

# **FAO SANCTIONS PROCEDURES**

**2014**

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# FAO Sanctions Procedures

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## **Section 1: Introduction**

### **1.1 Objectives**

Fraud and corruption in any form pose a grave threat to the effective implementation of the policies and objectives of the Food and Agriculture Organization of the United Nations (“FAO” or “the Organization”). In light of FAO’s overriding mandate of ensuring humanity’s freedom from hunger, it is imperative that no resources are diverted from their ultimate purpose. Fraud and corruption not only divert resources from FAO programs and operations, but also undermine public trust and confidence in the Organization. As a result, the Organization has adopted a zero-tolerance policy (<http://www.fao.org/unfao/procurement/codedeconduitethique/en/>) in respect of fraud in all its manifestations, by its own personnel or by any entity financed by FAO or involved in the execution of FAO activities. Such third party entities include vendors or contractors bidding for or contracted in commercial relationships with FAO, or Service Providers, Implementing Partners or other entities receiving financial or other resources from FAO in respect of its programs and operations pursuant to Letters of Agreement, Execution Agreements, or other instruments.

In furtherance of its zero tolerance policy, FAO has established the FAO Sanctions Procedures (“the Procedures”) with respect to Third Parties. In particular, these procedures are applicable to alleged instances of specified forms of fraud, corruption or other proscribed activities (as defined herein under “Sanctionable Action”) committed by entities engaged in business relationships with the Organization.

The objectives of the Procedures are to establish and communicate the steps that will be taken by FAO when handling allegations of Sanctionable Actions, including:

- the temporary suspension from eligibility to bid in FAO procurement tenders, and/or of ongoing contracts and payments under these contracts, while investigations are underway;
- the determination of sanctions to be imposed when allegations are supported by the results of investigations; and
- the reaching of settlements and the rehabilitation of the business relationship with FAO.

The Procedures aim to ensure that FAO’s zero tolerance policy is applied consistently and with due process to the affected third parties.

## 1.2 Definitions

For purposes of these Procedures, the following terms shall have the meanings set forth in this section:

**1.2.1** “*Authorized Official*” means the personnel with the responsibility and authority to undertake procurement actions, as well as the financial authority to approve and sign Contractual Instruments on behalf of the Organization under the provisions of Manual Section 502 or 507 of the Administrative Manual of the Organization, or personnel delegated to sign Execution Agreements or other instruments.

**1.2.2** “*Days*” means working days, unless stated otherwise.

**1.2.3** “*Eligible Vendor*” means any legal entity, or their agents or representatives, which may supply goods, works or services to the Organization under the provisions of Manual Section 502 or 507, or an actual or prospective Implementing Partner or other entity, and which has not been included in the Ineligibility List, or if having been included, being duly rehabilitated or exempted.

**1.2.4** “*Implementing Partner*” is an entity which undertakes activities in support of a partnership established under a formal agreement with FAO including Execution Agreements.

**1.2.5** “*Ineligibility List Administrator*” means the person responsible for maintaining and updating the Ineligibility List hosted by the United Nations Global Market (UNGM).

**1.2.6** “*Ineligibility List*” means the central list administered by the Ineligibility List Administrator, hosted and maintained confidentially by UNGM and available to Participating UN Agencies, which specifies the name, location, grounds for ineligibility as well as effective and terminal date for each ineligible vendor status.

**1.2.7** “*Ineligible Vendor*” means any legal entity, or their agents or representatives, which, whether by the Organization or any other Participating UN Agencies, has been temporarily or permanently debarred to participate in current or prospective procurement actions due to its involvement in a Sanctionable Action, and included in the Ineligibility List.

**1.2.8** “*Organization*” means the Food and Agriculture Organization of the United Nations (FAO).

**1.2.9** “*Participating UN Agency*” means the United Nations, any of its subsidiary entities, Funds, Programmes or Specialized Agencies, which are implementing a vendor sanctions system through the Ineligibility List.

**1.2.10** “*Preponderance of evidence*” means that upon consideration of all the relevant evidence, it is more likely than not that the Third Party engaged in a Sanctionable Action.

**1.2.11** “*Rehabilitation*” means the process through which a Sanctioned Party may restore its business relationship with the Organization.

**1.2.12** “*Sanctionable Action*” means:

(a) With respect to procurement, a corrupt, fraudulent, collusive or coercive practice, occurring at any time during the procurement process (including contract execution or anytime thereafter), and defined as follows:

(i) “*corrupt practice*” or “*corruption*” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value whether tangible or intangible to improperly influence the actions of another party;

(ii) “*fraudulent practice*” or “*fraud*” means any act or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial and/or other benefit and/or to avoid an obligation;

(iii) “*collusive practice*” is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

(iv) “*coercive practice*” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; or

(b) Any unethical practice contrary to the conflict of interest, gifts and hospitality or post-employment FAO policy (<http://www.fao.org/unfao/procurement/codedeconduitethique/en/>), as well as any provisions or other published requirements of doing business with the Organization, including the UN Supplier Code of Conduct ([http://www.un.org/depts/ptd/code\\_of\\_.htm](http://www.un.org/depts/ptd/code_of_.htm)); or

(c) “*Obstruction,*” which means acts or omissions by a Third Party that may prevent or hinder the work of Investigation Unit of the OIG.

