



## **External Quality Assessment 2020**

### **WIPO Investigation Function**

**Conducted by:**

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**Geneva, Switzerland**

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## 1. EXECUTIVE SUMMARY

1. As requested by Mr. Rajesh Singh, Director of the Internal Oversight Division (IOD) at the World Intellectual Property Organization (WIPO), Ms. Coralie Colson (Senior Investigator, International Organization for Migration), Mr. Benoit de Schoutheete (Head of the Office of Internal Oversight, World Trade Organization) and Ms. Nathalie Iniguez (Investigator, World Trade Organization)<sup>1</sup>, altogether referred to as "the Reviewers", conducted an External Quality Assessment ("EQA" or "the Assignment") of IOD's Investigation function.
2. The principal objectives of the EQA were to evaluate the Investigation function's effectiveness in carrying out its mission, by:
  - (a) Assessing the conformity of IOD's Investigation function to the standards set forth in the Uniform Guidelines for Investigations endorsed by the Conference of International Investigators (CII) in June 2009, the WIPO Internal Oversight Charter and the WIPO Investigation Policy (altogether referred to as "the Standards"); and
  - (b) Identifying opportunities to enhance the Investigation function's resource management, work processes and overall value to WIPO.
3. The Reviewers found that IOD's Investigation function is overall effective, generally able to carry out its mandate independently and composed of committed professionals conducting good quality work.
4. After having interviewed key persons and conducted a detailed review of IOD's investigation activities in 2015-2020<sup>2</sup>, the Reviewers concluded that IOD's Investigation function generally conforms with the Standards.
5. Nonetheless, the Reviewers propose the following recommendations aiming at further improving IOD's capacity to fully accomplish its investigative mandate and comply with recognized international standards and good practices.
  - **Recommendation 1:** The Investigation function should strive to implement recommendations 1, 6, 7 and 13 of the 2015 EQA Report that are still pending to be completed.
  - **Recommendation 2:** WIPO should implement Recommendation 3 of the Joint Inspection Unit's 2020 Report (JIU, Report JIU/REP2020/1). All allegations of misconduct should be reported to IOD, save for allegations falling under the mandate of the Ethics Office. In particular, in order to avoid any actual or perceived conflict of interest, HRMD should not be responsible for receiving and assessing allegations of misconduct.
  - **Recommendation 3:** In order to reduce the number of "self-generated" cases (and in particular those alleging misconduct by IOD staff) and to avoid unnecessary delays in ongoing investigation cases, IOD should, whenever possible, refrain from treating complaints arising from ongoing investigations until such investigations have been closed. To formalize this approach, IOD may consider amending the Investigation Policy.
  - **Recommendation 4:** IOD should establish an Intake Officer role responsible for the recording and processing of the intake of allegations of misconduct or wrongdoing reported to the IOD.
  - **Recommendation 5:** IOD should include in its quarterly reports to the Independent Advisory Oversight Committee (IAOC) a table providing (1) the total time elapsed between the opening of investigation cases and their closure, and (2) the total time

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<sup>1</sup> The Reviewers are listed in alphabetical order (by family name).

<sup>2</sup> From October 1, 2015 to September 30, 2020.

spent by IOD on each investigation (excluding time while awaiting information from outside sources).

- **Recommendation 6:** To align with practices followed in other International Organizations, IOD should consider amending the Investigation Manual to allow preliminary evaluations to be completed in more than 30 calendar days.
- **Recommendation 7:** All persons (including staff members) called to participate in a duly authorized investigation should be required to sign, in advance of their participation, an oath of confidentiality.
- **Recommendation 8:** IOD should formalize the procedure for seeking legal advice from outside IOD.
- **Recommendation 9:** The Investigation function should explore possibilities for conducting forensic analysis of corporate WIPO mobile telephones and establish related procedures as appropriate.
- **Recommendation 10:** The Investigation function should conduct a quality self-assessment on an annual basis. For this purpose, it may consider using, as a reference, the template included in Annex 4 of this report.
- **Recommendation 11:** The Investigation function should consider migrating all the intake and investigation cases from the old Case Management System (CMS) to the new CMS.
- **Recommendation 12:** WIPO should explore ways to ensure that investigation reports originating from a *prima facie* determination made by the Ethics Office of the United Nations Office for Project Services (UNOPS) are submitted to the competent authority (other than the WIPO Ethics Office) for final determination.
- **Recommendation 13:** Principles and procedures to review decisions and determinations made by the Director, IOD as part of his/her mandate should be reviewed for consistency and aligned with the jurisprudence of the International Labour Organization Administrative Tribunal (ILOAT), according to which the decision made by IOD not to open an investigation should be subject to a form of internal review.
- **Recommendation 14:** WIPO should implement Recommendation 8 made by the JIU in its Report JIU/REP/2015/4. Multilanguage channels should be developed and established to allow for anonymous reports of misconduct/wrongdoing.
- **Recommendation 15:** IOD should consider developing Standard Operating Procedures (SOPs) for handling allegations of Sexual Exploitation and Abuse (SEA), keeping in mind that such SOPs should be victim-centered.

## 2. OPINION AS TO CONFORMANCE WITH THE STANDARDS

6. It is the Reviewers' overall opinion that **IOD's Investigation function generally conforms with the standards** set forth in the Uniform Guidelines for Investigations endorsed by the Conference of International Investigators (CII) in June 2009 (the "Uniform Guidelines for Investigations")<sup>3</sup>, the WIPO Internal Oversight Charter<sup>4</sup> and the WIPO Investigation Policy<sup>5</sup> (altogether referred to as "the Standards").
7. "Generally conforms" means that IOD's Investigation function has a charter, policies, practices and processes that are judged to be in conformance with the Standards. For the investigation activity overall, there may be opportunities for improvement, but these should not represent situations where the Investigation function has not implemented the Standards, has not applied them effectively, or has not achieved their stated objectives. The Investigation function fully achieves conformance with most, but not all, of the individual standards. For individual standards, the Investigation function conforms to the requirements of the concerned standard/provision in all material respects.
8. A detailed list of conformity with individual standards is provided in Annex 4. For those standards for which the Investigation function does not fully achieve conformance, the Reviewers identified opportunities for further improvement, which are detailed in Section 6 of this report.

## 3. OBJECTIVES, SCOPE AND METHODOLOGY OF THE ASSIGNMENT

### 3.1 Objectives

9. As stated in the Terms of Reference of the Assignment (ToRs)<sup>6</sup>, the main objectives of the EQA were the following:
  - (a) Assess the Investigation function's conformity to the Standards; and
  - (b) Identify opportunities to enhance the Investigation function's resource management, work processes and overall value to WIPO. This could be done through benchmarking the WIPO Investigation function to similar United Nations (UN) and/or international organizations to the extent possible.

### 3.2 Scope

10. Under the initial ToRs, the Assignment covered IOD's investigative activities for the period from January 1, 2019 through September 30, 2020. However, the Reviewers observed that paragraph 28 of the Internal Oversight Charter requires that "independent external assessments shall be conducted at least once every five (5) years" and noted that the last EQA, which was completed in October 2015 (referred to as the "2015 EQA"),<sup>7</sup> covered the period from January 21, 2014 to June 30, 2015.<sup>8</sup>

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<sup>3</sup> [http://www.wipo.int/export/sites/www/about-wipo/en/oversight/iaod/investigations/pdf/uniform\\_guidelines.pdf](http://www.wipo.int/export/sites/www/about-wipo/en/oversight/iaod/investigations/pdf/uniform_guidelines.pdf).

<sup>4</sup> Annex I of the WIPO Financial Regulations and Rules, [https://www.wipo.int/export/sites/www/about-wipo/en/pdf/wipo\\_financial\\_regulations.pdf#page=36](https://www.wipo.int/export/sites/www/about-wipo/en/pdf/wipo_financial_regulations.pdf#page=36).

<sup>5</sup> [https://www.wipo.int/export/sites/www/about-wipo/en/oversight/iaod/investigations/pdf/investigation\\_policy.pdf](https://www.wipo.int/export/sites/www/about-wipo/en/oversight/iaod/investigations/pdf/investigation_policy.pdf)

<sup>6</sup> See Annex 3 – *Terms of Reference (ToRs): External Quality Assessment of the Investigation function (2020)*.

<sup>7</sup> External Quality Review, WIPO Investigation Function, Report, 19-23 October 2015.

<sup>8</sup> See the Terms of Reference of the 2015 EQA, Annex 1.

11. Accordingly (and after having consulted IOD's Investigation function), the Reviewers decided to extend the period included in the scope of the Assignment, to cover the period from October 1, 2015 to September 30, 2020.

### 3.3 Reviewers

12. The Assignment was conducted by:<sup>9</sup>

- (a) **Ms. Coralie Colson**, Senior Investigator at the International Organization for Migration (IOM). She has over 17 years of experience in investigations and ethics. Prior to joining IOM, Ms. Colson was a Senior Investigator for the UN High Commission for Refugees (UNHCR) and the World Bank Group, a Compliance Officer for a French oil company, and an Investigator and Legal Officer for the UN International Criminal Tribunals for the former Yugoslavia and Rwanda. Ms. Colson is a Certified Fraud Examiner and an attorney admitted to the New York Bar. She holds an LL.M from New York University and a Master's degree from the University of Paris-II Assas. She is also a Reserve Officer in the French Army.
- (b) **Mr. Benoit de Schoutheete**, Head of the Office of Internal Oversight at the World Trade Organization (WTO). His Office oversees Internal Audits, Evaluations, Inspections and Investigations. He has nearly 20 years of senior-level experience in internal oversight (internal audit, investigations, evaluations, risk management and ethics), in private sector companies and international Organizations (World Food Programme (WFP), International Telecommunication Union (ITU), UNHCR and WTO). He has a Master's degree in Business Administration, is a certified internal auditor and has an accreditation in Quality Assessment.
- (c) **Ms. Nathalie Iniguez**, Investigator at the WTO. Ms. Iniguez has over 10 years of legal, ethics and investigations-related experience, notably in the field of International Administrative Law. Prior to joining the WTO, she worked as an Associate Attorney in a Geneva-based Swiss law firm, in charge of conducting investigations and providing legal advice to several clients (including International Organizations). She was also a Case Manager in WIPO's Arbitration and Mediation Center from 2014-2016 and before that held various legal functions for different private-sector companies. Ms. Iniguez has a law degree and a Master of Arts in literature. She is admitted to practice law in New York and Massachusetts.

### 3.4 Methodology

13. The Assignment was undertaken in accordance with the General Principles for Reviews of CII Investigation Offices conducted by external experts, adopted by the CII in October 2014.<sup>10</sup>
14. The Reviewers initiated the Assignment in October 2020 with a desk review of the Standards as well as of relevant policies and background information.
15. The Reviewers prepared a detailed Register of Standards<sup>11</sup> in order to assess the Investigation function's compliance with each of the standards contained in the Uniform Guidelines for Investigations, the Internal Oversight Charter and the Investigation Policy.

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<sup>9</sup> Listed in alphabetical order, by family name.

<sup>10</sup> See Annex 5 – General Principles for Reviews of CII Investigation Offices conducted by external experts.

<sup>11</sup> See Annex 4 – External Quality Assessment Evaluation Matrix.

16. The Reviewers spent six (6) days (October 9-16, 2020) conducting interviews<sup>12</sup> of the following persons:<sup>13,14</sup>
- (a) Mr. Mukesh Arya, Chair, Independent Advisory Oversight Committee (IAOC);
  - (b) Ms. Anne Coutin, Head, Policy and Law Section, Human Resources Management Department (HRMD);
  - (c) Mr. Marc Flegenheimer, Ombudsperson;
  - (d) Mr. Mike (Hyung Tae) Kim, Senior Investigator, IOD Investigations Section;
  - (e) Ms. Ariendina Koppe, Head, Administrative Law Section, Office of the Legal Counsel (OLC);
  - (f) Ms. Chitra Radhakishun, Chief Ethics Officer;
  - (g) Mr. Patrice Sam, Head, IOD Investigation Section;
  - (h) Ms. Lise Schwob-Bolliet, Administrative Assistant, IOD Investigations Section; and
  - (i) Mr. Rajesh Singh, Director, IOD.
17. In order to protect the confidentiality of the discussions, the minutes of the interview meetings have not been attached to this report.
18. The Reviewers also examined the Investigation function's Case Management System (CMS)<sup>15</sup>, Standard Operating Procedures (SOPs), templates, reports (including quarterly and annual reports from IOD to the IAOC), investigations methodology and security arrangements.
19. Furthermore, the Reviewers selected a sample test of 21 out of the 138 cases treated by IOD since January 2016<sup>16</sup> (representing approximately 15% of the total number of cases), which are available in the current CMS and fall within the time period included in the scope of the Assignment.<sup>17</sup> The sample test included nine (9) investigations and 12 preliminary evaluations, conducted both by IOD staff and consultants.
20. Based on the judgment of the Reviewers, the sample test was selected both randomly, by choosing cases covering different types of allegations and levels of complexity, and upon discussion with the Head, IOD Investigation Section. The results of the sample test are described in Section 3.5 below.

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<sup>12</sup> Due to the current sanitary situation and the ban on external persons' access to WIPO premises, the interviews were conducted remotely through Skype for Business.

<sup>13</sup> Listed in alphabetical order, by family name.

<sup>14</sup> Additionally, the Reviewers conducted four (4) follow-up interviews with Mr. Sam and/or Ms. Schwob-Bolliet to clarify certain points and seek additional information and/or explanations.

<sup>15</sup> The COVID-19 sanitary measures in place at WIPO at the time of this EQA prevented the Reviewers from having physical access to WIPO's premises. The present EQA was therefore conducted remotely. Moreover, IT security restrictions prevented the Reviewers from having direct access to the CMS. As a result, the Reviewers used the screenshare option on Skype for Business to explore the CMS with the assistance of IOD staff.

<sup>16</sup> By cases, the Reviewers mean intakes recorded in the CMS, including those resulting in investigations.

<sup>17</sup> The Reviewers were given access to cases opened between January 1, 2016 and September 30, 2020. The documentation related to cases opened between October 1, 2015 and December 31, 2015 is not stored in the current CMS and was therefore not readily available for consultation by the Reviewers.

21. In addition, the Reviewers selected and examined 10 Management Implication Reports (MIRs) (representing 58 % of the 17 MIRs) produced by IOD during the period covered by the Assignment.
22. Finally, the Reviewers evaluated the status of implementation of the recommendations made in the 2015 EQA report<sup>18</sup>, as well as in the 2020 report of the Joint Inspection Unit (JIU) on the progress made in the UN system organizations in strengthening the Investigation function (JIU/REP2020/1).<sup>19</sup>
23. In the framework of the Assignment, the Reviewers received full and unrestricted access to WIPO's staff and documentation.

### 3.5 Results of the sample test

24. The main criteria used by the Reviewers when examining the sample test were as follows:
  - (a) The overall management of the case, including the way it was recorded and documented in the CMS;
  - (b) The communication between IOD and parties to the investigation;
  - (c) The overall consistency of the Preliminary Evaluation Report or the Investigation Report, the use of the evidence and the quality of drafting;
  - (d) The way the interviews were conducted, and the evidence handled;
  - (e) The way due process was respected throughout the investigative procedure; and
  - (f) The length of the investigative procedure.
25. IOD recorded 138 cases<sup>20</sup> between January 2016 and September 2020, which are distributed as follows:

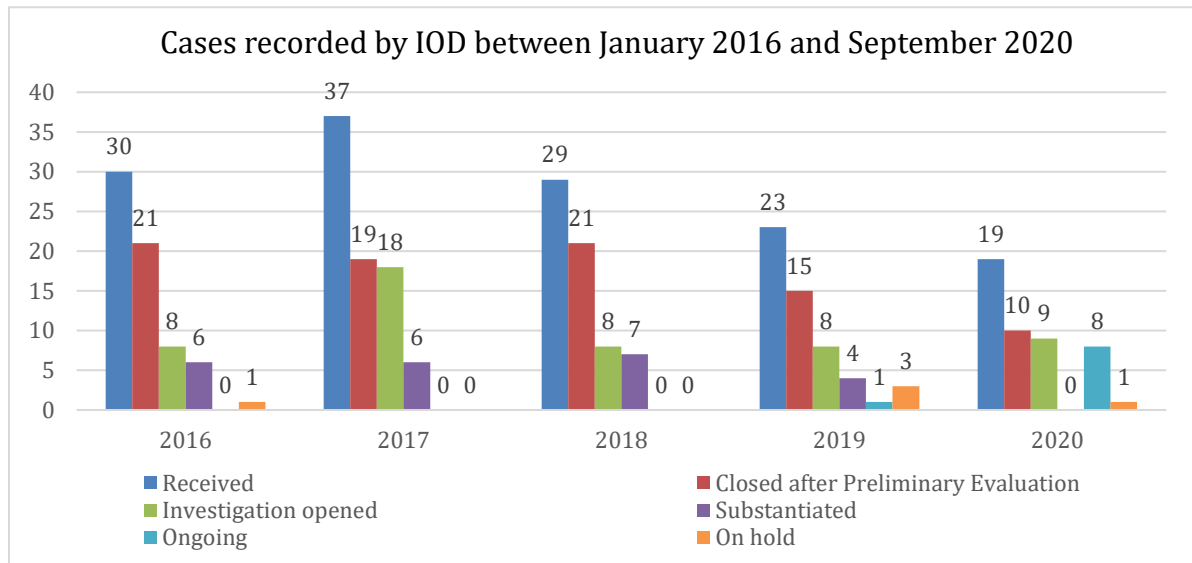
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<sup>18</sup> External Quality Review, WIPO Investigation Function, Report, 19-23 October 2015.

