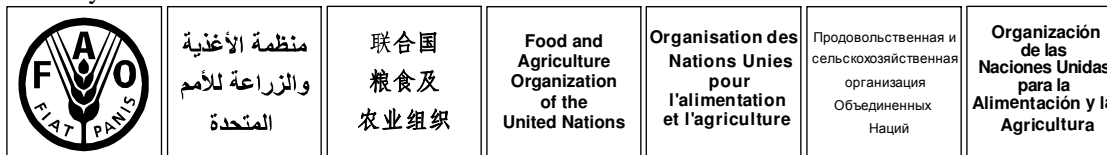


February 2012



# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Ninety-fourth Session

Rome, 19 - 21 March 2012

### Criteria and Procedure for the Selection of External Members of Ethics Committee

#### I. PURPOSE OF DOCUMENT

1. The purpose of this document - prepared in response to observations of the Finance Committee and the Council that the procedure and criteria for the nomination of external members of the Ethics Committee be reexamined – is to provide a basis for a first review of the matter by the Committee on Constitutional and Legal Matters.

#### II. BACKGROUND

2. The Immediate Plan of Action (IPA) for FAO Renewal approved by the Conference at its Thirty-fifth (Special) Session, provided for the “*Review of Terms of Reference and proposed membership of Ethics Committee by the CCLM and the Finance Committee*” (IPA action 3.34). After the issue was examined by both committees on a number of occasions<sup>1</sup>, the “*Terms of Reference and Composition of the Ethics Committee*” were adopted by the CCLM and the Finance Committee and endorsed by the Council at its Hundred and Forty-First Session (11-15 April 2011).

3. Pursuant to paragraph 4 of its Terms of Reference, the Ethics Committee is composed of five members: two internal to the Organization (one Deputy Director-General and the Legal Counsel) and three “*reputable individuals external to the Organization*”. The nomination of the external members “*are approved by the Council, upon recommendation by the Finance Committee and the Committee on Constitutional and Legal Matters*” (**Appendix I**).

4. As per established procedures, the CCLM (Ninety-third Session, 21-23 September 2011) and the Finance Committee (Hundred and Fortieth Session, 10-14 October 2011) reviewed the

<sup>1</sup> The CCLM examined proposed “Terms of Reference and Composition of the Ethics Committee” at its Eighty-eighth Session (September 2009), Ninety-first Session (September 2010) and Ninety-second Session (March 2011), while the Finance Committee did so at its Hundred and Twenty-eighth Session (July 2009), Hundred and Thirty-fifth Session (October 2010) and Hundred and Thirty-eighth Session (March 2011).

nominations submitted by the Director-General and recommended three candidates to serve as external members of the Ethics Committee. The nominations were then approved by the Council at its Hundred and Forty-third Session (28 November - 2 December 2011). The external members were appointed by the Director-General as of 1 January 2012 and will serve for a term of office of two years.

5. At the time of reviewing the matter during its Ninety-third Session (21-23 September 2011), the CCLM considered useful to establish criteria in the light of which the nominations could be examined. The CCLM also recommended that, for the next renewal of external membership, the procedures for the nomination of candidates be improved. The CCLM thus requested the Director-General to propose in the future at least seven candidates for the three positions (i.e. one candidate from each of the FAO geographic regions) and that the proposal be gender balanced<sup>2</sup>.

6. In turn, the Finance Committee suggested (Hundred and Fortieth Session, 10-14 October 2011) that the procedures be re-visited jointly by the Chairpersons of the Finance Committee and the CCLM, in order to have a clear definition of the procedure for nomination of the external candidates, as well as the selection criteria, including the respective roles of the Finance Committee and the CCLM in the nomination process<sup>3</sup>.

7. At its Hundred and Forty-third Session (28 November - 2 December 2011), the Council took note of the observations made by both Committees regarding the need to review the procedure and criteria for the nomination of candidates before the renewal of the external membership of the Ethics Committee<sup>4</sup>.

8. While this has not been explicitly articulated by the Finance Committee and the Council, it would appear that the main concerns underlying the above request are that the CCLM and the Finance Committee might recommend different candidates to the Council. Insofar as the committees do not hold sessions at the same time, there is no mechanism allowing them to agree on the same candidates. In order to address these concerns, it is proposed to better define the criteria that the candidates should meet, on the one hand, and to establish a consultation procedure which would facilitate reaching consensus on the same candidates by the two committees, on the other hand.

### **III. CRITERIA FOR THE SELECTION OF THE EXTERNAL MEMBERS**

9. During its Ninety-third Session (21-23 September 2011), the CCLM established criteria for the selection of the external members of the Ethics Committee.

