

Independent review of the UNOPS Ethics Function

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Glossary

AAC - Audit Advisory Committee

CEB – UN System Chief Executives Board for Coordination

ED – Executive Director

ENMO - Ethics Network of the Multilateral Organizations

EPUN - Ethics Panel of the United Nations

EXB – Executive Board

IAIG - Internal Audit and Investigations Group

ICA - Individual Contractor Agreement

IMF – International Monetary Fund

JIU - Joint Inspection Unit

OI LG - Operational Instruction promulgated by the UNOPS Legal Group

PCG - UNOPS's People Change Group

UNESCO - United Nations Educational, Scientific and Cultural Organization

UNOPS - United Nations Office for Project Services

VA - Vacancy announcement

**Independent review of the UNOPS Ethics Function:
to ensure the independence and impartiality of its work**

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I. Executive Summary

Summary of Terms of Reference and Methodology Followed

1. The present report was prepared by an external independent review panel (the “Panel”), following a request by the UNOPS Executive Board¹. The Panel consisted of the Head of the UNESCO Ethics Office, Dr. Mirka Dreger, and the Head of the IMF Ethics Office, Dr. Ursula Wellen -- both acting in their official capacity and following a formal request by the UNOPS Executive Director² ad interim to the Director-General of UNESCO and the Managing Director of the IMF, respectively. The terms of reference for this review, attached as Annex 1, were agreed by the Executive Director ad interim in September 2022 and slightly amended in January 2023 at the request of the Panel members.

2. In terms of process followed, the Panel members first reviewed an electronic data room with relevant background documents made available by the Head of the UNOPS Ethics Office³, with additional documents made available at the request of the Panel members. Annex 2 contains an inventory of the electronic data room. As a second step, the Panel members interviewed a number of key internal stakeholders and several external stakeholders.⁴ As to methodology, the Panel took relevant reports by the UN’s Joint Inspection Unit (JIU) and the recommendations set out in each of these reports as a common denominator of best practices for its review.⁵

3. In the view of the Panel, and for the purpose of this exercise, the 2021 JIU Report on Ethics serves as guidance on best practices and international standards on organizational ethics, particularly but not only, with respect to functional conflicts of interest and the need to avoid dual functioning roles.⁶

¹ Paragraph 7 of UNOPS EXB decision 2022/16. Hereinafter, all references to the Executive Board refer to the UNOPS Executive Board.

² Hereinafter, all references to the Executive Director refer to the UNOPS Executive Director.

³ Hereinafter, all references to the Ethics Office refer to the UNOPS Ethics Office. Also, while the title of the Head of the Ethics Office was changed in 2019 to “Chief Ethics and Compliance Officer” and then again changed in 2022 to “Director, Ethics”, this Report uses the functional title “Head of the Ethics Office”, for reasons of consistency and clarity.

⁴ While the Panel kept a log and meeting notes of these interviews, it considers that the precise composition of the interviewee list – as well as the attribution of the interview content – is covered by confidentiality, in line with paragraph 13 of the terms of reference for the review (cf. “The Panel will observe the Office’s principles of independence, impartiality and confidentiality.”).

⁵ Namely, the 2021 Report of the JIU on the Review of the ethics function in the United Nations system (JIU/REP/2021/5, the “2021 JIU Report on Ethics”), the 2019 Report of the JIU on the Review of Audit and Oversight Committees in the United Nations system (JIU/REP/2019/6, the “2019 JIU Report on Audit and Oversight Committees”) and the 2018 Report of management and administration in UNOPS (JIU/REP/2018/3, the “2018 JIU Report on UNOPS Administration”).

⁶ The 2021 JIU Report on Ethics highlights throughout its report that for an ethics function to be independent, it is important that there is no functional conflict of interest, and that the Ethics function should not have a “dual functioning role”. According to the JIU, dual function means a “function mandated with responsibilities both for ethics and another subject, such as an Ombudsperson or legal function”. Indeed, in accordance with best practices a strict segregation of duties especially from functions that are not independent is of utmost importance to ensure the independence of an Ethics function of an international organization. At the same time, it is also important to keep the ethics function separate from other assurance functions.

Summary of Backward-Looking Analysis

4. Based on the Panel's interviews with internal and external stakeholders and review of documents, the Panel finds that since the very inception of the Ethics Office there were several long-lasting systemic issues that still negatively affect today's setup, functioning and perception of the independence of the Ethics function. While some of these issues have recently been addressed, it is the view of the Panel that further changes are necessary, to establish an Ethics function that is genuinely independent from management. To achieve real progress, UNOPS management and the Ethics Office will need to be conscious of this legacy of functional conflicts of interest that has negatively affected the Ethics function since its inception, as described in detail below. Going forward, UNOPS management as well as the current and any future Head of the Ethics Office will also need to be especially mindful in their professional interactions by keeping an appropriate arms-length relationship, in order to avoid any actual or perceived undue influence by UNOPS management. The Panel is aware that there is an inherent tension between the need for a Head of the Ethics Office to be independent as well as for them to be trusted and accepted by management, in order to be effective. However, considering UNOPS's history, it is necessary for the current and future Head of the Ethics Office to err on the side of caution when it comes to interactions with management. It will be necessary and appropriate for the current or new Head of the Ethics Office to continue to further strengthen cooperation with the Ethics Panel of the United Nations (EPUN) and the Ethics Network of the Multilateral Organizations (ENMO), and to avoid any perception of being too close to or seeking to be "liked" by senior management.