<sup>19</sup> Joint Inspection Unit Report JIU/REP2020/1 – *Review of the state of the investigation function: progress made in the United Nations system organizations in strengthening the investigation function*, September 2020, [https://www.unjiu.org/sites/www.unjiu.org/files/jiu\\_rep\\_2020\\_1\\_english\\_0.pdf](https://www.unjiu.org/sites/www.unjiu.org/files/jiu_rep_2020_1_english_0.pdf)

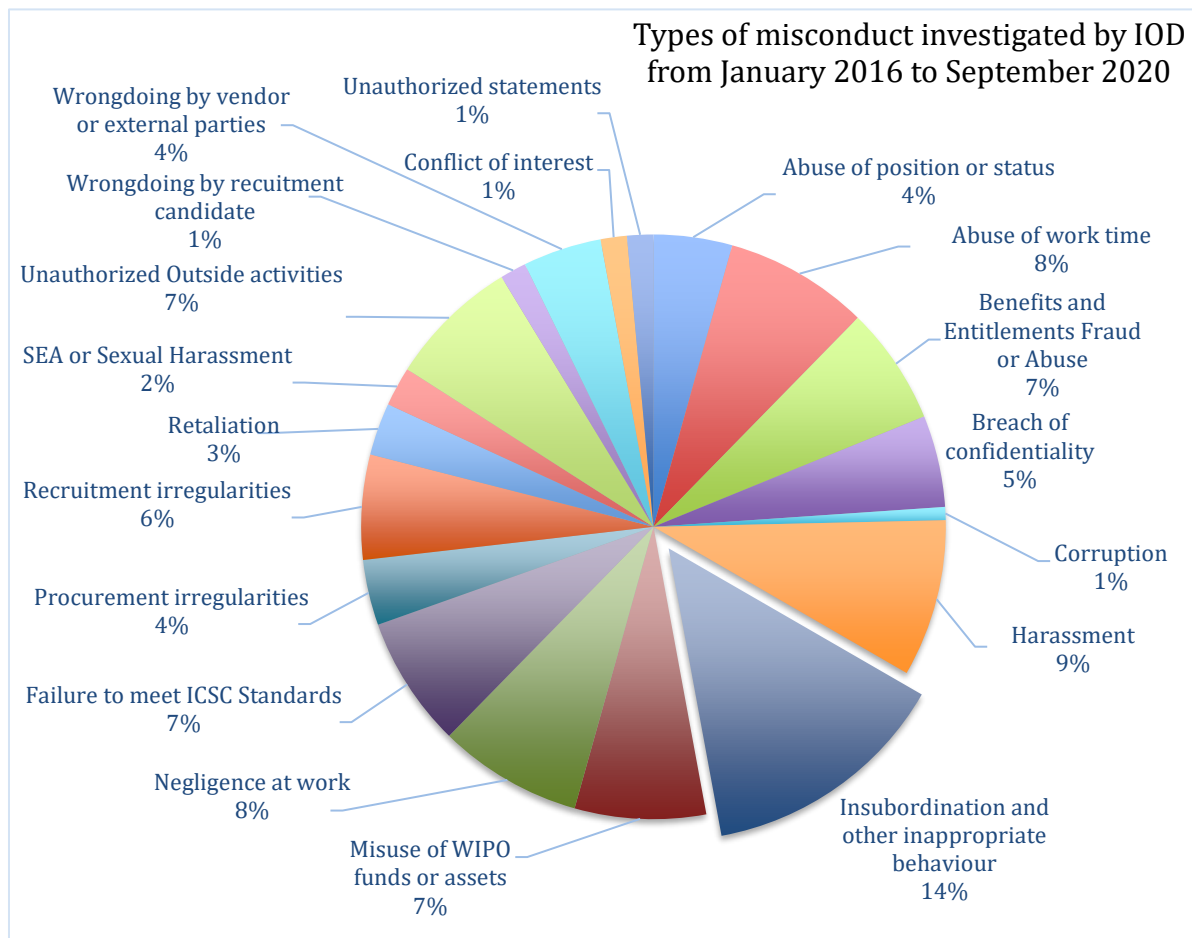
<sup>20</sup> The Reviewers have used the same meaning of "cases" than by IOD, which includes both reports of alleged misconduct for which it was decided, at the conclusion of the preliminary evaluation, not to open an investigation, and those for which an investigation was subsequently opened.

**Figure 1: Cases recorded by IOD between January 2016 and September 2020**



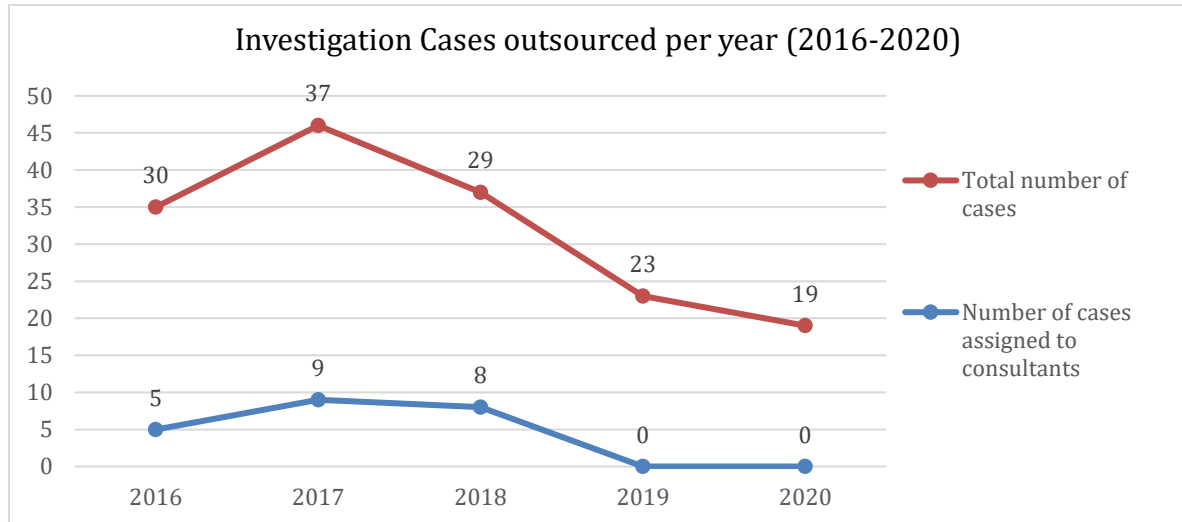
26. IOD investigated a wide range of misconduct allegations, focusing on staff misconduct, including workplace related grievances and misconduct having potential financial implications for the Organization. The distribution of cases per type of misconduct since 2016 is as follows:

**Figure 2: Types of misconduct investigated by IOD (January 2016 – September 2020)**



27. The vast majority of the cases were handled internally by IOD investigators. However, between 2016 and 2018, IOD used a significant number of external consultants or consulting firms:

**Figure 3: Investigation cases outsourced by IOD per year (January 2016 – September 2020)**



28. Based on information received during interviews with WIPO staff and other relevant individuals and on the sample review of investigation cases, the Reviewers reached the conclusion that the quality of reports was rather uneven, in terms of level of detail, quality of drafting and analysis as well understanding of the organizational structure and that the reports drafted by IOD investigators were generally of better quality than those drafted by external consultants/consulting firms. As IOD has not used consultants in 2019 and 2020, there is no need to make a recommendation with respect to the use of consultants, but the Reviewers suggest that the practice of assigning cases only to IOD investigators continue in the future, unless there is a conflict of interest or outside expertise is required.

#### 4. WIPO'S INTERNAL OVERSIGHT DIVISION AND INVESTIGATION FUNCTION

##### 4.1 Internal Oversight Division (IOD)

29. IOD provides the Management of WIPO with independent, objective assurance, analyses, appraisals, recommendations, lessons learned, advice and information, through the undertaking of internal audits, evaluations and investigations.<sup>21</sup> IOD is composed of three (3) separate Sections: the Internal Audit Section, the Evaluation Section and the Investigation Section.

30. IOD's objectives include:

- (a) Identifying means for improving WIPO's relevance, effectiveness, efficiency and economy of the internal procedures and use of resources;
- (b) Assessing whether cost-effective controls are in place; and

<sup>21</sup> Internal Oversight Charter, para. 9.

(c) Assessing compliance with WIPO's Financial Regulations and Rules, Staff Regulations and Rules, relevant General Assembly decisions, the applicable accounting standards, the Standards of Conduct for the International Civil Service, as well as good practice.<sup>22</sup>

31. The Director, IOD (Mr. Singh, D1) enjoys functional and operational independence from the Management of WIPO in the conduct of his duties. He is not part of operational management.<sup>23</sup> While he reports administratively to the Director General, he has direct access to the Chairs of the General Assembly (GA), the Coordination Committee (CoCo), the Program and Budget Committee (PBC) and the Independent Advisory Oversight Committee (IAOC).<sup>24</sup>

## 4.2 Investigation function

32. The Investigation function is in charge of conducting formal fact-finding inquiries, to examine allegations of, or information concerning, misconduct or other wrongdoing involving WIPO personnel, in order to determine whether they have occurred and, if so, the person or persons responsible. Investigations may also examine alleged wrongdoing by other persons, parties or entities, deemed to be detrimental to WIPO.<sup>25</sup>

33. The Investigation function is currently composed of the Head of Investigations (Mr. Sam, P-5), a Senior Investigator (Mr. Kim, P-4) and two (2) part-time Front Office Administrative Assistants (Ms. Schwob-Bolliet, G-5 and Ms. Azizova, G-4). A temporary Investigator position (P-3) is currently under recruitment.

## 5. LEGAL FRAMEWORK FOR INVESTIGATIONS

34. The Reviewers consider that the legal framework for investigations is mainly composed of the following regulatory texts:

### 5.1 Internal Oversight Charter

35. The Internal Oversight Charter, which is contained in Annex I of the WIPO Financial Regulations and Rules, defines IOD's mission, mandate, authority and responsibility, duties and modalities of work, reporting and resources.

### 5.2 Uniform Guidelines for Investigations

36. Pursuant to paragraph 8 of the Internal Oversight Charter, investigations shall be carried out in accordance with the Uniform Guidelines for Investigations. The Uniform Guidelines for Investigations are intended to be used as guidance in the conduct of investigations subject to the regulations, rules, policies and the privileges and immunities applicable in each organization.

### 5.3 Investigation Policy

37. The Investigation Policy provides the governing principles for investigations within WIPO.<sup>26</sup> It defines the scope and authority of the Investigation function and the principles governing

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<sup>22</sup> Internal Oversight Charter, para. 9.

<sup>23</sup> Internal Oversight Charter, para. 10.

<sup>24</sup> Internal Oversight Charter, para. 14.

<sup>25</sup> Internal Oversight Charter, para. 7.

<sup>26</sup> Investigation Policy, para. 11.

the investigative process. The Investigation Policy also describes how allegations of misconduct and wrongdoing shall be reported and investigated.

## 5.4 Investigation Manual

38. The Investigation Manual,<sup>27</sup> which was revised in September 2019, serves as a practice guide for IOD staff and external investigators conducting investigations and as a source of information for WIPO staff, Member States and other stakeholders on the oversight function of investigation.<sup>28</sup> It provides detailed information on each step of the investigative process.

## 5.5 Other policies

39. WIPO has developed the following policies which are also relevant to the Investigation function:

- (a) WIPO Code of Ethics;<sup>29</sup>
- (b) Guide to Ethics at WIPO;<sup>30</sup>
- (c) Policy to Protect Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations;<sup>31</sup>
- (d) Policy on Preventing and Detecting Fraud and Other Prohibited Acts;<sup>32</sup>
- (e) Guide to a respectful and harmonious workplace;<sup>33</sup>
- (f) Workplace-related Conflicts and Grievances;<sup>34</sup>
- (g) WIPO Policy on Preventing and Addressing Sexual Exploitation and Sexual Abuse;<sup>35</sup> and
- (h) Terms of Reference of the IAOC.<sup>36</sup>

## 6. RECOMMENDATIONS AND OBSERVATIONS

40. The Reviewers consider that the Standards are generally well understood and properly applied by the Investigation function. Furthermore, IOD management has implemented good practices, such as the adoption of a sound case management tool, which may be replicated by other International Organizations of similar size.

41. The Reviewers observed that some of the recommendations included in the 2015 EQA Report and in the 2020 JIU Report on the Review of the state of the investigation function in the UN system organizations (JIU/REP/2020/1) have not yet been fully implemented by WIPO and IOD in particular. Furthermore, while the overall activities of the Investigation

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<sup>27</sup> [https://www.wipo.int/export/sites/www/about-wipo/en/oversight/iaod/investigations/pdf/investigation\\_manual.pdf](https://www.wipo.int/export/sites/www/about-wipo/en/oversight/iaod/investigations/pdf/investigation_manual.pdf)

<sup>28</sup> Investigation Manual, para. 2.

<sup>29</sup> Office Instruction No. 84/2012.

<sup>30</sup> August 2017.

<sup>31</sup> Office Instruction No. 33/2017.

<sup>32</sup> Office Instruction No. 10/2019.

<sup>33</sup> 2019.

<sup>34</sup> Office Instruction No. 24/2019.

<sup>35</sup> Office Instruction No. 25/2019.

<sup>36</sup> Annex III of the WIPO Financial Regulations and Rules.

function generally conform with the Standards, the Reviewers have found partial conformance with some individual standards (as detailed in Annex 4).

42. The following recommendations are based on the abovementioned observations and are intended to build on the foundation already in place for the Investigation function.
43. Recommendations and observations detailed below are divided into four (4) groups:
  - (a) Recommendations made in the 2015 EQA Report, which have not yet been fully implemented;
  - (b) Recommendations made in the 2020 JIU Report (JIU/REP/2020/1) applicable to the Investigation function;
  - (c) Other recommendations made by the Reviewers, including observations of process improvement opportunities for the Investigation function to consider in its continuous improvement efforts, that are offered as suggestions for the continued growth of the Investigation function's successful practice; and
  - (d) Observations that recognize good practices employed by the Investigation function leading to a level of performance beyond generally conforming to the Standards.

### 6.1 Status of recommendations of 2015 EQA Report

44. Reviewers consider that the Investigation function has fully implemented nine (9) of the 13 recommendations contained in the 2015 EQA Report. These are:
  - (1) 2015 EQA Recommendation 2: "The standard of proof in the Investigation Procedures Manual should be harmonized with the standard of "clear and convincing" evidence mentioned in the WIPO Staff Rules";<sup>37</sup>
  - (2) 2015 EQA Recommendation 3: "The Investigation function should allocate a unique registration number to all requests and allegations received and clearly state actions taken";
  - (3) 2015 EQA Recommendation 4: "The preliminary evaluation should only consist of a limited number of fact-finding actions needed to gather information showing that the allegation is *prima facie* relevant, material, verifiable and credible. The case should then either be closed or assigned to an investigator for investigation. this step would then be followed by an Investigation Plan necessary to further proceed with substantial investigative activities";
  - (4) 2015 EQA Recommendation 5: "The possibility for ISS<sup>38</sup>, when duly authorized, to remotely and directly access WIPO's electronic mailboxes on UNICC<sup>39</sup> servers should be explored. This could potentially reduce the delay to access the information from days, sometimes weeks, to hours";

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<sup>37</sup> The standard of proof applied by the Administrative Tribunal of the International Labour Organization (ILOAT) is "beyond reasonable doubt", which is a higher standard than the one required by WIPO. The Reviewers have been informed that the OLC is in the process of challenging the standard required by the ILOAT and is waiting for a judgment confirming the standard of proof to be applied by WIPO. In the meantime, WIPO has been using the "beyond reasonable doubt" standard.

<sup>38</sup> At the time of this Assignment, the name of the concerned Division is Security and Information Assurance Division (SIAD).

<sup>39</sup> United Nations International Computing Centre.

- (5) 2015 EQA Recommendation 8: "The current position of temporary Secretary (G-4) should be upgraded to a position of full-time<sup>40</sup> and Fixed-term Investigation Assistant";
- (6) 2015 EQA Recommendation 9: "Possible mechanisms should be explored with the support of HR to effectively tackle the issue of the increasing number of denials of invitation to interviews on medical grounds";
- (7) 2015 EQA Recommendation 10: "The subject should be informed about the outcome of an investigation only when allegations were not substantiated or unfounded. The manual should be adapted accordingly";
- (8) 2015 EQA Recommendation 11: "The Intranet page of the Investigation Function could be expanded to include further elements of information, such as a "Frequently Asked Question" section and an information brochure, in order to publicize more extensively its functions and activities, as well as rights and obligations of staff";
- (9) 2015 EQA Recommendation 12: "A deeper involvement of the investigation function in the training programmes for newly recruited and existing staff would improve awareness of investigations and anti-fraud mechanisms".

