

# **REVIEW CONCERNING INVESTIGATION OF BULLYING ALLEGATIONS BY TRANSPARENCY INTERNATIONAL IN 2019/2020**

**PROVIDED BY**  
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**DATE:** 29 JULY 2021



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## 1. EXECUTIVE SUMMARY

In February 2021, Harriet Witchell, specialist independent investigator, was contacted by Ms Patricia Moreira, the former Managing Director of Transparency International Secretariat (TI-S) in Berlin, Germany.

Following initial discussions Witchell agreed to conduct a review of events related to complaints made against and by Moreira in the 2018 – 2020 period concerning her time with TI-S. There was no former relationship between Witchell and Moreira and no existing relationship between Witchell and Transparency International (TI).

Witchell reviewed the documents listed as provided by Moreira and open-source articles and documents available on the web. No persons were interviewed concerning these matters and the observations in this review are limited in respect of the information provided to it. The reviewer acknowledges that there are events and documents which have not been visible to the reviewer that may change the conclusions of this report.

## CONCLUSIONS OF THE REVIEW

This reviewer makes nineteen observations concerning the events reviewed. It is the opinion of the reviewer that the initial complaints made to members of the Board Ethics Committee in late 2018 and early 2019 were not responded to, either in accordance with the old or new Integrity System, by members of the Board Ethics Committee or the Board of Directors.

This failure to act on these issues for 6 months, including the failure to raise them with the Managing Director (MD) or Senior Management Team (SMT), resulted in the extension of the complaints to include the perceived inaction of the Board Ethics Committee and the Board. The subsequent actions of the Board were flawed from this point on as no investigation undertaken by or overseen by the Board Ethics Committee, could overcome the inherent conflict of interest and lack of procedural fairness created by the Board Ethics Committee investigating/handling complaints concerning their own actions.

The events that followed as outlined in the documents reviewed, indicate that the Board of Directors took steps to avoid the investigation of the complaints relating to inaction of board members and they appear to have misrepresented facts to the Annual Membership Meeting (AMM) in 2019 and 2020.

Additional observations have been made concerning the definition of who is a Whistleblower. The observations in this review are based on the TI Whistleblower Policy as made publicly available on the TI Website as of April 2021. The definition applied by the TI Ombudsman in September 2020 appears to conflict with the TI Policy.

## OBSERVATIONS MADE

1. In 2018 and 2019, members of the Board Ethics Committee and or the Board, failed to respond in accordance with the TI Whistleblower policy and to best practice standards, to complaints made directly to them in their role as members of the Board Ethics Committee by employees in Case #2, Case#3, by the Ireland Chapter and members of the Works Council.
2. Inquiries made by the Board Ethics Committee into the complaints after 24 April 2019 were inappropriate as the Board Ethics Committee were subject of the complaints at that time.
3. The requests from the Board Ethics Committee for Moreira to answer for conduct of the 'Senior Management Team' as a collective without providing her the details of the allegations was inappropriate and unreasonable.
4. The lack of specific allegations put to Moreira during the Taylor Wessing investigation rendered the investigation procedurally unfair and was inconsistent with best practice in workplace investigations.
5. Making findings in respect of allegations where the accused has not been given an opportunity to respond is contrary to best practice workplace investigations and procedurally unfair.
6. The Taylor Wessing report makes it difficult to understand whether the Taylor Wessing investigation was intended to make findings against individual employees or whether it was a cultural review.
7. The Terms of Reference signed off by the Board in August 2019 was inconsistent with the Terms of Reference followed by Taylor Wessing in their investigation.
8. The Board of Directors committed to the Annual Membership Meeting (AMM) 2019 to investigate complaints against the actions of the Board of Directors but failed to do this.
9. The Board of Directors made a false statement to the Ireland Chapter and AMM 2019 when it incorrectly stated that the Board of Directors did not know

of any complaints concerning the conduct of the Board of Directors in connection with the complaints made by Case #2 and #3.

10. The appointment of the Independent Ethics Panel (IEP) was not independent and failed to meet the standards set out in the AMM 2019 resolution.
11. The investigation continued by the IEP did not include an interview with Moreira and it did not include an investigation of her complaints. This renders the investigation procedurally unfair. It failed to meet the resolution of 2019 AMM or the Terms of Reference as set out in August 2019 by the Board of Directors.
12. The IEP did not critically assess individual actions of Board members against expected standards or policies of TI, giving the impression of bias and leniency towards the Board.
13. The IEP report included a statement concerning Moreira's complaints which at the time of publishing on 20 May 2020 was incorrect.
14. The Board of Directors misled the membership and donors when it released the IEP report on 2 June 2020. The Board of Directors allowed the report to include the statement that Moreira's complaints were "excluded because they are currently subject of legal discussions" when all legal discussions had ceased on the 12 May 2020.
15. The use of a non-disclosure agreement in Moreira's termination contract is contrary to a decision made by the Board in September 2019 to reject the use of non-disclosure agreements. It is also inconsistent with the TI Mission and values.
16. The subsequent rejection of Moreira's complaints by the TI Ombudsman appears contrary to the TI Policy on Whistleblowing and is contrary to Whistleblower best practice.
17. The role of an external Ombudsman is ineffective at providing any reassurance to members of TI when complaints are made concerning members of the Board.
18. The presentation of the IEP report and discussion by the Chair of the Board of Directors at the 2020 AMM represents a clear and successful attempt by the Board of Directors to cover up the legitimate concerns of employees that the Board Ethics Committee and members of the Board of Directors failed to take appropriate action and mishandled their Whistleblower reports.

19. The implication that Moreira has psychological problems and that this risk should be addressed with any future appointment exemplifies the very worst in the treatment of Whistleblowers, and why protection is required at law.

There are many flaws in the processes followed by the Board of Directors of TI in the handling of these complaints. A review of these processes indicates the following most significant failings:

- Members of the Board Ethics Committee took no meaningful action for 6 months in respect of Case #2 and Case #3 when those complainants provided the Board Ethics Committee with complaints and evidence of misconduct in 2018 and 2019.
- The Board Ethics Committee and the Board of Directors failed to implement their own Whistleblower protection policy in respect of employee complaints made to them in 2018 and 2019.
- The Board Ethics Committee attempted to investigate allegations against themselves in breach of the most basic understanding of a conflict of interest.
- The Board of Directors actively worked against introducing the improved Integrity System in 2019 despite the Board having signed this off in 2018.
- The Board of Directors attempted to cover up the allegations made against Board members by appointing and briefing an Independent Ethics Panel that lacked independence and did not fulfill the requirements of the Terms of Reference as defined by the AMM resolution of 2019.
- The Board of Directors issued inaccurate and misleading information about the handling of Moreira's complaints against the Board of Directors and Board Ethics Committee in the IEP Report at the time of its release and made no attempt to correct the record at the AMM 2020.
- The Board of Directors unfairly influenced the decision of the membership at the AMM 2020 by failing to report to the membership that the 2019 resolution to independently investigate complaints concerning members of the Board, had not been fulfilled; choosing instead to present the IEP report without correcting the legal status of Moreira's complaints.

**The observations are particularly concerning given the leadership role TI plays in establishing and advising organisation and countries on the effective handling of Whistleblowers.**

## DOCUMENTS VIEWED

1. 15 February 2018. Letter from UK Department of International Development to TI-UK outlining responsibilities to report misconduct
2. 25 May 2018. Letter from Canada regarding expected standards for NGO in relation to whistleblowing
3. Board Ethics Committee Terms of Reference 2003
4. Board Ethics Committee Terms of Reference 2018
5. Board Ethics Committee Terms of Reference 2019
6. 16 August 2018. Report for the Review of the Ethics Framework and Policies at the TI S
7. TI-S Integrity implementation plan 2019
8. 24 April 2019. Formalisation of complaint from Case #3 to Board Ethics Committee E, request for independent review of management of TI.
9. 24 April 2019. Copy of complaint: Case #2 submits full complaint to the Chair of Board and Board Ethics Committee
10. 25 May 2019. Terms of Reference for TaskForce regarding transformation
11. 29 May 2019. Email from Board Ethics Committee to Moreira containing allegations regarding Case #2.
12. 29 May 2019. Email to Moreira containing taskforce ToR
13. 8 June 2019. Email correspondence between Case #3 Rights and A J Brown regarding disclosure of complaint
14. 9 June 2019. Moreira's Report to Board
15. 9 June 2019. Covering letter from Moreira in response to Board Ethics Committee email dated 29 May 2019
16. 10 June 2019. Email from Deputy Chair Moreira's response to Taskforce
17. 10 June 2019. Emails from Chair to G&I Consulting and Moreira regarding role of Board in Integrity System.
18. 29 June 2019. Email from Board Ethics Committee to Moreira - States that full complaint of Case #2 sent to Moreira
19. 11 July 2019. Email regarding complaints Case #3 from Board Ethics Committee to Moreira
20. 11 August 2019. Moreira Second response to the Board Ethics Committee
21. 21 August 2019. Guardian article: Transparency International staff complain of bullying and harassment.
22. 22 August 2019. Board resolution on independent investigation
23. 22 August 2019. Terms of Reference for investigation
24. 4 September 2019. Moreira response to the Board resolution regarding independent investigations
25. 5 September 2019. Letter from 58 former employees to the Board



