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Unidas
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y la
Alimentación

FINANCE COMMITTEE

Hundred and Thirty-fifth Session

Rome, 25 – 29 October 2010

Terms of Reference and Composition of the Ethics Committee

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EXECUTIVE SUMMARY

- The Immediate Plan of Action (IPA) for FAO Renewal (2009-11), approved by the Conference at its Thirty-fifth (Special) Session, called for the establishment of an Ethics Committee, whose proposed terms of reference and composition would be reviewed by the Finance Committee and the Committee on Constitutional and Legal Matters. Proposals to that effect have been under review for a while.
- The proposed terms of reference and composition are set out in Section III of this document and are based on the conclusions of the study of the ethics function by Ernst & Young, whose authors will be available to provide to the Finance Committee further views on those conclusions, as may be necessary. The proposals made draw upon the experience gained within FAO with the Audit Committee in the course of the past few years.

GUIDANCE SOUGHT FROM THE FINANCE COMMITTEE

- The Committee is invited to review and endorse the proposed terms of reference and composition of the Ethics Committee which, after review by the CCLM, would be promulgated within FAO through a Director-General's Bulletin and incorporated in the Administrative Manual of the Organization. The Committee is also invited to endorse a proposal that the functioning of the Ethics Committee be assessed after a given period of time, as may be decided by both Committees, and its terms of reference adjusted as required.

I. BACKGROUND

A. Immediate Plan of Action (IPA) for FAO Renewal

1. The Immediate Plan of Action (IPA) for FAO Renewal approved by the Conference, at its Thirty-fifth (Special) Session, contains the following Action Matrix on Ethics.

“Appointment of an Ethics Officer, functioning of the office, and training of staff” (IPA action 3.33)

“Review of Terms of Reference and proposed membership of Ethics Committee by the CCLM and the Finance Committee” (IPA action 3.34)

“Appointment and initiation of work by Ethics Committee” (IPA action 3.35)

“Review of annual or biennial reports of Ethics Committee by the Council on the basis of the findings and recommendations of the CCLM and Finance Committee” (IPA action 3.36)

B. Past deliberations on the matter

2. At its Hundred and Twenty-eighth Session, in July 2009, the Finance Committee examined document FC 128/2 *“Review of the Terms of Reference and proposed Membership of the Ethics Committee”* prepared in response to action 3.34 of the IPA. The Committee decided to keep the issue open and review the matter again at one of its forthcoming sessions, including in the light of the deliberations of the Committee on Constitutional and Legal Matters (CCLM), due to hold its session in September 2009.

3. At its Eighty-eighth Session, in September 2009, the CCLM reviewed document CCLM 88/2 *“Ethics Committee”* and suggested amendments to the proposed Terms of Reference. The CCLM noted, at that time, that the proposed Terms of Reference of the Ethics Committee would be reviewed again by the Finance Committee.

4. At its Hundred and Thirty-second Session, in April 2010, the Finance Committee examined document FC 132/13 entitled *“Review of the Terms of Reference of the Ethics Committee”*.¹ On the occasion of the review by the Finance Committee, a range of observations were made on issues such as the composition of the Committee, reporting lines, prevention of conflict of interest, financial disclosure, the independence of the ethics function and other functions of the Organization, as well as taking into account, as noted in the September 2009 CCLM Report, ongoing developments in the United Nations System. The Finance Committee requested that a revised document, in the context of the above observations made by the Committee, be prepared for its review. The revised document would also be referred to the CCLM.² The Council, at its Hundred and Thirty-ninth Session, in May 2010, requested the Finance Committee, in liaison with the CCLM, to continue reviewing the draft terms of reference

¹ It should be stressed that the content of the submissions to the Finance Committee and to the CCLM was the same, despite changes in the titles of the documents, except that the document submitted to the Finance Committee in April 2010 reflected a few limited changes to the terms of reference which had been suggested by the CCLM at its session of September 2009.

