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# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Hundred and Sixth Session

Rome, 12-14 March 2018

### Procedures related to the process of appointment of the Director-General

#### I. Introduction

1. This matter is placed on the agenda of the Committee on Constitutional and Legal Matters under Rule XXXIV, paragraph 7 of the General Rules of the Organization (GRO).
2. The procedures for the appointment of the Director-General have been discussed in FAO on a number of past occasions<sup>1</sup>. The current election procedures were established by the Conference in 1967 and have since operated effectively. The Director-General is elected by the Conference, through a secret ballot, by a majority of votes cast. Where there are several candidates, the GRO provide for a system of gradual elimination of candidates having the smallest number of votes. It is considered that the balloting procedures are fully satisfactory and effective and reflect best practice within the United Nations System.
3. The Conference has also established a number of procedures regarding the nominations period, the related time-frame, as well as for the hearing of candidates. The time-frame applicable to the overall process of appointment was last adjusted by the Conference in 2013.
4. In 2009, in the context of the implementation of the Immediate Plan of Action for FAO Renewal, the Conference approved a term limit, through an amendment to Article VII, paragraph 1, of the Constitution, so that the Director-General may only serve for two four-year terms. Furthermore, in 2013, drawing upon the experience acquired in the Organization, the Conference also adopted a number of procedures designed to facilitate the transition between an outgoing and an incoming Director-General<sup>2</sup>.

<sup>1</sup> For a general overview of the matter see documents CCLM/84/2 and CCLM 85/2, Appointment and term of office of the Director-General (84<sup>th</sup> and 85<sup>th</sup> Session of the CCLM, 2-4 February 2009 and 23-24 February 2009).

<sup>2</sup> GRO XL, paragraph 2 and GRO XXXVII, paragraph 6.

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5. In anticipation of the elections for a Director-General due to take place in 2019, it is desirable to clarify a number of issues. Some of these issues, with particular reference to the question of the status of internal candidates, received considerable attention in 2008 and 2009 but, at that time<sup>3</sup>, the Membership eventually concluded that there was no need to formally address them. There was, at the time, some uncertainty as to the rules that could be proposed. Subsequently, some practice both within FAO and in a few other organizations, which have examined the procedures for the appointment of their chief executives, seems to confirm the desirability of concretely addressing these issues. Of primary relevance in this regard are the issues of the status of internal candidates during the electoral process, the status of unsuccessful internal candidates, and the question of compliance by staff with obligations of neutrality in connection with the electoral process.

## II. Status of internal candidates nominated for the office of Director-General

6. It is proposed that any internal candidates nominated for the office of Director-General be placed on special leave from the date of circulation of the nominations by the Secretary-General of the Conference and the Council in accordance with Rule XXXVII, paragraph 1(b) of the GRO [i.e. the date of publication of the list of candidates]. This reflects the current practice in a number of organizations – as described below – and is considered appropriate. In some cases, specific rules or decisions of Governing Bodies of other organizations called for this solution.

7. In 2006, following the death of the incumbent Director-General, the Executive Board of World Health Organization (WHO) launched an accelerated process for the election of the Director-General which resulted in the election of Dr Chen, an internal candidate. As foreseen in a decision of the Executive Board, internal candidates were placed on special leave from the end of the nomination period<sup>4</sup>. With respect to the elections to be held in 2017, in January 2016, the WHO Director-General informed the Executive Board of her intention to request internal candidates to exhaust their annual leave entitlements, beginning on the date of publication of the list of candidates, before placing them on special leave with half pay until the end of the 140<sup>th</sup> Session of the Executive Board in January 2017, at which the nominations for candidates to be considered for election by the World Health Assembly would be made<sup>5</sup>. Internal candidates nominated by the Executive Board were placed on special leave with full pay until the election of one of the candidates by the World Health Assembly.

8. In the International Fund for Agricultural Development (IFAD), internal candidates who took part in the latest processes for the elections for office of President held in 2017 were placed on special leave without pay from the date on which nominations were communicated to all Member States. In the FAO, in 2011, the internal candidate nominated for the office of Director-General, Mr Jose Graziano da Silva, was placed on special leave without pay from the date of circulation of nominations.

9. Taking into account the above, placement of internal candidates on special leave during the electoral process appears to reflect commonly accepted practice.

10. A related issue is whether internal candidates should be placed on special leave without pay, special leave with pay, or special leave with half pay. As can be seen from the above, latest practice is not uniform. The Organization notes that, in the latest IFAD electoral process, references were made

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<sup>3</sup> See document CCLM/84/2, Appointment and term of office of the Director-General, 84<sup>th</sup> Session of the CCLM, 2-4 February 2009, paragraphs 22 to 29.

<sup>4</sup> And, subsequently, in accordance with this procedure, Dr Chen was placed on special leave starting from the end of the nominations period.

