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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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Participation of international non-governmental organizations and civil society organizations in meetings of FAO - Review of rules and procedures

I. Background

1. At its 97th Session (21 - 23 October 2013), the Committee on Constitutional and Legal Matters (CCLM) examined document CCLM 97/8 “*Preliminary review of participation of international non-governmental organizations and civil society organizations in meetings of FAO - Legal Aspects*”. The document presented the rules and present practice governing the participation of Civil Society Organizations (CSOs) in meetings of both Governing and Statutory Bodies of FAO and illustrated the rules and practice in place in other UN organizations and agencies. Noting that the practice currently governing CSOs participation in FAO meetings is detached from the legal framework set out in the Basic Texts, and considering the need for a more simplified and coherent mechanism of participation of CSOs in various FAO bodies, the CCLM *requested that a process of redefinition of applicable procedures be initiated by the secretariat, involving such units as deemed appropriate, and in informal consultation with CCLM Members*¹.

2. At its 148th Session, the Council endorsed the Report of the 97th CCLM Session and *stressed the need to initiate a process for the reformulation of rules and procedures for the participation of non-governmental organizations and civil society organizations in meetings of FAO, with due regard being paid to the two recently adopted FAO Strategies for Partnerships with Civil Society Organizations and the Private Sector, and emphasized that the intergovernmental nature of FAO’s decision making process would be maintained*².

3. A tentative document setting forth “*Proposed Guidelines for Participation of Civil Society Organizations and Private Sector Representatives in FAO Meetings*” is set out in Annex I to this document. It was not possible to convene informal meetings of CCLM Members present in Rome to discuss this draft document, before the present session.

4. A background note containing information on existing legal frameworks and practice for the participation of CSOs and NGOs in FAO and in other organizations of the United Nations System is

¹ CL 148/2 Rev.1, paragraph 26.

² CL 148/REP, paragraph 20(f).

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attached as Annex II. The note, which is to be considered as a reference information document, is appended to this document for the sake of convenience. It provides an overview on options regarding categories, eligibility criteria, and procedure for participation of CSOs in meetings of the Organization and reflects information already provided to the 97th Session of the CCLM and which was already taken into account by the Members on that occasion.

II. Suggested action by the Committee

5. The CCLM is invited to:

- a) to review, advise on and amend as appropriate the proposed Guidelines for participation of civil society organizations and private sector representatives in FAO meetings; and
- b) to provide such guidance as it may deem fit on the process of review of the proposed guidelines.

ANNEX I

PROPOSED GUIDELINES FOR PARTICIPATION OF CIVIL SOCIETY ORGANIZATIONS AND PRIVATE SECTOR REPRESENTATIVES IN FAO MEETINGS

1. FAO recognizes the relevance and value of the contribution of Civil Society Organizations (CSOs) and the private sector to the achievement of the objectives of the Organization and is committed to facilitating their involvement in its work and activities. Being a knowledge organization and a neutral forum for dialogue and debate, FAO encourages an inclusive process for policy dialogue and for sharing expertise and knowledge, taking into account the intergovernmental nature of the Organization and its accountability to its Members. The Organization is committed to facilitating CSOs participation in FAO activities, subject to the principle that, in line with the nature of FAO as an intergovernmental organization of the United Nations System, decision making is entirely a matter for Members.
2. The FAO Strategy for Partnerships with Civil Society Organizations³ defines civil society organizations as a broad category which encompasses a wide variety of organizations, including local authorities, mass media, business and industry leaders and the research community, including academia and think-tanks. The aforementioned Strategy contemplates three main categories of civil society organizations: member-based organizations, non-governmental organizations and social movements.
3. These guidelines foresee that CSOs and private sector representatives may attend FAO meetings, including sessions of FAO Governing and Statutory Bodies, in an observer capacity either as a result for having been granted formal status with the Organization, or upon invitation on an *ad hoc* basis. Formal status is granted as a result of a process assessing requirements and collaboration and activities carried out by the relevant entity with the Organization, including their interest for the work of FAO. These guidelines draw on FAO's past experience and on that of a number of organizations and programmes and funds of the United Nations System.