² CL 139/8, paragraphs 49 and 50.

of the Ethics Committee, taking note of developments in the UN System, with due consideration of the role of the Ethics Committee's function *vis-à-vis* other activities of the Organization, such as those in the office of the Inspector-General, the functions of the Ombudsman and FAO's mediation process.³

5. At its Ninety-first Session in September 2010, the CCLM reviewed document CCLM 91/4 entitled "*Terms of Reference and Composition of the Ethics Committee*", in light of the information provided by the Secretariat, the Ethics Officer and the Office of the Inspector-General. The CCLM noted that the proposals contained in document CCLM 91/4 had taken into account preliminary conclusions on the matter by Ernst & Young, as part of a broader study commissioned by management to better define the relationship between the ethics function and, *inter alia*, the activities of the Office of the Inspector-General, the financial disclosure programme, the functions of the Ombudsman and FAO's mediation policy, which was still under review. The CCLM decided to defer consideration of the matter pending the submission of the conclusions of the study and review of the proposals by the Finance Committee.

II. APPROACH TOWARDS THE PROPOSED ETHICS COMMITTEE

6. This document takes into account the observations made by the Finance Committee, at its Hundred and Twenty-eighth Session, in July 2009 and at its Hundred and Thirty-second Session in April 2010, by the Council at its Hundred and Thirty-ninth Session, in May 2010, and by the CCLM at its recently concluded Ninety-first Session, in September 2010. In addition, it reflects further consideration of the whole matter within FAO, and the conclusions of the study of the ethics function by Ernst & Young. The authors of the study will be available to provide to the Finance Committee further views on its recommendations. The document proposes a framework for the operation of the Committee.

7. As a general and preliminary observation, it is important to emphasise that while the IPA requested that proposals be made for the terms of reference and composition of an Ethics Committee, practical experience gained throughout the United Nations System on the operation of the ethics function, in general, and ethics committees, in particular, remains very limited. On the other hand, the Secretariat believes that the experience gained within FAO with the Audit Committee, seen in the light of its evolution over the years, is very useful and would provide, with the necessary adjustments, a basis for the proposals regarding the Ethics Committee. Thus, insofar as possible, the proposed Ethics Committee would replicate in respect of the ethics function, obviously with such necessary adjustments, the Audit Committee in respect of the audit function.

8. As to the proposed terms of reference of the Ethics Committee, these have been adjusted in a number of respects as compared with earlier submissions. Provision is made for the Ethics Committee to operate, both as an advisory panel to the Director-General on all matters pertaining to ethics within the Organization, and as a supervisory tool over the activities of the Ethics Officer. The Ethics Committee would, thus, keep under review all matters pertaining to the formulation, development and implementation of the ethics programme of FAO, including the Organization's financial disclosure programme or programmes aimed at preventing or addressing conflict of interest; keep under review the activities of the Ethics Officer on the basis of regular reports referred to the Committee and to provide guidance thereon; advise on such matters as the Director-General or the Ethics Officer might refer to it; review and advise on the main individual components of the Ethics Programme, including any relevant policies, regulations and rules, dissemination of information, training, disclosure programmes and conflict of interest prevention and related policies. The Ethics Committee would submit an annual report to the Director-General, to the Finance Committee and to the CCLM and, more generally, advise or examine any issues related to the fulfilment of its mandate.

³ CL 139/REP, paragraph 44.

9. As to its composition, the Ethics Committee would have mixed membership, insofar as it would consist of three internal members and three external members. This would be in line with the proposals made by Ernst & Young and also draw upon the experience of the Audit Committee. The internal members, with their knowledge of the Organization would ensure that any decision taken or advice provided reflects considerations regarding applicability within FAO, while the external members would ensure that ideas and experiences from private or public organizations are considered. It is further proposed that there should be three internal members appointed by the Director-General and three external members appointed by the Director-General, whose nomination is approved by the Council, following a recommendation by the Finance Committee and the CCLM, consistent also with the procedure currently in force for the appointment of the members of the Audit Committee. Members of the Ethics Committee would hold office for three year terms, with a possibility of renewal, by the Director-General, for a further term of three years. The Chairperson of the Ethics Committee would be elected by the Committee itself from among its external members.

