

# **Office of Internal Audit & Oversight**

## **Standard Operating Procedure Investigations**

**July 2018**



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## Acronyms

CIA	Chief Internal Auditor
HRD	Human Resources Department
IAO	Office of Internal Audit & Oversight
IOAC	Independent Oversight Advisory Committee
ICT	Information Communications Technology
ILO	International Labour Organisation
ISAS	Information Security and Assurance Section
JUR	Office of the Legal Adviser
SOP	Standard Operating Procedure
UN	United Nations

**This Standard Operating Procedure (SOP) is intended as a 'practical guide' for investigations. It incorporates international best practice in investigations and the ILO Financial Rules and Staff Regulations.**

**The SOP is a living document that will be updated by IAO as required.**

**The SOP is a guide to best practice but is not mandatory in every situation. To ensure consistency in the investigation of cases, investigations are to be conducted in accordance with the SOPs to the extent possible. However, the circumstances of a particular investigation may necessarily affect the application of the guidelines to the specific circumstances of a case. Deviations from these guidelines may not necessarily constitute a due process violation.**

# **1. Introduction**

## **1.1 Purpose**

1. This Standard Operating Procedure (SOP) for Investigations has been prepared by the Office of Internal Audit & Oversight (IAO) of the International Labour Organization.
2. The purpose of the SOP is to inform investigators, the subjects of an investigation and other stakeholders about the investigative process and guide that process to ensure that investigations are conducted thoroughly, objectively and effectively, in accordance with professional standards and best international practices.
3. The SOP has been prepared in accordance with accepted investigation standards, taking account of the Uniform Guidelines for Investigations<sup>1</sup>, a UN Joint Inspection Unit report on ‘the Investigation Function in the United Nations System’<sup>2</sup>, and other investigative practices in the UN as a whole.
4. It is consistent with ILO regulations, rules and relevant Internal Governance Documents (IGDS). In case of inconsistency between the SOP and ILO regulations and rules, the regulations and rules shall prevail.
5. The SOP also reflects and incorporates investigative ‘best practices’ that have been developed by the IAO over a number of years.

## **1.2 Legal Basis**

6. The IAO has the mandate to investigate all suspected matters of fraud and misconduct by staff members, as well as a duty to investigate procurement and development cooperation related irregularities by contractors and service providers, including consultants as per the following:
  - a. ILO Financial Regulations and Rules<sup>3</sup>
  - b. ILO Anti-fraud policy
  - c. Investigation Charter<sup>4</sup>
  - d. Fiduciary obligations undertaken with respect to extra budgetary resources

## **1.3 IAO’s mandate and the nature of IAO investigations**

7. IAO’s mission is to provide ILO with an effective system of independent and objective internal oversight that is designed to improve the effectiveness and efficiency of ILO’s operations in achieving its development goals and objectives through the provision of internal audit, investigation and inspection services. IAO has sole responsibility for conducting investigations within ILO.

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<sup>1</sup> Uniform Guidelines for Investigators 2<sup>nd</sup> edition 2009

<sup>2</sup> UN Joint Inspection Unit report on ‘The Investigation Function in the United Nations System 2011 JIU/REP/2011/7

<sup>3</sup> ILO Financial Regulations Article 30(d) and ILO Financial Rules Chapter XIV

<sup>4</sup> GB.326/PFA/9 (Rev.)

8. ILO conducts investigations into allegations of, amongst others, procurement fraud, corruption and bribery, theft and embezzlement, misrepresentation, misuse of ILO resources and failure to comply with financial disclosure requirements.
9. Normally, IAO investigation does not extend to those areas for which separate provision has been made for review including; harassment, sexual harassment, workplace-related conflicts and grievances; personnel grievances arising from administrative decisions affecting the terms and conditions of appointment of a staff member; performance issues and performance-related disagreements. These investigations are subject to the collective agreements signed between the ILO and the Staff Union.
10. Following completion of the investigative process, IAO may still be required to support post-investigation activities that fall within the responsibility of the Organization as part of the system of accountability. These activities may include responding to inquiries from relevant staff, preparing management implication reports and assisting the Office of the Legal Adviser in proceedings before the ILO Administrative Tribunal. IAO investigators may be called upon to explain the investigation process or provide information about the findings and conclusions of a specific case. This responsibility may extend to providing testimony before the ILO Administrative Tribunal and even before national authorities should the matter result in a criminal prosecution.
11. The purpose of an investigation and report is to provide sufficient evidence and facts to enable the Director General to make a decision on an allegation of misconduct and any resulting penalty, taking into account any relevant standards established by decisions of the ILOAT.
12. For the purposes of the SOP, the term Chief Internal Auditor will also include the designated Officer in Charge.