26. 6 September 2019. Letter from Donors on expectations of the Board with regard to the investigation and Integrity System
27. 8 September 2019. TI-S Integrity implementation plan 2019
28. 26 September 2019. Letter from Moreira lawyers which raises questions over integrity of Taylor Wessing investigation and presence of allegations against the Board. Contains information that Moreira was first advised of allegations on 29 May 2019 by Board Ethics Committee and requested an independent investigation
29. 2 October 2019. Letter from Moreira lawyer regarding allegations
30. October 2019. Email exchange between Moreira Lawyers and Taylor Wessing investigator and TI Chair regarding clarification of the allegations prior to interview
31. 29 October 2019. Letter from Moreira lawyers to Taylor Wessing stating the date they were informed of the subject of the allegations
32. 6 November 2019. Summary of Moreira interview with comments by Moreira.
33. November 2019. Correspondence between Chair and Moreira Lawyers on provision of the final report
34. 16 November 2019. Annual Membership Meeting (AMM) Resolution – agreement to set up three-member independent panel to advise the Board Ethics Committee
35. 16 November 2019. Statement by Board to AMM
36. 22 November 2019. Redacted report from Taylor Wessing
37. Redacted Taylor Wessing report, 2<sup>nd</sup> version with different redactions
38. 4 November 2019. Letter from Integrity Officer on her departure
39. 20 November 2019. Letter from donors regarding follow up on investigation
40. 19 November 2019. Annual Donor meeting
41. 16 December 2019. Letter from Moreira lawyer regarding additional complaints created
42. 16 December 2019. Letter from Moreira's lawyer regarding request for information about additional allegations
43. 16 December 2019. Update to TI members that investigation report received on 22 November 2019 and members will be updated in due course
44. 30 December 2019. Letter to Integrity Officer containing 4 complaints from Moreira
45. 30 December 2019. Letter to Ombudsman for TI, lodging 4 complaints from Moreira regarding Board Ethics Committee, Board, TI Ireland and Works Council
46. 27 December 2019. Moreira lodges complaint against Board Ethics Committee's role and Board of Directors for mishandling complaints
47. 27 December 2019. Moreira lodges complaint against the Board for Bullying
48. 6 January 2020. Email from Moreira to new Integrity Officer regarding email from Taylor Wessing



49. 6 January 2020. Email to Ombudsman regarding Taylor Wessing response to complaints, reply from Ombudsman saying he cannot act; 8 January Moreira asking for explanation; 10 January 2020, Reply from Ombudsman stating that he had already responded stating that she is not a whistleblower and her issue is a labour dispute
50. 27 January 2020. Moreira complaint against the Board for failing to support the MD in seeking redress for Guardian's defamatory article against external advisors
51. 25 February 2020. Draft Termination contract
52. 26 February 2020. Email to Moreira containing Taylor Wessing report from TI
53. February 2020. Email update from the Board of Directors to membership change of Moreira
54. 23 March 2020. Moreira's statement of response to the Taylor Wessing report of 22 November 2019. Report received by Moreira on 26 February 2020
55. 18 May 2020. Email from Integrity Officer confirming receipt of letter advising on end to negotiations regarding termination dated 12 May 2020
56. 18 May 2020. Letter from TI to Moreira solicitor
57. 20 May 2020. Report of the Independent Ethics Panel
58. 28 May 2020. Moreira response to the Independent Ethics Panel
59. 2 June 2020. Press release on TI pages
60. 7 June 2020. Guardian article Anti-corruption watchdog hit by legal row over staff "bullying"
61. 30 September 2020. Letter from Moreira to Ombudsman for TI
62. 30 September 2020. List of annexes provided to TI Ombudsman
63. 3 November 2020. Email from TI IO to Moreira asking to communicate via lawyer only
64. 4 November 2020. Letter from Moreira to Chair of Board of Directors asking for a response as to how TI will respond to her complaints against the Board
65. 5 November 2020. Letter to AMM
66. 6 November 2020. Covering letter to donors
67. AMM minutes 6-8 November 2020 including presentation of the independent Ethics Panel. Agenda item 12
68. Email 11 November 2020 from Ombudsman citing the Chair saying that the AMM had been advised of the complaints and voted not to pursue them
69. 18 November 2020. Letter from Moreira to Chair following up on 4 November letter
70. 23 November 2020. Response from Chair of Board of Directors stating that Moreira has to communicate via TI's lawyer

## 2. BACKGROUND TO REVIEW

In February 2021 Ms Patricia Moreira, former Managing Director for Transparency International Secretariat (TI-S) contacted Harriet Witchell, CEO of MyKludo, via LinkedIn. Ms Moreira requested a meeting to discuss her situation.

Harriet Witchell is an experienced specialist workplace investigator in Australia. She had no pre-existing relationship with Ms Moreira and no connection to TI.

Moreira explained that she had been the Managing Director of the Transparency International Secretariat (TI-S) in Berlin, Germany, from October 2017 until February 2019, when her contract was prematurely ended. During this time the TI-S had gone through a significant period of change including changes to the Integrity System and moving the organisation from a holacratic system of management to a more hierarchical system.

In 2019 complaints were raised by staff alleging bullying and harassment by the Senior Management Team, and an article published by The Guardian on 21 August 2019 claimed that TI had a toxic work environment. The complaints were investigated by legal firm Taylor Wessing, but according to Moreira the process lacked procedural fairness. The investigation did not substantiate the complaints against the Senior Management Team in most cases, but some findings of possible misconduct were made concerning three incidents.

Throughout the process, Moreira raised concerns regarding the fairness of the processes followed by TI. In December 2019 and January 2020 Moreira raised formal complaints to the Board of TI concerning the handling of the complaints by the Board of Directors and the Board Ethics Committee.

On 2 February 2020 Moreira was asked to stand aside as Managing Director by the Board of Directors. Documents demonstrate that Moreira was notified on 2 February that she was to be stood down from her executive duties effective from 28 February 2020. After this time, Moreira entered discussions with the Board on a settlement. Discussions regarding her settlement contained the condition that she withdraw her complaints concerning the actions of the Board of Directors and Board Ethics Committee. Moreira refused to withdraw her complaints and negotiations were stopped on 12 May 2020.

Moreira contends that at this time, the Board of Directors appointed an Independent Ethics Panel (IEP) to continue the investigation into the complaints previously

investigated by Taylor Wessing. The IEP published a report on 20 May 2020 which was circulated to the TI Membership and donors on 2 June 2020.

Moreira alleges that:

- Initial investigations conducted by Board Ethics Committee in May/June 2019 were outside of their role, not in accordance with the TI-S Integrity System, and procedurally unfair
- The investigation conducted by Taylor Wessing was not procedurally fair due to a number of factors:
  - The process was the Board Ethics Committee, some of whose members were themselves subjects of the allegations made by staff under investigation
  - The Taylor Wessing investigators made findings concerning events that were not put to her or other members of the Senior Management Team for a response
  - The Taylor Wessing report did not address the full Terms of Reference for the investigation as agreed by the Board on 22 August 2019, which included complaints made against members of the Board Ethics Committee for failing to act on complaints received by them during the period October 2018 to April 2019
  - The Independent Ethics Panel established in March 2020 was not independent as both members were senior members of TI Germany
- Neither Moreira herself nor any other members of the Senior Management Team were interviewed by the IEP and, consequently, did not receive a fair hearing
- The IEP failed to investigate the full Terms of Reference for the investigation as agreed by the Board on 22 August 2019 and the Annual Membership Meeting (AMM) in November 2019, as no investigation of the conduct of Board members was conducted by either the IEP
- Because of these failures, the Board of TI failed in its duty to honour the commitments made to the members at the AMM in November 2019 and misled the members in presenting the final report to members at the AMM in November 2020 that did not meet its commitments.

## TERMS OF REFERENCE

As a result of the information provided by Ms Moreira, MyKludo agreed to undertake a review of the papers provided and to prepare a written opinion as to the processes undertaken. The review was to consider procedural fairness and best practice for conducting workplace investigations and the handling of whistleblower complaints.

The report does not attempt to make findings concerning the complaints made by staff of TI-S or by Moreira during the 2018 – 2020 period.

Over the course of March and April 2021, MyKludo reviewed the documents provided by Ms Moreira and prepared this report. Ms Moreira was not involved in directing the content or structure of this report. Whilst she has provided input on editing the final report, she has played no part in determining the opinions expressed in this report. The opinion expressed in the report is the sole view of the author based on the documents viewed.

## **ABOUT THE AUTHOR**

The report has been prepared by Harriet Witchell, BA (Hons), Grad Dip Psychology, MSc Forensic Psychology. There was no pre-existing relationship between Moreira and Ms Witchell prior to her engagement to write this report.

Ms Witchell was a Lecturer in Policing (Investigations) with Charles Sturt University in Australia for 9 years. In 2001 she started her own investigations company. She has operated two successful investigations businesses since this time and supervised a staff of more than 30 investigators engaged in conducting investigations nationwide. Many of these investigations involved allegations of bullying and harassment and included whistleblowers and protected disclosures.

Ms Witchell served as a member of the Review Panel for the Victorian Police Registration and Services Board between 2017- 2020 and has presented at numerous national and international conferences on investigation related topics. She is widely considered a thought leader in the field of workplace investigations in Australia.

She has published two books, one concerning Procedural Fairness, the other on Investigative Interviewing. The latter was awarded an IPPY award in the International Business Class in 2013.

## **LIMITATIONS**

The report is limited in its conclusion by the documents made available to the reviewer and no interviews have been conducted with the parties involved. Where observations of standards of practice have been made, wherever possible reference has been made to TI's own documents or to international standards. In some instances, reference has been made to Australian legal standards and this is the home jurisdiction of the reviewer.

While countries and courts may have slightly different interpretations of the legal principles involved, the concepts of the presumption of innocence, procedural fairness, conflicts of interest, and the best practice handling of whistleblower complaints, are fairly universal.

In the management of complaints and misconduct investigations to meet the requirements of a fair and open process, the principal of procedural fairness is commonly applied.

## PROCEDURAL FAIRNESS

Procedural Fairness is a legal principle comprising of three rules:

- **The fair hearing rule**, which means that parties negatively impacted by an administrative decision have the right to know the issues or allegations raised, be given sufficient time to provide a response, and that the decision maker takes these responses into consideration before making a decision.
- **The no bias rule**, which provides that the decision makers will be independent and unbiased in their decision making. In Australia the decision makers include those tasked with conducting investigations as well as those who make the final decisions concerning the outcome.
- **The evidence rule**, that decisions will be based on the evidence provided and not on speculation or gossip.

## TRANSPARENCY INTERNATIONAL

Transparency international is a not for profit agency established in 1993 to promote anti-corruption work around the globe. It has Chapters in over 100 countries, and a Secretariat in Berlin, Germany.

Transparency International's mission is to:

*"stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society."*

TI-S has a suite of policies and procedures which govern the way the organisation operates. These have been subject to change over the past few years however, the following policies have been viewed at the time of writing this report as they appear on the organisations website.

## CONFLICT OF INTEREST

At law conflict of interest can be “actual”, “perceived” or “potential”. When dealing with a conflict of interest in an investigative sense it is imperative to avoid all possible conflicts of interest on the part of the investigator, to maintain the perception and actual independence of the process and decision making. A conflict of interest in the investigator or decision maker would amount to a breach of the fair hearing or biased decision-making rules for procedural fairness.

