

Investigations Manual

Provisional, pending promulgation of the revised
ST/AI/371



SIOS

Office of Internal Oversight Services



Investigations Division

TABLE OF CONTENTS

1.	THE INVESTIGATION FUNCTION	1
1.1	INVESTIGATIONS AND OTHER TYPES OF INQUIRIES.....	2
1.2	INVESTIGATION AUTHORITIES	2
1.2.1	Office of Internal Oversight Services.....	4
1.2.2	Other Inquiries.....	7
1.3	CATEGORIES OF MISCONDUCT.....	8
1.3.1	Serious vs. Routine Matters.....	9
1.3.2	Sexual Exploitation and Sexual Abuse.....	10
1.3.3	Prohibited Conduct.....	11
1.3.4	Retaliation.....	12
2.	THE INVESTIGATION PROCESS.....	14
2.1	NATURE OF INVESTIGATIONS	15
2.1.1	Confidentiality.....	16
2.1.2	Investigation Standards.....	17
2.2	PERSONNEL SUBJECT TO INVESTIGATION	19
2.2.1	Staff Members.....	20
2.2.2	United Nations Volunteers	20
2.2.3	Consultants.....	21
2.2.4	Vendors.....	22
2.2.5	United Nations Military Experts on Mission.....	23
2.2.6	United Nations Police Officers	24
2.2.7	Formed Police Units	24
2.2.8	Contingent Personnel.....	25
2.2.9	Additional Personnel.....	25
2.2.10	Implementing Partners.....	26
2.3	INTERNAL JUSTICE.....	26
2.3.1	The Internal Justice System.....	27
2.3.2	Administrative leave pending investigation.....	28
2.3.3	Investigation Responsibilities in the Justice Process.....	29
2.3.4	Fairness during Investigations	30
2.3.5	Due Process during the Disciplinary Stage	31
2.4	EXTERNAL JUSTICE.....	32
2.4.1	Arbitration	33
2.4.2	Civil Litigation.....	34
2.4.3	Criminal Prosecution.....	34
3.	INVESTIGATION INTAKE	35
3.1	REPORTS OF POSSIBLE MISCONDUCT	36
3.1.1	Sources	37
3.1.2	Anonymous Sources	37
3.1.3	Malicious Complaints.....	38
3.1.4	Complaints and Victims	38
3.2	PREDICATION.....	39
3.2.1	Registration.....	40
3.2.2	Evaluation.....	40
3.2.3	Notification	41
3.2.4	Post-Predication Action.....	41

4.	INVESTIGATION PLANNING AND MANAGEMENT	42
4.1	PLANNING.....	43
4.1.1	Predication.....	43
4.1.2	Ageing	45
4.1.3	Ancillary Issues	45
4.2	INVESTIGATION	46
4.2.1	Preservation of Evidence	46
4.2.2	Witnesses	47
4.2.3	Records	48
4.2.4	Resources.....	48
4.2.5	Forensics.....	49
4.2.6	Equipment.....	49
4.3	SUPPORT AND PREPARATORY INVESTIGATION TASKS.....	50
4.4	MISSION CHECKLIST	51
4.5	POST-INVESTIGATION.....	51
5.	FACT-FINDING	53
5.1	EVIDENCE.....	54
5.1.1	Common Types of Evidence	54
5.1.2	Relevance of Evidence.....	55
5.1.3	Direct vs. Circumstantial Evidence.....	55
5.1.4	Hearsay Evidence	56
5.2	TESTIMONIAL EVIDENCE.....	56
5.2.1	Witness Interviews	56
5.2.2	Subject Interviews	57
5.2.3	Fairness Requirements during Interviews	57
5.2.4	Interviewing Contractors.....	58
5.2.5	Contingent Personnel Interviews	59
5.2.6	Interview Methodology.....	59
5.3	DOCUMENTS AND RECORDS	60
5.3.1	Personnel Records.....	60
5.3.2	Administrative Records	61
5.3.3	Procurement Records	61
5.3.4	Financial Records	62
5.3.5	External: Public and Private Records	62
5.3.6	Originals vs. Copies.....	63
5.3.7	Location/Availability of Documents and Records.....	64
5.4	ELECTRONIC INFORMATION	64
5.4.1	Official Servers and Shared Drives	65
5.4.2	Official Computer Hard Drives and Peripherals	66
5.4.3	Official Communications Equipment.....	66
5.4.4	Personal Equipment.....	67
5.4.5	Other Sources	67
5.5	PHYSICAL EVIDENCE AND FORENSICS.....	68
5.5.1	Physical Evidence	68
5.5.2	Hard Disk Analysis.....	68
5.5.3	DNA Samples	69
5.5.4	Documents/Writings	69
5.5.5	Audio/Video/Photographic Enhancement.....	69
5.5.6	Fingerprints	69
5.5.7	Trace Material	70
5.6	EVIDENCE HANDLING.....	70
5.7	INTERNAL LEGAL FRAMEWORK	70
5.7.1	United Nations Dispute Tribunal.....	71

5.7.2	United Nations Appeals Tribunal	72
6.	REPORTS AND OPERATIONS SUPPORT	73
6.1	OIOS INVESTIGATIONS REPORTING FUNCTION	74
6.2	REPORT STRUCTURE, FORMAT AND STYLE.....	75
6.3	REPORT TYPES.....	76
6.3.1	Investigation Report.....	77
6.3.2	Contingent Report.....	78
6.3.3	Closure Report.....	80
6.3.4	Advisory.....	80
6.4	CONFIDENTIALITY OF OIOS REPORTS.....	81
6.5	OPERATIONS SUPPORT.....	82
6.5.1	Programme Managers	82
6.5.2	Parties Involved in OIOS Investigations	83
6.5.3	Internal Justice Process.....	83
6.5.4	National Authorities.....	84
6.5.5	Troop-Contributing Countries	84
6.6	REPORTING OBLIGATIONS AND PROCEDURES.....	85
6.6.1	Member States.....	85
6.6.2	External Oversight Bodies	86
7.	REFERRAL.....	86
7.1	REFERRAL PROCEDURES.....	87
7.1.1	Referral to Internal Units	87
7.1.2	Referral to External Bodies	88
7.2	MULTIPLE REFERRALS AND CONTEMPORANEOUS INVESTIGATIONS	91
7.3	PRESERVATION OF EVIDENCE	92
7.4	COLLABORATION WITH NATIONAL AUTHORITIES.....	92
7.5	PRIVILEGES AND IMMUNITIES.....	93

Foreword

This Investigations Manual, prepared by the Investigations Division, Office of Internal Oversight Services (OIOS), is intended to be used as a practical guide by United Nations staff members responsible for conducting internal preliminary fact-finding administrative investigations.

It includes information on OIOS investigative techniques, methods and procedures and should be viewed as advisory in nature only. There must not be an expectation that any of these techniques, methods and procedures be applied to a particular OIOS investigation. Therefore this Investigations Manual does not create any substantive rights.

Further, it does not confer, impose or imply any new rights or obligations (other than those contained in United Nations regulations and rules) that would be actionable in a court of law or in administrative proceedings by or against the United Nations or those staff members responsible for conducting the investigations. Further this Manual does not limit staff members' rights and obligations as defined in United Nations regulations and rules and other relevant administrative issuances.

ST/AI/371, which currently outlines the basic requirements of due process to be afforded a staff member against whom misconduct is alleged, was issued on 2 August 1991, prior to OIOS being established. Together with ST/SGB/2005/21, ST/AI/371 is in the process of undergoing a substantial revision, which will set out more clearly the rights and obligations attendant on those who participate in an investigation. OIOS actively awaits the promulgation of these revised documents, as they will provide a more consistent and current legal framework for conducting administrative investigations within the Organization. Accordingly, this manual should be considered as provisional, pending the issuance of the revisions.



1. THE INVESTIGATION FUNCTION

The purpose of this Chapter is to explain the role of internal investigations within the United Nations system, in particular the Investigations Division of the Office of Internal Oversight Services (OIOS), and to outline the different authorities which may perform the investigation function.

Any investigation function is a tool for collecting facts. In executing this function properly, however, the investigation can achieve purposes beyond simply collecting facts. In particular, the function is also a:

- **DETERRENCE AGAINST POSSIBLE IMPROPRIETY.** Individuals who may be inclined to act improperly are deterred by the fact that such conduct will be subject to effective investigation.
- **COMMITMENT TO ACCOUNTABILITY.** The process of investigating matters of possible employee misconduct is a function of the internal accountability system in the United Nations. Also, as investigations are conducted into other categories of personnel engaged in United Nations activities, it is important for individuals, beneficiaries and Member States to see that there are consequences for misconduct. This requires a robust capacity to establish facts so that there will be consequences for this misconduct which is critical for achieving accountability.



1.1 Investigations and Other Types of Inquiries

There are many ways to define an investigation and investigations are often referred to by different names. Nonetheless, there are common elements. An investigation, including all types of related inquiries, is defined as:

“A legally based and analytical process designed to gather information in order to determine whether wrongdoing occurred and, if so, the persons or entities responsible.”

This definition covers a range of different processes, including inquiries conducted both at a preliminary stage and as part of the United Nations internal system of justice. Even though investigations and other types of inquiries (collectively referred to as investigations) are simply fact-finding processes, they may have different requirements depending on how those facts will be used. Consequently, the nature of the investigation must be determined to establish the appropriate process to follow. This is determined by establishing which authority conducts the investigation and the type of possible wrongdoing investigated.

1.2 Investigation Authorities

The general investigation function may be discharged through a variety of different offices and departments in the United Nations system (see Chapter 2), including:

- Investigations Division/Office of Internal Oversight Services
- Department of Safety and Security – Headquarters and Special Investigation Units
- Ethics Office
- Programme Managers



- Funds and Programmes

Troop-Contributing Countries

A Troop-Contributing Country (TCC) may also undertake investigations into the conduct of its military personnel contributed as United Nations peacekeepers. The TCC has primary responsibility for investigating its military personnel. These inquiries may include contingent Board of Inquiries and investigations by the Force Provost Marshall. Further, investigations may be a hybrid internal-external activity with the United Nations participating in some capacity. In particular, OIOS interaction with the TCC is reflected in the revised draft model memorandum of understanding, which recognizes the authority of the TCC over its personnel.¹

The revised draft model memorandum of understanding may limit the United Nations authority to a preliminary fact-finding inquiry upon notifying the TCC of possible misconduct. The TCC must then decide how to proceed and if the United Nations will be involved in the investigation.² If OIOS participates in a preliminary fact-finding inquiry, its role may be described as secondary or complimentary to the TCC-led investigation. (See Chapter 6)

When OIOS leads an investigation, either because so decided by the government of the TCC or by its default due to the government's failure to respond to a request for investigation under the revised draft model memorandum of understanding, the government of the TCC is obliged to instruct the Contingent Commander to cooperate and share documentation and information with OIOS, subject to applicable national and military laws of the TCC.

¹ Draft model memorandum of understanding as set out in A/61/19 (Part III) and endorsed by the General Assembly in A/RES/61/267 B.

² Procedures - Interaction with Troop-Contributing Countries and military members of national contingents.



Security Council Investigations

In addition to the internal fact-finding activities conducted by various offices, departments and organizations in the United Nations common system, there are certain investigations conducted under the authority of the United Nations. In particular, investigations conducted under a Security Council resolution can be completed outside of and unrelated to United Nations operations as measures adopted pursuant to Chapter VII of the Charter of the United Nations.³

1.2.1 Office of Internal Oversight Services

OIOS has overall responsibility for internal United Nations investigations. Its role is to assist the Secretary-General in fulfilling his or her internal oversight responsibilities in respect of the resources and staff of the Organization. The Under-Secretary-General (USG) for OIOS is appointed by the Secretary-General, following consultations with Member States, and approved by the General Assembly. OIOS exercises operational independence and cannot be prohibited from carrying out any action within the purview of its mandate.⁴

All staff members are required to cooperate fully with official investigations.⁵ Furthermore, OIOS has the right to direct and prompt access to all persons engaged in activities under the authority of the Organization, as well as all records, documents or other materials, assets and premises and to obtain such information and explanations as it considers necessary to fulfil its responsibilities.⁶

³ Charter of the United Nations, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.

⁴ A/RES/48/218 B (12 August 1994) and ST/SGB/273 (7 September 1994).

⁵ Staff Rule 2(1) r; *Yapa* 2011-UNAT-168, para. 35.

⁶ ST/SGB/273 (7 September 1994).



Legislative Mandate

OIOS was established under General Assembly resolution 48/218 B of 12 August 1994, to enhance the oversight functions within the United Nations. Member States took this action in response to the increased importance, cost and complexity of the Organization's activities. The General Assembly stressed the operational independence of the Office and also stated its proactive and advisory role to assist and provide methodological support to programme managers in the effective discharge of their responsibilities.

The Fifth Committee (Administrative and Budgetary) regularly reviews the functions and reporting procedures of OIOS, as stipulated in resolution 48/218 B. These subsequent reviews have resulted in a number of new provisions concerning OIOS as outlined in General Assembly resolutions 54/244 of 31 January 2000, 59/272 of 2 February 2005 and 59/287 of 21 April 2005.

Scope

The aim of OIOS investigations is to establish facts and make recommendations in light of its findings. The Secretary-General or delegated programme manager, in the circumstances of the case, has the responsibility to consider what action, if any, is to be taken after receipt of the report. It is important to note that OIOS is not a law enforcement agency, and does not have subpoena or other coercive statutory powers; however, in cases of possible criminality OIOS may make a recommendation to the Office of Legal Affairs (OLA) for referral to national law enforcement authorities (see Chapter 7).

Misconduct may be reported or otherwise detected. This includes:

- Violations of the regulations, rules and administrative issuances of the Organization
- Improper conduct of TCC personnel within the context of United Nations operations subject to TCC authority
- Third party fraud and corruption in the execution of United Nations contracts or other agreements



This responsibility does not include investigating disputes over performance, conditions of employment or personal behaviour that would not amount to misconduct as defined by United Nations regulations, rules and administrative issuances. Moreover, while retaliation for reporting possible misconduct or cooperating with an investigation is misconduct, the initial assessment as to whether an OIOS investigation is warranted is made by the Ethics Office.⁷

Reports of possible misconduct may be from the Secretary-General, programme managers, staff members or persons outside of the Organization. OIOS is also mandated to initiate proactive investigations to assess the risk to the Organization of potential fraud and other contraventions through analysis of systems control in high-risk areas as part of its own programme of work. OIOS is mandated to transmit the results of its investigations to the Secretary-General, together with appropriate recommendations to guide the Secretary-General in deciding on jurisdictional or disciplinary action.⁸ Such recommendations may be for appropriate action, including disciplinary or administrative measures, consideration of referral to national authorities, and requesting financial recovery.⁹

Investigation Intake

OIOS has discretionary authority to decide which matters to investigate. All reports received by OIOS will be assessed through an intake process. In deciding whether to investigate a report, intake will consider if such matters should more appropriately be dealt with by another entity. Numerous entities exist to ensure that staff members receive entitlements due to them under the staff regulations and rules. If a report of possible misconduct relates to a personnel dispute concerning allowances, promotion, conduct of a supervisor, etc., the matter may be referred to the programme manager, Office of Human Resources Management (OHRM), or the Ombudsman. For more information about reporting possible misconduct to OIOS and the preliminary assessment see Chapter 3.

⁷ ST/SGB/2005/21 (19 December 2005).

⁸ A/RES/48/218 B (12 August 1994).

⁹ Procedure - Report Writing.



Disciplinary Proceedings

OIOS is not responsible for deciding whether to initiate disciplinary proceedings or to institute corrective administrative action as a result of its reports and recommendations. If a staff member is found to have engaged in misconduct,¹⁰ the programme manager should, in accordance with ST/AI/371, Revised Disciplinary Measures and Procedures and ST/AI/371/Amend.1, refer the matter to OHRM for possible disciplinary action. On the basis of the evidence presented, the Assistant Secretary-General for Human Resources Management shall decide whether the matter should be pursued as a disciplinary case.¹¹

Disciplinary proceedings are not instituted against a staff member unless he or she has been notified, in writing, of the allegations against him or her and of the right to seek the assistance of counsel, and has been given the opportunity to respond to those charges.¹² The investigation is therefore, fundamental to the entire process, as well as to the interests of both the Organization and the staff member to ensure effective internal justice (see Chapter 2).

1.2.2 Other Inquiries

In addition to the investigation authority of OIOS and the other United Nations offices, departments, funds and programmes, the system also provides for an additional body with investigation related responsibilities, for example Boards of Inquiry.