10. It is important to stress that while FAO would have its own Ethics Committee, consistent with the decision of the Conference, the Ethics Officer of FAO shall continue to be a member of the network of Ethics Officers of the organizations of the United Nations and take an active part in all activities of the network, which would respond to concerns regarding United Nations System consistency and coordination. In addition, it is proposed that the functioning of the Ethics Committee be assessed after a given period of time, as recommended by the Committees, and its terms of reference and working procedures adjusted as appropriate. Again, this would be in keeping with the pragmatic approach that has been taken over the years in FAO *vis-à-vis* the Audit Committee.

III. PROPOSED TERMS OF REFERENCE AND COMPOSITION OF THE ETHICS COMMITTEE

11. Taking into account the above considerations, the following proposals are made regarding the 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, and ensure overall supervision over the activities of the Ethics Officer.*

Mandate of the Ethics Committee

2. *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 review the activities of the Ethics Officer on the basis of regular reports referred to the Committee and to provide guidance thereon;*
 - (c) *To advise on such matters as the Director-General or the Ethics Officer 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, dissemination of information, training, disclosure programmes and conflict of interest prevention and related policies;*
 - (e) *To submit an annual report to the Director-General, to the Finance Committee and the Committee on Constitutional and Legal Matters;*

(f) *To advise or examine any issues related to the fulfilment of its mandate.*

Composition of the Ethics Committee

3. *The Ethics Committee shall consist of the following members appointed by the Director-General:*
 - (a) *Three reputable individuals external to the Organization whose nomination is approved by the Council, upon recommendation by the Finance Committee and the Committee on Constitutional and Legal Matters;*
 - (b) *One Deputy Director-General;*
 - (c) *One Assistant Director-General;*
 - (d) *The Legal Counsel.*
4. *The Chairperson of the Ethics Committee shall be elected by the Committee from among its external members for a period of three years.*

Term of Office

5. *Members of the Ethics Committee hold office for a term of three years, which may be extended for another term up to three years, at the discretion of the Director-General.*

Sessions

6. *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 or the Ethics Officer may request the Chairperson to convene a meeting if necessary.*

Quorum

7. *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.⁴*

Secretariat

8. *The Ethics Officer shall be the secretary of the Ethics Committee. The Organization shall make the necessary secretarial arrangements for the functioning of the Ethics Committee.*

IV. FINANCIAL AND OTHER CONSIDERATIONS

12. Under the proposed format where three members would be external individuals, there would be a need to foresee allowances, as well as coverage by the Organization of travel expenditures, in the event that these individuals should not be based in Rome. Allocation for these expenditures is available for 2011 under the Immediate Plan of Action and shall be foreseen in the

⁴ For the time being, as discussed on a few past occasions, the proposals do not include detailed procedural rules for the operation of the Committee (e.g. on voting), given the nature of the Committee. In the future, following a possible reassessment of the workings of the Committee, this position could be reconsidered.

PWB 2012-13. Other operating expenditures would normally be absorbed by existing relevant budgetary allocations.

V. SUGGESTED ACTION BY THE COMMITTEE

13. The Finance Committee is invited to review this document and provide such views thereon as appropriate. At its session of March 2011, the CCLM will review these Terms of Reference of the Ethics Committee, together with the views of the Finance Committee thereon.

14. The Finance Committee is, in particular, invited:

- (a) To review and endorse the proposed terms of reference of the Ethics Committee which, after review by the CCLM⁵, would be promulgated within FAO through a Director-General's Bulletin and incorporated in the Administrative Manual of the Organization;
- (b) To endorse the proposal that the functioning of the Ethics Committee be assessed after a given period of time, as may be decided by the Committees, and its terms of reference adjusted as appropriate.

⁵ While the extent of the review by the CCLM is a matter for the CCLM itself, it has been the practice of this Committee to restrict its review of proposals referred to it to strictly legal issues.