**1.2.13** “*Sanctioned Party*” means any Third Party on which a sanction has been imposed by the Assistant Director-General of the Corporate Services, Human Resources and Finance Department (“ADG/CS”) upon recommendation of the Sanctions Committee.

**1.2.14** “*Third Party*” means any entity considered a Vendor or Service Provider under Manual Section 502 or 507, respectively, including its Affiliates, Successors or Assigns, alleged to have engaged in a Sanctionable Action. For the purposes of this policy, “Third Party” also includes any entity, including those designated as Implementing Partners, entering into Execution Agreements with the Organization. A Third Party may also be considered responsible for any Sanctionable Action, or

attempted Sanctionable Action, committed by another party, including employees, agents or representatives, acting in the capacity of representing the Third Party, regardless of whether the act has been specifically authorized.

### **1.3 The Sanctions Committee**

**1.3.1 *Mandate.*** The Sanctions Committee (“the Committee”) shall determine whether a Third Party has engaged in any Sanctionable Action and, if so, recommend appropriate sanction(s) or other corrective and rehabilitative measure(s) to the Assistant Director-General of the Corporate Services, Human Resources and Finance Department (“ADG/CS”). In order to reach its determinations and formulate its recommendations, members shall analyse all evidence and assess its relative value.

**1.3.2 *Composition.*** The Sanctions Committee membership (“Members”) will consist of a pre-determined roster of Members (“Roster”), all serving in their personal capacity. The Deputy Director-General Operations (“DDO”) shall appoint the members to the Roster and shall appoint from this Roster a Chairperson and Vice-Chairperson. A quorum will consist of the Chairperson or Vice-Chairperson and three Members. The three Members required for each Sanctions Proceedings shall be chosen from the Roster, in a manner that promotes impartiality, according to availability and all Members participating in a meeting of the Committee shall be voting Members. In the case of a tie, the Chairperson shall have the qualifying vote. In the absence of the Chairperson, the Vice-Chairperson shall have the qualifying vote.

**1.3.3 *Committee Service.*** Each member of the Roster shall serve until their resignation, retirement, transfer to another office or removal by the DDO.

**1.3.4 *Secretary.*** A Secretary to the Sanctions Committee (“the Secretary”) shall act as a confidential, impartial, non-voting advisor to the Committee, reporting directly to the ADG/CS. In addition, the Secretary shall:

- (a) Receive and forward all written submissions and evidence, records of any related proceedings, and/or any other materials received or issued by the Committee and the Third Party relating to sanctions proceedings;
- (b) Schedule all Committee meetings relating to sanctions proceedings;
- (c) Assist the Committee during its deliberations; and
- (d) Draft the record of the Committee’s deliberations and recommendations.

**1.3.5 *Advisors to Committee.*** When relevant, the Chairperson may request the FAO Representative from the country in which the procurement activities took place and/or any other Staff member with relevant expertise to participate in a meeting of the Committee as advisor.

**1.3.6 Meetings.** Meetings of the Committee will be convened either upon the Office of the Inspector General's ("OIG") request or at any time the Chairperson or a member of the Committee deems necessary. The Committee will meet in closed sessions, unless it decides otherwise. In all meetings of the Committee, the attendance of all members is required. However, one or more members may attend the meeting by means of conference telephone or similar communications media.

**1.3.7 Decision Making.** The Committee will reach its decisions by majority.

**1.3.8 Reporting.** The Committee shall report on its activities to the ADG/CS, at least once every six (6) months.

**1.3.9 Recusal.** Members of the Roster and the Secretary shall be recused from involvement in any matter before the Committee in which they had prior substantive involvement and which would impair the objectivity of the member. For this purpose involvement in the Vendor selection process is not, *per se*, considered sufficient to require recusal. In such cases, an alternative member of the Roster will be selected by the Chairperson or the DDO or an alternate Secretary identified for the matter.

## **1.4 Office of the Inspector General**

As provided in the Charter for the OIG (<http://www.fao.org/aud/48639/en/>), all allegations of fraud and corruption by a Third Party involved in programs and operations of the Organization shall be referred to the Investigation Unit of the OIG ("OIG/INV"). OIG/INV will conduct a preliminary review, after which OIG/INV may, in the exercise of professional discretion and in the interest of the most effective usage of FAO resources, decide whether to commence an investigation and the manner in which such investigation is to be conducted. OIG/INV shall be responsible for conducting such an investigation to determine if a Sanctionable Action was committed.