45. The Investigation function has not fully implemented four (4) other recommendations made in the 2015 EQA Report. The below table sets out (1) the recommendations initially made in the 2015 EQA report, (2) the Reviewers' observations regarding their status of implementation and (3) their recommendations (including supplemental ones) in this regard.

**Table 1 – Status of 2015 EQA Recommendations**

2015 EQA Recommendations	2020 EQA Reviewers' Observations	2020 EQA Reviewers' Recommendations and Remarks
<p><u>2015 EQA Recommendation 1</u></p> <p>Standard provisions should be included in the contracts with third parties that they have an obligation to cooperate with an IOD investigation.</p>	<p>The Reviewers note that paragraph 13 of the Internal Oversight Charter contains provisions requiring contractors and other personnel to cooperate with any duly authorized investigation. This is in line with paragraph 16 of the Uniform Guidelines for Investigations. While the Head, Investigation Section confirmed that the obligation to cooperate was systematically recalled to all interviewees (and, if needed, to other participants in investigations),<sup>41</sup> the Reviewers have not received any evidence that standard provisions have formally been incorporated into contracts with third parties, requiring such parties to cooperate in investigations.</p> <p>WIPO now has a dedicated Vendor Sanction Policy (Office Instruction 31/2017). However, no reference to this</p>	<p>The Reviewers uphold this recommendation.</p>

<sup>40</sup> The Reviewers note that two (2) Administrative Assistants are currently providing support to the three (3) IOD sections. According to the Head, Investigation Section, the current administrative arrangement is sufficient.

<sup>41</sup> See Annex 4, line 6.

	policy is made in the contracts with third parties.	
<p><u>2015 EQA Recommendation 6</u></p> <p>The process of securing and retaining electronic evidence within ISS<sup>42</sup> should be described in writing and formalized in agreement with IOD.</p>	<p>Paragraph 102 of the Investigation Manual requires strict handling of all electronic evidence. It further provides that "[t]he designated investigator is responsible for keeping a detailed record of how the electronic evidence was collected, handled and secured."</p> <p>While the Reviewers consider that addressing the requirement for ensuring the correct retrieval and review of electronic evidence is a good first step in implementing Recommendation 6 of the 2015 EQA Report, they consider it does not provide sufficient guidance to SIAD on the process it should follow for securing and retaining electronic evidence.</p>	<p>The Reviewers uphold this recommendation.</p>
<p><u>2015 EQA Recommendation 7</u></p> <p>The Investigation function should be reinforced by an additional full-time Fixed-term Investigation Officer.</p>	<p>A P-3 Investigator position is currently under recruitment, but the process was still pending to be completed at the time of the Assignment. The Reviewers also note that the position is being offered as a temporary (not a Fixed-term) contract.</p>	<p>The Reviewers uphold this recommendation and reiterate the importance of converting the position into a Fixed-term post.</p> <p>In addition, when completing the recruitment process, the Reviewers invite the Investigation function to consider the gender balance in the team.</p>
<p><u>2015 EQA Recommendation 13</u></p> <p>Periodical exchanges with HRMD and OLC be established to strengthen mutual feed-back on quality and legality aspects.</p>	<p>Some of the other internal assurance providers at WIPO expressed to the Reviewers their view that having more frequent coordination meetings with IOD would be beneficial for their work. The Reviewers suggest that IOD organize joint coordination meetings not only with HRMD and OLC, but also with the Chief Ethics Officer, the Ombudsperson and any other relevant assurance function at least once a year. Furthermore, bilateral meetings with each of the other assurance providers may be organized on an ad hoc basis, whenever deemed necessary.</p> <p>The revised Investigation Manual (2020) foresees that regular meetings with HRMD and OLC be organized, to discuss pending and recently closed cases. This provision however still remains to be implemented in practice.</p>	<p>The Reviewers uphold this recommendation.</p> <p>The Investigation function should organize, at least once a year, joint coordination meetings not only with HRMD and OLC, but also with the Chief Ethics Officer, the Ombudsperson and any other relevant assurance function.</p>

<sup>42</sup> See footnote 39 above.

46. Based on Table 1 above, the following recommendation is made to the Investigation function:

**Recommendation 1:** The Investigation function should strive to implement recommendations 1, 6, 7 and 13 of the 2015 EQA Report that are still pending to be completed, taking into consideration the additional remarks made by the Reviewers as detailed in Table 1 above.

## 6.2 Status of recommendations of 2020 JIU Report (JIU/REP/2020/1)

47. In its report published in September 2020 (JIU/REP/2020/1), the JIU examined the current state of the investigation function in the UN system organizations and the progress made since 2011 in strengthening the organizational set-up, independence and capability of the function.<sup>43</sup> Twenty-eight (28) UN organizations, including WIPO, participated in the review. The objectives of the JIU's review were to (1) assess the adequacy of organizational, structural and operational arrangements for the investigation function in the UN system organizations; (2) identify gaps and challenges while taking into account the changes of the landscape in which the investigation function has to operate; and (3) identify good practices and lessons learned across the UN system and explore opportunities for improved cooperation, information-sharing and coordination across the UN system.

48. The 2020 JIU Report proposed ten (10) formal recommendations to enhance the independence and capability of the investigation function, to address identified shortcomings and achieve greater system-wide coherence and cooperation in the area of investigations.

49. The Reviewers are pleased to observe that at the time of the Assignment, WIPO's Investigation function complied with nine (9) out of the 10 JIU recommendations. The Investigation function has still to implement Recommendation 3 of the 2020 JIU Report, which states:

"The legislative bodies of United Nations system organizations should request that organizations that have not yet done so consolidate by the end of 2022 all investigations and related activities (namely intake, preliminary assessment and the decision to open an investigation), irrespective of the type of misconduct, in the internal oversight office of each organization".

50. WIPO has multiple entry points and channels to deal with cases of alleged misconduct, depending on their nature. The Internal Oversight Charter reiterates WIPO's Staff Regulation 11.4 and Staff Rule 11.4.1, stating that the Director, IOD may receive reports "concerning suspected wrongdoing, misconduct or irregularities including but not limited to: fraud and corruption, waste, abuse of privileges and immunities, abuse of authority, and violation of WIPO regulations and rules",<sup>44</sup> but it specifies that his/her mandate "does not extend to those areas for which separate provision has been made for review, including workplace-related conflicts and grievances, personnel grievances arising from administrative decisions affecting a staff member's terms of appointment, and performance issues and performance-related disagreements".<sup>45</sup>

51. In accordance with these provisions, allegations of retaliation for reporting misconduct or for cooperating in authorized audits and investigations should be reported to the Chief Ethics Officer, who is responsible for the intake and the *prima facie* preliminary evaluation. Similarly, allegations of harassment, discrimination, abuse of authority, workplace-related conflicts and grievances, personnel grievances, grievances arising from administrative decisions, grievances affecting a staff member's terms of appointment and performance-

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<sup>43</sup> The Reviewers consider that their analysis of the 2020 JIU Report (JIU/REP/2020/1) satisfies the suggestion in the General Principles for Reviews of CII Investigation Offices conducted by external experts to include a comparison of similar offices in the EQA report.

<sup>44</sup> Internal Oversight Charter, para. 15.

<sup>45</sup> Internal Oversight Charter, para. 16.

related disagreements are to be reported to the Director General (with HRMD being responsible for the intake and preliminary evaluations of those allegations), who decides whether an investigation should be opened. As a result of these rules, the Investigation function redirects those complaints that have mistakenly been reported to it to the appropriate channels. In any event, where the Chief Ethics Officer or the Director General determine that an investigation is required, it is conducted by IOD's Investigation function.

52. The Reviewers identified the following issues raised by the fragmentation of responsibilities resulting from having multiple entry points (i.e. HRMD, Ethics Office and IOD) at the pre-investigation stage:
- (a) First, the procedure may not be sufficiently clear for all staff members to know to whom they should submit reports of suspected wrongdoing. This is even more problematic when a complaint contains several types of allegations, which might then in theory need to be treated by different entry point channels.
  - (b) Second, some complainants have filed complaints in relation to the same matter with different entry points (a practice which may, in some instances, be considered abusive).
  - (c) Third, and relatedly, there have been instances of so-called "self-generated cases", whereby a party to an investigation (complainant or subject) filed a complaint of harassment and/or retaliation against staff members of offices involved in the internal justice system (e.g. HRMD, Ethics Office, IOD, Office of the Director General (ODG), Ombudsperson, etc.), solely based on actions or decisions taken in the framework of an ongoing investigation<sup>46</sup>, resulting in the paralysis or delay of the ongoing investigation process. This practice also has the undesirable effect of multiplying the number of intakes and investigation cases.
  - (d) Fourth, the multiple entry-points follow different procedural rules and apply different due process rights when conducting intakes and preliminary evaluations. This discrepancy may result in an inconsistent treatment of allegations.
  - (e) Finally, the Reviewers consider that the current rules requiring the Investigation function to conduct preliminary evaluations in order to determine whether the allegations fall within an area for which separate provision has been made for review are an inefficient use of the function's time, which could be better spent on more substantive matters (including conducting investigations).
53. The Reviewers agree with the JIU's Recommendation 3 that it would be more efficient to streamline the process by reducing the number of entry-points. In particular, the Reviewers consider that IOD should be the sole entity at WIPO responsible for handling intakes (and, where applicable, preliminary evaluations) of all types of allegations of misconduct (including, notably, those currently treated by HRMD) — excluding allegations of retaliation for reporting misconduct or for cooperating in authorized audits and investigations, which should continue to be dealt with by the Chief Ethics Officer<sup>47</sup> under the Policy to protect against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations<sup>48</sup>.

**Recommendation 2:** WIPO should implement Recommendation 3 of the Joint Inspection Unit's 2020 Report (JIU, Report JIU/REP2020/1). All allegations of misconduct should be reported to IOD, save for allegations falling under the mandate of the Ethics Office. In particular, in order

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<sup>46</sup> For example, a complainant may file a complaint of harassment against the Director, HRMD, based on his/her decision to close a case after the preliminary evaluation.

<sup>47</sup> The Reviewers consider that allegations of retaliation for reporting misconduct or for cooperating in authorized audits and investigation should not be handled by the Investigation function, as it may give rise to a perceived (or actual) conflict of interest for the IOD.

<sup>48</sup> Office Instruction No. 33/2017.

to avoid any actual or perceived conflict of interest, HRMD should not be responsible for receiving and assessing allegations of misconduct.

**Recommendation 3:** In order to reduce the number of self-generated cases (and in particular those alleging misconduct by IOD staff) and to avoid unnecessary delays in ongoing investigation cases, IOD should, whenever possible, refrain from treating complaints arising from ongoing investigations until such investigations have been closed. To formalize this approach, IOD may consider amending its Investigation Policy.

54. The Reviewers note that in a given case, the same investigator often conducts both the preliminary evaluation and the subsequent investigation. This practice may raise questions with regards to his/her impartiality and objectivity. As a result, the Reviewers consider that IOD would benefit from having a dedicated Intake Officer, primarily responsible for receiving complaints and conducting preliminary evaluations. Creating such a position would have the dual function of (1) pre-emptively addressing potential claims of the investigators' lack of impartiality and objectivity and (2) expediting investigations by allowing investigators to focus their efforts on conducting investigations.
55. In this respect, the Reviewers have been informed that the current G-5 Administrative Assistant has the necessary qualifications and experience for fulfilling the responsibilities of the Intake Officer position.
56. Relatedly, the Reviewers recall the recommendation in the Uniform Principles and Guidelines for Investigations that "*to the extent possible, interviews conducted by the Investigative Office should be conducted by two persons*". The Reviewers note that the sample review of cases highlighted the fact that, with the exception of subject interviews, usually one investigator, sometimes accompanied by an Administrative Assistant, conducts the interviews. While this practice is consistent with the paragraphs 123 to 125 of the Investigation Manual and while the interviews are systematically recorded, the act of recording does not mitigate the need for a second investigator to support the first investigator and to help ensure the quality of the interview. There is also a risk that an investigator acting alone might be accused of inappropriate conduct that is non-verbal or that occurs before or after the recording device is turned on.
57. The Reviewers take note of the consistent comments made by IOD staff that they are adequately staffed given their caseload. IOD investigators also highlighted the fact that they receive ample and good quality support from the IOD Administrative staff when needed. However, the Reviewers consider that it might be worth considering assigning two (2) investigators to each case. This would be possible by having a more senior and a more junior investigator working together on a case.
58. In this respect, the idea of converting an Administrative Assistant into the Professional category and assigning that person to work full-time in Investigations Section was mentioned during the interviews conducted by the Reviewers in the course of the Assignment. The Reviewers note that such a position could be the same as the recommended P2 Intake Officer mentioned in Recommendation 4.

**Recommendation 4:** IOD should establish an Intake Officer role responsible for the recording and processing of the intake of allegations of misconduct or wrongdoing reported to the IOD.

### 6.3 Additional recommendations made by the Reviewers

59. The Reviewers made the following observations for which they identified opportunities to enhance the investigative function's resource management, work processes and overall value to WIPO:

### 6.3.1 Delays in the investigative process

60. Paragraph 82 of the Manual provides that “[t]he Director, IOD, will endeavor to complete all investigative activities in a timely manner. All efforts will be made so that preliminary evaluations are completed within 30 calendar days from the receipt of allegations of misconduct or other wrongdoing [...] and full investigations (including final investigation reports) within six months of the date of initiating the full investigation”.
61. Based on the data provided by IOD since 1 January 2019<sup>49</sup>, the Reviewers observe that deadlines for completing preliminary evaluations are not always respected.<sup>50</sup> While the Reviewers are mindful that numerous factors could account for the delays, one of the factors is that the 30 calendar days for preliminary evaluations seems to be too restrictive. Several other International Organizations, such as UNHCR and the UN Development Programme (UNDP), have adopted between two (2) and three (3) months deadlines to complete a preliminary evaluation. IOD's self-imposed 30-day deadline to complete a preliminary evaluation appears to be rather short and to not correspond to the actual time required to complete, in certain cases, a meaningful evaluation. The Reviewers consider that, in many cases, the 30-day deadline for completing the preliminary evaluation is too restrictive. Extending this deadline would be more in line with practices currently applied by other International Organizations.
62. As far as investigations are concerned, the Reviewers are satisfied that they are usually completed within six (6) months, as required in the Investigation Manual. There are a few instances in which the investigation took longer than six (6) months but the Reviewers consider that this is explained by the complexity of the cases and/ or the availability of the evidence. In light of those, the Reviewers do not see any need to recommend a change.
63. Also, the Reviewers consider that IOD's WIPO Performance Reports (WPR) may be confusing, as they only report the total time spent by IOD on an investigation (deducting time spent awaiting information from other Divisions or outside sources) and not the total time taken to complete an investigation, from the moment of its inception until its closure. While the Reviewers recognize that the reasons for the delays are often out of the Investigation function's control (e.g. parties refusing invitations to interviews for medical reasons; time spent waiting for information requested from SIAD, HRMD, the IAOC or other sources; etc.), the Reviewers nevertheless consider that these delays should be accurately reported, reflecting the total number of days.

**Recommendation 5:** IOD should include in its quarterly report to the Independent Advisory Oversight Committee (IAOC) a table providing (1) the total time elapsed between the opening of the investigations and their closure, and (2) the total time spent by IOD on each investigation (excluding time while awaiting information from outside sources).

**Recommendation 6:** To align with practices followed in other International Organizations, IOD should consider amending the Investigation Manual to allow preliminary evaluations to be completed in more than 30 calendar days.

### 6.3.2 Oaths of confidentiality

64. Pursuant to the Investigation Manual, all persons involved in an investigation shall be bound by confidentiality. In practice, the Investigation function requires non-staff members participating in an investigation to sign an oath of confidentiality. However, participating staff members are not currently required to sign an oath of confidentiality when called to participate in an investigation.

<sup>49</sup> This date corresponds to the implementation of the new CMS and the start of tracking deadlines for preliminary evaluations and investigations.

<sup>50</sup> Notwithstanding this observation, the Reviewers note that the new CMS, which shows deadlines on the dashboard, has helped to better monitor and reduce the time spent on investigations.

65. Given the importance of securing the confidentiality of investigative proceedings, and noting that many staff members no longer recall the contents of the oath they signed upon joining the organization (or even the existence of the oath itself), the Reviewers consider that the requirement to sign an oath of confidentiality should be extended to staff members and other internal parties participating in a duly authorized investigation. Ideally, this requirement should be formalized in the Investigation Policy and/or in the Investigation Manual.

**Recommendation 7:** All persons (including staff members) called to participate in a duly authorized investigation should be required to sign, in advance of their participation, an oath of confidentiality.

