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Enabling poor rural people
to overcome poverty

Procedure for the negotiation, signature and approval of agreements and similar legal instruments

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Procedure for the negotiation, signature and approval of agreements and similar legal instruments

A. Introduction

1. Further to the announcement made at the ninth special session of the Executive Board, this document elaborates on the procedure followed by the Fund for the negotiation, signature and approval of agreements with third parties, including memorandums of understanding. As will be seen, this matter involves, on the one hand, the approval authority of the Executive Board and, on the other, the function of the President as the legal representative of the Fund and his or her responsibility to conduct the business of the organization. Moreover, the exercise of these powers is intimately linked with the rules of international law related to agreements concluded by international organizations.
2. The Agreement Establishing IFAD prescribes that the Fund shall work closely with other United Nations organizations, other international governmental organizations, international financial institutions, non-governmental organizations and others, implicitly recognizing such collaboration as essential for the Fund in delivering on its mandate.

B. Legal framework

3. **Relevant international law.** IFAD is recognized by the United Nations as a specialized agency, operating in accordance with the Agreement Establishing IFAD,¹ and in accordance with articles 57 and 63 of the United Nations Charter.² This means that IFAD, as other specialized United Nations agencies, is deemed capable of independently bearing rights and obligations under international law. As a result and as stated in the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, "international organizations possess the capacity to conclude treaties, which is necessary for the exercise of their functions and the fulfilment of their purposes".³ The Fund's international legal personality is also reflected in the Agreement Establishing IFAD.⁴ In addition to the international legal personality that enables the Fund to contract with States and international organizations, the Fund also possesses the capacity to enter into agreements with private parties, including with non-governmental organizations. This latter capacity is mainly stated in the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.
4. Thus consistent with the rules reflected in the 1986 Vienna convention and with, inter alia, the 1947 convention, the Fund enters into agreements or establishes working arrangements with other United Nations organizations, other international governmental organizations, international financial institutions, non-governmental organizations and others.

¹ Article I of the Agreement between the United Nations and the International Fund for Agricultural Development, 1978.

² Article 57 of the United Nations Charter provides that "the various specialized 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 in accordance with the provisions of Article 63." It also specifies that "such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies." Whereas article 63 of the United Nations 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. Such agreements shall be subject to approval by the General Assembly."

³ Preamble to the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Despite being concluded in 1986, this treaty is not yet in force. As is the case with other codified international legal rules, however, regardless of its formal status, it is generally accepted as the applicable law and widely used as a written guide in practice.

⁴ Article 10, section 1 of the Agreement Establishing IFAD provides that "the Fund shall possess international legal personality."

5. **Role of the Executive Board.** Concerning the internal approval process for the Fund to enter into international agreements, article 8, section 2 of the Agreement Establishing IFAD, stipulates that:

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.

Based on the above, the Executive Board may decide to conclude an agreement or establish working arrangements with a third party either ex ante or ex post, or delegate authority to the President to do so.

6. **Role of the President.** Concerning the role of the President, two aspects come into play. First, the President is responsible for conducting the business of the Fund, under the control and direction of the Governing Council and the Executive Board.⁵ In other words, the Agreement Establishing IFAD attributes the power to conduct the day-to-day business of the Fund directly to the President and authorizes the Governing Council and the Executive Board to provide directives to the President in that regard. Second, the President is the legal representative of the Fund.⁶ Given the President's responsibility for conducting the business of the Fund, the President assesses the need for entering into, amending or terminating arrangements with third parties. This entails analysing the business case, conducting attendant legal instruments, authenticating them and then submitting them to the Executive Board for approval. In that process, the President is guided by a decision of the Governing Council, such as the replenishment resolutions, and by the directives of the Executive Board, such as those contained in the various operational policies it has adopted. Based on the above, the President commences consultations with the relevant parties with a view to negotiating and concluding agreements, including memorandums of understanding and other legal instruments.
7. **Validity of agreements.** Given the division of labour between the President and the Executive Board in matters concerning agreements with third parties, it is obvious that such agreements, including memorandums of understanding and other legal instruments of similar nature with other organizations, institutions and agencies, will only become binding for the Fund after completion of the relevant internal procedures of one of the signing parties. For the Fund this means that, pursuant to the Agreement Establishing IFAD, only upon final approval by the Executive Board can the instrument enter into force. Executive Board approval may be given either ex ante or ex post. Both procedures are fully in line with the Agreement Establishing IFAD, whereby Executive Board approval is necessary for an agreement to enter into force. The approach taken for the timing of the signing of a legal instrument is, to a certain extent, based on the common understanding between IFAD and the third party. Currently, in most cases the Fund, in agreement with the third party, decides to sign the agreement prior to Executive Board approval, mainly for efficiency reasons, with the understanding that the agreement can only enter into force after such approval has been obtained.