## **2. Definitions**

For the purposes of this SOP the following definitions apply:

### ***2.1 Allegation***

A statement not yet proven. A complaint or information concerning the possible existence of fraud, presumption of fraud, attempted fraud<sup>5</sup>, waste, abuse of authority, misconduct or other irregular activities.<sup>6</sup>

### ***2.2 Complainant***

An individual who makes a communication to IAO that discloses, or demonstrates an intention to disclose, information that fraud or misconduct may have occurred and who is the victim of the alleged misconduct (*see also definition of source*).

### ***2.3 Disciplinary Action or Proceedings***

The procedure initiated against a staff member pursuant to the Staff Regulations which may result in imposition of sanctions.

### ***2.4 Evidence***

Any type of proof which tends to establish a fact material to the case which may substantiate or disprove an allegation. It includes, but is not limited to, oral testimony of witnesses, including experts on technical matters, documents, electronic, audio, video records and photographs.

### ***2.5 Fraud***

The term fraud is used in the SOP to describe acts such as deception, bribery, forgery, extortion, theft, embezzlement, misappropriation, false representation, concealment of material facts and collusion. Fraud involves a violation of trust. For practical purposes, fraud may be defined as the use of deception with the intention of obtaining advantage, avoiding an obligation or causing loss to another party<sup>7</sup>.

### ***2.6 Independent Oversight Advisory Committee***

The Independent Oversight Advisory Committee (IOAC) is a subsidiary body of the Governing Body of the International Labour Office. It serves in an expert advisory capacity and provides independent, external, senior level, expert advice to the Governing Body and to the Director-General in fulfilling their governance responsibilities, including ensuring the effectiveness of

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<sup>5</sup> ILO Financial Rules 13.10

<sup>6</sup> ILO Financial Rules 14.30

<sup>7</sup> ILO Office Directive Anti-Fraud Policy IGDS No. 69 (2015)

International Labour Office's (ILO) internal control systems, risk management and governance processes. The IOAC aims to add value by strengthening accountability and governance within the ILO.

## **2.7 Investigation**

A formal fact-finding enquiry to examine allegations of fraud, misconduct and other wrongdoing in order to determine whether they have occurred and if so, the person or persons responsible.

## **2.8 Investigator**

A person designated by the Chief Internal Auditor to conduct an investigation into allegations of fraud/misconduct and other wrongdoing.

## **2.9 Misconduct**

In the case of staff members, the failure to comply with the ILO Staff Regulations or other relevant administrative rules and instructions or to observe the standards of conduct required of an international civil servant.<sup>8</sup> Such failure could be deliberate (intentional or willful act) or as a result of an extreme or aggravated failure to exercise the standard of care that a reasonable person would have exercised with respect to a reasonably foreseeable risk (gross negligence) or from a complete disregard of a risk where it is likely to cause harm (recklessness). In the case of non-staff personnel such service contractors and external collaborators, the failure to comply with the terms and conditions of the contract governing their relationship with the ILO.

## **2.10 Retaliation**

'Retaliation means any direct or indirect detrimental action or omission recommended, threatened or taken because an individual reported misconduct or cooperated with an audit or investigation.'<sup>9</sup>

## **2.11 Source**

A person who makes a communication to IAO that discloses or demonstrates an intention to disclose information that fraud/misconduct may have occurred, but is not necessarily the victim of the alleged fraud/misconduct (*see also definition of complainant*).

## **2.12 Staff Member**

A person who holds an ILO Letter of Appointment according to the ILO Staff Regulations or a staff member of other organizations on secondment to ILO.

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<sup>8</sup> ILO Staff Regulations, Chapter I

<sup>9</sup> Office Procedure Ethics in the Office: Whistleblower protection, IGDS Number 186 (Ver.1) (2010)

### ***2.13 Subject***

A person, whether a staff member or third-party who is the focus of an investigation either by virtue of an allegation made, or evidence gathered during the investigative process.

### ***2.14 Whistleblower***

An individual who reports wrongdoing.

### ***2.15 Witness***

A person, who is aware, sees, knows or vouches for something in conjunction with an alleged fraud/misconduct or other wrongdoing and is capable of providing testimony.

## **3. Investigation Standards**

### ***3.1 Standards for Investigations***

13. The Chief Internal Auditor, and the individuals he/she designates to conduct investigations (investigators) shall maintain objectivity, impartiality, and fairness throughout the investigative process and conduct their activities competently and with the highest levels of integrity.
14. In particular, the Chief Internal Auditor and designated investigators shall perform their duties independently from those responsible for or involved in operational activities and from staff members liable to be the subject of investigations, and shall also be free from improper influence or fear of retaliation.
15. The Chief Internal Auditor and designated investigators shall avoid conflicts of interest and take appropriate action to avoid any perception of a conflict of interest. Designated investigators shall disclose to the Chief Internal Auditor in a timely fashion any actual or potential conflicts of interest they may have in an active investigation and the Chief Internal Auditor shall take appropriate action to remedy the conflict.
16. The Chief Internal Auditor and designated investigators shall conduct investigations with strict regard to confidentiality, the right to due process of all persons involved and the presumption of innocence

