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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Hundred and First Session

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**Independent Review of FAO Governance Reforms - Implementation of
Recommendation 10 on the mandate of Technical Committees during the
inter-sessional period**

I. INTRODUCTION

1. This item has been placed in the Provisional Agenda of the Committee on Constitutional and Legal Matters (“CCLM” or “the Committee”) under Rule XXXIV, paragraph 7 (a), of the General Rules of the Organization (“GRO”), whereby the Committee shall consider specific items referred to it which may arise out of “*the application and interpretation of the Constitution, [the General Rules of the Organization] and the Financial Regulations or amendments thereto*”.

2. The purpose of this document is to provide the CCLM with preliminary information on functions of the Bureaux of FAO Technical Committees (“TCs”) referred to in Article V, paragraph 6(b) of the FAO Constitution¹, with a view to addressing *Recommendation 10 - On the mandate of the Technical Committees during the inter-sessional-period*, as contained in the Final Report of the Independent Review of FAO Governance Reforms and adopted by the 39th Session of the Conference in 2015. Indeed, the issue of the functions of bureaux and steering committees vis-à-vis the main bodies, during the inter-sessional period, has been under review for a number of years. Insofar this review has been inconclusive, as the membership has not been able to reach consensus on the functions and roles of these bodies. However, this is primarily a matter for the membership to carry out the necessary consultations. When examining the matter, the membership may wish to take into account the information provided in this document, as well as the views of the CCLM.

¹ For the purpose of this document, Technical Committees include: the Committee on Agriculture (“COAG”), the Committee on Commodity Problems (“CCP”), the Committee on Fisheries (“COFI”), and the Committee on Forestry (“COFO”). This review does not take into account the Committee on World Food Security (“CFS”) since, following the IPA and the Reform of the CFS, the CFS has been given a *sui generis* status.

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II. BACKGROUND

3. In 2008, the FAO Conference approved the Immediate Plan of Action for FAO Renewal (“IPA”) to implement the recommendations of the 2007 Independent External Evaluation (IEE”).²

4. Action 2.74 of the IPA provided for the Conference to assess progress in implementation of the IPA in 2015 with an Independent Review contributing to this process. The Council, at its 148th Session, in December 2013, endorsed “*arrangements for an Independent Review of Governance Reform*”,³ including the appointment of an Independent Review Team (“IR Team”) to be supported by the FAO Office of Evaluation.

5. The IR Team issued its Final Report, containing sixteen Recommendations and twelve Suggestions, which was welcomed by the Council at its 151st Session in March 2015. The Council also endorsed the proposed actions in response to each Recommendation and Suggestion of the IR Team made in the “*Assessment of Governance Reforms*” by the Open-ended Working Group established for this purpose.⁴

6. At its 39th Session in 2015, the FAO Conference “[e]ndorse[d] the actions proposed in the *Assessment of the Independent Review of FAO Governance Reforms (C 2015/26 Rev.1)* in response to the Recommendations and Suggestions contained in the *Independent Review of FAO Governance Reforms (C 2015/25)*, and decide[d] that the actions foreseen in this document be implemented by the competent Governing Bodies of the Organization”.⁵

III. RECOMMENDATION 10

7. The IPA called for a number of actions regarding the Technical Committees.⁶ These actions were implemented through changes in practice and amendments to the Basic Texts. Amendments to the Basic Texts were approved by the Conference at its 36th Session (18-23 November 2009) following review by the CCLM⁷ and the Council⁸ in 2009. As a result of these amendments, the Technical Committees have been given an enhanced status. Further amendments were introduced to

² C 2008/REP, Resolution 1/2008.

³ CL 148/10; CL 148/REP, paragraphs 21-24.

⁴ CL 2015/26.

⁵ Conference Resolution 7/2015. C 2015/REP.

