



## COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

### Eighty-eighth Session

Rome, 23 - 25 September 2009

### ETHICS COMMITTEE

#### BACKGROUND

1. The Immediate Plan of Action (IPA) for FAO renewal (2009-11), approved by the Conference at its Thirty-fifth (Special) Session, contains the following Action Matrix on Ethics:

- “Appointment of an Ethics Officer, 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 on the basis of the findings and recommendations of the CCLM and Finance Committee” (IPA Action 3.36)

2. This document deals with the specific issue of the implementation of IPA Action 3.35 concerning the Terms of Reference, including the proposed membership and general *modus operandi* of the Ethics Committee, which is being referred both to the Finance Committee and the Committee on Constitutional and Legal Matters (CCLM). As it appears from the Action Matrix itself, which covers several topics, the implementation of IPA Action 3.35 must be seen in conjunction with all other matters covered in the Action Matrix with particular reference to the appointment of the Ethics Officer and the initiation of activities by the Officer. The process of recruitment of an Ethics Officer is currently under way following the advertisement of the position. It is expected that the officer will be appointed in September 2009. IPA Actions 3.35 and 3.36 can be implemented only at a subsequent stage, after the Ethics Officer will have taken up the role and will have initiated the activities.

3. In the context of these preliminary considerations, three points of a general nature should be made and kept in mind when examining this document:
  - 3.1 The first is that the issue of the Terms of Reference of the Ethics Committee cannot be seen in isolation from that of the scope and nature of the functions of the Ethics Officer insofar as obvious functional relationships will be established between the Ethics Officer and the Ethics Committee. For the sake of clarity the job description of the Ethics Officer is reproduced in this document.
  - 3.2 The second observation is related to the fact that both the role of the Ethics Officer and that of the Ethics Committee must be seen in the broader context of the existing oversight system, including its various components, their mandates, authority and inter-relationship, i.e. Office of the Inspector-General, External Auditor and Office of Evaluation. In the same vein, functional relationships may be established with other offices such as the Human Resources Division, any office or unit which may be established to mediate staff disputes and the Legal Office.
  - 3.3 The third observation concerns the fact that experience throughout the United Nations System on matters related to Ethics Offices and Ethics Committees is still limited. While an Ethics Committee has been established at the United Nations, it does not seem that any Specialized Agency has yet established such a committee. There is reason to believe that it will be the practice of the Organizations in the future to progressively shape the scope, nature and role of the ethics function. This would imply that, in the case of FAO, there may be a need in the future to reconsider the Terms of Reference of the Ethics Committee in light of the experience gained.

## **CONSIDERATIONS REGARDING THE PROPOSED ETHICS COMMITTEE**

### **Establishment of an ethics function within the United Nations**

4. Initiatives within the United Nations aimed at establishing an ethics function have been taken in parallel with efforts aimed at reforming the United Nations, reflected in the 2005 World Summit Outcome. The 2005 World Summit Outcome recognized the ongoing reforms carried out by the Secretary-General to strengthen accountability and oversight, improve performance and transparency and reinforce ethical conduct, and invited him to report to the General Assembly on the progress made in their implementation. The 2005 World Summit Outcome also welcomed the Secretary-General's efforts to ensure ethical conduct, more extensive financial disclosure for United Nations officials and enhanced protection for those who reveal wrongdoing within the Organization. The Secretary-General was urged to scrupulously apply existing standards of conduct and develop a system-wide code of ethics for all United Nations personnel and requested him to submit details of an Ethics Office with independent status, which he intended to create, to the General Assembly at its sixtieth session<sup>1</sup>. The General Assembly, through resolution 60/248, approved resources for the establishment of an Ethics Office<sup>2</sup>.

5. The Ethics Office was established on 1 January 2006, through Secretary-General's Bulletin ST/SGB/2005/22 of 30 December 2005. The Ethics Office is an office within the United Nations Secretariat reporting directly to the Secretary-General. The overall objective of the Ethics Office is to ensure that all staff members observe and perform their functions consistent with the highest standards of integrity required by the Charter of the United Nations through fostering a culture of ethics, transparency and accountability. The head of the Ethics Office is appointed by the Secretary-General and is accountable to the Secretary-General in the performance of his or her functions.

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<sup>1</sup> A/RES/60/1, paragraphs 161 (a) and (d).

<sup>2</sup> A/RES/60/248, Part XIII, paragraph 4.

6. In general, all organizations of the United Nations system, as well as separately administered programmes and funds, have established Ethics Offices or created Ethics Officer Posts. Experience of the organizations, funds and programmes reveals an array of distinct situations.