Boards of Inquiry are convened on an ad hoc basis in peacekeeping missions to review investigations of loss or damage, including injury and death of mission personnel, and to record the facts of incidents relating to both civilians and peacekeepers.¹³

¹⁰ "Misconduct" is defined in Staff Rule 10.1 (a).

¹¹ ST/AI/371 (2 August 1991).

¹² Staff Rule 10.3 (a).

¹³ SOP on Boards of Inquiry, Department of Peacekeeping Operations/Department of Field Support (1 March 2011). Boards of Inquiry are generally not appropriate for Category I misconduct matters, including Sexual Exploitation and Sexual Abuse, that have not resulted in death, serious injury or loss or damage to property.



It is comprised of staff members who serve on a voluntary basis in addition to their regular duties. Boards of Inquiry conduct a panel based peer investigation whose character and role is fundamentally different from those of OIOS, which are designed to establish facts related to possible misconduct.

1.3 Categories of Misconduct

Although OIOS has overall authority for the investigative function within the United Nations Secretariat, this authority may be discharged through various offices/departments which have different mandates and processes used to gather information. For example, the expertise of professional investigators is required for complex fraud or criminal activities, while a lay panel of staff members may appropriately deal with cases that review behavioural problems.



1.3.1 Serious vs. Routine Matters

Misconduct is classified into two broad categories, according to the relative seriousness of the contravention and risk to the Organization.¹⁴

Category I SERIOUS	Category II ROUTINE
<ul style="list-style-type: none"> • serious/complex fraud or criminal activity • sexual exploitation and abuse • prohibited conduct by senior staff members¹⁵ • conflict of interest • gross mismanagement • waste of substantial resources • risk of loss of life to staff or to others • complex proactive investigations aimed at studying and reducing risk to life and/or United Nations property • entitlement fraud • procurement violations • substantial violations of United Nations regulations, rules or administrative issuances 	<ul style="list-style-type: none"> • personnel matters • traffic related inquiries • simple thefts • contract disputes • office management disputes • basic misuse of equipment or staff • prohibited conduct by staff • basic mismanagement issues

The distinction between category I and II is used to determine whether OIOS should investigate or whether another authority may assume that role. While OIOS has ultimate authority to determine if a matter is category I or category II, programme managers also make this assessment when dealing with day-to-day conduct issues and managers are encouraged to consult with the Investigations Division.

Accordingly, whenever OIOS receives a matter, an assessment is made by intake as to whether it warrants OIOS investigation (see Chapter 3). All other matters are referred to the appropriate entities or will be closed if not satisfying the requirements for an investigation.

¹⁴ See the “Report of the Office of Internal Oversight Services on strengthening the investigation functions in the United Nations” – A/58/708; A/RES/59/287; and Kunanayakam UNDT/2011/006, paras. 45-46.

¹⁵ ST/SGB/2008/5 – “prohibited conduct” includes discrimination, harassment, including sexual harassment, and abuse of authority.



Conduct and Discipline Unit

Conduct and Discipline offices do not conduct investigations: the Conduct and Discipline Unit at Headquarters provides global oversight on the state of discipline in peacekeeping operations and guidance for Conduct and Discipline Teams based in the peacekeeping missions. Conduct and Discipline Teams receive, screen and categorize reports of possible misconduct in the respective missions.

Conduct and Discipline Teams report to the heads of the missions, to whom they provide technical advice and assistance on a series of misconduct-related issues, including:

- The design and implementation of measures to prevent misconduct
- Receivership and assessment of reports of misconduct
- Maintenance of records of misconduct
- Enforcement and remedial action

They also determine which investigative body will receive a particular report of misconduct, depending on its seriousness and the type of personnel involved, including cases involving or related to sexual exploitation and abuse.

1.3.2 Sexual Exploitation and Sexual Abuse

Sexual exploitation and sexual abuse constitutes serious misconduct and is strictly prohibited.¹⁶ It includes:

- Sexual activity with any person under the age of 18
- The exchange of money, employment, goods or services for sex

It should be further noted that sexual relationships between United Nations staff and beneficiaries of assistance are strongly discouraged.¹⁷

¹⁶ ST/SGB/2003/13 (9 October 2003).

¹⁷ ST/SGB/2003/13 (9 October 2003), Section 3.2 (d).



The prohibition against sexual exploitation and sexual abuse extends to United Nations personnel, including contractors and personnel provided by a TCC. As this reflects a significant number of individuals, there must be careful prioritization to ensure that limited investigative resources are appropriately deployed.

OIOS, therefore, prioritizes cases which are reported as non-consensual sex. This includes sex through coercion or violence and sexual activity with persons under the age of 18, as they are considered as lacking the capacity to consent.

1.3.3 Prohibited Conduct

Pursuant to Secretary-General's bulletin ST/SGB/2008/5, panels will be established to investigate discrimination, harassment, including sexual harassment, and abuse of authority, which collectively are referred to as "prohibited conduct". Managers and supervisors have the duty to take prompt and concrete action in response to reports of such conduct.¹⁸ There may be either informal or formal resolution of the matter. Even in the event of a formal resolution, the matter may be handled without referral to OIOS.

Informal Resolution

In many cases, claims of prohibited conduct can be resolved informally. Aggrieved individuals are encouraged to notify the offender of their complaint or grievance and ask him or her to stop as, in some instances, the alleged offender may not be aware that his or her behaviour is offensive. Aggrieved individuals may also ask for assistance from a third party in seeking informal resolution. An unsuccessful attempt to resolve the matter informally does not preclude it from being pursued formally under the following provisions.

¹⁸ ST/SGB/2008/5 (11 February 2008).



Formal Resolution

In circumstances where informal resolution is not desired or appropriate, or has been unsuccessful, the aggrieved individual may submit a written complaint to the head of the department, office or mission concerned (“the responsible official”), except in those cases where the official who would normally receive the complaint is the alleged offender, in which case the complaint should be submitted to the Assistant Secretary-General for Human Resources Management or, for mission staff, to the Under-Secretary-General for Field Support. Formal resolution may also be initiated by the submission of a report of prohibited conduct from a third party that has direct knowledge of the situation to the responsible official. In all instances, aggrieved individuals or third parties who have direct knowledge of the situation may report cases of prohibited conduct directly to OIOS, without the need to obtain authorization or clearance from any official. When a matter of prohibited conduct is investigated by OIOS, it is investigated according to normal OIOS procedures, subject to any procedural fairness rights contained in ST/SGB/2008/5.

Upon receipt of any such report of possible misconduct, the responsible official determines whether there are sufficient grounds to warrant a formal fact-finding investigation. If that is the case, the responsible official shall promptly appoint a panel of at least two individuals from the department, office or mission concerned who have been trained in investigating allegations of prohibited conduct or, if necessary, from OHRM’s roster.

1.3.4 Retaliation

Retaliation is any direct or indirect detrimental action recommended, threatened or taken against an individual who officially reported misconduct or otherwise cooperated with duly authorized audits or investigations.¹⁹ If established, retaliation constitutes misconduct which is subject to possible sanction.

The Ethics Office is entrusted with administering the protection against retaliation policy, which offers enhanced protection for those who reveal wrongdoing, in accordance with Secretary-General's bulletin ST/SGB/2005/21.

¹⁹ ST/SGB/2005/21 (19 December 2005).



The Ethics Office has functional responsibility for undertaking a preliminary review of claims of retaliation. This review is to determine if the report is being lodged in good faith and whether there is a prima facie case of retaliation. If established, the Ethics Office will refer the matter to OIOS.

Where retaliation is reported to or discovered by OIOS, it will be referred to the Ethics Office for an initial determination and possible referral back to OIOS for a full investigation.

The OIOS investigation methodology does not change in matters of retaliation, which simply is one type of misconduct. Moreover, the investigation will not generally identify possible remedial or protective actions, although in cases where the retaliation is ongoing and/or interferes with an investigation, OIOS may recommend that the implicated staff member be placed on administrative leave for the sole purpose of effective investigation of the reported misconduct. After receipt of the OIOS investigation report, the Ethics Office will inform the complainant in writing of the outcome of the investigation.²⁰

²⁰ ST/SGB/2005/21 (19 December 2005).



2. THE INVESTIGATION PROCESS

The purpose of this Chapter is to explain the general investigation process, how it relates to the entire system of accountability and, more generally, the processes that may be used by investigation authorities other than OIOS.

The investigation process is part of a more comprehensive system of accountability. Consequently, it depends upon and integrates with other processes within that system. At times, there may also be an overlap with other investigation authorities that may have differing procedures or practices depending upon the nature of the investigation and the matter being investigated. It must be remembered that OIOS conducts preliminary fact-finding administrative investigations. As such, there is an obligation to ensure that the requisite fairness principles are met throughout the course of the investigation (see section 2.3.4).

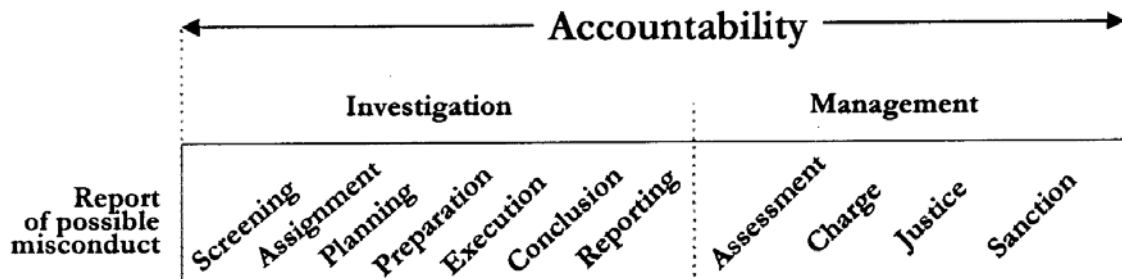


2.1 Nature of Investigations

The process of investigating matters of possible misconduct is a function of the accountability system in the United Nations. As such, the process is generally part of the internal justice system designed to ensure employee accountability and is, therefore, strictly administrative. The contract of employment reflects the duties of employees to act in a certain manner, including cooperating with investigations into possible contravention of those duties, and the employer’s obligation towards the employee during the course of any investigation and potential disciplinary process that may result (for further discussion of the United Nations internal justice mechanism, see section 2.3).

As an administrative process, investigations follow prescribed steps defined by the employer’s obligations towards the employee to ensure procedural fairness. As a first step, the investigation process generally commences with a report of possible misconduct. The intake of matters for investigation requires a methodical and consistent approach for receiving, recording, screening, and assigning matters for investigations (see Chapter 3). Intake also serves as a foundation for and, to a certain extent, initiates the next step of investigation planning.

The investigation process continues with the steps of planning and preparation (see Chapter 4). These steps include both formal and informal actions designed to ensure effective disposition of the investigation, as well as to support post-investigation management action. The steps of planning and preparation are, therefore, critical to the effective execution of investigation responsibilities.



The execution of an investigation plan is the culmination of technical expertise in methods and techniques, as well as competence in the organizational requirements for the administrative process that includes the administration of justice (see Chapter 5). As such,



the investigation is one part of the entire system of accountability and must be executed in a manner that supports that system.

The conclusion of an investigation is not the final step. Rather the conclusion is the point where a decision is made that either:

- there is sufficient factual information to make recommendations about the reported possible misconduct; or
- the matter can no longer be effectively pursued and must be closed.

As with the decision at intake on whether an investigation is to be initiated, the decision of how and when to close the investigation is discretionary and must take into account the interests of the Organization and the requirements of the system of accountability.

Whatever the conclusion of an investigation, a written report should be prepared to record the process, result and recommendations, if any (see Chapter 6). The reporting step is critical to communicating information to relevant managers and creating the auditable record for future review and assessment, particularly during any internal justice process or when the investigator's exercise of discretionary authority is challenged.

With the completion of a report, the process of investigation is concluded. However, investigation personnel may still be required to support post-investigation activities that fall within the authority of the Organization as part of the system of accountability. This includes management's consideration of whether disciplinary or remedial action is necessary and the procedures for imposing a sanction. Investigation personnel may be called upon to explain the investigation process, as well as information about the findings and conclusions of a specific case. This responsibility may extend to providing testimony before internal review bodies.

2.1.1 Confidentiality

The investigation process is designed to prevent unauthorized disclosure of confidential information that may be private or not appropriate for distribution. This level of confidentiality is required for the effective investigation and disposition of possible



misconduct and is in the interest of both the Organization and implicated personnel. Consequently, to safeguard the integrity of the investigation process, the requirement for confidentiality extends equally to staff, management and investigators.

The investigation process has systematic controls that prevent unauthorized disclosure of information and informs individuals of the confidentiality requirements.²¹ These controls commence with initial intake by, for example, ensuring source details are protected, and continue through each step of the investigation process until the final report is issued to the appropriate authority.

However, absolute confidentiality of investigations cannot be guaranteed. Where an investigation proceeds to the United Nations Dispute Tribunal (UNDT), the Tribunal has the power to call for documents relevant to the proceeding, including witness statements. In addition, proceedings before UNDT may be made open to the public, as may judgments relating to such proceedings.

2.1.2 Investigation Standards

The investigation function is a critical part of the overall accountability framework, and to maintain the integrity of any accountability framework, standards for investigations must be created, published and monitored for compliance.

The standards for OIOS investigations are based on United Nations regulations, rules, and administrative issuances, jurisprudence of UNDT and the United Nations Appeals Tribunal (UNAT), General Assembly resolutions, core principles and best practices for investigation activities. This manual and related guidance material for implementing its provisions likewise forms part of the standards applicable to investigations.

²¹ Advisory – Confidentiality during Investigations; Protocol – Declaration of Confidentiality by non-ID personnel; Protocol – Requests and Handling of Confidential Information.



The Uniform Guidelines for Investigations provides fundamental standards for investigations and investigators in the United Nations and other international organizations, and the basic principles are specifically enumerated and include:²²

- Investigation is a profession requiring the highest personal integrity
- Persons responsible for the conduct of an investigation should demonstrate competence
- Investigators should maintain objectivity, impartiality and fairness throughout the investigative process and disclose in a timely manner any conflicts of interest to supervisors
- Investigators should endeavour to maintain confidentiality
- The conduct of the investigation should demonstrate the investigator's commitment to ascertaining the facts of the case
- Investigative findings should be based on substantiated facts and related analysis, not suppositions or assumptions
- Recommendations should be supported by the investigative findings

Investigator Conduct

Like all staff members, those performing investigation functions must comply with the highest standards of conduct expected of international civil servants. Additionally, however, they must responsibly use the authority of their position and the power of the office.

Investigators must, therefore, abide by United Nations regulations, rules, administrative issuances and the applicable law of relevant jurisdictions. In discharging their duties, they must maintain strict confidentiality, act with objectivity, disclose any actual or potential conflicts of interest, and recuse themselves from any involvement in the investigation if such a conflict exists.²³

²² Uniform Guidelines for Investigations, 2nd Edition, as endorsed by the 10th Conference of International Investigators held in Jordan between 10 and 12 June 2009.

²³ Protocol – OIOS Conflict of Interest regarding parties of an investigation.



Investigator Misconduct

Staff members should be aware of what can be expected during the course of any investigation. Regarding a particular investigation, OIOS must specifically advise the staff member of the investigation process prior to the commencement of a formal interview (see Chapter 5). The staff member will be advised as necessary of the procedure for reporting investigator misconduct during the course of an investigation. Details of investigator misconduct claims will be maintained and reviewed by the Under-Secretary-General, OIOS, for consideration of appropriate action.

Oversight of Investigations

As investigations are part of the system of internal justice, the review process for any disciplinary matter serves as one element of oversight for the quality and proper conduct of an investigation. Not every investigation report will result in a charge of misconduct, nor will every charge of misconduct result in sanction or otherwise withstand appeal. As such, the administration of justice system provides critical oversight during the discharge of its functions by detecting procedural flaws in the investigation process.

Investigations that are closed without an investigation report, either because the reported possible misconduct is found to be unsubstantiated or because it is found that there is no basis on which to pursue an investigation, result in a closure report which will be included in the file (see Chapter 6). All closure reports may be subject to periodic review by the Under-Secretary-General, OIOS and may be re-opened should it be deemed appropriate.

