

February 2009



منظمة الأغذية
والزراعة
للأمم المتحدة

联合国
粮食及
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and
Agriculture
Organization
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the
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Organisation
des
Nations
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pour
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Продовольственная и
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организация
Объединенных
Наций

Organización
de las
Naciones
Unidas
para la
Agricultura
y la
Alimentación

COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Eighty-fifth Session

Rome, 23-24 February 2009

APPOINTMENT AND TERM OF OFFICE OF THE DIRECTOR-GENERAL

BACKGROUND

1. At its Eighty-fourth session, the Committee on Constitutional and Legal Matters (CCLM) reviewed the proposed procedures for the appointment of the Director-General as set out in a revised Rule XXXVI of the General Rules of the Organization (GRO). The CCLM considered that, subject to any changes as might be proposed to address any outstanding issues, revised Rule XXXVI was drafted in proper legal form and reflected the relevant actions of the Immediate Plan of Action (IPA actions 2.95 to 2.99).

2. The CCLM examined under document 84/2 the issue of whether the proposed amendments for the election of the Director-General allowed the Organization to address effectively an unexpected vacancy in the office of Director-General and made the following recommendations.

3. First, as regards the procedure to be followed in the event of an unexpected vacancy in the office of Director-General, the CCLM recommended that, building upon current Article VII, paragraph 3 of the Constitution, provision be made in revised Rule XXXVI, for the adoption by the Council of an *ad hoc* accelerated procedure and requested the secretariat to make a proposal in this regard to its next session. The CCLM noted that, in any case, Article VII, paragraph 3 of the Constitution would need to be amended to reflect the new term of office of the Director-General.

4. Second, and in connection with the issue of an unexpected vacancy in the office of Director-General, the CCLM noted that, under current Rule XXXVI, paragraph 2 of the

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GRO, the Deputy Director-General acts as Director-General in the case of a vacancy in the office of Director-General. The CCLM noted that in the future organizational structure of FAO there would be two Deputy Directors-General, and it would be necessary to define, either in the GRO or in a Conference resolution or decision, which Deputy Director-General would become acting Director-General, in the event of an unexpected vacancy in the office of Director-General.

5. The CCLM stressed that a Deputy Director-General acting as Director-General should exercise caretaker functions and functions of an interim nature and facilitate the overall process of election of a new Director-General. The CCLM requested the secretariat to make proposals to deal with the matter, following inter-agency consultation, as appropriate, and recommended that the matter be brought to the attention of the Conference Committee.

PROPOSED REVISED PROCEDURES

6. The Appendix to this document contains revised procedures in the light of the discussion held at the Eighty-fourth session of the CCLM. Changes to existing provisions are shown in track mode for the sake of clarity.

7. As explained in document CCLM 84/2, and on the basis of Article VII, paragraph 3 of the Constitution and Rule XXXVI of the GRO, if for reasons other than the expiry of the term of office, the office of Director-General is vacant or notice is received of a pending vacancy, there may be a need for the Council to meet to set a deadline for the nominations and a deadline for circulation of the nominations. There may also be a need for the Conference to hold a special session for the election of the Director-General. In accordance with the guidance provided by the CCLM, it is suggested that, should the office of Director-General become vacant prior to the expiry of the term of office, the Council be required to make promptly the required arrangements for the election of a new Director-General. However, the revised Rule would not indicate in detail the substance of these arrangements, as these would be a matter for the Council. Given the fact that there has been an extension in the duration of the process of election of the Director-General, it is proposed to extend from 90 days to 120 the minimum period of time between "*the occurrence or notice of the pending vacancy*" and the beginning of the special session at which the Director-General is to be elected.

8. At present the Deputy Director-General acts as Director-General in any case where the Director-General is unable to act or in the case of a vacancy in the office of Director-General. This provision is important for two reasons.

9. First, there have been situations where, for the performance of important acts of a legal nature, third parties enquired as to who is the legal representative of the Organization who acts on behalf of the Director-General. A general, objective clause such as the one set out currently in Rule XXXVI, paragraph 2 of the GRO is essential, irrespective of the issue of who would be acting Director-General.

