



COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Hundred and Second Session

Rome, 14 - 16 March 2016

Review of the work of the Ethics Committee

I. INTRODUCTION

1. The FAO Ethics Committee was and remains a unique feature in the United Nations System. In 2008, the Immediate Plan of Action (IPA) for FAO Renewal (2009-11), approved by the Conference at its 35th (Special) Session, called for the establishment of an Ethics Committee. The Finance Committee and the Committee on Constitutional and Legal Matters (CCLM) examined the conditions of implementation of this action over a period of two years. The proposed establishment of an Ethics Committee was not consensual amongst the FAO membership. While some Members were in favor of the initiative, a few Members were concerned that the Committee could undermine the independence of the ethics function and Ethics Officer. In 2011, a compromise was finally reached. At its 141st Session in April 2011, the Council agreed, on the basis of the proposal made by the CCLM and Finance Committee, to the establishment of the Committee on a trial basis for a period of four years, starting in January 2012.

2. The main elements of the compromise were that the Ethics Committee would have a majority of external members. The Chairperson was to be appointed from among the external members. The Committee should exercise no supervisory functions in respect of the Ethics Officer. The Committee would be established on a "trial" basis for a period of four years. At the end of this period a determination would be made as to its future. As provided under the Committee's Terms of Reference, the CCLM, the Finance Committee and the Council were mandated to review the work of the Ethics Committee during the four-year period, in order to determine, at the expiry of its mandate, whether it should be extended for a further period of four years, or established on a permanent basis, or whether there should be any adjustments to its Statutes.

3. Under its Terms of Reference (see **Annex 1**), the Ethics Committee's mandate was to operate as an advisory panel on all matters pertaining to ethics within the Organization, to ensure general oversight over the functioning of the ethics programme, as well as to provide assurance that the programme was operating effectively. The Committee was also responsible for reviewing and advising



on all ethics-related policies, regulations and rules, training, disclosure programmes and conflict of interest prevention activities.

4. The mandate of the Ethics Committee expired on 31 December 2015. This document provides an overview of the activities of the Ethics Committee over the past four years, taking into account the fact that both Committees requested and expect a detailed report of the activities of the Ethics Committee. It is acknowledged that the final decision with respect to the future of the Committee rests with the FAO membership and is not a matter for the Secretariat. However, drawing its experience in the course of the past few years, the Secretariat provides herewith some elements which the CCLM and Finance Committee may wish to take into consideration when making a determination as to the future of the Committee.

II. FUNCTIONING OF THE COMMITTEE

5. The Committee consisted of three individuals external to the Organization, whose nomination was approved by the Council, on the recommendation of the Finance Committee and the CCLM, one Deputy Director-General, and the Legal Counsel as an *ex officio* member.

6. During its first year, i.e. from January 2012 to January 2013, the Committee was composed of Mr Ngonlardje Kabra Mbaidjol¹, Ms Anne Marie Taylor² and Mr José Zalaquett³, as external members, Ms Ann Tutwiler, as Deputy Director-General (Knowledge) and Mr Antonio Tavares, Legal Counsel. In December 2012, Mr Daniel Gustafson, Deputy Director-General, (Operations), was appointed as an internal member to replace Ms Tutwiler. In January 2013, Ms Taylor resigned for health reasons and Ms Suomi Sakai⁴ was appointed as an external member until December 2015. The term of the other two external members, Mr Ngonlardje Kabra Mbaidjol and Mr José Zalaquett, was renewed until 31 December 2015 and Mr Gustafson and Mr Tavares also remained members of the Committee until that date.

7. In 2012, the Committee held two meetings in Rome. Subsequently, it started a practice of annually holding one physical two-day meeting in Rome and one or two annual meetings by teleconference.

8. Over the years, the Committee reviewed a variety of matters, including the implementation of the Financial Disclosure Programme, training on ethical matters, and review of relations with the private sector. The Committee also provided general guidance to the Ombudsman/Ethics Officer on the functioning of its office, as well as on a few related Human Resource management issues. An overview of the Ethics Committee's activities is reproduced below.

¹ **Mr Ngonlardje Kabra Mbaidjol**, a national of Chad, is the former Director of the UNHCR Ethics Office. Currently retired from UNHCR, Mr Mbaidjol is a senior UN staff member with extensive experience in managing conflict and mediation, in international human rights law and humanitarian law, as well as in conducting training workshops and research in Ethics and Compliance.

² **Ms Anne Marie Taylor**, is national of Canada, France and United States of America, is the former Chief Ethics Officer at the World Bank. She also held the functions of Ombudsman and Senior Ethics Officer in Merck&Co, Inc. She has valuable experience on all matters related to ethics, particularly on issues related to conflicts of interest, misconduct, prevention and outreach.