2.2 Personnel Subject to Investigation

Investigations are not primarily conducted to assess systemic or organizational management problems. Rather, they are for the sole purpose of collecting facts to determine whether an individual acted in a manner inconsistent with his or her duties and obligations towards the Organization. The investigation will, therefore, be affected by the nature of that individual's relationship to the Organization as may be defined by his or her contractual status. Within the United Nations, there are broad categories defining the contractual status of an individual and this must be ascertained in order to determine the appropriate means of



investigating their conduct and, ultimately, disposition of the matter within the system of accountability.²⁴

2.2.1 Staff Members

Staff members are all personnel appointed under the United Nations Staff Regulations and Rules. This includes continuing, fixed-term and temporary appointments. Duties and obligations of staff are universal under those rules. This includes the standard of conduct expected and the requirement for cooperating with investigation activities.

Even though personnel appointed under the Staff Regulations and Rules are staff members, the authority to make such appointments has been delegated to several organizations that do not report directly to the Secretary-General. Most United Nations Funds and Programmes, therefore, have delegated authority to appoint staff members to their respective organizations. These staff members are subject to the same Staff Regulations and Rules, but may be within the investigative purview of the appointing authority. Moreover, staff members may be appointed by one organization and then loaned or seconded to another, which determines the investigative authority (see Chapter 7).²⁵

Ultimately, however, the investigation of staff conduct arises from the United Nations regulations and rules that apply to all staff members, no matter which organization appoints them. These regulations and rules specifically address matters of staff misconduct and the disciplinary process to follow.²⁶

2.2.2 United Nations Volunteers

United Nations Volunteers are professionals who serve as volunteers without regard to financial benefit. They are recruited and managed by the United Nations Volunteers Programme, based in Bonn, Germany, which is administered by the United Nations

²⁴ For example, a disciplinary measure cannot be imposed on a former staff member, see *Mobono* UNDT/2012/179, para. 45.

²⁵ Inter-Organization Agreement (1 January 2012)

²⁶ Article X, Staff Regulations and Chapter X, Staff Rules.



Development Programme. United Nations Volunteers are not United Nations staff members and do not enjoy, nor are they bound by the United Nations Regulations and Rules.²⁷ The Conditions of Service for International United Nations Volunteers exclusively define the duties and obligations of United Nations Volunteers.²⁸

The Memorandum of Understanding between the Department of Peacekeeping Operations and the United Nations Volunteers provides that “the United Nations shall seek to ensure that United Nations Volunteers are granted, for the purposes of performing their official duties, the same privileges and immunities and facilities as those accorded to United Nations officials assigned to the civilian component of a mission.”²⁹ When this language is incorporated into a status-of-forces agreement, United Nations Volunteers have the same functional immunity as United Nations staff members in the host State.³⁰

United Nations Volunteers are required to cooperate fully with investigations.³¹ They are also required to sign an “undertaking” which incorporates prohibitions against sexual exploitation and sexual abuse. A mission may request repatriation of a United Nations Volunteer, but that may not be considered a disciplinary measure. After an OIOS investigation, the matter progresses through the United Nations Volunteers internal disciplinary process, which may require OIOS support.

2.2.3 Consultants and individual contractors

A consultant is an individual who is a recognised authority or specialist in a specific field, engaged by the United Nations under a temporary contract in an advisory or consultative capacity to the Secretariat. An individual contractor is an individual engaged by the Organization under a temporary contract to provide expertise, skills or knowledge for the performance of a specific task or piece of work. The distinguishing characteristic of both of these categories of personnel is that they are individuals providing temporary services to the

²⁷Memorandum of Understanding Between the United Nations, acting through its Department of Peacekeeping Operations, and United Nations Volunteers, 18 November 2003.

²⁸ Conditions of Service for International United Nations Volunteers, 1 March 2015.

²⁹ *Id.*

³⁰ Convention on the Privileges and Immunities of the United Nations 1946.

³¹ Memorandum of Understanding Between the United Nations, acting through its Department of Peacekeeping Operations, and United Nations Volunteers, 18 November 2003.



United Nations but not appointed under the Staff Regulations and Rules, and therefore not subject to United Nations internal disciplinary process.³²

Their duties and obligations are defined by the General Conditions of Contracts for the Services of Consultants and Individual Contractors.³³ Consultants and individual contractors may be accorded the status of Experts on Mission for the Organization.³⁴

While investigative methodology used for staff members is generally applicable to investigations of consultants and individual contractors, the consequences may differ. Thus, there may be procedural variations that reflect the different contractual status.

2.2.4 Vendors

A vendor is a potential or actual supplier of goods, services and/or works to the United Nations, which may take various forms, including persons, a company (whether privately or publicly owned), a partnership, a government agency or a non-governmental organization.

Vendors are subject to the United Nations General Conditions of Contract, which obliges them to cooperate fully and in a timely manner with any authorized United Nations investigation and to adhere to the highest ethical standards. This means that vendors' employees and management must not engage in corrupt, fraudulent or unethical practices, such as bribery, extortion, coercion, fraud and collusion, during the bidding process or throughout the execution of a contract.³⁵

Although vendors provide a commercial service that may be subject to some degree of investigation, the purpose of an investigation is not to establish the facts needed for arbitrating/litigating a contract dispute related to those services. Rather, investigations are used to support internal processes which, in the case of vendors, may include debarment

³² See ST/AI/2013/4.

³³ See ST/AI/2013/4.

³⁴ ST/AI/2013/4, para. 5.4, Convention on the Privileges and Immunities of the United Nations, 1946, section 22.

³⁵ United Nations Procurement Manual, Version 7 of 1 July 2013, United Nations Supplier Code of Conduct, Revision 05 of 5 September 2013.



from future procurement exercises and contract termination should corruption be established.

Corrupt practices implicating a vendor's employee can also implicate staff members. Accordingly, the investigation may cover vendors and staff members. Where there is a staff member implicated, the findings may be used to support a disciplinary action and/or a debarment process, as well as potential criminal prosecution, civil litigation or commercial arbitration. This can result in variations in investigation methodology and reporting.

2.2.5 United Nations Military Experts on Mission

United Nations Military Experts on Mission, including Military Observers, Military Advisors and Military Liaison Officers, are recruited as individuals through a Member State that retains disciplinary authority over them. Their duties and obligations are generally defined by a signed undertaking with the United Nations, as well as by the prevailing status-of-forces agreement in the country of operation.³⁶ In addition, they are subject to mission-specific regulations and rules. United Nations Military Experts on Mission are accorded the status of “Expert on Mission” for the Organization in accordance with the Convention on the Privileges and Immunities of the United Nations.³⁷

Internal United Nations investigations are conducted by OIOS where instances of serious misconduct arise. Although United Nations Military Experts on Mission are under the disciplinary authority and procedures of the Sending State, their signed undertaking outlines the obligation to cooperate fully and actively with an OIOS investigation.³⁸

³⁶ Model Undertaking and Declaration to be signed by the United Nations Military Experts on Mission, 23 April 2010. Model Status-of-Forces agreement as included in A/45/594. See also ST/SGB/2002/9 (18 June 2002).

³⁷ Convention on the Privileges and Immunities of the United Nations 1946.

³⁸ Procedure – Interaction with Military Experts on Mission including Military Observers, Military Advisers and Military Liaison Officers.



2.2.6 United Nations Police Officers

United Nations Police officers are recruited as individuals through a Member State that retains disciplinary authority over them. Their duties and obligations are generally defined by a signed undertaking with the United Nations, as well as by the prevailing status-of-forces agreement in the country of operation.³⁹ In addition, they are subject to mission-specific regulations and rules. United Nations Police officers are accorded the status of “Expert on Mission” for the Organization on secondment from governments of Member States upon request of the Secretary-General.⁴⁰

Internal United Nations investigations are conducted by OIOS where instances of serious misconduct arise. Although United Nations Police officers are under the disciplinary authority and procedures of the Sending State, their signed undertaking includes the obligation to cooperate fully and actively with an OIOS investigation.⁴¹

2.2.7 Formed Police Units

Members of Formed Police Units are law enforcement officials assigned to serve as “Experts on Mission” with the United Nations on secondment by governments of Member States at the request of the Secretary-General. Their duties and obligations are generally defined by a signed undertaking with the United Nations, by a Memorandum of Understanding between the United Nations and the police-contributing country, as well as by the prevailing status-of-forces agreement in the country of operation.⁴² In addition, they are subject to mission-specific regulations and rules.

Internal United Nations investigations are conducted by OIOS where instances of serious misconduct arise. Although Formed Police Units are under the disciplinary authority and

³⁹ Model Undertaking and Declaration to be signed by Experts on Mission: UN Police Officer/Corrections Officer/Military Observers/Military Liaison Officer. Draft model status-of-forces agreement as included in A/45/594. See also ST/SGB/2002/9 (18 June 2002).

⁴⁰ Convention on the Privileges and Immunities of the United Nations 1946, section 22.

⁴¹ Procedure – Interaction with United Nations Police Officers.

⁴² Draft model status-of-forces agreement as included in A/45/594.



procedures of the Sending State, their signed undertaking includes the obligation to cooperate fully and actively with an OIOS investigation.⁴³

2.2.8 Contingent Personnel

Contingent personnel refer to individuals provided by a troop-contributing country (TCC) and serve in the military force of a United Nations peacekeeping operation.⁴⁴ They are neither employees nor contractors of the United Nations. Their duties and obligations are defined in the revised draft model memorandum of understanding with the TCC, as well as by the prevailing status-of-forces agreement in the country of operation.⁴⁵ Contingent members are subject to the United Nations standards of conduct entitled “We are United Nations Peacekeeping Personnel”⁴⁶ and to mission-specific regulations and rules.

OIOS authority to investigate conduct of contingent military personnel is limited by agreement with the TCC. Personnel provided by a TCC remain under the command of their national military commander. The overall operational authority for the troops of a peacekeeping mission lies with the Head of Mission and the Force Commander, but this does not include disciplinary measures for national military contingent members. Because TCC military personnel are under their respective national disciplinary authorities, the investigative methodology adopted by OIOS must be adjusted accordingly.⁴⁷

2.2.9 Additional Personnel

Other personnel categories include interns, associate experts, corrections officers, high-level envoys and technical cooperation experts.⁴⁸

⁴³ Procedure – Interaction with Formed Police Units.

⁴⁴ Military Staff Officers are considered members of national contingents.

⁴⁵ Revised draft model memorandum of understanding as set out in A/61/19 (Part III) and endorsed by the General Assembly in A/RES/61/267 B. Draft model status-of-forces agreement as included in A/45/594.

⁴⁶ Revised draft model memorandum of understanding as set out in A/61/19 (Part III), Annex H.

⁴⁷ Procedure – Interaction with Troop-Contributing Countries and military members of national contingents

⁴⁸ Advisory – Categories of Personnel.



OIOS may conduct investigations into reports of misconduct by these additional personnel, however not all are subject to United Nations rules, regulations and other administrative issuances.

2.2.10 Implementing Partners

Where implementing partners, including non-governmental organizations, receive United Nations administered resources pursuant to agreements with the Organization for implementing humanitarian aid projects, OIOS may conduct investigations into reports of misappropriation or diversion of these funds.⁴⁹

2.3 Internal Justice

Where there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed, the head of office or responsible officer shall undertake an administrative preliminary fact-finding investigation.⁵⁰ Misconduct is defined in Staff Rule 10.1 as a "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant." Such behaviour may amount to unsatisfactory conduct leading to the institution of disciplinary proceedings.

Further, the standard of proof of evidence required to institute disciplinary proceedings has been set forth in the United Nations Appeals Tribunal judgment of *Molari* (2011-UNAT-164):

Disciplinary cases are not criminal. Liberty is not at stake. But when termination might be the result, we should require sufficient proof. We hold that, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof requires more than a

⁴⁹ For the purpose of paragraph 2.2.10 "Organization" includes funds and programmes, and specialized agencies.

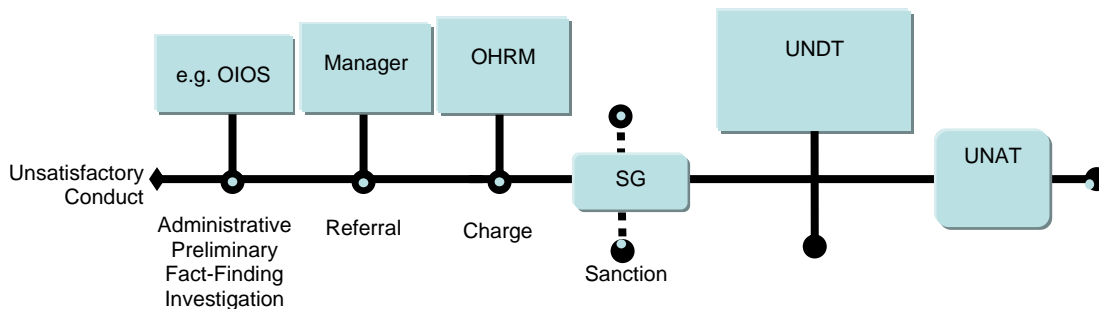
⁵⁰ ST/AI/371



preponderance of the evidence but less than proof beyond reasonable doubt – it means that the truth of the facts asserted is highly probable.

2.3.1 The Internal Justice System

A new system of internal justice was established within the United Nations in 2009.⁵¹ It is designed to address possible misconduct in an employment environment, as depicted in the diagram below.



The system begins with an indication that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed.

Thereafter, an administrative preliminary investigation is undertaken to establish the facts so that management decisions can be made on an informed basis. Accordingly, a preliminary investigation report is provided to the relevant programme manager for referral to OHRM, which may decide to charge the staff member with misconduct.⁵²

The charge is a formal written allegation of misconduct issued by the United Nations and initiates the disciplinary proceedings. It contains the allegations and evidence against the staff member charged so that he or she may appropriately defend his or her interests. The Administrative Law Section/OHRM uses facts established by the investigation to formulate the charge. The investigation report and all relevant supporting material is provided to the staff member as part of the charge, to give the staff member an opportunity to reply.

⁵¹ A/RES/61/261

⁵² ST/SGB/273.



After the staff member has replied to the charge, or has otherwise failed to reply, the Assistant Secretary-General, OHRM, considers the entire dossier on behalf of the Secretary-General, and decides whether the disciplinary case is to be pursued. Disciplinary measures may include written censure, dismissal, fine or loss of one or more steps in grade. If a disciplinary case is not pursued, a non-disciplinary measure, such as written or oral reprimand or recovery of monies owed to the Organization, may still be imposed on the staff member.⁵³

A staff member wishing to contest the imposition of a disciplinary or non-disciplinary measure may file an application with the United Nations Dispute Tribunal (UNDT).

UNDT, which became operational on 1 July 2009, is the first instance court in the new system of administration of justice. It is an administrative body which hears and decides cases filed by or on behalf of current and former staff members appealing administrative decisions alleged to be in non-compliance with their terms of appointment or contract of employment, including appeals against dismissal and other disciplinary measures. The Tribunal conducts hearings, issues orders, and renders binding judgments.

An appeal against a judgment of UNDT by the staff member or by the Secretary-General may be filed with the United Nations Appeals Tribunal, (UNAT). UNAT is an appellate court established by the General Assembly to review appeals against judgments rendered by UNDT. It is composed of seven judges who normally review appeals in three-member panels. Their judgments are final and binding on the parties.

2.3.2 Administrative leave pending investigation

Staff members may be placed on administrative leave at any time pending an investigation until the completion of the disciplinary process. The decision to place a staff member on administrative leave may be made in certain circumstances, including where there is credible evidence that:

⁵³ ST/AI/371.



- the conduct of the staff member would pose a danger to other United Nations personnel or to the Organization
- the staff member is unable to continue performing his or her functions effectively, in view of (a) the ongoing investigation; and (b) the nature of those functions
- continued service by the staff member would create an unacceptable risk that he or she could destroy, conceal or otherwise tamper with evidence, or interfere in any way with the investigation

Placement on administrative leave is without prejudice to the rights of the staff member and does not constitute a disciplinary measure.⁵⁴

The decision to place a staff member on administrative leave with pay is made by the Assistant Secretary-General, OHRM, or officials with delegated authority. Decisions to place staff members on administrative leave without pay are made by the Under-Secretary-General for Management. The staff member must be informed in writing of the reasons for suspension and the probable duration which, so far as practicable, should not exceed three months.⁵⁵

A manager may recommend that a staff member be placed on administrative leave in the context of a pending investigation, an investigation or during the disciplinary process, depending on the nature and gravity of the conduct in question.⁵⁶

Consequently, the possibility of administrative leave should be planned and assessed as a matter of priority at the initiation of an investigation and where not considered necessary, still monitored throughout the investigation in the event that evidence or witness protection becomes necessary.

