



COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Ninety-first Session

Rome, 20 – 22 September 2010

INFORMATION ON PAST DELIBERATIONS REGARDING PROPOSED ACCESS BY MEMBERS TO REPORTS OF THE OFFICE OF THE INSPECTOR-GENERAL

The Representative of the United States of America requested that information be provided on past deliberations by the Governing Bodies of FAO on the issue of making reports of the Office of the Inspector General accessible to Member Nations, upon request.

Past deliberations on this matter by the Finance Committee, the Committee on Constitutional and Legal Matters (CCLM) and the Council are set out in chronological order in the appendixes attached hereto.

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APPENDIX I

FC 115/4

FINANCE COMMITTEE

Hundred and Fifteenth Session
Rome, 25 - 29 September 2006
Access by Members to Reports of the Office of the Inspector-General

Executive Summary

This document is presented in response to the request made by the Committee at its 113th Session that the issue of potential future availability of internal audit reports to Members be examined.

The document seeks to place the matter in the context of the overall external and internal oversight framework of the Organization by providing general information on this dual framework. It presents the main features of General Assembly resolution 59/272 entitled “*Review of the implementation of General Assembly resolutions 48/218 B and 54/244*”, puts forward a few relevant considerations and possible options on the matter. In addition, it outlines several considerations regarding the proposed request in light of the existing reporting and accountability procedures applicable to Internal and External Audit.

The document establishes a distinction between general audit reports and specific investigation reports. While the possibility of releasing audit reports does not raise insurmountable legal and practical difficulties, the release of investigation reports to Member Nations does raise a few issues of a legal nature related to confidentiality, rights of due process or issues regarding the protection of officials of the Office of the Inspector-General. The document describes the criteria applied by the United Nations in respect of the release of reports and proposes that, should the Finance Committee be of the view that Members should have access to reports of the Office of the Inspector General, the matter be referred to the Committee on Constitutional and Legal Matters (CCLM) and that the views of both the Finance Committee and the CCLM be referred to the Council.

I. BACKGROUND

1. At its 113th Session, held from 8 to 12 May 2006, the Finance Committee discussed the “*2005 Annual Activity Report of the Office of the Inspector General*”. The issue of access to reports of the Office of the Inspector General was raised and the Committee requested a paper for the September 2006 session on potential future availability of such reports to Members, including reference to previous discussions on the matter.

2. This document has been prepared in response to that request. It seeks to place the matter in the context of the general oversight framework of the Organization by providing information on this framework and putting forward a few relevant considerations. It also presents the main

features of General Assembly resolution 59/272 entitled “*Review of the implementation of General Assembly resolutions 48/218 B and 54/244*”, on Member States’ access to reports of the Office of Internal Oversight Services (OIOS)¹. Should the Finance Committee be of the view that Members should have access to reports of the Office of the Inspector General, it is suggested that the matter be also referred to the Committee on Constitutional and Legal Matters (CCLM), insofar as the release of certain reports could raise issues of confidentiality, rights to due process of individuals or issues regarding the protection of officials of the Office the Inspector General.

II. GENERAL OVERSIGHT FRAMEWORK OF FAO

3. Over the years a comprehensive oversight system of the Organization has evolved, the key features of which are presented below.
4. The External Auditor is appointed by the Council of FAO, on the recommendation of the Finance Committee. The External Auditor is the Auditor-General, or person exercising equivalent functions, of a Member Nation. The External Auditor may not be removed during his tenure of office, except by the Council.
5. The External Auditor is required to express an opinion on the FAO accounts, covering both regular programme and extra-budgetary resources. The audit is conducted in accordance with generally accepted auditing standards and, subject to any special directions of the Finance Committee, in accordance with the Additional Terms of Reference set out in Annex I to the Financial Regulations. The External Auditor may make observations with respect to the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Organization (commonly referred to as “*value-for-money*” reviews). The External Auditor is completely independent and solely responsible for the conduct of the audit. However, the Finance Committee may request the External Auditor to perform certain specific examinations and issue separate reports on the results². The External Auditor is provided with such facilities as required for the performance of his functions.
6. The External Auditor is required to issue a report on the financial statements and relevant schedules, which includes such information as he deems necessary in regard to matters referred to in his Terms of Reference, including the administration and management of the Organization. The External Auditor’s reports are transmitted through the Finance Committee, together with the audited financial statements, to the Council in accordance with any directions given by the Finance Committee. The Council is required to examine the financial statements and the audit reports and to forward them to the Conference, with such comments as it deems advisable.
7. The Internal Audit function of the Organization is carried out by the Office of the Inspector General, who reports directly to the Director-General, but with a measure of autonomy and independence consistent with the nature of the functions performed, in accordance with the principles set out in the Charter of the Office of the Inspector General.
8. The audit work of the Office of the Inspector General is based on a work plan considered by the Audit Committee and agreed by the Director-General. No restrictions are placed upon the work of the Inspector General and she has complete independence, authority and discretion to examine all such matters and operations as deemed necessary and relevant in the particular circumstances, both at headquarters and at any field location. Selection of areas and activities to be examined is based on risk assessment, the organizational priorities and other critical factors. The Office carries out financial as well as value-for-money audits, covering a variety of subject matters, such as staffing and staff costs, procurement, cash management, payables and

¹ UN General Assembly Resolutions do not apply, de iure, to Specialized Agencies. From a preliminary review, none of the Specialized Agencies have adopted a procedure similar to that established by the UN General Assembly.

² The Finance Committee has requested on a number of past occasions that the External Auditor should make special examinations on particular matters such as the lapse factor, the Working Capital Fund and specific projects financed by the World Bank.

receivables, reporting, etc. The Office has qualified staff to discharge the audit function and the work is conducted in accordance with international auditing standards taking into account matters such as purpose and authority of the audit function, independence, proficiency and due professional care and quality assurance. The actual audit work is based on planning, clear understanding of scope and objectives, assessment of risk and internal controls, use of standard or specific audit programmes, and due dialogue with the client divisions. In addition, the Office of the Inspector General has a special group which handles investigations. A formal mechanism is in place for reporting on results of audits and investigations and following up on the subsequent actions taken based on report findings.

