James Pooley
325 Sharon Park Drive, Suite 208
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August 29, 2016

Hon. Christopher Smith
2373 Rayburn House Office Building
Washington, D.C. 20515

Hon. Isobel Coleman
799 United Nations Plaza
New York, NY 10017-3505

Re: World Intellectual Property Organization

Dear Chairman Smith and Ambassador Coleman,

I need to inform you of alarming developments in the WIPO matter since I last wrote to you, Chairman Smith, on April 29, 2016. In that letter (a copy of which is attached for your convenience) I pointed out that the OIOS final report had been delivered on March 15 to the Chairs of WIPO's General Assembly and Coordination Committee, who decided to issue only a misleading "summary" that trivialized the allegations against Mr. Gurry. I decried the whitewash, and called on the U.S. to demand that the full report be issued to delegates so that the Member States of WIPO could consult with relevant stakeholders and make an informed decision about what to do.

As my letter went out, an open letter of April 28 from you and other members of the House Committee on Foreign Affairs was delivered to Secretary Kerry, making the same request. I want to thank you for that effort.

On May 19, the U.S. joined with ten other countries in a letter to the WIPO Chairs demanding that they be given the full and unredacted report, noting with displeasure that the Chairs had already provided Mr. Gurry with a copy, in violation of rules intended to protect the identity of witnesses.

The WIPO Chairs – who we must recall owe their positions to Mr. Gurry's political support – refused, and instead proposed a bizarre procedure to create a "secure reading room" at WIPO in which country representatives could sit under supervision and look at a copy for two hours, so long as they signed a confidentiality agreement and left their mobile phones at the door. For reasons that have not been shared with me, the U.S. did not object to this proposal, and so it was only by visiting the WIPO facility that those with ultimate responsibility for oversight could get a brief look at, but not copy or even take notes from, the

official OIOS report. It should come as no surprise that, burdened with such a constrained and humiliating process, most of the Member States did not come in.

However, enough diplomats did get access, and spoke openly about the report's disturbing contents, that the broad outlines of its findings became generally known in Geneva. Mr. Gurry had been found guilty of corruption in the diversion of a competitive procurement for IT services to favor an acquaintance, as I had alleged. As to the secret theft of DNA from the offices of WIPO officials in 2008, the investigators confirmed that Mr. Gurry was the only actor with a personal interest in the matter. However, the Swiss government had refused to cooperate or otherwise provide any explanation of how the stolen genetic material was accepted for testing by its law enforcement officials. With the other relevant individuals claiming failed recollection, that left the investigators without sufficient evidence to clearly establish Mr. Gurry's culpability.

In the meantime, Mr. Gurry, who remained in full control of WIPO, used the information in the report to target and retaliate against witnesses. Among these was Mr. Wei Lei, WIPO's Chief Information Officer, who had chaired the evaluation committee involved in the procurement corruption. During the investigation of my complaint, Mr. Lei had decided to come forward and blow the whistle himself, and he provided full, detailed testimony to the investigators, backed up with emails confirming that Mr. Gurry had deliberately interfered with the procurement process, first by demanding that the committee change the criteria used to judge the competitors, and then (when he was told that that was not possible) by ordering that the competition be halted altogether in favor of a direct award of the contract to the Australian company run by his friend. The OIOS investigators found Mr. Lei and his version of the events to be credible.

Mr. Gurry's retaliation against Mr. Lei was clear, but what to do about it was not. He tried to file a complaint against Mr. Gurry with the WIPO Chairs, but they eventually told him to direct it to the Chief Ethics Officer, who reports to Mr. Gurry. Without any other alternative, he complied. He heard nothing until earlier this month when, as the maximum 90 day time for investigation was about to expire the Chief Ethics Officer told him that the time required by the rules had been "extended" for two months. Who authorized that extension? Mr. Gurry.

While Mr. Lei was trying unsuccessfully to get review of his retaliation complaint, the Member States were privately meeting in small groups, with Switzerland leading an effort to "terminate the investigation." Too much time and effort had been spent on this already, the argument went. The procurement issue was "overblown" since these things happen all the time, and anyway the amount was not that big. (Apparently the UN's "zero tolerance" policy on procurement misconduct does not apply to high officials.) And basically the report had supposedly "exonerated" Mr. Gurry on the DNA theft.

