



## Governing Body

323rd Session, Geneva, 12–27 March 2015

GB.323/PFA/11/2

**Programme, Financial and Administrative Section**  
*Personnel Segment*

**PFA**

**Date:** 11 February 2015

**Original:** English

### ELEVENTH ITEM ON THE AGENDA

## Matters relating to the Administrative Tribunal of the ILO

### Recognition of the Tribunal's jurisdiction by two international organizations

#### Purpose of the document

This paper contains proposals regarding the approval of the recognition of the ILO Administrative Tribunal's jurisdiction by two international organizations. See the draft decision in paragraph 24.

**Relevant strategic objective:** None.

**Policy implications:** None.

**Legal implications:** Extended jurisdiction of the Tribunal.

**Financial implications:** None.

**Follow-up action required:** None.

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

**Related documents:** None.



1. Since the Governing Body last approved the recognition of the jurisdiction of the ILO Administrative Tribunal (“the Tribunal”) by an international organization in November 2009,<sup>1</sup> the Director-General has received declarations by two international organizations recognizing that jurisdiction.
2. According to article II, paragraph 5, of the Tribunal’s Statute, in order to be eligible for approval, 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.

## Global Crop Diversity Trust

3. By a letter dated 4 November 2013 (see Appendix I), the Executive Secretary of the Global Crop Diversity Trust (“Crop Trust” or “the Trust”) informed the Director-General that the Trust had decided to recognize the Tribunal’s jurisdiction in accordance with article II, paragraph 5, of the Tribunal’s Statute. In her letter, the Executive Secretary asks that the Trust’s request for recognition of the Tribunal’s jurisdiction be submitted to the Governing Body for its approval.
4. The Crop Trust is an independent international fund established in 2004. To date, there are 28 States parties to the Agreement for the Establishment of the Global Crop Diversity Trust. According to article 4 thereof, the agreement is open for accession by all members of the Food and Agriculture Organization of the United Nations (FAO) and any States that are not members of the FAO but are members of the United Nations or any of its specialized agencies or of the International Atomic Energy Agency.
5. The legal status of the Crop Trust is defined under article 1 of its constitution as an “autonomous international fund established under international law” that “shall possess full international legal personality and enjoy such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. ... In particular and without prejudice to the generality of the forgoing, the Trust shall have the legal capacity – (a) to enter into treaties and contracts; (b) to acquire and dispose of movable and immovable property; and (c) to institute and respond to legal proceedings.”
6. Pursuant to article 2 of its constitution, the Crop Trust’s purpose is to ensure the long-term conservation and availability of plant genetic resources for food and agriculture with a view to achieving global food security and sustainable agriculture. In furtherance of this objective and pursuant to article 3 of its constitution, the Crop Trust maintains an endowment fund to provide grants to support the maintenance of eligible collections of plant genetic resources for food and agriculture that meet agreed standards of management and availability of the genetic resources, related information, knowledge and technologies, and to cover operating expenses and other expenses incidental thereto.

<sup>1</sup> GB.306/PFA/19/2.

7. The Crop Trust is governed by its Executive Board, which has established a Donors' Council to advise it on fundraising and other financial matters. The Executive Secretary is the chief executive officer and is responsible to the Executive Board for the operation and management of the Trust and for assuring that its objective, programmes and plans are properly developed and carried out. The Trust is funded by resources from external donors providing grant contributions and the investment income derived from these resources.
8. The Crop Trust has established its headquarters in Bonn, Germany. The headquarters agreement concluded with the German Government in 2012 provides that the Trust and its officials enjoy privileges and immunities, and that the Trust has full juridical personality and the capacity to contract, acquire and dispose of property, and to institute legal proceedings in Germany. More detailed information on the Organization's aims and activities may be found at <http://www.croptrust.org>.
9. Currently, the Crop Trust employs 24 regular staff members in its secretariat. Pursuant to article 12 of the Trust's headquarters agreement, its officials enjoy immunity from legal process for acts undertaken in their official capacity. The Staff Regulations and Personnel Policies and Procedures Manual, last revised in October 2014, sets out the conditions of employment of the staff, and provides – subject to the approval of the ILO Governing Body – that regular staff members may appeal against a final decision of the Executive Secretary to the Tribunal.