I. CSOs IN FORMAL STATUS**A. CSOs eligible for formal status**

4. In order to be eligible for formal status, CSOs should:
 - a) be sufficiently representative in the field of interest in which it operates;
 - b) be concerned with matters covering a portion of FAO's field of activity and be in a position to make a contribution deemed to be of interest to the Organization or to give practical assistance to the Organization;
 - c) have aims and purposes in conformity with the general principles embodied in the Constitution of FAO; and
 - d) have, as far as possible, a permanent directing body, authorized representatives and systematic procedures and machinery to communicate with its membership.
5. Before being granted formal status, the concerned CSO may be requested to develop working relations with the Organization through the institutional arrangements and tools of collaboration set out in the Strategy for Partnerships with Civil Society Organizations.

B. Rights of CSOs in formal status

6. CSOs in formal status will be entitled:
 - a) to send an observer (without the right to vote), who may be accompanied by advisers, to sessions of the Conference; to speak before the commissions and technical committees of the Conference, but not to participate in discussions unless requested by the Chairperson;

³ CL 146/REP, Appendix F, paragraph 7.

and, upon request addressed to the Director-General and with the consent of the General Committee of the Conference, to speak before the Conference itself;

- b) to attend (without the right to vote) the sessions of the Council, technical committees under Article V of the Constitution, Regional Conferences and the Statutory Bodies of the Organization, to speak before the concerned body and to participate in discussions upon approval by the Chairperson, and in accordance with such procedures as may be adopted;
- c) to participate (without the right to vote) in experts' meetings, technical conferences or seminars on subjects which fall within their fields of interest and to participate in discussions upon approval by the Chairperson, and in accordance with such procedures as may be adopted;
- d) to receive, in advance of session or meetings, documentation of a non-restricted nature, as well as information about meetings planned on matters agreed upon with the Secretariat;
- e) to circulate their views in writing, without abridgement, to the meetings where they participate; and
- f) to submit written statements, in one of the languages of FAO, to the Director-General who may communicate them to the Secretariat.

7. Notwithstanding the above, participation in sessions and meetings of the Organization by CSOs may be subject to such arrangements as may be approved by the body or meeting concerned which may be necessary for the conduct of the proceedings.

C. Obligations of CSOs in formal status

8. CSOs in formal status undertake:

- a) to cooperate fully with FAO for the furtherance of the objectives of the Organization;
- b) in cooperation with the competent units of FAO, to determine the ways and means of coordinating activities in a specialized field of FAO, with a view to avoiding duplication and overlapping;
- c) to invite a representative of the Director-General to attend and participate in the meetings of its governing bodies, general assemblies and appropriate technical meetings, and to arrange for coordination at secretariat level;
- d) to contribute, as far as possible, and at the request of the Director-General, to the promotion of a better knowledge and understanding of FAO's programmes and activities through appropriate discussions or other forms of publicity;
- e) to send to FAO its reports and publications on an exchange basis; to keep FAO informed of changes in its structure and membership, as well as of important changes in its secretariat; and
- f) to submit periodical reports of their activities, specifically with regard to the support that they have given to the work of the FAO, its Governing and Statutory Bodies and secretariats, as appropriate.

D. Review of formal status

Suspension

9. Formal status may be suspended during a period of up to three years whenever a CSO has not shown any interest in, or has not attended any meetings during a period of two years.

Termination

10. Formal status may be terminated in the following circumstances:

- a) whenever the formal status is no longer considered necessary or appropriate in the light of changing programmes or other circumstances;
- b) if, within the preceding four years, a CSO has not made any positive or effective contribution to the work of the Organization;
- c) if a CSO clearly abuses its status by engaging in a pattern of acts contrary to, or incompatible with, the purposes and principles of the FAO Constitution; and
- d) if there exists substantiated evidence that a CSO has undertaken criminal activities.

