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**NOMINATION OF THE REGIONAL DIRECTOR:
CODE OF CONDUCT**

The Regional Committee for the Western Pacific, at its sixty-first session, considered a report by the Legal Counsel containing proposals for improving the fairness and transparency of the process for the nomination of the Regional Director.

At that same session, the Regional Committee approved a proposal related to the short-listing and interview of candidates for the post of Regional Director and amended its Rules of Procedure accordingly (resolution WPR/RC61.R3).

The Regional Committee also expressed interest in a code of conduct as a means of improving the fairness, openness and transparency of the nomination process, with particular regard to campaign activities.

The Legal Counsel, at the request of the Regional Committee, has prepared the attached report that elaborates on relevant issues and challenges underpinning a possible code of conduct. The attached annex contains the draft of a possible code of conduct to enable the Regional Committee to discuss more concretely its implications and does not imply an opinion by the Secretariat on the desirability or appropriateness of a code of conduct.

The Regional Committee is requested to review the report and decide what role, if any, a code of conduct should play in the nomination process for the Regional Director.

1. INTRODUCTION

The Regional Committee for the Western Pacific, at its sixty-first session, considered a report by the Legal Counsel containing proposals for improving the fairness and transparency of the process for the nomination of the Regional Director. The specific proposals submitted by the Legal Counsel, as requested by the Regional Committee at its sixtieth session, concerned the introduction of a short-listing and interview process for candidates for the post of Regional Director; and a possible code of conduct recommending a set of best practices concerning the behaviour of Member States and candidates in the context of the electoral campaign for the nomination of the Regional Director.

The Regional Committee approved the proposal related to the short-listing and interview of candidates and amended its Rules of Procedure accordingly (resolution WPR/RC61.R3). The Committee also expressed interest and support in principle for a code of conduct as a tool to improve the fairness, openness and transparency of the nomination process with particular regard to campaign activities. It was noted that there was no precedent for a code of this nature within the United Nations system and that more consideration by the Committee was required. The Legal Counsel was requested to present a more elaborate and substantive report to the sixty-second session of the Committee, including the text of possible provisions which could be included in a code of conduct to facilitate the Regional Committee's deliberations.

The present report elaborates on relevant issues and challenges underpinning a possible code of conduct. The annex to the present report contains the draft of a possible code of conduct to enable the Committee to discuss more concretely its implications. The draft should be seen as a suggestion to stimulate discussion and does not imply an opinion by the Secretariat on the desirability or appropriateness of a code of conduct.

2. SOURCE OF A CODE OF CONDUCT

As the Legal Counsel observed in his previous reports, no organization within the United Nations system and no other intergovernmental organizations contacted for the purpose of preparing the present report have indicated that they had adopted or were discussing the possibility of a code of conduct. This issue for the most part has not been discussed or even raised.

The only two organizations that informed the Secretariat of the use of codes of electoral standards in their practice were the International Federation of Red Cross and Red Crescent Societies

(IFRC) and the International Olympic Committee (IOC). Also the International Federation of Football Associations (FIFA) has adopted "Rules of Conduct" governing the bid process for the selection of the venue of the football world cup. Other international sports federations may have similar codes.

Besides these few examples of electoral codes at the international level, the codes of conduct brought to the attention of the Secretariat concern national elections.¹ National electoral codes are normally concerned with issues that are not immediately relevant for nominations and elections within international organizations, such as the role and responsibilities of political parties and the media; the protection of public resources and assets from misuse for electoral purposes; prohibition of conduct such as carrying weapons or acts of violence, disrupting electoral events, or discrimination against certain categories and groups. They also regulate the conduct of polling and establish processes and institutions to address complaints and allegations of breaches.

Notwithstanding their different environment and functions, however, national electoral codes of conduct are based on a number of underlying principles and purposes that may be relevant for a code of conduct for the nomination of the Regional Director, such as: respect for the rule of law and the role of competent authorities; fairness in all electoral activities; non-discrimination; avoidance of undue influence by political parties, supporters and candidates; clarity of rights, responsibilities and obligations of all stakeholders; mutual respect among parties and candidates; and equitable campaign opportunities. The ultimate goal of codes of conduct is the creation of a climate of equitable implementation of electoral regulations and responsible campaigning with a view to ensuring the perception of legitimacy of the electoral process and its outcome, and hence the acceptance of that outcome. These are, in the view of the Secretariat, values and principles that are also applicable *mutatis mutandis* to elective processes within international organizations.