³ **Mr José Zalaquett**, a national of Chile, is a lawyer and law professor, who is extremely involved in civil rights activities in Chile. He is the former Director of the Program on Human Rights at the University of Chile and is currently a professor of Ethics and Government and professor of Human Rights, as part of the doctoral program of the Faculty of Law of University of Chile.

⁴ **Ms Suomi Sakai**, a national of Japan, has held the functions of Principle Adviser, Ethics at UNICEF since 2012. Prior to her current functions, she held valuable positions as Representative of UNICEF in Nigeria, Cambodia and Nepal.

III. THE ETHICS COMMITTEE'S ACTIVITIES

A. The Financial Disclosure Programme

9. During its mandate, the Ethics Committee kept under review the development of the Financial Disclosure Programme (FDP), which aims at facilitating the fulfillment of the Organization's duty to prevent and address actual or potential conflicts of interest in order to preserve the integrity of both the staff members and the Organization. This is in recognition of the fact that, to maintain public confidence, FAO must comply with corporate governance best practices of transparency and disclosure and observing privacy requirements, whilst observing privacy requirements.

10. In 2012, the Committee reviewed the UN Questionnaire for the FDP and recommended that it be adopted and completed by staff in Headquarters and Field Offices. The Committee also proposed to initially limit those staff requested to take part in the Programme and to expand the inclusion risk criteria developed by the Ethics Office as the Programme matures. By 31 March 2013, 232 staff members had been required to file financial disclosure statements; there was a 100% completion rate and none of the 232 staff members presented a conflict of interest.

11. In 2014, the FDP was temporarily suspended as the new Ombudsman/Ethics Officer had joined the Organization at the end of April 2014. Further to his appointment, the members of the Ethics Committee advocated a change in the procedures in order to allow the Ombudsman/Ethics Officer to have access to financial declaration data and discuss feedback with the external reviewer who had assisted both FAO and the World Food Programme (WFP). The Ethics Committee also endorsed the proposal that FAO adopt the electronic system for financial disclosure that is being used by both the International Fund for Agricultural Development (IFAD) and WFP. The Committee noted this system would be more efficient and reduce security and confidentiality risks, in addition to increasing cooperation among the Rome-based agencies.

12. In 2015, the Committee expressed satisfaction at the resumption of the implementation of the Programme, as described in Administrative Circular 2015/18 of 31 July 2015. The Committee noted that some of the arrangements that had been previously proposed would continue to be implemented, including recourse to the external reviewer who was also providing services to IFAD and WFP. The Committee also welcomed improvements made to the on-line system.

B. Education and Awareness on Ethical matters

13. As staff engagement is a central component in strengthening and consolidating an ethical culture across the Organization, the Ethics Committee reviewed the education and awareness initiatives on ethical matters which had been developed and implemented throughout the years. The objective of these initiatives was to broaden awareness of the Ethics Office services and listen directly to the ethics-related concerns of staff based in field locations.

14. The Ethics Committee noted, in particular, that in 2013, the Ethics Office organized workshops in FAO headquarters and in 59 decentralized country offices and developed an e-learning programme. While the Committee recognized the efforts made in the area of training, it suggested that education programmes be strengthened at all levels, as means to increase knowledge and raise awareness of ethical issues, prevent staff misconduct and also re-enforce organizational reputation.

15. In 2014, the Committee suggested that the new Ombudsman/Ethics Officer raise awareness in his new role among FAO staff, hold regular training sessions in ethics, and network with Ombudsman and Ethics Officers from other UN agencies.

16. In 2015, the Committee recommended that the e-learning and other thematic ethics training programmes which had been strengthened by the Ombudsman/Ethics Office be made mandatory and that their completion be monitored and integrated into performance evaluation mechanisms. The Committee stressed the importance of providing training to FAO senior managers and considered that

face-to-face training developed on matters related to FAO policies (prevention of harassment and abuse of authority, whistle-blower protection, identification and prevention of conflicts of interest and protection against sexual exploitation and abuse) was also essential in decentralized offices, where a large number of staff is deployed.

C. FAO's Relationships with the Private Sector

17. The Committee examined thoroughly questions related to FAO's relations with the private sector and discussed, in particular, issues related to conflicts of interest. The background and views of each of the Committee's members on this topic were of particular interest and gave rise to fruitful discussions.