2.3.3 Investigation Responsibilities in the Justice Process

The staff member's response when informed of reports of misconduct against him or her may require further information from the investigator. OIOS is, therefore, often requested

⁵⁴ Staff Rule 10.4

⁵⁵ Staff Rule 10.4.

⁵⁶ ST/AI/371. Amend 1. paragraph 4.



to provide extensive comments on the staff member's reply. In addition, new information provided by the staff member in his or her reply to the charge may require further inquiry to establish the authenticity and veracity of the information.

Investigators may also be required to provide testimony during UNDT hearings. In such cases, investigators may be requested to explain procedures and methods used during the investigation process. Further, they may provide their professional opinion on operational context, circumstances prevailing in the area where the contravention occurred or other information useful to reviewing the matter.

2.3.4 Fairness during Investigations

The Organization has certain duties in the administration of internal justice. This relates to ensuring that principles of fairness, which are more generally prescribed in the Uniform Guidelines for Investigations, are accorded to United Nations staff members implicated in a preliminary administrative fact-finding investigation (see section 2.1.2).

The objective of these principles of fairness is to ensure that facts are collected in a fair and reasonable manner, and in line with the following general requirements:

- **Transparency**

This includes informing staff members implicated by an investigation of the Organization's duties during the investigation and what generally to expect from the investigation.

- **Accuracy**

This requires collection and recording of clear and complete information establishing the facts, whether incriminating or exculpatory.

- **Confidentiality**

This requires preventing the unauthorized disclosure of information concerning an investigation.

Although these general requirements exist throughout the investigation process, individuals implicated by a report of possible misconduct can expect the following:



- Explanation of the investigation process
- Identification of the individual(s) conducting an investigation interview
- Scheduling of interviews at a reasonable place and time
- Interviews for the purpose of obtaining relevant facts
- Assistance of interpreters during an interview, if required
- Investigators accessing official records and facilities according to established procedures that ensure appropriate collection of facts where justified
- Opportunity to identify relevant witnesses or information for investigation
- A closure letter if the investigation findings do not support a conclusion of misconduct
- As appropriate, disclosure of complaint procedure for any problem in the investigation process

All of these process requirements are to ensure the effective administration of the internal justice process.

2.3.5 Due Process during the Disciplinary Stage

Once the investigation is complete and the investigation report is issued, “due process” requirements are accorded to all staff members who are charged with misconduct during the disciplinary stage as provided for in the United Nations Staff Regulations and Rules.⁵⁷

These due process requirements mean that the staff member must be:

- informed, in writing, of the formal allegations
- provided with a copy of the documentary evidence of the alleged misconduct

⁵⁷ Staff Rule 10.3 and ST/AI/371; *Applicant* 2012-UNAT-209, para. 43; *Powell* 2013-UNAT-295, para. 23; *Akello* 2013-UNAT-336, para. 36.



- notified that he or she can seek the assistance of counsel through the Office of Staff Legal Assistance, or from outside counsel at his or her own expense, and offer information on how to obtain such assistance
- given an opportunity to respond to the allegations

Once a decision has been taken to impose on the staff member either a non-disciplinary or disciplinary measure, the staff member may make an application to UNDT seeking a review of the decision. As part of its review, the Tribunal may assess whether there were any instances where fairness during the investigation stage, and due process requirements, were not accorded to the staff member.

2.4 External Justice

External justice refers to legal action under local jurisdiction. It includes civil claims that may arise under a local court authority or through commercial arbitration, as well as criminal prosecution that may arise in connection with criminal acts including fraud, corruption and sexual abuse cases. External justice may be pursued in addition to, or as an alternative to, internal administrative justice. However, it requires consideration of the privileges and immunities accorded to the United Nations and its personnel.

Privileges and Immunities

The United Nations is accorded certain privileges and immunities so that it can effectively discharge its functions.⁵⁸ The immunities are described as functional.⁵⁹ Consequently, they extend only to official functions and, even in the case of official functions, may be waived if the immunities would otherwise impede the course of justice.

The primary issue that arises in connection with investigations is the immunity of officials and experts on mission from legal process for any words spoken or written and any acts performed in their official function. When investigations cover conduct that might potentially result in legal action, whether criminal or civil, the issue of immunity should be

⁵⁸ Convention on the Privileges and Immunities of the United Nations 1946.

⁵⁹ Vienna Convention on Diplomatic Relations 1961.



addressed. Although most criminal conduct is not committed as part of an official function and does not necessitate a waiver for prosecution, waiver of immunity may be required for staff members who provide testimony before any court should the matter be referred for criminal or civil action (see Chapter 7).

Confidentiality

During the course of any external justice proceeding, considerations of confidentiality are essential. In particular, confidential and sensitive information obtained during an internal preliminary fact-finding investigation may not be disclosed without first consulting the Office of Legal Affairs and obtaining the requisite consent of the information source. It is important to note that United Nations investigators cannot be compelled to testify, participate or otherwise engage in any external justice proceedings, except where required to facilitate the proper administration of justice⁶⁰ (see Chapter 7).

2.4.1 Arbitration

Arbitration is a method for dispute resolution through private means by agreement rather than through a court system. United Nations contracts generally provide for arbitration pursuant to the United Nations Commission on International Trade Law Arbitration Rules to resolve commercial disputes.⁶¹ This applies to individual consultants (see section 2.2.3) and vendors (see section 2.2.4).

The investigation process may impact on arbitration, as any vendor or consultant affected by a decision based on investigation findings can potentially challenge that decision through the arbitration process. Consequently, the investigation must be conducted in a manner that can withstand judicial rigour through these arbitration proceedings and may require post-investigation support and even testimony before arbitral proceedings.

⁶⁰ Convention on the Privileges and Immunities of the United Nations 1946, section 21.

⁶¹ United Nations Commission on International Trade Law Arbitration Rules, adopted by the General Assembly on 15 December 1976.



2.4.2 Civil Litigation

Civil litigation is a formal dispute resolution before a local court. It is initiated by one party against another. Because of the United Nations immunity from legal process, it cannot be initiated against the United Nations unless it agrees and waives its immunity. The United Nations does not typically accept the jurisdiction of local courts in civil matters and defers matters to arbitration.

Nevertheless, the investigation process may be relevant to civil litigation if the United Nations should waive immunity and accept the jurisdiction of local courts, either as an applicant or respondent in a case that relied upon investigation results to resolve the dispute. This may require post-investigation support and even testimony before local courts.

2.4.3 Criminal Prosecution

Criminal prosecution is an action by a State against an individual and in some jurisdictions, against entities as well. While a victim of a crime may file a criminal complaint with the authorities, prosecution is at the sole discretion of the State. If the United Nations is the victim of a crime, for example embezzlement, it may file a criminal complaint by referring the matter to local authorities for possible prosecution (see Chapter 7).

The decision to refer a matter for possible criminal prosecution is often based on investigation findings. Consequently, the investigation must be conducted in a manner that can withstand the judicial rigour of criminal prosecution. This does not, however, change the standards of investigation or investigation methodology generally, as the internal investigation remains an administrative process irrespective of the type of conduct being investigated. Criminal prosecution may also require post-investigation support for the prosecution, including the provision of testimony at proceedings. Further, waiver of immunities must be duly considered in consultation with the Office of Legal Affairs.



3. INVESTIGATION INTAKE

The purpose of this Chapter is to define the basic principles sustaining OIOS standards for receiving and evaluating information that may lead to an investigation.

The “intake” of any matter for investigation is a critical part of the overall system of accountability. It is the first step in a comprehensive process that will be affected by how the initial information about possible misconduct, referred to as source information, is received and handled. The proper receipt and handling of source information at intake is, therefore, essential and includes:

- Clear and distinct means of receiving source information
- Systematic recording of source information
- Consistent review of source information for action
- Transparent and verifiable management of source information



3.1 Reports of Possible Misconduct

A report of possible misconduct is any information that may lead to an investigation. This source information can come through means of either **receipt** or **discovery**.

The **receipt** of source information usually comes from hotlines, direct reports to investigative personnel or general complaints sent by post, e-mail or other means of communication. The **discovery** of source information, however, primarily occurs through other oversight functions monitored by investigators for red flags that suggest possible misconduct.

The source information does not have to be in a specific form and may be either in writing or verbal. Generally, the source information should have sufficient detail to determine whether the actions reported might be considered misconduct if ultimately established. In addition, specific factual details are desirable. This includes dates, places, names of those implicated and possible witnesses.

Where the information is provided verbally the exact date, time and circumstances should be recorded in writing by the person receiving the information with a detailed written statement. Contact information should be requested from the source and included for the record.⁶²

If the information is relayed from an original source through a third party who then reports it, the identity of the original source should be requested with an explanation of confidentiality principles if necessary (see section 3.1.1). If the original source cannot be identified, the report should be considered to have originated from an anonymous source (see section 3.1.2), with the individual actually reporting the information indicated as a possible witness.

⁶² Advisory – Investigations Hotline.



3.1.1 Sources

Information that may lead to an investigation can come from a variety of different sources, including:

- Individual witnesses to the possible misconduct, whether a staff member or not
- Staff acting in an official capacity, for example a manager who detects an irregularity
- Previous investigations
- Audit, inspection and evaluation reports
- Press reports

Except for staff acting in an official capacity, the source of any information that may lead to an investigation is protected by confidentiality and their identities will not be revealed. However, if that person obtained the information through illicit or illegal means, his or her identity may be revealed as required for a disciplinary process. In addition, where safety or security requires disclosure, it may be revealed to the extent necessary to address those safety or security concerns.

It should be noted that in most cases the source is also a witness to the reported misconduct. While the source will not be identified by name as a source, he or she may be identified as a witness (see Chapter 4). Moreover, if information is obtained or discovered through the normal investigative process, the person from whom it is solicited is considered a witness rather than a source and does not benefit from the status of a source. This is, however, without prejudice to the protection from retaliation afforded to individuals who participate in authorized oversight functions.

3.1.2 Anonymous Sources

Information received from anonymous sources will be assessed and may lead to an investigation. However, the information should include sufficient detail so as to allow for independent corroboration of the information reported. If there is no means of independently corroborating the information provided from the source, the matter will not be considered receivable.



If an anonymous source provides contact information, for example an e-mail address, he or she will be encouraged to reveal his or her identity. The anonymous source should also be informed of the nature of confidentiality (see section 3.1.1) and protection policies in the event of retaliation for reporting possible misconduct (see Chapter 1). In addition, the general duty of staff to cooperate and the difficulties when assessing the receipt of anonymous reports must be explained.

3.1.3 Malicious Complaints

The motives of an individual source are not relevant to the decision to investigate. While the motive in reporting possible misconduct may later reflect upon their credibility as a witness, his or her malice towards implicated personnel does not otherwise affect the facts asserted. Nevertheless, where a source provides information that he or she knew or ought to have known was false, it would be considered a wrongful complaint and constitutes possible misconduct.⁶³ In such circumstances, the source waives any rights of confidentiality and a new investigation may be initiated. Honest mistakes or error are not, however, subject to such consideration.

3.1.4 Complaints and Victims

It is the obligation of all staff to report possible misconduct, but investigations generally cannot be demanded. As an independent function, investigations are conducted according to the interests of the Organization and not those of individuals, including managers, who either report possible misconduct or are possible victims of misconduct. Of course, the interests of the Organization reflect both the needs of staff who may have reported possible misconduct, and staff who may have been victimized by misconduct. This does not mean

⁶³ ST/SGB/273, section 18 (e): The transmittal of suggestions or reports to the Office with knowledge of their falsity or with wilful disregard of their truth or falsity shall constitute misconduct, for which disciplinary measures may be imposed.

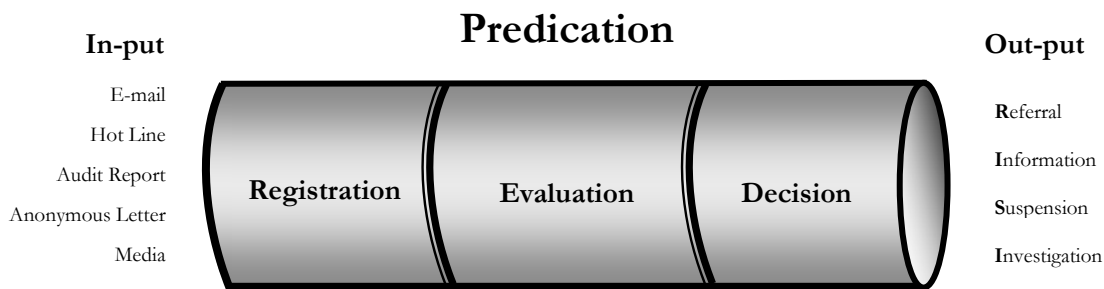


that they are necessarily entitled to information about the investigation, its status or its conclusions and, importantly, they do not “own” the reported information.

Any source reporting possible misconduct and claiming to be a victim should be informed that the OIOS mandate does not provide for assistance to victims or for conflict resolution, and that their personal concerns may be addressed through other means, including administrative appeal mechanisms or by consulting the Office of the Ombudsman or the Ethics Office. Further, a source reporting “prohibited conduct” will be duly advised of alternative reporting arrangements pursuant to ST/SGB/2008/5 if OIOS does not intend to investigate the report.⁶⁴

3.2 Predication

Reports of possible misconduct will be predicated. The predication process includes formal registration, evaluation and decision on appropriate disposition of the matter.



The predication process requires a documented system to track both the handling of incoming reports through each stage, from the initial receipt to the final disposition, and those responsible for the ultimate decision on disposition.⁶⁵

⁶⁴ ST/SGB/2008/5 – “prohibited conduct” includes discrimination, harassment, including sexual harassment, and abuse of authority.

⁶⁵ Terms of Reference – Intake; Procedure – Investigations Intake.



3.2.1 Registration

Registration is the systematic process of recording the receipt of incoming information. A unique registration number is created for each matter. All material received related to that matter should be filed and recorded under that reference number (currently “ID Case No.”) or with a cross reference to it. The registration must indicate the date of receipt and provide an audit trail for subsequent action in the case.

3.2.2 Evaluation

Evaluation should determine whether the report of possible misconduct is receivable for investigation. To be receivable, it must relate to a matter of misconduct within the scope of OIOS investigative review and include sufficient information on which to proceed (see Chapter 1). The evaluation may result in one of the following decisions:

- **Referral**

Where a matter is not for OIOS action, it may be referred to another person (for example, programme managers), a department or an organization for action (see Chapter 1). A report may also be referred back to its originator if appropriate. Referrals normally will provide some information on the basis and justification for the referral. For example, category I matters are sometimes referred when OIOS determines that its limited resources will be best utilized for matters presenting greater risks to the Organization (see Chapter 1). Additionally, referrals commonly occur for matters related to performance and disagreement over administrative decisions.

- **Information**

Where a matter is not receivable and is not appropriate for referral, it will be maintained on the register for information purposes.

- **Suspension**



Where the matter does not include sufficient information to proceed and further clarification is possible, the matter may be suspended pending receipt of clarification.

- **Investigation**

Where it is determined that the matter warrants OIOS investigation, it will be appropriately assigned.

3.2.3 Notification

If the individual source of information is identified, he or she normally will be notified in writing that the information was received. The notification will:

- Confirm receipt of the information
- Include general information on the predication/investigation process

Notification of receipt of information is only given to the source. No other party is automatically entitled to any such notification, including the programme manager, the supervisor or the subject of any reported misconduct. Where the source is anonymous or provides no means of providing written communication, notification will not be sent.

3.2.4 Post-Predication Action

Investigations serve the overall interests of the Organization. During the course of an investigation, OIOS will not generally provide information about its status or progress except if a matter or issue arises which presents a risk to the Organization or which might impact its proper management. However, OIOS may provide specific relevant information to appropriate parties prior to the completion of the investigation. Ultimately, it is the prerogative of the Organization to decide how to use the investigation report once issued, taking into account all due process interests of individuals implicated by that report.



4. INVESTIGATION PLANNING AND MANAGEMENT

The purpose of this Chapter is to explain the general need for investigation planning and the major areas impacting any investigation workplan.

The planning and subsequent management of any investigation is critical to a fair and effective outcome. Any workplan must be flexible and investigations require particular attention to evolving and sometimes unanticipated demands. The investigation workplan must be comprehensive and thorough enough to provide clear direction and establish for the record known requirements, facts and circumstances to advance the investigation process in a methodical but expeditious manner.⁶⁶

⁶⁶ Form – Investigation Workplan template.



4.1 Planning

Planning and investigation management begins upon receipt of a report of possible misconduct. The intake process, therefore, must include planning as a fundamental objective (see Chapter 3). In particular, the intake process will consider available resources and specific investigator skills, together with the need for guidance and support in relation to the nature of the apparent contravention, the applicable law and relevant jurisprudence.

