



COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Hundred and Twentieth Session

Rome, 25-27 March 2024

Recommendation 7 of the JIU Report *Review of the state of the investigation function: progress made in the United Nations system organizations in strengthening the investigation function* (JIU/REP/2020/1)

I. Introduction

1. In Recommendation 7 of its report on the *Review of the state of the investigation function*, the Joint Inspection Unit of the United Nations (JIU) recommended that: “[t]he legislative bodies of United Nations system organizations that have not yet done so should develop and adopt appropriate formal procedures for the investigation of complaints of misconduct by executive heads” (“Recommendation 7”).

2. This matter, which has been on the agenda for previous sessions of the Committee on Constitutional and Legal Matters (“CCLM” or “the Committee”), is presented in accordance with its mandate as set out in Rule XXXIV, paragraph 8, of the General Rules of the Organization, whereby the Committee considers “the legal and constitutional aspects of any other matters submitted to it by the Council”. The matter is also under consideration by the Finance Committee, within the context of its mandate.

II. Background

3. The consideration of this matter in previous sessions of the CCLM,¹ the Finance Committee² and the Council³ is summarized in paragraphs 3-8 of document CCLM 119/2.

¹ 117th Session of CCLM (October 2022; [CCLM 117/4](#)); 118th Session of CCLM (April 2023; [CL 172/10](#)); 119th Session of CCLM (October 2023; [CCLM 119/2](#)).

² 194th Session of the Finance Committee (November 2022; [FC 194/7](#)); 195th Session of the Finance Committee (April 2023; [CL 172/9](#)); 198th Session of the Finance Committee (November 2023; [FC 198/8](#)). The Finance Committee also considered this matter at its 188th Session (November 2021; [CL 168/9](#), paragraph 18(d)) and its 191st Session (May 2022, [CL 170/12](#), paragraph 30).

³ 171st Session of the Council (December 2022; [CL 171/9](#); [CL 171/10](#); [CL 171/REP](#)); 172nd Session of the Council (April 2023; [CL 172/REP](#)); 174th Session of the Council (December 2023; [CL 174/9](#); [CL 174/10](#); [CL 174/REP](#)). The Council also considered the recommendations of the Finance Committee at its 168th Session (November/December 2021; [CL 168/REP](#), paragraph 27(h)) and its 170th Session (June 2022; [CL 170/REP](#), paragraph 30).

4. In their reports submitted to the 174th Session of the Council, the two Council Committees had made observations and recommendations, within their respective mandates, as set out below.

5. As regards the CCLM:

“9. The Committee emphasized that ‘misconduct’ included sexual harassment, sexual exploitation and abuse (SEA). It recommended, therefore, that the definition should stipulate the applicability of the definitions in other FAO rules and policies addressing those specific kinds of misconduct. The Committee also observed that there is a need to provide safeguards for complainants and whistleblowers and recommended that the issue of provisional measures be addressed.

10. The Committee considered the preliminary procedures for the investigation and disciplinary processes, as set out in Annexes 3 and 4 of document CCLM 119/2. It reiterated the importance of developing these procedures to implement the JIU recommendation.

11. It considered mechanisms through which the Conference, as the appointing authority under the Basic Texts, could address such matters. The Committee recommended that the procedures to be developed should, as far as possible, avoid the establishment of new bodies. The Committee noted that the FAO governance framework did not provide for an intersessional term for a bureau of the Conference similar to other UN system entities. The Committee considered that allegations should be referred to an external investigating entity (EIE). It emphasized the need for impartiality in the investigation process.

12. The Committee emphasized that such procedures should ensure transparency, due process, duty of care, and the presumption of innocence, noting the possibility of politically motivated allegations against the Director-General.

13. The Committee agreed to further consider this matter at its 120th Session in 2024 and looked forward to an updated document taking into account the relevant practice and developments in other UN specialized agencies as well as related discussions in other FAO Governing Bodies.”⁴

6. The Finance Committee:

“a) recommended that the principles of integrity, transparency, impartiality, expertise and efficiency in the investigation process, and presumption of innocence should be emphasized in developing the processes to implement recommendation 7;

b) supported the recommendations of the Committee on Constitutional and Legal Matters (CCLM) at its 119th Session that the procedures to be developed should, as far as possible, avoid the establishment of new bodies, and allegations should be referred to an external investigating entity;

c) recommended the application of the policies and rules of the Organization with respect to all types of misconduct, including sexual harassment, sexual exploitation and abuse (SEA) and the definitions thereof, in development of the preliminary procedures;

d) recommended that Management should continue to consult with and take into account the relevant practices and processes under development at other UN specialized agencies;

e) reiterated its request at its 195th Session for delivery of procedures that include draft provisions of the investigations and disciplinary procedures necessary for handling complaints of misconduct to implement the Joint Inspection Unit’s (JIU) recommendation; and

f) looked forward to continued discussions on this matter, including through further briefings to the members of the CCLM and the Finance Committee and an update at

⁴ [CL 174/10](#), paragraphs 9-13.

