108th Session **Judgment No. 2867**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs A. T. S. G. against the International Fund for Agricultural Development (IFAD) on 8 July 2008, IFAD's reply of 12 September, the complainant's rejoinder of 31 October and the Fund's surrejoinder of 18 December 2008;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereinafter "the Convention") entered into force on 26 December 1996. By decision 24/COP.1 the Conference of the Parties, which is the Convention's supreme body, established the Global Mechanism, which is responsible for increasing the effectiveness and efficiency of existing financial mechanisms with a view to assisting country Parties in implementing the Convention. The Global Mechanism is housed by IFAD, and its modalities and administrative operations are set out in a Memorandum of Understanding (hereinafter "the MOU") signed between the

Conference of the Parties and IFAD on 26 November 1999. The MOU provides in Section II.A that the Global Mechanism has a separate identity within IFAD and is an organic part of the structure of the Fund directly under the President of the Fund. According to Section III.A, paragraph 4, the Managing Director of the Global Mechanism is responsible for preparing the Global Mechanism's programme of work and budget, including proposed staffing, and his proposals are reviewed and approved by the President of the Fund before being forwarded to the Executive Secretary of the Convention for consideration in the preparation of the budget estimates of the Convention. Section III.B states that the Managing Director, on behalf of the President of the Fund, will submit a report to each ordinary session of the Conference on the activities of the Global Mechanism.

The complainant is a Venezuelan born in 1958. On 1 March 2000 she was offered a two-year fixed-term appointment with IFAD as a Programme Officer in the Global Mechanism at grade P-4. Her contract was subsequently renewed several times up to 15 March 2006. By a memorandum of 15 December 2005 the Managing Director of the Global Mechanism informed her that the Conference had decided to cut the Global Mechanism's budget for 2006-2007 by 15 per cent. As a result, the number of staff paid through the core budget had to be reduced. He explained that the regional programme for which the complainant was working had become less attractive to donors and that he had decided to cut down the costs related to it; consequently, her post would be abolished and her contract would not be renewed upon expiry on 15 March 2006. He offered her a six-month contract from 16 March to 15 September 2006 as "an attempt to relocate [her] and find a suitable alternative employment". On 15 February 2006 the complainant wrote to the Assistant President of the Finance and Administration Department of IFAD requesting that the President of IFAD establish a review process, as provided for under Chapter 11 of the Human Resources Procedures Manual, to determine whether the "declared post redundancy" was appropriate. The Director of IFAD's Office of Human Resources informed her on

13 March that the decision not to renew her contract was in line with the provisions of the Manual and that the review process had been replaced by a facilitation process.

The complainant wrote to the President of the Fund on 10 May 2006 requesting facilitation. The facilitator concluded on 22 May 2007 that no agreement was likely to be reached between the parties. The complainant filed an appeal with the Joint Appeals Board on 27 June 2007 challenging the Managing Director's decision of 15 December 2005.

In its report of 13 December 2007 the Board held that, in the absence of evidence showing that the Managing Director had consulted or obtained the approval of the President of the Fund before deciding to abolish the complainant's post, the decision not to renew the complainant's appointment was tainted with abuse of authority. It also found that the decision had been taken in breach of the provisions of the Manual concerning redundancy, since the possibility of renewing her contract had not been seriously considered and no attempt had been made to relocate her or to provide her with additional training. In addition, she had been denied due process as the Director of the Office of Human Resources had incorrectly advised her that the review process for job redundancies had been abolished. The Board therefore recommended that the complainant be reinstated within the Global Mechanism under a two-year fixed-term contract and that the Global Mechanism pay her an amount equivalent to all the salaries, allowances and entitlements she had lost since March 2006.

By a memorandum of 4 April 2008, which is the impugned decision, the President of the Fund informed the complainant that he had decided to reject her appeal. He considered that the decision not to renew her contract had been taken in accordance with section 1.21.1 of the Manual, which provides that a fixed-term contract expires on the date mentioned in the contract. Noting that she had been given three months' notice, that she had been offered a six-month consultancy contract to enable her to search for alternative employment, that a facilitation process had been conducted and that

her applications for vacancies within IFAD had been given due consideration, he concluded that she had been afforded due process.