As the summer went on, my impression was that the U.S. continued with its relatively passive posture that had been manifested in its "non-opposition" to the Chairs' reading room proposal. There were no public calls for Mr. Gurry's suspension, for protection of witnesses, or for Switzerland to come forward with the evidence it was withholding. There was only an agreement to put the matter of the OIOS report on the agenda for the October meeting of the Coordination Committee.

This brings me to the most recent and disturbing development: the issuance last week of a "review" of the OIOS report by the two WIPO Chairs. (A copy procured from a public website is attached.) Claiming that "in a spirit of transparency" they had consulted with Member States about what to do, and acknowledging that they had brought Mr. Gurry into the process to allow him to submit comments "on the understanding that this was not part of a disciplinary procedure," they issued a stunning recommendation: to "close with no further action all investigations regarding alleged misconduct by Mr. Gurry in both the DNA and Procurement cases."

They disposed of the DNA case quickly, with the observation that OIOS did not find evidence that Mr. Gurry was involved in the "taking" of the DNA samples from the staff members' offices. No mention was made of the fact that the Swiss authorities – uniquely able to say who gave them the illegally obtained samples and why they accepted and used them – have so far refused to cooperate and share what they know.

The procurement case took much more creativity to deflect. Here, the Chairs – unlike the OIOS investigators who actually spoke to the witnesses – chose to believe Mr. Gurry over Mr. Lei, and concluded that Mr. Gurry had acted properly in directing that the procurement proceed in "the best interests of the Organization." But even worse, they turned their fire on Mr. Lei, singling him out as the "one staff member of the evaluation team [who] declared to have acted under Mr. Gurry's pressure." (In fact, there was only one other staff member present in the room with Mr. Gurry, Assistant DG Ambi Sundaram, a direct report to Mr. Gurry, whom the investigators did not credit because his version was not consistent with the written email record.) While in the view of the Chairs – and contrary to the OIOS report – Mr. Gurry acted properly, there was "no convincing justification" for the conclusion by the procurement evaluation committee that the "best technical bid" could be accepted by Mr. Gurry. (In fact, as Mr. Wei explained, this conclusion was the only possible ethical response of the committee in reaction to Mr. Gurry's improper effort to have the bid criteria completely restructured.) The failure of the evaluation committee to issue a normal conclusion, the Chairs argue, is reason to have someone look at WIPO's procurement process, to make sure ***that*** doesn't happen again.

Thus, using pretzel logic that would make Sepp Blatter blush, the WIPO Chairs have tried to redirect criticism away from Mr. Gurry and toward the whistleblower.

But knowing that only a careful reading of the full and unexpurgated OIOS report would reveal the extent to which they have attempted to rewrite history, the Chairs added a potentially disarming final recommendation: that the OIOS report finally be provided to the Member States. However, the recommendation provides only an illusion of transparency, because the version the Member States get must "omit . . . any reference implicit or explicit to a person, either a natural person, a corporation, a company, or any legal entity." One can only imagine the text that will have to be blacked out from the report to avoid "implicitly" referencing any person, when so much of the report describes personal actions and credibility that might imply who was speaking or being evaluated. And the novel suggestion that references to "any legal entity" be redacted must give great comfort to the largest "entity" that was also an actor in this sorry drama, Switzerland. After all those redactions, there is unlikely to be much in the OIOS report from which anyone can conclude anything.

If when this matter had first been reported Mr. Gurry had been suspended during a properly independent investigation, it all would have been concluded two years ago. Instead, having left him in place to push his levers of power, we have seen whistleblowers attacked, complaints of retaliation ignored, the president of the staff union summarily dismissed (and the union itself threatened with replacement by a compliant house organ), the shutting down of a first investigation, a refusal to cooperate with a second, and behind the scenes a scurrying to arrange political favors to ensure maximum protection for the person who is the target of the investigation. All of this has culminated this summer in a diplomatic kabuki that only Geneva can perform: publishing a context-free "summary" of the investigative report; forcing the member states to shuffle through a supervised room to have a brief look at something that should instead be studied; and now a ridiculous personal re-evaluation of selected facts from the report, presented in a way that is designed to get everyone to "remain calm and carry on" with business as usual.