### ***3.2 Confidentiality***

17. There is an obligation of confidentiality relating to information and evidence obtained during the course of an investigation.
18. The confidentiality of an investigation shall be observed by the Chief Internal Auditor, designated investigators and anyone else involved in the investigation, including the complainant or source of the report of possible fraud/misconduct, the subject, witnesses, observers, interpreters, and all other individuals required to assist IAO in its investigative activities.
19. The Chief Internal Auditor and designated investigators will secure and protect all information gathered in the course of an investigation from unauthorized disclosure. However, IAO is entitled to use such information insofar as is required for the legitimate needs of the investigation or the Organization.
20. In particular, IAO may disclose information to specific individuals if this is necessary to proceed with the investigation. Likewise, such information may also be transmitted by the Chief Internal Auditor to a relevant party on a need-to-know basis. This may include: (i) information provided to subjects to allow them to fully respond to allegations and to provide countervailing evidence; (ii) information contained in requests to witnesses or other persons with whom investigators communicate in order to verify facts; (iii) where appropriate preliminary information is shared with senior management during the course of an investigation to allow necessary action to be taken prior to the conclusion of an investigation. Any such information must not be further

communicated without the written approval of IAO and must be treated in accordance with any instructions given by IAO.

21. In determining the level of information that is provided to subjects, witnesses and others in the course of an investigation, IAO will seek to strike a balance between the legitimate need for information and the risk that the IAO investigation will be compromised and/or that the witnesses and whistleblowers will be subject to retaliation.
22. In order to protect the reputation of a person/entity against whom allegations of fraud/misconduct have been made, the disclosure of the identity of that person/entity is restricted to a need-to-know basis, that is, it may only be disclosed if this is necessary for IAO to proceed with its investigative activities or to protect the interests of the Organization.
23. Each investigator is responsible for the confidentiality and security of their respective investigation case files and evidence collected and retained. All the IAO standard forms will be marked and treated as 'confidential'.
24. The obligation of confidentiality does not cease upon separation from ILO.
25. Breach of confidentiality in the context of an investigation constitutes misconduct liable to disciplinary proceedings under the ILO Staff Regulations, Chapter XII.

### ***3.3 Protection against Retaliation***

26. Staff members are entitled to communicate confidentially with, and provide information to, the Chief Internal Auditor without fear of reprisal<sup>10</sup>.
27. Retaliation against staff members for reporting alleged fraud/misconduct or cooperating in an investigation constitutes misconduct and may result in disciplinary or other appropriate action against the person responsible.

### ***3.4 False or Malicious Allegations***

28. The confidentiality provisions and protection against retaliation detailed above only apply to individuals acting in good faith and providing information which they reasonably believe is true. Making an allegation or providing information that is known to be false or misleading, or that recklessly disregards the accuracy of the information, amounts to serious misconduct and may result in disciplinary or other appropriate action against the person responsible.

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<sup>10</sup> Office Procedure, *Ethics in the Office: Whistleblower protection*, IGDS Number 186 (Ver.1) (2010)

## **4. Investigative Mandate and Authority**

### ***4.1 Nature of the Investigation Process***

29. IAO investigations include all fact-finding inquiries, both during the preliminary investigation and the full investigation. They aim at gathering and reviewing the evidence available, both inculpatory and exculpatory, that is, evidence that either substantiates or disproves an allegation. Investigative findings and conclusions are determined through an impartial, objective, and independent process of information gathering and analysis, based on substantiated facts and evidence and may include reasonable inferences where necessary.
30. IAO investigations are administrative in nature as opposed to criminal investigations and other judicial actions. The investigation function is part of ILO internal justice system, which is based on the Organization's internal rules, not on national laws.
31. IAO investigations are not a punitive undertaking. IAO is only responsible for the investigative function and plays no role in the disciplinary process. The separation of functions between investigation and disciplinary action provides necessary checks and balances for the proper administration of justice.

### ***4.2 Authority to Investigate***

32. Within ILO, the Chief Internal Auditor has overall responsibility<sup>11</sup> for investigating suspected fraud and misconduct and other irregular activities.
33. The Chief Internal Auditor will independently determine whether any allegation should be investigated.
34. The Chief Internal Auditor directs investigative activities in keeping with their independence and authority to initiate, carry out any action, and report on any issue or conduct which is deemed necessary to fulfill their mandate and function as set out in the ILO Financial Rules. The Chief Internal Auditor is responsible for the management of all investigations and investigators employed or contracted by IAO.
35. The Chief Internal Auditor may investigate allegations against staff members or against a third-party (e.g. external collaborator, vendor or implementing agent) in accordance with any applicable agreement with the ILO.