Summary of Key Recommendations

5. Based on the backward-looking analysis, the Panel has identified a list of six key recommendations, as set out in more detail in paragraphs 29-32:

- i. Adopt standalone Terms of Reference for the Ethics Office to define and limit the scope of its mandate;
- ii. Further strengthen the link to EPUN and consider for an interim period of 12 months the introduction of an additional substantive reporting line to the Director of the UN Ethics Office and Chair of EPUN;
- iii. Discontinue any doubling of functions (in particular between Ethics, Legal, and Human Resources);
- iv. Ensure that additional checks and balances are built into future recruitment processes for the Head of the Ethics Office by way of involvement of the Audit Advisory Committee (AAC) and/or the Executive Board;
- v. Ensure there is a clear accountability mechanism for the Head of the Ethics Office and a "dotted" reporting line to the Executive Board and the AAC;
- vi. Ensure requests for Ethics advice and guidance are strictly confidential and not shared, unless with express prior consent of the person seeking advice and guidance. Reassess participation in Navex system.

II. Backward-Looking Analysis

Legacy of functional conflicts of interest since establishment of the ethics function

Since 2009 Inception: Functional Conflicts of Interest between Ethics, Legal and Human Resources

6. From the time of the Ethics Function's establishment up until 1 February 2009, the UNOPS General Counsel, also served as the first Head of the Ethics Office, in addition to performing his regular duties as General Counsel.⁷ After his retirement, from 1 February 2009 and to 2019, the previous General Counsel became the Head of the Ethics Office on the basis of a part-time consultancy without any post retirement cooling-off period. The part-time consultant Head of the Ethics Office was based overseas and only came to Copenhagen occasionally for important meetings.

7. The Panel notes that, in its 2018 report on the UNOPS Administration⁸, the JIU already expressed concerns about the lack of independence of the UNOPS Ethics function, stating that "*the appointment of a former legal counsel as Ethics Officer does not appear appropriate in terms of perception of independence and objectivity*". This lack of segregation of functions at the time of inception of the UNOPS Ethics Function resulted in a prolonged functional conflict of interest, which negatively affected its independence and impartiality.

8. Between 2016 and 2019, the current Director of the UN Ethics Office and Head of EPUN repeatedly pointed out to UNOPS management and the Head of the Ethics Office that it was not appropriate for the Head of the Ethics Office to be employed as a consultant, due to the lack of institutional independence. This contractual setup led, inter alia, to a situation in which a member of the Ethics Office (the P5 Ethics Advisor) officially did not report to the Head of Ethics Office but to the General Counsel because the P5's supervisor would otherwise have been a part time consultant. Moreover, from 2016 to 2018, the Ethics Office's annual report to the Executive Board was presented by the UNOPS Legal Counsel.⁹

9. An audit of the Ethics function conducted in 2010 by the Internal Audit and Investigations Group (IAIG) also highlighted that, at that time, standard setting and ethics training were vested with the Human Resources function on the grounds of insufficient resources/capacity of the Ethics function. This was another example of a lack of segregation of functions that added to the legacy of functional conflicts of interest and overall lack of clarity within the organization on what an independent ethics function entails.

10. Several interviewees also noted that the Head of the Ethics Office at the time had an overly close professional rapport with the General Counsel, who allegedly directly intervened in the Ethics Office's work as well as with other members of the Senior management team, which added to the actual or at least perceived lack of independence. This resulted in an ongoing dependence of the Ethics function on senior management, including the Deputy Executive Director, and an overlap of the

⁷ Cf. annual report DP/OPS/2011/3.

⁸ Review of management and administration in the UNOPS (JIU/REP/2018/3)

⁹ Although UNOPS management clarified to the JIU that the statement was "prepared by the Ethics Officer, who was available online during the session".

functions of the Ethics Office with other functional units --especially the Office of the General Counsel and the Office of Human Resources.

Since 2019: Creation of a Dual Ethics and Compliance Function, Increasing Functional Conflicts of Interest

11. In 2019, UNOPS added a compliance function to the role of the Head of the Ethics Office. This made UNOPS an outlier amongst the Ethics Offices within the UN system and amongst other CEB organizations. The move was officially explained as being inspired by best practice in the corporate private sector, but the Panel was not able to establish that there had been any prior research or benchmarking before the change. The move was explained as being an initiative by the former Executive Director. Consequently, the first externally hired full time Head of the Ethics Office held the title of "Chief Ethics and Compliance Officer". While UNOPS issued an OI LG 2018.08 on Compliance providing for the role of the Ethics Office to deal with compliance matters, it is unclear what that additional function was precisely intended to include, both concretely and in operational terms. In the view of the Panel, adding this – poorly defined – compliance function to the Ethics function created yet another functional conflict of interest for the Ethics function, since compliance monitoring is normally understood to be a management function. The Panel understands that the Executive Director issued a statement to the Executive Board in 2022, indicating that the Ethics Office was no longer in charge of compliance. The Panel advises that the OI LG 2018.08 on Compliance be formally repealed.

