

Governing Body

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Programme, Financial and Administrative Section
Personnel Segment

PFA

Date: 30 September 2019
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THIRTEENTH ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO

Recognition and withdrawal of the recognition of the Tribunal's jurisdiction by other international organizations

Purpose of the document

This paper contains a proposal regarding the approval of the recognition of the Tribunal's jurisdiction by two international organizations, the Global Green Growth Institute (GGGI) and the International Cocoa Organization (ICCO), and provides information about the decision of the International Fund for Agricultural Development (IFAD) to discontinue its recognition of the Tribunal's jurisdiction. The Governing Body is invited to approve the recognition of the Tribunal's jurisdiction by the GGGI and the ICCO and to take note of the decision of IFAD to withdraw its recognition of the Tribunal's jurisdiction (see the draft decision in paragraph 15).

Relevant strategic objective: Not applicable.

Main relevant outcome/cross-cutting policy driver: Efficient support services and effective use of ILO resources.

Policy implications: None.

Legal implications: Changes in the membership of the ILO Administrative Tribunal.

Financial implications: None.

Follow-up action required: None.

Author unit: Office of the Legal Adviser (JUR).

Related documents: None.

Introduction

1. Since the Governing Body last approved the recognition of the jurisdiction of the Administrative Tribunal of the International Labour Organization (hereinafter “the Tribunal”) by an international organization in October 2017,¹ the Director-General has received declarations by two more international organizations recognizing that jurisdiction.
2. According to article II(5) of the Tribunal’s Statute, in order to be eligible for admission, an international organization must either be intergovernmental in character or fulfil the following conditions, set out in the Annex to the Statute:
 - (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.
3. In a related development, following the latest withdrawal of the recognition of the Tribunal’s jurisdiction by an international organization in October 2018,² the Director-General has received an official communication from another international organization notifying its decision to terminate its recognition of the Tribunal’s jurisdiction.
4. While the Statute of the Tribunal in its article II(5) and the Annex sets out the conditions for admission of an international organization, it is silent on the conditions of withdrawal from the Tribunal’s membership. The discontinuation of the recognition of the Tribunal’s jurisdiction by four international organizations in the last three years³ prompted the preparation of draft amendments to the Statute of the Tribunal and its Annex establishing a procedure for terminating the recognition of the Tribunal’s jurisdiction. These amendments are currently before the Governing Body for its consideration.⁴
5. Even though the recognition of the Tribunal’s jurisdiction is in essence a unilateral declaration by an international organization which can be unilaterally revoked, a withdrawal from the Tribunal’s membership needs to be confirmed by the Governing Body to become effective.

Recognition of the Tribunal’s jurisdiction by the Global Green Growth Institute

6. By letter addressed to the ILO Director-General dated 2 August 2019 (see Appendix I), the Director-General of the Global Green Growth Institute (GGGI) requested that the GGGI’s

¹ [GB.331/PFA/15](#).

² [GB.334/PFA/12/2\(Rev.\)](#).

³ [GB.328/PFA/10](#); [GB.331/PFA/15](#); [GB.332/PFA/12/1\(Rev.\)](#); [GB.334/PFA/12/2\(Rev.\)](#).

⁴ [GB.337/PFA/13/2](#).

declaration of acceptance of the Tribunal's jurisdiction be submitted to the Governing Body for its approval.

7. As explained in the Director-General's letter, the GGGI is an international intergovernmental organization established in 2012. Its purpose is to promote sustainable development of developing and emerging countries, including the least developed countries, by supporting green growth, which is a balanced advance of economic growth and environmental sustainability. Its headquarters are in Seoul, Republic of Korea. The GGGI has full legal personality and is immune from legal process as evidenced by the headquarters agreement with the host country, concluded in January 2013. It currently employs 288 staff.

Recognition of the Tribunal's jurisdiction by the International Cocoa Organization

8. By letter addressed to the ILO Director-General dated 20 August 2019 (see Appendix II), the Executive Director of the International Cocoa Organization (ICCO) requested that the ICCO's declaration of acceptance of the Tribunal's jurisdiction be submitted to the Governing Body for its approval.
9. As explained in the Executive Director's letter, the ICCO is an intergovernmental organization established in 1973. The ICCO's mandate is to work towards sustainable world cocoa economy. Its headquarters are in Abidjan, Côte d'Ivoire. The ICCO has full legal personality and is immune from legal process as evidenced by the headquarters agreement with the host country, concluded in March 2017. It currently employs 19 staff.

