

Ambassador Chi Dung Duong
Chair of WIPO Assembly

Ambassador Daniir Mukashev
Chair of WIPO Coordination Committee

Cc:
Mr. Yukio ONO
Vice-Chair of WIPO Coordination Committee

Mr. Faizal Chery SIDHARTA
Vice-Chair of WIPO Coordination Committee

Mr. Gabor Amon
Chair, Internal Audit and Oversight Committee
(IAOC)

Mr. Egbert Kaltenbach
Vice-Chair, Independent Advisory Oversight
Committee

Report of misconduct

1. Pursuant to paragraph 14 of WIPO Office Instruction 33/2017 (OI/33/2017¹), this is a report of misconduct² against the following WIPO officials: Mr. Francis Gurry, Director General; Mr. Ambi Sundaram, Assistant Director General for Administration and Management; Ms. Cornelia Moussa, Director of Human Resources Management Department (HRMD); Mr. Rajesh Singh, Director of Internal Oversight Division (IOD); Ms. Chitra Radhakishun, Chief Ethics Officer.
2. Pursuant to paragraph 14 of OI/33/2017, the report should also be sent to the Director of IOD for registration. Since the Director of IOD is also a subject of this report of misconduct, an exception is requested. Instead, the Chair and Vice Chair of IAOC have been copied on this report for registration. Please kindly advise if this exception is not acceptable.
3. As WIPO treats misconduct and retaliation separately, this report does not directly address various retaliations against me as the result of my whistleblower activities and participation in the investigation initiated by the WIPO Member States against Mr. Gurry.

¹ OI/33/2017 is the new "Policy to protect against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations". It was issued on 29 September 2017. See Annex A for details.

² OI/33/2017 defines misconduct as "...abuse of authority, fraud, corruption, the failure of one or more members of personnel to comply with his or her obligations to the Organization including under the Staff Regulations and Rules or other relevant administrative issuances ... and any request or instruction from any member of personnel to violate the above-mentioned regulations, rules, standards, issuances or terms, and other wrongdoing." See full details under paragraph 4.g. In the earlier version of the policy – OI/58/2012, "wrongdoing" was used as the term in place of "misconduct". But it has a very similar definition.

Background

4. My name is Wei Lei, the Chief Information Officer and the Director of the Information and Communications Technology Department of the World Intellectual Property Organization (WIPO). I have held this position at the D2 level since August 2009.
5. In November 2013, I complained to Mr. Sundaram, my supervisor, about irregularities concerning a procurement procedure, for which I was the chair of the evaluation team. In December 2013, I reported the procurement irregularities to Mr. Avard Bishop, the Chief Ethics Officer at the time.
6. In April 2014, a "Report of Misconduct" against Mr. Gurry by Mr. Jim Pooley, the then Deputy Director General of WIPO, surfaced on the Internet³. Mr. Pooley's allegations included the procurement irregularities that I had reported to the Chief Ethics Officer.
7. From August 2014 to January 2016, I participated in the initial evaluation conducted by an external investigator and later in the investigation conducted by UN OIOS against Mr. Gurry on, inter alia, an alleged misconduct concerning procurement irregularities.
8. Early 2016, OIOS concluded its investigation and stated in its report (OIOS Report)⁴ that "the conduct of Mr. Francis Gurry may be inconsistent with the standards expected of a staff member of the World Intellectual Property Organization" and recommended that "the Chair of the General Assembly of the World Intellectual Property Organization consider taking appropriate action against Mr. Francis Gurry".

Allegation 1: Mr. Gurry and Mr. Sundaram abused their authority to compromise the independence of IOD and the integrity of internal control within the Information and Communications Technology Department (ICTD)

9. In November 2014, when the investigation against Mr. Gurry's alleged misconducts was on-going, Mr. Gurry and Mr. Sundaram instructed my staff to provide monthly activities that ICTD conducted on WIPO computer users using a special software tool. The list of targeted computer users included those either at the request of IOD for investigation purpose, or out of our own departmental needs for technical diagnostics or information security defense.
10. If the activity was taken due to ICTD's needs, under my written instruction, as CIO, targeted users must be advised in advance, or afterwards if such notification could not be done promptly. The key is transparency – ICTD is not in the business of investigating other staff.
11. IOD's request for electronic forensic evidences always had to be channeled through me at the time.
12. When I suspected such monthly reports could be used to spy on IOD's investigations without IOD's knowledge, I requested clarifications of the detailed reporting processes. Then I was told that Mr. Gurry and Mr. Sundaram had decided that the reports produced by my staff should be submitted without going through me⁵.