18. In 2013, the Ethics Committee reviewed FAO's Strategy for Partnerships with the Private Sector and highlighted the need to develop appropriate procedures to minimize the risks of conflicts of interest that could arise with such partnerships. In this context, in 2014, the Ombudsman/Ethics Officer shared with the Committee the outcome of his discussion with the department in charge of partnerships with the private sector and briefed the Committee on the steps taken to mitigate the risks of conflict of interest, as enshrined in the Strategy for Partnerships with the Private Sector.

19. The Committee was of the view that the FDP, as currently implemented in FAO as well as in other UN agencies, could not alone sufficiently mitigate the risks of conflict of interest. In this regard, the Committee appreciated the steps taken by the Organization throughout the process of review of possible acceptance of contributions from the private sector (i.e. pre-screening and the selection phase to the monitoring of the process) to mitigate and address those risks. The Committee noted that there were no particular reasons not to continue to implement FAO's Strategy for Partnerships with the Private Sector, but emphasized the need to maintain a tight system of control in order to avoid conflicts of interest.

D. General guidance on various matters

20. Over the years, the members of the Committee provided their views on the functioning of the Ombudsman/Ethics Office. In particular, the special configuration of the ethics function in FAO, including the decision to merge the functions of the Ethics Officer and Ombudsman gave rise to extended discussions, insofar as that configuration resulted in observations from various professional networks of Ombudsmen.

21. In 2013, the Committee examined matters related to the interrelated functions of Ombudsman, Ethics Officer, Staff Relations Officer, as well as the Mediation Programme. In 2014, the Committee examined in detail the Organization's decision to merge the functions of Ombudsman and Ethics Officer and noted that the initial implementation of the combined functions had been successful. In particular, the members expressed the view that the functions of Ombudsman, Ethics Officer and mediation by the same office could be facilitated in FAO by the fact that none of the functions required investigations to be undertaken, which could have increased risks of incompatibility and conflict of interest.

22. In 2015, the Committee was also satisfied that the combination of the functions of Ombudsman and Ethics Officer had not affected the efficiency of the Ombudsman/Ethics Office, and observed that issues of conflict of interest had been successfully addressed. In this respect, the Committee recommended to the Ombudsman/Ethics Officer to continue to systematically refer to the Office of the Inspector-General any cases in which investigation appeared to be required. In addition, it encouraged him to continue to ensure full confidentiality of matters discussed with him and to continue to monitor closely any potential instances of conflict between the functions.

23. In 2015, the Members of the Committee also exchanged views and provided general guidance to the Ombudsman/Ethics Officer on some Human Resource management issues that had been

referred to his office throughout the year, including the Performance Evaluation Mechanism (PEMs), the Mobility Policy, the interpretation of some HR policies and procedures.

IV. FUTURE OF THE COMMITTEE

24. At its last session in 2015, the members of the Committee noted that the CCLM and Finance Committee were expected to determine whether the Ethics Committee should be discontinued, given that the four-year duration of the Committee was coming to an end. The members examined the matter in detail, but could not agree on a recommendation. However, the debate revealed a range of opinions which are very useful for the consideration of the matter.

25. One external member was of the view that the Ethics Committee had discharged its mandate and the Organization had now a fully operational ethics function. It did not seem that there would be justification to extend it for another term, either with its current mandate or with a revised mandate. More generally, it did not seem that the Committee would bring any value added to the operation of the function. The other two external members considered that any decision had to be taken by the relevant Governing Bodies in light of all pertinent considerations. They were also of the view that the Secretariat and the relevant Governing Bodies had all necessary elements to take an informed decision on the matter.

26. The two internal members considered that the Ethics Committee had been a useful forum for dialogue and exchange of ideas and that, while there were arguments in favor and against its abolition, on balance, it would be difficult to justify its continuation. However, the Ombudsman/Ethics Officer considered that support and advice received from the Committee had been useful and was inclined to support its continuation. However, he did not consider such continuation as being essential for the future performance of his functions.

27. Prior to making a determination as to the future of the Committee, the CCLM and Finance Committee may wish to note the positive role played over the years by the Ethics Committee, including in relation to the FAO membership. The beneficial impact of the Committee's external composition, which included members of recognized experience and qualifications and provided a very useful forum for dialogue on ethics and related matters, should also be taken into account.

28. In general, the costs of the operation of the Committee were kept within very reasonable limits. This was especially so after a decision was taken to hold one physical meeting every year in Rome and other meetings by teleconference. Under the circumstances, direct operating costs of the operation of the Committee included essentially travel and per diem of the three external members of the Committee.

29. However, the operation of the Ethics Committee involved a number of costs of an indirect nature and such costs were not negligible. These included the preparation of documents for the sessions of the Ethics Committee, which were generally under the responsibility of the Ethics/Ombudsman Officer, and the preparation of its annual report to the CCLM and Finance Committee. The preparation of the documents for the Ethics Committee, the CCLM and the Finance Committee, as well as subsequent inter-action with the various concerned parties, placed some burden on the Secretariat. This was also so given the relatively small nature of the offices involved in this exercise.