<sup>5</sup> The current election procedure at WHO involves a nomination of three candidates by the Executive Board and the election of one of these candidates by the World Health Assembly.

to the fact that no resources of the Organization should be expended for electoral purposes<sup>6</sup>. Similar principles are applied at ILO<sup>7</sup>. In this spirit, the Organization could consider establishing that special leave should be without pay.

**11. In conclusion, it is proposed that any internal candidates running for the office of Director-General be placed on special leave without pay from the date of circulation of the nominations by the Secretary-General of the Conference and the Council in accordance with Rule XXXVII, paragraph 1(b) of the GRO [i.e. the date of publication of the list of candidates].**

### **III. Requirement that unsuccessful internal candidates resign from the Organization**

12. While this was not set out in any Rule, there has been a general practice in FAO that unsuccessful internal candidates for the position of Director-General resign from the Organization. There are also a number of precedents for this, in a few other organizations.

13. In order to ensure clarity, and bearing in mind that those concerned would normally be amongst the senior staff of the Organization, it may be appropriate to confirm the discretion of the new Director-General to choose his/her senior staff and to decide whether an unsuccessful internal candidate should remain in the Secretariat<sup>8</sup>.

**14. It is proposed, therefore, that an internal candidate for the office of Director-General should submit an advance letter of resignation to the new Director-General. The resignation would become effective, if the candidate is not elected, when the new Director-General takes office.**

### **IV. Obligation of neutrality and impartiality of staff members in connection with the electoral process**

15. It has been the practice in FAO, as well as in other organizations of the United Nations System, that in anticipation of elections for executive heads staff members are strictly reminded of their obligations of neutrality and impartiality, consistent with the Standards of Conduct for the International Civil Service. This is, in fact, done as a routine exercise. The electoral process is of an intergovernmental nature and individual staff members have no role to play in that process, except where specific staff members have official functions to perform in the context of the implementation of the applicable procedures.

16. It is proposed that the Organization, in line with past practice, issue appropriate instructions to the staff reminding them of their duties. While this could be done by the Secretariat, on its own initiative, as was the case in the past, it is suggested that the CCLM should underline the importance of

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<sup>6</sup> IFAD Information Note IN/OPV/01, 4 September 2016. Appointment of the next President. See also 'Report of the Governing Council Bureau on the Review of the Established Practice for the Process Leading to the Appointment of the President of IFAD', paragraphs 23-25).

<sup>7</sup> Rules governing the appointment of the Director-General of the ILO - Annex III to the Compendium of rules applicable to the Governing Body of the International Labour Office adopted by the Governing Body at its 240th Session (May-June 1988) and amended at its 312th Session (November 2011). "9. (...) *Appropriate measures shall also be taken by the Director-General to prohibit the use of ILO resources for the purposes of campaigning for, or supporting, any candidate and to regulate the conduct of ILO staff presenting as candidates for the appointment as Director-General*"

<sup>8</sup> The Bureau of the Governing Council of IFAD prepared a "Report of the Governing Council Bureau on the Review of the Established Practice for the Process Leading to the Appointment of the President of IFAD"<sup>8</sup>. The Bureau "recommended that an internal candidate should not be required to resign from the Fund if he/she has failed to win the Presidency"<sup>8</sup>. The underlying concept seems to have been that whether or not a candidate should resign should be a matter to be determined by the new President.

the matter and that the Council should invite the Director-General to require from the staff strict adherence to their obligations of neutrality and impartiality in connection with the electoral process. In this connection, the CCLM may wish to note that the above-mentioned report to the Governing Council of IFAD recommends that clear instructions be issued to the staff in connection with electoral campaigns<sup>9</sup>. It is anticipated that the IFAD Governing Council will endorse this recommendation. In a similar vein, the Governing Body of ILO decided that “*appropriate measures shall be taken by the Director-General to remind the staff of the Office of the rules and standards of conduct aimed at ensuring the Office’s neutrality with respect to the electoral process, as well as the sanctions that can be imposed on staff in the event these rules are not respected*”<sup>10</sup>.

## V. Suggested action by the Committee

17. The CCLM is invited to review this document and make such suggestions thereon as appropriate. The CCLM is, in particular, invited:

- a) to endorse the proposal that any internal candidates running for the office of Director-General be placed on special leave without pay from the date of circulation of the nominations by the Secretary-General of the Conference and the Council in accordance with Rule XXXVI, paragraph 1(b) of the GRO [i.e. the date of publication of the list of candidates];
- b) to endorse a proposal that any internal candidate running for the office of Director-General should submit an advance letter of resignation to the new Director-General; the resignation would become effective, if the candidate is not elected, when the new Director-General takes office.
- c) to confirm that staff members must adhere to the strict obligation of neutrality and impartiality as established in the Standards of Conduct for the International Civil Service during the election period.

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<sup>9</sup> Ibid, paragraphs 35-39.

<sup>10</sup> Ibid. Rules governing the appointment of the Director-General of the ILO - Annex III to the Compendium of rules applicable to the Governing Body of the International Labor Office adopted by the Governing Body at its 240th Session (May–June 1988) and amended at its 312th Session (November 2011), paragraph 9.