12. Several interviewees stressed that the Chief Ethics and Compliance Officer, who was hired in 2019 and left UNOPS in early 2022, was also perceived as being overly close to management and management was seen as interfering with her work. The Panel was told that UNOPS colleagues were in fact disinclined to report Ethics issues to the Ethics Office due to the lack of segregation of duties, independence, and confidentiality, and the actual or perceived risk of retaliation.

Past Recruitment & Dismissal Process for Head of Ethics not fully in line with best practice

JIU Recommendation on Executive Board consultation not yet implemented

13. The JIU has repeatedly put emphasis on the need for institutional checks and balances to strengthen the independence of the Ethics Offices within the UN system – in general, by creating a link between the governing body and the Head of the Ethics Office and, in particular, by involving the governing body in the selection and appointment process as well as with respect to any early termination or dismissal of the Head of the Ethics Office.

14. In its 2018 report on the UNOPS Administration¹⁰, the JIU noted that *"UNOPS [was] revisiting its procedures for the appointment of a new Ethics Officer, to include consultations with the Executive Board"*. The 2018 JIU Report also stated that *"For the selection and appointment of a new Ethics Officer, the recommendations of the 2010 JIU report on the ethics function should be followed in respect of, among others, competitive recruitment, professional background in ethics as a requirement for the post, the involvement of staff representatives in the selection process, term limits for the incumbent and setting out the Ethics Officer's formal and informal access to the governing bodies."*

¹⁰ [JIU/REP/2018/3: JIU Review of Management and Administration in the United Nations Office for Project Services \(UNOPS\) | Joint Inspection Unit of the United Nations System \(unjiu.org\)](#).

15. Despite the 2018 JIU recommendation, it appears that the Executive Board was neither consulted during the 2019 nor the 2022 recruitment process. While UNOPS strengthened some aspects of its selection procedure during the 2022 recruitment process.¹¹, the Panel recommends that going forward, UNOPS introduce additional institutional checks and balances in the recruitment process for the role of the Head of the Ethics Office (now with the title Director, Ethics), as set out below under paragraphs 17. and 28. below. While the Panel appreciates that there may have been operational reasons for moving ahead quickly in 2022, the Panel also considers that it would have been preferable -- from an institutional governance perspective -- for UNOPS to wait for the Panel's findings and recommendations before finalizing the recruitment and selection process for the post of the new Director, Ethics. The Panel understands that an additional procedural element was applied for the recruitment of the Director, IAIG, in 2022, since the AAC was involved in that process.

16. On the positive side, the Panel notes that the vacancy announcement issued in 2022 for the position of Head of the Ethics Office (now with the title Director, Ethics), provided for a four-year mandate, renewable once for another four years, with no probation period and that the letter of appointment of the recently appointed Head of the Ethics Office is a fixed term appointment for four years, renewable once for the same duration. The Head of the Ethics Office is excluded from applying for other roles at UNOPS and reports directly to the Executive Director. These appointment terms are in accordance with best practice and expected to contribute to the independence of the Head of the Ethics Office in carrying out their mandate. The Panel also understand that the vacancy announcement had been shared with the Director of the UN Ethics Office and Chair of EPUN for comments prior to publication.

JIU Recommendation on Audit Advisory Committee only given effect in 2023

17. Pursuant to the 2021 JIU Report on Ethics¹², it is considered part of best practice for members of an audit and oversight committee to have a role in the recruitment, performance evaluation and dismissal of the Head of the Ethics Office by providing independent advice to senior management.

18. The Panel welcomes that the revised Terms of reference for the UNOPS Audit Advisory Committee ("AAC"), adopted by the AAC in February 2023, now provide for the AAC to be consulted with respect to the recruitment, performance evaluation and early termination of the Head of the Ethics Office. It is expected that this recent change will provide additional checks and balances in the future, which will contribute to fostering the independence of the ethics function, to the extent that the overall governance structure is also strengthened, including the independence of the AAC (cf. below).

Continuing Ethics Office Governance Issues

Recusal statement by the new Head of the Ethics Office to be updated

19. The current Head of the Ethics Office was appointed in November 2022 after a competitive selection process and had previously served for a period of six months as the acting Head of the Ethics

¹¹ As part of the 2022 selection process, two members of the Ethics Panel of the United Nations ("EPUN"), who serve organizations with the same Executive Board as UNOPS, designed and evaluated a written test on a no-name basis, and one of those two EPUN members was subsequently part of the interview panel.

¹² JIU report 2021 on Ethics, paragraph 72.

Office (with the title Director, Ethics, ad interim). Immediately before first taking up the interim Ethics appointment, the current Head of the Ethics Office, worked in UNOPS's People Change Group ("PCG"), where he led UNOPS's Grievance Function and represented the interests of UNOPS management.

20. Upon taking up his function as acting Head of the Ethics Office (Director, Ethics, ad interim), the incumbent signed a recusal letter under which he will not deal with any matter (especially requests for protection from retaliation) in his new function as acting Head of the Ethics Office, that he had previously dealt with in the grievance function.

