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ETHICS AND INVESTIGATIONS FUNCTIONS

Introduction

1. In response to recommendations of the Audit Committee of the Pan American Health Organization (PAHO), the Director examined the dual mandate of the PAHO Ethics Office. After extensive consideration, the Director concluded that the Organization's culture for ethics and integrity will be better served by creating an independent and separate investigations office, consistent with practices adopted by other United Nations Agencies, Funds, Programs, and Secretariat.

2. This change will require modifications to the Ethics Office's mission and mandate as well as adoption of a mission and mandate for the new Investigations Office. To implement this decision the Director will *a)* revise the Ethics Office's role, *b)* establish an independent Investigations Office, *c)* clarify reporting relationships for the heads of these two offices, *d)* safeguard independence, *e)* implement operational requirements for staffing and resources, and *f)* adopt new position descriptions including term limits, revision of certain existing policies, and setting deadlines for the transition.

Background and Context

3. In 2004, the External Auditor of PAHO, the National Audit Office of the United Kingdom of Great Britain and Northern Ireland, presented its Report to the 45th Directing Council.¹ This report contained a number of recommendations to improve governance and management in the Organization, including the following:

- a) ethical standards and codes of conduct,
- b) recruitment of employees and consultants,
- c) complaints procedures,
- d) management of external relationships, and
- e) information technology security.

¹ Financial Report of the Director and Report of the External Auditor 2002-2003: Special Report of the External Auditor into Anonymous Allegations, Document CD45/29.

4. PAHO's Ethics Office was created in late 2005 in response to these recommendations with its first Ethics Program Manager transferred into position in 2006. The functions assigned to the Office included: *a)* advice, counsel, and guidance on ethical matters; *b)* education, communications, and training; and *c)* enforcement and investigation.² The Directing Council emphasized the importance of independence and impartiality in the discharge of the new Ethics Officer's duties in considering the reporting relationship of the Ethics Program Manager.

5. At that time, the Organization outlined a number of functions for the Ethics Office, including: *a)* adoption and dissemination of a new Code of Ethical Principles and Conduct focusing both on ethical values and compliance; *b)* annual confirmation by all staff that they are in compliance with the Code; *c)* regular declarations of outside interests and activities by staff in sensitive posts (e.g., senior management, procurement, and human resources); *d)* clear and transparent procedures for investigating alleged breaches of the Code or failure to declare conflicts of interest; *e)* creation of a confidential hotline for staff to use to report concerns, supervised by an independent third party able to report to the Directing Council; and *f)* protocol for determining which complaints require investigation, inclusive of intake and evaluation, preliminary inquiry, and detailed investigation steps.³

6. Resolution CD46.R2 (2005) of the 46th Directing Council requested that the Director "complete the implementation of the recommendations of the Special Report of the External Auditor, particularly those focusing on complaints management systems and human resources."⁴

7. From its inception, the Ethics Office assumed responsibility for two parallel work streams. One is reactive in orientation by examining allegations of individual misconduct, conducting fact finding, and reporting conclusions to Management for the imposition of discipline. The other is preventive by intervening to forestall ethical lapses from occurring through outreach, training, policy recommendations, and advisory services.

Audit Committee Recommendations and Management's Response

8. In 2016, the Audit Committee found that this combination of duties and functions could give rise to the reality or appearance of conflicts of interest, and recommended that the investigation function be assigned elsewhere, stating the following (Document CE158/9 [2016]):

19. "For some time, the Committee has been concerned that the dual role of the Ethics Office—to provide policy advice, training, and guidance on ethical issues and protect whistleblowers from harassment on the one hand and to conduct

² Progress Report on the Implementation of the Recommendations of the External Auditor's Special Report, September 2004, CD46/28, 30 August 2005, 46th Directing Council, PAHO.

³ See above, Annex 1, Progress Matrix.

⁴ Process of Institutional Strengthening of the Pan American Sanitary Bureau, Resolution CD46.R2, 46th Directing Council.

impartial investigations into allegation of misconduct on the other—may give rise to, or may be perceived as, a conflict of interests. The Committee had hoped that in general there would be more awareness of the requirements to be impartial and to risks of conflicts of interest in the investigation and integrity processes. It had hoped that after several discussions these issues would have by now been mostly avoided by a full adoption of the United Nations Secretariat model where investigations are not part of the Ethics Office (they are the responsibility of the Office for Internal Oversight Services) as this was the best practice to follow. In addition, the Committee again advised that a peer review of the existing arrangements for ethics, the integrity and conflict management system, and investigation be carried out and that it be completed before the Committee’s next meeting in October 2016.”

