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IFAD's withdrawal from the jurisdiction of the Administrative Tribunal of the International Labour Organization (ILOAT) and its submission to the jurisdiction of the United Nations Appeals Tribunal (UNAT) based on the Assessment and Recommendations outlined in EB 2019/126/R.35

Executive Board — 126th Session
Rome, 2-3 May 2019

For: Approval

IFAD's withdrawal from the jurisdiction of the Administrative Tribunal of the International Labour Organization (ILOAT) and its submission to the jurisdiction of the United Nations Appeals Tribunal (UNAT) based on the Assessment and Recommendations outlined in EB 2019/126/R.35

1. During its 126th session the Executive Board hereby unanimously approves the Fund's withdrawal from the jurisdiction of the Administrative Tribunal of the International Labour Organization (ILOAT) and its submission to the jurisdiction of the United Nations Appeals Tribunal (UNAT). The discussions were held in closed session at the request of Executive Board members to ensure a thorough and candid deliberative process.
2. As a consequence of this decision, IFAD will inform the ILOAT of its decision to withdraw from its jurisdiction. In parallel, IFAD will initiate the process to submit to the UNAT's jurisdiction.
3. Any challenge to an employment matter that has been submitted to IFAD's grievance system - starting with the submittal of a claim before the Mandatory Administrative Review (MAR) and including matters currently under review of the Joint Appeals Board (JAB) and ILOAT, as of the date of this approval by the Executive Board - will continue to follow the normal course of review, including submission to the jurisdiction of the ILOAT. Therefore, only new claims submitted to the MAR after this decision will fall under the jurisdiction of the UNAT.
4. This decision aims to strengthen IFAD's justice system both for the sake of staff protection and in the interests of the Fund in order to foster a better work environment.
5. Its implementation addresses three key issues:
 - (i) Substantive legal concerns by-20+ entities currently under ILOAT's jurisdiction: IFAD has joined these entities in raising substantive concerns over the past year about how the ILOAT has handled cases, particularly regarding lack of jurisprudential consistency and foreseeability, as well as appropriate weight of proportionality of decisions. This change will allow IFAD to put in place a more robust framework to safeguard both staff rights and the interests of the Fund.
 - (ii) Standard of proof is too high to adequately protect against misconduct: The Executive Board notes the concern, as documented in the recent independent panel report on UNAIDS, that the ILOAT standard of proof does not adequately protect against misconduct and is "erroneous and misplaced" for international organizations' investigations. The "beyond a reasonable doubt" standard adopted by the ILOAT does not allow organizations to react properly in disciplinary cases, ensuring the full implementation of zero tolerance policies toward sexual harassment (SH) and exploitation and abuse (SEA), anticorruption and other crucial disciplinary issues.¹
 - (iii) Time to decision is too lengthy: The time span for staff and IFAD to await tribunal decisions from the ILOAT is two to three times longer than that of UNAT (although the ILOAT is working to reduce this).² Given the context of

¹ See www.unaids.org/sites/default/files/media_asset/report-iep_en.pdf.

² *Id.* at para. 162.

“justice delayed is justice denied”, members noted that quicker decisions will better protect staff who may be victims of misconduct.

6. Members have taken note of the extensive consultations over the past months that had been undertaken with IFAD’s Staff Association (ISA). Stressing that these changes aim to better support staff, they encouraged Management to continue collaborating with ISA to build a strengthened IFAD justice system. This includes the move to the UNAT and Management’s commitment to further enhance the JAB for the sake of both staff protection and institutional interest.
7. The Board recognizes that the move from ILOAT to UNAT would allow staff to bring their grievances before a system highly familiar with the functioning and legal framework of the UN System given that the UNAT has vast experience with decentralized UN environments such as IFAD.
8. The Executive Board during its deliberations noted with concern some inaccurate published information about the implications of the move to UNAT. The purpose of this move is to further encourage victims and witnesses of misconduct, including SEA/SH, to report allegations, and to better support proper and timely investigations using a still strong standard of proof now aligned with that of other administrative tribunals reviewed. This would allow the institution to more appropriately prevent, mitigate and strengthen its response to misconduct. With the public disclosure of this decision and the related documentation, IFAD will undertake a communications effort to further engage with staff and ensure that the benefits of this change are clear.
9. To conclude, the Board notes that the decision to withdraw from the ILOAT and move under the jurisdiction of UNAT would reinforce IFAD’s strong institutional commitment to zero tolerance for misconduct, fraud and corruption. It would enhance the Fund’s efforts to ensure a safe working environment for staff and strengthen its commitment to the principles of integrity, professionalism and respect for the dignity of all people.