The TI Conflict of Interest Policy (CoI) is dated 28 October 2004 last updated 30 November 2016 Annual Membership Meeting (<https://images.transparencycdn.org/images/Conflict-of-Interest-Policy.pdf> viewed on 21 April 2021) states:

*“It is essential that everyone associated with TI or any of its National Chapters be highly sensitive to potential conflicts of interest.”*

*“For the purpose of this policy, a conflict of interest is a situation where any Board of Directors associated with TI and/ or a National Chapter of TI is confronted with choosing between the duties and demands of their position and their own private interests.”*

This includes Board members. The role of the Board Ethics Committee is detailed at point 7.

### ***“7. TI Board’s Ethics Committee***

*TI’s International Board of Directors has established an Ethics Committee for the purpose of providing advice on ethical questions to any Board of Directors associated with the movement. The Terms of Reference and contact details of the Board Ethics Committee can be obtained through the TI-Secretariat or the Internet.”*

## WHISTLEBLOWING

TI positions itself as an international leader in whistleblower management and ethical conduct. The organisation promotes and advises governments around the globe on effective whistleblower policies and has been instrumental in the development of the EU Directive on Whistleblowing, which will come into effect in November 2021 across the EU. The TI website states:

*“Transparency International, working with a broad coalition of civil society organisations, trade unions and journalist associations, has been advocating for a comprehensive whistleblower directive for many years. We welcomed the Commission’s proposal in April 2018*

*and supported the strong Parliament report, in November 2018, which incorporated many of our main policy recommendations.” ( <https://transparency.eu/press-release-historic-day-whistleblowers/> viewed 21 April 2021)*

The TI Whistleblower policy states:

*“The TI-S Whistleblower Policy (currently under review) can be used by any individuals working under any form of contract or agreement with the secretariat to raise concerns about misconduct and wrongdoing, such as acts of a fraudulent, dangerous or criminal nature, incidences of corruption or any other serious reputational risk for the secretariat, and suspicion thereof (<https://www.transparency.org/en/the-organisation/ethics-integrity>. viewed 21 April 2021).*

At the time of the complaints being received TI had a whistleblower policy (2014 as per <https://images.transparencycdn.org/images/Whistleblower-Policy.pdf> viewed on 21 April 2021). The policy states that the Board Ethics Committee will oversee complaints related to the Managing Director or Deputy Managing Director. It also states that recipients of concerns or reports have a “*duty to ensure appropriate follow-up as outlined under 9.*” The policy further states that reporters will receive a response within 5 working days and a more detailed response at 30 days following the report.

Section 7 of the policy notes that the identity of the reporter will be treated in confidence and not disclosed and sensitive information will be handled in accordance with German Data Protection Laws. Anonymous complaints i.e. without disclosing your personal data to anybody, are permitted, but the policy notes that anonymous complaints may be impossible to resolve without revealing your identity. “*This notwithstanding, your identity will not be revealed without prior written permission unless required to do so by law.*”

To further understand how the conduct subject to this review should be viewed, a deeper understanding of what constitutes best practice whistleblower policy, is required. It is noted that one of Australia’s leading academics on whistleblower best practice is a current member of the Board of Directors and was a member of the Board Ethics Committee at the time the complaints were initially raised, until June 2019.

In an article written by Paul Latimer and A J Brown, in the UNSW Law Journal ( 2008 Vol.31(3)766-794) Whistleblower Laws: International Best Practice, it states:

*“Effective whistleblower protections must include access to the normal legal process including trial by jury, protection for the whistleblower and protection of lawful disclosure. There must be no retaliation and there must be effective resolution of the wrongdoing disclosed by the whistleblower.”*



*“Best practice includes prohibiting employers from restraining free speech by imposing confidentiality on a whistleblower with policies, rules or by non-disclosure agreements”*

Best practice whistleblower policies contain three important elements:

1. The ability for a person to make a complaint, sometimes anonymously
2. The protection of the complainant from retribution, and
3. The effective investigation or resolution of the complaint.

## CHANGES TO THE INTEGRITY SYSTEM WITHIN TI-S

The transformation of TI-S from a holacratic system to a hierarchical one was entrusted to Moreira on her appointment in 2017. The history of this is covered in the report provided by the IEP dated 20 May 2020. What is clear is that prior to her appointment the TI-S had been experiencing a difficult period. Further, Moreira was not appointed by the substantially new Board which came into office after the November 2017 Annual Membership Meeting but had been appointed by the previous Board.

The IEP Report confirms that the move from a holacratic system to a hierarchical system was the outcome of independent assessments recommending changes to the structure of TI-S, prompted by a report by PwC in 2015 which concluded that TI-S *“suffered from a lack of cooperation between staff, was too hierarchical and ... there was no clear delineation between the tasks of the MD and the Board, in particular the Chair”*.

The IEP Report added:

*“These structural issues were also accompanied by a lack of continuity or a vacuum at the top management level of TI-S. The former MD was removed from office by the Board in February 2016. The proposed successor then did not accept the position due to protests about the lack of a formal selection procedure. From February 2016 until October 2017, a total of three people worked as MDs, sometimes parallel to each other with different roles. This situation led to the Chair increasingly managing the organisation and the steady erosion of the intended allocation of tasks between the Board and the MD. When the new MD took over the management of TI-S in October 2017, there was practically no functioning internal structure model. Staff were uncertain and frustrated and has (sic.) high expectations of the new manager.”*

Against this backdrop, of relevance to this review was the timing of the implementation of a new Integrity System.

During her interview with Taylor Wessing on 6 November 2019, Moreira explained the process and timeline for the changes to the TI-S Integrity System since her commencement as Managing Director in October 2017.

When Moreira started, TI-S had Ethics Advisors and a Council which was a staff-elected group of staff. This group advised Moreira when she started in her role, that it needed a review of the Ethics Structure. This was taken to the Board of Directors, and an external provider was engaged to conduct a review.

The review report was published on 16 August 2018.<sup>1</sup> This report observed that all staff spoken to were eager to talk to the review. *“That eagerness stemmed from a deep dissatisfaction. Nobody thinks that the current Integrity System of TIS is working properly.”*

The report identified six problems:

1. The system was overloaded
2. Cases are never closed
3. Lack of clarity over definition of integrity-violation
4. Ethics advisors and council were in an antagonistic relationship with management
5. The system was dealing with value-conflicts and not equipped
6. Low level of trust in Integrity System and each other.

The advisors stated that the Integrity System was dysfunctional with too many avenues to report and too many avenues for recourse, creating impunity and lowering trust in the system.

The advisors recommended the appointment of specialized resource, consisting of an Integrity Officer at TI-S and a legal officer to oversee all investigations. The advisors stated that the Board Ethics Committee *“should function as a recourse of last resort for the whole movement. However, it should let any concrete investigations be carried out by the integrity officer of TIS.”*

Prior to July 2018 TI-S had an Ombudsman. This position was vacant from July 2018 until the end of 2018 when a new Ombudsman was hired following the review process and on the advice of the external consultants.

On 19 October 2018 new Terms of Reference for the Board Ethics Committee was approved. This was the first update to the Terms of Reference for the Ethics Committee since 2003. Under the new Terms of Reference, the Committee retained a role in respect of complaints relating to the Managing Director and Senior

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<sup>1</sup> Attachment 6.

Management of TI-S. Their role included responsibility, *“to receive, act upon and advise the Board of actions to resolve the issues, including the use of such processes as necessary to ensure independence, objectivity, impartiality and public confidence in their resolution.”*<sup>2</sup>

Anna Turus was appointed as an internal Integrity Officer in February 2019.

The following is a quote from Moreira’s interview with the Taylor Wessing investigator in November 2019:

*“When Anna started she immediately started drafting documents, which were meant to explain the new system to the staff but we had to overcome resistance from the BEC [Board Ethics Committee]. One recommendation of the ethics report was that the BEC should keep to its oversight role and that it should not interfere with individual cases, unless complaints were directed at her – the MD.”* (The transcript is notated by Moreira as follows: *“Inaccurate. For clarification: One recommendation of the ethics report was that the BEC should only perform its supervisory function and that the Integrity Officer should report to the Managing Director. The Integrity Officer should report directly to the Board only in the event of allegations against the Managing Director.”*)

The transcript continues: *“The general reporting line of the Integrity Officer was to the MD, but if that would raise conflicts of interest Anna would report to the BEC. The BEC did not want to accept this role, kept interacting with staff and did not publicly step back. This stopped Anna from publishing the new system, effectively leaving her role in the system – since it did not exist before – undefined to the staff.*

*This situation was even worse for the staff, since during the phase of October 2017 until October 2018 they still had the old structure”.*

Moreira told the Taylor Wessing investigator that when the Guardian article was published on 21 August 2019, she was told to step aside from the Integrity System and the Integrity Officer was told to align with a member of the Board. A new Integrity System was signed off by the Board of Directors in September 2019. Moreira stated that this new system did not comply with the external recommendations or those of the Integrity Officer, Anna Turus.<sup>3</sup>

Ms Turus resigned from TI-S in September 2019 shortly after the new Integrity System was approved. She wrote a letter to the Chair and the Managing Director of TI-S outlining the reasons for her resignation. In this correspondence Ms Turus confirms the difficulties that she experienced in her role with the failure of the Board of Directors to agree to the new Integrity System and its implementation. Ms Turus stated that the Board Ethics Committee had misapplied the requirement for her to

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<sup>2</sup> Attachment 4

<sup>3</sup> Attachment 32

have a dual reporting line to accommodate complaints against the Managing Director, as the Integrity Officer having two managers. She was told that her primary reporting line was to the Board Ethics Committee, and often had to respond to unlawful requests for information from the Board Ethics Committee and members of the Board of Directors. On 22 August 2019 Ms Turus states that she was told that the Managing Director was to have no further involvement with the Integrity System and all matters needing formal input would need to be shared with the Support Group of the Board.

Ms Turus highlighted the high level of distrust in the Integrity System which was reinforced by the actions of the Board Ethics Committee, 1. in not seeking her support in the handling of allegations concerning the Secretariat and 2. In the approval of the Terms of Reference for the Board Ethics Committee in September 2019 as an alternative reporting line for staff of the TI-S for anyone who is “unaware or no longer trusting the lower reporting channels”. Ms Turus stated that such actions undermine the Integrity System by indicating that even the Board of Directors does not trust the system.