B. The complainant contends that the decision not to renew her contract was tainted with abuse of authority. Indeed, according to the MOU, the Managing Director was not entitled to determine the Global Mechanism's programme of work independently of the Conference of the Parties and of the President of the Fund. According to the 2006-2007 programme of work and budget approved by the Conference, the staffing proposal to be financed by the Global Mechanism's core budget was for nine professional posts, which included her post. Consequently, the Managing Director's decision was not in line with the approved programme of work and budget; if he deemed it necessary to modify the programme by suppressing her post, he should have obtained the prior approval of both the President of the Fund and the Conference, but he did not do so. She adds that even though the Conference agreed to a 15 per cent reduction in the core budget, there is no evidence that such "modest budget cuts" required the abolition of her post. She explains that beside the core budget, the activities of the Global Mechanism are financed by voluntary contributions and that the Managing Director has the authority to approve expenditure to be deducted from the voluntary contributions account. She points out that in 2006 several consultants and three professional staff were recruited to work for her programme, the latter under fixed-term contracts.

The complainant alleges that IFAD acted in breach of its duty of care and good faith. The termination of her contract was abrupt and unjustified and it damaged her professional reputation. According to section 1.21.1 of the Manual, consideration should be given to a staff member's performance, the need for the post and the availability of funding when deciding not to renew a contract. On the basis of these factors, the Joint Appeals Board concluded that her contract should have been renewed. She adds that, in accordance with section 11.3.9(b) of the Manual, the Fund had a duty to consider her for the new positions to be filled in the Global Mechanism or to provide her with additional training in order to enable her to find suitable alternative employment. Although she had exemplary

performance appraisals and was one of the most senior staff of the Global Mechanism, the Fund did not assist her in finding alternative employment. The vacancies for which, according to the President of the Fund, she was given due consideration, arose after she had separated from service; consequently, she had to apply as an external candidate. She stresses that the only employment she was offered was a consultancy contract for which she did not receive the terms of reference until after having separated from service.

In addition, she criticises the Fund's ambivalent attitude towards the staff working in the Global Mechanism. She states that she had an "IFAD contract" but that the defendant preferred to treat her as a "Global Mechanism problem".

Lastly, she indicates that, contrary to the Tribunal's case law, the President of the Fund did not give reasons for departing from the Joint Appeals Board's recommendations.

The complainant asks the Tribunal to quash the impugned decision and to order IFAD to reinstate her, for a minimum of two years, in her previous post or in an equivalent post in IFAD with retroactive effect from 15 March 2006. She also claims reimbursement for "loss of salary, allowances and entitlements, including […] contributions to the United Nations Joint Staff Pension Fund, potential promotion". She seeks compensation in the amount of 50,000 United States dollars for the suffering caused by the heedless manner in which she was treated by IFAD, and 5,000 euros in costs.

C. In its reply IFAD contends that the Tribunal has no jurisdiction to entertain the argument that the Managing Director of the Global Mechanism abused his authority in deciding not to renew the complainant's contract. Neither is it competent to entertain the argument that the decision-making process of the Fund was flawed, as this may entail examining the decision-making process in the Global Mechanism. IFAD explains that the Global Mechanism is not an organ of the Fund; it is accountable to the Conference, and acts of its Managing Director are not attributable to the Fund. It is indeed clearly stated in decision 24/COP.1 that the role of the Fund is restricted

to housing the Global Mechanism. Moreover, Section II.A of the MOU stipulates that the Global Mechanism will have a separate identity within the Fund; thus, the latter merely supports the Global Mechanism in performing its functions in the framework of the mandate and policies of the Fund. The defendant consequently takes the view that IFAD's acceptance of the jurisdiction of the Tribunal does not extend to entities that it may host pursuant to international agreements with third parties. It adds that neither the Conference of the Parties nor the Global Mechanism has recognised the jurisdiction of the Tribunal.