7. Subsequent to the establishment of the Ethics Office, a number of steps were taken to improve the ethics function within the United Nations and separately administered organs and programmes. Secretary-General's Bulletin ST/SGB/2007/11 entitled "*United Nations system-wide application of ethics: separately administered organs and funds*" was adopted on 30 November 2007. The Bulletin sets forth a number of principles regarding the ethics function, the administrative nature and the Terms of Reference of an Ethics Office in a separately administered organ or programme and the rights of staff members. The Bulletin mirrors the principles set forth in ST/SGB/2005/22 of 30 December 2005.

8. As to the main principles underlying the Ethics function, Secretary-General's Bulletin ST/SGB/2007/11 states that the ultimate goals and principles of an Ethics Office, in general, and of an Ethics Office of a separately administered organ or programme of the United Nations, established by the Executive Head of the organ or programme, are to cultivate and nurture a culture of ethics, integrity and accountability and thereby enhance the trust in, and the credibility of, the United Nations both internally and externally. Independence, impartiality and confidentiality are vital prerequisites for the functioning and operation of the office. In the performance of their responsibilities and duties, the Ethics Offices of a separately administered organ or programme of the United Nations may not be compelled by any United Nations official or body to disclose issues brought to its attention.

#### **United Nations Ethics Committee**

9. Secretary-General's Bulletin ST/SGB/2007/11 also established the United Nations Ethics Committee. The United Nations Ethics Committee consists of the heads of the Ethics Offices of the separately administered organs and programmes of the United Nations and the Ethics Office of the United Nations Secretariat. The United Nations Ethics Committee is placed under the chairmanship of the Director of the Ethics Office of the United Nations. The Secretary-General's Bulletin ST/SGB/2007/11 does not define in detail the functions of the Ethics Committee, except in two cases:

9.1 First, Secretary-General's Bulletin ST/SGB/2007/11 provides that the United Nations Ethics Committee is required to establish a unified set of standards and policies of the United Nations Secretariat and of the separately administered organs and programmes and consult on certain important and particularly complex cases and issues having United Nations-wide implications raised by any Ethics Office or the Chairperson of the Ethics Committee.

9.2 Second, Secretary-General Bulletin ST/SGB/2007/11 foresees a situation where a particular matter may be referred to the Ethics Committee in accordance with a procedure defined in some detail in the Bulletin. If, following the receipt of a request for advice or complaint submitted by a staff member, the respective Ethics Office does not, within forty-five days, formally consider that request, the staff member may refer the matter in writing to the Chairperson of the United Nations Ethics Committee. Alternatively, if following a final determination by the respective Ethics Office of a matter referred to it by a staff member, the said staff member wishes to have the matter reviewed further, he or she may, in writing, refer the matter to the Chairperson of the Ethics Committee.

In such cases, the Chairperson, after consultation with the Ethics Committee, may undertake his or her independent review of the matter and provide a written report to the Executive Head of the separately administered organ or programme. Independent

review for the purposes of this provision includes review of the actions already taken by the Ethics Office concerned, determination of what additional actions are required, including, in the case of some particular matters, whether referral for investigation is warranted based on the requirements of the policy for protection against retaliation of the Ethics Office concerned, and provision of recommendations to the Executive Head of the relevant, separately administered organ or programme. The Chairperson will include a summary of all such cases in the annual report of the activities of the Ethics Office of the United Nations Secretariat.

10. It is proposed that the above be taken into account in the definition of the functions of the FAO Ethics Committee.

### **Establishment of an ethics function within FAO**

11. As indicated earlier, the FAO Ethics Officer is in the process of being recruited. For the sake of clarity it may be useful to recall the duties and responsibility of the Ethics Officer. These are, under the general supervision of the Director-General, to:

*“Formulate a strategy for the development and implementation of the Ethics Programme, lead and coordinate said Programme fostering a culture of ethics, transparency and accountability in the Organization;*

*Develop, implement and coordinate the Organization’s Financial Disclosure Programme;*

*Take a proactive role in fostering management and FAO personnel awareness in prevention of conflicts of interest; advise staff on potential conflict of interest;*

*Provide advice and guidance to FAO personnel (staff, contractual employees, etc...) on questions pertaining to ethical issues, Organization’s policies and regulations and rules (e.g. violation of ethical standards, standards of conduct, sound business practices and protection against retaliation);*

*Develop training and education on ethics issues, in coordination with the Human Resources Management Division and other offices, as appropriate, including ensuring annual ethics training for all staff;*

*Participate in relevant inter-UN Agency meetings and facilitate the adoption of a harmonized approach with other institutions of the UN-Common System;*

*Develop and coordinate a reporting programme and ethics Helpline to allow FAO personnel, suppliers and other stakeholders to confidentially report violations of ethical standards, regulations and rules, policies or other workplace concerns, without fear of retaliation;*

*Liaise with the Ethics Committee with respect to ethics-related matters in the Organization;*

*Undertake such other functions as the Director-General or the Ethics Committee considers appropriate for the Office”.*

12. The Ethics Officer of FAO will be administratively linked to the Legal Office. However, from a functional viewpoint, the Ethics Officer will operate independently in accordance with the principles outlined earlier in this document.