In September 2019 new Terms of Reference were approved for the Board Ethics Committee. These contained changes to the previous Terms of Reference that increased the active involvement of the Board Ethics Committee in ethical matters and discipline investigations, contrary to the recommendations of the review into the Integrity System and against the advice of the Integrity Officer. The changes indicate a reduction in the level of maturity of the TI organisation in respect of integrity matters, giving the Board Ethics Committee the authority to intervene on any integrity matter, at the request of “any party” and recommend, “remedial action needed, including re-investigation or re-consideration”. The Board Ethics Committee’s Terms of Reference was also widened to include the capability to make recommendations concerning the Managing Director, Integrity Officer and Senior management on disciplinary action.<sup>4</sup>

The history and the structure of the Integrity System recommended by the review is outlined on the TI Website.<sup>5</sup>

It is noted that the Independent Ethics Panel report makes no mention of the changes to the Integrity System at the time of the complaints.

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<sup>4</sup> Attachment 5

<sup>5</sup> <https://www.transparency.org/en/the-organisation/ethics-integrity>

### 3. METHODOLOGY

The investigator met with Moreira via zoom on two occasions and was provided with copies of relevant documents related to the case as detailed in the list of documents.

A review was also conducted of the TI website, Wikipedia and relevant press articles.

The contents of this report are based on the information provided and do not take account of documents or communications which have been excluded from the view of MyKludo. The findings of the review are based on documentation evidence only and no parties have been interviewed or responses sought in relation to obtaining further explanations or information on the facts or circumstances surrounding the documents.

#### TIMELINE OF EVENTS

1. October 2017. Moreira appointed as Managing Director of TI-S in Berlin, Germany.
2. November 2017. 9 new members of the 12 member Board of Directors appointed, including the Chair and Vice Chair.
3. 16 August 2018. Report for the Review of the Ethics Framework and Policies at the Transparency International Secretariat. Produced by Governance and Integrity International<sup>6</sup>.
4. September 2018. Review of the Integrity System including recommendations and implementation plan approved by the Board. The plan included changes to the Board Ethics Committee Terms of Reference and the appointment of an Integrity Officer.
5. October 2018. Ireland Chapter requests an independent investigation into the management of TI-S for the period during 2018.
6. October 2018. Case #2 contacts AJ Brown member of Board Ethics Committee and reports bullying and harassment by the Senior Management Team.
7. November 2018. Case #3 contacts a member of Board Ethics Committee and raises concerns of discrimination, harassment and bullying by members of the Senior Management Team.
8. January 2019. Case #1 reports to Board Ethics Committee regarding concerns.
9. January 2019. Case #2 repeated their concerns to AJ Brown.
10. February 2019. Appointment of Integrity Officer at TI-S.

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<sup>6</sup> Attachment 6

11. February 2019. Board Ethics Committee recommends to the Board of Directors an independent investigation of the complaints, request denied by the Board of Directors.
12. 24 April 2019. Upon decision to resign, Case #2 submits formal complaint to the Chair of Board and Board Ethics Committee, listing complaints against the Senior Management Team and the failure to respond to complaints by members of the Board Ethics Committee and the Board of Directors.
13. 24 April 2019. Upon decision to resign, Case #3 submits formal complaint to Board Ethics Committee, requesting for independent review of management of TI. The complaints include allegations against the Senior Management Team and failure to act by members of the Board Ethics Committee and the Board of Directors.
14. 25 May 2019. Board of Directors approves a new Terms of Reference for the Board Task Force to conduct a TI-S Review of the Transformation Process.
15. 28 May 2019. Emails between Case #3 and AJ Brown. AJ Brown explains why he hasn't progressed action by Board Ethics Committee.
16. 29 May 2019. Email from Board Ethics Committee to Moreira containing allegations regarding Case #2. Email does not include full complaint document.
17. 29 May 2019. Moreira responds to the Board Ethics Committee email outlining how the complaints would be handled under the new Integrity System which was in place at the time the complaints were made. Moreira recommends an independent external investigation.
18. 3 June 2019. Email from Case #3 to AJ Brown states a clear expectation that an investigation should have commenced despite Case #3's request for confidentiality.
19. 8 June 2019. Email from Oya Ozarslan to Case #3 outlining commencement of investigation and process under 'old' Board Ethics Committee procedure refers to section 11.
20. 9 June 2019. Moreira provides a report to Board of Directors requesting an independent investigation of the complaints in accordance with new Integrity System.
21. June 2019. Resignation of AJ Brown from Board Ethics Committee. Reasons unknown.
22. 29 June 2019. Email from Board Ethics Committee to Moreira. States that full complaint of Case #2 has been sent to Moreira in the email.
23. 11 July 2019. Email from Board Ethics Committee to Moreira containing outline of complaints of Case #3.
24. Moreira provides a second response to the Board of Directors on 11 August 2019 declining to respond because the Board Ethics Committee did not engage with Moreira to discuss how they would handle the complaints relating to the Board Ethics Committee members.



25. Guardian article published on 21 August 2019: "Transparency International staff complain of bullying and harassment".
26. 22 August 2019. Board resolution made to conduct an independent investigation. Terms of Reference for independent investigation approved. Terms of Reference include investigation of complaints concerning the Senior Management Team and members of the Board Ethics Committee and Board of Directors.
27. 4 September 2019. Moreira provides a response to the Board concerning the resolution to conduct an independent investigation.
28. 5 September 2019. Letter from 58 Former TI employees to the Board of Directors claims TI-S has toxic workplace and request the investigation review cases over a 5 year period.
29. 6 September 2019. Letter from donors to Board of Directors outlining donors expectations of the independent investigation.
30. 24 September 2019. Letter from the Chair of Board to Moreira's solicitor.
31. 26 September 2019. Letter from Moreira's lawyers which raises questions over integrity of Taylor Wessing investigation and presence of allegations against the Board.
32. 2 October 2019. Letter from Moreira's lawyer to Taylor Wessing requesting details of allegations.
33. October 2019. Prior to interview, email exchange between Moreira's lawyer and Taylor Wessing investigator and TI Chair regarding clarification of the allegations.
34. 29 October 2019. Letter from Moreira's lawyer to Taylor Wessing stating the date they were informed of the subject of the allegations.
35. November 2019. Correspondence between Chair and Moreira's lawyers on provision of the final report.
36. 16 November 2019. Statement by Board to Annual Membership Meeting (AMM) including statement that the Board was unaware if there were any allegations against members of the Board.
37. November 2019 AMM Resolution – agreement to set up three-member independent panel to advise the Board Ethics Committee and investigate complaints against the Board of Directors.
38. Update to TI members on 16 November 2019 that investigation report will be received on 22 November 2019 and members will be updated in due course.
39. Taylor Wessing report provided to the Board of Directors. Report is dated 22 November 2019
40. 30 December 2019. Moreira submits her initial 4 complaints to Taylor Wessing, the Integrity Officer and the TI Ombudsman. The complaints are dated 27 December 2019.
41. 1 January 2020. Emails from Taylor Wessing to Moreira stating they are no longer working for TI.



42. 6 January 2020. Moreira writes to Integrity Officer and Ombudsman lodging her complaints against the Board, Board Ethics Committee, TI Ireland, and Works Council in light of response from Taylor Wessing.
43. 6 January 2020. Ombudsman writes back declining to act on complaints from Moreira.
44. 8 January 2020. Moreira asks for explanation from Ombudsman.
45. 10 January 2020. Ombudsman writes back saying that she is not a whistleblower.
46. 27 January 2020. Moreira makes additional complaints to Board regarding failure of the Board to support her in pursuing redress from the Guardian for alleged inaccuracies and defamations in the article.
47. 2 February 2020. Moreira is dismissed from Managing Director role.
48. 4 February 2020. Email to members from Board regarding change in Managing Director.
49. 20 February 2020. Chair of Board wrote to Hartmut Baumer, Chair of Transparency International's Germany Chapter, to request that he form the Independent Ethics Panel.
50. 26 February 2020. A redacted version of the Taylor Wessing report provided to Moreira.
51. 5 March 2020, Baumer and Conze sign agreement to form the Independent Ethics Panel (IEP).
52. 18 March 2020. IEP meet with staff at TI-S, the Chair of Board, Works Council and Acting Managing Director.
53. 20 March 2020. IEP signs a non-disclosure agreement and receives information from Board.
54. 23 March 2020. Moreira provides a statement of response to the Taylor Wessing report stating that her response should be published alongside the Taylor Wessing report as promised by the Chair of the Board.
55. February to May 2020: exchanges between Moreira's lawyers and the Board regarding a possible settlement. However, no agreement reached and on 12 May 2020 Moreira's lawyer writes to TI informing it that the negotiations have failed.
56. 18 May 2020. TI responds in writing to Moreira's lawyer acknowledging that negotiations have failed.
57. 20 May 2020. Report of the Independent Ethics Panel published.
58. 28 May 2020. Moreira provides her written response to the Independent Ethics Panel Report, intended for publication alongside the IEP report, as promised by the Board.
59. 2 June 2020. Press release on TI pages publishing the IEP and Taylor Wessing reports without Moreira's responses
60. Moreira obtained an injunction forcing TI to remove the reports from the website as her responses were not published with the reports.
61. 9 June 2020. TI publish an amended statement on the TI website.

62. September 2020. Moreira writes to the TI Ombudsman requesting that her complaints be investigated by the Ombudsman as a whistleblower.
63. 5 November 2020. Moreira writes to Annual Membership Meeting (AMM) delegates requesting an independent investigation of her complaints concerning the Board.
64. AMM minutes of 6-8 November 2020 indicate that AMM included a presentation of the IEP findings to a limited audience.
65. 11 November 2020. Email from TI Ombudsman relaying information from the Chair of the Board stating that the Board has openly discussed Moreira's complaints with members and the members voted not to pursue them any further.

## 4. HANDLING OF INITIAL COMPLAINTS

The Independent Ethics Panel (IEP) Report sets out the timeline of events from October 2017 to January 2020. This timeline identifies that complaints about the management of TI-S were initially raised by the Irish Chapter with members of the Board in October 2018. These complaints were followed by individual complaints being made to members of Board Ethics Committee by the complainants in Case #2 in October, November 2018 and in January 2019, and by Case #3 in October, November 2018, and February 2019.