9. Audit and investigation reports are issued to Senior Management for action after completing each assignment. The External Auditor has access to all audit and investigation reports of the Office of the Inspector General and to the relative working papers. Cases of fraud are systematically reported to the External Auditor under the Financial Regulations. The External Auditor determines the scope of his audit after taking into account the plan of work and reports of the Office of the Inspector General. In addition, the External Auditor may draw from the reports of the Office of the Inspector General when he reports to the Governing Bodies. Both the management of the Organization and the Audit Committee (cf. paragraph 11 below) monitor the implementation of the recommendations made in the reports.

10. Since 1996, the Office's annual report to the Director-General on its activities is simultaneously issued to the Finance Committee, posted on the internet and thus made available to all interested parties. Furthermore, under the terms of the Charter, "*at the discretion of the Inspector General, any [individual audit or investigation] (...) report may (...) be submitted to the Finance Committee together with the Director-General's comments thereon and be made available to other interested member states*" (cf. paragraph 13 of the Charter of the Office of the Inspector General).

11. The Director-General has established an Audit Committee as an advisory panel to him and to the Office of the Inspector General. Its aim is to assist the Organization in gaining house-wide acceptance of the importance and value of the internal audit, inspection and investigation functions, and to provide the Director-General with assurance that these functions are operating effectively and efficiently³. The Committee consists of seven members: five internal and two external. It is placed under the chairmanship of the Deputy Director-General and includes the Assistant Director-General, Administration and Finance, the Legal Counsel, two Assistant Directors-General, and two external members. The Inspector General provides the secretariat of the Committee. The Committee meets three to four times a year. All reports of the Committee are addressed to the Director-General. The Director-General provides a copy of the annual report of the Audit Committee to the Finance Committee. The Committee has authority to obtain all necessary information and consult directly with the Inspector General and her staff, access all reports and working papers produced by her office, seek any information it requires from any staff member and require all staff members to cooperate with any request made by the Committee and obtain independent professional advice and secure the attendance of outside persons with relevant experience and expertise if considered necessary.

12. In addition, FAO has an Evaluation Service which systematically carries out in-depth reviews of projects and programmes, and with which the Office of the Inspector General coordinates mainly in connection with the preparation of value for money reviews, in order to ensure complementarity and avoid duplication of effort.

13. Finally, completing the oversight regime, the Organization has engaged local audit firms - normally internationally reputed accounting firms or their associates - to carry out regular reviews

³ The Committee appraises the adequacy and effectiveness of the internal audit services and its strategies, priorities and workplans and suggests potential audit areas to address the Organization's risks, reviews progress in the implementation of the action plans of the Office of the Inspector General which have been agreed upon, and takes note of the reports of the External Auditor and monitors timely follow-up of his recommendations.

at decentralized locations (FAO Offices and projects), in order to ensure the integrity of the financial transactions generated in these offices and to obtain the requisite audit assurance on the accounts. The local audit interventions are particularly useful as they provide the management with the needed assurance on the reliability of the accounts and act as an “*early warning*” mechanism in identifying problems and malpractices, and indeed act as a deterrent against malpractices. All reports issued by the local auditors are carefully reviewed by the Office of the Inspector General and the Finance Division, which allows corrective action to be taken in a timely manner.

III. PERTINENT CONSIDERATIONS

14. As demonstrated by the framework set forth above, the Organization has a comprehensive system of oversight of its functions and operations based, on the one hand, on the External Auditor and, on the other hand, on the Office of the Inspector General. This system reflects a balance between these two sets of functions, each having its own rationale and reporting lines. Thus, the External Auditor is fully independent and appointed by the Governing Bodies of the Organization, i.e. the Council in the case of FAO. The External Auditor is only accountable to the Council and to the Conference of the Organization. The External Auditor has large powers to carry out his functions and has access to the reports and working papers of the Office of the Inspector General. The External Auditor may also request from the Inspector General such additional information on any particular report as he deems fit.

15. The Office of the Inspector General is an internal structure of the Organization. Both the appointment and termination of the appointment of the Inspector General are made by the Director-General, after consultation with the Finance Committee. However, this function remains within the Organization and the Inspector General reports directly to the Director-General, as explicitly stated in the Charter of the Office of the Inspector General. The reports of the Office of the Inspector General are management tools intended to allow the executive head to take corrective action in presence of any issues that might impact ultimately upon the proper functioning of the Organization. It is indeed essential that the Director-General should have such a tool in order to be able to discharge his responsibilities and, therefore, be able to be fully accountable to the Governing Bodies. This complies with Financial Regulation 10.1 of FAO’s Basic Texts whereby “*the Director-General shall (...) maintain an (...) internal audit which shall provide an effective current examination and/or review of financial transactions (...)*”

16. The issue of sharing the reports of the Office of the Inspector General has been raised in past sessions of the Finance Committee. In these instances, members have expressed certain concerns, e.g. that it would seem desirable for the proper functioning of the Organization as a whole that the specific institutional lines of authority and reporting regarding the External Audit and Internal Audit functions be preserved and, in particular, that the distinction between these two functions should not be blurred. This could have a number of adverse consequences such as the involvement of the Governing Bodies in micro-management, an increasing perception of the Office of the Inspector General as an external function and, in extreme situations, a potential progressive erosion of the independence of the Governing Bodies when reviewing the reports of the External Auditor (who, in planning and performing his own work, takes into account the work of the Office of the Inspector General – See Para. 9) and, through that, a loss of effectiveness when exercising their supervisory authority vis-à-vis the Director-General. In summary, overlapping between the internal and external audit perspectives may not necessarily be in the best interest of the Organization and the Governing Bodies⁴.