Withdrawal of the recognition of the Tribunal's jurisdiction by the International Fund for Agricultural Development

10. By letter addressed to the ILO Director-General dated 30 May 2019 (see Appendix III), the President of the International Fund for Agricultural Development (IFAD) communicated the decision of IFAD's Executive Board to formally discontinue IFAD's recognition of the jurisdiction of the ILO Administrative Tribunal and to recognize instead the jurisdiction of the United Nations Appeals Tribunal.
11. In his letter, the President indicated that IFAD's Staff Association had been extensively consulted and that its views had been submitted for the review of the Executive Board prior to its deliberation on this matter. He also specified that the decision to withdraw aimed to address various matters, including concerns that the standard of proof applied by the Tribunal does not adequately protect against misconduct and is not the most appropriate for investigations conducted by international organizations.
12. In order to ensure an orderly phasing out period and to guarantee that all claims submitted to IFAD's internal justice system prior to the decision of the Executive Board can be appealed to the Tribunal, the President requested that IFAD remain under the Tribunal's jurisdiction until 31 March 2020 inclusive.
13. IFAD recognized the jurisdiction of the Tribunal in 1988 and has so far been the subject of 23 judgments.

14. Subject to the approval of the acceptance of the Tribunal's jurisdiction by the GGGI and the ICCO and following IFAD's withdrawal, the Tribunal's jurisdiction will extend to 57 organizations other than the ILO. The recognition of the Tribunal's jurisdiction by other organizations entails no additional cost to the ILO, since the organizations against which complaints are filed are required under the Statute to bear the expenses of sessions and hearings and pay any award of compensation made by the Tribunal. Those organizations also contribute, in amounts proportionate to the number of their staff, to most of the running costs of the Tribunal's registry.

Draft decision

15. *The Governing Body:*

- (a) approved the recognition of the Tribunal's jurisdiction by the Global Green Growth Institute (GGGI) and the International Cocoa Organization (ICCO), with effect from the date of such approval;*
- (b) took note of the decision of the International Fund for Agricultural Development (IFAD) to discontinue its recognition of the jurisdiction of the Administrative Tribunal as from 1 April 2020;*
- (c) confirmed that IFAD will no longer be subject to the competence of the Tribunal with effect from 1 April 2020; and*
- (d) requested the Director-General to follow up with IFAD regarding the payment of any outstanding costs.*

Appendix I



Ref.: ODG-20190802-190

2 August 2019

Mr. Guy Ryder
 Director-General
 International Labour Office
 4 route des Morillons
 CH-1211 – Geneva 22
 Switzerland

**Subject: Request for the recognition of the competence of the Administrative Tribunal
 of the International Labour Organization (ILO)**

Dear Mr. Ryder,

I have the honor to present a request by the Global Green Growth Institute (“GGGI”) to extend the jurisdiction of its Administrative Tribunal to the staff members of GGGI. Having considered the Statutes and Rules of Procedures, GGGI undertakes to recognize the Tribunal’s jurisdiction.

The Global Green Growth Institute (“GGGI”) is an international organization dedicated to supporting and promoting strong, inclusive and sustainable economic growth in developing countries and emerging economies. GGGI was established under the Agreement on the Establishment of the Global Green Growth Institute (the “Establishment Agreement”) signed by the governments of Australia, Cambodia, Costa Rica, Denmark, Ethiopia, Guyana, Indonesia, Kiribati, Mexico, Norway, Papua New Guinea, Paraguay, the Philippines, Qatar, the Republic of Korea, United Arab Emirates, the United Kingdom, and Vietnam on 20 June 2012. GGGI officially became an international organization after the required number of countries ratified the Establishment Agreement on October 18, 2012. A copy of the Establishment Agreement is attached as **Annex 1**. To date, GGGI is composed of 32 member countries.

In accordance with Article 2 of the Establishment Agreement, the purpose of GGGI is to promote sustainable development of developing and emerging countries, including the least developed countries, by: (i) supporting and diffusing a new paradigm of economic growth: green growth, which is a balanced advance of economic growth and environmental sustainability; (ii) targeting key aspects of economic performance and resilience, poverty reduction, job creation and social inclusion, and those of environmental sustainability such as climate change mitigation and adaptation, biodiversity protection and securing access to affordable, clean energy, clean water and land; and (iii) creating and improving the economic, environmental and social conditions of developing and emerging countries through partnerships between developed and developing countries and the public and private sectors.

Pursuant to Article 14 of the Establishment Agreement, as an international organization, GGGI possesses full legal personality and full legal capacity to enter into contracts, acquire and dispose of immovable and movable property, and institute and defend itself in legal proceedings.

