


January 2011

	منظمة الأغذية والزراعة للأمم المتحدة	联合国 粮食及 农业组织	Food and Agriculture Organization of the United Nations	Organisation des Nations Unies pour l'alimentation et l'agriculture	Продовольствен ная и сельскохозяйств енная организация Объединенных	Organización de las Naciones Unidas para la Agricultura y la Alimentación
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# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

**Ninety-Second Session**

**Rome, 7-9 March 2011**

**Terms of Reference and Composition of the Ethics Committee**

## 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 Office, 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*”<sup>1</sup>. 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, its 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<sup>2</sup>. 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 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<sup>3</sup>.

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 Office 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

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<sup>1</sup> 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.

<sup>2</sup> CL 139/8, paragraphs 48 and 50.

<sup>3</sup> CL 139/REP, paragraph 44.

submission of the conclusions of the study and review of the proposals by the Finance Committee.

6. At its Hundred and Thirty-fifth Session, in October 2010, the Finance Committee examined a revised document on the Terms of Reference and Composition of the Ethics Committee. **The Committee requested that a revised proposal be prepared (a) providing for an increase from three to four in the number of external members; (b) providing for the same procedure both for the appointment and any subsequent renewal of the appointment of outside members; (c) redefining the role of the Committee to clarify that, while exercising an advisory function to the Ethics Office and the implementation of the ethics programme, the Committee would not be involved in operational activities nor have any formal supervisory responsibilities over the activities of the Ethics Office and (d) examining the possibility that the Ethics Office should not be the secretary of the Committee and that instead the Organization should make such secretarial arrangements as required for the servicing of the Committee<sup>4</sup>.** The Committee also requested that a revised proposal reflecting its proposed adjustments be referred to the CCLM and then to the Finance Committee in March 2011. The Council at its Hundred-and-fortieth session held in November and December 2010 welcomed the continuing efforts to prepare the terms of reference and of the Ethics Committee, and supported their review by the CCLM and the Finance Committee in March 2011.

## II. APPROACH TOWARDS THE PROPOSED ETHICS COMMITTEE

7. 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, by the CCLM at its Ninety-first Session, in September 2010 and, in particular, those made by the Finance Committee at its Hundred and Thirty-fifth Session in October 2010. **At that session of the Committee, discussions showed that a measure of consensus had been reached on the text, except for the observations reflected in paragraph 6 above.**

8. It is important to recall again 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 adjustments, the Audit Committee in respect of the audit function.

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<sup>4</sup> CL 140/21, paragraph 50.

9. 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 follow-up tool over the functioning of the ethics programme, but without exercising any form of direct supervision over the Ethics Office or engaging in operational activities. It is proposed to reflect this in explicit terms in the mandate of the Committee. Without carrying out any operational activities, the Ethics Committee would 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 conflicts of interest; keep under review the activities of the Ethics Office on the basis of regular reports referred to the Committee and to provide guidance thereon; advise on such matters as the Director-General 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.

10. As to its composition, the Ethics Committee would have mixed membership. It would consist of three internal members and four external members. This would be in line with the proposals previously made by Ernst & Young and also draw, to some extent, 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 the three internal members should be appointed by the Director-General and four external members appointed by the Director-General, whose nomination would be 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. Internal 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 procedure for the renewal of the appointment of the external members would be the same as for their appointment. The Chairperson of the Ethics Committee would be elected by the Committee itself from among its external members.

11. It is important to stress that while FAO would have its own Ethics Committee, consistent with the decision of the Conference, the Ethics Office of FAO shall continue to be a member of the network of Ethics Offices 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 should 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

12. Taking into account the above considerations, including the views expressed by the Finance Committee at its Hundred and Thirty-fifth Session in October 2010, 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, ensure general oversight over the operation of the ethics programme and provide assurance that the ethics programme is operating effectively. The Ethics Committee shall not have any formal supervisory responsibility in respect of the Ethics Office, nor engage in any operational activities in relation to its mandate.*

#### *Mandate of the Ethics Committee*

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

(a) *To keep under review all matters pertaining to the formulation, development and implementation of the ethics programme of the Organization, including the Organization's financial disclosure programme or programmes aimed at preventing or addressing conflict of interest;*

(b) *To keep under general review the activities of the Ethics Office on the basis of annual reports referred by the Ethics Office to the Committee and to provide guidance thereon;*

(c) *To advise on such matters as the Director-General may refer to it;*

(d) *To review and advise on the main individual components of the Ethics programme, including any relevant policies, regulations and rules, training, disclosure programmes and conflict of interest prevention and related policies;*

(e) *To submit an annual report 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) *Four 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. *Except for the Legal Counsel, who shall be an ex officio member of the Ethics Committee, the members of the Ethics Committee who are officials of the Organization shall 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. The Director-General may renew the appointment of the individuals external to the Organization, subject to approval by the Council, upon recommendation by the Finance Committee and the Committee on Constitutional and Legal Matters.*

### **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 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 five members<sup>5</sup>.*

### **Secretariat**

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

## **IV. FINANCIAL AND OTHER CONSIDERATIONS**

13. Under the proposed format where four 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 PWB 2012-13. Other operating expenditures would normally be absorbed by existing relevant budgetary allocations.

## **V. SUGGESTED ACTION BY THE COMMITTEE**

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

15. The CCLM is, in particular, invited:

- (a) To review and endorse the proposed terms of reference of the Ethics Committee which, after review by the Finance Committee, would be promulgated within FAO through a Director-General's Bulletin and incorporated in the Administrative Manual of the Organization;

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<sup>5</sup> 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.

- (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.