## **Section 2: Temporary Suspension**

### **2.1 Purpose and Effects**

Temporary Suspension is a means to protect the best interests of the Organization when reasonable inferences may be drawn from preliminary information provided by OIG prior to the issuance of an Investigation Report, another International Organization conducting its own investigation, or national authorities. When a Third Party is placed under Temporary Suspension, it may not partake in any procurement activity. A Temporary Suspension may also suspend, in whole or in part, the effects of ongoing business relationships, including, but not limited to, payment.

## **2.2 Request for Temporary Suspension**

**2.2.1 *Submission by OIG.*** OIG may request that the Sanctions Committee consider a Temporary Suspension at any stage of the investigation or the sanctions proceedings. If OIG is presenting its request before an Investigation Report is concluded, its request shall include any preliminary findings, as well as any information that support its inferences pertaining to the Third Party's involvement. It shall also indicate whether or not an Investigation Report can be reasonably expected within 6 months. When making a request to the Sanctions Committee to start Sanctions Proceedings, OIG must indicate whether or not it seeks Temporary Suspension for any Third Party. When Temporary Suspension had been previously granted, the Notice of Sanctions Proceedings shall refer to this previous request.

**2.2.2 *Committee Decision.*** The Committee may seek inputs from CSAP or the FAO Representative prior to making its determination. The Sanctions Committee has full discretion to grant or deny the request.

## **2.3 Notification of Temporary Suspension and Right to Contest**

**2.3.1 *Notification.*** The Third Party shall be notified of the Temporary Suspension by the Secretary, either through a stand-alone notice or as part of the Notice of Sanctions Proceedings, as applicable. The Third Party shall be informed of the nature of the allegations as well as the date the Temporary Suspension became effective.

**2.3.2 *Right to Contest Temporary Suspension.*** The Third Party shall have a period of no more than fifteen (15) days to contest the Committee's decision to impose Temporary Suspension in writing. The Committee shall take any submissions from the Third Party into consideration and shall promptly notify the Third Party if it reaffirms or alters its original determination. The Secretary shall notify OIG and any relevant FAO Offices.

## **2.4 Duration and Extension**

**2.4.1 *Duration.*** Temporary Suspension imposed at the investigation stage shall have a maximum duration of 6 (six) months.

**2.4.2 *Automatic Extension upon Sanctions Proceedings.*** Any Temporary Suspension imposed at the investigation stage shall be automatically extended upon submission of an OIG Request to start Sanctions Proceedings.

**2.4.3 *Request for Extension of Suspension.*** In case the completion of the investigation is delayed, and before the initial suspension period lapses, OIG may request a single extension to the Sanctions Committee for an additional 6 (six) months. This request shall include a summary of the current progress of the ongoing investigation, the reasons for the delay, evidence that remains to be gathered, and a good faith estimate on time required to complete the investigation. The Committee shall decide in its discretion whether such extension should

be granted. The Secretary shall inform the Third Party of any extension granted within 5 days.

**2.4.4 Expiration.** If no extension to the Temporary Suspension is requested, and a Request for the issuance of a Notice of Sanctions Proceedings is not submitted to the Committee prior to the end of the initial period of Temporary Suspension, the suspension shall automatically expire. The Secretary shall notify the Third Party and any pertinent offices that the Temporary Suspension has expired.

**2.4.5 Immediate Effect.** Temporary Suspension imposed or extended at the initiation of sanctions proceedings shall be in effect immediately upon issuance of the Notice and until the AD/CSA makes a final decision as set out under Section 5.

### **Section 3: Proceedings**

#### **3.1 Request for a Notice of Sanctions Proceedings**

**3.1.1 Submission of Request by OIG.** If upon completing the investigation, OIG determines that there is sufficient evidence to confirm the allegations that a Third Party has engaged in a Sanctionable Action it shall submit to the Committee a Request for Notice of Sanctions Proceedings. This request shall be accompanied by an OIG Investigation Report, which shall include the following:

- (a) The specific allegations of Sanctionable Action(s);
- (b) OIG's designation of each Third Party alleged to have engaged in a Sanctionable Action and proposed to be sanctioned;
- (c) OIG's summary of the facts constituting the Sanctionable Action and the grounds for sanctioning any designated Third Party; and
- (d) All evidence and information in support of the summary of facts, together with any exculpatory or mitigating evidence.