In Moreira's first complaint about the Board of Directors' handling of these complaints, Moreira stated that the Terms of Reference for Board Ethics Committee were to be reviewed as part of the changes to the Integrity System. Despite the Board of Directors approving the new Integrity System in September 2018, she argued, the Board of Directors introduced a new Terms of Reference for Board Ethics Committee in October 2018 but without updating its procedures.

Moreira states that the new External Independent Advisor, also known as the Ombudsman, was in place from December 2018 and the Integrity Officer was in place from February 2019.

The IEP Report stated that an initial assessment was provided by Board Ethics Committee to the Board of Directors in December 2018 but this document has not been viewed.

In January 2019 an additional employee referred to as Case #1 made an ethical complaint concerning the Managing Director and Senior Management Team.<sup>7</sup> It is not clear what action was taken in respect of this complaint. Moreira was never informed of this complaint. She remained unaware of the complaint until reference was made to it in the Taylor Wessing report.

Case #2 repeated their complaint to AJ Brown in January 2019. It is not clear what action was taken, if any, in response to the complaints made to the Board Ethics Committee in this instance.

It is reported in the IEP Report that in late 2018 and early 2019, the Board was aware of serious problems at TI-S. The report states that the Board had a choice to conduct an independent investigation or to fully support the Managing Director and continue

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<sup>7</sup> Attachment 58 IEP Report

with the structural changes at TI-S.<sup>8</sup> The IEP Report states that the Board decided to support the Managing Director and continue with the changes. There is no comment made as to what action if any was to be taken regarding the complaints. The existence of complaints was not raised with Moreira or the Senior Management Team of TI-S at this time.

On 24 April 2019 the employees referred to as Case #2 and Case #3 made their complaints formal with members of the Board Ethics Committee. Case #3 requested confidentiality until 7 June 2019.

### **COMPLAINT BY CASE#2**

According to information provided by Moreira regarding the complaint submitted by Case #2, when Case #2 formalised his complaint – in this document, Case #2 stated that he had raised his complaints with his line manager, HR, members of the Senior Management Team including the Managing Director and members of Board Ethics Committee. It is expressly stated in the complaint that no action had been taken since he raised his initial complaints, and he could see no change in his circumstances, so he had decided to resign from TI.

The allegations made by Case 2# include direct instances of bullying and harassment by members of the Senior Management Team and a failure to respond to his complaints by his line manager, the Managing Director and members of Board Ethics Committee.

### **COMPLAINT BY CASE #3**

Based on the complaint information relating to Case #3 supplied by Moreira, which includes a copy of the complaint lodged by Case #3 on 24 April 2019. Case #3 first raised concerns with AJ Brown in October 2018 and again in November 2018. In February 2019 Case #3 approached Oya Ozarslan, Board member and member of Board Ethics Committee, and AJ Brown, Board member and member of Board Ethics Committee, again and acknowledged that at that time, he asked to “remain anonymous and for concerns to be treated confidentially”. Later the official complaint document of Case #3 states that he recommends an independent investigation along the lines of recent investigations conducted by Save the Children and Amnesty. He states:

*“This is needed because there’s substance to the concerns that haven’t been addressed by the Board. These concerns are too serious for just the Board Ethics Committee to investigate... Publishing this report, as other major NGOs have done, even if it brings to light management abuses (and the Board’s negligence in allowing them) will be to the credit of TI’s reputation for governance.”*

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<sup>8</sup> Attachment 58 – IEB Report page 15 para 3

These statements indicate that by 24 April 2019 Case #3 widened his complaint to include the perceived failure to act on his complaints by members of the Board.

It is reported by the IEP that in April 2019 the Board Ethics Committee recommended to the Board that an independent investigation be commissioned to consider Case #3's complaints. This request was declined by the Board who preferred an internal process executed by the Board Ethics Committee.

Moreira states that the Board Ethics Committee was discontinued, and a Task Force established to Review the Transformation process. The Task Force never became operational and was later renamed the Support Group in June 2019. However, reference continues to be made to the Board Ethics Committee in the Board documents and in September 2019 a new Terms of Reference for the Board Ethics Committee was on the agenda at the Annual Membership Meeting (AMM) 2019, indicating that the Board Ethics Committee was not replaced by the Task Force/support group, but co-existed.

It appears that despite the Board being advised to withdraw from active involvement in the Integrity System by its own Independent review, agreed to in 2018, it attempted to sidestep the recommendation by establishing a Task Force to replace the activities of the Board Ethics Committee, and later amended the Terms of Reference of the Board Ethics Committee but continued to have oversight of this function of the Integrity System, contrary to the agreed changes to the Integrity Plan.

This reluctance of the Board to follow the agreed changes to its process is corroborated in the letter sent by the Integrity Officer, Anna Turus, in November 2019. Ms Turus described the actions of the Board Ethics Committee as creating double reporting lines, indicating there was a lack of consensus on implementing the changes to the Integrity System.<sup>9</sup> These issues are also central to the conflict that Moreira was attempting to address with the Board during the handling of the complaints against her in 2019.

Email correspondence from Oya Ozarslan in June 2019 to complainant in Case #3 sets out that the Board Ethics Committee will investigate the complaints in accordance with Section 11 of the Board Ethics Committee Terms of Reference. This is despite the new Integrity System being in place and an integrity officer being employed since February 2019.

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<sup>9</sup> Attachment 38.

## INVESTIGATOR'S COMMENT:

The formal complaints of Case #2 and Case #3 contained complaints about members of the Board and the Board Ethics Committee. It is a conflict of interest for Board Ethics Committee to investigate the complaints concerning itself and as such any inquiries made by the Board Ethics Committee into these complaints does not meet the standards expected of a procedurally fair process.

The establishment of the Task Force, and later the Support Group, appear to be by attempts by the members of the Board Ethics Committee to create the appearance of conforming with the change process while in practice retaining the same functions.

## INITIAL ALLEGATIONS SENT TO MOREIRA FOR RESPONSE

On 29 May 2019 Natalia Soebagjo, TI Board member and Chair of the Board Ethics Committee, sent an email to Moreira outlining the allegations and complaints brought forward to the Board in Case #2. The email states that *"between 2018 to 2019 he was the subject to bullying and harassment in the workplace by the Senior Management Team. He lists these actions as travel bans, arbitrary timelines, extra document requests, denials to provide security support to chapters and ignoring emails."*

The complaint stated that he raised his complaints with the ethical system prevailing at the time, with various offices and officers, starting with:

- The HR Manager
- Managing Director
- Board Chair
- The Works Council
- The Board Ethics Committee.

The email specifies that the complaint is deemed to be within the remit of the Board Ethics Committee on the following grounds:

1. The complaint is about actions that are alleged to be in violation of the TI International Code of Conduct as well as TI Values and Principles;
2. It involves the actions and inactions of the Managing Director and the Senior Management Team;

3. The complainant had been in contact with a member of the Board Ethics Committee for advice on a large part of the basis for the complaint prior to his resignation based on confidentiality.

The email reported that the requirement for anonymity was withdrawn via email by the complainant on 7 May 2019.

The email demanded that Moreira provide a formal response to the allegations within 15 days so that they can prepare a report and recommendation to the Board.

#### INVESTIGATOR'S COMMENT:

Examination of the email correspondence between Case #2 and AJ Brown indicates that the complainant made complaints to the Board Ethics Committee in October 2018 and January 2019. Representing this as "advice" is potentially misleading. Case #2 included inaction by Board Ethics Committee in his formal complaint dated 24 April 2019.

The complaint includes the inaction of members of the Board Ethics Committee and as a result the Board Ethics Committee cannot conduct the investigation without bias.

The organisation's own whistleblower policy would classify Case #2 and Case #3 as whistleblowers. The purpose of a whistleblower policy is to enable complaints to be raised in confidence and anonymously, if necessary, with the purpose of providing protection to the reporter and to enable the organisation to respond to the complaints. It is noted that these complaints were not anonymous, they were made requesting confidentiality. It is unclear why the Board Ethics Committee believed that the requirement for confidentiality prohibit investigation of the complaints. This would seem counter to good whistleblower handling.



## BOARD TASK FORCE ESTABLISHED TO CONDUCT REVIEW OF TRANSFORMATION PROCESS AT TI-S

Attached to the email sent to Moreira on 29 May 2019 was a Terms of Reference for the Board Task Force (BTF). The Terms of Reference detailed the purpose of the review and identified the existence of complaints regarding the culture of TI-S. The Terms of Reference state:

*“Staff complaints have been raised directly to BEC [Board Ethics Committee] or through informal structures which point to dissatisfaction with the general path of travel taken by Management. Questions have been raised about some of the management decisions, the leadership style, the organisational culture where speaking out is not permitted and selection of programme priorities, among others. Some chapters have equally raised concern about the erosion of support from TI-S from their programs and operations.”*

### INVESTIGATOR’S COMMENT:

The establishment of the Task Force and a review of the Transformation process appears to be a reasonable strategy for the Board of Directors and articulates the issues that have been raised by the complainants to the Managing Director together with a clear focus on the desired purpose for the review.

The Board Ethics Committee also wrote to Moreira at the same time with a letter of allegations indicating that two processes were occurring concurrently, a disciplinary process and a review process. The ethical problems with the Board Ethics Committee conducting a disciplinary process concerning these allegations is addressed elsewhere in this report.

The reviewer has not been informed whether the Task Force ever reported on the Review of the Transformation Process.

## RESPONSE FROM MOREIRA ON 9 JUNE 2019

Moreira responded to this email on 9 June 2019 providing observations as the Managing Director and as the accused. Specifically, Moreira stated that the new Integrity System is in place and she requested that this complaint be dealt with via the new system to ensure that the process is conducted with fairness, independence and professionalism. Moreira acknowledged that because the Integrity System was new and the TI policies and Terms of Reference for the Board Ethics Committee had not yet been updated, the complaint was referred directly to the Board Ethics Committee.

Moreira also raised a number of points relating to fairness and bias in the investigation conducted by Board Ethics Committee, stating:

- A. She had not been provided with a copy of the complaint or details of the alleged conduct and could not therefore reasonably provide a response;
- B. She was being asked to respond to allegations that appear to be levelled at a number of people, not just herself;
- C. The email mentioned complaints reported to other parties but no information is provided about what action, if any, was taken;
- D. The complaint mentioned that there had been prior contact with a member of Board Ethics Committee, which raised issues of bias;
- E. The 15-day deadline was based on the Board Ethics Committee procedure in Case of Complaints, which relates to 15 days to respond following provision of the complaint. As no complaint had been provided, she was unable to provide a response within the time frame.