### **Relevant considerations regarding the proposed FAO Ethics Committee**

13. When addressing the question of the status of the Ethics Committee it is important to keep in mind a consideration of a general nature, as well as a few specific issues.

14. As regards the general consideration it is important to indicate, at the outset, that although the Independent External Evaluation of FAO recommended the establishment of an Ethics Committee and this was approved by the IPA, experience on the matter is very limited. On the basis of the information available to the Organization, only the United Nations has established an Ethics Committee as described above. The Terms of Reference and status of the Committee are defined in general terms only and, in general, experience on the matter is still evolving. It does not seem that any Specialized Agency has established an Ethics Committee<sup>3</sup>.

15. A number of issues regarding the Ethics Committee need to be addressed regarding composition, functions, and the desirability that after a given period of time and experience gained in the operation of the Ethics Committee, this be assessed and, as appropriate, its Terms of Reference revised. It is also proposed that the financial implications of the proposal be taken into account.

16. The IEE did not provide guidance on the particular issue of the composition and membership of the Ethics Committee. The IEE called for the establishment of an Ethics Committee “*with a mandate for independent review of any ethics issues brought to its attention, including any resulting from internal audits*”<sup>4</sup>. The IPA did not clarify the position. It is proposed that the matter be addressed drawing on the experience of the former Audit Committee. The Ethics Committee would be placed under the chairmanship of a reputed external member, appointed by the Director-General. It would consist of internal members (including on a rotation basis), aside from being open to the Ethics Officers of the World Food Programme and IFAD.

17. A few observations could be made in this connection. The first is that there would be no need for an Ethics Committee consisting of external members. It is considered that it should be primarily seen as a management tool aimed at reinforcing the ethical framework of the Organization. Indeed, it does not appear that there should be a special need to ensure protection of its functioning through external members (for instance as a tool to ensure protection against reporting of wrongdoing, as other procedures to that effect are in force). The second is that drawing on the experience of the former Internal Audit Committee, membership of internal members, including rotation of members, is likely to ensure a much needed sense of commitment to and understanding of ethical values and principles on the part of senior officials of the Organization. Finally, the Chairperson of the Ethics Committee could be a reputed external individual appointed by the Director-General.

18. As regards the functions of the Ethics Committee, the Committee would keep under regular review all matters pertaining to the formulation, development and implementation of the Ethics Programme of the Organization, including the Organization’s Financial Disclosure Programme; keep under review the activities of the Ethics Officer; advise on such matters as the

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<sup>3</sup> Financial institutions have established Ethics Committees but the underlying approach and scope of activities appear to be different from those of the organizations of the United Nations system.

<sup>4</sup> Report of the Independent External Evaluation of FAO – Submitted to the Council Committee for the Independent External Evaluation of FAO (CoC-IEE), September 2007, paragraph 1214 (g).

Director-General or the Ethics Officer may refer to it; review and advise on each of the main individual components of the Ethics Programme, and submit an annual report to the Finance Committee and the Committee on Constitutional and Legal Matters. These functions are further described in the Terms of Reference of the Committee set out below.

19. It is also proposed that the special procedure for referral of specific issues by an official, foreseen in the United Nations Ethics Committee, be provided for in the case of the FAO Ethics Committee. This procedure may need to be adjusted in future depending on the evolution of practice.

20. It is suggested that the operation of the Ethics Committee, including its Terms of Reference and *modus operandi* be reassessed either on the request of the Finance Committee or the Committee on Constitutional and Legal Matters or the Director-General or after five years of operation. The requirement does not need to be set out in the Terms of Reference of the Ethics Committee, but could be reflected in a suitable manner in any other document such as the reports of the Finance Committee or the CCLM.

21. The initiatives of the organizations of the United Nations aimed at establishing Ethics Offices and, *a fortiori*, Ethics Committees, are new and experience on the matter is limited. In the presence of new situations of this nature, it is normal that adjustments to procedures and practice may need to take place. The scope of activities of an Ethics Office may also need improvement, especially from the standpoint of the relationship with Internal Audit and Inspection Services. In this connection, it may be useful to note that the Joint Inspection Unit has recently initiated a review of ethics in the United Nations and will be reviewing the experience gained by organizations of the system in areas related to the establishment of ethics functions, dissemination of ethics information, ethics training, financial disclosure policies and procedures and related matters.

22. These considerations suggest that it would be wise to foresee an assessment of the functioning of the Ethics Committee after a period of a few years of operation. Adjustments to the Terms of Reference might be considered at that time.

## **FINANCIAL IMPLICATIONS**

23. Under the proposed format where the Chairperson of the Ethics Committee would be an external individual there would be a need to foresee allowances, as well as coverage by the Organization of travel expenditures in the event that it should not be based in Rome. It would be necessary to foresee the necessary allocations to that effect.

