

ANNEX I  
POINTS OF NEGOTIATION PROPOUNDED TO THE OFFICE BY THE UNION

*STANDARDS OF JUSTICE*

- ✓1. All complaints brought before the ILOAT are to be heard in accordance with the principles of due process, fair procedures, *audi alteram partem* (the right to a hearing and defense), *nemo iudex in re sua* (no one shall judge his own cause), and international law, including without limitation, relevant labour standards, and the ILO Declaration of Fundamental Principles and Rights at Work.

*STARE DECISIS*

- ✓2. In any decision rendered by the ILOAT, it shall strictly adhere to all prior legal precedents set out in its previously decided cases unless it clearly demonstrates in its written judgment that the prior precedent is distinguishable in law or in fact from the present case and therefore not applicable, or that the prior precedent was patently incorrect, or is now contrary to the generally accepted principles of international law.

*JUDGMENTS*

- ✓3. In any decision rendered by the ILOAT, it shall expressly address all legal issues or claims raised in the complaint (as well as those raised in any *amicus curiae* briefs), and shall explain and incorporate same in its written judgment.
- ✓4. In the event a complaint before the ILOAT may be equally adjudicated on the basis both substantive and/or procedural grounds, the Tribunal whenever possible shall base its judgment on the substantive rather than the procedural grounds.

*STANDARDS OF PROOF*

5. In any complaint brought before the ILOAT involving allegations of wrongdoing, misconduct, or inappropriate behavior on the part of a protected person, such protected person for the purposes of the ILOAT proceeding shall be presumed innocent for all intents and purposes, and the Office shall bear the burden of demonstrating to the Tribunal beyond a reasonable doubt that the protected was culpable for the alleged wrongdoing, misconduct, or inappropriate behavior.
6. In any other claims brought before the ILOAT by a protected person, including class actions, upon the showing by the protected person of a *prima facie* case, the burden of proof shifts to the Office to show that, based on the available evidence, the conclusions supporting the claims of the protected person are unreasonable. In the event such evidence either supports the claimant's position, or otherwise equally supports the conclusions of the protected person and of the Office, the Tribunal shall adopt the conclusions of the protected person.

*UNION AS AMICUS CURIAE*

7. The ILO Staff Union shall have the right in its sole unfettered discretion to submit a written opinion to the ILOAT, or to intervene and be heard at the time of oral argument, if any, in the matter of any complaint brought before the Tribunal by a protected person, when, in the opinion of the Union, such complaint raises a matter of policy or of general applicability. The ILOAT shall consider this opinion or oral intervention in its deliberations prior to rendering its judgment on a complaint, and shall give express reasons in its decision why it did or did not follow the *amicus* opinion.

*PRIVILEGES AND IMMUNITIES*

8. When a protected person has brought a grievance and received a final judgment from the ILOAT, such protected person shall have the right to request that the Office lift the privileges and immunities either of the Office and/or one or more of its officials so that such staff member may continue to pursue his claims in a competent national court of his or her own choosing, and the Office shall be obligated to and shall promptly lift the privileges and immunities either of the Office and/or one or more of its officials, but only in the event the Office or such officials were implicated in the complaint filed with the ILOAT.
9. In the event such grievance mentioned above of the protected person was brought against a person who enjoys privileges and immunities as a result of his or her position with an organization other than the Office, the Office shall diligently do its utmost and make all representations necessary to effect the lifting of the privileges and immunities of such person.

*INTERLOCUTORY REDRESS*

10. In the event an impugned decision of the Office (including without limitation its failure to abide by time-limits, or stays set out in the Collective Agreement on a Procedure for the Resolution of Grievances made between the Parties on 13 September 2000, or in the ILOAT constituent documents, or the Staff Regulations) will cause a protected person irreparable harm, and if the impugned decision is likely to be quashed, the protected person may, no matter what the status of his or her grievance, immediately petition the ILOAT for an order to maintain the parties in *status quo ante* (the relative positions each was in prior to the impugned decision) pending final adjudication of the grievance or complaint. Within ten days of its receipt of such petition, the ILOAT shall take a decision on same (in the event the Tribunal is not in session, such decision shall be made by the President of the Tribunal). If the Tribunal finds that the protected person is likely to suffer irreparable harm from such impugned decision, and if such impugned decision is reasonably likely to be quashed after full consideration by the

Tribunal, the Tribunal shall issue such interlocutory orders as it deems necessary to maintain the parties in such *status quo ante*.