⁵ Article 6, Section 8 (d) of the Agreement Establishing IFAD.

⁶ Article 6, Section 8 (g) of the Agreement Establishing IFAD.

As the following description of past practice demonstrates, whether the one option or the other is followed will mainly depend on the circumstances and considerations of expediency.

C. Operationalizing the principles

8. **Ex ante approval.** In the past, the preferred procedure was often to seek approval from the Executive Board to authorize the President to negotiate and finalize an agreement with a third party, after which the text of this agreement, as negotiated and concluded, was submitted for information to a subsequent session of the Executive Board. This procedure is therefore followed in the event of the Executive Board explicitly requesting the negotiation and finalization of an agreement with a third party.⁷
9. **Ex post approval.** In the recent past, however, in the light of agriculture's current high place on the global agenda and IFAD's increased profile, the organization is often expected to participate in events that may lead to adoption of instruments prior to their consideration by the Executive Board. Therefore, it has become common practice to negotiate and finalize a text, duly signed by both parties, after which Executive Board approval is sought. Such approval of international instruments is similarly important as, in most cases, the objectives of these documents have not previously been addressed by the Executive Board.⁸
10. **Delegation of authority.** In some cases IFAD enters into framework agreements which, approved by the Executive Board either ex ante or ex post, are mainly intended to build effective partnerships and enhance programmatic cooperation between IFAD and third parties in the implementation of joint initiatives. Under these framework agreements the Executive Board gives the President the authority to enter into subsequent agreements with the third party. Depending on its subject matter, it may or may not be deemed necessary to submit the subsequent agreement to the Executive Board for approval.⁹
11. **International law and the practice of States and international organizations.** Under international law no requirement is foreseen for the timing of signing an international agreement and its entry into force. Therefore, when States enter into international agreements that require ratification, such requirement should be explicitly stated in the agreement. Whereas the 1969 Vienna Convention on the Law of Treaties (i.e. those between States) stipulates that "every State possesses capacity to conclude treaties,"¹⁰ the "consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed".¹¹ In practice when a State signs the treaty, the signature is subject to ratification, acceptance or approval. It means that the State has not expressed its consent to be bound by the treaty through its signature until it ratifies, accepts or approves it. Therefore, in most cases, the international agreement has to be put before the national parliament for approval. The same holds true for the 1986 Vienna convention involving international organizations. There too it is envisaged that an agreement may be signed subject to ex post ratification, acceptance or approval.

⁷ Examples of ex ante Executive Board approval are listed in the annex.

⁸ Examples of ex post Executive Board approval are listed in the annex.

⁹ Examples in which the Executive Board delegated authority to enter into international agreements to the President of IFAD are listed in the annex.

¹⁰ Article 6, 1969 Vienna Convention on the Law of Treaties.

¹¹ Article 11, 1969 Vienna Convention on the Law of Treaties.

Examples of Executive Board ex ante approval of international agreements:

- Memorandum of Understanding between IFAD and the Deutsche Gesellschaft Für Technische Zusammenarbeit (GTZ) GmbH in 2004¹².
- Memorandum of Understanding for a Cooperation Framework between IFAD and the New Partnership for Africa's Development (NEPAD)¹³.

Examples of Executive Board ex post approval of international agreements:

- Memorandum of Understanding with FAO, IFAD, WFP and the Alliance for Green Revolution in Africa (AGRA)¹⁴.
- Another example refers to the Memorandum of Understanding between IFAD and the Japan International Cooperation Agency (JICA) in 2010¹⁵.

Examples in which the Executive Board delegated the authority to enter into international agreements to the President of IFAD:

- Framework agreement for the enhancement of cooperation and the direction of joint operations between IFAD and the OPEC Fund for International Development (OFID)¹⁶.
- Cooperation Agreement between the Organisation for Economic Co-operation and Development (OECD) and IFAD¹⁷.

¹² Document EB 2004/83/INF.4.

¹³ Document EB 2004/82/INF.3.

¹⁴ Document EB 2008/94/R.37.

¹⁵ Document EB 2010/101/R.56.

¹⁶ Document EB/2011/102/R.44.

¹⁷ Document EB 2005/85/INF.6.