On the merits the Fund denies having acted in breach of its duty of care. In its view, the complainant is mistaken in considering that she is a staff member of the Fund and that the procedures concerning redundancy laid down in the Manual applied to her. Her legal status is defined in the President's Bulletin No. PB/04/01 of 21 January 2004, according to which the application of the aforementioned Manual is subject to limitations and conditions. In particular, the provisions of the Manual concerning redundancy do not apply to her because paragraph 11(c) of the bulletin provides that "IFAD's rules and regulations on the provision of career contracts for fixed-term staff shall not apply to staff of the Global Mechanism". The defendant indicates that the complainant was nevertheless offered a six-month consultancy contract and that she refused it. Thus, the complainant was *de facto* granted by the Global Mechanism the same protection that she would have been given by the Fund had she been an IFAD staff member.

In the event that the Tribunal considers that it is competent to rule on the allegation of abuse of authority, IFAD asserts that the Managing Director had the authority to decide not to renew the complainant's contract. To support its view, it refers to Section III.A, paragraph 4, of the MOU, which provides that the Managing Director is responsible for preparing the programme of work and budget of the Global Mechanism, which includes proposed staffing. Thus, he was authorised to assess and make decisions in relation to the staffing needs of the Global Mechanism insofar as his decisions complied with the budgetary limits established by the Conference. It further submits that the Fund has no authority to examine whether the core

budget approved by the Conference warranted the abolition of the complainant's post, because decisions concerning the staffing and budget of the Global Mechanism are not taken by the Fund but by the Conference. It therefore argues that IFAD cannot be held responsible for the Managing Director's decision.

The defendant also rejects the complainant's plea that the President of the Fund failed to give reasons for rejecting the Joint Appeals Board's recommendations. It points out that, in his letter of 4 April 2008, the President explained that he had decided to reject these recommendations on the basis of paragraph 11(c) of his Bulletin No. PB/04/01, according to which the renewal of contracts is subject to the functional needs and availability of resources.

D. In her rejoinder the complainant contests the Fund's position regarding the Tribunal's jurisdiction. At no stage during the internal appeal procedure did the defendant suggest that she was mistaken as to the fact that it was competent to consider her appeal. On the contrary, the IFAD Administration advised her to undertake the facilitation process, which was a prerequisite to filing an internal appeal with IFAD. Moreover, the President of the Fund did not state in the impugned decision that the Fund was not competent to deal with her case. She adds that if the Tribunal declines jurisdiction to hear her case, she will be deprived of any legal redress.

Contrary to the defendant's assertion, she contends that she was a staff member of IFAD until her separation from service on 15 March 2006. Indeed, all her letters of appointment provided that she was offered an "appointment with the International Fund for Agricultural Development", and the first also indicated that "the appointment w[ould] be made in accordance with the general provisions of the IFAD Personnel Policies Manual".

With regard to the contention that the Fund cannot be held responsible for decisions taken by the Managing Director, she indicates that such contention is based on the incorrect assumption that he was not a staff member of IFAD. She points out that, according to the

Managing Director's job description, he works "under the direction of the President of the […] Fund".

She maintains that the provisions of the Manual on redundancy were applicable. Paragraph 11(c) of the President's Bulletin No. PB/04/01 provides for exceptions to the application of the Manual to staff members working within the Global Mechanism only with regard to the provisions on career contracts, and not those concerning redundancy. Moreover, the President of the Fund made no reference to that paragraph in the impugned decision.

The complainant expands on her claim for compensation, arguing that she was prejudiced by lack of "proper notice", "heedless treatment" and "dilatory procedures". She contests that she was given three months' notice before separating from service. She received a notice of non-renewal from the Managing Director on 15 December 2005, but it was only on 13 March 2006, i.e. two days before the expiry date of her contract, that she received an "official communication from a personnel officer" stating that her contract would not be renewed.