10. Pursuant to paragraph 4 of the Terms of Reference of the Ethics Committee due regard should be paid, first and foremost, to the “reputability” of the individuals, including their competence on ethical matters. Moreover, the CCLM identified the following criteria:

- (i) no former officials of FAO;
- (ii) desirability of avoiding candidates serving, or having served with other United Nations Rome-based organizations;
- (iii) knowledge of, and experience in ethics, in the United Nations System;
- (iv) gender balance;
- (v) regional balance; and
- (vi) usefulness of private sector experience, including academia.

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<sup>2</sup> CL 143/4, Report of the Ninety-third Session of the Committee on Constitutional and Legal Matters (Rome, 21-23 September 2011), paras. 17 and 19.

<sup>3</sup> CL 143/8, Report of the Hundred and Fortieth Session of the Finance Committee (Rome, 10-14 October 2011), paras. 30-31.

<sup>4</sup> CL 143/REP, para 31.

11. In general, the Finance Committee agreed with the above criteria although a number of specific observations were made in the course of the deliberations at its session of October 2011. The CCLM may wish to decide whether it wishes to maintain these criteria or whether they should be revisited. There would be ultimately a need for the two committees to agree on the same criteria which the Director-General would have to follow when nominating candidates.

#### **IV. PROCEDURE FOR THE SELECTION OF THE EXTERNAL MEMBERS**

12. The procedure for the selection of the external members of the Ethics Committee currently requires the CCLM and the Finance Committee to review the nominations submitted by the Director-General and to recommend three candidates for approval by the Council. This is justified by fact that both committees play an important role in respect of ethics in the Organization and that the Ethics Committee reports to both committees (see paragraphs 2 and 3.e of its Terms of Reference).

13. The CCLM and the Finance Committee have suggested that this procedure should be revisited. The objective of the review would be to propose an approach that could avoid the risk of having the two committees making different recommendations to the Council. This objective could be achieved by introducing an element of informal consultation and coordination between the chairpersons of the two committees. It is suggested that after the list of candidates is submitted by the Director-General to the Finance Committee and the CCLM, consultations take place between the Chairpersons, and among the Chairpersons and the members of each committee, with a view to identifying a basis for possible parallel decision by the two committees.

14. The implementation of an informal procedure along these lines might obviate the need for a formal amendment to the Basic Texts. In this connection, it is important to note that insofar as in the course of the past few years some members of the CCLM have not been based in Rome (contrary the prevailing practice regarding membership of the Programme and Finance Committees), any procedure involving the holding of joint meetings of the CCLM and the Finance Committee would have financial implications.

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

15. The CCLM is invited to review this document and to make such comments thereon as appropriate. The views of the CCLM on the matter will be reported to the Finance Committee.

16. Depending on the outcome of this review, the CCLM and the Finance Committee might agree on revised criteria or procedures for the selection of external members of the Ethics Committee for submission to the Council at its June session. If this was not possible, the matter would be reconsidered at the Autumn sessions of the Committees and reported to the session of Council of November 2012.

## APPENDIX I

### **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.

2. The Ethics Committee shall be established for an initial period of four years. During this period, the Membership, through the Committee on Constitutional and Legal Matters, the Finance Committee and the Council, shall review the work of the Committee in order to determine, at the end of that period, whether the Committee should be extended for a further period of four years, or established on a permanent basis, or to make such adjustments to its modus operandi as may be required.

#### **Mandate of the Ethics Committee**

3. 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 on its activities 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**

4. The Ethics Committee shall consist of the following members appointed by the Director-General:

- a) Three reputable individuals external to the Organization whose nominations are approved by the Council, upon recommendation by the Finance Committee and the Committee on Constitutional and Legal Matters;
- b) One Deputy Director-General;
- c) The Legal Counsel.

5. The Chairperson of the Ethics Committee shall be elected by the Committee, from among its external members, for a period of two years.

#### **Term of Office**

6. The individuals external to the Organization shall be appointed for a term of two years. 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. The Legal Counsel shall be an ex officio member of the Ethics Committee. The Deputy Director-General shall hold office for a term of two years, which may be extended for another term of up to two years, at the discretion of the Director-General. Should a position fall vacant, a replacement member shall be appointed for the remainder of the term, in accordance with the relevant procedure.

#### **Sessions**

7. 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**

8. The presence of all members is expected at each meeting. At the discretion of the Chairperson, if necessary, meetings may take place with at least four members<sup>5</sup>.

#### **Secretariat**

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

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<sup>1</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.