21. The Panel considers that the recusal statement needs to be updated because the current incumbent is no longer acting but has been appointed as Head of the Ethics Office (with the title Director of the Ethics Office) for a period of at least four years.¹³

Need to redesign the grievance process to ensure confidentiality of ethics consultations

22. Based on a number of interviews, the Panel notes that the grievance process at UNOPS is seen as confusing and non-transparent, and that there is a lack of trust in the confidentiality of case management. The Panel is particularly surprised to hear that, when an employee files a case through the Navex system (which may concern several matters) at least in the past, either PCG, the Ethics Office or IAIG may have referred such case to each other without the express consent of the person concerned. The Panel is of the view that a referral of matters without consent to a unit that is not independent from management, such as the PCG, is incompatible with the independence of the Ethics function, as well as of IAIG. An employee should be able to file a matter exclusively with the Ethics Office, and in case the latter finds that it is not competent to deal with it, it should inform the employee and may suggest different avenues at the exclusive choice of the employee. Referral to the IAIG, as another independent oversight function, should also be limited to exceptional cases of imminent physical danger etc.

Current staffing issues within the ethics office team

23. As for the current situation, the Panel further notes that in July 2022, the Ethics Office issued a vacancy announcement ("VA") for "Ethics and Legal Advisor", and it was informed that two persons have been hired against this VA in January 2023. The functions described in the VA cover both ethics and legal advice. While the Head of the Ethics Office, informed the Panel that this VA was issued in these terms to attract a higher number of candidates with legal background, and that their functions were limited to giving ethics advice and aligned with the functions of ethics advisors at the UNEO, it finds that this created yet another perception of a functional conflict of interest and confusion for employees and internal and external stakeholders. Considering the history of lack of segregation of duties and the functional conflicts of interest between the UNOPS General Counsel/legal function and

¹³ The Panel received on March 20, 2023 an electronic copy of an updated recusal letter dated March 17, 2023 by the Head of the Ethics Office, addressing some (albeit not all) of the concerns that the Panel had raised during informal discussions. Situations not addressed in the updated recusal letter are for example those where the Head of the Ethics Office would receive a protection against retaliation request concerning his former supervisor at PCG or persons working within PCG.

the Ethics function, this will need to be corrected by changing the job description and functional title of these two recruits, to the extent this has not already been taken care of.

24. Further, to strengthen the independence of the Ethics Office it is indispensable that employees working on individual cases in the Ethics Office are given stable contracts. For example, the Panel understands that currently, retaliation cases are reviewed by a person who has an ICA (consultant)/retainer contract and is being paid on an hourly basis. It urges UNOPS to grant staff contracts not only to the Head of the Ethics Office, but also to those members of the team who deal with retaliation cases or provide confidential ethics advice on cases. Besides this employment status point, UNOPS Management should, however, defer to the Head of the Ethics Office when it comes to staffing needs – the Panel understands that in the past, senior management repeatedly interfered and in fact micromanaged the staffing of the Ethics Office which is not compatible with its status as an independent office.

25. The Panel understands that the budget of the Ethics Office is now being approved directly by the Executive Director, with no delegation of authority to a lower level (e.g., CFO), and is also shared with the Executive Board for transparency purposes. This should be added to the terms of reference of the Ethics Office.

Annual performance evaluation of the Head of the Ethics Office

26. The Panel did not get a clear answer on who undertakes the performance evaluation of the Head of the Ethics Office. It urges UNOPS to have the Executive Director him- or herself undertake the performance evaluation, with no delegation of authority to another official. It finds that the involvement of the AAC in the performance evaluation, as per the new terms of reference of the AAC adopted in 2023, is a good additional safeguard.

III. Forward-Looking Analysis

27. Against the background of this mixed legacy of the Ethics function, the Panel is of the view that a true start up approach will be required in which none of the elements of an independent Ethics function is taken for granted and attention is paid to putting the most important and fundamental elements in place.

Recommendations to Strengthen UNOPS Ethics Office Independence

28. Specifically, the Panel considers the following six Ethics recommendations to be most crucial:

- Adopt standalone Terms of Reference for the Ethics Office and define and limit the scope of its mandate.
- Further strengthen the link to EPUN and consider for an interim period of 12 months the introduction of an additional substantive reporting line to the Director of the UN Ethics Office and Chair of EPUN.
- Discontinue any doubling of functions (in particular between Ethics, Legal, and Human Resources).
- Ensure that additional checks and balances are built into future recruitment processes for the Head of the Ethics Office by way of involvement of the AAC and/or the Executive Board.

- Ensure there is a clear accountability mechanism for the Head of the Ethics Office and a “dotted” reporting line to the Executive Board and the Audit Advisory Committee.
- Ensure requests for Ethics advice and guidance are strictly confidential and not shared, unless with express prior consent of the person seeking advice and guidance. Reassess participation in Navex system.