### ***4.3 Access to Information***

36. To carry out investigations, the Chief Internal Auditor and designated investigators shall have unrestricted, unlimited, direct and prompt access to all staff members, records, property, premises, end-user computing devices and ILO information and communication technology (ICT) systems that staff members have access to, such as

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<sup>11</sup> ILO Financial Rules (2010) Chapter XIV Internal Audit 14.10(b)

email and ILO databases, as well as those of third-parties in accordance with any applicable agreement with the ILO.

#### **4.4 *Duty to Cooperate***

37. Staff members have a duty<sup>12</sup> to cooperate unreservedly with any investigation conducted by or on behalf of IAO, to respond honestly, promptly and fully to IAO requests for information and to answer all questions during an interview with the IAO. A lack of cooperation may result in disciplinary or other appropriate action. This duty similarly extends to third-parties pursuant to standard ILO contracting modalities.

38. IAO will not pay a witness or subject for information.

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<sup>12</sup> Article 9(d) ILO Investigation Charter

## 5. Alleged Fraud and Misconduct

### 5.1 Duty to Report

39. ILO staff members have a duty to report possible incidents of fraud/misconduct as determined in the ILO Financial Rules<sup>13</sup> and the Anti-fraud Policy<sup>14</sup>. This duty similarly extends to third-parties pursuant to standard ILO contractual modalities.

### 5.2 Internal Reporting Mechanisms

40. Paragraph 13.10 of the Financial Rules provides;

*'Any case of fraud, presumption of fraud or attempted fraud must be reported to the Director-General through the Treasurer and the Chief Internal Auditor'.*

41. Paragraph 14.30 (iii) provides:

*'In addition to receiving reports of fraud, presumption of fraud or attempted fraud as required under article 13.10 of the Financial Rules, internal audit shall also be available to receive directly from individual staff members complaints or information concerning the possible existence of waste, abuse of authority or other irregular activities'.*

42. Reports, complaints or information on possible fraud may be brought to the attention of the Treasurer and the Chief Internal Auditor. Reports, complaints or information on possible waste, abuse of authority or other irregular activities e.g. misconduct, may be brought to the attention of the Chief Internal Auditor:

- in person;
- by telephone;
- in writing, including by email.

Contact can be also be made via:

[investigations@ilo.org](mailto:investigations@ilo.org)

### 5.3 Receipt of Information

43. IAO will record any complaint or information on alleged fraud/misconduct from any source such as:

- victims or witnesses of alleged fraud/misconduct, including staff members and external sources;
- anonymous information received, including those via the ILO Whistleblower's Policy;
- line managers or program managers;
- referral by the Director, HRD;
- the Ethics Officer; or
- discovery or detection by IAO during the course of oversight activity.

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<sup>13</sup> ILO Financial Rules (2010) Chapter XIII-XIV

<sup>14</sup> Office Directive, Anti-fraud Policy IGDS Number 69 (Ver.2) (2015)

44. The Chief Internal Auditor will ensure that allegations are recorded, evaluated and processed in a consistent, accountable and confidential way, through a secure system.

#### ***5.4 Referral from the SHIF (Staff Health Insurance Fund)***

45. All matters of suspected fraud/misconduct will be reported by way of a referral form, which will include a summary of the allegations, supported where appropriate by relevant documentation.

#### ***5.5 Confidentiality of report and of Identity of Source***

46. Reports of possible fraud/misconduct shall be received on a confidential basis and may also be submitted anonymously.
47. IAO shall keep confidential the identity of the source of the initial report of possible fraud/misconduct. No other person will be informed of the allegations at this stage, unless there is an imminent threat to the ILO's operations or to the safety of ILO staff or a third-party.
48. Diligent efforts should be made, by all means available, to reassure an anonymous source of the ILO's commitment to confidentiality and protection from retaliation. The anonymous source should be encouraged by an investigator to disclose his/her identity to ensure a full assessment of the facts within his/her knowledge to justify a full internal investigation.
49. The identity of the source will be disclosed on a need-to-know basis only where required by the legitimate needs of the investigation and/or any subsequent proceedings.

#### ***5.6 Acknowledgement of Receipt***

50. Unless the initial information was received anonymously with no means of identifying any contact details, an acknowledgement of receipt will be sent in writing to the source of a report of possible fraud / misconduct.

#### ***5.7 Reporting Allegations against IAO***

51. Where allegations of fraud/misconduct concern staff of IAO, the Chief Internal Auditor will inform the Director-General, who will make the appropriate recommendations on how to deal with the allegations.
52. Allegations of fraud/misconduct concerning the Chief Internal Auditor shall be reported to the Director-General, who will inform the Chair of the Governing Body and the Chair of the Independent Oversight and Audit Committee (IOAC), and will make the appropriate recommendations on how to deal with the allegations.

