|  |  |
| --- | --- |
| **Council Working Group on  Financial and Human Resources**  **Eleventh meeting – Geneva, 3-4 February 2020** |  |
|  |  |
|  | **Document CWG-FHR-11/15** |
| **22 January 2020** |
| **English only** |

|  |
| --- |
| Contribution by the United States of America |
| Proposal for a New Investigation Function and Process |

**Introduction**

The United States is pleased to submit this contribution to the ITU Council Working Group on Finance and Human Resources issues (CWG-FHR) for its discussion and consideration during its February 3-4, 2020 meetings. This proposal is based on the 2019 Council decision on *General Audit Following the Case of Fraud at a Regional Office* ([Decision 613](https://www.itu.int/md/S19-CL-C-0130/en)) and in response to CWG-FHR’s previous decision for “Fraud and Related Matters” to continue as a permanent agenda item.

**Discussion**

During the 2019 Council session, members were provided details of fraud and misconduct that occurred at the ITU Regional Office for Asia and the Pacific.[[1]](#footnote-1) The fraud and misconduct that were uncovered in this incident exposed shortcomings in the organization’s internal controls framework and its oversight mechanisms. For example, according to current investigation procedures, neither the Ethics Officer nor ITU’s Internal Audit Unit (IAU) have the authority to initiate investigations into allegations of misconduct, as is best practice in the UN system, and a recommendation of the UN Joint Inspection Unit (JIU).[[2]](#footnote-2) Concerns were also raised about how the allegations were handled, including maintaining the confidentiality of the information provided by the complainant, and therefore, whether ITU’s policy to protect staff from retaliation for reporting misconduct (Service Order 11/04) was effectively implemented.[[3]](#footnote-3)

In Council Decision 613, the council members acknowledged the need for effective oversight mechanisms, policies and procedures through the implementation of best practices as it relates to the independence of the investigation process and strong ethics functions. This decision and Resolution 48 (Rev. Dubai, 2018) recognized that the organization needs to take further steps to strengthen whistleblower protections, including addressing the findings and recommendations from the JIU report on "Review of Whistle-

Blower Policies and Practices in United Nations System Organizations" with respect to the Union. The Council instructed the CWG-FHR, in consultation with the Ethics Office and the Internal Audit Unit, to recommend actions for ITU Council to strengthen the independence of ITU’s oversight and audit functions, ethics framework, and investigation procedures in view of UN system-wide best practice and UN JIU recommendations as appropriate.

Following analysis of UN system-wide best practices, UN JIU reports, and consultations with the ITU Secretariat, the United States is concerned that the current investigation function and processes at ITU either do not exist, or are not aligned with best practices. Unlike other UN organizations for example, ITU does not have a single oversight unit/office that includes a separate and independent investigations unit, and the current oversight functions (i.e. Ethics Office and IAU) that receive complaints of wrongdoing, do not have the authority to initiate investigations. There also has been a significant increase in the reports of wrongdoing since the Ethics Officer came on board in 2018.

ITU does not have a full-time investigator and has been handling allegations on an ad-hoc, case-by-case, basis with the involvement of different ITU departments (i.e. Ethics Office, HRMD, IAU) or hires an external investigator. Some of these Departments may not have the training and expertise required to handle and investigate allegations of misconduct, or their involvement is an inherent conflict of interest. For example, if IAU has to conduct an audit in a unit/office where IAU conducted a previous investigation, the auditors may have preconceived notions that could undermine the independent findings of the audit. The United States believes these are significant weaknesses in the oversight framework, which exposes the organization to legal liability and possible waste, fraud and abuse.

**Proposal**

Therefore, pursuant to Council Decision 613, and taking into account Resolution 48 (Rev. Dubai, 2018), the United States proposes that the CWG-FHR discuss and consider the following options to recommend to Council regarding the establishment of an investigation function and process:

1. Establishment of ITU investigation function[[4]](#footnote-4)
2. Option 1 – Within existing resources the ITU should hire a P-5 or P-4 investigator to conduct investigations and associated responsibilities as described in the investigation process proposed below (“2. Reform of the Investigation Process”), to develop investigation guidelines, and contribute to other oversight policies as appropriate. This investigator will also be responsible for providing an annual report to member states on investigations undertaken during the year, and will monitor and follow up on investigation reports to see if action was taken on the findings, and if so, whether the action was proportion to the "offense." The P-5 or P-4 would be housed in the same office as the Ethics Officer, but report directly to the Secretary General. The Investigator would remain operationally independent, with similar safeguards to the Internal Auditor and Ethics Officer.
3. Option 2 – Within existing resources, hire a D-1 to oversee the entire oversight unit, to include audit and investigations. This option assumes Option 1, above, which provides for the creation of an investigator position, either as a P-3 or P-4. The D-1 would report directly to the Secretary-General, have a term limit, and his/her appointment or dismissal would be approved by ITU Council.
4. Reform of the investigation process (assuming the implementation of Option 1 or Option 2 above)[[5]](#footnote-5)
   1. *Entry:* Three internal ITU channels available for reporting wrongdoing, namely a hierarchical supervisor, the Ethics Office, or ITU investigator.
   2. *In-take:* The ITU investigator, except for complaints of retaliation, would be responsible for receiving the allegation of wrongdoing. This phase may include, depending on the circumstances of the case, ensuring that the received allegation/report is complete, and assessing the need of urgent protection measures by working with the Ethics Officer. In regards to complaints of retaliation, the Ethics Officer will be responsible for intake.
   3. *Preliminary Assessment:* The ITU investigator will conduct a preliminary assessment of the allegation of wrongdoing to determine whether the complaint warrants investigation or should be referred to another ITU entity for appropriate action. For complaints of retaliation, the Ethics Officer shall conduct a preliminary assessment and determine whether there is a *prima facie* case of retaliation that warrants an investigation. If the Ethics Officer finds there is a *prima facie* case of retaliation, he/she will immediately refer the matter to the ITU investigator for investigation.
   4. *Investigation:* If an investigation is warranted, the ITU Investigator shall have the authority to initiate an investigation immediately. He/she will conduct the investigation or hire an external investigative entity, if the investigation requires specialized knowledge or expertise (i.e. SEA or IT).
   5. *Final Decision:* Following the investigation, the investigation report, including findings and recommendations, shall be submitted to the Secretary-General and HRMD for any action, in accordance with established procedures in each scenario. If the investigation is in response to a complaint of retaliation, the final investigation report and findings shall be sent to the Ethics Officer to determine whether the burden of proof for retaliation has been met. The Ethics Officer will submit his/her findings and recommendations to the Secretary-General.
   6. *Reporting:* Taking into account confidentiality, the ITU Investigator shall submit annually a report to ITU Council on the misconduct/wrong-doing investigations undertaken during the year --specifically what has been alleged as well as the findings and outcomes --including administrative actions taken.
5. Procedure for addressing allegations of misconduct against senior officials in the organization (including high-level Union elected officials, Chief Internal Auditor, Ethics Officer, or ITU Investigator)[[6]](#footnote-6)
   1. Option 1: Since ITU’s oversight functions, including any ITU investigator, report to the Secretary-General these functions should not handle any sort of investigations involving senior officials as it would pose a conflict of interest. Similarly, these oversight functions should not handle any allegations of wrongdoing made against them for the same reason. Therefore, this working group may wish to discuss and consider recommending the following procedure to Council for addressing allegations of wrongdoing against Union senior officials and any of the oversight functions. This procedure is based on similar processes at WFP and WIPO (i.e. allegations be submitted to Chair of the Council who would seek guidance and advice from the audit committee)[[7]](#footnote-7):
      1. Allegations of wrongdoing that involve any ITU senior elected officials or oversight functions, including the Secretary-General, shall be reported to the Chair of the ITU Council or the ITU investigator. The investigator and/or Chair of the ITU Council shall inform the Secretary-General if they receive any allegations of wrongdoing that involve an ITU senior elected official, if the allegation does not involve the Secretary General.
      2. Upon receiving the allegation of wrongdoing, the ITU Council Chair and/or the ITU Investigator shall immediately seek guidance from the Independent Management Advisory Committee. Within 60 days, IMAC shall conduct, or arrange for a preliminary evaluation of the allegations. Based on the results of the preliminary evaluation, IMAC will recommend to the investigator and/or ITU Council Chair whether to close the case, or to refer the matter for investigation to an independent external investigative entity. IMAC shall provide guidance on the terms of reference for such an investigation, as well as on the selection of an external independent investigator. IMAC shall also advise the Council Chair as to whether interim protections for the complainant are needed. If the allegations do not involve the Ethics Officer, the Chair shall work with the Ethics Officer to ensure those protections are in place.
      3. Following the guidance and advice from IMAC, the Council Chair shall refer the allegations of wrongdoing to an external investigator, if necessary, within 30 days of receiving said guidance from IMAC. The Secretary-General will be notified of such a referral by the Chair, while maintaining the confidentiality of the case, and all parties involved. The external investigator will endeavor to complete the investigation in 120 days.
      4. Once the investigation is complete, the final investigation report shall only be submitted to the Council Chair and IMAC. If the investigation does not involve the Secretary General, but instead other ITU senior elected officials, or any of the oversight functions, then the report shall also be submitted to the Secretary-General.
      5. If the investigation finds that misconduct occurred, then the Chair of Council shall make accessible a redacted version of the investigation report to ITU Council members upon request. The Chair and IMAC shall maintain the confidentiality of the complainant and any witnesses involved in the investigation. The Chair shall call for a special Council session, so the ITU Council can decide what action should be taken on the findings, if any.
   2. Option 2: In general, recommend that ITU Council consider and develop a specific procedure to handle these types of allegations at the next Council meeting.