10. Second, this Rule provides a convenient tool which allows for the "automatic designation" of an acting Director-General which ensures continuity in the event of an unexpected vacancy in the office of Director-General. Information received from the United Nations system confirms that there are no organizations with two deputy executive

heads. Consultation made has shown that in a situation where there would be two deputy executive heads a solution would be that the official with greater seniority in the position would replace the executive head¹. However, if both are appointed at the same time, it may be important to establish criteria to identify which deputy executive head would be acting as executive head. Overall seniority in the Organization could be one of such criteria, but situations could arise where two deputy executive heads, appointed at the same time, would have the same seniority with the Organization. In that case, consideration could be given to a criterion of age. This proposal is reflected in the revised procedures presented in the Appendix to this document.

11. The CCLM may wish to note the provisions in force at the International Fund for Agricultural Development (IFAD). The by-laws of IFAD provide that “*the President shall designate the staff member to exercise the authority and perform the functions of the President, should he become incapacitated or there arise a vacancy in his office. If he has failed to do so, the Executive Board shall designate a senior officer of the Fund to exercise this authority and perform the functions of the President temporarily, Any person exercising the authority and performing the functions of the President under this paragraph shall have the same powers and duties and the President, except those to appoint a Vice-President*”. A solution incorporating this wording, *mutatis mutandis*, could be contemplated in FAO, with the necessary adjustments to take account of Rule XXXIX, paragraph 1 of the GRO, whereby the appointment to the post of Deputy Director-General is made by the Director-General, subject to confirmation by the Council. The designation of the Deputy Director-General, who would act in the event that the Director-General should be unable to act, or in the event of a vacancy in the office of Director-General, could be made by the Director-General when referring the appointment(s) for confirmation to the Council.

12. The CCLM also referred to the fact that an acting Director-General should restrict his activities to caretaker functions. While this might reflect a practice followed occasionally in international organizations, and certainly in national systems, the secretariat is not aware of legal provisions on the matter. An addition has nevertheless been made to revised Rule XXXVI, paragraph 5 of the GRO, reflecting the proposals of the CCLM.

13. A few minor amendments to Rule XXXVI, paragraph 1 of the GRO were proposed to address some of the issues raised at the last session of the CCLM.

SUGGESTED ACTION BY THE COMMITTEE

14. The CCLM is invited to review the proposed procedures set out in the Appendix and in particular those regarding the treatment of an unexpected vacancy in the office of Director-General, including Article VII, paragraph 3 of the Constitution, and those regarding the acting Director-General.

¹ This solution would be consistent with a general recognition, expressed in a number of judgments of the Administrative Tribunal of the International Labour Organization that, in presence of two officials holding the same grade, the official with greater seniority may be called upon to exercise particular functions.

15. The CCLM may wish to seek guidance from the Conference Committee on the issues referred to in paragraphs 10, 11 and 12 of this document.

APPENDIX

Proposed amendments to Article VII, paragraphs 1 and 3 of the Constitution and to Rule XXXVI of the General Rules of the Organization

Article VII

The Director-General

1. There shall be a Director-General of the Organization who shall be appointed by the Conference for a term of ~~four~~ years. ~~The Director-General~~ shall be eligible for reappointment only once for a further term of four years.

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2. The appointment of the Director-General under this Article shall be made by such procedures and on such terms as the Conference may determine.

3. Should the office of Director-General become vacant prior to the expiry of his term of office, the Conference shall, either at the next regular session or at a special session convened in accordance with Article III, paragraph 6 of this Constitution, appoint a Director-General in accordance with the provisions of paragraphs 1 and 2 of this Article. However, the duration of the term of office of the Director-General appointed at a special session shall expire ~~after~~ the ~~second~~ regular session of the Conference following the date of ~~appointment~~, ~~in accordance with the sequence for the term of office of the Director-General established by the Conference~~.

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4. Subject to the general supervision of the Conference and the Council, the Director-General shall have full power and authority to direct the work of the Organization.

5. The Director-General or a representative designated by him shall participate, without the right to vote, in all meetings of the Conference and of the Council and shall formulate for consideration by the Conference and the Council proposals for appropriate action in regard to matters coming before them.

Rule XXXVI

Appointment of the Director-General

1. In pursuance of paragraph 1 of Article VII of the Constitution, the Director-General of the Organization shall be appointed under the following conditions:

(a) When the term of office of the Director-General is due to expire, the appointment of a new Director-General shall be placed on the agenda of the regular session of the Conference immediately preceding the expiry of the term of office; whenever, for other reasons, the office of the Director-General is vacant, or notice is received of a pending vacancy, the appointment of a new Director-General shall be

placed on the agenda of the next session of the Conference which opens not less than 120 days from the occurrence or notice of the pending vacancy.