17. In this spirit, it may be of some interest to mention that Price Waterhouse Coopers has submitted recently to the High Level Committee on Management of the Executive Committee Board for Coordination a set of “*Draft Governance and Oversight Principles and Practices*”

⁴ While they were never reflected in reports of the Finance Committee, such concerns were occasionally voiced within the Committee when the issue of access to audit reports was raised.

which emphasize the need to preserve the duality of External Audit and Internal Audit functions for an efficient overall oversight system.

18. In addition, while it did not make any specific recommendation on the issue at hand, the Joint Inspection Unit issued a few years ago a report entitled “*Enhancing governing oversight role: structure, working methods and practices on handling oversight reports*” (JIU/REP/2001/4) which reflects the above concerns. The report observed that internal oversight mechanisms are tools for the executive head in the management of each organization and since, accordingly, reports prepared by internal oversight mechanisms are to be addressed to the executive head, the issue of the access by Member States to the internal oversight reports is not supposed to arise as a matter of principle. However, the same report recalled that there had been an ongoing debate within the United Nations system on the issue of reporting by the internal oversight mechanisms to the legislative organs. The report also mentioned that the question of handling or reporting of individual oversight reports to Member States remained in controversy. The adoption of General Assembly resolution 59/272 entitled “*Review of the implementation of General Assembly resolutions 48/218 B and 54/244*” may have represented a critical step on the matter.

IV. RECENT DEVELOPMENTS AT THE UNITED NATIONS

19. On 23 December 2004, the General Assembly of the United Nations adopted resolution 59/272 entitled “*Review of the implementation of General Assembly resolutions 48/218 B and 54/244*”. The resolution decided to maintain the reporting procedures for the Office of Internal Oversight Services in accordance with its earlier resolutions and requested the Secretary-General to ensure that:

“(a) Annual reports submitted by the Office of Internal Oversight Services to the General Assembly contain the titles and brief summaries of all reports of the Office issued during the year;

(b) Semi-annual reports of the Office of International Oversight Services contain the titles and brief summaries of all other reports of the Office issued in the reporting period;

(c) Original versions of the reports of the Office of Internal Oversight Services not submitted to the General Assembly are, upon request, made available to any Member State”

20. Through the resolution, the General Assembly, “*(a)lso (decided) that when access to a report would be inappropriate for reasons of confidentiality or the risk of violating the due process rights of individuals involved in Office of Internal Oversight Services investigations, the report may be modified, or withheld in extraordinary circumstances, at the discretion of the Under-Secretary-General for Internal Oversight Services, who will provide reasons for this to the requesting party*”. Given the importance of this resolution for the issue under discussion, it is reproduced in full in the appendix hereto.

21. The United Nations Office of Internal Oversight Services, Investigation Division, has developed criteria for withholding or modifying certain reports before providing them to Member States who request them. However, there are circumstances when the Office may modify or withhold such reports. Modifications may entail removing names and other terms which may reveal the identity of a complainant, witness or person to whom confidentiality has been promised or of the subject of an investigation who has been cleared of the allegations or against whom disciplinary or administrative action is pending. In the same vein, reports may be withheld for a number of reasons, for example, when they cannot be modified sufficiently to protect the identity of the complainant or of any person to whom confidentiality has been promised or when the disclosure of the report may cause direct and serious harm to a person.

22. In mid-May 2006 the Special Assistant to the Under-Secretary-General for Internal Oversight Services informed the Inspector General of FAO that since the adoption of the resolution, in December 2004, his Office had received requests from 35 Member States for a total of 314 reports. Each of three Member States had requested in excess of 20 reports. The requests included investigation and audit reports. Under operative paragraph 2 of the resolution the Under-

Secretary-General for Internal Oversight Services has discretion to decide not to release a report or to redact the report in order to protect confidentiality and this provision has been used extensively in respect of investigation reports. The process of modification of reports in accordance with the above criteria has placed a very heavy burden on the Office of Internal Oversight Services.

V. CONSIDERATION BY THE FINANCE COMMITTEE

23. In examining the desirability of making internal audit reports accessible to Member Nations, upon request, the Finance Committee may wish to take into account the existing framework for external and internal oversight functions at FAO and past consideration of the matter by the Finance Committee. In addition, the Committee may wish to keep in mind the observations outlined below.

24. A distinction – also made in paragraph 2 of Resolution 59/272 - may need to be made between audit and investigation reports. An audit is generally considered to be a systematic, independent and documented process aimed at obtaining objective information to establish the extent to which particular activities conform to accepted principles, criteria and rules governing those activities, including on efficiency matters. Therefore, these can be financial audits or audits dealing with the administration and the management of the Organization. Investigation reports are the result of investigations into allegations of unsatisfactory conduct and wrongdoing on the part of staff members or third parties.

25. As mentioned earlier, information received from the United Nations suggests that the implementation of resolution 59/272 is placing a considerable burden on the Office of Internal Oversight Services. In particular, as regards investigation reports, which concern necessarily specific individuals, access may be inappropriate for reasons of confidentiality or the risk of violating the due process rights of individuals involved. Under the circumstances the report may be modified or withheld in extraordinary circumstances, at the discretion of the Under-Secretary-General for Internal Oversight Services, who will provide the reasons for this to the requesting party.

26. The Finance Committee may wish to express its views on whether it is desirable that a procedure comparable to that followed at the United Nations be introduced in FAO. In this connection, the Committee may wish to advise on the desirability that any such procedure should retain an exceptional character, if only to avoid a situation where the modification of reports would place a heavy administrative burden upon the scarce resources of the Office of the Inspector General and other offices (e.g. the Legal Office and the Human Resources Management Division) and preserve the essence of the dual character of the oversight functions within the Organization.