Having served for five years at WIPO, I am saddened but not surprised by all this connivance and manipulation. Rather, it is the mostly silent and private posture struck by the United States that deeply disappoints and befuddles me. As I pointed out in my previous letter, when the U.S. learned that Mr. Gurry's predecessor had misrepresented his age, our Ambassador made a strong and very public demand that he step down in the interest of the staff and reputation of WIPO. Are we willing to risk being seen as applying a different standard to a white Australian than to a black African? Are we willing to risk reinforcing public cynicism about the UN at such a critical time for the institution? Are we willing to continue trumpeting our commitment to transparency and accountability while closed-door diplomacy consumes justice?

As I have said before, I appreciate that none of this is easy. Confronting misbehavior by a powerful politician is fraught with risk. Standing up to a host country and demanding that it conform its actions to its respectable image has to

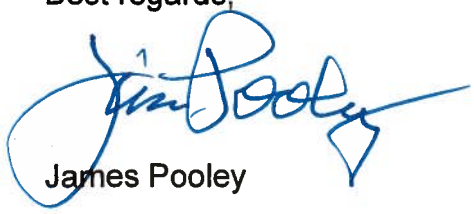
be very hard. I would like to think, however, that we are fueled in the task by our knowledge of what is right and what must be done.

Given how far things have now gone and the obvious conflict of interest of the WIPO Chairs and of Switzerland, and considering that so many countries are prepared to take action without having actually read the report themselves, it seems to me that we have only one honorable course of action before us at the moment: to publicly disavow, if not condemn, the Chairs' handling of the investigation report, to apply maximum pressure on Switzerland to reveal what it knows, and to lead with determination a cohort of like-minded countries to force unfettered public access to the original, unexpurgated OIOS report.[1]

Withholding fifteen percent of our national contribution to WIPO, which doesn't need our money, hasn't worked to effect even the small change of providing independent arbitration of whistleblower retaliation claims. What we need is dramatic action by the State Department or Congress, or both, that makes Geneva understand we won't accept the direction this is going.

Although our options have narrowed in the two and a half years since I filed my Report of Misconduct, there remains a clear path forward, if we have the courage to take it. If we don't, then we should prepare ourselves for more fake transparency, more manipulation, and essentially zero accountability. And we should not anymore count on whistleblowers to let us know what's going on inside UN agencies. Having seen this farce unfold as it has, no one will bother.

Best regards,



James Pooley

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[1] At a later time, we must also help to build a new framework for management oversight at WIPO. That process should begin with a real audit by an organization without any vested interests. For many years, including my own tenure as manager of the PCT, its efficiency has continued to increase as costs of processing applications have decreased, throwing more and more cash onto the pile available for discretionary spending. That WIPO was able to spend $200,000 in 2012 on a Washington lobbyist without that expense even showing up in its financials is just one indicator of the overdue need for a truly deep and independent examination of its books and records.

cc:
Hon. Ileana Ros-Lehtinen
Hon. Matt Salmon
Hon. Karen Bass
Hon. Ted Deutch
Hon. Brad Sherman

James Pooley
325 Sharon Park Drive, Suite 208
Menlo Park, CA 94025

April 29, 2016

Hon. Christopher Smith
2373 Rayburn House Office Building
Washington, D.C. 20515

Re: World Intellectual Property Organization

Dear Chairman Smith,

Thank you again for holding the February 24 hearing to gather testimony about WIPO and the way that whistleblowers are being treated at the UN. Those of us who have made the decision to come forward are deeply gratified that so many Members have voiced not only their willingness but also their determination to see this through to a just and sensible outcome.

I write to you today because that outcome is in serious jeopardy. Since the hearing two months ago, the formal report of OIOS into the allegations of misconduct by Director General Gurry has been delivered to Gabriel Duque, the Ambassador of Colombia, who acts as Chair of the WIPO General Assemblies. We understand that the report runs to almost a thousand pages of facts, analysis and exhibits. But rather than giving it to the Member States of WIPO, Amb. Duque has issued only a two-page document that he describes as a "summary." (I have enclosed a copy that has been published by news media.)