11. A CSO whose formal status is terminated under any of the circumstances above may reapply for formal status.

II. PARTICIPATION OF CSOs IN FAO MEETINGS ON AN *AD HOC* BASIS

A. Eligibility for invitation

12. CSOs concerned with matters covering a particular portion of FAO's field of activities and having interest in attending specific FAO meetings, may be invited on an *ad hoc* basis to participate in such meetings, upon their request or upon decision of the secretariat. These may include sessions of FAO governing and statutory bodies, technical meetings and consultations, etc.

B. Rights of CSOs invited on an *ad hoc* basis

13. CSOs invited to specific sessions of FAO bodies or meetings on an *ad hoc* basis shall enjoy in respect of the particular meetings to which they are invited the same rights as CSOs in formal status set out in Section I.B of these Guidelines.

III. PARTICIPATION OF PRIVATE SECTOR REPRESENTATIVES

14. Private sector representatives concerned with a particular area of FAO's field of activities and having interest in attending specific FAO meetings may be invited, either as organizations having been granted formal status, or on an *ad hoc* basis, to participate in such meetings. As a general principle, private sector representatives shall have the same rights as CSOs in formal status, as set out in Section I.2 of these Guidelines.

15. When considering applications for formal status or requests for participation of private sector representatives in FAO meetings on an *ad hoc* basis, due consideration shall be given to:

- a) the intergovernmental nature of FAO's decision-making process;
- b) the need for transparency and awareness of represented interests; and
- c) the need to maintain FAO's neutrality, impartiality and transparency.

16. With a view to guaranteeing transparency, FAO will take all necessary measures to ensure that participants have complete information on the interests represented by private sector representatives attending meetings of the Organization. As a condition for their participation in meetings of the Organization, private sector representatives shall disclose the required information.

ANNEX II

EXISTING LEGAL FRAMEWORK AND CURRENT PRACTICE ON THE PARTICIPATION OF CSOs AND NGOs IN THE WORK OF FAO AND OTHER ORGANIZATIONS OF THE UN SYSTEM

I. Definition of CSOs and NGOs

In 1998, the UN defined civil society as: *the sphere in which social movements organize themselves around objectives, constituencies, and thematic interests*⁴. Civil society is a broad category which encompasses a wide variety of organizations, including – further to NGOs – *local authorities, mass media, business and industry leaders and the research community, including academia and think-tanks*⁵. The FAO Strategy for Partnerships with Civil Society Organizations contemplated three main categories of civil society organizations: (i) member-based organizations (MBOs); (ii) non-governmental organizations (NGOs); and (iii) social movements (SMs)⁶.

NGOs are formally constituted, legally registered, free from commercial interests, non-profit organizations that provide services, information and expertise, sensitize public opinion, and conduct advocacy activities⁷.

II. Participation of CSOs and NGOs in the work of FAO

A. Formal status in FAO

The FAO legal framework currently in force provides that formal relations with an International Non-Governmental Organization (INGO) may take one of three forms according to the importance of its field of activity in relation to FAO activities and the level of cooperation envisaged: consultative status, specialized consultative status and liaison status. The three statuses system proved nevertheless to be too cumbersome. Consideration may be given to the need for simplification, keeping in mind the desirability that coherence between various rules and mechanisms of participation of CSOs and INGOs in force in FAO (Basic Texts, Codex Alimentarius, etc.) should be ensured.

Under FAO rules, each formal status reflects a different level of cooperation envisaged; however, there is a common set of prerequisites, which must be satisfied regardless of the status eventually granted. These prerequisites may be summarized as follows: (i) that the organization be international in structure and scope of activity; (ii) that it be representative in its field of interest; and (iii) that it have a permanent directing body, authorized representatives and systematic procedures. In addition, the INGO's aims and activities must be consistent with FAO's mandate and Constitution. In particular, the eligibility criterion requiring NGOs to have international character has been interpreted in practice in a more flexible way. Whereas the Basic Texts qualify a NGO as international when it is international in its structure and scope of activity, in practice, at present the international character of the organization is evaluated by looking at its international scope of activity and governance, namely the international composition of the members of its governing body.