their respective spring 2024 sessions, prior to the presentation of draft procedures to their autumn 2024 sessions.”⁵

7. The recommendations of both Council Committees were endorsed by the Council at its 174th Session.⁶

III. Update on developments since the last consideration by the Governing Bodies

A. Developments in FAO

8. In December 2023, after the 174th Session of the Council, the FAO Oversight Advisory Committee (OAC) was briefed on this matter. The OAC was invited to provide views and advice, drawing on the high level of relevant expertise and experience of its members.⁷

9. The OAC provided insights on many relevant matters, noting the highly technical nature of investigation and disciplinary processes. Its members commented on, *inter alia*, the general overarching principles that could guide the formulation of the procedures; the retention and supervision of external investigating entities (“EIEs”), including quality control of their products; the provision of impartial legal support for investigation and disciplinary processes; channels for receipt of allegations, etc. The OAC also considered the nature and scope of any potential support that it could provide if so requested by the Governing Bodies. The guidance of the OAC will greatly assist in the preparation of the draft procedures to be presented to the relevant Governing Bodies at their autumn 2024 sessions. The OAC will be regularly consulted during the drafting process in the coming months.

10. Activities continue to address the specific recommendations of the Council Committees endorsed by the Council. Thus, drafting of texts reflecting the guidance related to the definition of “misconduct”, incorporating the general principles identified, is ongoing. Moreover, efforts are ongoing to address the practical modalities that would need to be put in place to ensure availability of an EIE, and to quantify the resources necessary for the proposed processes.

B. Developments in other Specialized Agencies

11. In 2023, the World Health Organization (“WHO”)’s Independent Expert Oversight Advisory Committee (“IEOAC”), pursuant to a request from the WHO Executive Board, developed proposals for a process and advice on handling and investigating significant allegations, including potential allegations against the WHO Director-General.

12. The report of the IEOAC was submitted to the WHO Executive Board, through the Programme, Budget and Administration Committee of the Executive Board (“PBAC”).⁸ Following consideration of the IEOAC’s report, at its 153rd Session in May 2023, the Executive Board requested the former co-facilitators of the Agile Member States Task Group on Strengthening WHO’s Budgetary, Programmatic and Financing Governance (“AMSTG”) to hold informal consultations with Member States on the process of handling and investigating potential allegations against WHO Directors-General, building on the last proposals (which address both the investigation and disciplinary processes) and flowchart received from the IEOAC, and to report on the outcome of those consultations to the Executive Board at its 154th Session to be held from 22 to 27 January 2024, through the 39th meeting of the PBAC to be held from 16 to 19 January 2024. Accordingly,

⁵ [CL 174/9](#), paragraph 22.

⁶ [CL 174/REP](#), paragraphs 26(b) and 30(a).

⁷ The terms of reference and composition of the Oversight Advisory Committee may be found on the [FAO website](#).

⁸ WHO Independent Expert Oversight Advisory Committee: annual report ([EBPBAC38/2](#)), paragraphs 49 to 54 and Annex A.

in January 2024, the WHO Director-General transmitted the report submitted by the former co-facilitators of the AMSTG to the PBAC.⁹ The report set out areas of consensus and areas of continued contention. At the time of preparation of the present document, the outcome of the PBAC's and WHO Executive Board's deliberations were not available.

13. As regards UNESCO, its Executive Board, at its 212th Session in October 2021, requested the Director of the Division of Internal Oversight Services (IOS) to submit a procedure for the handling of the investigation in case of allegations against a Director-General to its 215th Session to be convened in October 2022.¹⁰

14. The Director OIS recommended that the United Nations Office of Internal Oversight Services (OIOS) be in charge of conducting an investigation in case of allegations against a Director-General of UNESCO. This recommendation was approved at the 215th Session of the Executive Board in October 2022, and the Director IOS was mandated to approach OIOS to establish a memorandum of understanding for this purpose. The Director IOS was also requested to propose a procedure agreed with OIOS on the handling of investigations in case of allegations against a Director-General. Subsequently, at its 42nd Session convened in November 2023, the UNESCO General Conference, through its Resolution 72, adopted a procedure for investigations in case of allegations against a Director-General.¹¹ The procedure, setting out roles for the Director IOS, the Oversight Advisory Committee, OIOS, and the Chairperson of the Executive Board, focuses on the investigation process, indicating that the resulting OIOS reports shall be submitted to the Chairperson of the Executive Board "*for further action as appropriate*".

15. Management has not received any information from other Specialized Agencies of ongoing actions to implement the JIU recommendation. Efforts to obtain information will continue, with a view to providing oral updates on any additional information received by the time of the Committee's Session.

IV. Suggested action by the Committee

16. The Committee is invited to take note of this update, and to make such comments and give guidance as it deems appropriate.

⁹ [Matters emanating from the Agile Member States Task Group on Strengthening WHO's Budgetary, Programmatic and Financing Governance \(EB154/35\)](#).

¹⁰ [212 EX/Decision 21.I](#).

¹¹ This procedure is set out in document [42 C/27](#).