#### *DISCLOSURE*

- ✓11. When a complaint is lodged with the ILOAT, the Office shall produce all documents or information (which shall include without limitation any and all informal documents such as e-mail messages, correspondence retained in electronic form only, handwritten notes, and oral recordings) at the request of the claimant or may object to such request, subject to section 3.12 of this Article.
- ✓12. Where a claimant's request for disclosure of documents or information has been ignored or resisted by the Office, the claimant seeking disclosure may file an application with the ILOAT to compel disclosure. The parties thereto shall demonstrate before the Tribunal the reasons for the requested documents or information to be disclosed or not disclosed, after which the Tribunal shall expeditiously render its decision on such request.
- ✓13. Any objections to a claimant's request for disclosure of documents or information must be based on a legally recognized privilege or right, and shall not be denied upon the perfunctory claim of "confidentiality".
- 14. Where the Office withholds the requested documents or information in contravention of an order from the ILOAT ordering its disclosure to the claimant, the Office shall have judgment entered against it, and the claimant shall be awarded its requested redress.
- 15. The burden of proof shall be upon the Office requested to produce documents or information to show that it has fully complied with any and all discovery requests.

#### *WITNESSES AND TESTIMONY*

- 16. All witnesses called upon to testify shall be obligated to do so unless expressly excused for good cause by the Tribunal, and must do so fully and truthfully to the best of his or her ability.
- 17. Upon the request of any claimant, the ILOAT shall hold oral hearings in which the claimant and/or his or her counsel may make arguments and/or question witnesses in the presence of the Tribunal. Failure to grant such a requested hearing shall entitle the claimant to invoke the appellate process of the ILOAT's judgment set out below, by right.

#### *CLASS ACTION*

- 18. Any grievance which has been brought as a class action pursuant to paragraph 3.13 of the Collective Agreement on a Procedure for the Resolution of Grievances made between the Parties on 13 September 2000, and which is

appealed to the ILOAT by two or more claimants who were party to the original grievance shall be treated as a class action by the ILOAT as provided for herein.

19. Even if a grievance was not originally brought pursuant to said paragraph 3.13 of the Collective Agreement mentioned in the immediately preceding paragraph as a class action, in the event two or more claimants who have the right individually to depose a complaint with the ILOAT pursuant to Article II of its Statutes, at their election, where their individual complaints concern the same or very similar issues or facts, the ILOAT shall treat such individual complaints as a single class action.
20. As soon as practicable after the filing of a complaint as a class action, the Tribunal shall effect notification of all potential members of the class, by means deemed most likely to reach as many potential members of the class affected by the complaint as possible, which notice shall include a statement that any individual claimant who is part of the class, personally or through his or her legal representative, may argue his or her position before the Tribunal at the same time that the Tribunal is considering the class action. Such notice shall also include a statement that any judgment entered in the class action shall be binding upon such recipient.
21. Individual members of a class action, in addition to their class action claims, shall also have the right to have any individual claims related to the class action claims considered and adjudicated by the Tribunal at the same time it considers the class action claims.
22. Any member notified of his or her inclusion in the class, in the event they believe they have no issue of fact or law common to the other claimants as set out in the complaint, may petition the Tribunal to remove them from the class. The Tribunal shall rule on any such petition in a timely manner.
23. Any judgment of the ILOAT in a class action shall be binding upon all members of the class who were notified of the class action, whether they personally appeared to argue their position or not.
24. For the purposes of class actions, the Union may act as a claimant/complainant in a class action upon its certification in writing to the Tribunal that the claim or claims affect two or more protected persons, in which event, the Tribunal shall treat such claim as a class action even if no other person joins as a complainant.

#### *TIME LIMITS AND SANCTIONS*

25. Where the Office fails to comply with the time limits governing responses or to co-operate in discovery, the claimant may request sanctions against the Office and the Tribunal, to the extent deemed appropriate, shall grant such request unless the Office shows good cause or unavoidable delay. Such

sanctions may include, without limitation, imposition of fines, closing of the pleadings, or entering of judgment in favor of the claimant.

- ✓26. Where the Office requests an extension of a time limit set out in the ILOAT Statutes or Rules, such extensions shall only be granted upon good cause shown. The claimant shall be promptly notified of such request, and shall be granted the right to object to such request in writing.
27. Article<sup>1</sup> II: The following paragraph shall be inserted as a separate, stand-alone paragraph immediately after paragraph 4., Article II of the Statutes-- "The Tribunal shall be competent to hear any complaint impugning any decision of the Joint Panel as provided in Articles 15-20 of the Collective Agreement on a Procedure for the Resolution of Grievances made between the Parties on 13 September 2000. The Tribunal shall consider any such complaint *de novo*, except in the event the claimant is denied the opportunity, after express written request, to present witnesses and/or make oral arguments to the Tribunal, in which event the Tribunal shall be conclusively bound and strictly abide by the factual findings of the said Joint Panel".
28. Article III: The following paragraph shall be inserted as paragraph 2. to Article III of the Statutes, replacing in its entirety the existing paragraph 2.-- "2. The judges shall be appointed for a term of three years, and may serve a maximum of two (2) three-year terms. The slate of names submitted by the ILO Director-General to the Conference of the ILO as candidates for judges must be agreed upon by the Office and the Union in advance, including the candidates who are sitting judges proposed for a second three year term".
29. Article IX: The following paragraph shall be inserted as paragraph 2. to Article IX of the Statutes, replacing in its entirety the existing paragraph 2.-- "2. All costs and/or expenses occasioned by a complaint filed with the ILOAT shall be borne by the Office in its entirety."
30. Article<sup>2</sup> 2: The following paragraph shall be inserted as Article 2 of the Rules, replacing in its entirety the existing Article 2.--" The posts of ILOAT Registrar and Assistant Registrar shall be filled in accordance with the selection competition procedures as provided for in the ILO Staff Rules. Successful candidates for the posts may be appointed to a maximum of two (2) four year terms."
31. Article 5: The following paragraph shall be inserted as paragraph 1. to Article 5 of the Rules, replacing in its entirety the existing paragraph 1.--"1. The Complainant may plead his or her own case or appoint for the purpose of representation any agent of his or her choosing."