27. Should the Finance Committee formulate a recommendation to the effect that a procedure similar to that applied at the United Nations be introduced in FAO, it is suggested that, in view of its implications, its practical implementation modalities be examined by the CCLM. In particular, the CCLM should make a detailed analysis of the conditions of release of investigation reports in light of the criteria and practice followed so far by the United Nations, and taking into account additional information which may become available from other organizations of the system. Specific issues to be addressed would include, *inter alia*, the extent to which passages are to be withheld or modified, in the event of proceedings or complaints having been filed in connection with findings of a particular report. A consolidated proposal taking into account both the views of the Finance Committee, as well as those of the CCLM, could be referred to the Council.

VI. SUGGESTED ACTION BY THE COMMITTEE

28. The Finance Committee is invited to examine this document and offer such views thereon as appropriate.

APPENDIX IIUnited Nations **A/RES/59/272****General Assembly** Distr.: General

2 February 2005

Fifty-ninth session

Agenda item 119

04-49258

Resolution adopted by the General Assembly*[on the report of the Fifth Committee (A/59/649)]***59/272. Review of the implementation of General Assembly resolutions 48/218 B and 54/244***The General Assembly,*

Recalling its resolutions 48/218 B of 29 July 1994 and 54/244 of 23 December 1999,

1. *Decides* to maintain the reporting procedures for the Office of Internal Oversight Services in full compliance with its resolutions 48/218 B and 54/244, and in this context requests the Secretary-General to ensure that:
 - (a) Annual reports submitted by the Office of Internal Oversight Services to the General Assembly contain the titles and brief summaries of all reports of the Office issued during the year;
 - (b) Semi-annual reports of the Office of Internal Oversight Services contain the titles and brief summaries of all other reports of the Office issued in the reporting period;
 - (c) Original versions of the reports of the Office of Internal Oversight Services not submitted to the General Assembly are, upon request, made available to any Member State;

2. *Also decides* that when access to a report would be inappropriate for reasons of confidentiality or the risk of violating the due process rights of individuals involved in Office of Internal Oversight Services investigations, the report may be modified, or withheld in extraordinary circumstances, at the discretion of the Under-Secretary-General for Internal Oversight Services, who will provide reasons for this to the requesting party;

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3. *Further decides* that reports of the Office of Internal Oversight Services shall be submitted directly to the General Assembly as submitted by the Office and that the comments of the Secretary-General may be submitted in a separate report;
4. *Affirms* its primary role in the consideration of and action taken on the reports submitted to it;
5. *Notes* that no mechanism has been established for the follow-up to Office of Internal Oversight Services recommendations, including those considered by the General Assembly;
6. *Emphasizes* the importance of establishing real, effective and efficient mechanisms for responsibility and accountability;
7. *Regrets* that despite previous information provided by the Secretary-General on the establishment of accountability mechanisms, including the accountability panel, such mechanisms are not in place, thereby affecting the efficient and effective functioning of the Organization;
8. *Takes note* of paragraph 129 (b) of the annual report of the Office of Internal Oversight Services,¹ and concurs with the view that a high-level follow-up mechanism under the authority of the Secretary-General should be established in the Organization to effectively feed findings and recommendations of the Office, as well as relevant findings of the Joint Inspection Unit and the Board of Auditors, into the executive management processes;
9. *Requests* the Secretary-General to submit annually to the General Assembly a report under the agenda item entitled “Review of the efficiency of the administrative and financial functioning of the United Nations” addressing the measures implemented with the aim of strengthening accountability in the Secretariat and the results achieved;
10. *Also requests* the Secretary-General to establish the aforementioned follow-up mechanism as soon as possible and to report to the General Assembly on the results achieved in the context of the report referred to in paragraph 9 above, with specific reference to:
- (a) The composition of such a mechanism, including the seniority of the chair and members;
 - (b) Terms of reference of the mechanism and frequency of its meetings;

- (c) The inclusion in the mechanism of one or more participants with relevant expertise from United Nations-system oversight bodies;
- (d) Reporting procedures;

11. *Reaffirms* the role of the Board of Auditors and the Joint Inspection Unit as external oversight bodies, and, in this regard, affirms that any external review, audit, inspection, monitoring, evaluation or investigation of the Office can be undertaken only by such bodies or those mandated to do so by the General Assembly;

12. *Also reaffirms* the importance of effective coordination, in the implementation of their respective mandates, between the Joint Inspection Unit, the Board of Auditors and the Office of Internal Oversight Services, in order to maximize the use of resources and share experiences, knowledge, best practices and lessons learned;

13. *Stresses* the vital importance of the evaluation function of the Office of Internal Oversight Services, and requests the Secretary-General to better reflect the objectives, expected accomplishments and performance indicators related to this function in future biennial programmes and budgetary submissions of the Office;

14. *Reaffirms* its oversight role as well as the role of the Fifth Committee in administrative and budgetary matters;

¹ See A/59/359.

A/RES/59/272

3

15. *Notes* paragraph 129 (a) of the annual report of the Office of Internal Oversight Services, and in this context requests the Secretary-General to report to the General Assembly at its sixtieth session, taking into account the views of external oversight bodies, on how to guarantee the full operational independence of the Office within the context of its resolution 48/218 B;

16. *Decides* to evaluate and review at its sixty-fourth session the functions and reporting procedures of the Office of Internal Oversight Services and any other matter which it deems appropriate, and to that end to include in the provisional agenda of that session an item entitled "Review of the implementation of General Assembly resolutions 48/218 B, 54/244 and 59/272".

76th plenary meeting

23 December 2004

APPENDIX III

CCLM 80/5

COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS
Eightieth Session
Rome, 2-3 October 2006
ACCESS BY MEMBERS TO REPORTS OF THE OFFICE OF THE INSPECTOR GENERAL

I. PURPOSE

1. The purpose of this document is to examine the implications of possible access by Members to reports of the Office of the Inspector General in terms of protection of confidentiality of individuals involved and third party rights, including due process. This matter is in the agenda of the 113th Session of the Finance Committee and the deliberations of the Committee on Constitutional and Legal matters need to take into account the outcome of the discussions at the Finance Committee.