**3.1.2 OIG Redaction of Sensitive Evidence.** OIG may redact evidence presented to the Committee in its Investigation Report by removing references to FAO staff or other Third Parties where the identity of such parties is not relevant to the Committee's consideration of the report. The Third Party may challenge redactions in its Response, in which case the Committee shall review the un-redacted version of the evidence to determine whether the information originally redacted is necessary to enable the Third Party to prepare an adequate response to the allegations against it. In the event that the Committee determines that the redacted information is necessary, OIG shall have the option to withdraw such evidence from the Investigation Report; withdraw the Notice in its entirety; or make the un-redacted version available to the Third Party to afford the Third Party an opportunity to provide comments in an additional submission.

**3.1.3 *OIG Request to Withhold Sensitive Evidence.*** The Committee may also, upon request of OIG, agree to withhold particular evidence included in an Investigation Report, when there is a reasonable basis to believe that revealing the particular evidence might expose an individual to the risk of retaliation or other detrimental consequences. In the event that the Committee denies OIG's request, OIG shall have the option to withdraw such evidence from the record, and the Secretary shall note that the Committee should no longer consider this particular evidence when rendering its final determination and recommendation.

## **3.2 Issuance of the Notice of Sanctions Proceedings**

**3.2.1 *Committee Review and Decision.*** The Committee will review the OIG Request for Notice and the Investigation Report and will decide whether OIG's findings support a conclusion that there is sufficient evidence that the Third Party has engaged in a Sanctionable Action. The Committee will make a determination within fifteen (15) days from the submission of OIG. If the Committee accepts OIG's conclusion that the Third Party may have participated in a Sanctionable Action, it will issue a Notice to each Third Party who may be subject to sanctions thereunder, and notify OIG accordingly. In cases where the Third Party has been temporarily suspended, this suspension shall be automatically extended from the date of issuance of the Notice until the date of the final outcome of the sanctions proceedings.

**3.2.2 *Contents of Notice.*** The Notice shall:

- (a) State the specific allegation(s);
- (b) State the sanction(s) that may be imposed by the ADG/CS, together with any corrective measures to be taken when applicable;
- (c) Inform the Third Party of the manner in which it may contest the allegation(s) and/or the sanction(s) that may be imposed; and
- (d) Append the Investigation Report, together with a copy of these Procedures in effect at the time of issuance of the Notice.

**3.2.3 *Evidence Provided to Third Party.*** All evidence presented to the Committee by OIG shall ordinarily be provided by the Committee to the Third Party unless it is withheld or redacted in conformity with Sections 3.1.2 or 3.1.3 in rendering its final determination or recommendation.

**3.2.4 *Denial of Request for Notice of Sanctions Proceedings.*** If the Committee does not endorse OIG's request to issue the Notice, by determining OIG's conclusions are not supported by its findings, the Secretary shall not issue the Notice and shall notify OIG of the basis for the denial and the matter shall be considered closed. If a temporary suspension has been previously issued, the Secretary shall immediately inform the Third Party of the

outcome of the Committee's determination and the temporary suspension shall be immediately terminated.

### **3.3 Written Statements to the Committee**

Once the Committee issues a Notice of Sanctions Proceedings, both the Third Party and OIG will be given an opportunity to present written statements to the Committee setting forth further information and evidence in the form of a Response and Reply described below.

**3.3.1 *Third Party Response.*** Within thirty (30) days after delivery of the Notice, the Third Party may provide a written response ("the Response") to the allegations and/or the Sanctionable Action(s) stated in the Notice, including arguments and evidence, to the Committee. The Response shall present arguments by the Third Party and attach any evidence in support thereof. In its Response, the Third Party may admit to none, all or part of any allegation set forth in the Notice. The Third Party may also present evidence or arguments of mitigating circumstances or other facts relevant to the Committee's recommendation concerning an appropriate sanction, including any corrective measure already taken. The Response shall also contain a certification, signed by an authorized officer of the Third Party, that the information contained therein is truthful to the best of the signer's knowledge after the exercise of due diligence in reviewing the matter. If the Third Party does not provide a Response within thirty (30) days after delivery of the Notice, the Committee shall consider the allegations as admitted in full and directly recommend the sanction(s) stated in the Notice to the ADG/CS.

**3.3.2 *OIG's Reply.*** Within twenty (20) days after receipt of the Third Party's Response, OIG may submit to the Committee additional written materials presenting arguments and evidence in reply to the arguments and evidence set forth by the Third Party ("the Reply"). The arguments and evidence included in the Reply must be limited to rebuttal information. A copy of OIG's Reply shall be submitted to the Third Party.

**3.3.3 *Sur-Reply.*** At the discretion of the Committee, the Third Party may be given the opportunity to provide a written response to information contained in OIG's Reply ("the Sur-Reply"). In such cases, the Third Party shall have fifteen (15) days after receipt of the OIG's Reply to submit the Sur-Reply. The Sur-Reply shall also contain a certification, signed by an authorized officer of the Third Party, that the information contained therein is truthful to the best of the signer's knowledge after the exercise of due diligence in reviewing the matter.