### INVESTIGATOR'S COMMENT:

In the opinion of the reviewer, these issues are all valid concerns and go towards a lack of procedural fairness in the process implemented by Board Ethics Committee and the Board of Directors.

## 9 JUNE 2019 MOREIRA REPORT TO THE BOARD

On 9 June 2019, Moreira presented a report to the Board of Directors. In her report Moreira outlined the progress of the transformation process to date. Moreira stated that since October 2018 she had felt a withdrawal of support by the Board of Directors

from herself and the Senior Management Team; and that the Board of Directors had increasingly become involved with direct relations with the Works Council, undermining the authority of the Senior Management Team at TI-S and the role of the Secretariat in the movement.

Moreira referred to pending legal action from Cobus de Swardt, the former Managing Director who was dismissed by the Board of Directors in 2017.

Examination of Wikipedia indicates that *“The departure of de Swardt from Transparency International was contentious and led to a settlement agreement between Transparency International and de Swardt in a Labour Court in Berlin”*.

The entry also makes reference to a “statement on allegations” by Mr de Swardt which was located on the TI website on 26 October 2018 and Retrieved 1 April 2019 ([https://en.wikipedia.org/wiki/Cobus\\_de\\_Swardt](https://en.wikipedia.org/wiki/Cobus_de_Swardt) Viewed on 29 April 2021).

Moreira identified this pending action by de Swardt as a public relations risk for TI.

The Moreira report also detailed that the new Integrity System which had been approved by the Board of Directors in September 2018 was not fully functional and as such the Board Ethics Committee should adopt their new Terms of Reference to enable the system to operate fully.

Moreira also stated that the complaint raised by the Board Ethics Committee to the Managing Director on 29 May 2019 should be referred through the new Integrity System and an independent investigation conducted with the reporting line from the external investigator to the Chair of the Board.

The report affirmed Moreira’s commitment to TI and the transformation process commenced at the start of her term in office. She attached the email sent to Board Ethics Committee on 29 May 2019 in response to the allegations regarding Case #2.

## **AJ BROWN RESIGNS FROM THE BOARD ETHICS COMMITTEE**

It is noted that in June 2019, AJ Brown is reported to have resigned from the Board Ethics Committee. He retained his position on the Board of Directors. It is not known why he resigned his position on Board Ethics Committee.

## EMAIL FROM BOARD ETHICS COMMITTEE TO MOREIRA ON 29 JUNE 2019

On 29 June 2019, the Board Ethics Committee sent Moreira a full copy of the complaints related to Case#2. The document requested Moreira answer three questions concerning the complaints:

- were the complainants targeted and “pushed out”;
- were they treated fairly; and
- were they bullied and harassed.

The email then stated: *“this is not an investigation which is not within the Board Ethics Committee’s remit to conduct an investigation, nor does it have the capacity to do so. Rather, our intention is to let you know that these issues have been raised to us and we need to assess how best to move forward with it.”*

### INVESTIGATOR’S COMMENT:

In the reviewer’s opinion, it would not be possible for Moreira to provide answers to these questions without an investigation. It would not be possible for Moreira to commission such an investigation as she was subject to some of the complaints.

As a result of the above, Board Ethics Committee’s request of Moreira appears unreasonable.

## EMAIL FROM BOARD ETHICS COMMITTEE TO MOREIRA ON 11 JULY 2019

On 11 July 2019, The Board Ethics Committee sent Moreira another email advising her that Board Ethics Committee had also received a complaint from another employee (it is assumed that this is Case #3) regarding unethical management at TI-S. The email reported that allegations had been made but did not particularise the alleged misconduct. The email demanded a response from Moreira to six issues within 15 days “as per Board Ethics Committee procedures”.

Email correspondence indicates that Case #3 was corresponding with AJ Brown<sup>10</sup> and the complainant anticipated that the Board Ethics Committee would commence an investigation of the issues raised by them earlier in the year. After an email was sent on 3 June 2019 to the complainant by AJ Brown which explained that no action was being taken due to the request for confidentiality, the complainant responded:

*"You tried to explain that my letter's confidential status meant that you did not contact those who agreed to speak with the BEC. I'm surprised that my request of confidentiality prevented you from reaching out to people who agreed to discuss their experiences to you. I will not now encourage anyone to contact you and the BEC. In my view, the BEC and the board has enough material to take action, but additional voices will increase the power of the call for an independent review of staff well-being. But rather than place the onus again on employees and ex-employees to hurry forward to raise their issues by contacting you, I think it is now incumbent upon the ethics committee or board to decide whether to reach out to these additional voices to gather further information. They expressed willingness to talk to you, which took some courage. I won't ask for more ie proactively seeking to express their disappointment about TI-S management. Whether you and your fellow board members have a matching courage to see a responsibility to act is another thing."*<sup>11</sup>

## INVESTIGATOR'S COMMENT:

Analysis of the Case #3 complaint shows that allegations were also made against members of the Board and Board Ethics Committee and as such the Board Ethics Committee have a conflict of interest in handling these complaints and any inquiries are unable to meet the basic requirements of procedural fairness.

The particulars of the complaint were not provided to Moreira despite the complaint documents being detailed and specific in nature. This denies Moreira procedural fairness.

Giving Moreira 15 days to respond is considered unreasonable because the issues raised in the complaint are complex and involve allegations concerning the actions of others, in addition to her own management of the issues.

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<sup>10</sup> Attachment 8.

<sup>11</sup> Attachment 8.

## **RESPONSE FROM MOREIRA TO BOARD ETHICS COMMITTEE 11 AUGUST 2019**

Moreira responded to Board Ethics Committee via email on 11 August 2019. She acknowledged the emails of the 29 May and provision of the complaint related to Case #2, and an email dated 7 July 2019 which detailed the complaints from Case#3. (It is assumed that this refers to an email actually dated 11 July 2019, which is amongst the documents considered in this report).

In this email Moreira maintained the same position as her report provided to Board Ethics Committee and the Board on 9 June 2019: that the matter should be referred through the Integrity System which was now in place, and an independent investigation conducted.

## **21 AUGUST 2019, GUARDIAN ARTICLE, ALLEGING BULLYING AND HARASSMENT AT TI-S**

The Taylor Wessing report indicates that the complaints made to the Guardian which led to this article are the same complaints of Case #2 and Case #3. However, it cannot be known with certainty that this was the only source of information informing the article.

## **CONCLUSIONS CONCERNING THE INITIAL HANDLING OF THE COMPLAINTS**

The initial handling of the complaints by the Board Ethics Committee and the Board of Directors is substantially deficient versus what might reasonably be expected of TI, an organisation which champions the cause of whistleblowers and promotes openness and integrity.

- The members of Board Ethics Committee did not take any action to address or investigate the complaints reported to them in October and November 2018 and again in January and February 2019 until 29 May 2019, 7 months after initial concerns were raised
- The Board failed on four occasions to accept a recommendation to undertake an independent investigation of the complaints in:
  - Late 2018 when requested by TI Ireland;
  - Early 2019 when complaints were initially discussed by the Board of Directors;
  - In April 2019 when requested by Case #3;

- In June 2019 when requested by the Managing Director.
- The Board inappropriately required members of the Board Ethics Committee to conduct inquiries/investigation into complaints concerning themselves, causing a conflict of interest and causing their inquiries to be deficient in procedural fairness.



## 5. BOARD RESOLUTION ON INDEPENDENT INVESTIGATION 22 AUGUST 2019

Responding to the escalating public relations situation, the Board resolved to accept the recommendation of the Board Ethics Committee to instigate an independent investigation with specific reference to Case #2 and Case #3 and the claims in the Guardian article.

The Board resolution outlined 11 points each specifying details of the reporting lines and responsibilities of the Board Ethics Committee, the integrity officer, Moreira and the Safeguarding and Wellbeing Support Group. The roles specified in this resolution appear to adhere to the former structures of TI and the previous Board, and do not align with the new or planned integrity model. No comment can be made by the reviewer as to which model was in operation at this time as these documents have not been viewed and it is considered outside the remit of this review.

### INVESTIGATOR'S COMMENT:

From a practical point of view, it did not matter which framework was in place at the time, only that a fair process was applied and clearly communicated to all parties. Neither of these appear to have occurred.

The time frame for conducting the investigation is inferred as 6 weeks. Given the urgency of the matter now the issues were in the public domain, this is considered a reasonable, albeit tight, time frame for conducting an investigation of this scope.

A continued Conflict of Interest persisted with the appointment of an independent investigator because the resolution specified that Board Ethics Committee were to be responsible for the selection of the independent investigator, that it would oversee the investigation, and that the investigator would report solely to the Board Ethics Committee. Because complaints included in Case #2 and Case #3 related to the conduct of members of the Board Ethics Committee, this procedure breached the requirements for a procedurally fair investigation.

## TERMS OF REFERENCE FOR TAYLOR WESSING INVESTIGATION

A detailed Terms of Reference was prepared for the independent investigation. Included as part of the Terms of Reference was a scope. The Scope focused on Cases #2, Case #3 and the allegations in the Guardian article and the conduct of the Managing Director and Senior Management Team. It included, *“any other alleged misconduct at the TI -S which comes to the attention of the investigator”*, which is a standard addition found in the scope of most misconduct investigations.

The final element of the scope reads, *“the adequacy and timeliness of any responses to the above matters if or when raised within the organisation”*. It is this final element of the scope which would cover the activities of the members of Board Ethics Committee and the Board from October 2018 to 22 August 2019.

### INVESTIGATOR’S COMMENT:

The Terms of Reference specifically refers to investigating the adequacy and timeliness of the responses by the “organisation”. Given that this is referring to members of the Board Ethics Committee it is not possible for the investigation conducted by Taylor Wessing with these Terms of Reference to meet the requirements of procedural fairness, since the Board Ethics Committee are in charge of investigating complaints against themselves.

## MOREIRA RESPONSE TO THE BOARD’S RESOLUTION (22 AUGUST 2019) DATED 4 SEPTEMBER 2019

Moreira wrote to the Board of Directors on 4 September 2019. She stated that the Board Ethics Committee’s delay moving towards the new Integrity System, and its continued conflicting role regarding complaints, had compromised her own role as Managing Director. Moreira stated that the issue went to the conduct of the Board Ethics Committee and the Board of Directors, in terms of using the complaints lodged by Case #2 and Case #3 to strengthen the executive role of the Board.