II. BACKGROUND

2. At its 113th Session, in May 2006, the Finance Committee requested a paper for its September 2006 session on potential future availability of internal audit reports to Members. Reference was made, in that connection, to The United Nations General Assembly Resolution 59/222 entitled "Review of the implementation of General Assembly Resolution 48/218A and 54/244". In response to the request made by the Finance Committee, a document was prepared (document FC 115/4), attached hereto as an **Annex** to this document. This document observed *inter alia*, "should the Finance Committee formulate a recommendation to the effect that a procedure similar to that applied at the United Nations be introduced in FAO, it is suggested that, in view of its implications the implementation modalities be examined by the Committee on Constitutional and Legal Matters (CCLM). In particular, the CCLM should make an analysis of the conditions of release of investigations reports in light of the criteria and practice followed so far by the United Nations, and taking into account additional information which may become available from other organizations of the system. Specific issues to be addressed would include, *inter alia*, the extent to which passages are to be withheld or modified, in the event of proceedings or complaints having been filed in connection with findings of a particular report. A consolidated

proposal taking into account both the views of the Finance Committee, as well as those of the CCLM, could be referred to the Council”.

3. It is important to emphasize that, at the time of preparation of this document (early September), the outcome of the discussions at the 113th Session of the Finance Committee is not yet known. However, by the time the CCLM will hold its Eightieth Session the outcome of such discussions will be known and, therefore, this document needs to be considered in the light of such outcome of the discussions as presented in the report of the session of the Finance Committee.

4. In the event that the Finance Committee should recommend that reports of the Office of the Inspector General should be made available to Members upon request, it would be necessary to consider some of the implications of such recommendation in terms, *inter alia*, of protection of confidentiality and third party rights, including due process rights of individuals involved in investigation reports. This document reproduces the relevant provisions of United Nations General Assembly resolution 59/272, describes the practice of the Office of Internal Oversight Services of the United Nations, presents some information received from other organizations of the United Nations and presents a number of considerations which the CCLM may wish to take into account when formulating its recommendation.

III. UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 59/272 “REVIEW OF THE IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTIONS 48/218B AND 54/244”

5. On 23 December 2004, the General Assembly of the United Nations adopted resolution 59/272 entitled ‘*Review of the implementation of General Assembly resolutions 48/218 B and 54/244*’. The resolution is appended to document FC 115/4. The General Assembly requested the Secretary-General, *inter alia*, to ensure that:

“(a) Annual reports submitted by the Office of Internal Oversight Services to the General Assembly contain the titles and brief summaries of all reports of the Office issued during the year;

(b) Semi-annual reports of the Office of Internal Oversight Services contain the titles and brief summaries of all other reports of the Office issued in the reporting period;

(c) Original versions of the reports of the Office of Internal and Oversight Services not submitted to the General Assembly are, upon request, made available to any Member State”.

6. The General Assembly:

“(a)Iso (decided) that when access to a report would be inappropriate for reasons of confidentiality or the risk of violating the due process rights of individuals involved in Office of Internal Oversight Services investigations, the report may be modified, or withheld in extraordinary circumstances, at the discretion of the Under-Secretary-General for Internal Oversight Services, who will provide reasons for this to the requesting party”.

IV. CRITERIA FOR MODIFYING OR WITHHOLDING REPORTS APPLIED BY THE UNITED NATIONS OFFICE OF INTERNAL OVERSIGHT SERVICES

7. The Office of Internal Oversight Services has developed the following criteria for modifying or withholding reports (reproduced below in full):

“ID/OIOS will endeavour to provide original reports, which are issued internally, to Member States who request them. However, there are circumstances where ID/OIOS may withhold or modify such reports. The criteria, which have been prepared to be as limited as possible in keeping with the intention of the General Assembly, are as follows:

- A. *Reports may be modified before providing to a Member State by:*
 - 1. *removing names and other terms which will reveal the identity of a complainant or cooperating witness;*
 - 2. *removing names and other terms which will reveal the identity of a subject of investigation who has been cleared of the allegation(s) or for whom there is a pending disciplinary or administrative action;*
 - 3. *removing the names and other terms which will reveal the identity of persons or entities to whom promises of confidentiality have been made;*
 - 4. *removing the identifiers of others, whether persons or entities, where it is in the best interest of the investigation so to do;*
 - 5. *adding information adduced since the preparation of the report which clarifies or corrects information in the report or which addresses the findings or recommendations of the report.*

- B. *Reports may be withheld from Member States when:*
 - 1. *the report cannot be modified sufficiently to protect the identity of the complainant or other person or entity to whom confidentiality has been promised by ID/OIOS;*
 - 2. *the report is an interim report and not a final report;*
 - 3. *the matter reported on is still under investigation by ID/OIOS, by other UN body or by national jurisdictions;*
 - 4. *the report has been withdrawn by ID/OIOS;*
 - 5. *the disclosure of the report may cause direct and serious harm to a person”.*

8. As indicated in document FC115/4, the Special Assistant to the Under-Secretary-General for Internal Oversight Services informed the Inspector General of FAO in mid-May 2006 that since the adoption of the resolution in December 2004, his Office had received requests from 35 Member States for a total of 314 reports. Each of three Member States had requested in excess of 20 reports. The requests included investigation and audit reports. Under operative paragraph 2 of the resolution, as reflected in the above criteria, the Under-Secretary-General for Internal Oversight Services, has discretion to decide not to release a report or redact the report in a number of situations. These possibilities have been used extensively.

9. It has been explained to FAO, in fairly emphatic terms, that the process of modification of reports, in accordance with those criteria, has placed a very considerable burden on the Office of Internal Oversight Services.