## ***5.8 Reporting Allegations against the Director-General***

Allegations of fraud/misconduct concerning the Director-General shall be reported to the Chair of the Governing Body either directly or via the Treasurer and Financial Comptroller, Chief Internal Auditor, or the Chair of the IOAC.

## **6. Investigation Process**

### **6.1 Introduction**

53. Once a matter has been received and registered, the investigation process usually comprises three phases: first, IAO conducts an initial assessment of the information received; second, if the criteria below are satisfied, a preliminary investigation will be launched; third, IAO may decide where pertinent, to launch a full investigation.

### **6.2 Initial Assessment**

54. IAO will conduct an initial assessment of the information received.

55. The purpose of the initial assessment is to determine whether:

- The allegation, if established, would amount to fraud/misconduct; and
- The matter falls within the mandate of IAO; and
- Prima facie credible information indicates that the alleged fraud/misconduct has occurred.

56. The outcome of the initial assessment is either a case closure or assignment of the case. The Chief Internal Auditor will authorize the Investigation Unit in writing to conduct investigative activities in a specific case who will then have responsibility to commence a Case Opening Form and an Investigation Diary. Investigations will commence as soon as possible following assignment, but owing to resource constraints, cases will be prioritized and pursued accordingly.

57. IAO has the exclusive authority for determining whether to close a case or proceed with an investigation on the basis of IAO's assessment.

### **6.3 Preliminary Investigation**

58. If the criteria mentioned above are met, a preliminary investigation will be launched. In general, the preliminary investigation will include the following steps:

- Establishment of the basic facts and preservation of evidence, including through interviews where relevant;
- Identification of any inconsistencies or outstanding questions;
- Analysis of the evidence to determine whether a full investigation is justified.

59. If the alleged fraud/misconduct is the subject of an ongoing investigation by the national authorities, the Chief Internal Auditor will consider the implication for ILO of parallel inquiries into the same facts and will inform the Director-General accordingly.

## ***6.4 Outcome of Preliminary Investigation***

60. Upon completion of the preliminary investigation, the investigator will normally report on the Case Opening Form recommended action for consideration by the Chief Internal Auditor.
61. Based on the outcome of the preliminary investigation, the Chief Internal Auditor may decide to:
  - take no further action;
  - refer the information for resolution elsewhere within ILO as described above;
  - defer further investigation for a specific time period pending further clarification of key facts;
  - direct that a full investigation be conducted.
62. The decision of the Chief Internal Auditor will be recorded in the in the Case Opening Form giving the reason(s) for the decision whether or not to initiate a full investigation.

## ***6.5 Investigation Planning***

63. If a full investigation is authorized by the Chief Internal Auditor, the investigator will develop an investigation plan which will seek to establish the relevant facts, gather the necessary evidence, and ensure that the investigation is conducted thoroughly, efficiently and expeditiously. The plan will be reviewed and authorized by the Chief Internal Auditor.
64. Investigation planning is a dynamic process and will be reviewed at key points or events during the investigation and may be amended or re-written to reflect the changing direction of the investigation.

## ***6.6 Full Investigation***

65. The purpose of the full investigation is to determine whether there is evidence to substantiate or refute an allegation of fraud/misconduct against a subject or subjects.

## ***6.7 Notification of a full investigation to the Subject***

66. If the Chief Internal Auditor decides to commence a full investigation, the subject, or subjects will be notified in writing of the fact that they are under investigation, of the general nature of the allegations under investigation, and of their rights and obligations.
67. This notification can be delayed (to a minimum of 24 hours before the subject interview) or withheld completely if there is a risk to the investigative process, or grounds exist to indicate that evidence or witnesses may be compromised or threatened in any way. The decision to delay or withhold the notification should be documented and approved by the Chief Internal Auditor.
68. The delay or the withholding of the notification should be only for as long as the risk still exists and should be reviewed when appropriate.

## **6.8 Interim Measures**

69. At any stage during the investigative process, the Chief Internal Auditor may recommend to the Director-General interim measures or remedial action to protect ILO staff and/or the Organization's interests.
70. This may include recommending that the subject or subjects of the investigation be suspended from duty in accordance with the Staff Regulations or applicable contractual provisions. The Chief Internal Auditor may make such a recommendation in specific circumstances, including where:
- There is a risk that the subject or subjects could destroy, conceal, or otherwise tamper with evidence, or interfere in any way with the investigation;
  - There is a possible threat to the security and/or safety of other staff members, and/or to ILO;
  - The subject or subjects are unable to continue performing their functions effectively in view of the on-going investigation and the nature of those functions.