24. Other operating expenditures would normally be absorbed by existing relevant budgetary allocations.

## **PROPOSED TERMS OF REFERENCE OF THE ETHICS COMMITTEE**

25. The Terms of Reference of the Ethics Committee, which could be incorporated in a Director-General Bulletin and issued to all staff, or incorporated in the Administrative Manual, could be as follows:

1. *The Ethics Committee shall operate as an advisory, supervisory and oversight panel to the Director-General on all matters pertaining to ethics within the Organization in accordance with the provisions of this bulletin.*

Mandate of the Ethics Committee

2. *The Ethics Committee shall have the following mandate:*
- a) *to keep under regular review all matters pertaining to the formulation, development and implementation of the Ethics Programme of the Organization, including the Organization's financial disclosure programme;*
  - b) *to keep under review the activities of the Ethics Officer on the basis of regular reports referred to the Committee and to provide guidance thereon;*
  - c) *to advise on such matters as the Director-General or the Ethics Officer may refer to it;*
  - d) *to review and advise on the main individual components of the Ethics Programme including relevant policies, regulations and rules, dissemination of information, training, disclosure programme 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 review any matter that may be referred to it by the Director-General or by a staff member in accordance with the procedures established in paragraph 8;*
  - g) *to advise or examine any issue related to the fulfilment of its mandate.*

Composition of the Committee

3. *The Ethics Committee consists of the following Members appointed by the Director-General:*

- a) *The Chairperson of the Ethics Committee, who shall be appointed by the Director-General from among reputable individuals external to the Organization.*

*The Deputy Director-General (Operations)*

*An Assistant Director-General or his or her alternate (a second Assistant-Director-General) appointed by the Director-General on a rotational basis.*

*The Legal Counsel or a representative senior official designated by him.*

*The Ethics Officer or the Director of the Ethics Office of the World Food Programme and of the International Fund for Agricultural Development*

Term of office

4. *The Deputy Director-General (Operations) and the Legal Counsel are permanent Members. The Assistant Director-General and his or her alternate (a second Assistant Director-General nominated by the Director-General) hold a term of three years, which*

*may be extended at the discretion of the Director-General, to be replaced on a rotational basis. The external Members serve for a three-year period, which may be renewed at the discretion of the Director-General.*

#### Meetings

5. *The Ethics Committee will hold at least three regular sessions each year. Additional meetings of the Ethics Committee may be convened by the Chairperson if deemed appropriate or for the implementation of the procedure of a request for advice provided for in paragraph 8. The Director-General or the Ethics Officer has the right to request the Chairperson to convene a meeting if necessary.*
6. *The Ethics Officer shall attend all meetings of the Ethics Committee.*

#### Quorum

7. *The presence of all members or the alternate Assistant Director-General and the representative of the Legal Counsel, as applicable, is expected at each meeting. At the discretion of the Chairperson, when necessary, meetings may take place with at least four members.*

#### Special procedure for review of a request for advice or complaint

8. *If, following the receipt of a request for advice (or complaint submitted) by a staff member, the Ethics Office does not, within sixty days, formally consider the request, the staff member may then refer the matter in writing to the Chairperson of the Ethics Committee. Alternatively, if following a final determination by the Ethics Officer of a matter referred to that Officer by a staff member, the said staff member wishes to have the matter reviewed further, that staff member may, in writing, refer the matter to the Chairperson of the Ethics Committee. In such an event, the Chairperson, after consultation with the Ethics Committee, may undertake an independent review of the matter and provide a written report to the Director-General. Independent review for the purposes of this provision shall include review of the actions already taken by the Ethics Officer, determination of what additional actions are required including whether referral for investigation is required, and provision of recommendations to the Director-General. Where a staff member has referred a matter to the Chairperson of the Ethics Committee on the basis of the provision of this paragraph, the Organization shall provide the Chairperson with the necessary support, including access to records, staff members and contractors, where feasible.*

#### Secretarial arrangements

9. *The Organization shall make the necessary secretarial arrangements for the functioning of the Ethics Committee.*
10. *The Organization shall provide the Ethics Committee with the necessary support including access to records and documents, staff members and contractors, where feasible.*



**SUGGESTED ACTION BY THE COMMITTEE**

26. The Committee is invited to review this document and provide such views thereon as appropriate.
27. The Committee is invited
  - a) to review and endorse the proposed Terms of Reference of the Ethics Committee which would be adopted through a Director-General's Bulletin and subsequently incorporated in the Administrative Manual of the Organization:
  - 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 Committee and that its Terms of Reference be adjusted as appropriate.
28. An extract of the report of the 128<sup>th</sup> Session of the Finance Committee (27 – 31 July 2009) is made available to the CCLM.