V. VIEWS ON THE MATTER PROVIDED BY THE LEGAL OFFICES OF OTHER ORGANIZATIONS OF THE UNITED NATIONS SYSTEM

10. It appears from consultation with other organizations of the United Nations system that only the General Assembly has so far adopted a resolution on the issue under discussion. There is, however, a specific situation which is that of the World Intellectual Property Organization (WIPO). The WIPO Internal Audit Charter provides that “(...) *The Internal Auditor shall submit the final internal audit reports to the Director-General, copied to the Audit Committee. The External Auditor shall also receive a copy, along with any supporting documentation. Permanent Representatives of Member States to WIPO or their designates can red final internal audit reports in the Internal Auditor’s Office*”. This provision has been the subject of much discussion by WIPO Member States, but was eventually adopted in July 2005. However, unlike at the United Nations, no related procedures or criteria for the implementation of that provision were designed. Thus, no formal procedures were contemplated in the Charter for dealing with confidentiality issues, or with the handling of reports referring to cases subject to litigation procedures. Should any report contain highly sensitive and confidential information, or result in administrative or judiciary proceedings, specific solutions for their availability would have to be sought on an *ad hoc* basis. However, contrary to the situation at the United Nations as of August 2006, since the adoption of the provision in question, no Member has asked to see any report. WIPO indicated that they viewed with some concern a situation where substantial modification of reports would be necessary in view of the workload involved in that exercise.

11. Other organizations informed FAO that no similar proposal had been made, although, admittedly, proposals of that nature could be made in future. One organization, IFAD, referred to an exceptional situation where extracts of a report were made available to a Member.

12. In general, all the organizations mentioned that they would be reluctant to release more than summaries of internal audit and investigation reports. More specifically, the legal offices which responded to the enquiries made by the FAO Legal Office emphasized that it would be necessary to examine carefully the legal implications of the release to Members of reports in terms of protection of confidentiality of individuals involved, in a way or another, in such investigations and of due process of staff subject of audit and investigation reports.

13. In addition to the need to modify reports to take account of issues regarding confidentiality and due process – much along the lines of the practice of the United Nations – one legal office informed that, when considering whether or not a particular report concerning a staff member should be released, one should also consider the type of internal proceedings available to that person subject of the report and the nature of the report. “*The consequences of communicating an audit/investigation report to a third interested party differ depending on whether the administrative consequence is in the form of a sanction subject to a possible appeal, or of a proposed sanction the determination of which requires consideration by an internal body. Similarly an investigation report established in an adversarial manner with the direct involvement*

of the person investigated cannot be handled in the same way as an audit report suggesting the likelihood of wrongdoings and requiring further investigation”⁵.

VI. PERTINENT LEGAL CONSIDERATIONS

14. In general, as already mentioned, when considering this matter, reference should be made to document FC 115/4 and the report of the 113th Session of the Finance Committee. The document describes in some detail the general oversight framework of FAO and refers to the desirability of preserving the specific institutional lines of authority and reporting procedures of the External Audit and the Internal Audit functions, as well as the desirability of maintaining the dual nature of these functions. In addition, the document draws attention to the considerable work involved in the review and modification of reports. However, these are issues primarily for the Finance Committee, insofar as they are not of a legal nature.

15. Of more direct relevance for the CCLM is the need to distinguish between audit and investigation reports which is reflected in paragraph 2 of United Nations resolution 59/272. An audit is generally considered to be a systematic, independent and documented process aimed at obtaining objective information to establish the extent to which particular activities conform to accepted principles, criteria and rules governing those activities, including on efficiency matters. These can be financial audits or audits dealing with the administration and management of the Organization. Investigation reports are the result of investigations into allegations of unsatisfactory conduct and wrongdoing on the part of staff members or third parties. In general, issues of confidentiality and protection of third parties rights arise mainly in connection with investigation reports. However, this is not always so, and the experience of the United Nations shows that audit reports may also contain references to individuals. Therefore, a clear distinction between audit and investigation reports from the point of view of their implications may be at times difficult, if not impossible to make. For this reason, it is considered that prior to acceding to a request for any report there will be a need to review its actual content irrespective of its qualification as audit or investigation report.

16. In general, should the Finance Committee recommend that reports of the Office of the Inspector General should be made available to Members upon request, the Inspector General should be allowed, at her discretion, not to release particular reports for reasons of protection of confidentiality of individuals involved. Presumably, the Inspector-General would consult other units of the Organization. For the same reasons, the Inspector-General should be able to modify other reports.

17. As concerns more specifically the need to modify reports, the various concerned units of the Organization – i.e. the Office of the Inspector General, the Human Resources Division and the Legal Office – would apply and be guided by criteria similar to those applied by the United Nations Office of Internal Oversight Services. Such criteria, as can be seen from consideration of their substance, appear to be rather comprehensive and cover the range of situations which may arise or at least the occurrence of which can be reasonably expected for the time being. The United Nations have now acquired experience in the implementation of the criteria and they could therefore constitute a useful reference for other organizations of the system.

⁵ *World Meteorological Organization.*

18. In addition, consistent with the spirit of some observations made in paragraph 13 above, and while this is not specifically addressed in the criteria issued at the United Nations, when a report forms the basis of administrative action against a staff member and all possibilities of appeal – either internal or external – have not been exhausted, it might be appropriate to take a prudent approach towards the release of that report. This is especially so insofar as there is some reason to believe that rules applicable to the conduct of investigations by investigation units have not yet stabilized in the case law of the Administrative Tribunal of the International Labour Organization. For instance, there is still doubt as to whether the investigation units in the performance of their functions are under an obligation to comply with adversarial requirements at all stages of an investigation and establish their reports in accordance with those requirements.

19. It is therefore suggested that the Organization should take a prudent approach and be given ample discretion to assess whether a particular report should be released prior to all instances of appeal – either internal or external (before the Administrative Tribunal) – having been exhausted.