### 6.3.3 IOD Legal Advice

66. The Reviewers have been informed that the Investigation function occasionally seeks legal advice from the Policy and Law Section (within HRMD) or OLC. Such practice may increase the risk of perceived (or actual) conflict of interest between IOD and other departments if not properly described and formalized in the Investigation Manual and/or the Internal Oversight Charter. The Reviewers nonetheless note that IOD has at least one (1) lawyer on staff who could provide legal advice to the Director, IOD. The Reviewers consider that IOD, and in particular the Investigation function, would benefit from having a more formalized relationship. Regular exchanges would allow IOD to be more frequently updated of recurring issues pertaining to investigations and to legal developments of the ILOAT.
67. In addition, the Reviewers note that Recommendation 13 of the EQA 2015 was that: "Periodical exchanges with HRMD and OLC be established to strengthen mutual feed-back on quality and legality aspects".

**Recommendation 8:** IOD should formalize the procedure for seeking legal advice from outside IOD.

### 6.3.4 Procedure for forensic analysis of WIPO mobile telephones

68. Corporate mobile telephones are available (but not required) to all staff members holding grade P-4 and higher, as well as to staff whose work so requires. The Investigation function does not have the expertise to conduct forensic analysis of WIPO mobile telephones. As a preventative measure, it would be beneficial for the Investigation function to establish a procedure for conducting forensic analysis of corporate mobile telephones.

**Recommendation 9:** The Investigation function should explore possibilities for conducting forensic analysis of corporate WIPO mobile telephones and establish related procedures as appropriate.

### 6.3.5 Quality self-assessments

69. The Internal Oversight Charter requires IOD to "[d]evelop and maintain a quality assurance/improvement program covering all aspects of [...] investigation, including periodic internal and external reviews and ongoing self-assessments in accordance with the applicable standards".<sup>51</sup>
70. The Investigation function has not conducted any quality self-assessments during the period included in the scope of the Assignment.

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<sup>51</sup> Internal Oversight Charter, para. 28(f).

**Recommendation 10:** The Investigation function should conduct a quality self-assessment on an annual basis. For this purpose, it may consider using, as a reference, the template included in Annex 4 of this report.

### 6.3.6 Migration of all cases to the new Case Management System (CMS)

71. Not all the intake and investigation cases documented in the old CMS have been migrated into the new CMS. The Reviewers noted that at least 76 cases included in the old CMS cannot be found in the new CMS.

**Recommendation 11:** The Investigation function should consider migrating all the intake and investigation cases from the old Case Management System (CMS) to the new CMS.

### 6.3.7 Submission of IOD investigation reports in cases referred to IOD by the Ethics Office of UNOPS

72. The Ethics Office is responsible for the *prima facie* preliminary evaluation of intakes of allegations of retaliation. Whenever s/he determines there is no need for a formal internal investigation into whether the activity is protected under the Policy to protect against retaliation for reporting misconduct or for cooperating with duly authorized audits or investigations<sup>52</sup>, the complainant has the possibility to request a review of this determination by the Ethics Office of the UN Office for Project Services (UNOPS).<sup>53</sup> In such case, a second *prima facie* evaluation is conducted by the Ethics Office of UNOPS. The outcome of the review by the Ethics Office of UNOPS is final and binding.<sup>54</sup> Where the Ethics Office of UNOPS determines that an investigation is warranted, the Investigation function must conduct the investigation and submit its final investigation report to the WIPO Chief Ethics Officer for final determination. The Reviewers consider that this procedure places the Chief Ethics Officer in a perceived position of conflict of interest since s/he initially concluded that an investigation was not warranted.

**Recommendation 12:** WIPO should explore ways to ensure that investigation reports originating from a *prima facie* determination made by the Ethics Office of the United Nations Office for Project Services (UNOPS) are submitted to the competent authority (other than the WIPO Ethics Office) for final determination.

### 6.3.8 Internal review of IOD's decisions and determinations

73. The Director, IOD considers that his functional and operational independence from Management means that his decisions should be immune from internal appeals. This has been formally stated in the 2019 versions of the Investigation Policy and Manual, which provide as follows:

"The Director, IOD enjoys functional and operational independence from Management. Consequently, decisions and determinations made by the Director, IOD in the fulfilment of his/her mandate may not be subjected to any internal review".<sup>55</sup>

74. The Reviewers consider that decisions and determinations made by IOD which affect the legal position of staff members, such as decisions not to open an investigation, are administrative decisions by nature and therefore should be subject to internal appeal.

<sup>52</sup> Office Instruction No. 33/2017, para. 19(c).

<sup>53</sup> Office Instruction No. 33/2017, para. 32.

<sup>54</sup> Office Instruction No. 33/2017, para. 32.

<sup>55</sup> Investigation Policy, para. 20 and Investigation Manual, para. 44.

75. To the eyes of the Reviewers, IOD's position appears to be contrary to the ILOAT's jurisprudence, and specifically to Judgment 4207, in which the ILOAT rejected a similar argument by the International Atomic Energy Agency (IAEA). In particular, in consideration 9 of Judgment 4207, the Tribunal held as follows:

"In response to the complainant's submissions of manifest errors by OIOS [Internal Oversight Services (OIOS)] and the Director General's subsequent adoption of its findings and conclusions, the IAEA takes the position that having regard to the OIOS's operational independence, as provided in the OIOS Charter, the Director General was constrained by the findings and conclusions of the OIOS Report and by the standard of proof necessary to establish harassment identified by OIOS, namely, beyond a reasonable doubt. It is convenient to address this submission at this point. It is observed that the operational independence of OIOS, as provided for in the OIOS Charter, concerns the independence of its internal operations. It does not in any way constrain or implicate the Director General's decision-making authority nor does it preclude judicial review of the OIOS's findings and conclusions underpinning a Director General's final decision. Accordingly, this submission is unfounded."

**Recommendation 13:** Principles and procedures to review decisions and determinations made by the Director, IOD as part of his/her mandate should be reviewed for consistency and aligned with the jurisprudence of the ILOAT, according to which the decision made by IOD not to open an investigation should be subject to a form of internal review.

#### *6.3.9 Mechanism for receiving anonymous reports of misconduct or wrongdoing*

76. In its review of whistleblower policies and practices in the UN System Organizations (Report JIU/REP/2018/4), the JIU made the following recommendation:

"Executive heads of United Nations system organizations should ensure that, by 2020, anonymous channels to report misconduct/wrongdoing are: (a) developed and operational; (b) available in all the working languages of the organization; (c) accessible to all personnel, vendors and beneficiaries; (d) reflected in their relevant policies; and (e) widely communicated".<sup>56</sup>

77. The Reviewers observed that WIPO has no independent whistleblowing mechanism in place to allow anonymous reports of misconduct or wrongdoing, such as a dedicated outsourced telephone hotline. Such a hotline would help to dispel fears of retaliation and provide reassurance to anonymous whistleblowers.

**Recommendation 14:** WIPO should implement Recommendation 8 made by the JIU in its Report JIU/REP/2015/4. Multilanguage channels should be developed and established to allow for anonymous reports of misconduct/wrongdoing.

#### *6.3.10 Sexual Exploitation and Abuse (SEA) procedures*

78. Given the centralized nature of WIPO's activities in its Headquarters in Geneva and the fact that WIPO staff have very limited contacts with potential vulnerable population (compared to other UN agencies operating in the field), the risk of Sexual Exploitation and Abuse (SEA) is rather limited at WIPO. However, sexual misconduct such as sexual activity with minors or exchange of money, employment, goods or services for sex may still be relevant in the context of WIPO operations.

79. The Reviewers note that WIPO adopted a Policy on Preventing and Addressing Sexual Exploitation and Sexual Abuse in July 2019.<sup>57</sup> Although the Policy lists the prohibited

<sup>56</sup> Recommendation 8, JIU/REP/2018/4, 2018.

<sup>57</sup> Office Instruction N° 25/2019.

conduct, it does not explicitly state the mechanisms to report acts of SEA and the procedure for the Organization to address such complaints. It is the Reviewers' understanding that SEA constitute misconduct as defined in the WIPO Internal Oversight Charter and would therefore fall within the mandate of IOD.

80. The Reviewers note that the UN as a whole had focused on the issue of SEA and the way Organizations of the UN system should tackle this issue, especially by adopting a victim-centered approach when it comes to investigations.<sup>58</sup>
81. Should such SEA cases arise at WIPO, it might be advisable for IOD to have a procedure in place which would take into account the sensitivity of the issue and ensure a victim-centered approach. Although it does not need to be a specific process, IOD should consider developing SOPs for handling SEA allegations.

**Recommendation 15:** IOD should consider developing SOPs for handling SEA allegations, keeping in mind that such SOPs should be victim-centered.

## 6.4 Observations of good practices

82. According to paragraph 10(c) of the ToRs, the EQA Report should identify the Investigation function's successful practices and value-added services.
83. As stated above, taking into consideration the relatively small size of the Investigation function, the Reviewers consider that it has in several areas reached a level of maturity that goes beyond conformance with the Standards. Indeed, the Investigation function has positioned itself as a strategic and trusted partner for WIPO's Senior Management and stakeholders. Furthermore, it has adopted several good practices which could be used as examples by other International Organizations, such as:

### 6.4.1 Proactive investigations

84. The Reviewer's experience is that it is not effective to rely exclusively on reporting as a means to detect misconduct. Cultural and organizational factors, the limited reach of reporting mechanisms, a lack of awareness of what should be reported and how to report irregularities are only some of the limitations to reporting. This means that some cases may not be reported and that IOD may not receive cases which would warrant an investigation.
85. Proactive investigations can be defined as investigations intended to identify and control an existing (but yet unidentified) occurrence of fraud or financial irregularities. Such definition may also apply to situations of widespread harassment or abuse of authority in a specific service or division or to systemic and recurring issues affecting the Organization.
86. Proactive investigations are mentioned, albeit not specifically by that term, in paragraph 56 of the Investigation Manual as "IOD will record allegations from any source such as [...] (e) Discovery or detection by IOD through proactive risk assessment and other oversight activity". Interviews with IOD staff mentioned the fact that, often, investigations are opened as a result of an auditing exercise. The Reviewers are satisfied that IOD is fulfilling its role when it comes to proactive investigations through the work of the audit section and its integrity reviews as determined on a yearly basis. The integrity reviews are taking place jointly between IOD's Audit and Investigations Sections, allowing investigators to proactively search for potential misconduct. The Reviewers encourage IOD Investigations to maintain this practice.

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<sup>58</sup> See for instance: <https://www.un.org/preventing-sexual-exploitation-and-abuse/> [Consulted on 27 November 2020]

#### *6.4.2 Case Management System (CMS)*

87. The Investigation function has developed an integrated and comprehensive Case Management System (CMS), which is in use since 2019. The Reviewers find that the system fulfils all the needs of an investigation function for an organization of WIPO's size.
88. The new CMS allows for cases to be tracked in detail and provides added safeguards to ensure parties' due process rights are respected. For example, it requires investigators to take certain steps (such as confirming they do not have a conflict of interest with a case) before being able to proceed in the system. The CMS also provides information on the time elapsed at each step of the investigative process as well as statistics on the overall time spent by IOD on (individual and combined) investigations.<sup>59</sup> The CMS also serves as a central repository for nearly all investigatory documents. In addition, the CMS documents are also stored on a secure server.
89. Moreover, the Reviewers consider that the new CMS is intuitive and user friendly.
90. The Reviewers note that the Investigation function presented its new CMS to the 2019 CII conference participants. The new CMS raised significant interest from small and medium-sized International Organizations, which have sought support from WIPO to develop their own systems.

#### *6.4.3 IAOC roster of independent investigators*

91. In cases of potential conflict of interest involving members of IOD, paragraphs 20 to 23 of the Internal Oversight Charter describes a specific procedure to be followed. They provide for seeking advice from the IAOC, which may then refer the case to an external investigative entity.
92. The Reviewers were informed of the fact that the IAOC recently conducted a recruitment exercise to establish a roster of qualified potential investigators. The investigators on the roster are different from the ones on the list maintained by IOD for its own needs.
93. The Reviewers consider that the process to handle potential conflicts of interest, involving the IAOC, and the existence of the IAOC roster are adequate and an example of good practice.

#### *6.4.4 Well-developed set of procedures and good quality investigative work*

94. The Reviewers note that WIPO has a well-developed set of policies applicable to a wide range of situations such as sexual harassment, retaliation and whistleblowing. IOD has a very comprehensive Manual and a set of SOPs and corresponding templates which are clear, detailed and provide for a large number of situations which may arise in the course of an investigation.
95. In addition, the Reviewers consider that the investigative work conducted by IOD is generally of very good quality. The Reviewers found that the procedures in place were appropriate and in conformity with the standards in the field. The processes as described in the Investigation Manual are detailed and were adequately followed by the investigators in the conduct of their investigations. This remark also applies to the SOPs developed by IOD. The sample interviews and reports reviewed during this EQA were of very good quality,

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<sup>59</sup> The CMS calculates timeframes after subtracting periods when a case was put on hold.

well drafted with detailed analysis and respect of due process requirements. The Reviewers did not identify major issues in the conduct of investigations by IOD.

96. Finally, the MIRs contain clear recommendations for addressing organizational issues identified in the course of investigations. The MIRs are publicly available through IOD's webpage, save when they do contain confidential information. The Reviewers found that such practice is commendable and should be pursued when possible.

#### 6.4.5 Collaboration with other international organizations and staffing

97. The Director, IOD has on several occasions provided support to the investigation functions of other organizations, including the WTO and World Food Programme (WFP). In particular, IOD's investigators have served as *ad hoc* investigators in assignments conducted by organizations.
98. This inter-agency collaboration has contributed to the sharing of experiences, practices and approaches among the different organizations.
99. This has been made possible in part because of IOD's substantial financial resources, which have allowed it to contribute to inter-agency collaboration by sending its investigators to support other organizations.
100. Notwithstanding Recommendation 4, the Reviewers also note that the persons interviewed confirmed that the Investigation function is sufficiently staffed. The Investigation function is currently comprised of two (2) investigators (including the Head of Investigations), which is consistent with the JIU's recommendation of an average of 700 to 1,500 total personnel (staff and non-staff) per investigator.<sup>60</sup>

## 7. LIST OF ANNEXES

1	List of Acronyms
2	Independent Reviewers' Statement
3	Terms of Reference of the Assignment
4	External Quality Assessment Evaluation Matrix
5	General Principles for Reviews of CII Investigation Offices conducted by external experts

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<sup>60</sup> 2020 JIU Report (JIU/REP/2020/1), paras. 273 and 277-278. WIPO's total workforce in 2020 was 1,508, broken down into a "core workforce" (staff holding a Fixed-term, continuing or permanent appointment on regular budget funding) of 1,090 people and a "flexible workforce" (staff on a temporary contract, non-regular budget funding, interns, fellows, etc.) of 413 people. (for more details, see: [https://www.wipo.int/edocs/pubdocs/en/wipo\\_workforce\\_2020.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_workforce_2020.pdf)).

## Annex 1 - List of Acronyms

ADG	Assistant Director General
CEB	Chief Executives Board for Coordination
CII	Conference of International Investigators
CMS	Case Management System
CoCo	Coordination Committee
CPE	Continuing Professional Education
CV	Curriculum Vitae
DDG	Deputy Director General
DG	Director General
DNC	Does Not Conform
EQA	External Quality Assessment
FAO	Food and Agriculture Organization of the United Nations
FPF	Fraud and Presumptive Fraud
GA	General Assembly
GC	Generally Conforms
HRMD	Human Resources Management Department
IACA	International Anti-Corruption Academy
IAEA	International Atomic Energy Agency
IAOC	Independent Advisory Oversight Committee
ILOAT	International Labour Organization Administrative Tribunal
IOD	Internal Oversight Division
IOM	International Organization for Migration
ITU	International Telecommunication Union
JIU	Joint Inspection Unit
MIR	Management Implication Report
ODG	Office of the Director General
OLAF	European Anti-Fraud Office (Office Européen de Lutte Antifraude)
OLC	Office of the Legal Counsel
OIOS	Office of Internal Oversight Services
PBC	Program and Budget Committee
PC	Partially Conforms
PER	Preliminary Evaluation Reports
QAIP	Quality Assurance and Improvement Program
SEA	Sexual Exploitation and Abuse
SIAD	Security and Information Assurance Division
SOPs	Standard Operating Procedures

ToRs	Terms of Reference
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICC	United Nations International Computing Centre
UNOIOS	United Nations Office of Internal Oversight Services
UNOPS	United Nations Office for Project Services
UNRIS	United Nations Representatives of Investigative Services
WFP	World Food Programme
WIPO	World Intellectual Property Organization
WPR	WIPO Performance Reports
WTO	World Trade Organization

## Annex 2 - Independent reviewers' Statement

The Reviewers were engaged to conduct an independent External Quality Assessment (EQA) of the Investigation function of WIPO's Internal Oversight Division (IOD).

The primary objectives of the EQA were the following:

- (a) To assess the investigative function's conformity to the standards set forth in the Uniform Guidelines for Investigations endorsed by the Conference of International Investigators (CII) in June 2009, the WIPO Internal Oversight Charter and the WIPO Investigation Policy (altogether referred to as *Standards*) and
- (b) To identify opportunities to enhance the investigative function's resource management, work processes and overall value to WIPO.

The Assignment was conducted in accordance with the *General Principles for Reviews of CII Investigation Offices conducted by external experts* adopted by the Conference of International Investigators in October 2014.