This brief document, which was prepared by WIPO and not OIOS, is part of a cynical manipulation designed to keep the OIOS report secret from the public, even though it reveals misconduct by a high public official. To begin with, the 2-page "summary" carefully skirts the most critical issues, and tries to diminish the significance of others. For example, my allegation was that Mr. Gurry arranged for someone to break into the offices of senior WIPO staff and take samples of their DNA that somehow found their way to the Swiss police. The 2-page document, however, reports only that there was "no evidence" that Mr. Gurry was involved in "the taking" of the DNA. We don't know what the OIOS report says about Mr. Gurry's involvement in arranging for someone else to do the taking, or whether and how he convinced the Swiss authorities to include this illegally obtained evidence in their official analysis of other, properly-obtained, samples. And of course when it claims there was "no evidence," we don't know whether that was because he, or the Swiss, or both, refused to provide any.

As to the procurement corruption, the WIPO "summary" points out that there was no evidence that Mr. Gurry received a financial benefit. But we are denied the details of exactly how he managed to interrupt this competitive process to favor his friend, so that the seriousness of his abuse of power can be assessed.

Amb. Duque has steadfastly refused to publish the full report, even in a redacted form that protects witness names. Instead, he has been urging delegations in Geneva to accept the 2-page substitute as sufficient, and to embrace his personal conclusion that there is no issue on the DNA theft and that the procurement corruption, while confirmed, doesn't really matter because there was no kickback.

This is like a railroad putting a translucent screen in front of a train wreck and telling the NTSB investigators to move on because there's nothing there to see.

I have discovered that there is a name for this sort of manipulation; it's called "contextomy" and refers to pulling selected information out of its important context, in order to win an argument by misleading the listener. It can be amusing when we see a review that pans a movie because it's a "terrific bore" and then see the studio advertisement quoting the critic that the movie was "terrific."

But the situation at WIPO is not funny, it's revolting. We know with absolute certainly – since the WIPO document admits it – that the OIOS investigators found Mr. Gurry guilty of misconduct that would justify disciplinary action. So it's baffling why anyone could possibly expect the Member States of WIPO to make a decision about what to do based on a WIPO-generated "summary," rather than on the report itself. Only the original OIOS report contains all the facts, all the professional analysis, and all the "context" that has been so carefully whitewashed from the 2-page document.

By trying to hide this critical information from public view, Amb. Duque – who owes his position as Chair to Mr. Gurry's political support – is acting to protect Mr. Gurry. The process has now become fatally tainted by this farce, and the only way for the U.S. to know what OIOS actually found is to get the report directly from that agency. Only then can we be assured that the document has not been tampered with for political reasons.

I recall vividly Congressman Sherman's observation at the hearing that "WIPO is the FIFA of UN agencies." It turns out that the comparison is more apt that we realized at the time. In 2012 FIFA appointed Michael Garcia, a former United States Attorney, to investigate suspected corruption in the award of future World Cup games to Russia and Qatar. His report was submitted two years later, along with his call to publish it, with only witness names redacted. The organization refused for "legal reasons," releasing only a "summary," and Mr. Garcia resigned in protest, noting that the summary was seriously misleading. Later FIFA promised to provide the full (properly redacted) version, but only after several

other investigations were completed. As of now, a year and a half later, the full report remains buried.

This is the danger we now face at WIPO. Mr. Gurry and his political friends will do whatever is required to keep the public from knowing what the professional investigators have concluded about his behavior as a WIPO official. As FIFA did, they will claim "legal" reasons, probably having to do with the agreement that was negotiated by WIPO (with Mr. Gurry still in charge) with OIOS, which he undoubtedly designed in a way to keep the eventual results away from public scrutiny. That kind of self-dealing is nothing more than another form of corruption, in my opinion. It would be outrageous to have the OIOS report remain hidden and unavailable to Congress or the public, merely because Mr. Gurry deftly arranged for that in advance.

Time is of the essence. It was four years ago when this Committee last confronted Mr. Gurry over his poor judgment, and he ducked and delayed (apparently with the help of a highly-paid lobbyist) until the proceedings were overtaken by the presidential election and other events.

We face exactly the same risk today. It has been over two years since I blew the whistle on these issues. It has been over four months since OIOS completed its investigation. Left to their own self-adjusted timetable, the diplomats in Geneva will continue to have occasional private meetings and to chew on various positions and half-measures, keeping the report effectively shrouded, until the clock runs out because of diplomatic fatigue or diversion due to other events. This is clearly what Mr. Gurry hopes will happen.