The headquarters of GGGI are located in Seoul, Republic of Korea. On 17 January 2013, GGGI and the government of the Republic of Korea signed the “Headquarters Agreement between the Global Green Growth Institute and the Government of the Republic of Korea” (the “Headquarters Agreement”). A copy of the Headquarters Agreement is attached as **Annex 2**. The Headquarters Agreement recognizes the legal personality and legal capacity of GGGI as an international organization, and provides, among others, privileges and immunities including immunity of staff from every form of legal process in respect of acts done by them in the exercise of their functions and acts performed by them in their official capacity.

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GGGI has also concluded so far fifteen (15) other bilateral agreements on the privileges and immunities of GGGI and its staff in the countries where it operates and is negotiating further similar agreements.

The principal organs of GGGI are the Assembly, the Council, and the Secretariat headed by the Director-General. The Assembly is the supreme organ and its functions include advising on the overall direction of GGGI and review the organization's progress in meeting its stated objectives. The Council serves as the executive organ and approves the organization's strategy, budget, admission of new members, and criteria for green growth planning and implementation programs. The Secretariat acts as the chief operational organ of the Institute and is headed by the Director-General, who, under the guidance of the Council and Assembly, represents GGGI externally and provides strategic leadership for the organization to carry out its objectives.

To date, GGGI has 288 staff members. The conditions of appointment and obligations of the staff members are set forth in the Staff Regulations, approved by the Council, and the Staff Rules which are approved and issued by the Director-General. In accordance with Article 12.1 of the Staff Regulations, staff may avail of an internal process for the settlement of disputes as well as for appeals relating to administrative decisions directly affecting the contractual rights and benefits of staff members. The internal process for settlement of disputes including the appeals process is set out in Staff Rule 12.

In addition to the establishment of an internal appeals process, the Director-General has the authority under Staff Regulation 12.2 to establish arrangements for staff members dissatisfied with the outcome of the internal appeal process to have access to an independent arbitral mechanism if they wish to seek recourse against the validity of the final decision taken by the Director-General. Currently, this mechanism is exercised by the GGGI Arbitration Panel established by the Director-General under the GGGI Arbitration Rules on 13 July 2015. However, in accordance with the authority of the Director-General under Staff Regulations 12.2, the Director-General has decided on 11 April 2019 to pursue the recognition of the jurisdiction of the Administrative Tribunal of the International Labour Organization, subject to the approval of ILO's Governing Body, to serve as the independent mechanism for staff members who wish to seek recourse against the validity of the final decision of the Director-General. The Council has been informed by the Director-General on 31 July 2019 that GGGI would be formally requesting recognition of competence by the Tribunal. Upon the approval of the request for recognition of competence, the Director-General will amend the Staff Rule to reflect the Tribunal's jurisdiction over staff disputes and report the same to the Council. By accepting and recognizing the Tribunal's jurisdiction as well as its rules of procedure, GGGI commits to be bound by the awards of the Tribunal which would be chargeable to the GGGI's budget. GGGI is also committed to pay its share of the annual running (overhead) costs of the operation of the Tribunal.

I would be grateful if you would submit this request to the Governing Body of the ILO and invite it, in accordance with article II, paragraph 5, of its Statutes, to approve at its next session on 24 October to 7 November 2019 GGGI's declaration of recognition of the Tribunal's jurisdiction and acceptance of its Rules of Procedure.

I remain at your disposal should you need further information and avail myself of this opportunity to give you the assurance of my highest consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank Rijsberman".

Frank Rijsberman
Director General

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Appendix II



INTERNATIONAL COCOA ORGANIZATION • ORGANISATION INTERNATIONALE DU CACAO
МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ПО КАКАО • ORGANIZACION INTERNACIONAL DEL CACAO

II-Plateaux ENA, Avenue Boga Doudou, Immeuble ICCO, 06 BP 1166 Abidjan 06, Côte d'Ivoire
Telephone: +225 22 51 49 68, Fax: +225 22 51 49 79, E-mail: jocelyne.koulibaly@icco.org, Website: www.icco.org

Our Refs: ED/AO/2019.08.15

Abidjan **20 AUG 2019**

The Executive Director of the International Cocoa Organization

To
The Director-General
International Labour Organization

Re: ICCO Application for Recognition of the Jurisdiction of the Administrative Tribunal of the International Labour Organization

Dear Mr Ryder,

I am writing to request your assistance in bringing the application of the International Cocoa Organization (ICCO) to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization to the attention of the Governing Body of the International Labour Organization.