## **Consortium of International Agricultural Research Centers**

10. By a letter dated 9 December 2014 (see Appendix II), the Chief Executive Officer (CEO) of the Consortium of International Agricultural Research Centers ("CGIAR Consortium" or "the Consortium") informed the Director-General that the Consortium had decided to recognize the Tribunal's jurisdiction in accordance with article II, paragraph 5, of the Tribunal's Statute. In his letter, the CEO asks that the Consortium's request for recognition of the Tribunal's jurisdiction be submitted to the Governing Body for its approval.
11. The CGIAR Consortium is an international organization established in 2011. To date, the Agreement establishing the Consortium of International Agricultural Research Centers as an International Organization has been signed by eight States: France, Hungary, Denmark, Benin, Uruguay, Morocco, Senegal and Colombia. According to article 7 thereof, the agreement is open for signature to all member States of the United Nations or any of its specialized agencies or of the International Atomic Energy Agency.
12. Article 1 of the constitution of the CGIAR Consortium defines the legal status of the Consortium as an "independent international organization under international law, with full international legal personality, enjoying such legal capacity as may be necessary for the exercise of its functions and powers, and the fulfilment of its purposes, including in particular and without prejudice to the generality of the foregoing, the legal capacity: (a) to enter into treaties, agreements and contracts; (b) to acquire and dispose of movable and immovable property; and (c) to institute and respond to legal proceedings". The Office notes that article 23 of the constitution provides for a review of the value and sustainability of the CGIAR Consortium ten years after its formal establishment.
13. The members of the CGIAR Consortium are 15 international agricultural research centres ("Member Centers") engaged in agricultural research for a food-secure future. All 15 "Member Centers" are independent, non-profit research organizations. Each "Member Center" has its own charter, board of trustees, director-general and staff.

14. Pursuant to article 2 of the agreement establishing the CGIAR Consortium, its purpose is “to provide leadership to the CGIAR system and coordinate activities among Member Centers and other partners under a common strategy, in order to enable them to enhance their individual and collective contribution to the achievement of the CGIAR vision”. The overall vision adopted by the CGIAR Consortium is “[t]o reduce poverty and hunger, improve human health and nutrition, and enhance ecosystem resilience through high-quality international agricultural research, partnership and leadership”. The CGIAR Consortium develops and carries out research programmes to address complex development issues related to agriculture.
15. The CGIAR Consortium is governed by the Consortium Board and supported by the Consortium Office – the Consortium’s secretariat – which is led by the CEO. It is primarily financed by the CGIAR Fund, a multi-donor trust fund administered by the World Bank, as trustee, and governed by the Fund Council, a representative body of Fund donors and other stakeholders.
16. The CGIAR Consortium’s headquarters are in Montpellier, France. The headquarters agreement between the Consortium and the French Government, concluded in 2011, specifically provides that the CGIAR Consortium has legal personality and enjoys privileges and immunities in France. Article 2 of the headquarters agreement recognizes the capacity of the CGIAR Consortium to contract, acquire and dispose of property, and to participate in legal proceedings. Additionally, article 5 of the same agreement grants the CGIAR Consortium immunity from legal jurisdiction in the host country. More detailed information on the CGIAR Consortium’s aims and activities may be found at <http://www.cgiar.org>.
17. The CGIAR Consortium expects to employ approximately 23 staff members in its secretariat over the course of 2015. Pursuant to article 17 of the Consortium’s headquarters agreement, staff members enjoy immunity from legal jurisdiction for acts undertaken in the course of their duties. Their conditions of employment are set out in the organization’s Personnel Policy Manual, adopted in 2014. Subject to approval of the ILO Governing Body, the Personnel Policy Manual provides for the possibility for staff members to refer complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the CGIAR Consortium’s personnel policies to the Tribunal.
18. The Office recalls that one “Member Center” of the CGIAR Consortium – the International Plant Genetic Resources Institute (IPGRI), which was renamed Biodiversity International in 2006 – recognized the Tribunal’s jurisdiction with effect from 1 January 2001.

\* \* \*

19. 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 by the Tribunal’s Statute to bear the expenses of sessions and hearings and to 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 secretariat.
20. The acceptance of the Tribunal’s jurisdiction by these two organizations brings to 60 the total number of international institutions, other than the ILO, that have recognized the competence of the Tribunal to hear employment-related complaints filed by their staff members.