Investigation Workplan

The investigation workplan provides a structured approach to conducting an effective investigation. The receipt date of the initial report should serve as the commencement date of the workplan. All actions, events and targets should follow from that commencement date for purposes of monitoring progress.⁶⁷ The workplan should follow the case from intake to closure and be updated as required to reflect changes, additions and adjustments.

4.1.1 Predication

Predication of the matter after receipt is part of the intake process (see Chapter 3). This includes a range of actions that should be anticipated, with possible consequences and contingencies planned for and recorded.

Referral

Matters not predicated for investigation are normally referred to another authority (see Chapter 7). Clear procedures must, therefore, exist and contact established for efficient referrals. This requires not only systematic planning at the procedural level but also day-to-day planning of who will ensure referrals are made, how they will be affected and who will follow-up as may be required.

Assignment for Investigation

Assignment of a matter for investigation should take into consideration the resources available and identify individuals who have the skills and capacity to carry out the

⁶⁷ Form – Investigation Workplan template.



investigation. Consequently, global case management is advisable to ensure that issues, no matter where or when they arise, are addressed professionally and efficiently. The assignment process must plan for any issues that may affect the individual's ability to investigate the matter, including leave and mission plans and other commitments, as well as factors affecting time required for investigation, such as translation/interpretation and technical knowledge or skills that may require third party assistance.

Remedial or Interim Measures

The predication may reveal risks of further harm, either because of ongoing misconduct or possible threats to the integrity of the investigation. The possibility of remedial or interim measures must, therefore, be considered as part of the investigation process. This may include urgent requests for evidence, such as in the case of electronic evidence (see Chapter 5), or even a request for a staff member to be placed on administrative leave pending the investigation (see Chapter 2). The investigation workplan must indicate key dates, such as the expiration date of staff suspension, and dates by which parties must be notified to ensure appropriate action as the matter moves from predication to investigation.

Personnel Implicated

When implicated individuals are identified at predication, the official status file and all employment records must be obtained. The time it takes to secure those records must be factored into the investigation workplan. The workplan must also include the contractual status, current assignment, appointment expiration date, reassignment, leave, absences and other employment issues affecting availability of implicated personnel. Where there is a possibility of unacceptable risk to other United Nations personnel or the Organization, this must be considered at the intake process and incorporated into the investigation workplan.

Applicable Legal Norms

Every investigation must consider the nature of the reported misconduct and the elements of the contraventions that may be identified during the intake process. The legal assessment, therefore, must be planned and include ongoing monitoring to ensure that the appropriate elements are being established, particularly in the event of potential criminal conduct that can result in a referral to national/local authorities (see Chapter 7).



Case Background

It is important to establish the circumstances relevant to the matter to be investigated and the investigative methodology to be employed. The background, however, may take time to research and document. Therefore, at an early stage, the investigation workplan should contemplate obtaining this background information to avoid delays and advance the investigation.

4.1.2 Ageing

As soon as a matter is received, the ageing process commences. Ageing is a method of identifying and evaluating potential problems in the management of a case. For instance, if an action anticipated by the investigation workplan is not completed in a timely manner, a re-evaluation of the workplan or the execution of the workplan may be warranted. Ageing is used by managers and investigators to ensure proper case disposition and cannot be effectively undertaken without a workplan.

The investigation process is inherently unpredictable in terms of results and additional factors often impact the investigation. The known elements must be established in the workplan with tentative actions/dates for evaluating progress. The reason for any change in the workplan, or failure to satisfy planned requirements, must be documented for the record.

4.1.3 Ancillary Issues

The investigation planning process may note a range of ancillary issues that relate to the matter predicated, whether for investigation, referral or closure. Often these issues are related to management, administrative and operational matters that are typically referred but not investigated by OIOS. For example, reports of misconduct against implicated personnel may also include details regarding deficiencies in systems controls in a particular work environment. Nevertheless, the impact these issues have on the investigation must be assessed and, unless detrimental to the investigation process, referred to the appropriate



manager/authority (see Chapter 7). Consequently, any ancillary issues identified must be factored into the investigation workplan.

4.2 Investigation

Planning for the investigation phase after predication normally considers the following broad categories of activity as part of the investigation workplan:

- Preservation of evidence
- Witnesses (including identified implicated personnel)
- Records
- Resources
- Forensics
- Equipment
- Logistics, e.g. international travel, travel to rural and remote locations, etc.

These categories are not exhaustive and the workplan must be kept flexible so that adjustments can be made as changes arise and any new information is discovered. The workplan is, therefore, a living document that anticipates and records developments in the investigative process.



4.2.1 Preservation of Evidence

Since an investigation is a fact-finding process and the facts may be evidence of possible misconduct, a fundamental element in the planning stage is the preservation of evidence.



The workplan must, therefore, identify known and possible sources of evidence and the means of securing those sources until the investigation can actually collect the facts required as well as the subsequent recovery, handling and storage of that evidence (see Chapter 5).

The means of preservation will vary according to the type of evidence (see Chapter 5). Consequently, known and anticipated evidence must be categorized as soon as possible and included in the investigation workplan. Thereafter, the workplan can be developed to address preservation and, ultimately, collection.

4.2.2 Witnesses

Witness testimony is particularly important evidence to collect and critical to any investigation (see Chapter 5). Because of the importance and special nature of witness testimony, careful planning is necessary. Witness recollection fades quickly and can be influenced by external factors such as media reports, sympathy and even office gossip. The investigation workplan must, therefore, include a detailed interview schedule which addresses issues of:

- Witness availability
- Order of testimony
- Special needs (interpreter, guardian)
- Re-interviews

These elements are inter-related and changes can affect the entire investigation workplan. Accordingly, the workplan should be monitored and adjusted to compensate for scheduling and other factors related to witnesses. Witness testimony also concerns more general planning issues, such as investigation support (see section 4.3) and travel/logistics (see section 4.4).

Further, these elements must also be taken into consideration when planning the interview schedule where individuals are identified as implicated personnel at the predication phase.



4.2.3 Records

Records are documentary evidence, regardless of physical form, created or received by a staff member in connection with, or as a result of, the official work of the United Nations, and remain the property of the United Nations. Records have the advantage of fixing information in time. However, records can be lost, damaged, altered or changed for legitimate or sinister purposes. In addition, records can be moved from initial storage/filing to the offices of individual staff members, other office facilities or even off-site storage. This can impact the time it takes to trace and obtain those records.

Identification of relevant records is fundamental and the investigation workplan must address the means of obtaining those records. Particular consideration should be given to obtaining electronic records that may be kept on back-up media that is periodically overwritten.⁶⁸

Plans for obtaining records should also consider their handling and storage (see Chapter 5). Since the records may be evidence, the workplan should anticipate the use of chain of custody requirements, with the records clearly identifying when they were obtained and document individuals who came into contact with the records.⁶⁹ When records are obtained with assistance from another office/duty station, the workplan must also reflect the additional time needed for briefing those assisting on OIOS standard procedures and confidentiality requirements (see Chapter 3).

4.2.4 Resources

A preliminary resource plan must be developed as soon as practical to identify all personnel required to participate in the investigation, required external expertise, as well as travel and

⁶⁸ Protocol – Request for Information Communication and Technology

⁶⁹ Procedure – Evidence Handling; Form - Chain of Custody.



investigation expenses. The budget(s) to which such expenses should be charged must be checked for available funds and relevant budget information recorded in the workplan.⁷⁰

Some locally incurred expenses may be covered at the mission or on an out-of-pocket reimbursable basis. Nevertheless, financial contingency factors should be considered in the investigation workplan.

4.2.5 Forensics

Where any forensic analysis is anticipated, early planning is required. In addition to the sometimes lengthy analysis time, procurement of external expertise may be required. With internal forensic expertise, planning support can be obtained from the OIOS Forensic Investigators. Requirements, timing and scheduling can be identified as soon as there is an indication of any forensic need. Rosters of forensic experts with skills that do not exist in OIOS are maintained, but their availability is limited and their use must be planned in advance.

Forensic analysis should be conducted as soon as possible after discovery of an item to be analyzed to avoid degradation, damage or loss of samples or information. Plans for examining computer hard drives, file servers and communication devices that store data electronically should be considered when assessing the need for preservation of evidence (see section 4.2.1 and Chapter 5). Other physical evidence may also require testing and analysis.

4.2.6 Equipment

Investigations may require certain equipment. This must be identified in the investigation workplan to ensure availability when required. The workplan should also include pre-mission equipment check on functionality. OIOS maintains standard investigation field kits in each

⁷⁰ Budget information should be provided, including account codes, source of funds for possible reporting purposes, and foreseen period over which the expense will run, particularly if over more than one financial year.



office to be deployed with any investigation mission. Investigators should be familiar with the content, operation and use of the items in the kit, which generally includes:

- Laptop computer with preloaded manuals/forms/templates
- Portable printer
- External hard drive
- Flash drive
- Digital camera
- Digital audio recorder
- Hard disk cloning software
- SIM card reader/back-up
- Multi-purpose hand tool
- Binoculars
- Measuring tape
- Flashlight
- Evidence bags/seals

If the investigation requires different or specialized equipment, OIOS Forensic Investigators should be contacted.

4.3 Support and Preparatory Investigation Tasks

Investigations often require support from other offices, departments and staff.⁷¹ These needs must be identified early so that contact can be made and necessary tasks explained. In addition, defining these needs as affected by local conditions can be time-consuming, albeit critical to the efficient discharge of investigation responsibilities. Further, individuals providing support may not have previous experience with investigative activities, therefore detailed briefings on OIOS responsibilities and confidentiality requirements should be provided.

⁷¹ Inter-agency support is an important option, particularly in small offices where potential conflicts of interest may arise.



The investigation workplan should also specify that all preparatory matters be scheduled early in the process. This generally includes necessary research and background to prepare the investigator. Typically, more detailed knowledge of case background is required than that which is provided for at predication (see section 4.1.1). The investigator may have to develop knowledge of local practice and geography, subject matter areas and even technical matters. This can require personal study and training that impacts the investigation workplan.

4.4 Mission Checklist

An investigator's access to witnesses, the subject and the location of the reported contravention are basic to the investigative process. Where an investigation requires mission travel, a mission checklist must be completed as early as possible. This checklist, which is a component of the overall investigation workplan, includes travel and field logistics.⁷² The checklist should also cover most needs that arise when undertaking an investigation in a mission, from arranging necessary office space and interview rooms to obtaining standard oaths of confidentiality that must be executed by those supporting the mission.⁷³

Travel and field logistics may require support from another office or department in that location. This must be planned well in advance so that action can be taken quickly and decisively when the investigation workplan is executed. Also, confidentiality considerations may require little advance notice to avoid rumour, gossip, possible destruction of evidence and attempts to influence witnesses.

4.5 Post-Investigation

The investigation workplan may contemplate necessary actions after the investigation report is completed. This includes the return or transfer of evidence, debriefing of managers and support for the administration of justice. In addition, the workplan will consider OIOS

⁷² Form – Investigation workplan template; Form – Pre-Mission Checklist template.

⁷³ Protocol – Declaration of Confidentiality by non-ID Personnel.



continued support and collaboration with any ongoing troop-contributing country proceeding (see Chapter 5).⁷⁴

⁷⁴ Procedures – Interaction with Troop-Contributing Countries and military members of national contingents.



5. FACT-FINDING

The purpose of this Chapter is to explain the nature of evidence in the fact-finding process, the means of obtaining and handling that evidence, and special legal and other considerations affecting evidence.

Investigations are preliminary fact-finding exercises that primarily serve to collect and preserve evidence so that they can be communicated to appropriate decision-makers (see chapter 6). There are various means by which evidence is gathered and it is important to create a record from whom the evidence was obtained and where and how it was collected.



5.1 Evidence

Evidence is anything that can be used to support the existence of a factual proposition. It includes documents and records, verbal statements and even tangible items or the physical condition of those items, for example:

Factual Proposition	Evidence
Mr. X drove vehicle Y	Vehicle log indicating Mr. X took vehicle Y
Mr. X was at the party	Witness statement that Mr. X was at the party
Vehicle Y was damaged	Photograph of damage to vehicle Y

5.1.1 Common Types of Evidence

There are many types of evidence, including:

- **Testimonial Evidence:** This typically includes the recollection of individuals who actually saw an event or have direct knowledge of something relevant to the issue being investigated.
- **Documentary Evidence:** This includes correspondence, forms and all information that may be maintained on paper in official archives, as well as external material such as personal letters, business records, etc. Documents and records may exist in physical and/or electronic form.
- **Electronic Evidence:** This usually refers to e-mail, data on hard drives or other computer memory, logs, system transactions, including automatic, key card gate entry. It also may include video and/or audio recordings, whether digital or analogue.
- **Physical Evidence:** This includes equipment, goods and facilities. It also may refer to more transient physical conditions, like the weather. It also includes records of the physical state, including photographs.
- **Forensic Evidence.** This is a general category that could include fingerprints, Deoxyribonucleic acid (DNA) trace material and even scientific analysis of items to



establish certain properties or source. It has, therefore, an element of analysis or interpretation that requires special handling and explanation that physical and even electronic evidence may not.

5.1.2 Relevance of Evidence

An essential principle of evidence is relevance. The evidence should make the existence of any fact that is of consequence to a matter under review more probable or less probable than it would be without the evidence.

The investigator should establish what evidence is likely to be relevant. When in doubt, it is better to collect too much than too little. Irrelevant evidence can always be discarded or returned to at a later stage.

5.1.3 Direct vs. Circumstantial Evidence

Direct evidence expressly supports the existence of a fact, while circumstantial evidence supports the inference of a fact. For example, a witness sees the person leaving the club last Wednesday with his arm around a young woman police have identified as a prostitute. This is direct evidence that the person was at the club last Wednesday. It is circumstantial evidence that the person solicited the services of a prostitute – as one must infer many facts, including that she was acting as a prostitute at the time, that there was no other explanation for the physical proximity, for example, he was helping her down the stairs.

Since circumstantial evidence only creates an inference of the factual proposition, it typically is part of a wider scenario that is evidenced as more likely than not, using a range of circumstantial evidence that may exclude other reasonable explanations. In most instances of circumstantial evidence, no single piece of evidence is persuasive. When the totality of circumstantial evidence is taken together, however, it may establish a compelling inference supporting the factual proposition, in this case the use of a prostitute.



5.1.4 Hearsay Evidence

Although a witness can provide testimony about what they heard others say, it is considered hearsay if the purpose of that testimony is offered to prove the truth of those statements. Normally, a witness should not be used for hearsay evidence and purported statements should be solicited from the person to whom they are attributed. If the source is not available, however, evidence can be obtained from a hearsay witness to provide not only insight into the source's state of mind but also possible corroboration for other evidence indicating the same fact. Although there is no explicit prohibition of hearsay evidence during administrative disciplinary proceedings, it will be given limited probative value and utilized with caution.

5.2 Testimonial Evidence

Testimonial evidence is obtained through interviewing individuals. An interview can take different forms depending on the subject matter of the investigation and the nature of the person's testimony. Individuals who witnessed relevant events or have knowledge or information relevant to those events are generally interviewed. Additionally, anyone implicated in the possible misconduct, for example someone accused of impropriety or individuals who had access and opportunity to perpetrate an act being investigated (also referred to as the "interview subject") must be interviewed.⁷⁵

5.2.1 Witness Interviews

Witness testimony typically is obtained before any subject interviews. Witness interviews can be used either to obtain general background information in order to prepare for the

⁷⁵ Witness testimony should be taken under oath or affirmation or there must be some other indicia of reliability or truthfulness. See *Njambuza* 2013-UNAT-364, para. 35; *Diabagate* 2014-UNAT-403, para. 34. See also UNDT Rules of Procedure Article 17(3).



investigation and other interviews, or they may be necessary to establish the facts related to possible misconduct.⁷⁶

Specialist Witness

Some witnesses may not have necessarily observed any circumstances that suggest possible misconduct, but may possess information relevant to the matter. This includes, for example, individuals who can explain standard procedures that should have been followed or simply can provide background material useful to understanding the operational context. Other witnesses will be able to provide testimonial evidence relevant to the matter being investigated. Clear records of the interview are required.