E. In its surrejoinder IFAD maintains its position. It specifies that it does not challenge the Tribunal's jurisdiction to hear the complaint, but only its jurisdiction to entertain the plea concerning abuse of authority by the Managing Director, the allegation that the abolition of the complainant's post was not required on financial grounds and the allegation that the decision-making process of the Global Mechanism was flawed.

With regard to the notice given, the defendant reiterates that the Managing Director informed the complainant on 15 December 2005 that her contract would not be renewed upon expiry on 15 March 2006. It denies that her contract was ended prematurely, explaining that it is of the essence of a fixed-term contract that it ends at the expiry date set in the letter of appointment. The complainant's claim for damages on that basis must therefore be rejected.

CONSIDERATIONS

1. The complainant challenges a decision of the President of the International Fund for Agricultural Development dismissing her internal appeal with respect to a decision not to renew her fixed-term contract as Programme Manager for Latin America and the Caribbean within the Global Mechanism. That decision was contrary to the recommendation of the Joint Appeals Board. The earlier decision not to renew the complainant's contract was taken by Mr M., who described himself as "Managing Director, Global Mechanism, IFAD Rome", and was based on the abolition of the complainant's post for reasons of budgetary constraint. A preliminary question arises as to the extent to which the Tribunal may review that earlier decision. The arguments go to the powers and jurisdiction of the Tribunal and, on that account, must be dealt with even though raised for the first time in these proceedings.

2. The Global Mechanism was established by the United Nations Convention to Combat Desertification in Those Countries Experiencing Severe Drought and/or Desertification, Particularly in Africa. Article 21, paragraph 4, of the Convention provides that the Global Mechanism functions "under the authority […] of the Conference of the Parties and [is] accountable to it". In accordance with paragraph 6 of that article, a Memorandum of Understanding (the MOU) was later reached with the Fund for it "to house the Global Mechanism for the administrative operations of such Mechanism". The MOU provides that the Global Mechanism is to be housed in Rome "where it shall enjoy full access to all of the administrative infrastructure available to the Fund offices, including appropriate office space, as well as personnel, financial, communications and information management services" (Section VI).

3. The MOU also provides that "[w]hile the Global Mechanism will have a separate identity within the Fund, it will be an organic part of the structure of the Fund directly under the President of the Fund" (Section II.A), and that its Managing Director, "in discharging his or

her responsibilities, will report directly to the President of [the Fund ... and] will cooperate with the Executive Secretary of [the Convention]" (Section II.D). Further provision is made in Section III.A with respect to the relationship of the Global Mechanism to the Conference of the Parties, which is the supreme body of the Convention. Relevantly, it is provided that the Mechanism functions under the authority of the Conference and is accountable to it, that "[t]he chain of accountability [runs] directly from the Managing Director to the President of the Fund to the Conference", and that the Managing Director is to "submit reports to the Conference on behalf of the President of the Fund".

4. Two other provisions of the MOU should also be noted. Paragraph 4 of Section III.A, provides:

> "The Managing Director will be responsible for preparing the programme of work and budget of the Global Mechanism, including proposed staffing, which will be reviewed and approved by the President of the Fund before being forwarded to the Executive Secretary of the Convention for consideration in the preparation of the budget estimates of the Convention, in accordance with the financial rules of the Conference." (Emphasis added.)

Paragraph 6 provides for the Conference to "approve the programme of work and budget of the Global Mechanism" and to authorise the transfer of resources to the Fund "for all or a portion of the Global Mechanism's approved operating expenses". The complainant relies on these two provisions to argue, firstly, that the Managing Director exceeded his authority in deciding not to renew her contract and, secondly, that the "core budget" approved by the Conference did not require the abolition of her post. The Fund contends that the Tribunal lacks jurisdiction to entertain these arguments.

5. The argument with respect to the Tribunal's jurisdiction is based, in the main, on the proposition that "[t]he Fund and the Global Mechanism are separate legal identities". In this regard, the Fund claims, correctly, that the Conference of the Parties is not an organ of the Fund and that the Global Mechanism is an integral part of the Convention accountable to the Conference. It also points to the

statement in the MOU that the Global Mechanism is to have a separate identity and contends that the statement that it is to "be an organic part of the structure of the Fund" does not make it an organ of the Fund. In this last regard, it contends that to treat the Global Mechanism as an organ of the Fund would require amendment both to the Convention and to the Agreement Establishing IFAD.