None of this should be read as criticism of the position taken by our government on this matter. I am very grateful that the State Department has made strong public statements demanding release of the full OIOS report about Mr. Gurry's misconduct. But our diplomats in Geneva act in an environment that too often demands compromise on important matters. We need to help them and back them up, with clear and repeated actions from Congress that reflect its concern and insistence that there be a halt to the delays and that the United States immediately obtain and publish a copy of the original OIOS report, with only the witness names redacted.

There can be no legitimate objection to this outcome, because the U.S. and other Member States own WIPO. They have plenary power over its management. What they face now is the profound embarrassment of the accused wrongdoer remaining in his position of power while he pulls political strings to keep everyone distracted. That should be unacceptable to the United States, which always insists on transparency and good governance in international institutions.

Back in 2007 Mr. Gurry's predecessor, Kamil Idris, was ultimately forced to resign because he admitted having misrepresented his age when he first came to WIPO. Without the full OIOS report, the Member States are in the dark and unable to compare the culpability of Mr. Idris' behavior to that of Mr. Gurry. Of course, the test that they should apply is clear enough. As U.S. Ambassador Warren Tichenor said in 2007, "The member states and the employees of WIPO deserve to have an organization that is led with the highest professional and ethical standards."

There is simply no way under current circumstances that the Member States can make a rational judgment about whether Mr. Gurry fails that test, without having copies of the report supplied directly by OIOS, so they can be carefully studied and assessed. The clock is ticking, and those of us who put this process in motion need your help to get the job done now.

Thank you for your support and assistance.

Best regards,

James Pooley

cc:
Hon. Ileana Ros-Lehtinen
Hon. Matt Salmon
Hon. Karen Bass
Hon. Ted Deutch
Hon. Brad Sherman

[X]. FINDINGS

A. THE "DNA CASE"

[x].The investigation revealed that:

i. DNA samples were taken by unidentified persons from three WIPO staff members, [...], without their knowledge and consent.

ii. Although there are strong indications that Mr. Gurry had a direct interest in the outcome of the DNA analysis, there is no evidence that he was involved in the taking of DNA samples.

iii. There is no evidence that Mr. Gurry attempted to suppress an investigation into the taking of DNA samples.

iv. There is no evidence that the settlement agreement entered into with [...] violated WIPO's regulations, rules or policies.

B. THE PROCUREMENT CASE

[x]. OIOS finds that Mr. Gurry, in his capacity as Director General and Chair of the ICT Board, directly influenced both subject procurement processes [.x1.] and [.x2.] in order to facilitate the award of a WIPO contract to [the Contractor]. In support of this finding, OIOS notes that:

i. Mr. Gurry, through [...], instructed PTD to stop the procurement process for [.x1.] and include [the Contractor] to the list of invitees.

ii. The comparison between the ToRs of the two procurement processes showed that minor changes were made to the ToR for [.x2.] after [.x1.] had been cancelled;

iii. Mr. Gurry directly influenced the evaluation process of the procurement process for [.x2.] by instructing the Chair of the Evaluation Team to base their recommendation purely on the technical evaluation, which would see [the Contractor] being the recommended vendor, notwithstanding, that their technical evaluation score was less than one point better than their nearest competitor but their costs were nearly double that of the same competitor;

iv. Mr. Gurry's recommendation to the Evaluation Team to disregard the financial weight of the evaluation was contrary to WIPO's Procurement Instructions, which state that the evaluation process should be based on pre-established criteria. In the instant case, the pre-established criteria required evaluating the various bids against a list of four pre-set technical criteria bearing a maximum weight of 70 per cent of the overall score, with the financial component bearing the balance weight of 30 per cent.

[x]. OIOS notes that the general principles and framework for WIPO procurement provide that where a formal RFP [Request For Proposal] has been issued, the procurement contract shall be awarded to the qualified proposer whose proposal, all factors considered, including value for money and the best interest of WIPO, is evaluated to be the most responsive to the requirements set forth in the solicitation documents. In this regard, OIOS takes note that Mr. Gurry firmly believed that [the Contractor] was the most responsive to WIPO's requirement for a proposal to strengthen its information technology operational security.

[x]. Nonetheless, OIOS finds that in disregarding the financial weight of the predetermined evaluation criteria, Mr. Gurry acted in non-compliance of WIPO's Procurement Instructions.

Although Mr. Gurry and [the Contractor's founder] have been professionally acquainted since 1997, there is no evidence that Mr. Gurry directly or indirectly gained any financial or personal benefit from the procurement processes for [.x1.] and [.x2.], and the eventual contract award to [the Contractor].