VII. POSSIBLE COURSE OF ACTION BY THE COMMITTEE

20. The course of action to be taken by the Committee depends on the recommendation made by the Finance Committee. On the assumption that the Finance Committee should recommend a procedure similar to that followed at the United Nations, the Organization would propose to apply the same criteria as the Office of Internal Oversight Services, subject to the considerations put forward in paragraphs 14 to 19 above.

21. In addition, the Committee is invited to offer such views as it deems appropriate, so that a comprehensive proposal on the matter, combining both the views of the Finance Committee and the CCLM, may be made to the Council.

The annex to CCLM 80/5 has been purposely removed from APPENDIX 2, and attached as APPENDIX 1 of the present document for clarity purposes.

APPENDIX IV**EXTRACT OF THE REPORT OF THE EIGHTIETH SESSION OF
THE COMMITTEE ON CONSTITUTIONAL AND LEGAL
MATTERS (2-3 OCTOBER 2006)
AS CONTAINED IN DOCUMENT CL 131/5****VI. ACCESS BY MEMBERS TO REPORTS OF THE OFFICE OF THE INSPECTOR
GENERAL**

18. The Committee considered document CCLM 80/5 entitled "Access by Members to reports of the Inspector-General". The Committee noted that the document included, as an appendix, a paper prepared for the Finance Committee on the same subject matter and that an extract of the report of the 115th Session had been made available to it. At its 113th Session in May 2006, the Finance Committee had requested a paper on potential future availability of internal audit reports to Members. In that context, reference was made to General Assembly resolution 59/272 of 23 December 2004 under the terms of which "original versions of the reports of the Internal Oversight Services not submitted to the General Assembly are, upon request, made available to any Member State". The General Assembly also decided that "when access to a report would be inappropriate for reasons of confidentiality or the risk of violating the due process rights of individuals involved in Office of Internal Oversight investigations, the report may be modified or withheld in extraordinary circumstances, at the discretion of the Under-Secretary-General for Internal Oversight Services, who will provide the reasons for this to the requesting party". The CCLM noted further that the submission to the Finance Committee provided detailed information on the matter, seen in the context of the general oversight framework of FAO, as well as information on recent practice at the United Nations and concluded that, in event that the Finance Committee should be of the view that a similar initiative should be implemented in FAO, the conditions of implementation of the procedure should be reviewed by the CCLM.

19. The CCLM noted that the Finance Committee, at its 115th Session, had reached a consensus to recommend to the Council that final audit reports be made available to Members on request, subject to such views as the CCLM might provide, especially as concerns information that Members might consider restricted in accordance with their legislation. As regards, more specifically, investigation reports, the Committee noted that further detailed guidance from the CCLM would be required, in light of various concerns expressed by some Members and related considerations, including the criteria already established by the United Nations for the modification or withholding of reports, so that a recommendation could be made to the Council. In addition, the CCLM noted, as reflected in document CCLM 80/5 following consultation by the Legal Office and the Office of the Inspector General with counterpart offices of all other organizations of the United Nations system, that while the criteria formulated by the Office of Internal Oversight Services of the United Nations could constitute a useful reference, a number of additional concerns had been expressed in relation to the implementation of the procedure and should be duly reflected in the criteria to be followed at FAO. These criteria would apply to all reports of the Office of the Inspector General, irrespective of their qualification as an audit or investigation report.

20. Having regard to all information available to it, as well as the fact that a recently-concluded "Comprehensive Review of Governance and Oversight within the United Nations, Funds, Programmes and Specialized Agencies" had not yet been examined by FAO and its

implications assessed, the CCLM agreed to recommend the following interim criteria, to be applied in respect of requests for reports of the Office of the Inspector General:

“INTERIM CRITERIA FOR MODIFYING OR WITHHOLDING REPORTS ISSUED BY THE OFFICE OF THE INSPECTOR GENERAL

1. *The Inspector General will endeavour to provide original reports, which are issued internally, to Members upon request. Prior to acceding to a request from a Member, the Inspector General will consult the Legal Office, the Human Resources Division and such other division he/she deems fit in the light of the circumstances.*

2. *The Inspector General may withhold or modify reports, in accordance with the following criteria:*

(a) *Reports may be withheld from Members when:*

- (i) *the report contains information which is, or may be considered to be, of a restricted nature under national legislation of a Member, subject however to acceptance by this Member that the report may be released and under the terms of such acceptance;*
- (ii) *it appears from the terms of the request, or from the circumstances surrounding the request, that confidentiality cannot be guaranteed or that the request pursues an objective incompatible with the status of the Organization;*
- (iii) *the report cannot be modified sufficiently to protect the identity of a complainant or other person or entity to whom confidentiality has been promised by the Office of the Inspector General;*
- (iv) *the report is an interim report and not a final report;*
- (v) *although the report is a final one, proceedings in relation to administrative action taken on its basis are still ongoing, either before the Appeals Committee or before the Administrative Tribunal of the International Labour Organization, or all possibilities of appeal against such administrative action have not yet been exhausted;*
- (vi) *the matter reported, or related matters, are still under investigation by the Office of the Inspector General, by other body or organization of the United Nations system, or by national authorities;*
- (vii) *the report has been withdrawn by the Office of the Inspector General;*
- (viii) *the disclosure of the report may cause direct and serious harm to a person;*
- (ix) *without prejudice to the general nature of paragraph 3, there is any important reason which the Inspector General will communicate to the requesting Member.*

(b) *Reports may be modified before providing to a Member by:*

- (i) *removing names and other terms which will reveal the identity of a complainant or a cooperating witness;*
- (ii) *removing names and other terms which will reveal the identity of a subject of investigation who has been cleared of the allegations;*
- (iii) *removing the names and other terms which will reveal the identity of persons or entities to whom promises of confidentiality have been made;*
- (iv) *removing the identifiers or others, whether persons or entities, where it is in the best interest of the investigation so to do;*

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- (v) *adding information adduced since the preparation of the report which clarifies or corrects information in the report, or which addresses the findings or recommendations of the report.*
3. *Under all circumstances, the Inspector-General shall provide to the requesting Member the reasons for which a report is withheld or modified”.*

21. The CCLM expressed the view that such criteria should be of an interim nature. The CCLM recommended to the Council that the Office of the Inspector-General and the Legal Office should monitor the implementation of the criteria in the light of the experience gained with a view to allowing the CCLM to revise them in future sessions, as appropriate.

