's receipt of Judgment No. 2867 and further informing her that the Fund was considering an appeal of this Judgment to the International Court of Justice, pursuant to Article XII of the Annex of the Statute of the ILOAT. Pending this decision, I requested the Complainant to provide the following information: (i) the wages or salary the Complainant earned for a two year period starting from 16 March 2006; (ii) the Complainant's pay slips from all her employers, where applicable, (iii) tax returns of the Complainant from the Italian Government, and any other Government, as applicable, (iv) an affidavit certifying the Complainant's total wages and salary earned within that period, and (v) any other information on the Complainant's wages or salary for the period described above.

On 8 March 2010, the Complainant addressed two separate documents to my attention. The first document is entitled "CUD 2008" and the second one is entitled "Travel Expenses 2007".

Please be advised that on 22 April 2010, the Executive Board of the Fund, by resolution EB 2010/99/R.43 adopted at its 99<sup>th</sup> Session, decided to avail itself of the provisions of Article XII of the Annex of the Statute of the ILOAT and requested an advisory opinion from the International Court of Justice on Judgment No. 2867 (Annex I, Resolution EB 2010/99/R.43 of the Executive Board). Moreover, on 23 April 2010, the Fund submitted nine questions to the International Court of Justice by means of a formal Request for an Advisory Opinion (Annex II, Request for an Advisory Opinion).

On 4 May 2010, the Fund signed an Escrow Agreement with the Banca Popolare di Sondrio and established an escrow account. The Fund has currently deposited into the escrow account a sum which corresponds to the amounts awarded in Judgment No. 2867. The amount so deposited in the escrow account needs to be recalculated upon the receipt of satisfactory evidence of the Complainant's salary and wages for a two year period starting from 16 March 2006.

Finally, please find attached the request for the suspension of the execution of Judgment No. 2867 pending the outcome of the advisory opinion of the International Court of Justice, which was filed by the Fund on 4 May 2010 with the ILOAT (Annex III, Request by the Defendant Organization for the Suspension of the Execution of Judgment No. 2867). The Fund understands and anticipates that the Complainant shall be invited by the Tribunal to share her views on the aforementioned request.

Regarding the advisory procedure before the International Court of Justice, the Fund wishes to point out that the Court's Statute contains no provisions whereby individuals may be given access to the Court, in the sense that individuals may not be considered parties to cases before the Court. For this reason, and in order to ensure that the Court is made aware of the views of the Complainant, the Fund hereby informs you that it is prepared to transmit to the Court any view that the Complainant may wish to share with it. Moreover, having regard to the practice followed by the Court, please be informed that should the Complainant wish to present written submissions or documents, such written submissions and documents must be submitted in English and in French.

Yours sincerely,



Rutsel Silvestre J. Martha

Mr Lawrence Christy  
Counsel for Mrs Ana Teresa Saez Garcia  
Via della Luce 3B  
00153 Rome

CC: Mrs Ana Teresa Saez Garcia  
Casella Postale 64221, Roma 64  
00100 Rome

Catherine Comtet  
The Registry  
International Labour Organization  
Administrative Tribunal  
4 route des Morillons  
1211 Geneva 22

## **Resolution on the request by the Executive Board to the International Court of Justice for an advisory opinion with respect to Judgment No. 2867 of the International Labour Organisation Administrative Tribunal**

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**Whereas** Article XII of the Annex of the Statute of the Administrative Tribunal of the International Labour Organisation provides as follows:

"1. In any case in which the Executive Board of an international organization which has made the declaration specified in Article II, paragraph 5, of the Statute of the Tribunal challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Executive Board concerned, for an advisory opinion, to the International Court of Justice

2. The opinion given by the Court shall be binding."

**Whereas** the Executive Board, after consideration, wishes to avail itself of the provisions of the said Article,

**Decides** to submit the following legal questions to the International Court of Justice for an advisory opinion:

**I.** Was the ILOAT competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development (hereby the Fund) on 8 July 2008 by Ms. A.T.S.G., an individual who was a member of the staff of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereby the Convention) for which the Fund acts merely as housing organization?