A review of eligibility requirements (scope, composition, funding, etc.) would be advisable, with a view to guarantee the participation of those stakeholders which may effectively contribute and enrich the work of the relevant body, taking into due consideration also the nature of the body concerned (*e.g.* the mandate or the geographical scope).

In accordance with FAO Basic Texts, the procedure for granting formal status varies depending on the different type of status. Upon request by the interested INGO, *consultative status* is granted by the Conference, on the proposal of the Council or by the Council during inter-sessional periods, whereas

⁴ FAO Strategy for Partnerships with Civil Society Organizations, CL 146/REP, Appendix F, paragraph 7.

⁵ *Arrangements and practices for the interaction of non-governmental organizations in all activities of the United Nations system*, Report of the Secretary-General, UNGA A/53/170, paragraph 3.

⁶ FAO Strategy for Partnerships with Civil Society Organizations, CL 146/REP, Appendix F, paragraph 8.

⁷ FAO Strategy for Partnerships with Civil Society Organizations, CL 146/REP, Appendix F, paragraph 14.

specialized consultative status and *liaison status* are granted by the Director-General. Formal status granted by FAO to an INGO is kept under review and may be terminated or maintained, as appropriate. Irrespective of their status or characteristics, CSOs and INGOs participate in FAO meetings, as the case may be, in an observer capacity. Rights of CSOs and INGOs participating in FAO meetings (*e.g.* the right to send observers accompanied by advisers or assistants, the right to speak before the body concerned, the right to circulate their views among Members, etc.) vary depending on the status granted to them. As regards the right to speak, INGOs having formal status may intervene in FAO meetings, time permitting and once Members have concluded their interventions, upon the request of the Chairperson or, in the case of intervention in the Conference plenary meeting, with the consent of the General Committee. Conversely, INGOs without formal status may intervene in a number of meetings without waiting until all Members have spoken.

There would seem to be a need to define rights and obligations and ensure consistency between the legal framework and practice in place, provided that the intergovernmental nature of FAO's decision-making process should be maintained, *i.e.* Members have the exclusive power to take decisions.

B. Participation of other constituencies in FAO meetings on an ad hoc basis

In order to make participation of CSOs and INGOs to FAO meetings more flexible, already in the mid-1960s, it was introduced the possibility for the Director-General to invite INGOs devoid of formal status to participate in specific meetings on an *ad hoc* basis. Furthermore, the Regional Conferences and some Governing and Statutory Bodies – namely the Committee on World Food Security (CFS) and the Commission on Phytosanitary Measures (CPM) – have recently developed new schemes for participation of CSOs and INGOs in their respective meetings.

In practice, there has also been a growing tendency for representatives from CSOs and INGOs to attend FAO meetings at times under special *ad hoc* arrangements. Such CSOs and INGOs can participate in meetings subject to endorsement by the relevant technical division, in consultation with the Office of Partnerships, Advocacy and Capacity Development (OPC).

Furthermore, in exceptional circumstances and upon submission of relevant expressions of interest, national NGOs, members of regional or international associations, federations or networks may also participate in FAO meetings, subject to prior evaluation of the request by the relevant technical division in consultation with OPC.

CCLM Members may also want to consider the possibility to formally make provision for such constituencies to be formally invited to meetings of the Organization and set out relevant terms and conditions

The Basic Texts do not provide explicitly for the possibility of participation of private sector representatives in FAO meetings. However, this is done through the procedures for the participation of NGOs. It is worth noting that both the Committee on World Food Security (CFS) and the *Codex Alimentarius* foresee such possibility. It should also be noted that sometimes formal non-for-profit organizations may *de facto* represent the interest of the industry in specific technical meetings. It may be desirable to clarify the scope, if any, and conditions for participation to be accorded to relevant private sector bodies. Private sector organizations participate, *inter alia*, in meetings of the Codex Alimentarius Commission, inter-governmental commodity groups, Commission on Phytosanitary Measures, some regional fishery commissions.