6. The fact that the Global Mechanism is an integral part of the Convention and is accountable to the Conference does not necessitate the conclusion that it has its own legal identity. Rather, and as the term "Global Mechanism" suggests, it merely indicates that it is the nominated mechanism by which the Conference gives effect to certain obligations created by the Convention. Nor does the stipulation in the MOU that the Global Mechanism is to have a "separate identity" indicate that it has a separate legal identity or, more precisely for present purposes, that it has separate legal personality. In this last regard, the difference may conveniently be illustrated by reference to a distinct trade name under which a person or corporation carries on business. The trade name frequently constitutes "the identity" or, perhaps, one of "the identities" of the person or corporation concerned, but it is the person or corporation that has legal personality for the purposes of suing and being sued. It is in this context that the statement that the Global Mechanism is to be "an organic part of the structure of the Fund" is to be construed.

7. The words "an organic part of the structure of the Fund" do not fall for consideration in isolation from other provisions of the MOU. It is significant that, according to the MOU, the Managing Director is to report to the President of the Fund. Moreover, the chain of accountability does not run directly from the Managing Director of the Global Mechanism to the Conference but "directly from the Managing Director to the President of the Fund to the Conference". Similarly, "[t]he Managing Director […] reports to the Conference on behalf of the President of the Fund" (emphasis added). The President of the Fund is to review the programme of work and the budget prepared by the Managing Director of the Global Mechanism before it

is forwarded to the Executive Secretary of the Convention for consideration. Additionally, the Global Mechanism is not financially autonomous. Rather, the Conference authorises the transfer of resources to the Fund for the operating expenses of the Global Mechanism. When regard is had to these provisions in the MOU, it is clear that the words "an organic part of the structure of the Fund" indicate that the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes. The effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund. Given this, it is wrong to say that to treat the Global Mechanism as part of the Fund would require an amendment to the Convention and, also, to the Agreement Establishing IFAD.

8. The Fund makes three further submissions relating to the powers and jurisdiction of the Tribunal. The first is that the Tribunal may not entertain flaws in the decision-making process of the Global Mechanism; the second is that the Tribunal may not entertain flaws in the decision-making process of the Fund if it entails examining the decision-making process of the Global Mechanism and the third is that acts of the Managing Director of the Global Mechanism are not attributable to the Fund. Because decisions of the Managing Director relating to staff in the Global Mechanism are, in law, decisions of the Fund, these submissions must be rejected.

9. The Fund makes a further argument that the complainant was not a staff member of the Fund which, if correct, would mean that the Tribunal has no jurisdiction to entertain the complaint. That argument is made in the face of the terms of the complainant's appointment. Her appointment followed her acceptance of an offer of 1 March 2000, written on the letterhead of the Fund, of "a fixed-term appointment for a period of two years with the International Fund for Agricultural Development (IFAD)". The offer stipulated a probationary period and that, in the event that the complainant's performance in that period was not satisfactory, her employment could

"be terminated by IFAD with one month's written notice". Similarly, it was stated that should the complainant wish to terminate her employment during the probationary period, she was "required to give written notice of at least one month to IFAD". In March 2002 and, again, in March 2004 the complainant accepted offers written on the letterhead of the Fund for the extension of her "appointment with the International Fund for Agricultural Development". Those written offers and their subsequent acceptance clearly constituted the complainant a staff member of the Fund. As the complainant was employed by and remained in the employ of the Fund, its reliance on Judgment 1509 is misplaced. In that case, the complainant's terms of appointment made it clear that he was not a staff member of the defendant organisation.