**II.** Given that the record shows that the parties to the dispute underlying the ILOAT's Judgment No. 2867 were in agreement that the Fund and the Global Mechanism are separate legal entities and that the Complainant was a member of the staff of the Global Mechanism, and considering all the relevant documents, rules and principles, was the ILOAT's statement, made



in support of its decision confirming its jurisdiction, that "the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes" and that the "effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund" outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

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**V.** Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea that the Managing Director's decision not to renew the Complainant's contract constituted an error of law outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

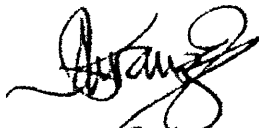
**VI.** Was the ILOAT's decision confirming its jurisdiction to interpret the Memorandum of Understanding between the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and IFAD (hereby the MoU), the Convention, and the Agreement Establishing IFAD beyond its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**VII.** Was the ILOAT's decision confirming its jurisdiction to determine that by discharging an intermediary and supporting role under the MoU, the President was acting on behalf of IFAD outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**VIII.** Was the ILOAT's decision confirming its jurisdiction to substitute the discretionary decision of the Managing Director of the Global Mechanism with its own outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**IX.** What is the validity of the decision given by the ILOAT in its Judgment No. 2867?

Rome, 22 April 2010



Kanayo F. Nwanze  
Chairman of the Executive Board



Paolo Ciocca  
Secretary of the Executive Board



## **Résolution sur la demande d'avis consultatif, présentée par le Conseil d'administration à la Cour internationale de Justice, concernant le jugement n° 2867 rendu par le Tribunal administratif de l'Organisation internationale du Travail**

Le Conseil d'administration, à sa quatre vingt-dix-neuvième session des 21 et 22 avril 2010 :

**Attendu que**, dans son jugement n° 2867 en date du 3 février 2010, le Tribunal administratif de l'Organisation internationale du Travail (le Tribunal) a affirmé sa compétence en relation avec la requête formée par Mme A. T. S. G. contre le Fonds international de développement agricole,

**Attendu que** l'article XII de l'annexe du Statut du Tribunal administratif de l'Organisation internationale du Travail dispose que:

"1. Au cas où le Conseil exécutif d'une organisation internationale ayant fait la déclaration prévue à l'article II, paragraphe 5, du Statut du Tribunal conteste une décision du Tribunal affirmant sa compétence ou considère qu'une décision dudit Tribunal est viciée par une faute essentielle dans la procédure suivie, la question de la validité de la décision rendue par le Tribunal sera soumise par ledit Conseil exécutif, pour avis consultatif, à la Cour internationale de justice.  
2. L'avis rendu par la Cour aura force obligatoire."


**Attendu que** le Conseil d'administration, après examen, souhaite se prévaloir des dispositions dudit article,

**Décide** de soumettre à la Cour internationale de Justice, pour avis consultatif, les questions juridiques ci-après:

I. Le Tribunal avait-il compétence, en vertu de l'article II de son Statut, pour examiner la requête dirigée contre le Fonds international de développement agricole (ci-après dénommé le Fonds), en date du 8 juillet 2008, formée par Mme A. T. S. G., une personne physique qui était membre du personnel du Mécanisme mondial de la Convention des Nations Unies sur la lutte contre la désertification dans les pays gravement touchés par la sécheresse et/ou la désertification, en particulier en Afrique (ci-après dénommée la Convention), vis-à-vis duquel le Fonds joue simplement le rôle d'organisation d'accueil?

II. Étant donné qu'il ressort du dossier que les parties au litige à la base du jugement n° 2867 du Tribunal sont convenues que le Fonds et le Mécanisme mondial sont des entités juridiques distinctes et que la requérante était membre du personnel du Mécanisme mondial, et en considération de tous les documents, règles et principes pertinents, l'assertion du Tribunal, en appui à sa décision affirmant sa compétence, selon laquelle "le Mécanisme mondial doit, à toutes fins administratives, être assimilé aux divers services administratifs du Fonds" et que "la conséquence en est que les décisions administratives prises par le Directeur général au sujet du personnel du Mécanisme mondial sont, en droit, des décisions du Fonds", relevait-elle de sa compétence et/ou constituait-elle une faute essentielle de la procédure suivie par le Tribunal?

III. L'assertion générale du Tribunal, en appui à sa décision affirmant sa compétence, selon laquelle "les membres du personnel du Mécanisme mondial sont des fonctionnaires du Fonds", relevait-elle de sa compétence et/ou constituait-elle une faute essentielle de la procédure suivie par le Tribunal?



IV. La décision du Tribunal affirmant sa compétence pour examiner l'argument de la requérante selon lequel la décision du Directeur général du Mécanisme mondial était entachée d'abus de pouvoir relevait-elle de sa compétence et/ou constituait-elle une faute essentielle de la procédure suivie par le Tribunal?

V. La décision du Tribunal affirmant sa compétence pour examiner l'argument de la requérante selon lequel la décision du Directeur général de ne pas renouveler le contrat de la requérante constituait une erreur de droit relevait-elle de sa compétence et/ou constituait-elle une faute essentielle de la procédure suivie par le Tribunal?