3. LEGAL NATURE AND SCOPE

The codes of conduct referred to in the previous sections fall broadly into two categories: in some cases they provide non-binding guidance or are political statements agreed among political parties about minimum rules of behaviour during an electoral campaign; in other cases they are

¹ Of particular relevance in this context was a study prepared in 1998 for the Inter-Parliamentary Union, which analyzes the growing practice of electoral codes of conduct adopted by national parliaments or governments or agreed upon among political parties. The study reproduces several electoral codes of conduct adopted either at the national level or by international organizations such as the United Nations and the Organization for Security and Cooperation in Europe (OSCE) in their support for national or local elections. This document was already mentioned in the report submitted by the Legal Counsel to the sixtieth session of the Regional Committee (document WPR/RC61/11). Accessed at <<http://www.ipu.org/english/parlit/reports/44223.htm>>

enacted as a national law or as internal rules of an organization, thus having a binding nature on their addressees. In the latter case, the codes in question sometimes establish committees or similar bodies with the purpose of guiding electoral activities, monitoring compliance as well as receiving and investigating allegations of breaches and recommending possible sanctions. In view of the lack of precedents within intergovernmental organizations, of the comments made by Member States during the discussion of this topic, and of the questionable legal basis of a binding code within the context of WHO, the draft code of conduct has been formulated as a non-binding document constituting a political statement on the part of Member States which retain ultimate responsibility for complying and ensuring compliance with it.

Some codes of conduct define explicitly the temporal scope of their applicability, normally with reference to the opening and closing of the electoral campaign as provided in national electoral laws. In the case of the nomination of the Regional Director, the moment at which the names of candidates to the post of Regional Director are disclosed to the Members of the Region is very close to the session of the Regional Committee and it is well known that Member States and candidates engage in electoral and promotional activities long in advance of that point in time, sometimes even before the call for candidatures by the Director-General. It would be difficult in this case to artificially determine an initial moment for the applicability of a code of conduct, whereas it is desirable that it should continue to apply until the final vote to nominate the Regional Director. Consequently, the draft code aims at providing guidance and reference for electoral activities related to the nomination of the Regional Director whenever they take place until the actual nomination by the Committee.

4. POSSIBLE CONTENT OF A CODE OF CONDUCT

Statement of principles. The provisions contained in the draft text in the annex reflect both the principles and approaches gleaned from the codes of conduct obtained by the Secretariat as well as relevant decisions by the Regional Committee and the concerns expressed by Members of the Committee. Under the latter respect, in resolution WRP/RC50.R8 of 1999, the Regional Committee affirmed that “campaigns for elective office in the Western Pacific Region should be open and fair, and based on the merits of the individual candidates.” During the discussions at the sixtieth and sixty-first session of the Committee, Member States supported measures to improve the overall fairness, transparency and equity of the nomination process and campaign practices, giving equal opportunities to candidates and encouraging cooperation and communication among the parties concerned. As

noted above, some support was also expressed for a mechanism to support campaign activities by candidates from low-income countries.

Consequently, it would seem appropriate to state at the outset of a code of conduct the underlying principles which inspire it and which the codes itself implement in detail. In the view of the Legal Counsel, two more important statements in order to put the operational content of the code in context are a clear affirmation of the authority of the Regional Committee to conduct the nomination of the Regional Director and of the balance of rights and responsibilities that Member States and candidates have with regard to the conduct of electoral activities.

Following such general provisions expressing the fundamental assumption underlying a code of conduct, it would seem clearer for its users to break it down in the various phases or steps of the nomination process and the electoral campaign.

Submission of proposals. Resolution WRP/RC50.R8 mentioned above underscores the importance of a nomination based on the merits of the individual candidates. The same resolution lists a number of criteria that the candidate nominated by the Committee should fulfil. A practical arrangement to enable the Committee to better compare the merits of candidates against those criteria would be to request Member States, in addition to the curriculum vitae of the candidate and other supporting material, to fill out a questionnaire requiring some elaboration on how the candidate fulfils the criteria based on his/her background and qualities. This should be limited to the first five criteria that are more relevant to such an analysis. A possible provision in this direction is proposed in section B.I. and annex 1 of the draft code. It should be noted that this approach has been used by the Regional Search Group of the Regional Committee for Europe.