In acting as Reviewers, they were fully independent of the Organization and had the necessary knowledge and skills to undertake this engagement. The Assignment, conducted in October and November 2020, consisted primarily of a review of extensive documentary submission, including policies, annual and quarterly reports, operating processes and procedures, including the case management and reporting systems. The Reviewers were provided various investigation reports and other relevant documents. In addition, interviews were conducted with several IOD staff and stakeholders within and outside WIPO.

The Reviewers were given full and unrestricted access to all relevant staff members and documents.

Based on the review, the Reviewers certify that IOD's Investigation function generally conforms with the Standards.

Implementation of the recommendations contained in the EQA report will improve the effectiveness and enhance the value of IOD's Investigation function and support conformity to the Standards.

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Ms. Coralie Colson  
Senior Investigator, IOM

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Mr. Benoit de Schoutheete  
Head, Internal Oversight, WTO

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Ms. Nathalie Iniguez  
Investigator, WTO

Date:

Date:

Date:



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## TERMS OF REFERENCE (TORS)

### EXTERNAL QUALITY ASSESSMENT OF THE INVESTIGATION FUNCTION (2020)

#### Background

1. The World Intellectual Property Organization (WIPO) is a specialized agency of the [United Nations](#), dedicated to developing a balanced and accessible international intellectual property system. WIPO's nine strategic goals enable the organization to achieve its mandate effectively in an evolving external environment.
2. The Internal Oversight Division (IOD) at WIPO is an independent internal oversight body. IOD provides the Management of WIPO with systematic assurance, analyses, appraisals, recommendations, advice and information, through the undertaking of independent internal audits, evaluations and investigations.
3. IOD's work is governed by the Internal Oversight Charter (the Charter) approved by the [WIPO General Assembly](#). Paragraph 28 (f) of the Charter provides in particular that IOD should "Develop and maintain a quality assurance/improvement program covering all aspects of internal audit, evaluation and investigation, including periodic internal and external reviews and ongoing self-assessments in accordance with the applicable standards", and further that "independent external assessments shall be conducted at least once every five (5) years".
4. In line with the above provisions, and considering that an external quality assessment of IOD's investigation function was conducted in 2015, a team of independent reviewers from outside the organization (altogether referred to as the "Reviewers" hereinafter) is to conduct a similar external quality assessment in 2020 (the Assignment).

#### Scope and Methodology

5. The Assignment will cover IOD's investigative activities for the period from January 1, 2019, through September 30, 2020.
6. The Reviewers shall:
  - (a) Assess the investigative function's conformity to the standards set forth in the *Uniform Guidelines for Investigations* endorsed by the Conference of International

Investigators (CII) in June 2009<sup>61</sup> and the WIPO Internal Oversight Charter<sup>62</sup> and Investigation Policy<sup>63</sup> (altogether, the Standards); and

(b) Identify opportunities to enhance the investigative function's resource management, work processes and overall value to WIPO. This could be done through benchmarking the WIPO Investigation Function to similar UN and/or international organizations to the extent possible.

7. The Assignment shall be conducted in accordance with the *General Principles for Reviews of CII Investigation Offices conducted by External Experts* adopted by the CII in October 2014<sup>64</sup>.

## **PROFILE**

8. The Assignment shall be conducted by qualified, experienced investigation professionals from UN or International/intergovernmental organizations, preferably with previous experience in similar review exercises.

## **DELIVERABLES**

9. The review shall be confidential. The Reviewers shall prepare a written report upon completion of the Assignment (the Report), and address it to the Director, IOD. During the Assignment, IOD shall provide the Reviewers with all the information, records and documentation needed.

10. The Report shall include:

- (a) A written opinion as to whether the investigation function, "generally conforms," "partially conforms" or "does not conform" with the Standards.
- (b) Recommendations for improvement.
- (c) Identification of successful practices and value-added services.

## **TIMETABLE**

11. The external quality assessment shall be carried out between October 1 and 31, 2020 with a draft report being issued at the end of the fieldwork. The final report is expected to be issued by November 30, 2020. This timeframe can later be amended upon agreement between IOD and the Reviewers.

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<sup>61</sup> [http://www.wipo.int/export/sites/www/about-wipo/en/oversight/iaod/investigations/pdf/uniform\\_guidelines.pdf](http://www.wipo.int/export/sites/www/about-wipo/en/oversight/iaod/investigations/pdf/uniform_guidelines.pdf)

<sup>62</sup> [https://www.wipo.int/export/sites/www/about-wipo/en/pdf/wipo\\_financial\\_regulations.pdf#page=36](https://www.wipo.int/export/sites/www/about-wipo/en/pdf/wipo_financial_regulations.pdf#page=36)

<sup>63</sup> [https://www.wipo.int/export/sites/www/about-wipo/en/oversight/iaod/investigations/pdf/investigation\\_policy.pdf](https://www.wipo.int/export/sites/www/about-wipo/en/oversight/iaod/investigations/pdf/investigation_policy.pdf)

<sup>64</sup> [http://www.undp.org/content/dam/undp/library/corporate/Transparency/General\\_Principles\\_for\\_External\\_Review\\_-\\_adopted\\_by\\_15\\_CII\\_09Oct14.pdf](http://www.undp.org/content/dam/undp/library/corporate/Transparency/General_Principles_for_External_Review_-_adopted_by_15_CII_09Oct14.pdf)

## Annex 4 - External Quality Assessment Evaluation Matrix

### A) Overall evaluation:

Based on their review, the Reviewers concluded that WIPO's Investigation function **generally conforms** with the standards.

Quality Assessment Evaluation Matrix — Overall Evaluation	GC	PC	DNC
OVERALL EVALUATION	X		

(GC = Generally Conforms, PC = Partially Conforms, DNC = Does Not Conform)

### Rating definition:

**“Generally Conforms”** means the Reviewers have concluded the following:

- For the investigation activity overall, that there may be opportunities for improvement, but these should not represent situations where the Investigation Section has not implemented the *Standards*<sup>65</sup>, has not applied them effectively, or has not achieved their stated objectives. The Investigation Section fully achieves conformance with a vast majority of the individual standards.
- For individual standards, that the Investigation Section conforms to the requirements of the concerned standard/provision in all material respects.

**“Partially Conforms”** means the Reviewers have concluded the following:

- For the investigation activity overall, that there are opportunities for improvement in effectively applying the *Standards*. Some deficiencies may be beyond the control of the Investigation Section and may result in recommendations to senior management.
- For individual standards, that the Investigation Section is making good faith efforts to conform to the requirements of the concerned standard but falls short of achieving some major objectives.

**“Does Not Conform”** means the Reviewers have concluded the following:

- For the investigation activity overall, that there are deficiencies that usually have a significant negative impact on the Investigation Section’s effectiveness and its potential to add value to the organization. These may also represent significant opportunities for improvement, including actions by senior management. The Investigation Section does not achieve conformance with a vast majority of the individual standards.
- For individual standards, that the Investigation Section is not aware of, is not making good faith efforts to conform to, or is failing to achieve many/all of the objectives of the concerned standard.

### B) Detailed matrix:

<sup>65</sup> The *Standards* include the provisions set forth in the *Uniform Guidelines for Investigations* endorsed by the Conference of International Investigators in June 2009, the WIPO Internal Oversight Charter and the WIPO Investigation Policy.

#	Statement	Assessment			Rationale	Reference Documents
		GC	PC	DN C		
<b>WIPO INTERNAL OVERSIGHT CHARTER (Annex I, WIPO Financial Regulations and Rules)</b>						
1	The Director, IOD, reports administratively to the Director General but is not part of operational management.	x			Director IOD has had direct and unrestricted access to the Director General whenever needed, and has reported to the Director General on any administrative matter. Additionally, the Director IOD has the duty to report any impediment to his independence to the Independent Advisory Oversight Committee (IAOC). The Director IOD confirmed that he had not faced any impediment to his independence during the period under review. Planning and performance of all oversight activities have been exempted from interference. The Director IOD considers that the IAOC constituted an effective safeguard in this respect. Furthermore, the Director IOD confirmed in his Annual Reports to the General Assembly (GA) during the period under review that there was no impediment to his independence. The Director IOD is not part of WIPO's operational management.	IOD annual reports to the GA Quarterly reports to the IAOC Interview records
2	In the exercise of his/her functions, [the Director, IOD] takes advice from the WIPO Independent Advisory Oversight Committee (IAOC). The Director, IOD, shall have access to the Chairs of the General Assembly, the Coordination Committee, the Program and Budget Committee and the IAOC.	x			The Director IOD meets the members of the IAOC on a quarterly basis. He also meets with the Chairs of the GA and Coordination Committee (CoCo) on an ad-hoc basis, whenever deemed necessary. In addition, advice is sought from the IAOC, and communications are made directly to the Chairs of the GA and CoCo whenever deemed necessary and in particular in case of investigative matters involving senior management, or in case of IOD conflicts of interest.	IOD annual reports to the GA Quarterly reports to the IAOC
3	The Director, IOD, enjoys functional and operational independence from Management in the conduct of his/her duties. [...] He/she has the authority to initiate, carry out and report any action, which he/she considers necessary to fulfil his/her mandate. The Director, IOD, and oversight staff shall be independent of all WIPO programs, operations and activities, to ensure impartiality and credibility of the work undertaken.	x			The Director IOD has confirmed to the GA once per year that he has enjoyed functional and operational independence from Management. He did not report any impediment to his independence during the period under review. The Reviewers consider that IOD conducted its investigative activities independently, both reactively and proactively. The scope of an investigation may, at any time, be expanded as the Director, IOD sees fit. The Reviewers consider that the Director, IOD and his staff were sufficiently independent from WIPO programs, operations and activities to ensure impartiality and credibility of their work.	IOD annual reports to the GA Quarterly reports to the IAOC

4	The Director, IOD and oversight staff shall conduct oversight work in a professional, impartial and unbiased manner and in accordance with good practice, standards and norms generally accepted and applied by the United Nations system organizations [...].	x		<p>The Reviewers have not identified any major factor indicating that IOD staff lacked the required professionalism, impartiality and unbiased approach. Also, the investigative function actively participated in the United Nations Representatives of Investigation Services (UNRIS) and the Conferences of International Investigators (CII), which are forums for sharing good practices and establishing norms and standards applied by all international organizations. The Reviewers consider that WIPO's investigative function is well-informed of good practices, standards, and norms generally accepted and applied by other international organizations. This has also been confirmed by the report of the Joint Inspection Unit (JIU) on the status of the investigation function in the United Nations system (2020) and the subsequent management comments submitted to the JIU by the Director IOD.</p> <p>The Reviewers note, however, that a number of complaints were filed by parties involved in investigations in 2016-2020 against IOD staff for alleged partiality and/or conflicts of interest. The Reviewers consider that some of these complaints may have been filed with the underlying objective of undermining the work of the investigator and paralyzing the investigation process.</p>	Questionnaire completed by IOD regarding the 2020 JIU Report (JIU/REP/2020 /1) entitled "Input to the Chief Executives Board (CEB) response to the JIU report" Interview records
5	For the performance of his/her duties, the Director, IOD shall have unrestricted, unlimited, direct and prompt access to all WIPO records, officials or personnel, holding any WIPO contractual status, and to all the premises of WIPO.	x		The Director IOD and the Head, Investigation Section confirmed that they have had unrestricted, unlimited, direct and prompt access to all WIPO records, officials or personnel, holding any WIPO contractual status, and to all the premises of WIPO.	Interview records
6	WIPO staff members, contractors and other personnel have the duty to cooperate with any duly authorized investigation.	x		According to the Head, Investigation Section, the obligation to cooperate with a duly authorized investigation was systematically recalled to all interviewees and, if and as needed, to other investigation participants. This was confirmed in the sample test analysed by the Reviewers. Also, the Head, Investigation Section indicated that instances of failure by a staff member to cooperate with a duly authorized investigation have systematically been reported by IOD to the Human Resources Management Department (HRMD) for processing as a separate case of misconduct.	Interview records Sample test of investigation records

7	WIPO staff members, contractors and other personnel have the duty to report suspected wrongdoing in WIPO.	x		The Head, Investigation Section indicated that this obligation has been emphasized in IOD's communications to staff and outreach activities. Most of IOD's investigation cases arose from reports received from staff. To date, IOD has not established any case of failure to report suspected wrongdoing.	Interview records
8	[R]eports [of wrongdoing] to the Director, IOD shall be received on a confidential basis and may also be made anonymously.	x		Staff members have the possibility to report allegations anonymously, or to cooperate with IOD without their names being disclosed. IOD has recorded several cases of anonymous complaints, in particular through its investigation hotline, available to any internal and external parties. The Head, Investigation Section confirmed that IOD has also secured the anonymity of those persons wishing to protect their identity in a number of cases. In addition, the Protection Against Retaliation policy (Office instruction 33/2017) provides a range of protection measures for whistle-blowers.	Interview records Sample test of investigation records IOD templates Protection Against Retaliation policy (Office instruction 33/2017)
9	The Director, IOD shall maintain facilities for the submission of reports by individual staff members as well as any other internal or external parties, concerning suspected wrongdoing, misconduct or irregularities including but not limited to: fraud and corruption, waste, abuse of privileges and immunities, abuse of authority, and violation of WIPO regulations and rules.	x		Several channels are in place for internal and external parties to report suspected wrongdoings at WIPO, including a dedicated email address and telephone number, in person meetings with IOD, and an anonymous hotline.	<a href="https://www.wipo.int/about-wipo/en/oversight/iaod/investigations/">https://www.wipo.int/about-wipo/en/oversight/iaod/investigations/</a>

10	<p>The right of all staff and personnel to communicate confidentially with, and provide information to the Director, IOD, without fear of reprisal, shall be guaranteed by the Director General. All WIPO staff members shall take appropriate steps to ensure that the confidentiality of such communications is maintained. (...) The Director, IOD shall respect the confidential nature of, and protect from unauthorized disclosure, any information gathered or received in the course of an [...]investigation, and shall use such information only in so far as it is necessary for the performance of his/her duties. Final investigation reports, drafts, materials, findings, conclusions and recommendations are fully confidential, unless disclosure is authorized by the Director, IOD or by the Director General.</p>		x	<p>IOD has implemented several systems and tools to secure the confidentiality of the investigation process. Investigation-related documents, as well as IOD's case management system, are kept on an encrypted network drive only accessible by authorized IOD staff members; paper files and physical evidence are stored in an armoured vault located in IOD offices. The Reviewers were unable to consult the IOD paper filing system as the COVID-19 sanitary measures in place at WIPO at the time of this EQA prevented them from having physical access to WIPO's premises. Investigation reports are marked and classified as HIGHLY CONFIDENTIAL and issued only to the extent defined in the Internal Oversight Charter. Confidentiality requirements are emphasized to interviewees and all other participants to investigations. Any external party who is called to participate in investigative activities or otherwise must sign an oath of confidentiality. Staff members are required to sign an oath of confidentiality at the time of their appointment. However, they often do not remember having done so or the contents of this oath at the time they are called to participate in an investigation. While recognizing the fact that no major confidentiality issues have been identified by the Reviewers, they consider that internal parties should also be required to sign an oath of confidentiality when called to participate in an investigation.</p>	<p>Interview records Protection Against Retaliation policy (Office instruction 33/2017) IOD templates Case Management System (CMS) Sample test of investigation reports and records</p>
11	<p>Notwithstanding the foregoing, the mandate of the Director, IOD normally does not extend to those areas for which separate provision has been made for review, including workplace-related conflicts and grievances, personnel grievances arising from administrative decisions affecting a staff member's terms of appointment, and performance issues and performance-related disagreements. It rests with the Director, IOD to determine whether such matters may involve wrongdoing and should be handled by IOD or whether they should be referred to other internal bodies.</p>	x		<p>All allegations (intakes) received by IOD are subject to a preliminary evaluation. The objectives of a preliminary evaluation include determining whether the allegations fall within an area for which separate provision has been made for review. The Head of Investigations indicated that whenever IOD has received allegations related to work-related conflicts and grievances, personnel grievances arising from administrative decisions affecting a staff member's terms of appointment, or performance issues and performance-related disagreements, it has consistently advised complainants to redirect the case to the appropriate channel (such as HRMD, the Chief Ethics Officer, the Ombudsman, etc.).</p>	<p>Interview records</p>