**3.3.4 *Requests for Clarification.*** The Committee may, at any time during sanctions proceedings, request clarification or further information from the Third Party or OIG. Refusal or delay to answer, or failure to answer truthfully, may be taken into consideration in the Committee's final determination or recommendation.

**3.3.5 *Submission of Additional Materials.*** In the event that additional material evidence becomes available to the Third Party or OIG after the applicable deadlines have passed, but

prior to the Committee's final determination or recommendation, the Committee may authorize such additional evidence to be admitted, provided it is promptly submitted to the Secretary along with a brief written submission stating its importance and the circumstances under which said evidence became available.

#### **Section 4: Settlement**

At any time before a final determination or recommendation has been reached by the Committee, the Third Party may submit in writing an offer of settlement to the Secretary, who shall submit it within five (5) days to the Committee for its consideration. The offer of settlement may include an admission of involvement in the Sanctionable Action, and should include an action plan for mitigating and eradicating the actions or omissions that resulted in the allegations included in the Notice of Sanctions Proceedings. If multiple Third Parties are involved, the Third Parties may offer to settle jointly or individually. The Committee has full discretion to approve or reject the settlement.

The settlement agreement may require the Third Party to submit periodic reports on the status and implementation of any corrective actions.

#### **Section 5: Imposition of Sanctions**

##### **5.1 Committee's Final Determination and Recommendation**

**5.1.1 *Insufficient Evidence of Sanctionable Action.*** If the Committee determines that there is insufficient evidence to support a finding that the Third Party engaged in a Sanctionable Action, it shall notify within ten (10) days the Third Party and OIG of its final determination in writing, and the matter shall be closed.

**5.1.2 *Finding of Sanctionable Action and Range of Possible Sanctions.*** If the Committee concurs that there is a preponderance of evidence to support a finding that the Third Party engaged in a Sanctionable Action, it may recommend to the ADG/CS appropriate sanction(s) from the following range of possible sanctions listed below, as well as any remedial action:

(a) *Reprimand:* The Committee may recommend that the Third Party be reprimanded in the form of a formal letter of censure of its behavior, to be kept in the FAO Vendor Record. A reprimand may be recommended in addition to other sanctions;

(b) *Conditional Non-Debarment:* The Committee may recommend to require that the Third Party comply with certain remedial, preventative or other conditions as a condition to avoid debarment. Conditions may include, but are not limited to, verifiable actions taken to improve business governance, including the introduction, improvement and/or implementation of corporate compliance, ethics programs, in-house trainings

and/or any other educational efforts to raise awareness; and/or restitution or disciplinary action against, or reassignment of, employees;

(c) *Debarment with Conditional Release:* The Committee may recommend that the Third Party be declared ineligible to be invited to FAO tenders and included in the Ineligibility List until the Third Party demonstrates compliance with certain remedial, preventative or other conditions for release, after a stated minimum period of debarment. Conditions may include, but are not limited to, verifiable actions taken to improve business governance, including the introduction, improvement and/or implementation of corporate compliance, ethics programs, in-house trainings and/or any other educational efforts to raise awareness; and/or restitution or disciplinary action against, or reassignment of, employees;

(d) *Debarment:* The Committee may recommend that the Third Party be declared ineligible, either indefinitely or for a stated period of time, to be invited to FAO tenders, and included in the Ineligibility List;

(e) *Restitution or Remedy:* The Committee may recommend that the Third Party be required to make restitution to FAO or to any other party or take actions to remedy the harm done by its Sanctionable Action as a condition of continuing or doing future business with the Organization;

(f) *Other Sanctions:* The Committee may recommend imposing other sanctions that it deems appropriate under the circumstances.

**5.1.3 Factors Affecting the Sanction Determination or Recommendation.** In recommending appropriate sanction(s), the Committee may consider the following factors:

- (a) The egregiousness and severity of the Third Party's actions;
- (b) Any past conduct of the Third Party involving fraudulent or corrupt practices;
- (c) The magnitude and severity of any losses or damages caused by the Third Party;
- (d) The negative impact caused by the Third Party to the credibility of the procurement process;
- (e) The quality of the evidence presented by OIG and the Third Party;
- (f) Any mitigating circumstances including, but not limited to, any instances where the Third Party played a minor role in the Sanctionable Action, took voluntary corrective action or cooperated in the investigation or sanctions proceedings;
- (g) The period of temporary suspension already served by the Third Party;

- (h) The Third Party's admission of involvement in the Sanctionable Action;
- (i) Any breaches of the confidentiality of the sanctions proceedings or interference by the Third Party in OIG's investigation; and
- (j) Any other factor that the Committee deems relevant to the Third Party's culpability or responsibility in relation to the Sanctionable Action.