Electoral campaign. This is probably the most sensitive part of a code of conduct recommending ethical conduct on the part of Member States and candidates. Nomination to an elective post within an intergovernmental organization, and related electoral campaign activities, do not raise some of the issues characterizing national elections, such as the role of political parties or of the media in supporting them. Rather, campaign activities are carried out by the Member States presenting candidates, which interact with other Member States to promote and support their candidates, as well as by individual candidates who wish to present their respective programmes and seek support from Member States.

The fact that electoral activities are carried out by both Member States and individual candidates introduces an additional element of complexity in assessing which kind of promotional activities should be recommended or discouraged in a code of conduct. Promotion of a candidate may become closely related to the foreign policy and development cooperation strategies of the Member

States concerned, which is considered a legitimate exercise of their sovereign prerogatives given the intergovernmental nature of the nomination process. At the same time, the Regional Director is a staff member of WHO serving the Organization in his/her individual capacity; the merits and qualifications of the individual candidates should thus play a prominent role which should ideally not be obfuscated or diminished by the influence that Member States bring to bear to support their candidates. Similarly, campaign activities at all levels should take place in a positive climate of competition so that Member States can take an objective and informed decision in order to choose the best candidate for the post.

The draft code of conduct, therefore, aims at striking a balance among these considerations and focuses on a few central issues that also appear in other codes of conduct. It recommends good faith communication, cooperation and mutual respect among Member States and candidates, including facilitating meetings between candidates and Member States. It also discourages conduct by either Member States or candidates which aims at unduly or inappropriately influencing the nomination process and its outcome so as to circumscribe the scope of the code in a way that does not interfere with legitimate foreign policy relations among Member States. It is difficult for the Secretariat to go beyond this general statement and much will necessarily be left to the appreciation of Member States and candidates in refraining from activities that could ultimately be perceived as undermining the integrity of the nomination process.

Funding of candidates. As noted above, some interest was expressed in the Regional Committee for supporting electoral activities by candidates from low-income countries. It was perceived that this could be seen as at least partially redressing the unequal distribution of financial resources across the Region, thus increasing the fairness and equitable nature of the overall process. The Legal Counsel has found no precedent of a similar mechanism in the few international codes of conduct it is aware of.

For the purpose of discussion within the Regional Committee, the draft code of conduct envisages the establishment by the Director-General of a fund which would be managed by WHO under its Financial Regulations and Rules and from which the Director-General would give grants to candidates. The fund would be financed by voluntary contributions and the draft code proposes three alternatives in this regard. The Regional Committee would be called to establish clear criteria for eligibility to the fund, a proportional or absolute ceiling for disbursements, the type of activities that could be financed etc. There would also have to be an accountability mechanism to ensure transparency and disclosure with regard to the use of the funds by candidates, once again largely along regular WHO financial procedures.

The use of a WHO fund and of WHO's financial accountability system for this purpose would, in the view of the Secretariat, better guarantee the transparency of a funding mechanism and reduce the risk of its politicization. At the same time, they raise a number of challenges both from Member States as well as for the Director-General who would be called to make potentially difficult funding decisions in the context of a sensitive electoral process. A delicate decision for Member States could be the threshold of eligibility in terms of the economic level of the Member States that have proposed candidates. For the purpose of discussion the draft code refers to least-developed countries (of which there are seven in the Region), but alternatively the ranking by the World Bank based on income could be used.

Nomination by the Regional Committee. As noted above, a possible code of conduct would also apply to the actual proceedings during the Regional Committee, since that marks the culmination of the nomination process and should be held in a dignified and legitimate fashion in full compliance with the Rules of Procedure and other relevant decisions. There could be activities and behaviours by Member States or candidates which could be perceived as undermining or interfering with the integrity of such an important meeting. Clarity of expectations and responsibilities are therefore important.

Internal candidates. WHO staff members are not barred from standing as candidates for elective positions within the Organization such as the post of Regional Director. As such, they are entitled to conduct campaign activities to promote their candidatures and make their programmes and visions known to Member States. At the same time, unlike external candidates, WHO staff members are international civil servants subject to the standard of conduct enshrined in the Staff Regulations and Rules. As such, they have to act with the interests of WHO solely in view and consequently have to clearly separate activities promoting their candidatures from their duties as WHO staff members, with particular regard to their interactions with Member States and other staff members.