12	[...] where allegations of misconduct concern the staff of IOD, the Director, IOD shall seek the advice of the IAOC on how to proceed.	x		IOD has developed a Case Management System (CMS) to manage investigations. Investigative steps are recorded by IOD investigators into the CMS following a mandatory sequence, to ensure fulfilment of due process and other procedural requirements. In particular, the CMS includes a mandatory step of "conflict of interest verification" where the Investigator must state whether the case involves either IOD staff, the Director IOD, personnel at the Deputy Director General (DDG) or Assistant Director General (ADG) levels, or the Director General. In such cases, the Investigator is also required to affirm that the relevant provisions of the Internal Oversight Charter have been followed. The Head, Investigation Section confirmed that there were instances of allegations against IOD staff during the period under this EQA review, and that in such cases, the Director, IOD systematically sought the advice of the IAOC on how to proceed.	CMS Interview records
13	Allegations of misconduct against the Director, IOD shall be reported to the Director General, who shall, at the earliest opportunity, but not later than one month, inform the Chair of the Coordination Committee and seek the advice of the IAOC on how to proceed. The IAOC shall conduct or arrange for a preliminary evaluation. Based on its results, the IAOC shall provide a recommendation to the Director General and the Chair of the Coordination Committee on whether to close the case or refer the matter for investigation to an independent external investigative entity. In case referral is recommended, such recommendation shall include the proposed Terms of Reference of the investigation and a proposal for a suitable investigative entity. No investigative proceedings into allegations against the Director, IOD or previous incumbents shall be initiated without the concurrence of the IAOC.	x		(See above line No. 12) The Head, Investigation Section confirmed that allegations were made against the Director, IOD during the period under this EQA review, and that in such cases, the Director, IOD systematically reported the allegations to the Director General. In addition, the Reviewers note that the IAOC has established a roster of independent external investigators used in case of need. The Reviewers consider that the process in place at WIPO, as well as the roster of independent external investigators established by the IAOC are good practices that may be considered by other international organizations.	CMS Interview records

14	Allegations of misconduct against WIPO personnel at the Deputy Director General and Assistant Director General levels shall be reported to the Director, IOD, who shall, at the earliest opportunity, but not later than one month, inform the Director General and the Chair of the Coordination Committee.	x		(See above line No. 12) The Head, Investigation Section confirmed that allegations were made against staff at the DDG and ADG levels during the period under this EQA review, and that in such cases, the allegations were reported to the Director, IOD, who in turn informed the Director General and the Chair of the CoCo within the required deadline.	CMS Interview records
15	Allegations of misconduct against the Director General shall be reported to the Director, IOD, who shall immediately inform the Chairs of the General Assembly and of the Coordination Committee and seek the advice of the IAOC on how to proceed. The IAOC shall advise the Director IOD on whether to conduct a preliminary evaluation or arrange for a preliminary evaluation by an independent external investigative entity. Based on the results of the preliminary evaluation, the IAOC shall provide a recommendation to the Chairs of the General Assembly and of the Coordination Committee on whether to request the Director, IOD to close the case or to refer the matter for investigation to an independent external investigative entity. In case referral is recommended, such recommendation shall include the proposed Terms of Reference of the investigation and a proposal for a suitable investigative entity. In the event the Chairs cannot reach an agreement or propose to deviate from the IAOC recommendation, the Vice-Chairs of the General Assembly and of the Coordination Committee shall be involved in the decision.	x		(See above line No. 12) The Head, Investigation Section confirmed that allegations were reported to the Director, IOD against the Director General during the period under this EQA review. The Director, IOD immediately informed the Chairs of the GA and CoCo and sought the IAOC's advice on how to proceed.	CMS Interview records

16	The Director, IOD shall liaise regularly with all other internal and external providers of assurance services to ensure the proper coordination of activities (External Auditor, Risk Officer, Compliance Officer). The Director, IOD shall also periodically liaise with the Chief Ethics Officer and with the Ombudsperson.		x	The Director, IOD informed the Reviewers that he met on an ad-hoc basis and whenever necessary with other external and internal assurance providers, including with the Chief Ethics Officer and the Ombudsman. He also coordinated the activities of IOD with the external auditor. In addition: - as part of its work planning exercise, IOD met on a yearly basis with all program managers; - details on cases of fraud and presumptive fraud (FPF) were shared with the External Auditor; - details of FPF cases were also shared on a quarterly basis with the Risk Management section. The Reviewers suggest that IOD organize joint coordination meetings with the Chief Ethics Officer, HRMD, the Ombudsman, and any other assurance function at least once a year.	Annual workplans Interview records
17	In the performance of their oversight work, the Director, IOD and oversight staff shall avoid perceived or actual conflicts of interest. The Director, IOD shall report any significant impairment to independence and objectivity, including conflicts of interest, for due consideration of the IAOC.	x		(See above line No. 12) As described above, the CMS system has been designed to require investigators to notify the Head, Investigation Section and the Director, IOD of any perceived or actual conflicts of interest they may have. The Head, Investigation Section confirmed that he was unaware of any situations of potential conflict of interest which would have affected IOD staff during the period under this EQA review, other than the ones mentioned above at lines 12 to 15.	CMS Interview records
18	To carry out his/her mandate, the Director, IOD shall:(a) Establish long- and short-term internal oversight work plans in coordination with the External Auditor. The annual work plan shall be based, where relevant, on a risk assessment to be carried out at least annually, on which basis work would be prioritized. In preparing the annual work plan, the Director, IOD shall take into account any suggestions received from Management, the IAOC or from Member States. Prior to finalizing the internal oversight plan, the Director, IOD shall submit the draft plan to the IAOC for its review and advice.	x		a) This Standard mainly applies to the internal audit and evaluations functions, and indirectly to the proactive investigations planned and undertaken by the investigation function. An internal oversight workplan was prepared on an annual basis in consultation with the IAOC as well as the External Auditor, Program Managers and Member States. The workplan was derived from risk analysis and took into account suggestions received from the IAOC, the External Auditor, Program Managers and Member States.	Annual workplans Interview records

19	(b) After review by the IAOC and consultation with Member States, establish policies for all oversight functions, i.e., internal audit, evaluation, and investigation. The policies shall provide rules and procedures on the access to reports while ensuring rights to due process and the preservation of confidentiality.	x			b) The Investigation Policy and Investigation Manual were reviewed and revised in 2019 by the Director IOD, in consultation with the IAOC. The Investigation Policy and Investigation Manual provide rules and procedures on the access to reports and on the processes for ensuring due process rights and confidentiality.	Investigation Policy Investigation Manual
20	(c) After review by the IAOC, issue [...] an investigation manual. Such manuals shall include the terms of reference of the individual oversight functions and a compilation of applicable procedures. They shall be reviewed every three years or earlier.	x			c) The Investigation Manual was reviewed and revised by the IAOC and the Director, IOD in 2019. It includes the terms of reference of the investigation function and details the applicable procedures.	Investigation Manual
21	(d) Establish and maintain follow-up systems to determine whether effective action has been taken in response to oversight recommendations, within a reasonable time. The Director, IOD shall periodically report in writing to Member States, the IAOC and the Director General on situations where adequate, timely corrective action has not been implemented.	x			d) Management recommendations arising from investigations are recorded in the TeamMate system along with internal audit and evaluation recommendations, and are followed up on by the Internal Audit function using the TeamCentral module on a quarterly basis. The Director IOD, in his quarterly reports to the IAOC and annual reports to the GA and to the Director General, specified the status of open recommendations and, if needed, related corrective actions.	Recommendations in TeamCentral IOD annual reports to the GA Quarterly reports to the IAOC
22	(e) Liaise and coordinate with the External Auditor and monitor the follow-up of their recommendations.	x			e) Not applicable for the investigation function. However, as described at line 16, the Director, IOD and the External Auditor had frequent contact to discuss investigation-related issues.	Interview records
23	(f) Develop and maintain a quality assurance/improvement program covering all aspects of [...] investigation, including periodic internal and external reviews and ongoing self-assessments in accordance with the applicable standards. Independent external assessments shall be conducted at least once every five years.		x		f) The last EQA exercise was conducted in 2015, and this EQA exercise is part of the quality assurance and improvement program (QAIP) developed and implemented by IOD.  However, the Reviewers noted that the investigation function had not conducted regular quality self-assessments. The Reviewers invite the Head, Investigation Section to conduct and update the quality self-assessment on an annual basis.	2015 EQA report
24	(g) Liaise and cooperate with the internal oversight or similar services of other organizations of the United Nations system and of Multilateral Financial Institutions, and represent WIPO in relevant inter-agency meetings.	x			g) The Director IOD and the Head, Investigation Section have remained consistently in contact with similar oversight functions in other international organizations, and participated to the UNRIS forum and the CII.	Interview records

25	The Director, IOD shall also undertake investigations into allegations of misconduct or other wrongdoing. The Director, IOD may decide to proactively initiate investigations based on risks identified.	x		The Head, Investigation Section indicated that (1) the first two proactive investigations were conducted in 2019/2020, and that (2) IOD was planning to conduct two additional proactive investigations in 2021.	Interview records CMS
26	The Director, IOD may provide consulting and advisory services, the nature and scope of which are agreed with Management and which are intended to improve WIPO's governance, risk management and control processes without IOD assuming management responsibility.	x		Not applicable. This Standard applies to IOD's internal audit function.	-
27	At the completion of each [...] investigation, the Director, IOD shall issue a report, which shall present the objectives, scope, methodology, findings, conclusions, remedial action or recommendations of the [investigation] and include, if applicable, recommendations for improvements and lessons learned from the [investigation]. The Director, IOD shall ensure completeness, timeliness, fairness, objectivity and accuracy in the reporting of [...] investigations.	x		IOD has developed a series of templates used by investigators, including templates for Investigation Reports and Management Implication Reports (MIR) which comprise dedicated sections on objectives, scope, methodology, findings, conclusions, remedial action or recommendations. Every investigation report is submitted to the Director, IOD for review and approval. He verifies the completeness, timeliness, fairness, objectivity and accuracy of the reports. Additionally, the Reviewers were informed that investigation reports are often also informally reviewed by the Policy and Law Section, HRMD, before their finalization, as an additional measure for ensuring the completeness, fairness, objectivity and accuracy of the documents.	IOD report templates Sample test of investigation records
28	The Director, IOD shall publish [...] Management Implication Reports resulting from investigations, on the WIPO website within one month of their issuance. If required to protect security, safety or privacy, the Director, IOD may, at his/her discretion, withhold a report in its entirety or redact parts of it. However, Member States may request access to reports withheld or to the original version of the redacted reports; such access shall be granted under condition of confidentiality at the offices of IOD.	x		The investigation process, as set out in the CMS, includes mandatory steps to (1) determine whether an MIR is warranted, (2) seek the Director, IOD's decision as to whether publication is possible or the MIR should be withheld in full or in part, and (3) ensure that the MIR is published. Published MIRs can be found on IOD's Internet website. According to the Head, Investigation Section, no Member States requested access to withheld MIRs during the period covered by this EQA review.	CMS IOD website: <a href="https://www.wipo.int/about-wipo/en/oversight/iaod/investigations/">https://www.wipo.int/about-wipo/en/oversight/iaod/investigations/</a> Interview records

29	Unless otherwise stipulated in this Charter, the Director, IOD shall submit final investigation reports to the Director General with a copy to the Director of the Human Resources Management Department; the External Auditor and the IAOC shall have access to investigation reports upon request.	x		The investigation process, as set out in the CMS, includes a mandatory confirmation that the "investigation report was issued as per Manual" (para. 155 of the Investigation Manual provides identical provisions to this Standard).The Head, Investigation Section confirmed that all final investigation reports completed during the period under this EQA review were submitted to the Director General, copying the Director, HRMD.Also according to the Head, Investigation Section: (1) the IAOC was informed of all investigation reports issued, through the quarterly activity reports provided by IOD, and copies of investigation reports were provided to the IAOC each time they were requested; and (2) the External Auditor did not request communication of any investigation report during the period under review.	Investigation Manual CMS Quarterly reports to the IAOC Interview records
30	The Director, IOD shall submit final investigation reports involving WIPO personnel at the Deputy Director General and Assistant Director General levels, to the Director General with copies to the Chairs of the General Assembly and of the Coordination Committee, the IAOC and the External Auditor. The Director General shall, at the earliest opportunity, inform the Chairs of the General Assembly and of the Coordination Committee as well as the IAOC and the External Auditor of the final disposition of the case and the reasons thereof. However, in case of termination of appointment, prior consultation of the Coordination Committee is required. In cases where allegations are substantiated, and upon request, Member States shall be provided confidential access to the reports.	x		The investigation process, as set out in the CMS, includes a mandatory confirmation that the "investigation report was issued as per Manual". The Investigation Manual, in its paragraph 65, provides that "allegations concerning IOD personnel, WIPO personnel at the DDG and ADG levels or the Director General shall be handled in accordance with paragraphs 21-25 of the Internal Oversight Charter". The Head, Investigation Section confirmed that, to the best of his knowledge, the Chairs of the GA and CoCo were consistently informed of final case dispositions as per this Standard. He further confirmed that Member States were given confidential access to the reports upon request.	Investigation Manual CMS Interview records

31	Final investigation reports concerning the Director, IOD, shall be submitted to the Director General, with copies to the Chairs of the General Assembly and of the Coordination Committee, the IAOC, and the External Auditor. The Director General shall, at the earliest opportunity, inform the Chairs of the General Assembly and of the Coordination Committee as well as the IAOC and the External Auditor, of the final disposition of the case and the reasons thereof.	x			The Head, Investigation Section confirmed that final investigation reports concerning the Director, IOD were submitted to the Director General, with copies to the Chairs of the GA and CoCo, the IAOC, and the External Auditor.	CMS Interview records Investigation Manual
32	Final investigation reports concerning the Director General shall be submitted to the Chairs of the General Assembly and of the Coordination Committee, with copies to the IAOC, the External Auditor and the Director, IOD.	x			The Head, Investigation Section confirmed that final investigation reports concerning the Director General were submitted to the Chairs of the GA and CoCo, the IAOC, and the External Auditor and the Director, IOD.	CMS Interview records Investigation Manual

33	<p>The Director, IOD shall submit, on an annual basis, a summary report to the WIPO General Assembly, through the Program and Budget Committee (Annual Report). The Director General and the IAOC shall be provided with a draft version of the Annual Report for their comments, if any. The Annual Report shall give an overview on the internal oversight activities conducted during the reporting period, including the scope and objectives of such activities, the schedule of work undertaken and progress on the implementation of internal oversight recommendations. The Director General may submit comments on the final Annual Report in a separate report as deemed appropriate. The Annual Report shall include the following, inter alia: (a) A description of significant issues and deficiencies relating to WIPO's activities in general, or a program or operation in particular, disclosed during the period. (b) A description, including the financial impacts, if any, of those investigative cases found to be substantiated and their disposition, such as disciplinary measures, referral to national law enforcement authorities, and other sanctions taken. (c) A description of all high priority internal oversight recommendations made by the Director, IOD during the reporting period. (d) A description of all recommendations which were not accepted by the Director General, together with his/her explanations for not doing so. (e) An identification of high priority recommendations in previous reports on which corrective action has not been completed. (f) Information concerning any significant management decision which in the view of the Director, IOD constitutes a serious risk for the Organization. (g) A summary of any instance where IOD's access to records,</p>	x		<p>The Director, IOD submitted annual reports to the GA (through the Program and Budget Committee) for each year covered by the period of this EQA review. The annual reports contained the information required by this Standard. The Director General and the members of the IAOC were provided draft versions of the documents.</p>	<p>IOD annual reports to the GA</p>
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	<p>personnel and premises was restricted.(h) A summary of the report submitted by the Director, IOD to the Director General regarding the status of implementation of external audit recommendations.(i) A confirmation of the organizational independence of the internal oversight function and information on the scope of the internal oversight activities and the adequacy of resources for the purposes intended.</p>					
34	<p>The Director, IOD shall ensure that IOD comprises staff, appointed in accordance with WIPO Staff Regulations and Rules, which collectively possess the knowledge, skills and other competencies needed to perform the internal oversight functions. He/she shall promote continuing professional development to meet the requirements of this Charter.</p>	x			<p>IOD staff members are selected and hired based on job descriptions which systematically include the essential and desirable qualifications and experience related to their respective posts. Job descriptions are drafted by the Head of the relevant section (Audit, Evaluation or Investigation) and reviewed by both the Director, IOD and HRMD. According to the Head, Investigation Section, all investigation professionals hired by IOD within the period under review fully matched the said requirements, and were selected following a competitive process. Personal development plans are discussed and implemented as part of WIPO's organization-wide performance assessment and staff development program, and include, each year, a number of training and continuing professional education (CPE) activities.</p>	<p>CVs of IOD investigators Job descriptions of IOD investigators IOD annual training plans since 2016 Interview records</p>
35	<p>The Director, IOD shall be a person with high qualifications and competence in oversight functions. The recruitment of the Director, IOD shall be based on an open, transparent international selection process to be conducted by the Director General in consultation with the IAOC.</p>	x			<p>According to the curriculum vitae (CV) of the Director, IOD, he has the necessary qualifications, competence, and senior-level experience in oversight functions to fulfil his responsibilities. He was appointed by the Director General following an open, transparent international selection process closely monitored by the IAOC.</p>	<p>CV of Director, IOD Interview records</p>

36	The Director, IOD shall be appointed by the Director General after endorsement by the IAOC and the Coordination Committee. The Director, IOD shall have a non-renewable fixed term of office of six years. On completion of the fixed term of office he/she shall not be eligible for any further employment in WIPO. Steps should be taken, where possible, to ensure that the start of the terms of the Director, IOD should not be the same as that of a new External Auditor.	x			The Director, IOD was appointed by the Director General after endorsement by the IAOC and the CoCo for a non-renewable fixed term of six years. Furthermore, the Director, IOD's term of office ends in 2023 while the current External Auditor's term ends in 2024.	Please check with the IAOC
37	The Director General may dismiss the Director, IOD only on specific and documented grounds and after endorsement by the IAOC and the Coordination Committee.	x			Not applicable. The Director, IOD has not been dismissed during the period under this EQA review.	-
38	The performance appraisal of the Director, IOD shall be made by the Director General after receiving input from and in consultation with the IAOC.	x			The performance appraisals of the Director, IOD were made by the Director General in consultation with the IAOC.	
<b>UNIFORM PRINCIPLES GUIDELINES FOR INVESTIGATIONS (CII)</b>						
39	Each Organization shall have an Investigative Office responsible for conducting investigations.	x			WIPO's investigation function is the subject of the present EQA.	-
40	The Investigative Office shall maintain objectivity, impartiality, and fairness throughout the investigative process and conduct its activities competently and with the highest levels of integrity.	x			(See above line No. 4) Objectivity, impartiality, fairness, competency and integrity are maintained by IOD mainly through scrutiny in the selection of its investigators (see above line No. 35), provisions against conflict of interest (see above lines No. 12 to 17), and the constant monitoring and review of investigator's work and deliverables. The Reviewers did not observe, when perusing the sample test of investigations, any material deficiency in the objectivity, impartiality, fairness, or integrity of the investigative process.	Sample test of investigation records
41	In particular, the Investigative Office shall perform its duties independently from those responsible for or involved in operational activities and from staff members liable to be subject of investigations and shall also be free from improper influence and fear of retaliation.	x			(See above lines No. 3, 17, and 41) The Reviewers consider that the investigative function at WIPO has the necessary independence for fulfilling its mandate and conducting its activities. The Reviewers did not find any evidence tending to show that the investigators had been subject to improper influence or risk of retaliation.	