21. The progressive extension of the Tribunal's jurisdiction has proceeded in two stages: article II of the Tribunal's Statute was first amended in 1949 in order to open up its jurisdiction to "any other inter-governmental international Organisation approved by the Governing Body".<sup>2</sup> In the 50-year period that followed this amendment, 36 intergovernmental organizations, including 11 organizations of the United Nations common system, recognized the Tribunal's jurisdiction. A second amendment, adopted in 1998, offered the possibility, under certain conditions, to non-intergovernmental international organizations to become parties to the Tribunal's Statute.<sup>3</sup> As a result, from 1998 to 2009, a further 22 international organizations accepted the Tribunal's jurisdiction, extending the legal protection of the Tribunal globally to over 46,000 international civil servants.
22. The wide reach of the Tribunal's jurisdiction is indicative of the trust placed by the organizations in its standing and expertise and of the considerable prestige it enjoys at the international level, including outside the UN common system. In its 69 years of existence, the Tribunal has delivered over 3,400 judgments and developed a body of case law which has influenced the attitudes not only of the administrations of the organizations having recognized its jurisdiction,<sup>4</sup> but also other international administrative courts and tribunals.<sup>5</sup>
23. However, in view of the increasing number of organizations accepting the jurisdiction of the Tribunal, concerns have occasionally been raised with regard to the capacity of the Tribunal to carry out its responsibilities effectively. Therefore, the Governing Body may need to examine at a future session the impact of the increasing workload of the Tribunal on its proper functioning.

### **Draft decision**

24. *In the light of the above, the Governing Body approves the recognition of the Tribunal's jurisdiction by the Global Crop Diversity Trust (Crop Trust) and the Consortium of International Agricultural Research Centers (CGIAR Consortium), with effect from the date of such approval.*

---

<sup>2</sup> ILO: *Record of Proceedings*, International Labour Conference, 32nd Session, Geneva, 1949, pp. 409–410.

<sup>3</sup> ILO: *Possible amendment to article II, paragraph 5, of the Statute of the ILO Administrative Tribunal regarding the nature of international organizations entitled to recognize the competence of the Tribunal*, Governing Body, 271st Session, Geneva, March 1998, GB.271/PFA/11/2.

<sup>4</sup> Most of these organizations have small secretariats of between ten and 100 staff members. The largest organization is the Global Fund to Fight AIDS, Tuberculosis and Malaria, which employs 650 staff, and the smallest is the International Organisation for the Development of Fisheries in the Eastern and Central Europe (EUROFISH), which employs nine persons.

<sup>5</sup> F. Gutteridge: "The ILO Administrative Tribunal", in C. de Cooker (ed.): *International Administration: Law and Management Practices in International Organisations*, 2009, p. 656.

## Appendix I

### Letter of 4 November 2013 from the Executive Secretary of the Global Crop Diversity Trust to the Director-General of the ILO

His Excellency Guy Ryder  
 Director General  
 International Labour Organization  
 4 route des Morillons – CH-1211 Genève 22  
 Switzerland

4 November 2013

Excellency,

**Subject: Recognition of the jurisdiction of the ILO Administrative Tribunal by the Global Crop Diversity Trust**

I have the honour to present a request by the Global Crop Diversity Trust (hereinafter the Trust) to extend the jurisdiction of its Administrative Tribunal to the staff of the Trust. Having considered the Statutes and Rules of Procedures, the Trust undertakes to recognize the Tribunal's jurisdiction.

The Trust is an independent international fund established by the Agreement for the Establishment of the Global Crop Diversity Trust which came into force on 21 October 2004 and to which, as of today, 28 States are Parties. The headquarters of the Trust are located in Bonn in the Federal Republic of Germany and the Trust has a headquarters agreement with the Federal Republic of Germany which entered into force on 14 December 2012.

The objective of the Trust is to ensure the long-term conservation and availability of plant genetic resources for food and agriculture with a view to achieving global food security and sustainable agriculture. In furtherance of this objective the Trust maintains an endowment fund to provide grants to support the maintenance of eligible collections of plant genetic resources for food and agriculture that meet agreed standards of management and availability of the genetic resources, related information, knowledge and technologies, and to cover operating expenses and other expenses incidental thereto.