30. In conclusion, the Secretariat's corporate views are that the Ethics Committee has been extremely useful to the Organization as a whole and that, in consideration of its external composition, it provided comfort to Members as to the operation of the function. It also provided to the Secretariat a "high level" forum for dialogue on ethics-related matters. However, and while recognizing that this is a matter entirely for the Members and that the Committee was established on the call of the Immediate Plan of Action for FAO Renewal, the FAO Secretariat is of the view that these reasons may not provide sufficient grounds for the continuation of the Committee. Doubts as to the actual need for the Ethics Committee were already expressed by Members between 2009 and 2011 when the Finance

Committee, the CCLM and the Council examined proposals for the establishment of the Ethics Committee and those doubts resulted eventually in the establishment of the Committee on a “trial” basis for a four-year period. In this connection, the Committees may wish to note that this scheme does not exist in other organizations of the System and that there are other structures, such as the Audit Committee, which review matters within the ambit of the Ethics Committee.

V. SUGGESTED ACTION BY THE COMMITTEES

31. The CCLM and Finance Committee are invited to review this document and to make such observations thereon as they would consider appropriate. They are invited, in particular, to make a recommendation to the Council as to the future of the Ethics Committee.

Annex 1

TERMS OF REFERENCE AND COMPOSITION OF THE ETHICS COMMITTEE

1. The Ethics Committee shall operate as an advisory panel on all matters pertaining to ethics within the Organization, ensure general oversight over the operation of the ethics programme and provide assurance that the ethics programme is operating effectively. The Ethics Committee shall not have any formal supervisory responsibility in respect of the Ethics Office, nor engage in any operational activities in relation to its mandate.

2. The Ethics Committee shall be established for an initial period of four years. During this period, the Membership, through the Committee on Constitutional and Legal Matters, the Finance Committee and the Council, shall review the work of the Committee in order to determine, at the end of that period, whether the Committee should be extended for a further period of four years, or established on a permanent basis, or to make such adjustments to its *modus operandi* as may be required.

Mandate of the Ethics Committee

3. Subject to the principles that the Ethics Committee shall not have any formal supervisory responsibility in respect of the Ethics Office, nor engage in any operational activities, the Ethics Committee shall have the following mandate:

- a) to keep under review all matters pertaining to the formulation, development and implementation of the ethics programme of the Organization, including the Organization's financial disclosure programme or programmes aimed at preventing or addressing conflict of interest;
- b) to keep under general review the activities of the Ethics Office on the basis of annual reports referred by the Ethics Office to the Committee and to provide guidance thereon;
- c) to advise on such matters as the Director-General may refer to it;
- d) to review and advise on the main individual components of the ethics programme, including any relevant policies, regulations and rules, training, disclosure programmes and conflict of interest prevention and related policies;
- e) to submit an annual report on its activities to the Director-General, the Finance Committee and the Committee on Constitutional and Legal Matters;
- f) to advise or examine any issues related to the fulfillment of its mandate.

Composition of the Ethics Committee

4. The Ethics Committee shall consist of the following members appointed by the Director-General:

- a) three reputable individuals external to the Organization whose nominations are approved by the Council, upon recommendation by the Finance Committee and the Committee on Constitutional and Legal Matters;
- b) one Deputy Director-General;
- c) the Legal Counsel.

5. The Chairperson of the Ethics Committee shall be elected by the Committee, from among its external members, for a period of two years.

Term of Office

6. The individuals external to the Organization shall be appointed for a term of two years. The Director-General may renew the appointment of the individuals external to the Organization, subject to approval by the Council, upon recommendation by the Finance Committee and the Committee on Constitutional and Legal Matters. The Legal Counsel shall be an ex officio member of the Ethics Committee. The Deputy Director-General shall hold office for a term of two years, which may be extended for another term of up to two years, at the discretion of the Director-General. Should a position fall vacant, a replacement member shall be appointed for the remainder of the term, in accordance with the relevant procedure.

Sessions

7. The Ethics Committee shall hold at least two regular sessions each year. Additional sessions of the Ethics Committee may be convened by the Chairperson, if deemed appropriate. The Director-General may request the Chairperson to convene a meeting if necessary.

Quorum

8. The presence of all members is expected at each meeting. At the discretion of the Chairperson, if necessary, meetings may take place with at least four members.

Secretariat

9. The Organization shall make the necessary secretarial arrangements for the functioning of the Ethics Committee.