Annex 1: Table of Investigation functions and processes at other UN Organizations (not a comprehensive list)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Investigators Can Authorize Investigations** | **Full-time independent Investigators/Investigation Function** | **Investigation Function Responsible for Intake and Preliminary Review** | **Investigation Function Provides Report to Governing Body** |
| **United Nations (UN)** | Yes | Yes | Yes, and other trained responsible officials | Yes |
| **Food and Agricultural Organization of the United Nations (FAO)** | Yes | Yes | Yes | Yes |
| **World Intellectual Property Organization (WIPO)** | Yes | Yes | Yes | Yes |
| **World Health Organization (WHO)** | Yes | Yes | Yes | Yes |
| **World Food Program (WFP)** | Yes | Yes | Yes | Yes |
| **United Nations Development Programme (UNDP)** | Yes | Yes | Yes | Yes |
| **World Meteorological Organization (WMO)** | Yes | No | No, audit function | Yes |
| **International Civil Aviation Organization** | Yes, investigation committee | No | No, Ethics Officer | Yes |
| **International Atomic Energy Agency** | Yes | Yes | Yes | No |

1. [Special Report by the External Auditor – addressing fraud at ITU](https://www.itu.int/md/S19-CL-C-0106/en) [↑](#footnote-ref-1)
2. In the JIU report, [*The Investigations Function in the United Nations System (A/67/140)*](https://www.unjiu.org/content/reports)*,* the JIU recommended that internal oversight entities or investigation units have authorization to initiate investigations without the executive head's prior approval as it undermines the independence of the investigation process. [↑](#footnote-ref-2)
3. [Special Report by the External Auditor – addressing fraud at ITU](https://www.itu.int/md/S19-CL-C-0106/en) [↑](#footnote-ref-3)
4. This proposal is supported by recommendation 1 and 7 in the JIU report, [*The Investigations Function in the United Nations System (A/67/140)*](https://www.unjiu.org/content/reports). The UN, World Health Organization (WHO), Food and Agriculture Organization (FAO), World Intellectual Property Organization (WIPO), and International Labor Organization (ILO) all have at least one full-time investigator and/or independent investigation function separate from the audit function and Ethics Office (see annex 1). [↑](#footnote-ref-4)
5. This investigation process reflects similar processes at the UN, World Health Organization (WHO), Food and Agriculture Organization (FAO), and World Intellectual Property Organization (WIPO). This proposed process is also supported by recommendation 2, 4, and 6 in the JIU report, [*The Investigations Function in the United Nations System (A/67/140)*](https://www.unjiu.org/content/reports) and [*Whistle-Blower Policies and Practices in United Nations System Organizations (JIU/2018/4)*](https://www.unjiu.org/sites/www.unjiu.org/files/jiu_rep_2018_4_english_0.pdf)  Please see Annex 1. [↑](#footnote-ref-5)
6. This proposal is supported by the JIU report, [*The Investigations Function in the United Nations System (A/67/140)*](https://www.unjiu.org/content/reports) and recommendation 1 in the JIU report on [*Whistle-Blower Policies and Practices in United Nations System Organizations (JIU/2018/4)*](https://www.unjiu.org/sites/www.unjiu.org/files/jiu_rep_2018_4_english_0.pdf) . [↑](#footnote-ref-6)
7. [World Intellectual Property Organization’s Internal Oversight Charter](https://www.wipo.int/about-wipo/en/oversight/iaod/index.html) [↑](#footnote-ref-7)