The Trust has entered into a relationship agreement with the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, under which the Trust is recognized as an essential element of the Funding Strategy of the International Treaty in relation to the *ex situ* conservation and availability of plant genetic resources for food and agriculture, and the Governing Body undertakes to provide overall policy guidance to the Trust on all matters within the purview of the International Treaty.

The responsibilities of the Executive Secretary and the staff are exclusively international in character, and in the discharge of their duties they will not seek or receive instructions from any government or from any authority external to the Trust.

The Trust, its property and assets, and the Executive Secretary and its staff enjoy such privileges and immunities as are necessary for the exercise of their functions. These privileges and immunities are detailed in the headquarters agreement that has been concluded with the Federal Republic of Germany. As a result of its headquarters agreement the Trust is not required to apply national law in its relation with its staff.

The Trust is governed by an Executive Board composed of four members, at least two of whom shall be from developing countries, appointed by the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, four members, at least one of whom shall be from a developing country, appointed by the Donors' Council, one member appointed by the Director-General of the Food and Agriculture Organization of the United Nations who shall operate in a technical capacity only and shall not have the right to vote, one member appointed by the Chair of the

Consultative Group on International Agricultural Research, who shall operate in a technical capacity only and shall not have the right to vote, and the Executive Secretary of the Trust as a member *ex officio*. The Executive Board may appoint two additional members to ensure overall balance amongst its membership, in particular with regard to diversity in disciplinary backgrounds, geographical representation, gender, and competence in fundraising and financial management.

The secretariat of the Trust consists of the Executive Secretary and staff for a current total of 24 employees. The Executive Secretary is the representative of the Trust in the exercise of its legal capacity.

At its Thirteenth Meeting in October 2013, the Executive Board of the Trust decided

- a. To confirm its decision taken in June 2011 to accept the jurisdiction of the ILO Administrative Tribunal for the adjudication of disputes arising out of staff employment contracts with the Trust;
- b. To formally guarantee that the Trust will comply with the ILO Administrative Tribunal's judgments and that any compensation awarded by the Tribunal shall be chargeable to the budget of the Trust;
- c. To authorize the Executive Secretary to address a formal communication to the Director-General of the International Labour Office recognizing the jurisdiction of the Tribunal to hear complaints alleging non-observance of the terms of appointment of officials and of provisions of the Staff Regulations, as well as its Rules of Procedure.

The conditions of appointment, the privileges and obligations of the staff members and, in so far as applicable, of other persons engaged by, or seconded to, the Trust are set forth in the Staff Regulations and Personnel Policies and Procedures Manual of the Trust. Article 12.6.1 of the Staff Regulations and Personnel Policies and Procedures Manual of the Trust provides that Regular Staff Members of the Trust may appeal against a final decision of the Executive Secretary to the Administrative Tribunal of the International Labour Organization in accordance with the conditions prescribed in its Statute.

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 the Trust's declaration of recognition of the Tribunal's jurisdiction and acceptance of its Rules of Procedure.

I enclose for your information the Agreement for the Establishment of the Global Crop Diversity Trust and annexed Constitution, the Relationship Agreement between the Trust and the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, the Headquarters Agreement between the Federal Government of Germany and the Trust and the exchange of Notes Verbales bringing that agreement into force. I also enclose a copy of the Staff Regulations and Personnel Policies and Procedures Manual of the Trust.

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

(signed)

Marie Haga  
Executive Secretary  
Global Crop Diversity Trust



## Appendix II

### Letter of 9 December 2014 from the CEO of the CGIAR Consortium to the Director-General of the ILO

9 December, 2014

The Director-General,  
The International Labour Office,  
4 route des Morillons,  
CH-1211 – Geneva 22.