The ICCO was established in 1973 to put into effect the first International Cocoa Agreement which was negotiated in Geneva at a United Nations International Cocoa Conference. There have since been seven Agreements. The Seventh International Cocoa Agreement, negotiated in 2010 in Geneva, is the one currently in force. The mandate of the ICCO is to work towards a sustainable world cocoa economy. The ICCO is an intergovernmental organization, composed of both cocoa producing and cocoa consuming member countries. Its headquarters are based in Côte d'Ivoire since April 2017.

On 11th April 2019, the International Cocoa Council, the International Cocoa Organization supreme governing body, decided to recognize the jurisdiction of the ILOAT to hear complaints of non-observance of their terms and conditions of appointment by the ICCO staff members (The letter of the Chairman of the Council is attached in annex 1). By approving the ICCO's Staff regulations and Staff Rules (attached as annex 2) the International Cocoa Council explicitly acknowledged that any awards rendered against the ICCO will be chargeable to its budget (Rule 11.5, paragraph (c) of the annex 2). The administrative rules of the International Cocoa Council is attached as annex 3.

The ICCO and the Government of Côte d'Ivoire concluded a Headquarters Agreement on 15th March 2017 (attached as Annex 4). The Headquarters Agreement recognizes the ICCO's international legal personality for the purposes of that agreement and confers on it privileges and immunities equivalent to those of other international organizations in Côte d'Ivoire. Accordingly, the ICCO is exempt from applying national law in its relations with its employees and enjoys immunity of jurisdiction and immunity of execution.

A total of 52 States contribute financial resources to the ICCO. The ICCO has an open-ended mandate.

As set out above, the ICCO is international in character and, as a result of its Headquarters Agreement, is not required to apply national law in its relations with ICCO staff Members. Given the nature of its mandate, the ICCO will continue to attract, manage and disburse resources for the foreseeable future. The ICCO has a permanent governance structure and its Board explicitly accepted that awards rendered by the ILOAT are chargeable to the ICCO budget, ensuring compliance with such awards. Accordingly, the ICCO meets the requirements set out in the annex to the Statute of the ILOAT.

I would appreciate your assistance in transmitting the ICCO's declaration to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization to the Governing Body for its review and approval. I am available for any clarifications or question you may have and am grateful for your assistance with this matter.

Yours sincerely,



Michel ARRION
Executive Director



Mr. Guy Ryder
Director-General
International Labour Organization
4 route des Morillons
CH-1211 Genève 22
Switzerland

Appendix III



THE PRESIDENT

30 May 2019

Dear Mr Ryder,

On behalf of the International Fund for Agricultural Development (IFAD), I wish to inform you that on 3 May 2019, IFAD's Executive Board unanimously decided to formally discontinue IFAD's recognition of the jurisdiction of the Administrative Tribunal of the International Labour Organization (ILOAT) and to submit to the jurisdiction of the United Nations Appeals Tribunal.

IFAD's Management engaged in extensive consultations with IFAD's Staff Association (ISA) for several months prior to submitting the proposal to the Executive Board. As a result of such consultations, ISA prepared a Position Paper that was submitted to the Executive Board members as an official document for their review prior to Executive Board deliberations.

This decision aims to address various matters, including concerns documented in a recent independent panel report¹ that the standard of proof adopted by the ILOAT does not adequately protect against misconduct and is not the most appropriate for international organizations' investigations.

I understand that the decision of IFAD's Executive Board will be submitted to the October-November Session of the ILO Governing Body which will take note of that decision. IFAD is committed to ensuring an orderly phasing out period and also to guaranteeing that all claims that have been submitted to IFAD's grievance system prior to the effective date of the Executive Board's decision continue their respectively applicable course of appeal, including submittal to the ILOAT. Therefore, I respectfully request that when the ILO Governing Body takes note of this decision that it instruct the ILOAT Registrar to reject any cases that are filed with the ILOAT against IFAD after 31 March 2020. This will allow for claims that were submitted to the first step of IFAD's grievance system, the Mandatory Administrative Review (MAR), prior to 3 May 2019 to be submitted for review of the ILOAT, as determined by IFAD's Executive Board.

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

Mr Guy Ryder
Director-General
The International Labour Organization
Geneva

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IFAD greatly appreciate the legal insights and support provided by the ILOAT during the many years that it has reviewed and issued rulings on IFAD's cases.

Yours sincerely,



Gilbert F. Hougbo

Copies for information:

Members of IFAD's Executive Board