⁶ Report of the Thirty-fifth (Special) Session of the Conference (Rome, 18-21 November 2008), Appendix E, Immediate Plan of Action for FAO Renewal, paragraph 26 and actions 2.56-2.65, which provides that

“The Technical Committees will report to Council on FAO’s budget and priorities and strategies for the programmes and directly to the FAO Conference on global policy and regulation becoming Committees of the Conference (action 2.56), and:

(a) Chairs will remain in office between sessions and provide their reports to the Council and Conference (action 2.57);

(b) Ways of working – Technical Committees will:

- Meet more flexibly as to duration and frequency, according to needs, normally once in each biennium. They will address priority emerging issues and may be convened especially for this purpose (action 2.58);

- The Chair will facilitate full consultation with Members, on agendas, formats and duration (action 2.59);

- More use will be made of parallel sessions and side events, taking care that countries with small delegations can participate (informal sessions will include NGOs and the private sector including representation from developing countries) (action 2.60); (...)”

⁷ Report of the Eighty-fourth Session of the CCLM (Rome, 2-4 February 2009), paras. 21-35 and document CCLM 84/3 entitled “*Technical Committees*”.

⁸ Report of the Hundred and Thirty-sixth Session of the Council (Rome, 15-19 June 2009), paras. 92-95 and Report of the Hundred and Thirty-seventh Session of the Council (Rome, 28 September - 2 October 2009), paras. 46-52.

the Rules of Procedure of the Technical Committees⁹ and changes in their working practice and modalities were progressively implemented. Furthermore, between 2010 and 2014, the TCs amended their Rules of Procedure *inter alia* to establish their respective Bureaux (Steering Committee in the case of the COFO) and implement the specific IPA Action 2.59 which called for an increased role of the Chairperson to carry out consultations with Members “*on agendas, formats and duration*”.

8. With regard to the mandate of the TCs during the intersessional-period, Recommendation 10 of the Final Report reads as follows.

*Based on the advice of the CCLM, and based upon the above-noted options [see below], the Council and the Technical Committees should clarify the possible role and authority of the Bureaux and Steering Committees during the inter-sessional period.*¹⁰

9. The Committee is invited to advise on the possibility for the Council and the TCs to clarify the role of TCs’ Bureaux during the inter-sessional period in light of the information contained in this document.¹¹ Specifically, Section II of this document illustrates the functions performed by the Bureaux of TCs. Drawing from the recommendations of the IRT, Section III addresses the possibility for TCs to delegate to their respective Bureaux some functions of “internal oversight”.

10. In examining the matter, the CCLM may wish to take into account a general, overarching principle that is generally observed throughout the United Nations System regarding functions of Bureaux/Steering Committees. In general, Bureaux are entrusted only with responsibilities regarding the preparation and organization of meetings of the main bodies and, do not have autonomous authority to decide on matters within the mandate of the main bodies.

Functions of the Bureaux of the Technical Committees

11. In accordance with the Rules of Procedure of the TCs, Bureaux are primarily entrusted with administrative functions related to the preparation of TCs’ sessions. Bearing in mind that Bureaux membership is composed of representatives from FAO Regional Groups, they also serve as a forum for consultation and collaboration among Regional Groups, facilitating the preparation of the TCs’ plenary sessions.¹² The rules applying to the functions and membership of Bureaux are contained in the Annex to this document.

12. A number of functions are carried out by TCs’ Bureaux, often on a *de facto* basis.¹³

a) Organization of the work of the Bureau

Bureaux define the calendar of their meetings, and establish their own agenda and working modalities.

⁹ The amendments to the Basic Texts were reviewed by the CCLM at its 84th (2-4 February 2009), 85th (23-24 February 2009); 86th Session (7-8 May 2009); 87th (25-26 May 2009); and 88th (23-25 September 2009) Sessions, and by the Council at its 136th (15-19 June 2009) and 137th Sessions (28 September – 2 October 2009). The amendments were finally adopted by the 36th Session of the Conference (18-23 November 2009).