29. **Adopt Standalone Terms of Reference:** The Panel notes that – besides the job description for the Head of the Ethics Office (who had different titles at different times) and OD.PCG.2017.01 on Human Resources, Ethics and Culture – the Ethics Office does not have any standalone terms of reference. In the view of the Panel, this has contributed to significant confusion amongst UNOPS personnel (and possibly even members of the Ethics Office) as to what the Ethics Office does and does not do. The Panel therefore recommends that, as a high priority matter, UNOPS adopt standalone Terms of Reference for the Ethics Office as soon as possible, which in terms of content should be based closely on ST/SGB/2007/21. Such step will also “protect” the Ethics Office against mission creep, -- i.e., situations where management might try to assign additional tasks to the Ethics Office, which might not be Ethics matters but rather management issues. The Terms of Reference should be adopted by the Executive Director, be shared with the Executive Board for information, and be publicly available to increase transparency and accountability. They could be integrated, for instance, into the Human Resources Manual, as appropriate. Beyond the mandate of the Ethics Office, the Terms of Reference should also specify the terms of employment for the Head of the Ethics Office, as set out in the 2022 vacancy announcement, and the reporting line to the Executive Director, with the additional reporting lines to the Executive ~~Board Director~~ and the AAC.

30. **Further Strengthen Links to EPUN:** In the view of the Panel, there is an overall lack of institutional maturity of the Ethics Function due to the legacy of functional conflicts of interest and the fact that, during the 10+ years of its existence, the Ethics Office did not have the required level of independence. The Panel, therefore, recommends that the Ethics Office further strengthen its existing links to EPUN. EPUN members should identify synergies and possibilities to support training and upskilling for the members of the Ethics Office and share any Ethics training and outreach material that could be shared with UNOPS personnel. In addition, the Executive Director ad interim should consider – for an interim period of twelve months from the issuance of the present report – introducing an additional substantive reporting line from the Head of the Ethics Office to the Director of the UN Ethics Office and Chair of EPUN. During this interim period, the Head of the Ethics Office would proactively consult the Director of the UN Ethics Office and Chair of EPUN on any non-routine advice and guidance matters, albeit on a no-name basis, as well as on any advice and guidance matters involving UNOPS staff at the D2 level or more senior levels.

31. **Discontinue Doubling of Functions:** As noted above, the doubling of functions (for instance, the Legal Counsel acting as the Head of the Ethics Office, the Legal Counsel supervising members of the Ethics Office, and PCG carrying out Ethics training) has resulted in a legacy of functional conflicts of interest and a lack of maturity of the Ethics function, despite the Ethics Office having been in existence for over ten years. The Panel, therefore, strongly recommends that going forward all doubling of independent oversight functions with other management functions be discontinued. If the doubling of functions in the past might have been due to a lack of resources for the Ethics Office, then Management will need to ensure – and the Executive Board will need to maintain oversight over – the adequate resourcing of the Ethics Office, in order to allow adequate coverage of all aspects of the

Office's mandate without "outsourcing" any parts of it to another office that is part of management (such as Legal or PCG). In this context, the Panel also highly recommends that the job descriptions and functional title of the recently hired "Ethics and Legal Advisors" be changed to "Ethics Advisors". Finally, the Panel recommends that the recusal statement by the Head of the Ethics Office be amended as per the terms of paragraph 21. above.

32. **Create Clear Accountability Mechanism for the Head of the Ethics Office:** The Panel also points out that strengthening the independence of the Ethics Office and of the Head of the Ethics Office, should go hand in hand with strengthening the accountability mechanisms for both. It recommends that the Ethics Office prepare an annual workplan that could and – in the view of the Panel should – be shared with the Executive Director, the Executive Board, the AAC, and at least for the time being also with the Chair of EPUN. The annual workplan could provide a framework for reviewing the Annual Report of the Ethics Office and also for the Annual Performance Evaluation of the Head of the Ethics Office which – as the Panel noted above– should be carried out by the Executive Director, with input by the AAC. In addition to the Head of the Ethics Office presenting the Annual Report of the Ethics Office to the Executive Board and meeting with the AAC in camera at least once a year, the Panel believes that these additional touchpoints with the Executive Board and the AAC will help establish a dotted reporting line to the Executive Board and the AAC – which in turn is crucial to strengthening the independence of the Head of the Ethics Office.

33. **Ensure Full Confidentiality Requests for Ethics Advice and Guidance:** to ensure that the Ethics Office is independent and also seen by UNOPS personnel as being independent, the Panel considers it paramount that requests for ethics advice and guidance are treated as strictly confidential, with only very limited and clearly pre-defined exceptions, such as imminent physical danger, etc. (see para. 22.). If such strict confidentiality cannot be achieved through the Navex filing system, then it is the Panel's explicit recommendation that the Ethics Office discontinue the use of Navex. UNOPS also needs to make sure that the Ethics Office has sufficient resources to ensure that employees working on confidential matters in the Ethics office (especially on retaliation cases) are given staff contracts.

Observations on the Overall Ecosystem of Internal Checks and Balances within UNOPS

34. Having carefully reflected on a recurring theme during many of the interviews held and fully considered the available material, the Panel would like to point out the following: it recommends strengthening the independence of the UNOPS Ethics Office, as identified in this report, and set out necessary conditions for achieving such independence. Even if all the necessary (but not sufficient) conditions set out above in paragraph 28. are met, this does still not guarantee that the Ethics Office will be truly independent – simply because the Ethics Office cannot be independent in isolation.