³ The report can be found on http://regmedia.co.uk/2014/07/08/wipo_report_james_pooley.pdf

⁴ The redacted report can be found on <http://www.foxnews.com/world/interactive/2016/09/27/un-world-intellectual-property-organization-report.html>. A partially unredacted report can be found on http://gentiumlaw.com/wp-content/uploads/2016/10/OIOS-WIPO_report_unredacted.pdf

⁵ Classified written evidences are not provided here but can be made available.

13. Mr. Gurry and Mr. Sundaram's action appeared to have compromised IOD's independence and ICTD's internal control that I tried so hard to maintain. I was the only one in the Organization who was able to identify if there was anyone on the list who was neither requested by IOD, nor out of ICTD's needs. Removing me from reviewing the reports made it impossible to detect if the software tool was abused.
14. The misconduct was reported to IAOC and IOD on 10 May 2016 and later made more explicit on 20 September 2016⁶. But the report was badly handled with the appearance of cover-up⁷.

Allegation 2: Mr. Sundaram failed to comply with his obligation to the Organization to uphold the integrity of procurement procedures and to report misconduct

15. Together with Mr. Gurry, Mr. Sundaram instructed me to violate the WIPO's procurement rules for the evaluation of RFP PTD/13/112 on Information Assurance Strategy⁸. When I complained to him in November 2013 about the irregularities of this procurement activity, Mr. Sundaram failed to report this misconduct, despite his obligation to do so⁹.
16. As the High Level Official in charge of Procurement (HLOP) entrusted with the overall authority and responsibility for the acquisition of goods and services required by WIPO, Mr. Sundaram failed to uphold the integrity of the procurement rules in this instance.

Allegation 3: Mr. Sundaram abused his authority to remove me from representing WIPO on the Management Committee of the United Nations International Computing Center (ICC)

17. ICC is a collective body providing information technology services to over 30 UN agencies. It is operated on cost-recovery basis and governed by the Management Committee represented by the Chief Information Officers of the agencies that use its services.
18. Since October 2015, Mr. Sundaram has removed me from representing WIPO in the ICC's Management Committee. This abuse of authority is in direct violation of OI/61/2009¹⁰, which explicitly stated in its last paragraph that "(T)he CIO, or his delegate, will represent WIPO on the ICC Management Committee...".
19. Furthermore, Mr. Sundaram designated another staff to represent WIPO on the ICC Management Committee, knowing that the said staff member's spouse was part of the ICC's management. This created potential conflict of interest, especially considering that WIPO makes well over US\$10 Million annual payments to ICC.

Allegation 4: Mr. Gurry abused his authority by using the convenience of his position to provide misleading or false information to the Member States, and to discredit OIOS witnesses

⁶ See Annex B.

⁷ See more details under Allegation 7.

⁸ Mr. Gurry's misconduct in relation to this procurement was already investigated and confirmed by OIOS in 2016.

⁹ Paragraph 5 of OI/58/2012, which was effective at the time, stipulates that "(I)t is the duty of all personnel to report that wrongdoing may have occurred, or any reasonable believe that such wrongdoing may have occurred."

¹⁰ See Annex C.

20. WIPO Member States received a reported¹¹ written by Mr. Gurry dated 30 May 2016. The report contained Mr. Gurry's comments on the OIOS Report. In doing so, Mr. Gurry abused his authority by using the convenience of his position to mislead Member States. The report contained numerous misleading, sometime plainly false, information, some of which constituted personal attacks against me as a witness in the OIOS investigation¹².

Allegation 5: Ms. Radhakishun failed to comply with her obligation to the Organization to uphold the integrity of processes for whistleblower protection

21. My first complaint of retaliation was filed on 30 May 2016 with Ms. Chitra Radhakishun, WIPO's Chief Ethics Officer, in the form she insisted to receive but never communicated to staff before. On 14 September 2016 I received the Chief Ethics Officer's determination that "...there is no need for the Ethics Office to take further action on the complaint"¹³.

22. One of the key justifications that led to this conclusion was due to Ms. Radhakishun's belief that senior officials in WIPO were not aware of my identity as a whistleblower since "...as a general rule, investigations protect the identity and preserve the anonymity of the party/parties providing testimony or evidence..."¹⁴.

23. In reaching her conclusion based on mere general assumptions, Ms. Radhakishun ignored my arguments that my name as a whistleblower and my collaboration with the investigation were already reported on the Internet and that it was also widely reported on the Internet that Mr. Gurry had been given the unredacted OIOS Report, including the names of the witnesses and the evidences provided by them.

24. My second complaint of retaliation with expanded scope and evidences was filed with Ms. Radhakishun on 29 September 2017, when OI/33/2017 took effect.

25. Some of the new features of OI/33/2017 included the provisions requiring the Chief Ethics Officer to recuse him/herself in the event of potential, perceived or real conflict of interest¹⁵, as well as allowing a review by the United Nations Office for Project Services (UNOPS) if the complainant wishes to do so¹⁶.