¹⁰ C2015/25, paragraph 166, and C2015/26 Rev.1.

¹¹ The CCLM already reviewed the functions of the Bureaux of TCs at its 97th Session in October 2013. On that occasion, considering that the matter was under negotiation by the membership of TCs, the Committee decided to review it again at a future session (CL 148/2 Rev.1, paragraph 7).

¹² The Steering Committee of COFO, instead, has a peculiar composition, as it consists of a Chairperson elected in its personal capacity by COFO, and the six Chairpersons of the Regional Forestry Commissions. The Steering Committee therefore serves as a forum for consultation and coordination among the Regional Forestry Commissions.

¹³ These functions were identified through a review conducted by the Secretariat of the minutes of the Bureaux/Steering Committee’s meetings since 2010. With regard to the Bureau of COFI, which was established in 2011, the minutes of meetings held since its establishment were reviewed.

b) Review of the presentations of TC reports to the Council and Conference

Reports of sessions of TCs are presented by the TC Chairpersons to the Council and the Conference. Bureaux normally review these presentations in advance, providing guidance as to aspects to be emphasized or brought to the attention of the Council or Conference.

c) Monitoring of the implementation by the Secretariat of the decisions and recommendations of the Technical Committee

The Secretariat periodically informs the Bureau on the status of implementation of actions arising out of TC sessions.

d) Information on subjects relevant to the mandate of the Technical Committee

Bureaux are periodically informed of the decisions taken by FAO Governing Bodies regarding, and relevant to, the mandate of their respective TCs. This may include a very wide range of topics.

e) Review of proposed amendments to the Rules of Procedure

Bureaux reviewed proposals to amend the Rules of Procedure of their respective TCs.

IV. Bureaux and delegation of internal oversight functions (Implementation of Recommendation 10)

13. The IRT noted that “virtually all IPA actions on the TCs have been implemented” and that “in general, the reforms have been appreciated, both within the Secretariat and among Members”.¹⁴ It found, however, that “the overall impact of the IPA actions on the internal oversight role of TCs appears to be limited”.¹⁵ Specifically, it emphasized the importance of clarifying the possible scope of action on internal oversight for Bureaux of TCs.¹⁶

14. In accordance with the General Rules of the Organization, TCs periodically review and approve *Progress reports on the implementation of the FAO Multiyear Programme of Work* (“Progress Reports”). Within the institutional framework of the Organization, Bureaux are normally entrusted with administrative and organizational functions in respect of the preparation of work of the Committees. However, they would not discharge core functions of a substantive nature such as internal oversight functions.

15. The possibility of entrusting some oversight functions to Bureaux would deviate from prevailing rules and practices within the United Nations System, although this would not, in itself, prevent FAO from adopting a solution which would respond to its own governance structure and practice. It is possible that in practice some information on the activities of Technical Departments is being provided to Bureaux. As pointed out by the IRT in its Final Report,¹⁷ when considering this matter, the following aspects should also be considered.

¹⁴ C 2015/25, paragraphs 150-151.

¹⁵ See C2015/25, paragraphs 160-161.

¹⁶ C2015/25, paragraph 164.

¹⁷ C2015/25, paragraph 165.

a) *The mandate of the Bureaux to represent the TC membership during the inter-sessional period*

Delegation of oversight functions to the Bureaux during the inter-sessional period might require enhancement of their representativeness. However, there is reason to believe that, if only for practical and budgetary reasons and considerations related to the staffing of the Representations to FAO, any option of expansion of the membership of Bureaux might not be viable. In this connection, it should be pointed out that it has proved difficult to schedule bureaux meetings and to ensure effective and meaningful participation of representatives in those meetings.

b) *Complementarity and no interference with, the management role of the TC Secretariat Bureaux*

Any review functions entrusted to Bureaux should be limited to providing general guidance on policy aspects, taking into consideration also financial and operational elements. As stressed by the IRT in its Final Report, this guidance should not result in the Governing Bodies interfering with the responsibility of the Secretariat for the implementation of managerial activities.