#### **CGIAR Consortium request for the recognition of the competence of the Administrative Tribunal of the International Labour Organization (ILO)**

Dear Sir,

The Consortium of International Agricultural Research Centers (hereinafter “CGIAR Consortium”) is an international organization whose members, which are legal entities in their own right, are 15 international agricultural research centers engaged in agricultural research for a food-secure future. The CGIAR Consortium was established by the entry into force of the Agreement establishing the CGIAR Consortium as an International Organization (“Establishment Agreement”, *cf. attached as Annex 1*). The Establishment Agreement has to date been signed by eight countries: France, Hungary, Denmark, Benin, Uruguay, Morocco, Senegal and Colombia. Under Article 1 of the Establishment Agreement, the CGIAR Consortium is established as an International Organization with legal capacity to *inter alia* enter into treaties, agreements, contracts and capacity to institute and respond to legal proceedings. The CGIAR Consortium operates in accordance with the Constitution of the CGIAR Consortium annexed to the Establishment Agreement (“Constitution”, *cf. attached as Annex 2*).

Under Article 5 of the Establishment Agreement, “*the rights, privileges and immunities granted to the Consortium, its staff members ... shall be specifically defined in a headquarters agreement between the Consortium and the host country*”. On March 4, 2013, the CGIAR Consortium and the Government of the French Republic signed an agreement regarding the headquarters of the CGIAR Consortium and its privileges and immunities on French territory (“HQ Agreement”, *cf. French version attached as Annex 3A and official English translation attached as Annex 3B*). The HQ Agreement was approved by the French Government on 18 June 2014 and became effective as of 31 July 2014. Article 5 of the HQ Agreement provides the CGIAR Consortium with immunity from legal jurisdiction. Moreover, Article 21(1) of the HQ Agreement enables the CGIAR Consortium to “*take appropriate measures with a view to the jurisdictional settling of disputes which may arise between the Organisation and employees, in the course of working relations, by waiving its immunity from legal jurisdiction or by referring to the constitution of an external, independent, and impartial tribunal in order to ensure employees the possibility of legal recourse.*”

In accordance with Article II, paragraph 5, of the Statute of ILO’s Administrative Tribunal (“Tribunal”) and the appendix to that Statute, the Consortium Board, at its meeting held on June 18, 2014, passed a resolution (*cf. attached as Annex 4*) accepting and recognizing, subject to the approval of ILO’s Governing Body, the jurisdiction of the Tribunal as well as its Rules of Procedure for the purpose of hearing complaints from CGIAR Consortium staff members alleging non-observance of their terms of appointment and/or of provisions of the CGIAR Consortium’s personnel policies. By accepting and recognizing the Tribunal’s jurisdiction as well as its rules of procedure, the CGIAR Consortium commits to be bound by the awards of the Tribunal which would be chargeable to the CGIAR Consortium’s budget.

In addition, at its meeting held on 10 October 2014, the Consortium Board approved Part A (Core Policies) of the CGIAR Consortium’s Personnel Policy Manual (the “PPM”) effective 1 January 2015, and delegated authority to the CGIAR Consortium CEO to approve Part B (Implementation Guidelines)

of the PPM, including any revision thereto (*cf. Consortium Board resolution attached as Annex 5*). Accordingly, the CGIAR Consortium CEO approved Part B of the PPM on 30 October 2014, and its first revision on 3 November 2014 (*cf. Parts A and B of the PPM attached as Annexes 6A and 6B*). The PPM sets out detailed staff grievances and appeals procedures (*cf. Sections 13 and 14 of the PPM*) and also recognizes the competence of ILO's Administrative Tribunal to hear complaints alleging non-observance in substance or form of the terms of appointment of officials and of provisions of the PPM (*cf. Sections 13.3 and 14.3 of Part A of the PPM*). Staff of the CGIAR Consortium have the right and option of appeal to the Tribunal upon exhaustion of all internal remedies.

Over the course of 2015, the CGIAR Consortium expects to have approximately 23 staff, as well as approximately 8 staff seconded from other entities, and approximately 6 consultants.

Additionally, please find attached the CGIAR Annual Report 2013 for your general reference (*cf. attached as Annex 7*).

I would be grateful if you would submit the matter to ILO's Governing Body and invite it, in accordance with Article II paragraph 5 of the Statute of the Tribunal, to approve at its March 2015 session the attached resolution of acceptance and recognition by the Consortium Board of the Tribunal's jurisdiction.

We look forward to hearing from your office.

Sincerely,

(*signed*)

Frank Rijsberman  
CEO, CGIAR Consortium