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## **Update on appeal of judgment no. 2867 of the International Labour Organization Administrative Tribunal to the International Court of Justice**

### **Note to Executive Board representatives**

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**For: Information**

## **Update on appeal of judgment no. 2867 of the International Labour Organization Administrative Tribunal to the International Court of Justice**

### **The Executive Board resolution**

1. The Executive Board, by a resolution adopted at its ninety-ninth session on 22 April 2010 (EB 2010/99/R.43/Rev.1), acting within the framework of article XII of the Annex to the Statute of the International Labour Organization Administrative Tribunal (ILOAT), decided to refer the question of the validity of ILOAT judgment no. 2867 to the International Court of Justice (the "Court") for an advisory opinion.

### **Filing of the case**

2. In accordance with the Board's decision, the President submitted the questions contained in the resolution to the Court on 23 April 2010 and designated the General Counsel as IFAD's legal representative in the proceedings.

### **Order of the Court**

3. By letters dated 26 April 2010, the Registrar of the Court gave notice of the request for an advisory opinion to all States entitled to appear before the Court. By an order of 29 April 2010, the Court:
  - (a) decided that the Fund and its Member States entitled to appear before the Court, the States parties to the United Nations Convention to Combat Desertification (UNCCD) entitled to appear before the Court and those specialized agencies of the United Nations that have made a declaration recognizing the jurisdiction of the ILOAT pursuant to article II, paragraph 5 of the Statute of the Tribunal are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion;
  - (b) fixed 29 October 2010 as the time limit within which written statements on these questions may be presented to the Court, in accordance with article 66, paragraph 2 of the Statute;
  - (c) fixed 31 January 2011 as the time limit within which States and organizations having presented written statements may submit written comments on such written statements, in accordance with article 66, paragraph 4 of the Statute;
  - (d) decided that the President of the International Fund for Agricultural Development shall transmit to the Court any statement setting forth the views of the complainant in the proceedings against the Fund before the ILOAT which the said complainant may wish to bring to the attention of the Court; and fixed 29 October 2010 as the time limit within which any possible statement by the complainant who is the subject of the judgment may be presented to the Court and 31 January 2011 as the time limit within which any possible comments by the complainant may be presented to the Court.
4. The subsequent procedure was reserved for further decision.

### **Filing of written statements**

5. In his order dated 24 January 2011, the President of the Court noted that the General Counsel of IFAD on 19 October 2010 had submitted a written statement by the Fund and on 26 October 2010 a statement setting forth the views of the complainant. The President further noted that on 28 October 2010 the Ambassador of the Plurinational State of Bolivia to the Kingdom of the Netherlands had submitted a written statement by the Government of the Plurinational State of Bolivia. These statements were submitted within the time limits fixed for that purpose by the Court.

**Extension order of the Court**

6. By an order dated 24 January 2011, the President of the Court extended to 11 March 2011, the time limit within which States and organizations having presented written statements may submit, in accordance with article 66, paragraph 4 of the Statute, written comments on the other written statements; and the time limit within which any comments by the complainant in the proceedings against the Fund before the Tribunal may be presented to the Court.
7. The time limits, which were originally fixed at 31 January 2011, have been extended in response to a request to that effect made by the General Counsel of IFAD in a letter dated 21 January 2011.

**Seeking the views of the UNCCD Conference of the Parties**

8. On 9 March 2011, IFAD submitted a statement to the Court noting that, by the terms of the Court's order dated 29 April 2010, the Conference of the Parties (COP) of the UNCCD was not among those invited to submit written statements and written comments in the present proceedings. IFAD informed the Court that it had entered into consultations with the Bureau of the COP at its meeting in Bonn, Germany, on 20 February 2011. IFAD noted that in the light of what transpired at the aforementioned meeting in Bonn, and as indicated by the text of ILOAT judgment no. 2867 and the written statements filed with the Court in October 2010, it is evident that the COP – the Fund's counterparty under the 1999 Memorandum of Understanding regarding the modalities and administrative operations of the Global Mechanism, and to which reference is made in questions VI and VII of IFAD's request for an advisory opinion – is likely to be able to furnish information on the questions referred to the Court in the present proceeding.
9. Noting that the written phase of the case had ended, IFAD informed the Court that it believed that it would be worthwhile for the Court to seek the views of the COP in any way that the Court deems appropriate and/or in the oral proceedings that the Fund requested.
10. The Fund also requested that the written statements and annexed documents submitted in this case be made accessible to the public at the appropriate time. In addition, the Fund requested permission to provide copies of the written statements and annexed documents filed in this case to the COP and the Office of Legal Affairs of the United Nations Secretariat as soon as the Court, or its President if the Court is not sitting, decides upon the Fund's present request for disclosure.