[X]. CONCLUSIONS

[x]. The established facts constitute reasonable grounds to conclude that the conduct of Mr. Francis Gurry may be inconsistent with the standards expected of a staff member of the World Intellectual Property Organization.

[X]. RECOMMENDATIONS

Based on the foregoing, OIOS recommends as follows:

Recommendation 1: It is recommended that the Chair of the General Assembly of the World Intellectual Property Organization consider taking appropriate action against Mr. Francis Gurry (Rec. No [...])

CONSIDERATION AND REVIEW OF THE FINAL INVESTIGATION REPORT BY THE OIOS ON "ABUSE OF AUTHORITY AND PROCUREMENT IRREGULARITIES IMPLICATING A STAFF MEMBER OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (ID CASE N. 0164/15)

1. **Introduction**

Following the reception on 15 March 2016 of the final investigation report of the Office of Internal Oversight Services (OIOS) in the above mentioned case;

Acting in accordance with WIPO Internal Oversight Charter, especially its paragraph 32 which stipulates that "final investigation report concerning the Director General shall be submitted to the Chairs of the GA and CoCo for any action deemed appropriate.."

Informed by technical advices of experts especially the WIPO Independent Advisory Oversight Committee (IAOC) and WIPO Legal Counsel;

Also informed by the views of Representatives of Member States (hereafter referred to as MS) regularly consulted;

The undersigned, respectively Chairman of the General Assembly (hereafter referred to as GA) and Chairman of the Coordination Committee (hereafter referred to as CoCo) of WIPO, have conducted the review as set out hereafter;

The Chair of the GA and the Chairs of the CoCo acting jointly are hereafter referred to as the Chairs;

This review aims to consider all the relevant facts of the case at hand, including the quality of evidence supporting the findings of OIOS; as well as the views advanced by MS on the issues reported thereafter to draw related conclusions and take appropriate action accordingly, in the best interests of WIPO.

2. **The OIOS Inquiry**

The inquiry by OIOS was initiated following a report by a former WIPO staff member with numerous allegations of unlawful and/or irregular actions by the Director General in two cases, the so called "DNA Case" and the so called "Procurement Case"

Considering the findings and recommendations of preliminary investigations into those cases, judging that the Director of WIPO's Internal Audit and Oversight Division (IAOD) was in a position of conflict of interest and was not indicated to conduct the investigations into those allegations, the IAOC recommended the Chair of GA to refer the matter to the Office of the Internal Oversight Services (OIOS) of the UN System.

On 28 April 2015, a letter by the Chair of the General Assembly referred the matter to the OIOS for a full investigation into those allegations.

On 15 March 2016, the OIOS sent the final investigation report to Ambassador Gabriel Duque, Chairman of the GA, with copy to Ambassador François Ngarambe the Chairman of the CoCo.

3. **Consultations with Representatives of MS**

The Chairs represent Member States who empowered them with the mandate stipulated in paragraph 32 of WIPO Internal Oversight Charter as follows: *"final investigation reports concerning the DG shall be submitted to the Chairs of the General Assembly and Coordination Committee for any action deemed appropriated and copy to the IAOC and to the External Auditor"*.

In accordance with such legal ground, the Chairs felt the obligation to inform regularly the MS on any major step of their actions, and seek their views so as to ensure that they are reflected in the decision taken, whenever appropriate.

The consultation with MS was thus guided by a spirit of transparency, inclusiveness and respect of WIPO convention and rules which uphold MS's sovereignty.

It is in that spirit that following the communication by IAOC to Regional Coordinators that the OIOS report was sent to the Chairs; the latter convened a meeting with those Regional Coordinators to inform them on the development and to communicate a summary of the findings, conclusions and recommendation of the OIOS report. The resolution of that meeting was that both Chairs would meet all interested MS in different regional groups, to communicate to them also the development, the summary of the report, and get their views on the rest of the process.

During the following round of inclusive and open consultations with all MS of respective regional groups, two main issues were discussed: (i) the mandate of the Chairs (the legal basis of the power to take "action deemed appropriate"; the scope and limit of that mandate) (ii) the interest expressed by MS to access the full report.

Following the request of several MS and the DG himself, the DG was given the opportunity to submit his updated comments on the final report on the understanding that this was not part of a disciplinary procedure.