35. Indeed, the independence of the Ethics Office further crucially relies on the other internal and external stakeholders respecting and supporting its independence, as well as fully playing their part in the overall ecosystem of internal checks and balances. The Ethics Office cannot be independent all by itself, it can only be as independent as other stakeholders allow and enable it to be and it can only be independent if other stakeholders also meet their respective independence standards. From the Panel's perspective, this general observation requires some additional analysis.

36. **Interactions with the Executive Director and Other Senior Leaders:** since the Executive Director is the direct supervisor for the Head of the Ethics Office, it is of paramount importance that any future Executive Director and any other members of the senior leadership group respect the independence of the Head of the Ethics Office, do not interfere with the Ethics Office's work, and do not exercise undue influence. At the same time, the current and future Heads of the Ethics Office will need to be especially mindful in their professional interactions with the Executive Director by keeping an appropriate arms-length relationship, in order to avoid any perception of being too close to senior management.

37. **Interactions with the AAC:** Under the Panel's recommendations and based on best practice, the AAC has an important role in ensuring the independence of the Head of the Ethics Office. Hence, it is essential that the AAC and its members are themselves also independent. In that context, the Panel very much welcomes the recent adoption of the revised Terms of Reference of the AAC in January 2023. The 2023 Terms of Reference envisage, inter alia, that the AAC has an independent budget, that it provides independent expert advice to assist the ED *and* the Executive Board, and that the AAC has direct access to and also reports to the latter.

38. One area where the Terms of Reference should still be further strengthened concerns the selection of the AAC members, since the 2023 Terms of Reference simply provide that "*The Executive Director initiates and determines the approach for selection and appointment of members.*"

39. Based on the interviews conducted, it appears that members of the AAC were directly appointed by the Executive Director in the past without a prior competitive selection process, based on being part of the Executive Director's professional network. This makes it very difficult for any such directly appointed member to assert their independence. While the 2019 JIU Report on Audit and Oversight Committees stops short of making a recommendation for an appropriate selection process, it still pointed out that "*any selection process should be based on transparency, professionalism, integrity, competitiveness, and equal opportunity for all, in line with good practices*" and identified best practices for such selection process¹⁴. Going forward, the Panel considers it highly desirable for UNOPS to align its AAC selection with best practice, as established in the 2019 JIU Report on Audit and Oversight Committees, considering the AAC's crucial anchor role for the Ethics Office. This includes the recommendation that the Executive Director's nominees be presented to the Board for approval.

40. **Interactions with IAIG:** the Ethics Office's independence also crucially depends on a strong and independent IAIG because the Ethics Office cannot credibly work on building an internal speak-up culture if the internal investigations function (as one of the pillars of the internal accountability framework) is not truly independent. The Panel is, therefore, encouraged by the candid self-assessment presented by the IAIG to the Executive Board during its second regular session 2022. In this self-assessment, the IAIG clearly points out that there has been a lack of independence in the past,

¹⁴ 2019 JIU Report on Audit and Oversight Committees, paragraphs 106 and 108: "*It also found that six JIU participating organizations (ILO, ITU, UNHCR, UNIDO, WFP and WMO) had published instructions on the process to be followed whenever a vacancy on their committees occurred. The process comprises external advertisements, a call for nominations from member States and the recruitment of a specialized external agency for application screening and preparing a shortlist of candidates*".

especially with respect to investigative matters. In its self-assessment, IAIG has identified “pathways” to strengthen its independence based on eleven recommendations. IAIG’s continued steady progress on its pathways to independence directly impacts the Ethics Office’s independence. To give just one example, as long as there is no full IAIG independence when it comes to retaliation investigations (or even as long as there is a perception amongst UNOPS personnel that IAIG does not have full independence in such cases), the Ethics Office also cannot make effective recommendations to address retaliation.

41. **Interactions with the Executive Board:** based on the recommendations in the 2021 JIU Report on Ethics and also on the Panel’s own professional experience, the Executive Board of a UN system organization has a crucial role to play in safeguarding and strengthening the independence of the respective Ethics Office, primarily by establishing an additional level of accountability and oversight for the Head of the Ethics Office and also by ensuring access for the Head of the Ethics Office if there are systemic concerns which management does not address despite requests by the Ethics Office. The Panel understands, based on its internal interviews, that there may be an additional review underway or being requested -- namely a review by the JIU of UNOPS’s Executive Board. While the Panel is not aware of the scope of any such review, it believes that such a review may be crucial for enhancing the independence of the Ethics Office. While the Ethics Office has primary responsibility and is the go-to for all questions related to ethics and standards of conduct, it cannot be in charge of the topic without the full back-up and support by the Executive Board – which for the Panel is best demonstrated by members of the Executive Board regularly and genuinely engaging with the Head of the Ethics Office. In light of the regular turnover for Executive Board members, there should also be regular inductions for Executive Board members where the Ethics Office’s function is clearly explained to newcomers, with an opportunity for Q&A.