**5.1.4 *Parties Subject to Sanctions.*** When recommending a sanction to be imposed on a Third Party, the Committee may also recommend that the effects of the sanctions be extended to any of its affiliates, successors, assignees or agents.

**5.1.5 *Transmission of Recommendation.*** Upon a finding that a Third Party engaged in a Sanctionable Action and a determination of an appropriate recommendation, the Committee shall transmit to the ADG/CS a written recommendation stating its findings of fact and conclusions based on all the submissions pertaining to the case. The Committee shall also include a recommendation on specific sanctions for the ADG/CS's consideration.

## **5.2 Entry into Force of Final Decision**

**5.2.1 *Decision by the ADG/CS.*** Upon receiving the Committee's recommendation, the ADG/CS shall promptly issue a final decision concurring, denying or modifying the Committee's recommendation and proposed sanction.

**5.2.2 *Final Nature of the Decision.*** The decision of the ADG/CS shall be final and non-appealable. It shall take effect immediately, and without prejudice to any action taken against the Third Party by any national authority in accordance with applicable laws. The decision shall promptly be transmitted to the Sanctioned Party through the Secretary. The Secretary shall also notify within ten (10) days OIG and other relevant offices within FAO.

**5.2.3 *Notice of Requirements for Conditional Non-Debarment or Debarment with Conditional Release.*** When a sanction of conditional non-debarment or debarment with conditional release is imposed, and as soon as practicable upon its notification, the Secretary shall contact the Sanctioned Party to advise it of the requirements for meeting the conditions, including, where applicable, the adoption and implementation of an integrity compliance program acceptable to FAO. The Secretary will also notify the Sanctioned Party of any additional monitoring requirements, including, but not limited to, periodic reporting by the Sanctioned Party, the appointment of an independent monitor, and inspection of the books and records by an external auditor approved by FAO.

**5.2.4 *UN Ineligibility List.*** Debarred Third Parties will be classified as Ineligible Vendors for the purposes of the UN Ineligibility List. In the case of any debarment, the Secretary of the Sanctions Committee shall submit a formal Summary of the Decision to the Ineligibility List Administrator, and the Secretary will notify the Ineligible Vendor of its inclusion in the

UN Ineligibility List. If, within the timelines specified in the notice, the Ineligible Vendor believes that the entry includes errors regarding the identity, type, or duration of the sanction, the Ineligible Vendor must request in writing that the entry be amended and provide supporting documentation. The Secretary of the Sanctions Committee will then amend or confirm the entry, and the Ineligible Vendor will be notified in writing. The Ineligible Vendor may not present documentation or make arguments that could be construed as a *de novo* review of the merits of the decision.

## **Section 6: Disclosure**

The Director-General may at any time make materials submitted to the Committee by OIG or the Third Party available to other international or multinational organizations, including other Participating UN Agencies, law enforcement or administrative authorities, or to national development agencies, provided that the recipient of such materials agrees to keep them confidential under terms and conditions acceptable to FAO.

## **Section 7: Rehabilitation**

### **7.1 Procedures and Requirements**

**7.1.1 Requirements for Rehabilitation.** A Sanctioned Party may have its business relationship with the Organization restored by the ADG/CS when:

- (a) The sanctions term and corresponding entry in the Ineligibility List have expired;
- (b) At least half of the sanctions term has expired, provided that the Sanctioned Party can demonstrate that corrective measures have been put in place and have fully met the requirements of the said sanction; or
- (c) The last day of the minimum period of debarment under a debarment for conditional release has come, provided that the Sanctioned Party has complied with the remedial, preventative or other conditions for release to the Committee's satisfaction.

**7.1.2 Request for Rehabilitation.** A request for rehabilitation ("the Application") shall be submitted in writing to the Secretary and accompanied by supporting documentation, including, *inter alia*, a detailed report on its implementation of any integrity compliance and monitoring program as required by the Committee, details relating to remedial actions taken in response to the Sanctionable Action for which the Third Party was sanctioned as well as any other any Sanctionable Action detected during the period of debarment or conditional non-debarment, and any criminal, civil or regulatory conviction or decision based on conduct of the type of a Sanctionable Action.

**7.1.3 Timeline and Committee Review.** Within thirty (30) days after receipt of the Application, the Committee shall begin its review thereof to determine, based on the

arguments and evidence set forth in the Application, whether or not the Sanctioned Party has complied with the conditions established. The Committee may request further information if deemed necessary. The Sanctioned Party shall cooperate fully with any such verification, including by permitting the Committee access to relevant books, records and external auditors.