5.2.2 Subject Interviews

Subject interviews are required to ensure that anyone who may later be implicated in possible misconduct has the opportunity to provide information that may be exculpatory or mitigating. However, subject interviews are not interrogations designed to secure a confession. The subject interview essentially places the subject in a position of a witness to the circumstances that are at issue, but since, unlike a witness, the investigation may lead to a decision that negatively affects the subject's appointment, the interviewing method must include additional fairness requirements. Therefore, once a person is identified as a subject of an investigation, then he or she must be informed before or at the commencement of his or her interview, that he or she is the subject of an investigation and of the nature of his or her alleged misconduct.

5.2.3 Fairness Requirements during Interviews

The Organization has an obligation towards staff members during the preliminary fact-finding investigation (see section 2.3.4). Although this obligation exists as a fairness

⁷⁶ Procedure – Interviews.



requirement throughout any investigation, many fairness issues arise during interviews.⁷⁷ In particular, before conducting any interview of a United Nations staff member, the investigator must inform the interviewee of:

- the identity and function of the individual(s) conducting the interview
- the investigation process and possible consequences of an investigation
- the authority of OIOS to conduct investigations and the duty of all staff to cooperate
- the obligation of confidentiality for both OIOS and the interviewee

The Organization also has an obligation to ensure that the interview is conducted in an appropriate environment, at a reasonable time, and for a reasonable duration with breaks as needed. At the end of any interview, any staff member implicated in an investigation should be given the opportunity to provide a final statement, comment or position for the record. Witnesses are not entitled to retain a copy of audio recordings or transcripts of interview during the preliminary fact-finding investigation phase.

5.2.4 Interviewing Contractors

Interviewing contractors requires special consideration. The terms of the contractual relationship must be reviewed to determine the authority to investigate. Where no contractual authority exists, the contractor's management team may be requested for authority to and provide assistance with interviewing its personnel. If the interview is with an individual contractor, for example a consultant, the individual should be requested to comply either as a result of the contractual terms or to maintain good standing generally. In all cases, the same requirements as for a witness interview should be extended.

⁷⁷ Procedure – Interviews.



5.2.5 Contingent Personnel Interviews

The government of a troop-contributing country (TCC) has sovereign rights and primary responsibility to investigate reported misconduct against contingent personnel. However, OIOS may lead an investigation, either at the direction of the government of the TCC or by default due to the government's lack of response. In the event of an OIOS led investigation, and if the TCC requests, a National Investigations Officer (hereinafter referred to as the NIO) must be allowed to participate. The extent of the NIO's participation in any interview must be agreed upon in advance.⁷⁸

Interviewing TCC personnel requires command level consent and, often, TCC support to gain access. This may be handled at the mission level or may require intervention through the command structure, particularly for personnel rotated out of the mission location.⁷⁹

Identified Interviews: Personnel who need to be interviewed may be specifically identified by name or appearance.

Sweep Interviews: Often, TCC personnel are not specifically identified but the unit, rank or location of duty at a given time may be known. These interviews may then be conducted as a sweep of all individuals fitting the description. The parameters should be as precise as possible to avoid the perception of an unfocused investigation.

The methods for interviewing TCC personnel are generally the same as those employed for interviewing other individuals.

5.2.6 Interview Methodology

Interview methodology is designed to document testimonial evidence. There are standard means to satisfy this requirement:⁸⁰

Audio Recordings: OIOS interviews are generally audio-recorded. Where a subject interview is to be relied upon for disciplinary proceedings, the verbatim transcript of a recording must be completed. An audio recording may not be taken without the

⁷⁸ Procedure – Interaction with Troop-Contributing Countries and military members of national contingents.

⁷⁹ Procedure – Interaction with Troop-Contributing Countries and military members of national contingents.

⁸⁰ Procedure – Interviews.



interviewee's knowledge. An interviewee is not entitled to bring his or her own equipment to record the interview.⁸¹

Language

Interviews are conducted in English or French. If the interviewee does not possess a good command of English or French, he or she will be interviewed in his or her own language, whenever feasible, using independent interpreters.⁸²

Interview Participants

An interview will be conducted by one or more OIOS representatives, an interpreter (if required) identified by the investigator, and the witness or subject being interviewed. United Nations personnel are not permitted to have counsel.⁸³ Provisions may be made for the presence of a support person in circumstances when an interviewee has special needs, for example a minor.

5.3 Documents and Records

5.3.1 Personnel Records

A staff member's official status file includes a significant amount of personnel information.

The standard official status file includes, among other things:

- Personnel Induction Questionnaire
- Personal History Profile
- Test results – language, entrance
- Curriculum vitae
- Certificates and educational qualifications
- Letter of Appointment

⁸¹ Procedure – Interviews.

⁸² Procedure – Interviews.

⁸³ *Powell* 2013-UNAT-295, paras. 21-23.



- Marital and dependency status
- Salary and other entitlements
- Visa information

Personnel information may also be available from payroll records and information systems designed to administer staff entitlements.

Medical information in the staff member's official medical records is privileged. This includes details of any medical condition, diagnosis, treatment, medication or other medical intervention received by the staff member. Such medical information may be requested if relevant to the investigation but requires express written consent from the staff member.⁸⁴

5.3.2 Administrative Records

Administrative records often exist in many places, including personnel files, financial records and even local files in a regional office. This is a broad category of records that covers a variety of administrative areas. Frequently, administrative records overlap with personnel information. For example, information on leave, absences and all types of entitlement claims, from home leave to education grants and travel claims, may exist in personnel records, and well as elsewhere in consolidated administrative records.

5.3.3 Procurement Records

Procurement transactions are required to be well documented through the process of requisition, approval and purchasing. The procurement records can be cross-referenced with financial records (see section 5.3.4) to establish trends and irregularities, or to corroborate other facts.

Contracts committee submissions and minutes include a significant amount of information on the procurement process and the judgement used in selecting the recommended contractor. As with financial records, procurement records also can provide useful

⁸⁴ Protocol – Requests and Handling of Confidential Information.



information that serves as indirect evidence of certain facts. Procurement records often provide a different perspective on information obtained from other sources.

Since procurement is a process and not simply a purchasing transaction, there may be documents that are not in the procurement file. For example, planning and project documents that establish specifications, requirements and needs that ultimately result in a requisition may exist in programme files. Likewise, information about receipt, delivery and subsequent disposition of the goods or services obtained through the procurement process may be found in programme files, financial records or even administrative records.

5.3.4 Financial Records

Internal financial records provide extensive details of transactions, administrative decisions and subsequent actions. The financial records can, therefore, be direct evidence of financial impropriety, as well as indirect evidence about the what, when, how or who of a particular transaction.

Financial records may comprise ledgers, spreadsheets, narrative reports or other forms and often require a degree of analysis and interpretation to be useful. Related audit reports often provide some guidance for this analysis and should be reviewed together with any financial records.

Financial information is increasingly stored in electronic form and may be part of the Enterprise Resource Planning system that links the general ledger to information from a variety of areas including personnel and procurement. As such, this system offers a comprehensive source of information that ultimately has a financial impact.

5.3.5 External: Public and Private Records

There is a wide variety of information available from public and private sources. This includes matters of public record with official registers, for example articles of incorporation, birth and marriage certificates and other state documents. Local press may also have



information. For example, local newspapers often provide event information that may be helpful in establishing timelines, testing a person's memory against recorded events or even to corroborate statements. Increasingly databases, both free and subscription-based, are available on the internet, including credit rating services like Dun and Bradstreet and services providing criminal background information.

Private information sometimes is available upon request. Individuals and companies may readily offer documents and records to assist with investigations. Examples include sample invoices from vendors, hotel billing records and even personal records offered by an individual or his or her agent. Unlike public information that can be readily researched without any particular knowledge of any relevant documents, private information must be specifically requested from the holder and may require written consent. Nevertheless, the request for information can, and should, be made if relevant to the investigation.

5.3.6 Originals vs. Copies

Documents may be collected as originals or copies. Generally, a copy is sufficient, but original documentation should be obtained where:

- The original may be required in subsequent civil or criminal proceedings
- Forensic or handwriting analysis is anticipated
- There is a risk that the original may be tampered with at a later stage
- The original may be difficult to obtain at a later stage, e.g. departing witness

Where a copy of the documentation is considered acceptable, it is the responsibility of the investigator to obtain a true and complete copy of the original document. The copies shall be regarded and handled in the same manner as originals.



5.3.7 Location/Availability of Documents and Records

Documents relevant to an investigation can be found in various places and may be obtained or provided to an investigator. Common sources/locations for documents and records include:

- Offices, storage rooms, warehouses, vehicles
- Cabinets, shelves, desks, file boxes
- Recycling and rubbish bins
- Archives and official files, whether central, local or off-site
- Public records and registries

Documents and records are often generated and stored electronically and, therefore, may also be available on shared drives on Local Area Networks (LAN) and electronic storage devices such as CDs, diskettes and flash drives, and even MP3 players (see section 5.4.4).

Often, arrangements can be made to secure, and even obtain, documents and records early in an investigation. When requesting documents to be secured or delivered, confidentiality of the process and the information must be considered.⁸⁵ In addition, the handling of such documents and records should be consistent with standard investigation requirements (see section 5.6).

5.4 Electronic Information

Pursuant to section 9 of Secretary-General's Bulletin ST/SGB/2004/15, OIOS, in accordance with its mandate, shall have authority to access all information and communication technology (ICT) resources and data of United Nations staff members.

OIOS' access to ICT resources is based on there being a legitimate need to retrieve the resources and data. This requires investigators to consider the nature of the investigation and the necessity and relevance of the material being requested.

⁸⁵ Protocol – Declaration of Confidentiality by non-ID personnel.



Electronic evidence exists in a digital form commonly identified with computer memory. It is not necessarily in a format that can be read without the computer translating the digital information. Electronic evidence can include information stored as documents or, for example, e-mail messages. It also can be a record of an event, like a telephone call, internet access or entry to an office compound. Electronic evidence may even relate to when or where something was done, like a document scan, print or photocopy.

Electronic evidence covers a wide-ranging area that may include digital information on:

- Computers and peripherals
- External storage devices – computer disks, flash drives, MP3 players, digital cameras
- Servers, firewall terminals, LAN
- Photocopiers (hard drive, colour, imperfections)
- PBAX/Telephones (land and mobile)
- Security systems (entry/exit points, surveillance)

Since electronic evidence usually requires some analysis or handling to be interpreted, there is often some element of forensic evidence collection involved. With forensic evidence, special collection and handling requirements apply. Routine instances of electronic evidence may include collection of the actual medium on which the evidence is stored or copies from that medium. In addition, readable printouts and logs may be generated, for example in the case of telephone switchboard calls.

5.4.1 Official Servers and Shared Drives

File servers that are part of most office local area network (LAN) environments have a significant amount of information. Access to file servers is provided without any particular formality but must be through the relevant technical department personnel.⁸⁶ The servers include:

- Mail servers where e-mail is stored
- Proxy servers that connect to the internet and log each internet event

⁸⁶ Protocol – Retrieval of Information, Communication and Technology Resources and Data.



Network shared drives also are generally accessible and often are open to anyone with LAN access. Shared drives limited to certain groups, for example a department, are generally accessible but access may require some support from the relevant technical department.

5.4.2 Official Computer Hard Drives and Peripherals

Subject to certain procedures and conditions, information stored on an official computer hard drive is available for investigation purposes.⁸⁷ These same procedures apply when collecting information from external memory storage devices.

Information from the memory of a specific user's peripheral equipment, such as scanners, printers or copiers if linked to the source computer, should be collected in the same manner as information from a computer hard drive. OIOS may access shared peripheral equipment, for example LAN scanners, however technical assistance may be necessary to access this information.

5.4.3 Official Communications Equipment

Official telephone records, including land lines and mobile telephones, are generally available from responsible technical departments and occasionally from administration departments dealing with payment of local telephone services.

In addition to telephone billing/call records, any information from switchboard and official telephone equipment is available to investigators. This includes, for example, voice mail messages and all data in the memory of mobile telephones.⁸⁸

Increasingly, mobile telecommunications devices are receiving e-mails. When these devices are synchronized with an official e-mail database, there is a separate server for the communications device to synchronize with the e-mail server. Both must be checked to

⁸⁷ Protocol – Retrieval of Information, Communication and Technology Resources and Data.

⁸⁸ Protocol – Retrieval of Information, Communication and Technology Resources and Data.



establish the complete record. In addition, these devices have internal memory, for example a SIM card, which should be considered.

Although radio communications generally do not have the same level of systematic recording, radio records are often scrupulously maintained for security purposes. These records are usually available from local security departments/officers.

5.4.4 Personal Equipment

If personal equipment in the office is used to access and/or store official information, then the data stored on that personal equipment may be copied for the purposes of a preliminary fact-finding investigation. In particular, a personal portable computer or an external memory device, which is connected to official facilities, may be duly accessed. Further, where the equipment is present in the office (including vehicles, warehouses or other official premises) but not connected to official facilities, the data may be copied with the consent of the individual who is in possession of the personal equipment.⁸⁹

5.4.5 Other Sources

Increasingly, computer memory is included in items from vehicles to cameras. The data on computer memory of official equipment may provide useful information and is generally accessible. However, if the item is in the possession and control of a staff member when the information is required, the procedures for collecting information from a computer hard drive should be followed.

Global Positioning System devices may be in use, whether in vehicles or hand-held. The device may have memory that records coordinates identified by a user. Such information can establish date, time and location information relevant to an investigation.

Official facilities may maintain video surveillance systems for security. This video may be in an analogue format, but increasingly is in a digital format. It is usually available from the

⁸⁹ Procedure – Searches.



relevant security department or contractor. However, since back-up tapes/memory are reused, the information should be secured promptly to avoid re-recording that destroys the video evidence required. Therefore, during the course of an investigation, it is advisable to keep records of video surveillance systems, particularly where cameras are deployed and to secure the procedures for backing up and storing video footage.

Electronic key card entry logs identify entry and often exit of a card assigned to identified individuals. This data is usually available from the relevant security department and can be used to establish timelines or corroborate attendance of an individual. As with video surveillance systems, the data may be stored on memory that is reused. Therefore, the back-up procedures should be identified for future reference.

5.5 Physical Evidence and Forensics

5.5.1 Physical Evidence

Where it may be impractical to take physical evidence away for example, because of its size or immovability, other approaches must be considered. This could mean securing an object in-situ but would more likely require that the evidence be photographed. In some cases, sketches of the scene may be necessary and may be used to corroborate investigator testimony of the scene being described.

5.5.2 Hard Disk Analysis

Special investigation tools can be used to analyze a computer hard drive to reveal a range of information not readily apparent from a simple review of its contents. This can range from disguised applications to recovery of deleted files. In addition, password/encryption cracking tools and other security override functions can be employed to access restricted information on a hard drive. However, forensic analysis of any hard drive must follow strict handling procedures to avoid compromising evidence that may be obtained.



5.5.3 DNA Samples

In exceptional circumstances, DNA samples may be taken, primarily for purposes of establishing evidence of serious misconduct.⁹⁰ Samples can only be taken with the voluntary and informed consent of the sample provider (or his/her legal guardian), and can be used only for the purpose for which consent was given. Strict procedural requirements must be met, such as proper identification of sample providers, supervised sample collection and a chain of custody.

5.5.4 Documents/Writings

Handwriting and document analysis can be undertaken and does not require the consent of implicated personnel. Writing samples may, however, be requested for that purpose or otherwise obtained from official records and documents that may be generally available. The name and qualifications of the analyst must be included with any of their findings to allow for future assessment.

5.5.5 Audio/Video/Photographic Enhancement

A qualified analyst may undertake digital and/or other enhancements to existing audio, visual or photographic evidence. The name and qualifications of the analyst, as well as the type of equipment and methods used to achieve the enhancement, must be included with any findings to allow for future assessment.

5.5.6 Fingerprints

Generally fingerprints are not taken during investigations. However, where fingerprint evidence might be relevant to an eventual local criminal investigation, the investigation may preserve the scene or items from which fingerprint evidence may be obtained.

⁹⁰ Protocol – Collection of DNA Samples



5.5.7 Trace Material

Generally trace material, for example fibre, unknown substances or hair, is not taken during investigations. However, there may be occasions where it is relevant, particularly if there may be an eventual local criminal investigation. The investigation may preserve the scene or items from which trace material may be obtained. In some cases, the investigation may have the material subject to forensic examination. The name and qualifications of the analyst, as well as the type of equipment and methods used to identify the trace material, must be included with any findings to allow for future assessment.