VI. La décision du Tribunal affirmant sa compétence pour interpréter le mémorandum d'accord entre la Conférence des Parties à la Convention des Nations Unies sur la lutte contre la désertification dans les pays gravement touchés par la sécheresse et/ou la désertification, en particulier en Afrique et le FIDA (ci-après dénommé le Mémorandum), la Convention et l'Accord portant création du FIDA relevait-elle de sa compétence et/ou constituait-elle une faute essentielle de la procédure suivie par le Tribunal?

VII. La décision du Tribunal affirmant sa compétence pour déterminer que, en s'acquittant d'un rôle d'intermédiaire et de soutien, en application du Mémorandum, le Président agissait au nom du FIDA relevait-elle de sa compétence et/ou constituait-elle une faute essentielle de la procédure suivie par le Tribunal?

VIII. La décision du Tribunal affirmant sa compétence pour substituer à la décision discrétionnaire du Directeur général du Mécanisme mondial sa propre décision relevait-elle de sa compétence et/ou constituait-elle une faute essentielle de la procédure suivie par le Tribunal?

IX. La décision rendue par le Tribunal dans son jugement n° 2867 est-elle recevable?

Rome, le 22 avril 2010



Kanayo F. Nwanze  
Président du Conseil d'administration



Paolo Ciocca  
Secrétaire du Conseil  
d'administration

23 April 2010

Request for Advisory Opinion

Dear Sir,

I have the honour to inform you that the Executive Board of the International Fund for Agricultural Development (IFAD), by a resolution adopted at its 99<sup>th</sup> session on April 22<sup>nd</sup> 2010, acting within the framework of Article XII of the Annex of the Statute of the Administrative Tribunal of the International Labour Organisation, decided to challenge the decision rendered by the Tribunal in Judgment No. 2867 at its 108<sup>th</sup> Session, on February 3<sup>rd</sup>, 2010, in the matter of S-G. v. IFAD, and to refer the question of the validity of Judgment 2867 to the International Court of Justice.

Accordingly, the Executive Board of IFAD, by a resolution adopted at its 99<sup>th</sup> session on April 22<sup>nd</sup> 2010, decided to request the International Court of Justice to give an advisory opinion on the following questions:

**I.** Was the ILOAT competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development (hereby the Fund) on 8 July 2008 by Ms S-G, an individual who was a member of the staff of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereby the Convention) for which the Fund acts merely as housing organization?

**II.** Given that the record shows that the parties to the dispute underlying the ILOAT's Judgment No. 2867 were in agreement that the Fund and the Global Mechanism are separate legal entities and that the complainant was a member of the staff of the Global Mechanism, and considering all the relevant documents, rules and principles, was the ILOAT's statement, made in support of its decision confirming its jurisdiction, that "the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes" and that the "effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund" outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**III.** Was the ILOAT's general statement, made in support of its decision confirming its jurisdiction, that "the personnel of the Global Mechanism are staff members of the Fund" outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**IV.** Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea alleging an abuse of authority by the Global Mechanism's Managing Director outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**V.** Was the Administrative Tribunal's decision confirming its jurisdiction to entertain the Complainant's plea that the Managing Director's decision not to renew the Complainant's contract constituted an error of law outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**VI.** Was the ILOAT's decision confirming its jurisdiction to interpret the Memorandum of Understanding between the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and IFAD (hereby the MoU), the Convention, and the Agreement Establishing IFAD beyond its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**VII.** Was the ILOAT's decision confirming its jurisdiction to determine that by discharging an intermediary and supporting role under the MoU, the President was acting on behalf of IFAD outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**VIII.** Was the ILOAT's decision confirming its jurisdiction to substitute the discretionary decision of the Managing Director of the Global Mechanism with its own outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

**IX.** What is the validity of the decision given by the ILOAT in its Judgment No. 2867?

One copy each of the French and English texts of the latter resolution of the Executive Board of IFAD, both duly certified, are herein enclosed.

In accordance with Article 65 of the Statute of the Court, IFAD shall transmit to the Court all documents likely to throw light upon the question.

I additionally have the honour to inform you that I have designated Dr Rutsel Silvestre J. Martha, the General Counsel, as the representative of IFAD in the proceedings of the Court concerning this request. Dr Martha is authorized to present written and oral statements on behalf of IFAD in the matter before the Court.

Yours faithfully,

  
Kanayo F. Nwanze

**President of the International Court of Justice**  
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2517 KJ The Hague  
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