42	The staff of the Investigative Office shall disclose to a supervisor in a timely fashion any actual or potential conflicts of interest he or she may have in an investigation in which he or she is participating, and the supervisor shall take appropriate action to remedy the conflict.	x		(See above lines No. 12 to 17) The Reviewers consider that the investigative function has implemented sound tools and processes to ensure the timely reporting of any actual or potential conflicts of interest.	Internal Oversight Charter CMS
43	Appropriate procedures shall be put in place to investigate allegations of Misconduct on the part of any staff member of the Investigative Office.	x		(See above lines No. 12 to 17) The Reviewers consider that the Internal Oversight Charter contains appropriate procedures to deal with allegations of misconduct on the part of any IOD staff member.	Internal Oversight Charter
44	Each Organization shall publish the mandate and/or terms of reference of its Investigative Office as well as an annual report highlighting the integrity and anti-fraud and corruption activities of its Investigative Office in accordance with its policies on the disclosure of information.	x		The Internal Oversight Charter is published as part of the Organization's Financial Rules and Regulations. It includes, but is not limited to, terms of reference of IOD regarding investigations. As per the Charter, investigations may be conducted into alleged fraud and corruption, as well as any other breach of rules applicable in WIPO. Additionally, the Investigation Policy and Investigation Manual specify the principles and modalities for the conduct of investigations in IOD. These documents are also published on IOD's Internet website. IOD's annual reports are publicly available on the internet.	Internal Oversight Charter Investigation Policy Investigation Manual <a href="https://www.wipo.int/about-wipo/en/oversight/iaod/index.html">https://www.wipo.int/about-wipo/en/oversight/iaod/index.html</a>
45	The Investigative Office shall take reasonable measures to protect as confidential any non-public information associated with an investigation, including the identity of parties that are the subject of the investigation and of parties providing testimony or evidence. The manner in which all information is held and made available to parties within each Organization or parties outside of the Organization, including national authorities, is subject to the Organization's rules, policies and procedures. The staff of the Investigative Office shall take appropriate measures to prevent unauthorized disclosure of investigative information.	x		(See above line No. 10) The Reviewers consider that appropriate measures are in place to prevent unauthorized disclosure of non-public information.	

46	Investigative findings shall be based on facts and related analysis, which may include reasonable inferences. The Investigative Office shall make recommendations, as appropriate, to the Organization's management that are derived from its investigative findings.	x		(See above line No. 27) Investigative findings included in the EQA sample test were based on facts and related analysis. Whenever appropriate, the investigative function made recommendation to WIPO management derived from its investigative findings. Furthermore, whenever structural deficiencies were identified, the investigative function issued MIRs.	Sample test of investigation records MIRs
47	All investigations conducted by the Investigative Office are administrative in nature.	x		This is specified in paragraph 40 of the Investigation Manual. Disciplinary and other administrative decisions taken by the Organization are appealable internally and, ultimately, before the International Labour Organization Administrative Tribunal (ILOAT).	Investigation Manual
48	The Standard of Proof that shall be used to determine whether a complaint is substantiated is defined for purposes of an investigation as information that, as a whole, shows that something is more probable than not.	x		The WIPO Staff Regulations and Rules specify that the standard of proof required for disciplinary action is the standard of "clear and convincing evidence" which is above the standard of preponderance of evidence required by the Uniform Guidelines for Investigations. However, WIPO is subject to the ILOAT's jurisdiction, which applies an even stricter standard of proof (beyond a reasonable doubt).	Staff Regulations and Rules
49	A staff member who qualifies as a "whistle blower" under the rules, policies and procedures of the Organization shall not be subjected to retaliation by the Organization. The Organization will treat retaliation as a separate act of Misconduct	x		(See above line No. 8) The Reviewers consider that the Anti-Retaliation policy enforced at WIPO provides adequate protection for whistle blowers. Allegations of retaliation are analysed prima facie by the Chief Ethics Officer and, if needed, treated as a separate act of misconduct.	Anti-retaliation policy
50	The Organization may require staff to report suspected acts of fraud, corruption, and other forms of Misconduct.	x		(See above line No. 7) The Internal Oversight Charter contains provisions requiring staff members to report alleged cases of misconduct.	Internal Oversight Charter
51	The Organization shall require staff to cooperate with an investigation and to answer questions and comply with requests for information. Each Organization should adopt rules, policies and procedures and, to the extent that it is legally and commercially possible, include in its contracts with third parties, provisions that parties involved in the investigative process shall cooperate with an investigation.	x		(See above line No. 6) The Internal Oversight Charter contains provisions requiring WIPO staff members, contractors and other personnel to cooperate with any duly authorized investigation.	Internal Oversight Charter

52	As part of the investigative process, the subject of an investigation shall be given an opportunity to explain his or her conduct and present information on his or her behalf. The determination of when such opportunity is provided to the subject is regulated by the rules, policies and procedures of the Organization.	x		As per paragraph 113 of the Investigation Manual, during his/her interview, the subject of an investigation "will be provided details of the allegations and shown the evidence in support thereof, in anonymized form where warranted; he/she will be offered the opportunity to respond and to provide countervailing evidence, during the interview and at any time thereafter". In addition, paragraph 148 of the Investigation Manual provides that "[b]efore finalizing and issuing an investigation report containing adverse findings against the subject, the Director, IOD will normally give him/her an opportunity to review and comment on relevant excerpts of the draft investigation report". These obligations are reflected in IOD's interview templates, as well as the CMS, where the "relevant excerpts" procedure is a mandatory step. The Reviewers confirm that, where applicable, these measures were properly put in place in the sample test of investigations examined.	Investigation Manual IOD interview record templates CMS Sample test of investigations
53	The Investigative Office should conduct the investigation expeditiously within the constraints of available resources.	x		According to the Investigation Manual, IOD should endeavor to complete preliminary evaluations within 30 calendar days, and full investigations within six calendar months. The reviewers consider that IOD's Investigation function systematically conducts investigations expeditiously within the constraints of available resources. The CMS systematically records the time elapsed for completion of preliminary evaluation and investigations, and requires the investigator to provide a comment to justify delays. According to the Head, Investigation Section, the "performance dashboards" prepared as part of the annual WIPO Performance Report (WPR) exercise consistently show that a majority of cases are resolved within the recommended timeframe. However, the Reviewers note that IOD has the possibility to suspend the time period of an investigation whenever information is required from sources outside IOD (e.g. while awaiting replies from the IAOC, SIAD, UNICC or other services; when subjects of investigations are on sick leave; etc.). As a result, the information reflected in the performance dashboards does not depict the total time elapsed from the start to closure of an investigation but rather the time spent by IOD in an investigation.	Investigation Manual Case Management System WIPO Performance Reports (WPR) since 2016 Interview records

54	The Investigative Office should examine both inculpatory and exculpatory information.	x		Paragraph 39 of the Investigation Manual provides that "IOD investigative activities (...) [s]hould aim at gathering and reviewing the evidence available, both inculpatory and exculpatory, that is, evidence that either substantiates or disproves an allegation, and/or contributes to identifying perpetrators and/or establishing relevant surrounding circumstances". More generally, this is part of the basic and universal principles of the investigation profession, which are well known to IOD investigators as seasoned professionals (See above line No. 35). The sample test reviewed in this EQA shows that the investigators examined both inculpatory and exculpatory evidence.	Investigation Manual Sample test of investigations
55	The Investigative Office shall maintain and keep secure an adequate record of the investigation and the information collected.	x		Investigation records, documents and evidence are stored in digital format on an encrypted network drive (commonly referred to as the "R Drive"). Physical evidence and paper files are kept in a vault located in the IOD front office. Older physical items are stored in a locked basement archive room. Unfortunately, due to COVID-19 sanitary measures, the Reviewers could not verify the vault or the secured archive room.	Interview records
56	For purposes of conducting an investigation, the Investigative Office shall have full and complete access to all relevant information, records, personnel, and property of the Organization, in accordance with the rules, policies and procedures of the Organization. To the extent provided by the Organization's rules, policies and procedures and relevant contracts, the Investigative Office shall have the authority to examine and copy the relevant books and records of projects, executing agencies, individuals, or firms participating or seeking to participate in Organization-financed activities or any other entities participating in the disbursement of Organization's funds.	x		The Internal Oversight Charter grants the Director, IOD with full and unrestricted access to all WIPO information, records, personnel, and property.	Internal Oversight Charter Interview records

57	The Investigative Office shall document its investigative findings and conclusions.	x		The investigative findings and conclusions included in the sample test of investigations examined by the Reviewers were properly documented. Furthermore, every step of the investigative process is documented in the CMS.	Sample test of investigations CMS
58	The Investigative Office shall accept all complaints irrespective of their source, including complaints from anonymous or confidential sources.	x		(See above line No. 8) The Reviewers consider that complaints filed by anonymous or confidential sources are properly received and accepted by IOD.	
59	Where practicable, the Investigative Office will acknowledge receipt of all complaints. All complaints shall be registered and reviewed to determine whether they fall within the jurisdiction or authority of the Investigative Office. Once a complaint has been registered, it will be evaluated by the Investigative Office to determine its credibility, materiality, and verifiability [...] to determine whether there is a legitimate basis to warrant an investigation.	x		Acknowledgement of any complaint or report of misconduct within seven days of receipt is an obligation set out in the Investigation Manual. In addition, the CMS includes such acknowledgement as a mandatory step. The sample test of investigations confirms that such acknowledgements of receipt were made within seven days of receiving the complaints.	Investigation Manual CMS Sample test of investigations
60	The planning and conduct of an investigation and the resources allocated to it should take into account the gravity of the allegation and the possible outcome(s).	x		As per the Investigation Manual, an investigation plan should be prepared before the opening of an investigation. Accordingly, IOD preliminary evaluation templates include an "investigative plan" section where the investigator must detail the approach, projected timeline of the case, and the resources needed. Preliminary evaluation reports (PER) must be approved in writing by the Director, IOD prior to the opening of any investigation. Generally, cases are dealt with in chronological order (based on the date of receipt of the allegations). In exceptional circumstance, cases may be prioritized when there is a potential detrimental impact for the Organization.	Investigation Manual Interview records
61	The Investigative Office shall, wherever possible, seek corroboration of the information in its possession.	x		The standard of proof applicable to IOD investigations is the standard of "clear and convincing evidence" (See above line 49). Consequently, corroboration of any relevant information should be sufficient to attain this standard of proof. Based on the sample test of investigations, investigators systematically corroborated the information gathered.	Sample test of investigations

62	Investigative Activity and critical decisions should be documented in writing and reviewed with managers of the Investigative Office.	x		The Investigation Manual details the need for the Director, IOD to review and approve critical decisions (such as the opening of a full investigation), and to issue himself certain critical communications (such as a notice of investigation). All IOD templates and SOPs are designed in line with these provisions. These provisions are also mirrored in the CMS, as compulsory steps to be followed by investigators. Based on the sample test of investigations, critical decisions were documented in writing and reviewed by the Head, Investigation Section and/or Director, IOD.	Investigation Manual IOD templates and SOPs CMS Sample test of investigations
63	To the extent possible, interviews conducted by the Investigative Office should be conducted by two persons. (footnote 8: Interviews of subjects should be conducted by two investigators. For interviews of complainants, witnesses and other persons, the number of interviewers depends on the nature and the circumstances of the case.)	x		As per Investigation Manual, subject interviews are systematically conducted by two investigators ("designated investigators" within the meaning of the Charter). All the subject interviews in the sample test of investigations were conducted by two persons.	Investigation Manual Sample test of investigations
64	The Investigative Office will not pay a witness or a subject for information. Subject to the Organization's rules, policies, policies and procedures, the Investigative Office may assume responsibility for reasonable expenses incurred by witnesses or other sources of information to meet with the Investigative Office.	x		According to the Head, Investigation Section, IOD has not paid any witnesses or expenses incurred by witnesses during the period covered by this EQA.	Interview records
65	The Investigative Office may engage external parties to assist in its investigations.	x		The Director, IOD, as WIPO program manager, has the authority to engage external consultants to provide investigative services, following rules and procedures set out in the WIPO Procurement Manual. During the period under review, there were several instances where investigative work was outsourced at the advice of the IAOC in situations raising a potential issue of conflict of interest (see above lines No. 12 to 15).	WIPO Procurement Manual Interview records

66	If the Investigative Office does not find sufficient information during the investigation to substantiate the complaint, it will document such findings, close the investigation, and notify the relevant parties, as appropriate.	x		<p>The Investigation Manual provides an obligation to prepare and issue an investigation report after completion of each case, irrespective of its results. Accordingly, the compulsory steps included in the CMS provide assurance that an investigation report will be issued following the same standards whether or not the case is substantiated or not.</p> <p>Likewise, the Investigation Manual includes a section detailing IOD's obligations with respect to closure notification, which are mirrored in the mandatory steps of the CMS.</p> <p>The Reviewers noted that the list of investigation cases conducted by IOD during the period of this EQA review includes several investigations or which the allegations were found to be unsubstantiated. These findings were included in a final investigation report and, where appropriate, the subjects were notified accordingly.</p>	Investigation Manual CMS List of investigation cases
67	If the Investigative Office finds sufficient information to substantiate the complaint, it will document its investigative findings and refer the findings to the relevant authorities within the Organization, consistent with the Organization's rules, policies and procedures.	x		<p>(See above lines No. 27 to 32)</p> <p>The EQA sample test confirmed that investigative findings were systematically documented and referred to the relevant authorities (i.e. the Director General, Chief Ethics Officer, and/or HRMD).</p>	Sample test of investigations
68	Where the Investigative Office's investigative findings indicate that a complaint was knowingly false, the Investigative Office shall, where appropriate, refer the matter to the relevant authorities in the Organization for further action consistent with the Organization's rules, policies and procedures.	x		<p>Paragraph 38 of the Investigation Manual provides that "when an individual intentionally and knowingly makes allegations or provides information that are false or misleading, the identity of that person as a complainant is not protected. Making allegations or providing information that are known to be false or misleading or that recklessly disregard the accuracy of the information amounts to serious misconduct and may result in disciplinary proceedings (...)".</p> <p>The Head, Investigation Section recalled that, at least once during the period under review, a case involving frivolous allegations was substantiated.</p>	Investigation Manual
69	Where the Investigative Office's investigative findings indicate that there was a failure to comply with an obligation existing under the investigative process by a witness or subject, the Investigative Office may refer the matter to the relevant authorities in the Organization.	x		<p>(See above line No. 6)</p> <p>The Head, Investigation Section indicated that instances of failure by a staff member to cooperate with a duly authorized investigation have systematically been reported by IOD to the HRMD for processing as a separate case of misconduct.</p>	Interview records