For the matter of disclosure to MS, after due consideration of the WIPO confidentiality policy, the recommendations of OIOS, IAOC, and the WIPO legal Counsel, and based on a non-opposition approach of MS, a decision on this topic was made. In consequence, starting on the 1st of June, two representatives per Mission had access to read the report and the DG's comments in a controlled room at WIPO, for two hours per session, for a total of three reading sessions. After consultation with Regional Coordinators some MS that requested it were granted with additional sessions for reading the report. The reading sessions ran until 15th Jul 2016.

After the reading period, all MS were invited by the Chairs to express their views on both the process and the substance of the report, in any form they wished. A final broad, inclusive and open session was thereafter organized for consultation with regional coordinators accompanied by all those MS wishing to participate. During this open and inclusive session three main views emerged: some members found that there was no substance for any action and recommended the case to be closed; some

members found that although there is no evidence of misconduct by the DG, the procurement case revealed loopholes in WIPO procurement system that needed to be addressed; some members strongly stated that the case should be referred for consideration by the CoCo.

In regard of this, having considered all views of MS and consulted all experts, especially the IAOC and the Legal Counsel, based on the mandate conferred by MS, the Chairs proceeded with the analysis of all relevant facts and views expressed during these proceedings, in order to take action as deemed appropriate. While doing so, the Chairs took note of the request by some MS to have the item "review of the OIOS report" be included in the agenda of the forthcoming CoCo and GA sessions in September and October 2016. It is worth noting that the item has been included and will be discussed during the forthcoming CoCo meeting.

Some MS have also requested that a redacted report version be made and handed out to all MS; no MS have expressly opposed this request.

4. **The DNA Case**

In the DNA case, the report concludes that "there is no evidence that Mr. Gurry was involved in taking the DNA samples"; "there is no evidence that Mr. Gurry attempted to suppress an investigation into taking DNA samples"; and that "there is no evidence that the settlement agreement entered into with one WIPO staff member violate WIPO's regulations, rules and practices".

This review didn't find any evidence in the report or outside the report which would contradict the findings and conclusions of OIOS report.

5. **The Procurement Case**

The OIOS investigations made the following findings: (i) Mr. Gurry directly influenced the evaluation process for procurement under this investigation by instructing the Chair of the Evaluation Team to base their recommendation purely on technical evaluation; (ii) Mr. Gurry's recommendation to the Evaluation Team to disregard the financial weight of the evaluation was contrary to WIPO's procurement instructions, which state that the evaluation should be based on pre-established criteria...; (iii) in disregarding the financial weight of the predetermined evaluation criteria, Mr. Gurry acted in non-compliance of WIPO's Procurement instruction.

The OIOS concluded that "the established facts constitute reasonable grounds to conclude that the conduct of Mr. Gurry may be inconsistent with the standards expected from a staff member of the WIPO" and therefore recommended that "the Chair of the GA of WIPO consider taking appropriate action against Mr. Gurry"

Regarding the last finding (iii) "OIOS notes that the general principles and framework for WIPO procurement provide that where a formal Request for Proposal (RFP) has been issued, the procurement contract shall be awarded to the qualified proposer whose proposal, all factors considered, including value for money and the best interest of WIPO, is evaluated to be the most responsive to the requirements set forth in the solicitation documents". In this regard, OIOS takes note that Mr. Gurry firmly

believed that "(…) the chosen vendor was the most responsive to WIPO's requirement for a proposal to strengthen its information technology operational security". In addition, "there is no evidence that Mr Gurry directly or indirectly gained any financial or personal benefit from the procurement processes (…)" subject of this investigation.

In his responses to the final report Mr. Gurry's made, among others, the following comments: (i) the Procurement instructions cannot exclude the best interest of the organization and nor can an individual RFP; (ii) the evaluation was not made based purely on technical evaluation and that there was no disregard of the financial criteria; (iii) there is no evidence whatsoever that he instructed anyone to disregard the financial criteria and to base the evaluation on purely technical grounds; (iv) the award of the contract in question was entirely proper and corresponded to best management practices. The circumstances of the award of the contract corresponded also to the regular practice of the Organization in diligently analysing and deciding upon a course of action that corresponded to the Financial Regulations and Rules, the Procurement General Principles and Basic Rules and safeguarding of the best interests of the Organization."