III. Participation of CSOs and NGOs in the work of organizations of the UN System

A. Eligibility criteria in the UN System

- **International Non-Governmental Organizations (INGOs)**

Organizations such as FAO and ILO grant formal status only to those NGOs which are qualified as “international” on the basis of the composition of their executive body and their scope of activity.

- **National, sub-regional, regional or international NGOs**

Organizations such as the United Nations (ECOSOC in particular), WHO and WIPO provide for participation of NGOs irrespective to their international/national character. Nevertheless, whereas INGOs are granted formal status on an ordinary basis, national NGOs are admitted to participate in meetings only in exceptional cases (*e.g.* international scope and impact of their activities, valuable work and experience, etc.).

- **CSOs**

With a *sui generis* approach, UNEP grants observer status in its meetings to CSOs⁸, including national entities and social movements. Such participation in meetings takes place through the Global Major Groups and Stakeholders Forum.

- **Private sector**

UNEP is the only organization formally providing for the participation of the private sector in meetings of its governing bodies.

B. Types of formal status

- **The World Health Organization (WHO)**

WHO recognizes only one category of formal relations, known as official relations. They are granted to organizations which meet the criteria described in the *Principles Governing Relations with Non-Governmental Organizations*.

- **The World Intellectual Property Organization (WIPO)**

WIPO provides for only one formal status: permanent observer.

- **Codex Alimentarius Commission (CAC)**

The Principles Concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission provide for only one category of relationship with INGOs, namely “**Observer Status**”.

C. Procedure for granting formal status

- **Organization-driven procedure**

Relevant secretariats have decision making power as to whether granting or not formal status to CSOs.

- a) UNEP

In order to obtain observer status in UNEP meetings, CSOs submit their requests to the Major Groups and Stakeholders Branch of the Division of Regional Cooperation. Such Branch reviews requests and submits those ones which comply with all necessary conditions and requirements to the office of the Secretariat of the relevant Governing Body for decision.

- **Member-driven procedure**

Member States, either in plenary sessions or through ad hoc committees, have decision making power as to whether granting or not formal status to CSOs.

⁸ CSOs participating in UNEP meetings are classified in nine constituencies called “Major Groups”. They include farmers, women, the scientific and technological community, children and youth, indigenous peoples and their communities, workers and trade unions, business and industry, non-governmental organizations, and local authorities.

a) WHO

The establishment of official relations between WHO and NGOs is the outcome of an evolving process proceeding through a number of separate stages. In the initial phase, the cooperation with NGOs takes place with exchange of information and reciprocal participation to technical meetings. When a number of specific joint activities have been identified, collaboration may be taken a stage further by proceeding to a period of working relations entered into by an exchange of letters. After a (at least) two years period of successful working relations, the relevant NGO may apply for having official relations with WHO. The success of past working relations is assessed on the basis of a joint assessment of the outcome of the collaboration undertaken by the parties concerned. The WHO Executive Board, after considering recommendations made by its Standing Committee on NGOs, decides whether an organization is to be admitted into official relations with WHO.

b) ECOSOC

In ECOSOC, the Committee on NGOs is mandated to review applications for observer status, examine changes in status, and submit its recommendations to the Council.

c) WIPO

Any organization wishing to apply for permanent observer status should submit a request to the WIPO Secretariat. The Secretariat then presents the request to the Assemblies of the Member States for approval.