## **6.9 Timeliness of Investigative Process**

71. The Chief Internal Auditor will ensure that all investigative activities are completed in a timely manner taking into account circumstances, such as the complexity of the case, IAO workload and priorities, and/or other compelling reasons. Such circumstances will be documented in the relevant case file and the matter reviewed when appropriate.

## **7. Evidence**

### ***7.1 Gathering Evidence***

72. Investigators are authorized to have full, complete and direct access to all ILO staff members; property, including end-user computer devices and software assigned to staff; records in all media and format regardless of their location and manner of storage; and to all ILO premises, whether at headquarters or elsewhere. This similarly applies to third-parties in accordance with any applicable agreement with the ILO.
73. In some cases, it may be necessary to perform searches of the offices, workspaces or other ILO assets that are in the custody of a subject or witness. Any search or securing of evidence located in the immediate vicinity of the individual should be performed by two investigators, or one investigator and a witness or observer.
74. IAO may also be given access by the individual concerned to external records containing personal information (other than public records, in which case authorization is not required).

### ***7.2 Relevance and Testing of Evidence***

75. Facts established during the course of an investigation may or may not be relevant at the time of information-gathering. It is essential for an investigator to accurately record all new information within the case file, evaluate its relevance as it occurs, and routinely subject that judgment to review as further information is discovered.

### ***7.3 Evidence Handling and Secure Storage***

76. All secured records and material may become relevant evidence and exhibits in subsequent disciplinary proceedings, and exceptionally, in national criminal or civil proceedings.
77. Accordingly, accountability in respect of the securing, handling and storage of evidence is a crucial element of an investigation.
78. Any record or data received or gathered during an investigation must be referenced within the case file and kept secure.

### ***7.4 Original or copy documents***

79. Normally relevant original documents should be secured to provide the best evidence if required for forensic examination or production in subsequent proceedings.
80. If a copy is secured the investigator must ensure that it is a true reproduction of the original, and store it in secure conditions as if it were the original document, preserving the chain of custody. Investigators must consider the risk that an original document could be altered, damaged, lost or destroyed and be able to justify why it was not secured when available.

## 7.5 *Electronic Evidence*

81. Electronic evidence comprises ICT resources and data, such as e-mail, data on hard drives or other end-user computer devices (e.g., cell phones, SIM cards, PDAs), photographs, videos, logs, etc. It can also include the data logs and network information that is recorded by users accessing and using the various ILO systems as well as the contents of ILO corporate and departmental databases.
82. Policies applicable in the area of ICT systems include, but are not limited to, the ILO Information Security Policies as amended from time to time. Particular reference is made to the use of email and internet<sup>15</sup>.
83. These policies stipulate that all information created, stored and/or processed using the ILO ICT systems is the property of ILO, that certain staff members within their designated official responsibilities may be given access to any ILO ICT systems and information resources, including for investigation purposes, and that, therefore, users should have no expectation of privacy when using ILO ICT systems and information resources for personal purposes.
84. In particular, 'ILO emails are official ILO property. All users of an ILO email address are reminded that, in the interests of the Office, it may be necessary to access active mailboxes, email archives, or restore the previous contents of a mailbox in the event of a malfunctioning of the system, for security reasons or for investigation purposes. If access is required to the mailbox of an official in their absence, such a request must first be approved by JUR. Any access to the mailbox of an official as a result of a formal investigation is covered under the Financial Rules and Financial Regulations of the Office and must be approved by the Office of Internal Audit and Oversight (IAO). The entire access operation is conducted in a confidential manner and logged in the presence of the relevant responsible chief or authorized individual. The official will be informed in due course of such access'.
85. The gathering of electronic evidence will normally be conducted by IAO with the technical assistance of suitably qualified forensic examiners.
86. Strict handling is required for all electronic evidence seizures to avoid compromising the chain of custody of potential evidence. The investigator is responsible for keeping a detailed record of how the electronic evidence was collected, handled and secured.
87. A useful reference point on how to deal with computer based evidence is the 'Good Practice Guide for Computer-Based Electronic Evidence', developed by UK Law Enforcement and Prosecuting Authorities<sup>16</sup>.

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<sup>15</sup> ILO Office Directive, *The use of email and internet in the ILO*, IGDS No. 452 (Version 1) of 15 December 2015; ILO Office Procedure, *Accessing the ILO network*, IGDS No. 496 (Version 1) of 9 March 2017

<sup>16</sup> [http://www.cps.gov.uk/legal/assets/uploads/files/ACPO\\_guidelines\\_computer\\_evidence\[1\].pdf](http://www.cps.gov.uk/legal/assets/uploads/files/ACPO_guidelines_computer_evidence[1].pdf)

## **8. Interviews**

### **8.1 Introduction**

88. Interviews are aimed at obtaining testimonial evidence, that is, the recollection of individuals who actually saw an event or have direct or indirect knowledge of anything relevant to the investigation.
89. They can fall into two distinct categories in relation to IAO investigations:
- Witness interviews, where persons are interviewed in order to secure their testimony and recover documentary or other types of exhibits; or
  - Subject interviews.
90. All staff members, as well as those of third-parties in accordance with any applicable agreement with the ILO, are required to cooperate<sup>17</sup> unreservedly with an investigation and to respond completely and truthfully to requests for information. A refusal to cooperate with IAO in the context of its investigative activities, including a refusal to take part in an interview, as well as any display of hostility during an interview will be noted at the time and recorded. Non-cooperation or refusal to take part in an interview may amount to misconduct and shall not delay the outcome of the investigation.

