



26 April 2019

IFAD STAFF ASSOCIATION

POSITION PAPER

on IFAD Management's proposal to withdraw from the jurisdiction of the ILOAT

In line with EMC recommendation of 23 January 2019, the IFAD Staff Association (ISA), represented by its Executive Committee, was invited to express its views on IFAD Management's proposal to withdraw from the jurisdiction of the Administrative Tribunal of the International Labour Organization (ILOAT) and move under the jurisdiction of the United Nations Appeals Tribunal (UNAT).

Following a broad consultation with its members, external legal experts, and staff associations of other international organizations, ISA prepared a position paper on the internal justice system at IFAD to address the proposal in a constructive and holistic manner and presented it to IFAD management on 11 March 2019.

It should be noted that ISA recognizes that both the ILOAT and the UNAT are well-established and reputable tribunals, fully fit to address disputes affecting staff members of the Fund.

However, ISA expressed a general reservation about withdrawing from the ILOAT given the absence of any sufficiently compelling rationale for the proposed move to UNAT. In particular, ISA questions whether a reduction in the length of time for issuance of decisions and the relatively marginal cost saving would justify such move. Moreover, the lower standards of proof applied by UNAT in cases of staff misconduct may jeopardize the organization's obligation to protect its staff members from any form of wrongdoing, violate good faith and undermine confidence in the rule of law within the Fund and the international community at large. In addition, UNAT – unlike ILOAT – cannot compel an organization to reinstate a staff member whose employment has been unfairly terminated.

ISA also considered that the United Nations justice system includes two courts: the United Nations Dispute Tribunal (UNDT), which is staffed by professional judges who make independent and binding decisions (and for which IFAD is eligible for membership), and the UNAT, which is a court of second instance. Furthermore, the UN justice system provides UN staff members with legal advice and representation through the Office of Staff Legal Assistance (OSLA), which is inaccessible to IFAD staff members.

Guided by the aim of safeguarding the best interests of both staff and the organization for a fair, impartial and professional justice system, ISA informed IFAD Management that it would be in a



position to endorse IFAD's adoption of the entire UN justice system – the UNDT and UNAT, and an adequate legal assistance package to staff.

However, IFAD Management responded to ISA's position by stating that, while it would seek the Executive Board's approval for moving from ILOAT to UNAT, it would not proceed in favour of submission of dispute resolution under UNDT as a court of first instance. Instead, Management proposed to retain and enhance the capacity of IFAD's first-instance dispute resolution body, the Joint Appeals Board (JAB).

It is the view of ISA that moving to the UNAT while keeping the JAB would have detrimental consequences for IFAD employees: staff members would have to accept a substantial reduction in legal protection without the benefits that would derive from having an independent dispute resolution tribunal with the power to issue interim decisions as the first step in the process.

ISA has invited Management to reconsider its stance given that the current JAB does not guarantee the complainant's right to a fair appeals procedure, and is significantly different – in form and structure – from the UNDT. Indeed, the JAB is not deemed to benefit from the same level of independence as the UNDT; nor is it a decision-making body with the authority to suspend the execution of management decisions. Moreover, notwithstanding the recent changes made to the way the JAB operates with the inclusion of an external jurist as its chair, ISA feels that the JAB lacks the necessary expertise and resources to duly discharge its important functions.

Finally, ISA would like to express its deep concern at the fact that the Executive Board document seeking the Board's approval of the recommendation to withdraw from the jurisdiction of the ILOAT and to submit to that of the UNAT – which also introduces a substantive change to paragraph 16.2 of IFAD's Human Resources Policy – was not made publicly available. This is in contrast with IFAD's Disclosure Policy approved by the Board in 2010 and the spirit of the IFAD's Action Plan to Increase Transparency approved in 2017.