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## **Key principles of a code of conduct**

### **Report by the Secretariat**

1. The Working Group of Member States on the Process and Methods of the Election of the Director-General of the World Health Organization, in its report to the Executive Board, requested the Secretariat, *inter alia*,<sup>1</sup> to prepare for the next meeting of the Working Group a report, based on the discussions at the second meeting, which would further elaborate key principles of a code of conduct.

#### **ELABORATING KEY PRINCIPLES OF A CODE OF CONDUCT**

2. The Working Group, at its second session, considered that it would be useful to establish a code of conduct or a statement of ethical principles to promote transparency and enhance ethical behaviour throughout the nomination process and with particular regard to electoral campaigns. It reviewed, on the basis of a report submitted by the Secretariat,<sup>2</sup> possible elements of a code of conduct; various views were elicited in response to this. The Working Group expressed support for principles including equal opportunities among candidates, abstention from abuse of a position of power and improper practice, and a commitment to comply with the code.

3. Based on discussions at the second session of the Working Group and with a view to facilitating deliberations on possible elements of a code of conduct, the Secretariat has elaborated issues contained in its previous report. It has also added a section on the conduct of internal candidates in connection with the election of the Director-General of WHO since the Working Group showed interest in expanding this issue. The Working Group is invited to consider the items below in connection with the explanations provided in the previous report by the Secretariat as well as the references to codes of conduct contained in the annex to that report.

#### **(a) Equal opportunities among candidates**

The principle that candidates start on an equal footing and should be treated equally throughout the electoral process was regarded as very important by the Working Group. It could be expressed in the form of equal opportunities for candidates to promote their candidatures and convey their messages to Member States as well as in equal access to public facilities, services and assistance, such as access to a web site provided by WHO to candidates from least-developed countries to post their own

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<sup>1</sup> See document EB130/29 Corr.1.

<sup>2</sup> Document EB/EDG/WG/2/3.

information and electoral materials. Additionally, there could be a recommendation to the effect that travel by candidates to Member States to promote their candidature should be limited in order to avoid excessive expenditure, which could lead to inequality among Member States and candidates.<sup>1</sup>

**(b) Abstention from abuse of a position of power**

Existing codes of conduct rely on this principle to prevent current office holders or public officials from using their position and public assets to further their electoral campaigns. Guidelines reflecting this principle could provide that internal candidates, including the current office holder, refrain from using their position as well as the resources of the Organization to promote their campaigns.<sup>2</sup> The idea of abstention from abuse of power is explicitly provided for in the Rules governing the election process for the position of Director of the Pan American Sanitary Bureau. According to the relevant provisions of those Rules, no internal candidates may make direct or indirect use of their positions to further their candidacies, and shall not use the resources of the Organization for campaign purposes. No internal candidates shall, in pursuing their candidacy, communicate restricted, confidential, or otherwise privileged information to anyone or use that information to their private advantage.<sup>3</sup> The Director-General of the International Labour Organization (ILO) is expected to prohibit officially all ILO staff, not only candidates for the appointment as Director-General, to use ILO resources for the purposes of campaigning for, or supporting, any candidate in connection with the process of election of the next Director-General.<sup>4</sup> The Rules applicable to the election of the Director of the Pan American Sanitary Bureau require that internal candidates for the post of Director shall either resign or take leave once the nominations are forwarded by the President of the Executive Committee to Member States, Participating States and Associated Members. The period of leave shall last until the election or the withdrawal of the candidacy. During such time, the staff member shall not represent the Organization in any manner whatsoever. This requirement shall not apply to the Director in office. Nonetheless, the Director shall strictly conform to the prohibition of the abuse of power and the prohibition of communicating confidential information. More specific provisions concerning the conduct of WHO staff members in connection with the election of the Director-General are contained in section (l) below.

**(c) Respect for the rights of the other parties to campaign and disseminate their ideas**

The principle of respect for the rights of the other parties, and notably of candidates and their supporting Member States, to campaign and disseminate their ideas without interference or inappropriate criticism was broadly supported. This principle could be expressed by stating that no Member State or candidate should at any time disrupt or impede the campaign activities of other candidates or Member States, and that no Member State or candidate should make any oral or written statements or other representations that could be deemed slanderous or libellous<sup>5</sup> or be seen as

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<sup>1</sup> Western Pacific Region: Nomination of the Regional Director: Code of Conduct (document WPR/RC62/9), p. 11.

<sup>2</sup> IDEA, 1999, p. 20; Zambia, 2006, 7(1)(i).

<sup>3</sup> Rules governing the election process for the position of Director of the Pan American Sanitary Bureau, Basic Documents of the Pan American Health Organization, 2007, p. 92.

<sup>4</sup> ILO, Reports of the Officers of the Governing Body (document GB.312/INS/16/3, November 2011), p. 2.