26. Despite my written notification to Ms. Radhakishun that I had filed a report of misconduct against her and, therefore, requested her recusal in accordance with the new policy provision, Ms. Radhakishun refused to do so.

27. When Ms. Radhakishun concluded her review of my second complaint and again reached the decision without further action, I requested to have the case reviewed by UNOPS citing the new provision in OI/33/2017, Ms. Radhakishun refused my request on 6 December 2017.

28. Ms. Radhakishun's actions have obviously been intentional with total disregard of the WIPO Office Instructions and her obligation, as the Chief Ethics Officer, to the Organization to uphold the integrity of the processes that are to protect the whistleblowers.

¹¹ The report is accessible on: http://gentiumlaw.com/wp-content/uploads/2016/10/Comments_of_Francis_Gurry_on_IOS_report_30_May_2016.pdf

¹² See further detail under Allegation 7.

¹³ Classified report not provided here but can be made available.

¹⁴ Quoted from the last paragraph on page 4 of the Chief Ethics Officer's report.

¹⁵ Paragraph 30 of OI/33/2017

¹⁶ Paragraph 32 of OI/33/2017

Allegation 6: Ms. Moussa failed to comply with her obligation to the Organization to uphold the integrity of the Performance Management and Staff Development System (PMSDS) processes

29. In the context of WIPO's PMSDS, Mr. Sundaram is my Supervisor and Mr. Gurry is the Reviewing Officer. In the process of evaluating my performance for 2015¹⁷, they intentionally adopted biased and fraud process against me¹⁸, including, but not limited to, signing off the performance evaluation without discussing with me over the disagreements; nor offering mediation – this was against the PMSDS guidelines issued by the HR Department¹⁹.
30. Ms. Moussa made several attempts²⁰ to force me to sign off my 2015 performance evaluation, despite my written evidences that my complaints against Mr. Gurry and Mr. Sundaram were on-going and my arguments that it would be conflict of interest to proceed given the circumstance.
31. Her latest attempt was in early December 2017. I was again given a few days of deadline to sign off my 2015 performance evaluation. Despite my written evidence that my complaint of misconduct against my Supervisor and the Reviewing Officer was still on-going at the time and my request that this should be put off until the conclusion of the investigation to avoid the obvious conflict of interest, my request was rejected and I was forced to proceed with a mediation process with my Supervisor and the Reviewing Officer, against whom I had complaints pending conclusion.
32. As the Director of the HR Department and the custodian of the PMSDS processes, Ms. Moussa intentionally and grossly disregarded the facts presented to her and failed to comply with her obligation to the Organization to uphold the fairness and integrity of the PMSDS processes.

Allegation 7: Mr. Singh abused his authority to cover up the misconducts of WIPO senior officials and wasted valuable resources to go after me, and failed his obligation to the Organization to uphold the independence and integrity of IOD

33. Mr. Gurry and Mr. Sundaram's interference of IOD's independence and their effort to undermine the internal control of ICTD, as outlined under Allegation 1, were first reported to IOD verbally in a meeting in July 2016 then in writing on 20 September 2016.
34. IOD has never acknowledged the receipt of this report. After repeated follow up emails from me requesting acknowledgement and update, Mr. Singh responded on 16 October 2017 in an email to me stating that my 20 September 2016 report was part of another preliminary evaluation and "(T)he case was eventually closed without further action".
35. However, a week later on 24 October 2017, Mr. Singh notified me in writing that the case was actually still on-going. That was more than a year after my initial report of misconduct.
36. On 22 January 2018, Mr. Singh finally notified me that it was decided to close the case without further action. For the sake of confidentiality, I shall refrain from further commenting on the

¹⁷ OIOS investigation against Mr. Gurry took place in 2015.

¹⁸ Numerous evidences can be provided.

¹⁹ See Annex D, especially paragraph 7.1. Earlier versions of the guidelines had almost identical requirements when it comes to the need for discussion and mediation to address disagreements in performance evaluation.

²⁰ Including but not limited to her email instruction to me on 19 January 2017, despite my plead for suspension due to on-going investigation at the time.

case but just say that the conclusion avoided addressing part of my allegations and was inconsistent with my first-hand knowledge and witness statements known to me.