70	The Investigative Office may consider whether it is appropriate to refer information relating to the complaint to the appropriate national authorities and the Investigative Office will seek the necessary internal authorization to do so in cases where it finds a referral is warranted.	x		Paragraph 147 (e) of the Investigation Manual provides that, in an investigation report, recommendations may include referral to national law enforcement authorities. Accordingly the Head, Investigation Section, recalled a past case of internal misconduct which, at the recommendation of IOD, had been referred to national authorities for criminal prosecution.	Investigation Manual Interview records
<b>WIPO INVESTIGATION POLICY</b>					
71	The Director, IOD has overall authority and responsibility for investigating allegations of or information concerning misconduct and other wrongdoing falling within his/her mandate.	x		(See above line No. 3) The Reviewers consider that the necessary authority and responsibility has been delegated to the Director, IOD for investigating all types of allegations of misconduct.	Internal Oversight Charter
72	WIPO staff members, contractors and other personnel have a duty to report wrongdoing in WIPO, provided there is a reasonable cause to suspect that wrongdoing occurred. [S]taff members shall report suspected wrongdoing to the Director, IOD, or a hierarchical supervisor, who shall immediately inform the Director, IOD.	x		(See above lines No. 7 and 50) The Reviewers consider that adequate channels exist at WIPO to permit staff members, contractors and other personnel to report misconduct directly or indirectly to the Director, IOD. The Head, Investigation Section is not aware of any instances of staff members failing to report misconduct.	Internal Oversight Charter Interview records
73	The Director, IOD shall be available to receive directly, from anyone, allegations of misconduct and other wrongdoing including, but not limited to, fraud and corruption, waste, abuse of privileges and immunities, abuse of authority, violation of WIPO regulations and rules or any other failure to observe the standards of conduct expected of international civil servants.	x		(See above lines No. 8 and 9) The Reviewers consider that the Director, IOD has put in place the necessary facilities to make him available to whoever wants to report allegations of misconduct or wrongdoing, independently of the type of allegation.	Internal Oversight Charter Interview records
74	Allegations of misconduct and other wrongdoing shall be received on a confidential basis and may also be submitted anonymously.	x		(See above lines No. 8 and 58) The Reviewers consider that complaints filed by anonymous or confidential sources are properly received and accepted by IOD.	Internal Oversight Charter Interview records

75	The Director, IOD may also decide to proactively initiate investigations into potential misconduct or other wrongdoing, based on risks identified in the course of risk assessment and other oversight activities.	x		(See above line No. 25) The Head, Investigation Section indicated that (1) the first two proactive investigations were conducted in 2019/2020, and that (2) IOD was planning to conduct two additional proactive investigations in 2021. The objective of proactive investigations is to respond to emerging risks identified in the course of other investigations, risk assessments or internal audits.	Internal Oversight Charter Interview records List of investigation cases
76	The Director, IOD shall acknowledge receipt within seven calendar days in writing of those allegations made by identifiable complainants. Furthermore, within six months of receipt of the report of suspected wrongdoing, the Director, IOD shall notify identifiable complainants in writing of the status of the matter.	x		(See above line No. 58)	-
77	Allegations concerning IOD personnel, WIPO personnel at the DDG and ADG levels or the Director General shall be handled in accordance with paragraphs 21-25 of the Internal Oversight Charter.	x		(See above lines No. 12, 14, and 30)	-
78	Upon receipt of allegations of or information concerning misconduct or other wrongdoing, IOD will conduct a preliminary evaluation of the information available, the purpose of which is to determine whether or not: (a) The alleged behavior, if established, would constitute misconduct or other wrongdoing; (b) The allegations are credible, material, and verifiable; and/or (c) A more appropriate or a less formal remedy is appropriate and available, or the matter falls within the purview of another body. Based on the outcome of the preliminary evaluation, the Director, IOD shall decide whether to close the matter or to initiate a full investigation. The preliminary evaluation and ensuing reasoned decision of the Director, IOD shall be documented.	x		Preliminary evaluation procedures are further detailed in the Investigation Manual, and reflected (1) in the CMS as mandatory steps prior to the opening of a full investigation or dismissal of the case, and (2) in WIPO's PER template, which requires documentation of the criteria to be considered by the Director, IOD to take his/her decision on the case. The EQA sample test confirms that preliminary evaluations were conducted in accordance with this Standard.	Investigation Manual CMS PER Template Sample test of investigations

79	IOD will endeavor to complete the preliminary evaluation within 30 calendar days from the receipt of the allegations, unless circumstances warrant a longer period.		x		While the reviewers consider that IOD's Investigation function conducted investigations expeditiously within the constraints of available resources, it had not always been possible to comply with the 30-calendar day deadline for completing preliminary evaluations. As stated in Recommendation 6 above, in line with practices observed in other International Organizations, IOD should consider amending its Investigation Manual to allow preliminary evaluations to be completed in more than 30 calendar days.	Sample test of investigations
80	The Director, IOD enjoys functional and operational independence from Management.	x			(See above lines No. 1 and 3)	-
81	[IOD investigative activities] aim at gathering and reviewing the evidence available, both inculpatory and exculpatory, that is, evidence that either substantiates or disproves an allegation, and/or contributes to identifying perpetrators and/or establishing relevant surrounding circumstances.	x			(See above line No. 54)	-
82	Investigative findings and conclusions are determined through an impartial, objective, and independent process of information gathering and analysis, which may include reasonable inferences, and are only based on substantiated facts and evidence.	x			(See above lines No. 27, 41 and 49)	-
83	The Director, IOD and the investigators he/she may designate [sic] shall have unrestricted, unlimited, direct and prompt access to all WIPO records, property, staff members, contractors and other personnel, and to all the premises of WIPO.	x			(See above line No. 5 and 56)	-
84	The right of WIPO staff members, contractors and other personnel to communicate confidentially with, and provide information to IOD without fear of reprisal, is guaranteed by the Director General.	x			(See above line No. 10)	Protection Against Retaliation policy (Office instruction 33/2017)

85	Investigative activities must preserve confidentiality, respect the individual rights and obligations of WIPO staff members and others concerned and must be conducted with strict regard for fairness, impartiality and the presumption of innocence.	x			(See above lines No. 10 and 19)	-
86	Confidentiality shall be maintained with respect to all investigative matters by the Director, IOD, designated investigators, and all others involved. IOD shall keep confidential the identity of the source of the initial allegations of misconduct or other wrongdoing and disclose it on a need to know basis only where required by the legitimate needs of the investigation and/or any subsequent proceedings. In addition, investigation plans and schedules, strategies or terms of reference relating to an investigation shall not be shared or distributed outside of IOD. Breach of confidentiality in relation to IOD investigative activities may amount to misconduct. Final investigation reports, drafts, materials, findings, conclusions and recommendations are fully confidential, unless disclosure is authorized by the Director, IOD or the Director General.		x		(See lines No. 10 and 19 above)	-

87	In the performance of their investigative functions, the Director, IOD and designated investigators will consider the impact on staff members and others concerned who might be negatively affected by the appearance of being investigated, and take reasonable steps to protect their reputation.	x		<p>Mitigation of reputational risks that may affect an individual as a result of an IOD investigation is mainly based on the following principles:</p> <ul style="list-style-type: none"> <li>- Confidentiality (see above line No. 10)</li> <li>- Timeliness of the investigative process (see above line No. 53); and</li> <li>- A specific provision in paragraph 167(b) of the Investigation Manual that "if allegations of misconduct are determined to be unfounded or unsubstantiated, the Director, IOD will notify everyone interviewed in the case accordingly". This provision is reflected in the CMS where "notice of closure" step includes a reminder to also notify witnesses as appropriate.</li> </ul> <p>The Reviewers believe that the Director, IOD and investigators adopted, to the extent possible, the necessary measures to protect the reputation of concerned persons.</p>	-
88	Once the preliminary evaluation has been completed and if the Director, IOD determines that a full investigation is warranted, the Director, IOD shall notify the individual whose conduct is under examination for alleged misconduct (hereinafter the subject) that he/she is under investigation. The notification will take place in writing, as soon as this is feasible without jeopardizing the effectiveness or integrity of the investigative process, and in any event before the subject is interviewed. It will provide information on the general nature of the allegations under investigation and on the subject's rights and obligations.	x		<p>This provision is reflected in paragraph 79 of the Investigation Manual, as well as in IOD's SOPs and in the CMS as a compulsory process step. Accordingly, IOD's notification template is designed to fulfil these requirements.</p> <p>The sample test confirms that the subjects of investigations were notified in writing that they were under investigation before the subjects were interviewed. The subject notices of investigation included a description of the allegations and the subjects' rights and obligations.</p>	<p>Investigation Manual CMS IOD templates and SOPs Sample test of investigations</p>

89	<p>The subject of an investigation shall be given a fair and reasonable opportunity to explain or justify the conduct being examined and present evidence on his/her behalf prior to the issuance of an adverse finding against him/her. Specifically, and unless exceptional circumstances would cause this to jeopardize the effectiveness or integrity of the investigative process:</p> <p>(a) The subject will be given an opportunity to attend an interview with IOD where he/she will be provided details of the allegations and shown the evidence in support thereof, in anonymized form where warranted; he/she will be offered the opportunity to respond and to provide countervailing evidence during the interview and at any time thereafter; and</p> <p>(b) Subsequently, the subject will be given an opportunity to review and comment on relevant excerpts of the draft investigation report.</p>	x			<p>(See above line No. 52) Based on the sample test, the Reviewers consider that IOD has complied with this Standard.</p>	<p>Case Management System Sample test of investigations</p>
90	<p>The Director, IOD will endeavor to submit [the final investigation] report within six months of the date of initiating the full investigation, unless circumstances warrant a longer period.</p>	x			<p>The IOD Investigation function strived to respect the six-month deadline for finalizing investigations.</p>	<p>Sample test</p>

91	<p>Upon completion of the investigation, the Director, IOD shall issue a final investigation report to the relevant competent authority detailing the findings made and evidence collected during the investigation as to whether misconduct or other wrongdoing occurred or not, and providing recommendations as deemed appropriate.</p> <p>Unless otherwise stipulated in this Policy, the Director, IOD shall submit final investigation reports to the Director General with a copy to the Director, HRMD; the External Auditor and the IAOC shall have access to investigation reports upon request.</p> <p>Where the case involves wrongdoing by a vendor or bidder, excerpts of the final investigation report relating to such vendor or bidder shall be provided to the Director, Procurement and Travel Division.</p> <p>Final investigation reports concerning the Director of IOD, WIPO personnel at the DDG and ADG levels or the Director General shall be handled in accordance with paragraphs 38-42 of the Internal Oversight Charter.</p>	x			<p>(See above lines 29 to 32)</p> <p>Based on the sample test, the Reviewers consider that IOD has complied with this Standard.</p> <p>The Head, Investigation Section also specified that no investigation report implicating a vendor has been issued during the period of this EQA review.</p>	<p>Vendor Sanctions Policy and Administrative Procedures Interview records Sample test of investigations</p>
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92	In response [to comments or a request for clarifications from the relevant competent authority regarding the investigative findings and/or conclusion in the final investigation report], the Director, IOD may, at his/her discretion, provide additional information and/or decide to conduct additional investigative activity, in which case an addendum to the final investigation report may be issued to the relevant competent authority. Should the additional investigative activity result in any new adverse findings, relevant excerpts of the addendum containing these findings will be shared with the subject for review and comments as per paragraph 31(b) of this Policy.	x		The Head, Investigation Section indicated that IOD did not receive any such requests for clarifications during the period of this EQA review.	Interview records
93	The Director, IOD may, at any time, issue Management Implication Reports providing systemic recommendations derived from investigative findings.	x		(See above lines No. 27 and 28)	-

## **Annex 5 - General Principles for Reviews of CII Investigation Offices conducted by external experts**

### **Introductory Remarks**

*Having regard to* the 13<sup>th</sup> Conference of International Investigators (CII) held in Luxembourg in September 2012, and its decision that the workshop dealing with so called "Peer Reviews" constitute a Working Group<sup>[1]</sup> to develop general principles and guidance for conducting external reviews of CII investigation offices,

*Having regard also to* the Working Group's numerous exchanges and deliberations on this topic since the 13<sup>th</sup> Conference, including discussions at the 14<sup>th</sup> and 15<sup>th</sup> Conference of International Investigators,

*Having regard, furthermore, to* the statement in the preamble to the "Uniform Guidelines for Investigations" (2<sup>nd</sup> Edition) that there is a need for investigation offices to undergo periodically an external quality assessment,

*Commending* the Working Group and all stakeholders involved for their work and the constructive compromise achieved,

The investigative offices present at the 15<sup>th</sup> Conference of International Investigators adopted/agreed on the following General Principles as a non-binding recommendation of a framework that investigative offices may wish to consider utilizing when choosing to conduct an external review:

### **Nature of Review**

The framework is intended to guide reviews that have been self-initiated by CII investigation offices. The framework is not intended to guide external reviews of investigative offices at the direction of the organization to which the investigative office belongs.

### **Timing of Review**

Periodic external reviews are highly desirable. However, the scope of the review and of prior reviews, the mandate of the office to be reviewed, a change in management, any consequent restructuring, and the needs of the investigative office, may be relevant in determining the timing, need for, and frequency of the review.

### **Composition of the Review Panel**

The review panel should generally be comprised of two or more qualified individuals from different institutions which can include or be comprised of staff from the investigation offices represented at the Conference of International Investigators and/or external experts. The panel should not include staff from the office being reviewed.<sup>[2]</sup>

### **Terms of Reference**

The precise nature of the review will be set out in the Terms of Reference (TOR), a document prepared in advance by the investigative office. The TOR or associated documentation shall include, inter alia, the qualifications and experience needed to be a reviewer in a given review. TORs will be agreed upon with the review panel.

### **Methodology**

The TOR for the review should provide a framework sufficiently detailed to offer guidance for the panel's work, yet with sufficient flexibility to allow for the unique characteristics of any given review. The essential feature of the review process is that the findings will be evidence based and any recommendation made at the end of the review will emanate from those findings. For the recommendations to be relevant, the review panel will need to understand the overall profile of the work, in the context of the organization. Points to be observed:

- The review panel should examine the legal basis and the policy framework of the office to assess their adequacy to fulfill its mandate;

- The review panel should assess the operating practices of the office which may include a review of systems used to trigger the investigation process<sup>[3]</sup>; case assessment methodology; investigation methodology<sup>[4]</sup>; and reporting<sup>[5]</sup>;
- In accordance with the organization's policies and procedures, and observing applicable confidentiality and data protection requirements, the review panel may examine a sufficient number of closed case files with a view to conducting an analysis of work performed by the office based upon the evidentiary materials within the files. The sample of cases chosen for review should be made by the reviewers following consultation with the office being reviewed. The cases should be representative of the caseload and mandate of the office. Such factors as the nature of the allegation, the complexity of the matter, the time taken to investigate, and whether the case involved staff of the organization or third parties, will be some of the considerations in selecting the cases to be examined;
- A broad spectrum of interviews should be conducted, including, where possible: (i) staff at all levels of the investigative office; (ii) members of project/programme areas of the organization; (iii) the organization's relevant oversight offices and committee; (iv) executive staff of the organization; and (v) other relevant actors, including office/s receiving and/or acting upon investigation reports;
- The review panel may undertake on-site visits to branch/field units/missions where resources and time allow and such visits are believed to be relevant to the review;
- The review panel should consider including a comparison of similar offices in its report. The comparative table should be sufficiently representative in terms of issues raised and organizations consulted to enable an objective appreciation. Such issues as interviewee's rights, notice of interview, advance detail of allegations as well as topics such as staffing, rotation, training, computer forensics, and on-going professional education are examples of matters which may be compared, if applicable to the investigative office under review;
- In respect of all proposed recommendations, the reviewers should give due consideration to the proportionality, the costs/resources, and administrative burden on the office under review.

#### **Optimal Length of Reviews**

The external reviews should be as thorough and expeditious as possible, taking into account the resources required and costs involved. Having these parameters in mind, the external reviews should preferably be completed within six months.

#### **Costs of the External Review**

The costs associated with the external review of an investigation office will be subject to agreement between the investigative office being reviewed and the investigation office(s) sending staff as qualified experts and/or the external experts.

#### **Confidentiality**

An external review report should not name any individual, subject of investigation or witness nor should it give detail sufficient to enable him or her to be identified. The identity of interviewees should not be disclosed without their consent.

Appropriate measures should be taken to avoid unnecessary disclosure of sensitive case information.

The report when completed is and remains the property of the office requesting the review and any sharing of the report, or its contents, should be exclusively at the discretion of the requesting office. The report and all related materials produced during its commissioning form part of the institutional archives of the institution that commissioned the report.

The review panel shall return or destroy all materials received during the review and all copies of the report.

Reviewers shall be required to sign a confidentiality undertaking and to maintain confidentiality over information obtained and/or produced as part of the review. Reviewers shall also declare any potential conflict of interest arising prior to the review and at any stage thereafter and, unless the conflict is resolved, may be required to recuse themselves from the review.

## Review Report

A draft report including observations and proposed recommendations shall be submitted to the office requesting the review before completion by the review panel. There should be ample opportunity for the office requesting the review to comment on the findings or remarks in the draft report. In the event of disagreement and impossibility of reconciling the differing views, the dissenting views of the office requesting the review should be attached to and form part of the report.

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<sup>[1]</sup> For example, how effective is the reporting system and, therefore, how likely is it that cases will come to the attention of the investigation office.

<sup>[2]</sup> Recognizing that there is a spectrum of acceptable investigative practices, this should include a review of the main steps undertaken in the investigation of a sample of cases – for example, evidence handling, witness interviews, subject interviews, investigation planning, and investigation reports.

<sup>[3]</sup> An assessment of effectiveness in informing stakeholders of the results and lessons learned from investigations.

<sup>[4]</sup> The working group is comprised of representatives of the African Development Bank, FAO, IACA, OLAF, UNDP, UNFPA, UNOIOS, and the World Bank.

<sup>[5]</sup> For avoidance of doubt, the members of the review panel do not need to be drawn from the same type of organization as the one being reviewed. The investigative office may wish to agree to the composition of the review panel.