5.6 Evidence Handling

There is a requirement for a detailed inventory of evidence collected with the signature of the receiving officer, with a copy of the inventory provided to the individual from whom the evidence was obtained. To preserve the integrity of evidence, it must be recorded in a manner that can be used for authentication and attribution through a clear chain of custody. Chain of custody simply is the paper trail showing the collection, custody, control, transfer, analysis, and disposition of certain types of evidence.⁹¹

5.7 Internal Legal Framework

Pursuant to General Assembly resolutions 61/261 and 62/228, the United Nations legal framework for the administration of justice underwent significant changes from 1 July 2009.

Currently, the issues pertaining to evidentiary requirements for disciplinary proceedings are outlined in the following rules and procedures of United Nations administrative bodies.

⁹¹ Procedure – Evidence Handling; Form – Chain of Custody.



5.7.1 United Nations Dispute Tribunal

The United Nations Dispute Tribunal (UNDT) is the first instance of the two-tier formal system of administration of justice. UNDT's jurisdiction includes applications filed by an individual to appeal an administrative decision alleged to be in non-compliance with their terms of appointment or contract of employment, or to appeal an administrative decision imposing a disciplinary measure.⁹²

Although a judge hearing a case can elect whether or not to hold an oral hearing, a hearing will normally be held following an appeal against an administrative decision imposing a disciplinary measure. When a hearing is held, the parties or their representatives must be present in person or, where unavailable, by video link or telephone. Oral hearings will be held in public, unless the judge hearing the case decides that exceptional circumstances require that the proceedings be closed.⁹³

The parties may call witnesses and experts to testify, and both the opposing party and the Dispute Tribunal have the right to examine those witnesses.⁹⁴

UNDT also has the power to determine the admissibility of any evidence. This means that it may exclude evidence that it considers irrelevant, frivolous or lacking in probative value. The Dispute Tribunal may also make an order requiring the production of any document, or the provision of any information that it deems necessary for a fair and expeditious disposal of the proceeding.⁹⁵

From time to time, OIOS investigators may be called to give evidence before UNDT. Their testimony may be required to explain the investigations' process and methodology, as well as to provide information about the findings and conclusions of a specific case. They may also be asked to provide their professional opinion on operational context, circumstances prevailing in the area where the contravention occurred, or other information useful to determining the proceeding.

⁹² Statute of the United Nations Dispute Tribunal, as contained in A/RES/63/253.

⁹³ A/RES/64/119, Article 16.

⁹⁴ A/RES/64/119, Article 17.

⁹⁵ A/RES/64/119, Article 18.



The Dispute Tribunal may, at the request of either party and where warranted by security interests or other exceptional circumstances, impose measures to preserve the confidentiality of evidence.⁹⁶ UNDT has also stated that the power to grant confidentiality in respect of the identity of a witness lies with UNDT and not with OIOS.⁹⁷ This means that OIOS is not able to provide absolute confidentiality undertakings to witnesses who provide statements during the course of a preliminary fact finding investigation. OIOS will, however, redact in its reports the name of any vulnerable witnesses, including minors, who give a statement to OIOS in the course of a preliminary fact finding investigation.⁹⁸

5.7.2 United Nations Appeals Tribunal

The United Nations Appeals Tribunal (UNAT) is the body of second instance within the United Nation's formal system of administration of justice. Its function is to hear cases filed against UNDT judgments in which it is asserted that the Dispute Tribunal:

- a) Exceeded its jurisdiction or competence;
- b) Failed to exercise jurisdiction vested in it;
- c) Erred on a question of law;
- d) Committed an error in procedure, such as to affect the decision of the case;
or
- e) Erred on a question of fact resulting in a manifestly unreasonable decision.⁹⁹

When an appeal is filed both parties must provide briefs setting out the legal grounds upon which they rely and copies of each document referred to in the brief.¹⁰⁰ UNAT will only receive additional evidence from a party, beyond that contained in the written record, in exceptional circumstances. In all other cases where additional findings of fact are needed, UNAT may remand the case to UNDT for further fact-finding.¹⁰¹

⁹⁶ A/RES/64/119, Article 18.

⁹⁷ *Sannidi* UNDT/2010/036; *Masri* UNDT/2010/056.

⁹⁸ Procedure – Report Writing.

⁹⁹ Statute of the United Nations Appeals Tribunal.

¹⁰⁰ Rules of Procedure of the United Nations Appeals Tribunal, Articles 8 and 9.

¹⁰¹ Rules of Procedure of the United Nations Appeals Tribunal, Article 10.



6. REPORTS AND OPERATIONS SUPPORT

The purpose of this Chapter is to provide an overview of the OIOS report writing process, to outline both the confidentiality requirements and the scope for OIOS report dissemination, and further to explain the operations support function.



6.1 OIOS Investigations Reporting Function

The rationale for OIOS reports is to assist the Secretary-General in fulfilling his or her internal oversight responsibilities in respect of the resources and staff of the Organization.¹⁰² This includes advising the Secretary-General on risks of potential fraud and other contraventions detected through the analysis of systems controls in high-risk areas within the Organization. OIOS also prepares reports to assist the government of a troop-contributing country (TCC), where military members, within the context of United Nations operations, are implicated in serious misconduct.¹⁰³

OIOS reports generally outline the facts established through investigations, formulate findings and conclusions, and, where necessary, make appropriate recommendations. OIOS reports are transmitted to the Secretary-General and/or programme managers who are responsible for implementing recommendations.¹⁰⁴

For investigations implicating United Nations personnel,¹⁰⁵ OIOS reports the investigation results which support possible misconduct to the Secretary-General (or designee) to provide guidance in deciding on jurisdictional or disciplinary action to be taken.¹⁰⁶ Concerned programme managers are also informed through reporting mechanisms of matters affecting their responsibilities, in particular where a lack of internal systems controls and processes was identified during an investigation. When the investigation concerns the conduct of personnel under the authority of a TCC, the investigation and, therefore, any report, is subject to the primary investigative authority of the TCC (see Chapter 2).

¹⁰² A/RES/48/218 B (12 August 1994); ST/SGB/273 (7 September 1994).

¹⁰³ Revised draft model memorandum of understanding as set out in A/61/19 (Part III) and endorsed by the General Assembly in A/RES/61/267 B (24 August 2007).

¹⁰⁴ Advisory – Dissemination of OIOS reports.

¹⁰⁵ United Nations personnel in the context of this chapter means United Nations staff and Experts on Mission (see Advisory – Categories of Personnel).

¹⁰⁶ A/RES/48/218 B (12 August 1994).



6.2 Report Structure, Format and Style

OIOS reports are summaries of preliminary fact-finding investigations, with findings and conclusions based on verifiable facts. Reports must be prepared in accordance with OIOS procedures designed to ensure stylistic and editorial consistency to meet United Nations standards and should be:¹⁰⁷

- factually correct
- impartial and objective
- concise, clear and complete
- logically organized

OIOS reports are generally structured to outline the reported misconduct linked to applicable United Nations regulations, rules and administrative issuances. They succinctly explain the steps taken to gather evidence, set forth analyses of and findings based on the evidence obtained, and demonstrate that conclusions drawn and recommendations made are rational and sustainable.

Although reports should be concise, they should not sacrifice clarity, completeness or accuracy, but rather enable the reader to easily identify the evidence and comprehend the issues addressed. However, excessive detail should be avoided so that readers are not buried under irrelevant facts. Reports should neither raise unanswered questions nor leave matters open to interpretation.

Reports should be written in the active voice and contain short and direct sentences. Concise headings and sub-headings should be used to guide the reader through reports. They should be presented in straightforward, grammatically correct language, avoiding the use of unnecessary, obscure, and confusing expressions or adjectives. Images and charts may also be used to demonstrate issues. To protect confidentiality, names of vulnerable witnesses may be replaced by descriptors.

¹⁰⁷ Procedure – Report Writing; Form – Report Writing Checklist; Form – Report Template.



High quality reports require factual accuracy. Therefore, each piece of evidence relied upon in a report must be supported by documentation in the investigation case file, which is referenced in a footnote.¹⁰⁸

Investigation findings can be made and included in a report only after individuals implicated in possible misconduct (also referred to as subjects) have been given the opportunity to respond to the claim(s) made against them. Where subjects refuse to cooperate with investigators, unanswered claims may be addressed, with reference to the subject's lack of cooperation. Reports should, where available, include exculpatory and mitigating evidence.¹⁰⁹ Some issues involving conduct may not necessarily constitute a contravention of United Nations regulations, rules and administrative issuances, but rather may indicate poor management or judgement. In such cases, the criteria used and the reasons for adopting those criteria must be made clear.

Reports should be responsive to the need of the intended recipients. Consequently, recommendations, in particular those which address misconduct, financial recovery, management-related problems or organizational systematic weaknesses, should be practical and address shortfalls identified during the investigation.¹¹⁰

6.3 Report Types

To meet reporting obligations, OIOS issues different types of standard reports.

- **Investigation Report:** Designed to support a decision on whether to initiate disciplinary proceedings against United Nations personnel. The report must include all evidence of misconduct that might be required and normally concerns a single subject.

¹⁰⁸ Procedure – Report Writing.

¹⁰⁹ *Applicant* UNDT/2011/106, para. 77.

¹¹⁰ Recommendations are assigned distinctive numerological descriptors for purposes of monitoring implementation.



- **Contingent Report:** Designed to inform a TCC of the facts revealed through a preliminary fact-finding inquiry and/or an investigation into the conduct of contingent personnel.
- **Closure Report:** Designed to record the investigation methodology and established facts for a conclusion that an investigation report is not warranted, as the evidence obtained does not substantiate the reported misconduct, and that accordingly the investigation is considered closed.
- **Advisory:** Designed to inform managers of facts and observations that arise during an investigation, which are not necessarily relevant for a disciplinary process.

6.3.1 Investigation Report

Investigation reports are used to present facts established through the investigation process that substantiate misconduct committed by United Nations personnel in contravention of United Nations regulations, rules and administrative issuances.¹¹¹ Investigation reports can address multiple contraventions, however separate reports must generally be issued for each subject. Investigation reports reference all evidentiary documents that support the facts and findings therein.

“Investigation report” means an issued report which contains information about the reported misconduct, applicable legal norms, employment history of implicated personnel, investigative methodology and details, findings and conclusions. It also contains recommendations to relevant programme managers, which may include:

- appropriate action (disciplinary or administrative) to be taken against implicated United Nations personnel found to have contravened regulations, rules and administrative issuances;
- referral to national authorities, in consultation with the Office of Legal Affairs, where evidence obtained indicates possible criminal activity, (see Chapter 7); and

¹¹¹ Procedure – Report Writing; Form – Report Writing Checklist; Form – Investigation Report Template.



- financial recovery.

Further, where retaliation or male fide claims arise from a reported case of misconduct, a separate investigation report must be issued.

The investigation report writing process starts during the intake stage when the applicable legal norms and relevant United Nations jurisprudence supporting the reported misconduct are identified. Jurisdiction is also considered during this stage, which includes determining the status of United Nations personnel implicated (see Chapters 2 and 3).¹¹² After completing investigations, assigned investigators, under direction of their supervisors, are responsible for preparing the investigation report.

Investigation reports are submitted to the Director of the Investigations Division of OIOS (hereafter the “Director”) for his or her final approval and issuance.

Before issuance by the Director, investigation reports are also reviewed by the Under-Secretary-General (USG) of OIOS. Only after the investigation reports are signed by the Director are they considered as issued and therefore final products reflecting the OIOS position.

6.3.2 Contingent Report

Contingent reports are used to provide the government of a TCC, through the Department of Field Support (DFS), with an assessment of facts obtained through a preliminary fact-finding inquiry. In particular, this inquiry concerns reported misconduct by military contingent members, which may or may not establish prima facie grounds indicating serious misconduct. Where the assessment indicates serious misconduct, appropriate recommendations are made (see Chapter 4). A contingent report may address possible misconduct involving one or more military members of the same contingent.

“Contingent report” means an issued report which contains information about the reported misconduct, applicable legal norms, implicated contingent personnel and their rotation status and investigative methodology. Further, the report may include details that impacted the

¹¹² Advisory – Categories of Personnel.



investigation such as TCC government representative(s) responsiveness, investigative details, as well as preliminary findings and conclusions.

Contingent reports will clearly reflect whether implicated personnel were interviewed by OIOS, and if so, will detail the circumstances and outline their versions of events regarding reported serious misconduct against them (see Chapter 5).¹¹³ Contingent reports will also contain recommendations to DFS, which may include:

- informing the appropriate permanent mission of the findings of the contingent report;
- providing a copy of the contingent report to the appropriate permanent mission for consideration of further investigation by the appropriate national authority;
- providing a copy of the contingent report to the appropriate permanent mission for consideration of appropriate action to be taken against identified contingent members where there is prima facie evidence of serious misconduct; and
- providing a copy of the contingent report for appropriate action by the head of the United Nations peacekeeping mission to address command and control issues.

The contingent report writing process starts during the intake stage during which applicable legal norms supporting the reported misconduct are identified (see Chapter 3). After completing the investigation, assigned investigators assess the facts obtained, identifying unfounded claims, claims based on hearsay, and claims supported by direct, corroborative and circumstantial evidence.

Based on these assessments, assigned investigators, under direction of their supervisors, prepare draft contingent reports, including preliminary findings and conclusions (see Chapter 2). Preliminary findings and conclusions are based on available evidence, which may include testimony of implicated contingent members, subject to their availability for OIOS interview (see section 5.2.5 and Chapter 2). Draft contingent reports are provided to the

¹¹³ Procedure – Interaction with Troop-Contributing Countries and military members of national contingents.



USG for review. Contingent reports are considered final products reflecting the OIOS position only when signed and issued by the Director.

6.3.3 Closure Report

Closure reports are used to outline facts established through the investigation process that suggest that there is no basis on which to pursue an investigation, that the available evidence does not substantiate the reported misconduct or, that an investigation is no longer possible due to extenuating circumstances. Closure reports address reported misconduct involving implicated United Nations personnel.

“Closure report” means a signed report by the Director, signifying approval for closure of an investigation. Closure reports contain descriptions of the reported misconduct, applicable legal norms, implicated personnel, investigative methodology, and facts established that justify a conclusion that the case can be closed.

Closure reports are prepared to ensure accountability of the process involving decisions to close investigations. Closure reports are not shared with programme managers. However, the Ethics Office is provided with the results of investigations concerning retaliation claims. All closure reports are subject to periodic review by the USG and may be re-opened if deemed appropriate.

Implicated United Nations personnel who were interviewed as subjects are notified by letter that the available evidence did not substantiate the reported misconduct, but that the matter may be re-opened if incriminating evidence is provided in the future. Closure notices are forwarded to relevant programme managers advising of the closure status of investigations against implicated United Nations personnel.

6.3.4 Advisory

Advisories are used to inform relevant programme managers about weaknesses or potential areas of risk in administrative or operational policies which could affect their areas of



responsibility. This may include management, procedural or other issues that may arise during an investigation, but are not part of an investigation or contingent report. Advisories may also be used to identify high-risk areas for fraudulent or related practices detected through the analysis of systems control and processes.¹¹⁴

Advisories generally describe the circumstances which led to the detection of the problem, analyze processes/control systems and make recommendations to the relevant programme managers concerning the identified risk areas. Recommendations will generally be focused on preventing harm to the Organization, and may include:

- consideration of lessons learned;
- development of best practices; and
- recognition of trends, for the overall improvement of office policies, internal controls and management practices.

Advisories generally do not address the conduct of individuals and are prepared by assigned investigators under the direction of their supervisors. They are submitted to the Director for approval and issuance. Advisories are transmitted to relevant programme managers for their consideration or implementation of recommendations. Advisories are also shared with the OIOS Internal Audit and Inspection and Evaluation Divisions for workplan considerations.

6.4 Confidentiality of OIOS Reports

OIOS reports contain confidential and sensitive information about individuals and United Nations operations and activities. Disclosure of such information may be detrimental to the Organization's proper functioning, the welfare and safety of its staff or third parties, or may violate the Organization's legal obligations.¹¹⁵ OIOS reports are therefore considered confidential internal United Nations documents.¹¹⁶ For these reasons, the release of reports for purposes other than to facilitate the disciplinary process is restricted to specific instances

¹¹⁴ ST/SGB/273 (7 September 1994).

¹¹⁵ ST/SGB/2007/6 (12 February 2007).

¹¹⁶ ST/SGB/273 (7 September 1994).



provided for under the OIOS mandate (see section 6.6).¹¹⁷ Even then, when the release of reports may breach confidentiality requirements and due process rights of individuals, the USG has the right to modify or even withhold reports.¹¹⁸ Where appropriate, reports may be redacted in accordance with set procedures designed to protect the identity of United Nations personnel and others, fairness and due process for all parties concerned, as well as to protect against reprisals.¹¹⁹ Where widespread release of reports, despite their redaction, may compromise legal processes, OIOS can consult the Office of Legal Affairs and the Administrative Law Section, before their release.