20. The Committee expressed misgivings about the relatively small amount of time being spent on ethics-related areas and hoped that once ethics and investigations were separated, this would improve.

Recommendation 6: That there be a peer review of the ethics and integrity and conflict management system to make recommendations for improvement to the system and ensure that there were no conflicts of interest or conflicting functions within the system.

Recommendation 7: That the functions of ethics and investigation be separated and report to different organizational offices, fully following the UN Secretariat model.

9. In response, the Director commissioned an “Independent Study of the Dual Mandates of the PAHO Ethics Office.”⁵ That study noted that the current focus of the PAHO Ethics Office was on individual workplace behavior that arises out of the employer-employee social contract, rather than on institutional behavior that creates risk. The PAHO Ethics Office predominantly focuses on resolution of workplace and interpersonal grievances among PAHO employees. Through its concentration and prioritization of misconduct investigations, the Ethics Office enables Management’s enforcement mechanisms for the Organization’s rules and policies.

10. The Independent Study found that these dual functions lead to role conflicts that can serve as barriers for staff to come forward and request confidential ethics advice. This unintentional chilling effect can be manifest in the nature and frequency of staff interactions with the Ethics Office, as well as the disproportionate attention that is allocated to investigations. The combination of these two functions in one office may allow prejudgment to impact the objectivity of investigations.

11. The dual nature of the PAHO Ethics Office incorporates both compliance and enforcement, as demonstrated by its prominent role in conducting internal investigations into complaints of employee misconduct; and organizational values and individual

⁵ Independent Review of the Roles and Mandates of the Ethics Office of the Pan American Health Organization, dated 5 December 2016, by Joan Elise Dubinsky, QED Consulting (New York).

behavior, as evidenced by its roles in providing confidential ethics advice and guidance, outreach, and training.

Status and Structure: Comparisons with other International Organizations

12. While all ethics offices in international organizations provide confidential ethics advice, it is becoming less common for these offices to also conduct investigations. Among the nearly 30 UN System-wide Agencies, only the International Civil Aviation Organization (ICAO) and PAHO Ethics Offices conduct internal investigations into allegations of employee misconduct. The vast majority of ethics offices in the UN System do not engage at present—or never have engaged—in misconduct investigations. Their focus is on ethical outreach, awareness-building, confidential advisory services, risk prevention, organizational culture, and ethical-decision-making.⁶

13. Within the UN System, ethics offices generally follow the model of the UN Secretariat and provide five core services: *a)* confidential ethics advice; *b)* ethics outreach, training, and communication; *c)* detection and management of personal conflicts of interest, typically through annual financial disclosure or other declarations; *d)* protection against retaliation for whistleblowers; and *e)* consultation on policies.

14. Most heads of ethics offices in international organizations report to the executive director of their respective agencies. This ensures access to management and inclusion as a member of senior leadership. By way of contrast, the PAHO Ethics Program Manager reports to PAHO governance through its Executive Committee, with an administrative reporting line to the Deputy Director.⁷ The Ethics Program Manager delivers the Annual Reports to the PAHO Executive Committee and meets, upon invitation, with the Audit Committee. Though promoting independence is cited in support of this reporting relationship, the practical impact has been to limit the Ethics Office's contributions to advancing PAHO's public health mission and strategic goals.

15. The majority of ethics officers have term limits, ranging between 4 and 7 years. Some agencies require that their outgoing ethics officers leave their institutions; others permit post-assignment job rotation into other functional areas. Term limits support the independence of the ethics function by protecting the incumbent from undue influence while avoiding the risks inherent in long-term tenure.⁸ PAHO's Ethics Program Manager position carries no term limits.

⁶ Several ethics offices within international financial institutions conduct internal investigations, as part of their financial compliance responsibilities. However, within the last 18 months both the International Monetary Fund and the African Development Bank have removed responsibility for internal investigations from their Ethics Offices.

⁷ The operative language in CD46/28 is as follows: "He/she shall have an administrative reporting relationship with the Director of PASB and report to PAHO's Executive Committee annually."

⁸ See Report of the Joint Inspection Unit on "Ethics in the UN System," JIU/REP/2010/3, Recommendation 6 which states: "The legislative bodies should direct their respective executive heads to apply term limits to the appointment of the head of the ethics office, which should be a nonrenewable appointment of seven years, or no more than two consecutive appointments of four or five years, with no

Separating Ethics Advisory Services from Internal Investigations

16. Transferring responsibility for all investigations, complaints, and reports of suspected misconduct from the Ethics Office to a new Investigations Office will effectively separate compliance and enforcement from promotion of ethical awareness and providing confidential ethics advice.