<sup>5</sup> Western Pacific Region: Nomination of the Regional Director: Code of Conduct (document WPR/RC62/9), p. 10 and 11.

criticism which either concerns the private life of candidates and is unrelated to their public activities<sup>1</sup> or which is based on unverified allegations.<sup>1</sup> Intimidation in whatever form should be prohibited<sup>2</sup> and all parties should refrain from speech calculated to generate controversy.<sup>3</sup>

#### **(d) Compliance with the code of conduct**

The principle concerning the responsibility of Member States and candidates to comply with the code of conduct to which they have subscribed is essential for the effective implementation of a code.<sup>4</sup> While some codes declare it a responsibility of the parties to the code to ensure that the latter is strictly observed by all their representatives and supporters,<sup>5</sup> others require parties to cooperate in order to develop further compliance and monitoring mechanisms to ensure the full effect of the code.<sup>6</sup> Still other codes promote compliance by stating that only those persons who pledge to observe the provisions of the code without reservation are eligible to serve as elected officials.<sup>7</sup> Similar statements could be considered for a code of conduct on the election of the Director-General and could serve as an important reminder of the responsibility of candidates and supporting Member States to respect and promote the integrity of the electoral process.

#### **(e) Cooperation with election officials**

National codes of conduct prescribe cooperation and communication between candidates and parties with the public officials appointed by the competent governmental authorities and entrusted with the authority and responsibility to oversee the proper conduct of the electoral process. There is no immediate parallel between the situation at national level and that of the election of the executive head of an international organization and there is no central government with the power to appoint public officials who can exercise their authority over electoral activities. With respect to WHO, the Secretariat is entrusted by the relevant Rules of Procedure and decisions of the governing bodies with a number of functions and responsibilities that have a bearing on the regularity and integrity of the election process. Consideration could therefore be given to a provision in a code of conduct that calls upon candidates and their supporting Member States to cooperate in good faith with the Secretariat in the exercise of its responsibilities, and to abstain from exercising pressure or from trying to obtain information from the Secretariat that could unjustly favour a particular candidate.

#### **(f) Communication**

As mentioned by the Secretariat in its previous report, all Member States and candidates should encourage and promote communication and cooperation with one another during the entire nomination process. Member States and candidates should act in good faith, bearing in mind the shared objectives

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<sup>1</sup> IPU, 1998, p. 67.

<sup>2</sup> Cambodia, 1993, 3, in: IPU, 1998, Annex 11, p. 122; Liberia, 1997, 3, in: IPU, 1998, Annex 2, p. 87; OSCE, 2003, Part One, 7.2. and 7.4., p. 18; UNTAES, 1997, Part I 7 and 9, in: IPU, 1998, Annex 1, pp. 78 and 79.

<sup>3</sup> Ghana, 1992, 10, in: IPU, 1998, Annex 12, p. 124.

<sup>4</sup> Western Pacific Region: Nomination of the Regional Director: Code of Conduct (document WPR/RC62/9), p. 10.

<sup>5</sup> OSCE, 1996, Article 119, in: IPU, 1998, Annex 5, p. 95; cf. UNTAES, Part I 2, in: IPU, 1998, Annex 1, p. 77.

<sup>6</sup> Nigeria, 2011, Rule of Law, 5.

<sup>7</sup> FIFA, 2009, Rule 4.1.

of promoting equity, openness, transparency and fairness throughout the nomination process.<sup>1</sup> The principle of promoting effective communication could also be implemented through the establishment of a virtual web-based forum as a communication platform for discussion of issues of common concern during the electoral campaign.<sup>2</sup>

### **(g) Coordination of campaign activities**

The coordination in advance of campaign activities among the competing parties is a means to avoid tensions and controversies among candidates. Such situations may arise, for example, if two candidates use the same event, such as a regional committee meeting, to conduct their campaign activities. If a collision of campaign activities occurs, those affected by it should resolve the problem amicably.<sup>3</sup> This matter was not discussed in detail by the Working Group but may be relevant for the overall purpose of a code of conduct.

### **(h) Abstention from improper practices**

The requirement to abstain from improper practices aims to avoid any undue influence on the outcome of the election beyond the specific situation of abuse of power by an internal candidate or office holder which is dealt with in section (b) above. It usually finds expression in guidance to the parties to the code not to offer financial or other advantages to voters or candidates as a direct quid pro quo for the support of a candidate, for the proposal or non-proposal of candidates or for the withdrawal or non-withdrawal of other persons' candidacies.<sup>4</sup> Improper practices can also include promises of rewards or advantages, such as a promise to appoint certain persons as staff members or to award them contracts or grants, or to implement particular projects or activities in certain countries in direct return for a commitment to vote for a specific candidate.<sup>5</sup> This principle can also be reflected in guidance discouraging the acceptance of instructions from any person or entity if this could undermine, or be perceived as undermining, the integrity of the election process.<sup>6</sup>

### **(i) Financing**

The principle of disclosing the details of the financing of electoral campaigns could contribute to the transparency and fairness of the election process. This area has not been thoroughly explored by the Working Group but could play an important role in improving the transparency of the electoral process. When this matter arises in existing codes, required actions often involve disclosures of income and assets of the candidates, as well as of their campaign accounts.<sup>7</sup> To make the principle

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<sup>1</sup> See also Western Pacific Region: Nomination of the Regional Director: Code of Conduct (document WPR/RC62/9), p. 10.