The release of reports to Member States does not constitute their publication, and OIOS does not bear any responsibility for any further dissemination of the report.

6.5 Operations Support

6.5.1 Programme Managers

Following completion of investigations, OIOS transmits reports to the Secretary-General or programme managers for consideration and comments on its recommendations.¹²⁰ Although there is no restriction on programme managers regarding dissemination of reports, OIOS encourages limited distribution to protect the confidentiality and due process rights of individuals (see section 6.4).

Programme managers are able to view OIOS recommendations online and provide their responses, including updates on implementation status. OIOS will follow up on recommendations contained in investigation reports until they are fully implemented or no longer actionable. On pre-arranged timeframes, OIOS will evaluate implementation status of recommendations against set criteria. The USG is obliged to report at least twice yearly to

¹¹⁷ A/RES/48/218 B (12 August 1994); ST/SGB/273 (7 September 1994); A/RES/54/244 (23 December 1999).

¹¹⁸ A/RES/54/244 (23 December 1999); A/RES/59/272 (2 February 2005).

¹¹⁹ Advisory – Report Redaction.

¹²⁰ Advisory – Dissemination of OIOS reports.



the Secretary-General on the implementation of recommendations addressed to programme managers, including those not accepted.¹²¹

When recommendations for appropriate action against staff members are based on misconduct, programme managers may refer the matters to OHRM for disciplinary action.¹²²

6.5.2 Parties Involved in OIOS Investigations

OIOS does not provide copies of its reports to subjects, witnesses or other interested parties involved in its investigations. However, where the Assistant Secretary-General for OHRM decides to pursue disciplinary procedures, the subject will be provided with a copy of the documentary evidence supporting the misconduct charge against him or her. This may include a copy of the investigation report (see section 6.5.3).¹²³

6.5.3 Internal Justice Process

Where programme managers, under ST/AI/371, report matters of alleged misconduct by staff members to OHRM for possible disciplinary action, they should provide a full account of all the known facts together with supporting documents relevant to the alleged misconduct (see Chapter 2).¹²⁴ On the basis of the evidence presented, the Assistant Secretary-General for OHRM shall decide whether the matter warrants disciplinary action.¹²⁵

Where such reports by programme managers ensue from OIOS investigations, the evidence outlined in investigation reports is essential for reaching an informed decision as to whether disciplinary action should be pursued. It is the responsibility of OHRM to ensure proper and efficient internal justice proceedings for all interested parties (see Chapter 2).

¹²¹ ST/SGB/273 (7 September 1994).

¹²² “Misconduct” is defined in Staff Rule 10.1

¹²³ ST/AI/371 (2 August 1991).

¹²⁴ ST/AI/371 (2 August 1991). ST/AI/371/Amend.1.

¹²⁵ ST/AI/371 (2 August 1991).



OHRM may require further support from OIOS, for example, clarification of the investigative process and provision of additional documents. OIOS investigators may also be required to testify before UNDT.

It should be noted that the separation of functions between investigation responsibilities under OIOS and disciplinary proceedings instituted by OHRM provides the necessary checks and balances for the proper administration of justice.

6.5.4 National Authorities

National authority requests for OIOS investigation reports and supporting documents to pursue possible criminal or civil action must be directed to OLA (see Chapters 2 and 5).¹²⁶ This may occur where, for example, the Organization, through OLA, has referred cases to national authorities for possible prosecution (see section 6.3.1 and Chapters 1 and 7), or where OIOS conducts administrative investigations parallel with national authorities. Documents may not be provided without OLA authorization, after which the Director will facilitate interaction with authorities.

OIOS investigators may be required to provide statements and testimony before national courts. In these cases, waiver of immunities must be duly considered in consultation with OLA (see Chapter 7).

6.5.5 Troop-Contributing Countries

The government of a TCC has sovereign rights and primary responsibility to investigate reported misconduct against contingent personnel. This means that a TCC exercises exclusive jurisdiction over its troops with regard to acts of misconduct committed while deployed to a peacekeeping operation. OIOS interaction with a TCC is reflected in the revised draft model memorandum of understanding, which states that OIOS investigation

¹²⁶ Procedure – Evidence Handling.



activities are either complementary or secondary.¹²⁷ OIOS communicates with a TCC and the Permanent Missions to the United Nations through DFS.

OIOS will lead an investigation, either at the direction of the government of the TCC or by default due to the government's failure to respond to a request for investigation under the revised draft model memorandum of understanding. In such cases, the government of a TCC is obliged to instruct the Contingent Commander to cooperate and to share documentation and information with OIOS, subject to applicable national and military laws of the TCC.¹²⁸ Where OIOS has conducted the preliminary fact-finding inquiry or investigation, it will issue a contingent report and provide its findings and evidence to the Permanent Mission of the TCC through DFS.

6.6 Reporting Obligations and Procedures

OIOS has reporting obligations that it is mandated to follow to ensure accountability and transparency for the utilization of its resources and to facilitate the implementation of its recommendations.

6.6.1 Member States

Member States, upon request, are provided with original versions of reports which were not made available to the General Assembly. However, the USG may modify or withhold reports to ensure the confidentiality and due process rights of individuals.¹²⁹ To facilitate prompt action, Member State representatives must reference the date, title of report and case number when making requests.

¹²⁷ A/61/19 (Part III) and endorsed by the General Assembly in A/RES/61/267 B.

¹²⁸ Procedure - Interaction with Troop-Contributing Countries and military members of national contingents.

¹²⁹ A/RES/59/272 (2 February 2005).



6.6.2 External Oversight Bodies

The Board of Auditors and the Joint Inspection Unit have oversight functions over OIOS activities, and in exercising this function they are entitled to copies of reports produced by OIOS.¹³⁰ These requests for OIOS reports must be directed to the USG or designee, who has discretion as to whether redaction of reports is required to protect the confidentiality and due process rights of implicated individuals.

7. REFERRAL

The purpose of this Chapter is to describe why and how matters are referred to an investigation authority and the implications of such referrals in terms of continuing and post-referral responsibilities.

Since the investigation function is discharged by various authorities in the Organization, a clear process for referring matters to the appropriate investigating authority is required. In addition, referring matters to external authorities requires procedures to meet standards of confidentiality, proper information handling and effective administrative management.

¹³⁰ A/RES/54/244 (31 January 2000).



7.1 Referral Procedures

Not all matters received, or even designated (also referred to as predicated) for investigation, remain with the initial investigation authority. Matters may be referred by that initial authority to another for a variety of reasons, including:

- another internal unit within the Secretariat has authority to investigate the matter¹³¹
- an external body, i.e. an “organization” or a national authority that has the mandate to investigate the matter¹³²
- specific procedures for the matter have been promulgated by the Organization¹³³
- the matter concerns management-related issues that do not require investigation

Irrespective of the reasons for a referral, it is not a closure for the authority that initially received the matter. A referral contemplates some further action and possible follow-up. Consequently, matters that are referred typically are subject to a systematic process of intake, recording and action to facilitate proper disposition of the matter by the appropriate authority.

7.1.1 Referral to Internal Units

As the investigation function may be discharged through different offices and departments within the United Nations Secretariat (see Chapter 1), matters received by one unit may be referred, in whole or in part, to another unit that has sole or primary responsibility for investigating the matter.

¹³¹ The expression “unit” includes all functional units in the United Nations Secretariat, including offices, departments, sections, etc.

¹³² For the purpose of Chapter 7, “organization” means funds and programmes, specialized agencies and multilateral development banks; national authority means law enforcement under authority of a Member State.

¹³³ See, ST/SGB/2008/5 – Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority and ST/SGB/2005/21 – Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations.



- **Intake**

Matters referred for investigation should be subject to normal intake procedures of the receiving unit (see Chapter 3). This includes standard requirements for preserving confidentiality (see Chapter 2). Specific consideration should be given to the identity of the source and whether it needs to be revealed in the referral. Where the source is entitled to confidentiality his or her identity should be maintained by the initial receiving unit. However, if the identity of a confidential source must be revealed in the referral, the source must consent to disclosure before the referral is made.

- **Recording**

Matters referred for investigation should be subject to normal procedures for recording and record-keeping. This includes all intake aspects and subsequent referral actions. In addition, the factors that went into any determination for referral should be maintained for the record and possible reference in the future.

- **Action**

Since the referral is not a closure, certain actions are implicit. This requires a determination as to the appropriate unit to refer the matter to. The basis for this decision should be expressed and included with the referral. The intake process must, therefore, provide a clear position on the grounds for referring the matter and to which unit.

Referral to another unit does not end the initial receiving unit's responsibilities for the matter. The initial receiving unit should remain available as a possible resource for the unit to which the matter is referred. This may include providing further information on the intake and determination, as well as details known only to the referring unit.

7.1.2 Referral to External Bodies

Where internal investigative units do not have jurisdiction over the matter, either because of the individual(s) or issues involved, it can be referred to external bodies.¹³⁴ This often arises

¹³⁴ For the purpose of Chapter 7 “organization” means funds and programmes, specialized agencies and multilateral development banks.



when the individual implicated is outside the investigation unit's jurisdiction, for example, the employee of another organization. In addition, certain conduct may be a contravention of the organization's standards and also a violation of a national law. The external body usually is, therefore, either an organization or a national authority.

Referral to Other Organizations

Referrals to other organizations are managed in a manner similar to referrals within the United Nations Secretariat. However, there typically is less follow-up and the matter may be closed after referral.

- **Intake**

Matters referred for investigation should be subject to normal intake procedures of the receiving authority (see Chapter 3). This includes standard requirements such as preserving confidentiality (see Chapter 2). Specific consideration should be given to the identity of the source and whether it needs to be revealed in the referral. Where not required, it generally should be maintained as confidential by the initial receiving unit. However, if the identity of a confidential source must be revealed in the referral, the source must consent to disclosure before the referral is made.

- **Recording**

Matters referred for investigation should be subject to normal procedures for recording and record-keeping. This includes all intake aspects and subsequent referral actions. In addition, the factors that went into any determination for referral should be maintained for the record and for possible reference in the future.

- **Action**

A referral to another organization essentially concludes any action that might be required by the initial receiving unit. The determination of which authority to refer the matter to should be thoroughly assessed and documented. The possibility of a joint or contemporaneous investigation should also be considered (see section 7.2).

Some organizations either lack the capacity to investigate or otherwise have a conflict that makes the undertaking of an investigation inappropriate. The organization may, therefore,



refer the matter back to OIOS for consideration. The referral may be subject to existing conditions provided for in a memorandum of understanding or accepted on an ad hoc basis.¹³⁵ In all cases, OIOS responsibilities must be expressed in writing with agreed cost reimbursement (see Chapter 1). Irrespective of any agreement, however, investigative standards as provided for in this manual shall be applied.

Referral to National Authorities

Matters referred to national authorities typically involve possible criminal conduct. However, criminal matters are investigated and prosecuted in the name of the relevant governmental authority of that State. National authorities act under their own prerogative and are not responsible to the United Nations for any reply, follow-up or other action. Any referral to a national authority must, therefore, consider the following:

- **Intake**

Matters referred for investigation should be subject to normal intake procedures of the receiving authority (see Chapter 3). This includes standard requirements preserving confidentiality (see Chapter 2). Specific consideration should be given to the identity of the source and whether it needs to be revealed in the referral. Where not required, it generally should be maintained as confidential by the initial receiving authority. If the identity of the source must be revealed in the referral, the source should be informed before the referral is made.

- **Recording**

Matters referred for investigation should be subject to normal procedures for recording and record-keeping. This includes all intake aspects and subsequent referral actions. In addition, the factors that went into any determination for referral should be maintained for the record and possible reference in the future.

- **Action**

Since a referral to national authorities may lead to criminal sanction, the determination must consider:

¹³⁵ Several funds and programmes have agreements with OIOS for cost reimbursement investigations.



- possibility/likelihood that contravention is a possible crime
- the jurisdiction(s) in which the possible crime occurred- the location of witnesses, records and crime scene(s)
- prior law enforcement involvement or criminal complaint related to the incident
- nature of the justice system to which referral is anticipated
- role of the United Nations, including issues related to flight risk, extradition and on-going support to any criminal investigation/prosecution
- privileges and immunities (see section 7.5)

Before any matter is recommended for referral to a national authority, a thorough analysis of relevant factors should be presented to the appropriate authority for making such referral. The investigation authority should not, therefore, contact law enforcement directly to present prima facie evidence of potential criminal conduct unless specifically authorized to do so by OLA.

7.2 Multiple Referrals and Contemporaneous Investigations

Matters may be received that implicate a variety of individuals in a range of activities subject to diverse investigative authority. This often occurs when the possible misconduct:

- involves individuals from two or more different organizations
- involves a variety of contraventions, some minor or managerial, while others are more serious
- contravenes internal administrative rules and also external criminal statutes

Multiple referrals should be handled as provided for in section 7.1, but the internal record must clearly indicate the respective referrals in a single document.

Contemporaneous investigations essentially occur when the possible contravention could be misconduct and also potentially criminal. In such a case, the internal investigation must



progress to the extent required to take appropriate administrative action, while a criminal investigation may be undertaken at the same time by a national authority.

Where an internal investigation continues while a criminal investigation is underway, the internal investigation must be conducted separately and consistent with internal standards for the administration of justice. Since the internal administration of justice is subject to a different legal standard than a criminal process, the internal investigation is neither complementary nor contradictory to any criminal investigation (see Chapter 2).

7.3 Preservation of Evidence

Even where the initial receiving authority ultimately refers a matter for investigation to another authority, there is a duty to preserve evidence.¹³⁶ Consequently, all information received or discovered prior to the referral should be handled as possible evidence (see Chapter 5).

7.4 Collaboration with National Authorities

Matters referred to national authorities often require some collaboration with law enforcement authorities. However, this should not be done without express authorization from OLA. In addition, no official records should be provided nor should access to officials or archives of the Organization be granted by the investigative authority without express authorization from OLA.

The investigative authority should only collaborate with law enforcement authorities as an authorized agent of the Organization and under clear, written instruction from OLA.

When authorized, the internal investigator will typically collaborate as an observer of police procedures for authorized searches of United Nations premises or equipment and for possible witness interviews conducted at United Nations offices. In addition, the investigator

¹³⁶ Procedure – Evidence Handling.



may provide information about the Organization and facilitate contacts with United Nations officials.

Records and Documents

Where the internal investigation obtained evidence required by national law enforcement officials for criminal investigation and prosecution, the evidence may have to be provided together with details on the chain of custody and authentication (see Chapter 5).¹³⁷ If copies of documents are sufficient for law enforcement purposes, the originals should be retained by the United Nations. Irrespective of whether an original or copy is provided, a formal written receipt must be obtained from the law enforcement agency taking delivery and kept in the investigation case file. No document may be provided without an official request from the law enforcement agency which is accepted by OLA.

Statements and Testimony

Investigators may be requested to provide statements and testimony in matters referred to national authorities. Approval from OLA is required before providing any statement or testimony and a waiver of immunity obtained in the case of testimony under oath.

The investigator may be requested to explain investigative procedures and methods used and comment on operational context, circumstances prevailing in the area where the contravention occurred or other information useful to reviewing the matter.

7.5 Privileges and Immunities

The United Nations is accorded certain privileges and immunities so that it can effectively discharge its function.¹³⁸ These privileges and immunities are qualified as functional and not diplomatic.¹³⁹ Consequently, they extend only to official functions and even in the case of official functions, must be waived by the Secretary-General if the immunities would otherwise impede the course of justice (see Chapter 2).

¹³⁷ Procedure – Evidence Handling.

¹³⁸ Convention on the Privileges and Immunities of the United Nations 1946.

¹³⁹ Vienna Convention on Diplomatic Relations 1961.



If referral to national authorities might require disclosure of certain official documents to law enforcement authorities, privileges related to the inviolability of archives and records must be considered as part of any recommendation for such a referral. The analysis of relevant factors affecting any determination to recommend a referral to national authorities where criminal investigation and prosecution might follow should specifically address the possibility of law enforcement authorities accessing official archives and records.

In addition, waiver of immunity may be required for staff members, including investigators and witnesses, who provide testimony before any court should the matter result in criminal prosecution. The possibility of testimony under oath should, therefore, be considered in the analysis of relevant factors affecting any determination to recommend a referral to national authorities where criminal investigation and prosecution might follow.