37. The alleged misconduct outlined under Allegation 2 was reported to IAOC and IOD on 10 May 2016 and later made more explicit on 20 September 2016²¹. IOD notified me on 28 November 2016 that they had decided to close the case with no further action, citing the procurement irregularities had already been addressed in a separate investigation (against Mr. Gurry).
38. I immediately requested clarification²² as to why the case was closed as the investigation against Mr. Gurry did not address Mr. Sundaram's roles. I have never received a written reply to this day.
39. However, in a meeting on 30 October 2017 in Mr. Singh's office, the message conveyed to me verbally was that it was IOD's view that Mr. Sundaram had no incentive to do anything but to collaborate with Mr. Gurry to break the procurement rules, and that IOD did not see the point of pursuing the case as the Member States had decided not to take action against Mr. Gurry.
40. The alleged misconduct outlined under Allegation 3, concerning Mr. Sundaram's abuse of authority by removing me from the ICC Management Committee in violation of OI/61/2009, was reported to IOD on 4 December 2017²³. On 21 December 2017, Mr. Singh notified me that the case was closed without further action. In his memorandum²⁴, Mr. Singh stated that my allegations "...either: (i) were already addressed in the past within the framework of the WIPO internal justice system; or (ii) should be referred to the Chief Ethics Officer...".
41. As the report of this misconduct was explicitly made the very first time less than three weeks before Mr. Singh's conclusion, it is false to suggest that the matter had already been dealt with in the past within the framework of the WIPO internal justice system. Furthermore, regardless if Mr. Sundaram's decision of removing me from representing WIPO in ICC was motivated by retaliation, his action in direct violation of OI/61/2009 was a clear misconduct as defined in the OI/33/2017.
42. The alleged misconduct outlined under Allegation 4 was reported to IAOC and IOD on 5 October 2016²⁵. Despite repeated requests, I have yet to receive an acknowledgment of the report. Nor have I been notified the outcome of my report. It has been 18 months since my initial report.
43. In response to my follow up enquiry on 11 October 2017, Mr. Singh responded on 16 October 2017 that IOD had no record of my report of misconduct against Mr. Francis Gurry filed with IOD on 5 October 2016²⁶, even though my email enquiry on 11 October 2017 included my earlier email communications, including the report of misconduct, with IAOC and IOD.
44. On 31 August 2017, Mr. Singh notified me that I was under investigation for an allegation that I misrepresented my "involvement and/or falsely denied responsibility in a car accident in the parking of" my private residence in July 2017.

²¹ See Annex B.

²² See Annex E. Mr. Efendioglu was the Acting Director of IOD at the time.

²³ See Annex F.

²⁴ Classified memorandum not provided here but can be made available.

²⁵ See Annex G.

²⁶ Classified correspondence not provided here but can be made available.

45. Mr. Singh cited paragraph 42²⁷ of the Standards of Conduct for the International Civil Service as his justification to conduct investigation into my private life – my private car at my private residence.
46. However, nowhere in the paragraph cited by Mr. Singh gives the organization the right to investigate its employees' private life.
47. I nevertheless provided Mr. Singh copies of my written communications with my insurance company expressing my willingness to accept the responsibility if I was found at fault and the evidence showing my prompt communication of the claim number to the party accused me of causing the "accident" so that they could proceed to have the car inspected by the repair shop and the insurance company. I also told Mr. Singh that my insurance company had already denied the accuser's claims as it determined that there was no evidence of the alleged "accident" on my accuser's car, let alone any association with me.
48. Despite all these explanations and evidences, Mr. Singh insisted to proceed with the investigation and to inspect my private car. I requested my insurance company's permission for the inspection and advised Mr. Singh in writing that I could not authorize such inspection without the agreement of my insurance company.
49. My insurance company never replied. Mr. Singh nevertheless proceed to hire an external expert to inspect my car at my private residence without my permission.
50. Almost six months after the initial notification, on 14 February 2018, Mr. Singh notified me that the case was closed without further action. In comparison, as mentioned above, it took Mr. Singh less than 3 weeks to close one of my reports of misconduct against Mr. Sundaram.
51. These series of actions clearly show that Mr. Singh has abused his authority to cover up the misconducts of WIPO senior officials while wasting valuable resources to go after me. Mr. Singh has failed his obligation to the Organization to uphold the independence and integrity of IOD.
52. This report of misconduct is submitted with good faith with the aim to uphold the integrity of the Organization and the accountability of its officials.
53. In the interest of preserving confidentiality, classified evidences have not been attached to this report but can be made available upon request.
54. On the other hand, for the sake of transparency, this report will be copied to those Member States of the WIPO Coordination Committee whose email addresses are available to me.



Geneva, 6 April 2018

²⁷ The paragraph reads: "The private life of international civil servants is their own concern and organizations should not intrude upon it. There may be situations, however, in which the behavior of an international civil servant may reflect on the organization. International civil servants must therefore bear in mind that their conduct and activities outside the workplace, even if unrelated to official duties, can compromise the image and the interests of the organizations. This can also result from the conduct of members of international civil servants' households, and it is the responsibility of the international civil servants to make sure that their households are fully aware of this."