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(b) In consideration of the expiry of the term of office of the Director-General, the Council shall set the dates for a period during which Member Nations may submit nominations for the office of Director-General. The nomination period shall have a duration of not less than twelve months and end at least 60 days prior to the beginning of the session of the Council referred to in sub-paragraph (c) of this paragraph. The nomination period shall be communication to all Member Nations and Associate Members by the Secretary-General of the Conference and Council. Nominations validly made in accordance with Rule XII.5 of these Rules shall be communicated to the Secretary-General of the Conference and Council by the date set by the Council. The Secretary-General shall circulate these nominations to all Member Nations and Associate Members by the date likewise set by the Council, it being understood that in the case of an election taking place at a regular session of the Conference, such date set by the Council shall be not later than 30 days before the session of the Council provided for in subparagraph (c) of this paragraph.

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(c) Subject to such arrangements as the Council may make consistent with these Rules aimed at ensuring equality among candidates, candidates shall address the session of the Council which will be scheduled not less than sixty days before the session of the Conference and respond to such questions as may be put to them by Member Nations and Associate Members of the Organization. There shall be no debate and the Council shall not draw any conclusion or recommendation from any of the statements or interventions made.

(d) As soon as possible after the opening of the Conference session, the General Committee shall determine and announce the date of the election, it being understood that the appointment of the Director-General at a regular session shall begin and be effected within three working days following the opening date of such session. Candidates shall address the Conference and respond to questions that Member Nations and Associate Members may put to them, subject to such arrangements as the Conference may make consistent with these Rules aimed at ensuring equality among candidates.

(e) Travel expenses of each candidate, properly incurred in travelling, by the most direct route from his/her duty station to the site of the Council and Conference sessions referred to in sub-paragraphs (c) and (d) of this paragraph and return to his/her duty station, as well as a subsistence allowance for up to five days per session, shall be borne by the Organization in accordance with its travel regulations.

2. The Director-General shall be elected by a majority of votes cast. Until a candidate obtains the required majority, the following procedure shall apply:

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- (a) two ballots shall be held among all candidates;
- (b) the candidate having received the smallest number of votes in the second ballot shall be eliminated; (c) thereafter, successive ballots shall be held, and the candidate having received the smallest number of votes

in any one of these ballots shall be eliminated, until only three candidates remain;

(d) two ballots shall be held among the three remaining candidates;

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(e) the candidate having received the smallest number of votes during the second ballot referred to in subparagraph (iv) above shall be eliminated;

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(f) a subsequent ballot, or successive ballots if necessary, shall be held among the two remaining candidates until one candidate obtains the required majority;

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(g) in the event of a tie between two or more candidates having received the smallest number of votes in one of the ballots referred to in subparagraphs (b) or (c) above, a separate ballot or, if necessary, separate ballots shall be held among such candidates, and the candidate having received the smallest number of votes in such ballot or ballots shall be eliminated;

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(h) in the event of a tie between two candidates having received the smallest number of votes in the second of the two ballots referred to in subparagraph (d) above, or if all three candidates have received the same number of votes in that ballot, successive ballots shall be held among all three candidates until one candidate has received the smallest number of votes, after which the procedure provided in subparagraph (f) above shall apply.

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3. Should the office of Director-General become vacant prior to the expiry of the term of office, the Council shall promptly make the necessary arrangements for the election of a new Director-General, subject to the provisions of sub-paragraph 1(a) of this Rule.

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4. Subject to the provisions of Article VII, paragraphs 1 to 3 of the Constitution, the terms and conditions of appointment of the Director-General, including the salary and other emoluments attached to the office, shall be determined by the Conference, having regard to any recommendations submitted by the General Committee, and shall be embodied in a contract signed by him and by the Chairman of the Conference on behalf of the Organization.

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5. The Deputy Director-General with greater seniority in the position shall act as Director-General in any case where the Director-General is unable to act or in the case of a vacancy in the office of the Director-General. In case the Deputy Directors-General were appointed at the same time, the functions shall be exercised by the Deputy Director-General with greater seniority with the Organization, or if both have the same seniority, by the Deputy Director-General who is older. In case of a vacancy in the office of Director-General, the acting Director-General shall carry out caretaker functions and facilitate the process of election of a new Director-General.

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