The Director-General and Regional Directors have in the course of time issued guidance to remind staff members about appropriate conduct during a period of electoral campaign, whether or not they are candidates for an elective post. Even though compliance with, and enforcement of, the obligations contained in the Staff Regulations and Rules fall within the authority of the Director-General and the Regional Director, it was felt appropriate to insert a section proving some broad statements of principle concerning specifically the situation of internal candidates for the post of Regional Director.

5. CONCLUSIONS

The Regional Committee may want to discuss the considerations, information and issues contained in the present report as well as the draft code of conduct provided in the annex, with a view to further assessing the appropriateness, implications and feasibility of a code of conduct for the nomination of the Regional Director.

DRAFT CODE OF CONDUCT
FOR THE NOMINATION OF THE REGIONAL DIRECTOR
OF THE WESTERN PACIFIC REGION OF THE WORLD HEALTH ORGANIZATION

By resolution WPR/RC50.R8, the Regional Committee *inter alia* affirmed that "campaigns for elective office in the Western Pacific Region should be open and fair, and based on the merits of the individual candidates." In resolution WPR/RC61.R3, the Regional Committee also pointed to its intention to improve the fairness of the process for the nomination of the Regional Director. The Regional Committee requested the Legal Counsel to elaborate further on a possible code of conduct on the nomination of the Regional Director.

This Code of Conduct (Code) aims at promoting an open, fair, equitable and transparent process for the nomination of the Regional Director of the Western Pacific Region (WPR) of the World Health Organization (WHO). In seeking to improve the overall process this Code addresses a number of areas, including the submission of proposals, the conduct of electoral campaigns by Member States and candidates, as well as funding and financing matters.

The Code is a political understanding reached by the Member States of the Western Pacific Region (Member States). It recommends desirable behaviour by Member States and candidates with regard to the nomination of the Regional Director to increase the fairness, openness and transparency of the process and thus its legitimacy as well as the legitimacy and acceptance of its outcome. As such, the Code is not legally binding but Member States and candidates are expected to honour its contents.

A. General Requirements

I. Basic Principles

The whole nomination process as well as electoral campaign activities related to it should be guided by the following principles that further the legitimacy of the process and of its result:

Fairness,
Equity,
Transparency,
Good Faith,
Dignity, Mutual Respect and Moderation,
Non-Discrimination,
Merit-based.

Annex 1

II. Authority of the Regional Committee and its Rules of Procedure

1. Member States accept the authority of the Regional Committee for the Western Pacific (Regional Committee) to conduct the nomination of the Regional Director in accordance with its Rules of Procedure and relevant resolutions of the Regional Committee.
2. Member States which propose persons for the post of Regional Director have the right to promote their candidature. The same applies to candidates with regard to their own candidature. In the exercise of that right, Member States and candidates should abide by all rules governing the nomination of the Regional Director contained in the Rules of Procedure of the Regional Committee as well as in relevant resolutions and decisions of the Regional Committee.

III. Responsibilities

1. It is the responsibility of Member States and candidates to observe and respect this Code.
2. Member States acknowledge that the process of nomination of the Regional Director should be fair, open, transparent, equitable, and based on the merits of the individual candidates. They should make this Code publicly known and easily accessible.

B. Requirements concerning the different steps of the nomination process

I. Submission of proposals

When proposing the name of one or more persons for the post of Regional Director, Member States will be requested by the Director-General to submit the necessary particulars of each person's qualifications and experience using the standard form annexed to this Code, in order to improve the comparability of the merits and qualifications of candidates against the criteria adopted by the Regional Committee with resolution WPR/RC50.R8.

II. Electoral campaign

1. All Member States and candidates should encourage and promote communication and cooperation among one another during the entire nomination process. Member States and candidates should act in good faith bearing in mind the shared objectives of promoting equity, openness, transparency and fairness throughout the nomination process.
2. Member States and candidates should refer to one another with respect; no Member State or candidate should at any time disrupt or impede the campaign activities of other

candidates. Nor should any Member State or any candidate make any oral or written statements or other representations that could be deemed slanderous or libellous.

3. Member States and candidates should refrain from improperly influencing the nomination process, by, for example, granting or accepting financial or other benefits as a quid pro quo for the support of a candidate, or by promising such benefits.

4. Member States and candidates should not make promises or commitments in favour of, or accept instructions from, any person or entity, public or private, when that could undermine, or be perceived as undermining, the integrity of the nomination process.

5. Member States that have proposed a candidate should facilitate meetings between their candidate and other Member States, if so requested. Wherever possible, meetings between candidates and Member States should be arranged on the occasion of conferences or other events involving Member States of the Region rather than through bilateral visits.