### **8.2 Process**

91. Before starting an interview, the investigator will identify themselves and explain in general terms:
- The investigative process and possible consequences of an investigation;
  - The authority of IAO to conduct investigations and the duty of ILO staff to cooperate;
  - Whether the interview is conducted in the context of a preliminary investigation or full investigation;
  - The requirement of confidentiality of both IAO and the interviewee, including the fact that the interview record will be protected from unauthorized disclosure but may be used and disclosed in full or in part to specific individuals if this is necessary to proceed with the investigation or for subsequent administrative, disciplinary or judicial proceedings.
92. Bearing in mind the need for confidentiality of the investigative process, witnesses called for an interview will be informed, when contacted, of the general nature of the matter on which they are requested to provide information.

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<sup>17</sup> Para 9 ILO Investigation Charter

### **8.3 Sequence**

93. Whether the initial information is received from a source, a complainant, a whistleblower, a witness, or a third-party without direct knowledge of the allegation, the investigator will conduct an interview with that person at the earliest opportunity to accurately record the relevant facts.
94. Other witnesses identified should be prioritized for interview having regard for the potential significance of the information they possess, their availability and any logistical needs.
95. Due diligence must be taken to research potential witnesses to identify any reasonable suspicion of complicity in fraud/misconduct before an interview is actually undertaken.
96. Determination of the timing of the subject interview will be made on a case by case basis, however, interviews with a subject will normally take place after all available witnesses have been interviewed, to enable the subject to provide exculpatory or mitigating information on the evidence gathered.
97. The investigator(s) may re-interview any witness or subject to clarify significant facts or obtain additional facts as further information is established.

### **8.4 Interpreters**

98. Interviews will normally be conducted in one of the working languages of the ILO, which are, English, French and Spanish, depending on the preference of the interviewee. If the interviewee requests to speak in an official language in which the investigator is not fluent, interpretation will be provided by ILO. The interpreter shall agree to respect the confidentiality of the investigation and he/she shall sign a confidentiality agreement.

### **8.5 Witness interviews**

99. All witness interviews will be recorded using one of two IAO standard forms:
  - Record of Interview/Conversation, this is to be used when it is necessary to secure testimony where the witness is interviewed by remote means such as telephone, electronically or other conferencing facilities.
  - Statement of Witness, this is best used for face-to-face interviews, especially when the witness produces physical or electronic evidence and is also ideally suited for professional witnesses, such as forensic examiners.
100. With respect to witness interviews, the number of interviewers will depend on the nature and circumstances of the case.
101. There may be circumstances which preclude a personal interview of a witness. In these circumstances an interview can be conducted by telephone or video-link and a Record of Interview will be prepared as described in para 99.

## **8.6 Subject Interviews**

102. During the interview, the subject will be provided with details of the allegations and of the evidence in support thereof and he/she will be afforded the opportunity to respond and to provide countervailing evidence. The subject may identify witnesses, indicate where further records can be found, and submit any information or document.
103. The investigator(s) must note details of any additional potential, exculpatory information and if necessary, seek the assistance of the subject to ensure reasonable access.
104. The interview should adapt to the behavior of the interviewee and the information provided. Reasonable comfort breaks will be offered and their acceptance or rejection noted.
105. Any records produced by the interviewee will be recorded in the IAO Exhibits Register, noted in the Record of Interview, and stored securely with other evidence.

## **8.7 Subject Interview – Participants**

106. Interviewers: Subject interviews should be conducted by two investigators or if two investigators are not available, one investigator assisted by another IAO staff member.
107. Observers: Investigation subjects will be offered the choice to be accompanied to their interview by an observer, provided that the observer is readily available and not otherwise involved in the investigation, as determined by the investigators. Before contacting anyone to act as an observer, the subject shall communicate to IAO the identity of the person prior to the planned interview, so as to allow IAO time to determine whether there is any reason to refuse the participation of that person.
108. The observer must agree to respect the confidentiality of the investigation and sign a confidentiality statement. The presence of an observer will not discharge the subject of the obligation to respond personally in the matter under investigation. The observer may not interrupt, prevent or delay the interview, and is not allowed to speak during the interview. If the investigator considers the presence of the observer disruptive, the observer may be asked to leave and the interview will proceed without the observer.
109. Considering the cultural context, gender, and other elements of the case, the investigator may also select an observer (e.g. field security officer) to attend the interview.
110. Investigation subjects have no right to the presence of counsel during interviews.