10. IFAD also relies on the President's Bulletin No. PB/04/01 of 21 January 2004 in support of its argument that the complainant was not a staff member of the Fund. Paragraph 11 of that bulletin specifies certain differences in the terms of appointment and in the conditions relating to staff of the Fund and those of the Global Mechanism, including, in subparagraph (c), that:

> "All fixed-term contracts of employment for the Global Mechanism shall be for a maximum of two years, renewable, and subject to the availability of resources. [The Fund's] rules and regulations on the provision of career contracts for fixed-term staff shall not apply to the staff of the Global Mechanism, except for those that have already received a career contract as a result of their earlier employment with [the Fund]."

It will later be necessary to return to this provision. For the moment, it is sufficient to note the somewhat curious argument that it establishes that the complainant was not a staff member of the Fund because "[if] Global Mechanism personnel were considered staff members of the Fund, the President would not have the authority to limit nor qualify the application of the [Human Resources Procedures Manual] rules [of the Fund]". In fact, the MOU confers no power on the President to determine the conditions of appointment of the personnel of the Global Mechanism and, thus, the President has authority to do so only if they are staff members of the Fund.

11. Given that the personnel of the Global Mechanism are staff members of the Fund and that the decisions of the Managing Director relating to them are, in law, decisions of the Fund, adverse administrative decisions affecting them are subject to internal review and appeal in the same way and on the same grounds as are decisions relating to other staff members of the Fund. So too, they may be the subject of a complaint to this Tribunal in the same way and on the same grounds as decisions relating to other staff members.

12. As already indicated, the complainant argues that the decision to abolish her post was taken without authority and was not required by budgetary constraints. At this stage it is convenient to note that that decision and the decision not to renew her contract are discretionary decisions that may be reviewed only on limited grounds. Those grounds include that the decision in question was taken without authority or was based on an error of law.

13. The question of the Managing Director's authority to abolish the complainant's post depends on whether, in the circumstances, that course was impliedly prohibited by the terms of the MOU and the decision of the Conference relating to staffing and budget for the 2006-2007 biennium. As already indicated, the MOU requires the Managing Director to prepare a programme of work and budget for the Global Mechanism to be reviewed by the President of the Fund and submitted for consideration by the Conference, which is "to approve [its] programme of work and budget". It is clear from paragraph 4 of Section III.A of the MOU that approval of "the programme of work and budget" includes approval of "proposed staffing".

14. It is not disputed that in October 2005 a proposed programme of work and budget for the 2006-2007 biennium was submitted to the Conference and that the proposed staffing expressly allowed for the continuation of nine professional posts, including that of the complainant. The Conference approved the proposed staffing but reduced the proposed core budget. The Conference also noted,

amongst other things, that the Global Mechanism "must be managed on the basis of the […] approved biennium core budget [...] and that this takes precedence over all other tables or figures […], unless amended by [the Conference]". In this regard, it may be noted that progress reports on the Global Mechanism in November 2003 and February 2005 indicated that the core budget left "a resource gap of about USD 1.2 million per year" for the 2004-2005 biennium, a shortfall that was apparently covered from other sources.

15. Given the previous practice of a shortfall in the core budget of the Global Mechanism and the Conference's express approval of the proposed staffing, the Conference decision to reduce the proposed core budget can only be seen as a directive that the approved posts were to be maintained and that the "resource gap" was to be made good from other sources, possibly by savings in other areas. Indeed, it is not disputed that the Managing Director indicated in staff meetings in October and, again, in December 2005, shortly before informing the complainant that her post was to be abolished and her contract would not be renewed, that the "resource gap" would, in fact, be covered by savings in other areas.

16. The MOU makes it clear that the Global Mechanism functions under the authority of the Conference. Thus, the conclusion that the Conference decision required the continuation of the approved posts, including that of the complainant, directs the further conclusion that the abolition of her post was impliedly forbidden by the Conference decision. Accordingly, the decision of the Managing Director to abolish it was taken without authority. That conclusion makes it unnecessary to consider the complainant's further argument that the reduction in the proposed core budget did not necessitate the abolition of her post. However, the conclusion that the effect of the Conference decision was that her post was to be maintained also directs the conclusion that it did not necessitate its abolition.