<sup>2</sup> cf. IDEA, 1999, p. 21.

<sup>3</sup> Nigeria, 2011, Campaign issues, 7; United Republic of Tanzania, 2010, 2.1(o).

<sup>4</sup> IDEA, 1999, p. 20; Kyrgyzstan, 2010, pp. 5 and 6; Western Pacific Region: Nomination of the Regional Director: Code of Conduct (document WPR/RC62/9), p. 11; in a similar sense the submission from Colombia, document EB/EDG/WG/2/6, p. 3; ILO, Reports of the Officers of the Governing Body (document GB.312/INS/16/3, November 2011), p. 2.

<sup>5</sup> cf. Panama, 1993, in: IPU, 1998, Annex 10, p. 121.

<sup>6</sup> Western Pacific Region: Nomination of the Regional Director: Code of Conduct (document WPR/RC62/9), p. 11.

<sup>7</sup> cf. IPU, 1998, p. 65; OSCE, 2003, Part One, 7.8, p. 19.

more effective, it could be envisaged that information on the contributions received and their source, as well as on campaign expenditures be published.<sup>1</sup> Certain codes of conduct place a cap on total campaign costs.<sup>2</sup>

#### **(j) Acceptance of the outcome of a fair election**

The principle that the parties to a code of conduct will accept the outcome of an election conducted in conformity with it and with the applicable rules ensures that the legitimacy of election results is not questioned and that those results are perceived to be final and reliable.

#### **(k) Enforceability of the code of conduct**

In order to strengthen the effect of a code of conduct and to enhance its parties' compliance with it, different ways of enforcing codes have been adopted. One way of encouraging compliance with a code of conduct, while avoiding an institutionalized mechanism to this effect, is to urge the parties to a code to mutually encourage each other and those involved in the election process to abide by the code and to discourage breaches of the code.<sup>3</sup> A number of codes of conduct provide for the establishment of an official body to consider alleged breaches of the code. Such a body is usually competent to receive complaints of parties to the code alleging breaches thereof. It then undertakes an enquiry and decides whether there is sufficient proof of a breach of the code. As a consequence, the body may make observations and/or issue a warning or recommendation to the member or candidate in question.<sup>4</sup> Such a body may even, under some codes, impose appropriate sanctions, such as fines, or disqualify a candidate from the campaign.<sup>5</sup> There is often a proviso that the parties to the code and others should not abuse the complaints procedure.<sup>6</sup> An example of an accountability mechanism at the international level is the procedure established by the International Federation of Red Cross and Red Crescent Societies. That process involves a three-stage system, which can ultimately result in the disqualification of candidates if approved by the Governing Board.

#### **(l) Internal candidates**

The code of conduct may also mention the applicable rules and guidance to be observed by WHO staff.<sup>7</sup> WHO staff members, including the incumbent Director-General, who are proposed for the post of Director-General are subject to the obligations contained in the WHO Staff Regulations and Staff Rules. Guidance on how to comply with the obligations contained in the Staff Regulations and Staff Rules has also been issued to staff in connection with at least the last four elections. The obligations deriving from the Staff Regulations and Staff Rules imply that WHO staff members who are proposed for the post of Director-General should observe the highest standard of ethical conduct and strive to

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<sup>1</sup> Submission from Colombia, document EB/EDG/WG/2/6, p. 3.

<sup>2</sup> Submission from Colombia, document EB/EDG/WG/2/6, p. 2.

<sup>3</sup> IDEA, 3(1), p. 15; IPU, 1.2, p. 64; Kyrgyzstan, 2010, p. 3; Nigeria, 2011, Rule of Law, 5.

<sup>4</sup> IOC, 2009, G 1 and 2, p.93.

<sup>5</sup> Nigeria, 2011, Implementation, monitoring and enforcement, 1.e)(ii); OSCE, 1996, Article 123, in: IPU, 1998, Annex 5, p. 96; United Republic of Tanzania, 2010, 5.5(g).

<sup>6</sup> IPU, 1998, p. 71.

<sup>7</sup> For the following see, for the nomination of the Regional Director, Western Pacific Region: Nomination of the Regional Director: Code of Conduct (document WPR/RC62/9), p. 13.

avoid any appearance of impropriety. WHO staff members should clearly separate their WHO functions from their candidacy and avoid any overlap, or perception of overlap, between campaign activities and their work for WHO. They also have to avoid any perception of conflict of interest. WHO staff members are subject to the authority of the Director-General, in accordance with the applicable regulations and rules, in case of allegations of breach of their duties with regard to their campaign activities. The Director-General may consider applying Staff Rule 650 concerning special leave to staff members who have been proposed for the post of Director-General. Failure to observe these rules may constitute serious misconduct and result in disciplinary action.<sup>1</sup>

## **CONCLUSION**

4. The Working Group may wish to take into account this elaboration on the key principles of a code of conduct in its further discussion of a possible code of conduct in relation to the nomination and appointment of the Director-General.

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<sup>1</sup> Rules governing the election process for the position of Director of the Pan American Sanitary Bureau, Basic Documents of the Pan American Health Organization, 2007, pp. 92 and 93.