Washington, 28 March 2023,

Dr. Ursula Wellen
Head of the IMF Ethics Office

Paris, 28 March 2023,

Dr. Mirka Dreger
UNESCO Ethics Advisor



January 2023

Terms of Reference for an independent review of the UNOPS Ethics function to ensure independence and impartiality

Background

1. The UNOPS Ethics Office was established in 2009 pursuant to the Secretary-General's Bulletin ST/SGB/2007/11 as amended. The office is based in Copenhagen and provides ethics and, since 2019, compliance¹ support to approximately 5,300 UNOPS personnel (as of 31 December 2021). Pursuant to the bulletin, the office's mandate is to "*cultivate and nurture a culture of ethics, integrity and accountability, and thereby enhance the trust in and credibility of the United Nations, both internally and externally*".
2. Under the bulletin, the office has specific responsibility for: developing standards, training and education on ethics issues; providing guidance to management to ensure UNOPS policies and procedures promote integrity standards; providing confidential advice and guidance to personnel on ethical issues; raising awareness on ethical standards and expected behaviour; managing UNOPS protection against retaliation policy; and administering UNOPS financial disclosure programme.
3. At its Annual Session 2022, the Executive Board, in relation to the UNOPS Ethics Office reaffirmed in its decision (para. 7 of 2022/16) the need of the full independence of the UNOPS ethics function and requested an independent review of the ethics function to ensure the independence and impartiality of the work.
4. Such an independent review would support accountability, inform decision-making and help develop forward-looking strategies that will enable the UNOPS Ethics Office to strengthen its credibility which has been hampered in the wake of its public credibility crisis during March/April 2022 and would assist to build on its effectiveness by enhancing its core programme areas including recommending good practices.
5. The independent review will coincide with the recruitment of a new Director of the Ethics Office (hereinafter "the Office") and allow for the incorporation of review findings, recommendations and lessons learned which will greatly assist in the leadership transition.

Objectives

6. The overall objectives are as follows:

¹ At the 07/2022 Annual Board session, the Executive Director a.i. announced that the compliance function and responsibility would be removed from the Ethics Office's mandate with immediate effect.

- As per Board decision 2022/16 at para 7 to independently review UNOPS' ethics function to ensure the independence and impartiality of the work;
- As appropriate, advise informally on successful practices and lessons learned from comparable Ethics Offices within the wider Ethics Network of Multilateral Organisations (ENMO) in relation to the overall effectiveness and efficiency of the UNOPS Ethics Office.

Key deliverables and timeframes

7. The review must be designed and completed in a timely fashion, and a short, concise written report with maximum 10 pages should be provided preferably by 31 January 2023 but no later than 31 March 2022 so as to address the specific purpose and objectives for which it was commissioned and ensure the usefulness of the findings and recommendations. The report should also include a brief conceptual framework of the review, the review methodology, and observations, conclusions and recommendations as per para. 6 above.
8. Prior to starting the review, the Panel shall submit a work plan with clear phases and milestones for information and feedback as appropriate to the Director of the Office.
9. The panel shall present its findings to the Executive Board, the Executive Director, the Ethics Panel of the United Nations and UNOPS' Audit and Advisory Committee (AAC).

Methodology

10. Two Ethics Offices of the Ethics Network of Multilateral Organisations (ENMO) will be identified as members of the Panel. The Ethics Office will provide support that may be required and appropriate to carry out the review.
11. In conducting the review and preparing its report, the Panel may take into account information from the following main sources:
 - Legal instruments, policy statements, internal communications, annual work plans, monitoring documents, and other relevant non-classified and non-confidential internal documentation;
 - Sample Office work documents, redacted to protect confidentiality;
 - Documents relating to the Office's structural review;
 - Any other relevant information sources such as interviews, questionnaires, on-site observations and other data that the panel may propose to collect in its work plan, provided the proposed methodology does not infringe upon the Office's confidentiality policy.
 - Panel members will sign confidentiality agreements with the UNOPS Ethics Office.

Guiding Framework

12. The Panel will conduct its review, where applicable, drawing from existing applicable policies and generally acknowledged best practice and standards for the functioning of Ethics Offices in the wider ENMO community.
13. The Panel will observe the Office's principles of independence, impartiality and confidentiality.

Transparency

14. Full information on the review design and methodology should be shared with the Office throughout the process to build confidence in the findings and understanding of any limitations in decision-making.
15. The final report should include a separate Executive Summary which can be shared publicly, including on the Ethics Office's website, with UNOPS personnel at large and various UNOPS stakeholders.
16. The review should not reflect personal or sectoral interests but should be in the interest to advance the field of the Ethics profession.
17. The key questions and areas for review should be clear, coherent and realistic. The plan for the review should be practical and cost effective. Findings and recommendations should be presented in a manner that will be readily understood by target audiences, including global UNOPS personnel.
18. The recommendations should be grounded on UNOPS' current context, should be implementable within reasonable time-frames, practical and commensurate with the maturity and resourcing of the Ethics Office.
19. The respective panel members from the Ethics Offices from the ENMO network shall observe a 5 year cooling-off period before being eligible for any staff positions within the UNOPS Ethics Office.

Resources

20. The Office's budget allocation for the peer review shall cover travel and DSA for two Panel members. The experts are expected to offer their services pro-bono.

