

**GB March 2021**  
**PFA Employers' written comments**

- [PFA/15/1](#) **Proposed amendments to the Statute of the ILO Administrative Tribunal**

Regarding the procedure according to which an international organization that has recognized the jurisdiction of the Tribunal may revoke its declaration of acceptance: The proposed amendments are aligned with the main Employers' group views expressed in earlier GB sessions where note was made that the withdrawal procedure should be well-defined and flexible so that it does not become a barrier to joining. Providing reasons for withdrawal should not be obligatory but part of an understanding to share experience and undertake good governance in a spirit of transparency.

With respect to the term of office of judges and the geographical distribution and gender balance in the composition of the Tribunal: The Employers' Group previously stressed that the skills and professional experience should be the primary requirement. The proposed amendment in Article III first and foremost emphasizes the moral character of appointed judges as well as their qualifications. The amendment notes that "due regard shall be given" with respects to geographic distribution and gender balance, and hence does not undermine the criteria on ethics and qualifications.

In relation to the independent review of the functioning of the Tribunal, the Employers' Group has initially suggested to wait for the Tribunal's consultations rather than to undertake an independent review. In this respect, it seems reasonable to wait for the on-going UN common system review before initiating an independent review of the ILO AT.

**Governing Body - 341<sup>st</sup> Session, March 2021**  
**Programme, Financial and Administrative Section**  
**Personnel Questions Segment**

**Workers' Group Comments**

**Document for Ballot by Correspondence**

**GB.341/PFA/15/1**

**Matters relating to the Administrative Tribunal of the ILO**  
**Proposed amendments to the Statute of the Tribunal**

The Workers' Group welcomes the proposed change in the Statute of the ILO Administrative Tribunal (ILO AT) that now explicitly regulates what will happen in case an extension of the appointment of a judge needs to take place but the ILO Conference does not meet prior to the expiry of his or her term of office. We deeply regret that last year it was not possible to find consensus on the basis of the current version of the Statute on how to deal with this matter in regard of Judge Kreins, which led to his stepping down from the ILO-AT and the loss of a very highly qualified and experienced judge to the work of the ILO-AT.

On the second issue addressed by the changes, namely the procedure according to which an international organization that has recognized the jurisdiction of the Tribunal may revoke its declaration of acceptance, we reiterate our strong concern that increasingly organizations may consider leaving the Tribunal for reasons of 'forum-shopping'. In the absence of the possibility to introduce stronger and binding legal obligations, we can accept the current proposals as an important step forward, but urge the Office to keep a close eye on how organizations are living up to the expectations expressed, including proper consultations with the relevant staff representative bodies prior to the withdrawal decision, to ensure the new clause will not be seen as an empty provision.

With regard to the proposed changes on the term of office of judges we can accept them, taking into account that the Tribunal has also indicated it can live with these changes. However, we draw attention to the fact that currently there exists in the ILO-AT an established good practice that judges will step down when they reach the age of 75. This provision has not been codified on the occasion of the current changes to the Statute. In our view, it would be good to let the Tribunal know that we expect this good practice to be continued also in the future.

Finally, on the geographical distribution and gender balance in the composition of the Tribunal: as also expressed by the Tribunal in the consultation phase, we emphasize that the general requirements regarding high quality, integrity, experience and qualifications required from judges, including also language requirements, should always be paramount, and take priority over any other requirements. On that basis we can accept the proposal to add that 'due regard shall be given to geographical balance and gender balance in the composition of the Tribunal'.

**Comments by the Government of India concerning proposed amendments to the Statute of the ILO Administrative Tribunal (GB.341/PFA/15/1)**

The Government of India agrees with giving extension of 7 years to 2 judges as mentioned in paragraph 35 of the document GB.341/PFA/15/1. However, it would be appreciated if the good practice of capping the age to 75 years is adhered to by the judges to whom extension is given. We will also recommend that deliberations may commence on introducing transparency in the process of shortlisting of judges to the Administrative Tribunal of ILO by consulting national judiciaries and Governments.

## **IMEC Statement on Amendments to the ILOAT Statute, PFA/15/1**

The members of IMEC are pleased to join consensus on these much-needed amendments to the ILOAT Statute, one of the most significant reforms of the Tribunal in its history. These amendments rationalize and modernize the 75-year-old Statute in several important ways.

First, the amendments introduce key best practices to better align the Tribunal with other, more recently established international tribunals: specific language on the importance of geographical and gender balance; term limits for judges; and, very importantly, a staggering mechanism so that we never again find ourselves in the precarious situation we face this year of needing to appoint six of the Tribunal's seven judges all at once.

Second, the amendments introduce a critical safeguard against a judge's term lapsing should the Conference be unable to meet in a given year. The amendments fix the Statute to prevent the deeply regrettable situation we faced last summer when Judge Kreins's term expired in the absence of holding the Conference. Never again will the Tribunal lose a talented judge as the result of such circumstances.

Third, the amendments codify and rationalize the process under which an organization withdraws from the Tribunal's jurisdiction. Critically, the new language does not grant the ILO Governing Body a veto over withdrawal, which is a decision that can only be made by the organization in question and its Members.

Fourth, the decision point acknowledges the critical cooperation that the Office provided to the UN Secretary-General in the compilation of the report entitled "Initial Review of the Jurisdictional Set-Up of the United Nations Common System," UN Doc. A/75/690, a comprehensive review of the evolution of and relationship between the different administrative tribunals of the UN system that sets forth several proposals for harmonizing the different tribunals' approach to Common System matters. We look forward to actively engaging in these continued discussions in New York.

As a final note, we would like to express our deep satisfaction that the tripartite membership has come together to approve this package of amendments by consensus after two-and-a-half years of discussions and negotiations. We would also like to thank the Office and the Office of Legal Services for their tireless work with the tripartite membership, the Tribunal's judges and Registry, and member organizations of the Tribunal to formulate a balanced set of amendments acceptable to all stakeholders, including the Tribunal itself. We commend the amendment package to the ILC and anticipate its swift adoption in June.