22. The CCLM considered that paragraph 2(a)(ix) of the proposed criteria involved both legal and policy issues and therefore should be left for consideration by the Council.

APPENDIX V**EXTRACT OF THE REPORT OF THE HUNDRED AND THIRTY-FIRST SESSION OF THE COUNCIL (20-25 NOVEMBER 2006)***Access by Members to Reports of the Office of the Inspector General*

1. The Council noted that the CCLM had examined the matter in detail on the basis, inter alia, of criteria for modifying or withholding reports issued by the Office of the Internal Oversight Systems of the United Nations and had proposed “Interim Criteria for Modifying or Withholding Reports issued by the Office of the Inspector General”. However, in consideration of the fact that a recently-concluded “Comprehensive Review of the Governance and Oversight within the United Nations, Funds, Programmes and Specialized Agencies” had not yet been examined at the United Nations, and notwithstanding the interim nature of the proposed criteria, the Council postponed consideration of the issue and requested the CCLM to review the matter again at its Spring 2007 Session.

APPENDIX VI**EXTRACT OF THE REPORT OF THE EIGHTY-FIRST SESSION OF
THE COMMITTEE ON CONSTITUTIONAL AND LEGAL
MATTERS (4-5 APRIL 2007)
AS CONTAINED IN DOCUMENT CL 132/5****VII. ACCESS BY MEMBERS TO REPORTS OF THE OFFICE OF THE INSPECTOR-
GENERAL**

22. At its 131st Session in November 2006, the Council noted that the CCLM had examined the matter in detail on the basis, *inter alia*, of criteria for modifying or withholding reports issued by the Office of the Internal Oversight Systems of the United Nations and had proposed “Interim Criteria for Modifying or Withholding Reports issued by the Office of the Inspector General”. However, in consideration of the fact that a recently-concluded “Comprehensive Review of the Governance and Oversight within the United Nations, Funds, Programmes and Specialized Agencies” had not yet been examined at the United Nations, and notwithstanding the interim nature of the proposed criteria, the Council postponed consideration of the issue and requested the CCLM to review the matter again at its Spring 2007 Session.

23. The CCLM was informed that, meanwhile, the matter was being examined on an interagency basis. It had been discussed at the Session of 19-20 March 2007 of the High Level Committee on Management (HLCM) of the United Nations System Chief Executives Board for Coordination. The HLCM reiterated its conclusion at its 9th Session of April 2005 that “internal audit reports were an important management tool for executive heads and should therefore remain confidential”. The HLCM noted that some organizations had been requested by a few Members, both during formal sessions of their Governing Bodies and subsequently, in writing, to share internal audit reports. The HLCM decided that its Finance and Budget Network, in consultation with the Heads of Internal Oversight of the organizations, as well as with their External Auditors and with the Institute of Internal Auditors, should prepare a position paper on behalf of the HLCM as a document to support the discussion of the item by the Executive Heads at the upcoming session of the United Nations System Chief Executives Board for Coordination on 20 and 21 April 2007.

24. The CCLM decided to postpone consideration of the matter until its next session, so that it could have the benefit of the conclusions of the United Nations System Chief Executives Board for Coordination.

APPENDIX VII**EXTRACT OF THE REPORT OF THE HUNDRED AND THIRTY-
SECOND SESSION OF THE COUNCIL (18-22 JUNE 2007)****Access by Members to Reports of the Office of the Inspector-General**

128. The Council noted that the CCLM had examined the matter in detail on the basis, *inter alia*, of criteria for modifying or withholding reports issued by the Office of the Internal Oversight Systems of the United Nations and had proposed Interim Criteria for Modifying or Withholding Reports issued by the Office of the Inspector General. However, at its Hundred and Thirty-first session, the Council had postponed consideration of the issue and had requested the CCLM to review the matter again at its Spring 2007 Session.

129. The Council noted that meanwhile the matter had been discussed at the March 2007 Session of the High-Level Committee on Management (HLCM) of the United Nations System Chief Executives Board for Coordination. The said Committee, having pointed out that internal audit reports were an important management tool for Executive Heads and should therefore remain confidential, decided that its Finance and Budget Network, in consultation with the Heads of Internal Oversight of the organizations, as well as their External Auditors and the Institute of Internal Auditors, should prepare a position paper on behalf of the HLCM as a document to support the discussions of the item by the Executive Heads at their forthcoming meeting. The Council endorsed the proposal of the CCLM to postpone consideration of the matter so that it could have the benefit of the conclusions of the United Nations System Chief Executives Board for Coordination.

APPENDIX VIII**EXTRACT OF THE REPORT OF THE EIGHTY-SECOND SESSION
OF THE COMMITTEE ON CONSTITUTIONAL AND LEGAL
MATTERS (25-26 OCTOBER 2007) AS CONTAINED IN
DOCUMENT CL 133/5****III. OTHER MATTERS**

5. The CCLM noted that the issue of access by Members to reports of the Inspector-General was still pending. The CCLM recommended that the Council may wish to provide guidance on the matter taking into account related recommendations contained in the report of the IEE.

APPENDIX IX**EXTRACT OF THE REPORT OF THE HUNDRED AND THIRTY-
THIRD SESSION OF THE COUNCIL (14 - 16 NOVEMBER 2007)***Other Matters*

48. The Council noted that the issue of access by Members to reports of the Inspector General was still pending, that the matter had also been addressed in the context of the Independent External Evaluation and that guidance would need to be provided on this matter in future.