6. 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.

7. Candidates, whether internal or external, should not combine their official travel with campaigning activities. Electoral promotion or propaganda under the guise of technical meetings or similar events should be avoided.

8. After the Director-General has dispatched the names and particulars of candidates to Member States in accordance with the third paragraph of Rule 51 of the Rules of Procedure, he/she will open on the web site of WHO a password-protected question and answer web forum open to all Member States and the candidates who request to participate in such a forum.

9. After the Director-General has dispatched the names and particulars of candidates to Member States in accordance with the third paragraph of Rule 51 of the Rules of Procedure, the Regional Office will post on its web site information on all candidates who so request including their curricula vitae and other particulars of their qualification and experience as received from Member States, as well as their contact information. The web site will also provide links to individual web sites of candidates upon request. Each candidate is responsible for setting up and financing his/her own web site. The Regional Office will also post on its web site, at the time referred to in the first paragraph of Rule 51 of the Rules of Procedure of the Regional Committee, information on the nomination process and the applicable rules and decisions.

Annex 1

III. Funding

1. In order to improve the equitable and fair nature of the nomination process, a fund to facilitate campaign by candidates from least-developed countries shall be established as a Trust Fund under the Financial Regulations and Rules of WHO.

2. The Fund could be financed by:

Option A: voluntary assessed contributions from Member States based on the scale of assessment adopted by the Health Assembly;

Option B: voluntary contributions by Member States

Option C: voluntary contributions by Member States that are upper-middle-income or high-income countries.

3. The Regional Committee will adopt criteria concerning the eligibility for financial support, and may fix a ceiling for each candidate financed from the Fund depending on the availability of resources. The Director-General will authorize disbursements from the Fund in accordance with the criteria and process approved by the Regional Committee.

4. Eligible candidates may request support from the Fund for the purpose of presenting their vision and programmes and promote their candidature through travel, promotional publications or other activities that should conform to the principles and provisions of this Code.

5. Candidates who benefit from the fund shall report to the Director-General on how they have used the funds received. Such information will be publicized by appropriate means and will be reported to the Regional Committee as part of the financial report.

IV. Nomination

1. The nomination of the Regional Director is conducted in private meetings of the Regional Committee in accordance with Rule 51 of the Rules of Procedure. Attendance at the private meetings is prescribed by the Director-General and limited to essential Secretariat staff besides Member States. As a matter of principle in order to preserve the serenity of the proceedings, candidates should not attend those meetings even if they form part of the delegation of their country. The votes in the private meeting are conducted by secret ballot. The results of the ballots should not be disclosed by Member States.

2. Member States should abide strictly by the Rules of Procedure and other applicable resolutions and respect the integrity, legitimacy and dignity of the proceedings. As such, they should avoid behaviours and actions, both inside and outside the conference room where the nomination takes place, that could be perceived as aiming at influencing its outcome.

3. Member States should respect the confidentiality of the proceedings and the secrecy of the votes. In particular, they should refrain from communicating or broadcasting the proceedings during the private meetings through electronic devices.
4. In view of the secret nature of the vote for the nomination of the Regional Director, Member States should refrain from publicly announcing in advance their intention to vote for a particular candidate.

V. Internal candidates

1. WHO staff members, including the incumbent Regional Director, who are proposed for the post of Regional Director are subject to the obligations contained in the WHO Staff Regulations and Rules as well as to the guidance which may be issued from time to time by the Director-General.
2. WHO staff members who are proposed for the post of Regional Director must observe the highest standard of ethical conduct and strive to avoid any appearance of impropriety. WHO staff members must 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.
3. WHO staff members are subject to the authority of the Regional Director and 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.
4. The Regional Committee may suggest that Director-General consider applying Staff Rule 650 concerning special leave with or without pay to staff members who have been proposed for the post of Regional Director.

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Annex 1

Standard Form for the Proposal of Names of Persons for Nomination of the Regional Director of the Western Pacific Region of the World Health Organization

1. Please provide details of the qualifications and characteristics of the person proposed by your Government with regard to the criteria contained in Resolution WPR/RC50.R8, para. 2:

a) a strong technical and public health background and extensive experience in international health

b) competency in organizational management

c) evidence of public health leadership

d) sensitivity to cultural, social and political differences

e) a strong commitment to the work of WHO