Analysing the report, we note the following:

- We found that the explanations of the DG on why he intervened to halt the first tender process before reception of the offers, improve the terms of references and extend the list of invited bidders to be consistent with his role, and we find that by doing so he didn't breach any procurement rule.
- After the first tender process subject to this investigation was cancelled, new RFP issued and proposals received from three bidders, the following steps were all conducted by competent WIPO Officers, acting regularly in accordance with WIPO Financial Regulations and Rules[1] and Office Instruction No. 21/2006[2], -regarding Procurement general Principles and Basic Rules-: evaluation of the bids by an evaluation committee, the review and recommendation to award the contract to the "best bidder" by Procurement and Property Division (PTD), the approval of the proposal by the High Level Official in charge of Procurement (HLOP); and the final signing of the contract by PTD.

  The approval of the decision to award the contract to one specific bidder was done by the HLOP, "in view of the sensitive and confidential nature and strategic importance of the activity of WIPO".
- This decision was made disregarding that "all offers shall be evaluated on the basis of objective criteria and their respective weighting, as set forth in the tender document"[3]. To make that exceptional decision, the concerned officer invoked that "the HLOP may determine, with the advice of the Contracts Review Committee (CRC) when he or she finds such advice necessary, that

[1] Rules 5.11 and 105.14-105.28. Applicable as from January 1, 2008 as amended until now.
[2] Amended in 2014 by OI 1/2014
[3] WIPO Financial Regulations 105.14 (e), Office Instruction 21/2006

using formal or informal methods of solicitation is not in the best interest of WIPO for a particular procurement action."[4]

- Before the evaluation team proposed to award the contract on the basis of best technical bid, Mr. Gurry was informed and expressed his non-objection in the following terms: "it is fine with me".
- We note that just one staff member of the evaluation team declared to have acted under Mr. Gurry's pressure. All the other actors involved in the process from the evaluation through final approval declared to the OIOS investigation team to have acted in total independence.
- Apart from the non-objection expression before the process to approve the proposal, we find no evidence beyond reasonable doubt of any involvement of Mr. Gurry, either by acting directly, influencing or imposing any behavior related to evaluation of the bids by the evaluation team, to the recommendation of the "best bid" by PTD, and to final approval by HLPO, and to the final execution by signing the contract by PTD.
- However, this review finds no convincing justification for the exceptional decision made at different levels of procurement process by diverse competent WIPO staff members to award the contract on the basis of "best technical bid" and to ignore the "best overall bid all factors compounded".

Conclusion in the procurement case review

For the reasons above mentioned, in particular the absence of evidence of the alleged involvement of Mr. Gurry in the outcome of the decision making process, also considering the OIOS Report findings, the Response by Mr. Gurry, and the views advanced by MS, we find no justification for any disciplinary action against Mr Francis Gurry.

6. Decisions and recommendations

In view of the above review, and given that there is no evidence beyond reasonable doubt for any unlawful or irregular action by Mr. Francis Gurry, both in the DNA and in the Procurement cases;

Acting in accordance with WIPO IOC, especially its paragraph 32 as mentioned supra in the introduction and in our respective capacities as Chairs of WIPO GA and WIPO CoCo;

We make the following decisions and recommendations:

1. To close with no further action all investigations regarding alleged misconduct by Mr. Gurry in both the DNA and the Procurement cases.

2. To recommend the DG to conduct all necessary reviews in order to address all deficiencies in WIPO procurement system, including but not limited to clarifications regarding exceptions to tender methods, and the role of the Director General in the process. In particular, for the purposes of the procurement investigation at hand, such

[4] WIPO Financial Regulations 105.18, Office Instruction 21/2006

reviews should asses the application of alternative procedures, when making an exception to financial and procurement rules.

3. To request OIOS to make a redacted version of the report omitting any reference implicit or explicit to a person, either a natural person, a corporation, a company, or any legal entity to be handed out to Member States. We also request Mr. Gurry to provide a redacted version of his response to the Report in the same way, to be handed out to Member States.

4. To inform of these decisions all Representatives of Member States, OIOS, IAOC, the Director General, and the IOD.

We deliver this Review in a confidential basis for the exclusive use of Members States.

Made in Geneva the 5th of August, 2016

Amb. Gabriel Duque
General Assembly Chair

Amb. François Ngaramibe
Coordination Committee Chair