#### INVESTIGATOR'S COMMENT:

These concerns appear founded. The Taylor Wessing investigation is compromised as the decision makers are subjects of the investigation. Such an arrangement breaches the bias and independence rule for procedural fairness.

## 6. INDEPENDENT INVESTIGATION BY TAYLOR WESSING

In their introduction, Taylor Wessing reported that participants and the Works Council had expected a far wider investigation with broader scope, but that in consultation with the Board, the original scope was maintained. Any matters arising that fell outside of the scope were to be reported to the Board. The scope was specified as: Cases #2 and #3 and items in the Guardian article of 21 August 2019.

This is consistent with the scope specified and explained to Moreira during her interview. The interview record, which is a summary and not an audio recording, states *"Then H (the investigator) outlined the content of this interview – 'cases 2 and 3' and general questions with regard to the allegations in the Guardian article"* (page 1 transcript summary).

Throughout the report the Senior Management Team is referred to in the singular or where an individual may have been named, the name has not been provided to Moreira. Specifically, it is not possible for Moreira to identify whether she has been found guilty of any misconduct, or whether the report is referring to another member of the Senior Management Team. The term "the Defendants" is used throughout the report to refer to the Senior Management Team.

#### INVESTIGATOR'S COMMENT:

Making findings against a group of people is highly irregular in workplace investigations. It may be a technique used in conducting cultural reviews, but this does not fit with the Terms of Reference provided to Taylor Wessing in this case.

In discussion about Case #2 the report reads: *“The complainants claim that both XX and the Works Council raise (harassment) concerns through several channels XXXXX, to the Works Council, and to members of the BEC), but that X concerns were not dealt with properly. The complainant supposedly requested a personal meeting with XXX which was denied by The Defendants”.*

This statement reaffirms that Case #2 and Case #3 included complaints concerning the conduct of members of Board Ethics Committee and the Board of Directors.

## **CASE #2**

In concluding the review of Case #2, Taylor Wessing state:

*“Against the background that we did not establish a systemic violation of TI’s values and principles and ... we, in particular, did not establish any disrespectful behaviour, from our point of view, the established facts of case #2 can neither be qualified as bullying or harassment as defined under point 4.4(a) below. Nor did we identify any violation of German Labor or criminal law.”*

To put this more clearly, Taylor Wessing did not find any evidence to support the allegations of bullying and harassment or disrespectful behaviour by members of the Senior Management Team.

The investigation did establish that the defendants had a practice of drafting emails and asking another person to send them to the complainant. The investigator stated that they did not obtain any evidence as to the motivation of why this was done but concluded that the practice *“is neither particularly transparent nor open”*.

A review of the summary of the interview with Moreira indicates that she was never asked about this issue, and it was not discussed at any time during the interview.

It is also not clear from the report provided who in the Senior Management Team was responsible for the drafting of the letters in question.

## **INVESTIGATOR’S COMMENT:**

Making a finding on this allegation does not meet the requirement of providing a fair hearing to the accused and therefore does not meet the standards for procedural fairness.

### CASE #3

*“As in Case #2, the allegations made by the complainant were substantially denied by the defendants. This applies to both objective facts and subjective facts ... most facts described by the complainant cannot be regarded as established, not even at the factual level.”*

Taylor Wessing found one instance where the Defendants acted in breach of points 4.2 and 4.3.9 of the Code of Conduct (CoC). This was in respect of *“disagreements between Ti XXX Office and the Defendants re recruitment process. The defendants appear to have disregarded the agreements made and apparently have not openly communicated their decisions in this context. By submitting proposals, which alluded to consultations with TI’s XXXX, even though there had supposedly not been an appropriate consultation, the MST did not communicate as would have been required.... The aforementioned conduct is neither open and honest nor accountable and therefore violates the guiding principle no. 2 as well as point 4.2 of the CoC, which requires consideration and open and collegial communication as well as point 4.3.9, which stipulates transparency.”*

A review of the summary of the interview with Moreira indicates that she was never asked about this issue and it was not discussed at any time during the interview.

### INVESTIGATOR’S COMMENT:

Making a finding on this allegation does not meet the requirement of providing a fair hearing to the accused and therefore does not meet the standards for procedural fairness.

### GUARDIAN ARTICLE

The Taylor Wessing report details the allegations made by witnesses that were not related to Case #2 or Case #3. They conclude that *“The allegations made in the article were not substantiated. Most of the accusations are of a general nature and the majority of those interviewed did not provide any information about concrete circumstances that would justify their allegations.”*

Taylor Wessing report on one instance of an employee who complained that they had been inappropriately given three warnings. This does not appear to have been put to the defendants as the report notes *“investigators note: subject to review of the Defendants”*

A review of the summary of the interview with Moreira indicates that she was never asked about this issue and it was not discussed at any time during the interview.

### INVESTIGATOR'S COMMENT:

Making a finding on this allegation does not meet the requirement of providing a fair hearing to the accused and therefore does not meet the standards for procedural fairness.

The overwhelming findings of the Taylor Wessing report are that the complaints were unsubstantiated, and that the Senior Management Team did not foster a toxic work environment which endangered the health of staff.

Whilst the investigation report refers to findings with respect to the Code of Conduct, there are no specific particulars related to allegations mentioned in the report.

### CORRESPONDENCE CONCERNING DISCLOSURE OF ALLEGATIONS DURING THE TAYLOR WESSING INVESTIGATION

Moreira contends that she was not provided with any allegations prior to her interview as part of the Taylor Wessing investigation. Correspondence has been provided from Moreira's legal representative indicating that the Taylor Wessing investigator did not have clear allegations with particulars to put to her and the purpose of the interview was to *"give your client the opportunity to describe in particular the situation of Case #2 and Case #3 in her own view and according to her own perceptions. I trust your client is aware of the formal complaints known as Case #2 and Case #3. In our view no further preparation to the interview is necessary"* (Email from Taylor Wessing on 31 October 2019, 16.01pm).

Moreira's lawyer requested copies of the two complaints in an email sent at 17.19pm that evening. Confirming that his client had received partial documents related to the complaints but wanting to make sure they were the same as those provided to the investigator.

Taylor Wessing responded that they were not permitted to send out TI documents and CC'd members of TI Board and Board Ethics Committee in the email.

A response was sent from the Chair of the Board that reads:

*“Dear All,*

*Patricia received the whole complaints documents in cases #2 and #3 when she dealt on this with the BEC even before the investigation was decided. She even exchanged emails with the BEC on the issue.”*

Moreira’s lawyer replied acknowledging that they had some documentation but wanted to confirm it was the same in the absence of any specific allegations for Moreira to respond to. Moreira’s lawyer also asked for reassurance from the Chair of the Board that they would be given an opportunity to respond to the report before it was finalised.

These requests were responded to by Oya Ozarslan via the Taylor Wessing investigator on 5 November 2019. It was agreed that an interview would take place on 6 November 2019. It is noted that this was 5 days after the initial date was offered by the investigator for the interview to take place.

It is noted that the investigator was being pressured to submit the report by 10 November and the delay in interviewing Moreira was viewed as delaying the finalisation of the report. The Annual Membership Meeting (AMM) was scheduled to take place on 15-17 November 2019.

## INVESTIGATOR’S COMMENT:

It is normal practice that a person accused of misconduct is provided with detailed allegations containing particulars of the conduct they are alleged to have engaged in, prior to an interview and prior to a decision being made as to the outcome.

There is no evidence of Moreira ever being provided with any allegations regarding her conduct throughout the investigation of the complaints.

The Taylor Wessing investigation report fails to meet the standards of a fair and reasonable workplace investigation for the following reasons:

- Throughout the investigation no specific allegations were put to Moreira for her response;
- Findings were made concerning three events which were not put to Moreira in the interview;
- The report did not investigate complaints concerning the Board or Board Ethics Committee; and



- The report addresses the accused as ‘the defendants’ and makes findings against them as a collective, failing to provide any specifics concerning the behaviours of individuals in the Senior Management Team.

## 7. COMMITMENT TO EXTEND INVESTIGATION – NOV. AMM 2019

Correspondence on behalf of ten donor agencies to the Board of Directors on 6 September 2019 indicated that donors were advised of the decision to conduct an independent investigation into the allegations published in the Guardian articles. The donors’ letter raised concerns that a sufficiently in-depth investigation could be conducted by October. The letter acknowledged that there had been changes to the integrity structure recently but *“we are yet to fully understand the communication lines and separation of tasks between the Board of Ethics, the External Independent Advisor (Ombudsman) and the Integrity Officer”*. The donors asked for regular updates on the progress and plan for the investigation and expressed gratitude for the intent to publish the results and subsequent steps taken by TI.<sup>12</sup>

At the Annual Donor Meeting in Berlin on 19 November 2019, the Chair of the Board and Moreira provided an integrity update. As part of this update, information was provided concerning the Taylor Wessing investigation. The donors were advised that the “Board is not restricting the investigation in any way”.<sup>13</sup>

Following the Donor meeting, Henrietta Kotter wrote an email to Astrid Soosten of TI summarising the meeting. The first item listed concerns the donor’s expectations regarding the investigation:

*“We expect to receive a report that covers all aspects of the Terms of Reference. We expect the Board to publish the report (taking into account privacy and data protection) and to come up with an action plan including concrete deadlines. We expect transparent and immediate communication on this issue. We’d like to see concrete action on improving working environment at the secretariat.*

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<sup>12</sup> Attachment 26

<sup>13</sup> Attachment 40

*We reminded TI that there are many donors reviewing future funding next year and we will take how the Board deals with the results of the investigation into account in our decisions.”<sup>14</sup>*

## **STATEMENT BY THE TI BOARD OF DIRECTORS TO AMM 16 NOVEMBER 2019**

The Board of Directors provided a statement in response to questions submitted by TI Ireland regarding the independent investigation.

There were four questions asked. The question and the Board of Directors’ response is provided.