**7.1.4 Verification and Decision.** The Committee shall verify the facts of the Application and make its recommendation to the ADG/CS as soon as practicable. Upon decision of the ADG/CS, the Secretary shall promptly notify the Sanctioned Party, OIG, and all relevant offices within FAO, of such decision and the basis thereof. If the ADG/CS approves the granting of such Application, the Secretary shall inform the Sanctioned Party and, where applicable, request the Ineligibility List Administrator to modify the Ineligibility List accordingly.

**7.1.5 Confirmation of Rehabilitation.** A Sanctioned Party may request written confirmation that the conditions for non-debarment have been met.

## **7.2 Noncompliance with Rehabilitation Requirements**

In the case of a determination by the Committee of non-compliance with conditions for non-debarment, a debarment with conditional release (the conditions for release being those originally stipulated for non-debarment) would automatically become effective for a period of time established by the Committee. In the case of a determination of non-compliance with conditions for release, the Committee shall recommend to the ADG/CS a continuation of the period of debarment, for a period not to exceed one (1) year. The ADG/CS's decision shall be final and non-appealable.

## **Section 8: Enforcement of Debarment Decisions by Other Participating UN Agencies**

The Organization may give consideration to other debarment decisions made by other Participating UN Agencies through the monitoring of the Ineligibility List and consider the participation of Vendors included therein only in circumstances where the Organization has a compelling interest to, as described below under Section 9.2.

## **Section 9: Eligibility Derogation Measures**

### **9.1 Waiver Request in Case of Special Circumstances**

**9.1.1 Waiver.** When special circumstances warrant the participation of an Ineligible Vendor in a procurement process, the Authorized Official may request a waiver that temporarily suspends the effects of the sanction(s) imposed by the ADG/CS. "Special

circumstances”, as used in this Section, shall cover any Emergency Situation, Exigency or any other exceptional cases where deviations from the Manual Section 502 or 507 are authorized, which warrant unusual or immediate action, such as a sudden and unforeseen crisis or any urgent situation that requires extreme effort or attention that may only be provided by the Ineligible Vendor.

**9.1.2 Effect of Waiver.** The waiver granted by the ADG/CS shall make the Ineligible Vendor eligible for an award of contract by the Organization exceptionally and on a one-time basis. The Secretary shall notify the Authorized Official and the Ineligible Vendor after the ADG/CS’s decision.

## **9.2 Exceptions to Common Actions**

**9.2.1 Exceptions.** Where the best interests of the Organization so require, the Authorized Official may request the ADG/CS to make exceptionally eligible an Ineligible Vendor included in the Ineligibility List by another Participating UN Agency. In support of its request, the Authorized Official shall demonstrate that the Organization has a compelling interest in using the Ineligible Vendor. The ADG/CS may approve or deny the request for exception at its sole discretion.

**9.2.2 Effect of Exception.** If approved, the Secretary shall promptly notify the Authorized Official and the Ineligible Vendor, indicating that the exception is only applicable to the Organization’s specific procurement action that prompted the request.

## **Section 10: Additional Provisions**

### **10.1 Effective Date**

The Procedures are effective as of 1 January 2014 (“the Effective Date”) and shall apply to:

- (a) All proceedings for which a Notice of Sanctions Proceedings is used on or after the Effective Date;
- (b) Any settlement in respect of which an offer for settlement is submitted on or after the Effective Date; and
- (c) Any decision taken in respect of compliance by a Sanctioned Party with conditions for release from debarment or for non-debarment taken on or after the Effective Date.

### **10.2 Computation of Deadlines**

Unless stated otherwise, “days” as used herein means working days and do not include weekends and/or holidays. Holidays shall be the holidays officially recognized by FAO. If

the last day of any period falls on a day in which the Organization is not officially open for business, the term shall run until the end of the next day on which the Organization is officially open.

### **10.3 Extensions of Time**

Upon request of OIG or the Third Party, a reasonable extension of any time period for the filing of submissions may be granted as a matter of discretion by the Committee, by notice to both parties.

### **10.4 Language**

All written materials submitted to the Committee shall be submitted in English or in another official language of the Organization. Exhibits and attachments may be submitted in their original language but shall be accompanied by a certified translation into English or another official language of the Organization.

### **10.5 Amendments**

The Organization reserves the right to further amend, supplement or otherwise revise the Procedures at any time, with or without notice. It also may adapt, modify, waive or suspend the Procedures in particular cases as circumstances warrant at any time and without prior notice. Any such revision will be effective as of the date of approval thereof by the appropriate authority and will apply to proceedings for which a Notice of Sanctions Proceedings is issued after such date.

### **10.6 Cooperation**

The Organization will communicate its decisions to other Participating UN Agencies, and share details of Sanctioned Parties through the UNGM, when applicable.