- **Mixed procedure**

a) Codex Alimentarius Commission (CAC)

Whereas “observer status” is automatically accorded to INGOs having formal status/relations with FAO and WHO, a specific procedure is also provided for granting observer status to INGOs devoid of any formal status. In particular, INGOs interested in acquiring such status shall supply the Secretary of the Codex Alimentarius Commission with specific information (*inter alia* on its structure, area of activity, source of funding, expected contribution to the Joint FAO/WHO Food Standards Programme, and past activities on behalf of, or in relation to, the CAC). The Secretary of the Commission will verify the completeness of the information provided by the organization, and will also perform an initial assessment of whether the organization appears to meet the necessary requirements (international character, aims and purposes in conformity with the Statutes of CAC, permanent directing body and Secretariat, etc.). Upon satisfactory completion of the verification and assessment, the Secretary of the Commission will request the advice of the CAC Executive Committee on the application and will transmit the application, together with all relevant information and the advice, to the Directors-General who will decide whether an Organization is to be granted observer status.

b) UNESCO

The decision making power on formal status in UNESCO varies depending on the type of status: consultative status may be conferred by the Director-General while associate status is granted by the Executive Board upon recommendation of the Director-General.

D. Accreditation process for participation in each meeting

- **CSOs having formal status**

One of the rights normally acquired together with the formal status is to participate as observer in meetings of relevant bodies. From a procedural viewpoint, two modalities of accreditation may be foreseen:

Participation upon request

CSOs having formal status and expressing their wish to attend the relevant meeting are accredited to participate (case of ECOSOC and WHO).

Participation upon invitation

CSOs having formal status are invited to sessions of the governing bodies (case of UNESCO).

- **CSOs devoid of formal status and wishing to be participate in a particular meeting**

In most of the cases, Organizations of the UN System allow CSOs devoid of formal status to participate in specific meetings on an *ad hoc* basis. As for the procedure to grant them formal status, such procedure may be Organization-driven or Member-driven.

Member-driven

Administrative unit (secretariat or relevant branch) review applications for accreditation and submit them to Member-States, normally seating in *ad hoc* committees (e.g. ECOSOC and WIPO).

Organization-driven

Secretariats or relevant technical unit review and decide on accreditation requests.⁹

E. Participation in the meetings of the Organization

- **CSOs having formal status with organizations may:**
 - a) appoint a representative, eventually accompanied by alternates and/or advisors;
 - b) participate, without the right to vote, in sessions of governing/statutory bodies or in meetings convened under their authority, unless such meeting are held in private;
 - c) speak, either once Members concluded their interventions or breaking out the discussion of Member-States, upon invitation by the chairperson;
 - d) access to non-confidential documentation; and
 - e) submit memoranda or written statements for circulation.
- **In WHO, CSOs having formal status with organizations may also:**
 - a) at the invitation of the chairman of the meeting or upon acceptance of a request from the concerned CSO, make a statement of an expository nature; and, with the consent of the meeting, it may be invited by the chairmen to make, in the course of the discussion of the item before the meeting an additional statement for purposes of clarification;
 - b) submit memoranda or written statements for inclusion in the agenda.
- **In UNEP, CSOs having formal status with organizations may also:**
 - a) submit to the secretariat written comments on the working documents of the Governing Council and the Ministerial Forum for their consideration and distribution to Members of the Committee of Permanent Representatives, before working documents are published.

F. Review, suspension or withdrawal of accreditation

In most Organizations of the UN System, a system of review of CSO accreditation is provided for the purpose of either continuing, suspending or terminating the official relations. The review of the formal status could be periodical and based on reports periodically submitted by the relevant CSO. The review is normally undertaken by the authority which granted the formal status.

⁹ At ILO, INGOs wishing to be invited to sessions of the International Labour Conference or other ILO meetings submit their request, together with all necessary documentation, to the Director-General. If necessary requirements are met, the Office of the Director-General will transmit the request to the Officers of the Conference or of the relevant Governing Body. INGOs having formal status with ILO have to undergo the same procedure, but are considered to have satisfied the necessary prerequisites.

In ECOSOC, for example, usually each four years CSOs having formal status have to submit to the Committee on NGOs, a brief report on activities undertaken in support of the work of the UN. Based on the findings of the Committee's examination of the report and other relevant information, the Committee may recommend to the Council any reclassification in status of the organization concerned as it deems appropriate.

In UNEP instead, the Secretariat of the relevant Governing Body on the recommendation of the Major Groups and Stakeholders Branch may suspend for up to three years or withdraw the accreditation of a CSO whenever the latter abuses its status.