17. The Ethics Office will continue to participate in the Integrity and Conflict Management System in discharge of its role in ethical and reputational risk assessment as well as in risk management, but without responsibility for fact finding in connection with specific allegations of misconduct. This will necessitate the transfer of the Hotline for reporting of alleged misconduct to the new Investigations Office, and the creation of an Ethics Helpline to facilitate requests for confidential ethics advice.

Creating an Independent Investigations Office

18. The mission of the new Investigations Office would be to conduct internal investigations into allegations of inappropriate conduct that could negatively impact the organizational integrity of PAHO or its stakeholders. The PAHO Investigations Office shall be the sole office designated to investigate reports of alleged wrongdoing.

19. The operational mandates of the Investigations Office shall be to examine and determine the veracity of allegations of *a)* unethical behavior on the part of the Organization's personnel, *b)* misconduct on the part of its staff members, and *c)* corruption or fraud with respect to, but not limited to, projects financed by PAHO. The Investigations Office shall maintain objectivity, impartiality, professionalism, and fairness throughout the fact-finding process and conduct its activities with the highest levels of integrity. The Investigations Office shall adopt transparent procedures for *a)* the intake and evaluation of complaints and allegations; *b)* the conduct of preliminary inquiries; *c)* the conduct of detailed investigations; and *d)* the reporting of the findings and conclusions to Management. In particular, the Investigations Office shall perform its duties independently from those responsible for or involved in operational activities and from staff members who may be the subjects of investigations. The Investigations Office and its staff shall be free from improper influence or fear of retaliation.

Refreshing the Mission and Mandate of the PAHO Ethics Office

20. The restated mission of the PAHO Ethics Office shall be to serve as a champion for the Organization's core ethical values, assess ethical risks, and create and maintain an organizational culture that prioritizes ethical decision-making. The Ethics Office shall focus on ethical risk prevention and mitigation by responding to individual and institutional requests for confidential ethics advice, examining and consulting on systemic ethical issues, and engaging in comprehensive outreach, communication, education, and training in ethics. The PAHO Ethics Office shall emphasize the

possibility of re-employment by the same organization.”

importance of fostering a culture of ethics and integrity by ensuring that all staff members and personnel perform their functions consistently with the highest standards required of international civil servants. The Ethics Office shall help ensure that PAHO, as an organization, exhibits the highest of ethical standards in its governance, operations, and the initiatives which it finances. In fostering a positive and ethical culture, PAHO must hold both itself and its personnel to the highest standards of behavior.

21. The operational mandates assigned to the PAHO Ethics Office shall include: *a)* providing confidential ethics advice; *b)* conducting ethical and reputational risk assessments; *c)* promoting ethical decision-making and values-based leadership; *d)* providing annual ethics training, education, outreach and communication responsive to the Organization's ethical risk profile; *e)* administering an annual financial and personal conflicts of interest disclosure system; *f)* promoting whistleblowing and protecting staff from retaliation; *g)* sustaining and maintaining an ethical organizational culture; and *h)* consulting on policies. The Ethics Office and its staff shall be free from improper influence or fear of retaliation.

Safeguarding Independence

22. To maintain structural independence of both the Investigations and Ethics Offices, these offices shall submit comprehensive annual reports to the Executive Committee which may include recommendations for consideration by Management and Management's responses thereto. To provide oversight and promote accountability, the heads of both the Investigations and Ethics Offices shall report directly to the Director of PAHO. Each head of office will serve a seven-year, nonrenewable term of office, to commence no later than 1 January 2019. At the conclusion of the nonrenewable term, the incumbent shall be ineligible for continued employment with PAHO. The heads of both offices will have the possibility of meeting with the Audit and Executive Committees in executive session, should the need arise for confidential exchange about management behavior. Should the Director conclude that it is necessary to terminate employment before completion of such contract terms, he/she shall consult with the Executive Committee in advance of making such a decision.

Proposed Decision by the Director

23. Noting the paramount importance of creating and sustaining an organizational culture based on ethics and integrity, the Director concluded that the internal misconduct investigations function should be transferred to an independent office.

Action by the Executive Committee

24. The Executive Committee is requested to take note of this report and the decisions of the Director and provide any comment it deems necessary.

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