Furthermore, bearing in mind the subsidiary nature of the relationship between TCs and their respective Bureaux, any functions entrusted to the Bureaux and not expressly set out in TCs' Rules of Procedure would be subject to an explicit mandate by the relevant TCs. Considering that only the Rules of Procedure of COAG and CCP envisage this possibility, consideration could be given to the development of a consistent approach towards the issue of the functions delegated to Bureaux, with due account being taken of the specific functional requirements of each TC. In considering this matter it would be desirable to ensure consistency of approach among all TCs.

V. Suggested action by the Committee

16. The CCLM is invited to review the information contained in this preliminary document and make such recommendations thereon as appropriate. The Secretariat is prepared to revise this document for review at a future session in light of the guidance provided by the Committee.

17. The CCLM is also invited to note that there seems to be a need for additional consultations among Members and regional groups on the matter prior to subsequent review thereof.

Annex

Rules of Procedure of Technical Committees on the Membership and Functions of Bureaus/Steering Committee

COAG

Rule I, paragraph 1, of the Rules of Procedure of COAG

At the first session in each biennium, the Committee shall elect a Chairperson and six Members, which collectively shall constitute the Bureau of the Committee. The representatives of the elected Members shall act as Vice-Chairpersons.

Rule I, paragraph 4, of the Rules of Procedure of COAG

The Bureau shall, between sessions, represent the membership of the Committee, perform functions related to the preparation of sessions of the Committee, and perform such other functions as may be delegated to it by the Committee. Each Member of the Bureau shall exercise its functions in close consultation with the Regional Group that it represents.

CCP

Rule I, paragraph 1, of the Rules of Procedure of CCP

At the first session in each biennium, the Committee shall elect a Chairperson and six Members, which collectively shall constitute the Bureau of the Committee. The representatives of the elected Members shall act as Vice-Chairpersons.

Rule I, paragraph 4, of the Rules of Procedure of CCP

The Bureau shall, between sessions, represent the membership of the Committee, perform functions related to the preparation of sessions of the Committee, and perform such other functions as may be delegated to it by the Committee. Each Member of the Bureau shall exercise its functions in close consultation with the Regional Group that it represents.

COFI

Rule I, paragraph 1, of the Rules of Procedure of COFI

At the first session in each biennium, the Committee shall elect a Chairperson, a first Vice-Chairperson and five other Vice-Chairpersons from among the representatives of its Members, who shall remain in office until the election of a new Chairperson and new Vice-Chairpersons and who will act as a Bureau between sessions and during sessions.

Rule I, paragraph 4, of the Rules of Procedure of COFI

Between sessions, in relation to agendas, formats and other matters, and to perform other actions relevant for ensuring preparations for the sessions, the representatives of the regional groups in the Bureau shall consult with Members in a timely way.

COFO

Rule I, paragraph 1, of the Rules of Procedure of COFO

At the first session in each biennium, the Committee shall elect a Chairperson from among the representatives of its Members. The Chairperson and the six Chairpersons of the FAO Regional Forestry Commissions will act as a Steering Committee during sessions. The six Chairpersons of the

FAO Regional Forestry Commissions shall act as Vice-Chairpersons. The Chairperson shall remain in office until the election of a new Chairperson. The Vice-Chairpersons shall remain in office until they complete their term as Chairpersons in their respective Regional Forestry Commissions. A newly elected Chairperson of a Regional Forestry Commission shall automatically replace his/her predecessor in the Steering Committee.

Rule I, paragraph 4, of the Rules of Procedure of COFO

Between sessions, the Steering Committee shall facilitate consultation with Members in relation to agendas, formats and other matters, and perform other actions relevant for ensuring preparations for the sessions.