---

<sup>1</sup> ILOAT Statutes

<sup>2</sup> ILOAT Rules

- ✓32. Article 7: The following paragraph shall be inserted as paragraph 3. to Article 7 of the Rules--"3. The ILOAT shall promptly notify the complainant of any correspondence or application made to it by the Office or any other party including the Tribunal itself as contemplated in paragraphs 1. & 2. above, and shall provide the complainant at the same time with a copy of any document submitted to the Tribunal by the Office or other party. The complainant shall also be given a reasonable period of time of no less than twenty-one days from receipt in which to submit a reply to any such application or correspondence, including without limitation, a claim of irreceivability."
33. Article 11: The following paragraph shall be inserted as paragraph 3. to Article 11 of the Rules--"3. Upon written application of the complainant, the Tribunal without fail shall hear the oral arguments of the complainant or his or her agent (in which event the Office shall be afforded an equal opportunity to make its case orally to the Tribunal should it so choose), shall allow the complainant and his agent to be present during any such oral argument, shall allow the complainant to question in the presence of the Tribunal such witnesses as he or she deems necessary to the presentation of the case, shall grant the complainant or his agent the right to cross-examine any and all witnesses called by the Office to give testimony, and, shall provide the complainant with a written transcript of any such foregoing oral argument or witness testimony.

*ESTABLISHMENT OF A PROCEDURE FOR APPELLATE REVIEW OF ILOAT DECISIONS*

34. It being the desire of the Parties hereto that the ILOAT maintain and strengthen its original foundations, and in keeping with the principle of *nemo iudex in re sua*, the Parties hereto agree that any claimant before the ILOAT or the Union may appeal any judgment of the Tribunal to the ILOAT sitting *en banc*, in which all seven (7) judges shall hear the complaint before it *de novo*. The ILOAT sitting *en banc* shall consider and rule, in writing, upon all issues of fact and law put before it by a claimant or the Union, and upon request of such claimant or Union, shall hold oral arguments and allow for the examination of witnesses, prior to rendering judgment on any such appeal.
35. Any such appeal to the ILOAT sitting *en banc* must be filed within 180 days of the dated of the impugned judgment.
36. Upon adoption of this Agreement by the Governing Body, the Tribunal shall be invited to promulgate or otherwise adopt rules of procedure for the hearing of such appeals *en banc* which shall become applicable and binding upon all parties to a complaint filed subsequently to their promulgation.

*RULES OF EVIDENCE*

37. Upon the adoption of this Agreement by the Governing Body, the Tribunal shall be invited to promulgate or otherwise adopt rules of evidence within one year, which shall become applicable and binding upon all parties to a complaint filed subsequently to the promulgation of such rules of evidence.

*CODE OF CONDUCT FOR LEGAL REPRESENTATIVES/AGENTS*

38. Upon adoption of this Agreement by the Governing Body, the Tribunal shall be invited to promulgate or otherwise adopt within one year a code of ethical conduct which shall binding upon all representatives/agents appearing before the Tribunal representing either a staff member or the Office, whether such representatives are licensed lawyers or not.
39. In the event the ILOAT fails to promulgate any of the additional rules or codes foreseen by this Agreement (i.e., rules of *en banc* appeal, rules of evidence or a code of ethical conduct for representatives) within the respectively mentioned time periods, or in the event any of the Parties hereto object to any one or part of such additional rules or codes promulgated by the ILOAT, the Parties hereto shall immediately negotiate on an urgent basis, upon the request of either party, any such additional rules or codes foreseen by this Agreement which have not been so promulgated by the ILOAT. Any such rules or codes agreed to between the Parties shall be incorporated herein by reference and shall be deemed to form an integral part of this Agreement.

January 15, 2002