## **8.8 Subject Interview - Audio Recording**

111. Subject to paragraph 113 below, all subject interviews will be audio-recorded. The recording will be conducted openly and with the knowledge of the interviewee. The interviewee is not entitled to use personal recording equipment during the interview.

112. The product of a recorded interview will be transcribed verbatim and if necessary translated. Transcripts of interviews will be submitted in evidence as part of the investigation file and will be entered into the Exhibit Register.

113. Where interviews are audio-recorded, a copy of the recording will always be provided to the interviewee, which will be acknowledged as received in writing by the subject.

### ***8.9 Subject Interview - Written Record***

114. In the event that a subject interview could not be audio-recorded, the investigator will make contemporaneous notes of the critical elements of the questions and answers sufficient to subsequently prepare an interview record on a standard IAO template.

115. The interview record will be headed "Confidential" and include details of the interviewee's name, job title, and as relevant a brief summary of their career within ILO.

116. The interviewee will be invited to review the interview record before signing it to confirm that it is a true reflection of what was said during the interview. The interview record will also be signed by the investigator. The original document will be retained by IAO and the interviewee offered a personal copy which must be kept confidential and protected from unauthorized disclosure.

117. If an interviewee refuses to review or sign the interview record, the investigator will document the efforts made to achieve compliance and the reasons for the refusal.

118. If a pre-prepared statement is submitted at the outset or during an interview, this should be accepted by the investigator(s) and noted in addition to requesting the interviewee to comply with the procedure described above.

## **9. Reporting Investigation Findings**

### ***9.1 Preliminary Investigation Report***

119. The outcome of a preliminary investigation will normally be recorded on the Case Opening Form, with the relevant part being completed and signed by the Investigator and passed to the Chief Internal Auditor for a decision, which once recorded, is signed off by the Chief Internal Auditor.
120. Case Opening Forms are IAO internal confidential documents and are not circulated.

### ***9.2 Full Investigation Report***

121. The outcome of a full investigation will be recorded in a Report and submitted directly to the Chief Internal Auditor for review, comments and decision making with regards to the 'issuing' of the report to the Director General. All reports so issued will be accompanied by a Covering Minute, signed off by the Chief Internal Auditor.

### ***9.3 Confidentiality***

122. Investigation reports are confidential and will be carefully controlled, kept secure and their contents or part thereof will not be communicated to persons unconnected with the investigation, other than with express prior approval of the Director-General.

### ***9.4 Disclosure & Redaction***

123. IAO does not share final investigation reports with investigation subjects, complainants or other investigation participants. If a decision is made by the Director-General to disclose the investigation report to the subject or other third-parties, the report should be returned to the IAO prior to any disclosure so that it can be examined and parts of the document that detail any sensitive investigative procedures or other similar material can be 'redacted'.

### ***9.5 Structure of investigation reports***

124. An investigation report should be an objective account of the facts examined, fully supported by available evidence. It will normally contain:
- I. Executive Summary:
    - A concise summary of the allegations, the investigation details, findings and conclusion
  - II. Applicable Norms:

- A list of the relevant Rules, Regulations & Procedures that impact on the investigation

III. Methodology:

- A summary of what methods were taken to recover evidence and witness testimony

IV. Investigation Details:

- A summary of the details of the investigation in chronological or sequential order

V. Investigation Findings:

- A summary of the what the investigation established

VI. Conclusions of the Investigation:

- A summary of what conclusions were drawn from the investigation

Annex A - List of exhibits

Annex B - List of witnesses

## **9.6 Management Implication Report**

125. In some instances, the Chief Internal Auditor may consider that a management implication report is warranted.

126. A management implication report is prepared by IAO to convey to the Director-General and/or relevant managers issues identified in the course of an investigation and requiring management attention. It may also include recommendations for corrective action derived from investigation findings, including improving existing systems, policies, and procedures, strengthening internal controls, or otherwise preventing similar incidents from recurring (lessons learned from the investigation).

## **10. Archiving and Retention of Material**

### ***10.1 Archiving***

127. All evidence gathered or acquired during the course of an investigation must be subject to recording and be stored in a safe, secure and suitable environment. This is essential so as to ensure that this evidence can be used in preparation or formulation of investigation reports. It will also ensure that such evidence can be recovered at any stage in order to facilitate appeals or other processes within the ILO system.

### ***10.2 Retention***

128. Retention of such material must be for ten years from the date that a decision is taken to close an investigation or from when a subject is subject to a discipline sanction, whichever is the latter.