17. Because the Managing Director had no authority to abolish the complainant's post, his decision not to renew the complainant's

contract on the ground of its abolition constituted an error of law. The President of the Fund erred in law in not so finding when considering her internal appeal. It follows that the President's decision of 4 April 2008 dismissing the complainant's internal appeal must be set aside.

18. Although the Joint Appeals Board recommended that the complainant be reinstated in a post in the Global Mechanism, there is no evidence that her contract would have been renewed for the 2008-2009 biennium. Accordingly, reinstatement will not be ordered. However, as the abolition of her post was the only reason advanced for the non-renewal of the complainant's contract and there is nothing to suggest that her contract would not otherwise have been extended for two years, she is entitled to material damages in the amount of salary and other benefits she would have received had her contract been renewed for a further two years, together with interest at the rate of 8 per cent per annum from due dates until the date of payment. The complainant must give credit for wages or salary received in that period.

19. The complainant makes a further argument that the Fund did not comply with its duty of care and did not apply the redundancy provisions applicable to other staff members. The argument, if correct, would not add to material damages but is relevant to moral damages.

20. It is not disputed that the complainant was not considered for other positions within the Global Mechanism or for training that might otherwise have qualified her for those positions, as would be the case for other staff members in relation to positions within the Fund. Nor is it disputed that, as found by the Joint Appeals Board, when the complainant requested "the establishment of a review process", she was incorrectly informed that that "process […] ha[d] been abolished and replaced by a facilitation process". The Fund contends that, by reason of paragraph 11(c) of the President's Bulletin No. PB/04/01

of 21 January 2004, the redundancy procedures applicable to other staff members of the Fund are not applicable to staff members employed in the Global Mechanism. That argument must be rejected. Paragraph 11(c) provides, in effect, that staff members employed in the Global Mechanism are not eligible for career contracts. It says nothing about their entitlement to have the redundancy provisions set out in the Human Resources Procedures Manual applied to them. Moreover, those provisions (section 11.3.9) are not restricted to staff members with career contracts.

21. The Fund further contends that it complied with its duty of care and *de facto* observed its redundancy procedures in that "the complainant was offered a six-month consultancy contract with the Global Mechanism". This, it is said, was "meant to build [her] capacity and to train her". The offer of a six-month consultancy contract may mitigate but does not excuse the failure of the Fund to abide by the redundancy provisions applicable to staff members.

22. One other matter is relevant to moral damages. The President rejected the substance of the complainant's internal appeal on the ground that proper notice had been given of the non-renewal of her contract. That neither addressed the authority of the Managing Director of the Global Mechanism to abolish her post nor adverted to the issue whether the question of his authority could be considered. The arguments relating to that last issue were as relevant to the Joint Appeals Board as they are to the Tribunal. This and the other matters referred to in considerations 19 and 20 above entitle the complainant to an award of moral damages over and above those flowing from the illegality of the decision to abolish her post. The Tribunal awards her 10,000 euros in moral damages.

23. The complainant is also entitled to costs in the amount of 5,000 euros in respect of these and the internal appeal proceedings.

DECISION

For the above reasons,

1. The President's decision of 4 April 2008 is set aside.
2. IFAD shall pay the complainant material damages equivalent to the salary and other allowances she would have received if her contract had been extended for two years from 16 March 2006, together with interest at the rate of 8 per cent per annum from due dates until the date of payment. The complainant is to give credit for wages or salary earned within that period.
3. IFAD shall pay the complainant moral damages in the sum of 10,000 euros.
4. It shall also pay her costs in the amount of 5,000 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 4 November 2009, Ms Mary G. Gaudron, President of the Tribunal, Mr Seydou Ba, Vice-President, Mr Giuseppe Barbagallo, Judge, Ms Dolores M. Hansen, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2010.

Mary G. Gaudron
Seydou Ba
Giuseppe Barbagallo
Dolores M. Hansen
Patrick Frydman
Catherine Comtet