### **10.7 Privileges and Immunities**

The Procedures are intended to assist in facilitating the reasonable exercise of discretion by the Organization Staff members in such cases and do not in themselves confer any rights or privileges to any party involved. Nothing in the Procedures, or revealed or implied during proceedings herein described, or decisions issued, shall be deemed to expressly or implicitly alter, abrogate, or waive the FAO's Status, Immunities and Privileges as set forth in the FAO Constitution, the Convention on the Privileges and Immunities of the Specialized Agencies or other provisions of international law, or shall be deemed to accept the jurisdiction of the courts of any country.

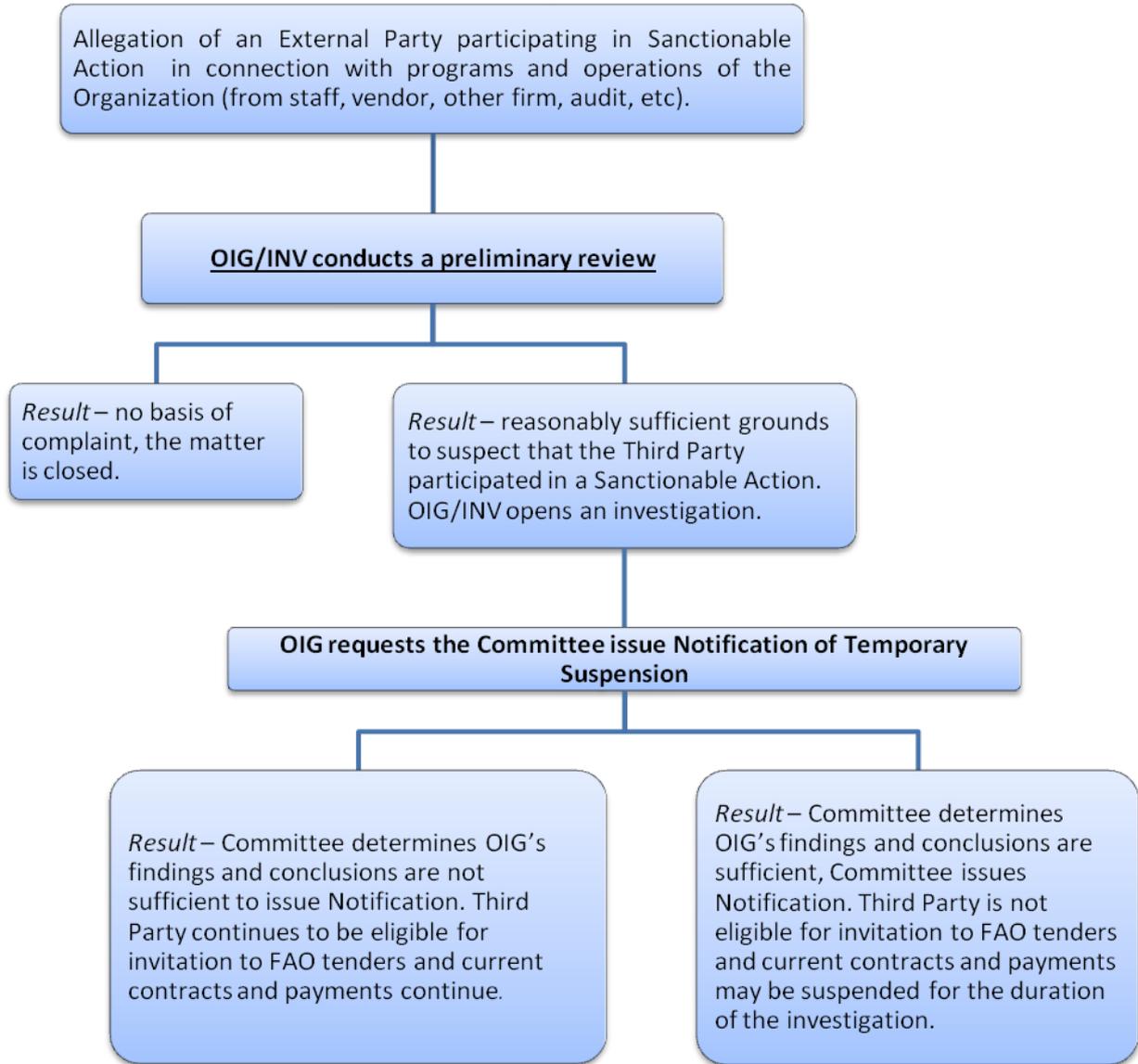
### **10.8 Actions Concerning Organization Staff**

The Procedures are not intended to alter existing policies on misconduct and procedures with respect to internal investigations or audits and possible disciplinary actions concerning FAO staff.

## **10.9 Data Protection**

In implementing the Procedures, the Organization shall adopt measures and take steps to ensure the adequate protection of personal and commercial data, including the processing of such data.

## Annex 1: Overview of the Operational Responsibilities



## Annex 2: Flowchart