Annex 2 - List of documents provided to the panel for the Independence review

Board submissions January 2023

- DP/OPS/2023/CRP.3 – Comprehensive response plan
- DP/OPS/2023/CRP.2 - Framework for restating the UNOPS strategic plan, 2022-2025

Budget documents and structure of the office

- CRP, EC, Ethics & Compliance – 2023 Budget Final
- Two ICA contracts - Ethics Advisors
- Draft for retreat – Ethics Office Workplan 2023 – Detailed workplan with phasing
- Employment overview of the Ethics Function
- ERP Taxonomy
- Ethics Advisor TOR P84241
- Ethics Advisor TOR P84242
- Guidance overview of ICS Level definition
- July 2022 – Ethics Legal Advisors ToR
- June 2021 – Job description IICA 3 Ethics Advisor
- Library of Position titles and expert indicators (as of 2021-05-17)
- Letter of appointment Berkan Manaigo-Vekil – nov 2022

Chief Ethics and Compliance Officer TOR

- UNOPS Job vacancy – Ethics and Compliance Officer

Contracts Ethics Office

- 100 days contracts explanation from HR
- ANNEX A – Denmark - terms and conditions of UNOPS individual contractor agreement
- IICA 2 and 3 contract
- LICA Contract

Due Diligence report

- Review of UNOPS due diligence procedures – Nov 2022

Engagement survey results GALLUP 2021/2022

- People Survey 30 nov 2021
- People Survey June 2022

Ethics Office Administrative Instructions

- Statement by UNOPS Acting Executive Director – 14.11.2022
- Assessment of the independence of the UNOPS Internal Audit and Investigations Group.
- Compliance announcement: Strengthening our approach to ethics and compliance
- Operational directive ref. OD.ED.2022.01 – Internal audit and investigations charter
- Operational directive Ref. OD.PCG.2017.01 - Human resources, ethics and culture
- Operational Instruction Ref. OI.Ethics.2018.02 - Financial Disclosure and Conflict of Interest Statements
- Operational Instruction Ref. OI.Ethics.2018.04 - Outside Activities
- Operational Instruction Ref. OI.Ethics.2020.01 - Prohibition of accepting gifts, honours, decorations, favours or non-UN remuneration or benefits from governmental and non-governmental sources
- Operational Instruction Ref. OI.Ethics.2022.01 - Protection against Retaliation
- Operational Instruction Ref. OI.IAIG.2020.01 - Investigations and Measures Relating to Misconduct Allegations Against UNOPS Personnel

- Operational Instruction Ref. OI.LG.2018.08 – Compliance
- Operational instruction Ref. OI.PCG.2017.01 - Personnel management framework

Ethics Office Annual reports

- Activities of the UNOPS Ethics Office in 2017
- Activities of the UNOPS Ethics Office in 2018
- Activities of the UNOPS Ethics and Compliance Office in 2019
- Activities of the UNOPS Ethics and Compliance Office in 2020
- Activities of the UNOPS Ethics and Compliance Office in 2021

IAIG Independence Assessment

- Assessment of the independence of the UNOPS Internal Audit and Investigations Group.

IAIG Audit of the Ethics Function

- Limited Scope audit of the functioning of the Ethics Office HQ, Copenhagen (Report No. IAIG/0102 (2010))

JIU Report

- JIU/REP/2021/5 Review of the ethics function in the United Nations system
- JIU/REP/2018/3 Review of Management and Administration in the United Nations Office for Project Services (UNOPS)
- JIU/REP/2019/6 Report on Audit and Oversight Committees

KPMG findings

- Statement by Jens Wandel - Acting Executive Director, UNOPS to UNDP/UNFPA/UNOPS Executive Board Special session 2022, 30 November 2022
- Final Backward-looking report UNOPS 28.11.2022: Third-party review of effectiveness of the UNOPS oversight mechanisms for Sustainable Investments in Infrastructure and Innovation (S3i)
- Final Backward-looking report UNOPS 28.11.2022: Third-party review of the internal control systems, risk management and overall governance structures of the United Nations Office for Project Services
- Special session decision draft
- UNOPS Response Plan EB Special Session 30.11.2022

Organigrammes

- Ethics Office Organigramme
- Executive Office Organigramme
- IAIG Organigramme
- UNOPS Organigramme January 2023
- UNOPS Global organigramme September 2022

Possible candidates for interviews

- List of possible candidates to interview

Previous UNOPS Reviews

- Compass final report dated 28 January 2022
- MOPAN 2020 Assessment

ST SGB on Ethics Office

- ST/SGB/2005/22
- ST/SGB/2007/11

Terms of Reference

- Terms of Reference for an independent review of the UNOPS Ethics function to ensure independence and impartiality
- Berkan Manaigo-Vekil Recusal statement (07/04/2022)
- Berkan Manaigo-Vekil Recusal statement (09/05/2022)
- Executive Office Instruction Ref. EOI.ED.2019.02 - Audit Advisory Committee
- Final Terms of Reference for an independent review of the UNOPS Ethics function to ensure independence and impartiality
- NDA Independence review

World Bank Tenants of Independence

- Tenants of Independence of the Ethics and Business Conduct Function within the World Bank Group