1. Did the board instruct the investigators to narrow the investigation and or not to interview anyone else?

The Board statement responded as follows:

*No. At no stage have the BEC given instructions to the independent investigator to restrict the scope of their investigation or not to interview further complainants or witnesses or not to interview TI Ireland.*

The Taylor Wessing report identified that differences of opinion regarding the scope of the investigation existed from the beginning with the Works Council and other TI members wanting a wide scope. Taylor Wessing sought clarification from the Board and the Taylor Wessing report states: “on behalf of the Board we followed a strict approach, meaning that we conducted the interviews limited to complaint agreed upon in advice ( namely Case #2 and Case # 3 as well as the allegations made in the article published by The Guardian)”

Both the instructions given to Moreira prior to the interview and the questions asked of her during her interview are consistent with this narrow scope described by Taylor Wessing in their report.

### **INVESTIGATOR’S COMMENT:**

This statement would appear to contradict the statement from the Board of Directors in respect of question 1.

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<sup>14</sup> Attachment 39

2. Is the Board intending to restrict the investigation to Case #2, Case #3 and the allegations in the Guardian article?

The Board statement responded as follows:

*No. We understand these cases have been priorities for detailed investigation.*

The statement explained that the Board expects to receive the initial report from Taylor Wessing on 22 November 2019 and a data file containing additional cases by 31 December 2019. The Board reiterated that the intention was to have a full investigation as specified in the Terms of Reference.

#### INVESTIGATOR'S COMMENT:

This response appears to conflict with the information provided to Taylor Wessing. However, Taylor Wessing did not continue with any investigation services following the provision of the Taylor Wessing report on 22 November 2019.

The Board statement added:

*Yes. The report will be made public subject to necessary legal restrictions.*

#### INVESTIGATOR'S COMMENT:

Given the nature of the specific complaints made to TI it would be very difficult to publish a report into the allegations, as to do so would almost certainly breach privacy requirements.

3. Are there allegations against the Board – and therefore is the Board overseeing a process that is investigating itself?

The Board statement responded as follows:

*The Board has not seen the report and so we do not yet know whether there are allegations of misconduct including mishandling the process, by the Board. If the report indicates there are*

*substantial allegations of misconduct against the Board, then a process will be convened that is independent of the Board, to avoid any perceptions of conflict of interest so that the Board itself can be investigated.*

## INVESTIGATOR'S COMMENT:

The complaints made in Case #2 and #3 on 24 April 2019 both named Board Ethics Committee and members of the Board of Directors as party to their complaints. The Terms of Reference for the independent investigation includes the investigation of how the initial complaints were handled. As the complaints were only received by Board members, it is reasonable to conclude that the investigation would cover the action or inactions of Board members.

The statement of the Board to this question is both inaccurate and misleading. The Board knew in April that there were complaints against members of the Board.

## NOVEMBER 2019 AMM - RESOLUTION: INVESTIGATION INTO ALLEGATIONS OF MISCONDUCT AT TI SECRETARIAT AND THE RESPONSE OF THE TI BOARD TO RELATED MATTERS.

At the November 2019 Annual Membership Meeting (AMM), five member chapters supported a resolution titled "Investigation into allegations of misconduct at TI Secretariat and the response of the TI Board to related matters." The resolution was put forward by TI Ireland, TI Armenia, TI Austria, TI Macedonia and TI Ukraine.

The text of the resolution was:

*"TI's membership meeting welcomes the Board of Director's announcement that an independent investigation based on the Terms of Reference presented to the Movement on 16 September will continue until such time as all concerns within the scope of the TOR are assessed and/or investigated by the investigators.*

*The membership meeting also resolves to see that all stakeholders are assured that the process by which the investigation has been conducted is above reproach."*

Further details in the document stated that "given that the TOR already include the adequacy of all responses to the concerns (thereby including the Board or it's committees)" and call for an independent panel of experts to advise the Board Ethics Committee and assure stakeholder of the integrity of the investigation process.

The Terms of Reference for the investigation dated 22 August 2019 included “*the adequacy and timeliness of any responses to the above matter if or when raised within the organization*”.

## INVESTIGATOR’S COMMENT:

The resolution passed at this meeting specifically affirms the Board of Directors’ commitment to investigate the complaints related to the actions of the Board of Directors and members of Board Ethics Committee.

The correspondence with donors sets a clear expectation that the Board of Directors will thoroughly investigate the complaints including the issues addressed to the conduct of the Board Ethics Committee and Board of Directors.

All parties committed to publishing the report subject to legal review and privacy restrictions.

## COMPLAINTS SUBMITTED BY MOREIRA CONCERNING THE CONDUCT OF THE BOARD OF DIRECTORS AND BOARD ETHICS COMMITTEE

Following the announcement to the Annual Membership Meeting that the investigation into bullying and harassment would be continuing and would include all allegations made against the Board of Directors and Board Ethics Committee, Moreira determined to lodge her own complaints against the Board of Directors and Board Ethics Committee for their mishandling of the complaints.

Moreira states that on 30 December 2019 Moreira she submitted complaints to the Integrity Officer and the Ombudsman concerning the conduct of the Board of Directors and Board Ethics Committee; and that these allegations have never been addressed by the organisation.

Moreira lodged 4 complaints at the end of December 2019. They were submitted to Taylor Wessing on 30 December 2019 and to the Integrity Officer and Ombudsman. A further complaint was made concerning the Board of Directors on 29 January 2020.

On 2 February 2020, Moreira was removed from her office by the Board.

Notification was sent to the membership on 4 February 2020 stating that,

*“After much discussion with the Managing Director over an extended period, and after hearing her latest proposals, the Board decided it was necessary and timely to make changes in the senior management level. The Board recommended the Managing Director to reconsider her position and is currently negotiating an agreement with her. We expect to appoint an interim director by March.*

*The decision has been taken independently of the investigation into ethics complaints.”<sup>15</sup>*

A copy of the draft Termination contract being negotiated between the Board and Moreira indicates that the Board of Directors attempted to use a non-disclosure agreement, preferential reference, and financial benefit as leverage for Moreira to withdraw her complaints against the Board of Directors and Board Ethics Committee. Moreira refused to drop her complaints against the Board of Directors and Board Ethics Committee and negotiations stopped by formal notification to the Board of Directors from Moreira’s lawyers on 12 May 2020.

## INVESTIGATOR’S COMMENT:

The timing of the dismissal of Moreira, being days after her second complaints were made against the Board of Directors and Board Ethics Committee raises concerns that TI have not acted in a manner consistent with their mission or with their own Whistleblower policies.

At the Board meeting in September 2019, the Board requested management to ensure all termination contracts included a clause explicitly rejecting any gagging clauses. This was implemented immediately. Lawyers Baker McKenzie drafted the clause and it was added to the termination contract template. However, it was excluded from Moreira’s Termination Contract.

The use of non-disclosure agreements has been subject to intense criticism as a mechanism which hinders the transparent handling of complaints by organisations. They were cited by AJ Brown as a tool which undermines Integrity Systems, and criticised by The Australian Human Rights Commissioner in the recent report [Respect@work](#).

The use of non-disclosure agreements and the request to Moreira to withdraw her complaints against the Board of Directors does not seem consistent with the TI Mission and values.

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<sup>15</sup> Attachment 35

## 8. APPOINTMENT OF INDEPENDENT ETHICS PANEL

The resolution passed at Annual Membership Meeting (AMM) 2019 to appoint an independent panel to continue the investigation into the management of TI-S stated *“This three person panel of persons with experience and knowledge of workplace and ethics-related investigations should be appointed by the Board. No member of the independent panel should also be a respondent, witness or complainant, nor should they be individual members or staff of any TI entity.”*

In late February 2020, after Moreira had been removed from the Managing Director position, the Board approached members of TI to form an Independent Ethics Panel. The panel appointed was Hartmut Baumer, Chair of TI Germany, who appointed Peter Conze, founding member TI and Board member of the TI Germany, to assist him.

Moreira states that both Baumer and Conze have long established relationships with the Board of Directors and their involvement with the TI movement constitutes a conflict of interest. Moreira also states that prior to the election of the panel members, the Integrity Officer, on advice of the TI-S lawyers, Baker and McKenzie, recommended the appointment of non TI related members to ensure independence. This information is not able to be independently verified.

It is noted that the panel comprised of two individuals and not three. Also, reference is made to Conze being appointed by Baumer, indicating that Baumer was in charge of Conze. If this was the case this would raise additional concerns that Conze was capable of expressing independent views in the process of the investigation. The panel appears devoid of true independence given that it comprises two people and not three, that one person was hired by the other (this point has not been independently verified), and that both parties had a long-established relationship with TI.

It is noted that the work of the IEP was done on a pro bono basis. This does not negate that a conflict of interest (including a perceived conflict) may still exist. The TI Policy on Conflict of Interest focuses its attention of conflicts that arise from monetary benefit. Conflicts of interest however can exist where there is no monetary benefit but rather a social, reputational, or promotional advantage instead. It is significant that the Board is the final authority on deciding a Chapter’s accreditation with TI every three years. Whilst no personal details are known by the reviewer of the backgrounds and relationships that exist between the members of the IEP and the other Board members, there is an inherent conflict of interest between the IEP members and the Board.



## INVESTIGATOR'S COMMENT:

The appointment of two individuals who have a long-established connection to TI and are dependent on the Board to provide their Chapter with accreditation, creates a conflict of interest for the members of the IEB. Even though their appointment may meet with the conditions set out in the resolution of November 2019, a reasonable person would consider there to be a likelihood of a perceived conflict if not an actual conflict, in their ability to fairly investigate complaints against Board members.

## COMMITMENT TO INVESTIGATE COMPLAINTS AGAINST THE BOARD AND BOARD ETHICS COMMITTEE

It is clear by the title and content of the resolution dated November 2019, that the purpose of the resolution included examination of the actions of the Board members and their handling of the complaints.

The Report tabled by the Independent Ethics Panel, dated 20 May 2020, lists the assignment given to them by the Board Ethics Committee and details three tasks. The third task specifically states that they will *"receive, assess and where it deems necessary, investigate or recommend other action on any complaints against the Board of Directors or its members regarding their response or handling of any matter related to these investigations"*. Further reference is made to the activities of the panel in the Report with a specific task being to report under the topic of *'Complaints' against the Board and the Board Ethics Committee, and Complaints/questions to the Board regarding the response or handling of any matter related to the investigations."*

In section 3.2 of the IEP Report, the timeline of events is detailed including the details of the complaints as they were received by Board Ethics Committee in late 2018 and early 2019.

The IEP Report, however, does not address the conduct of any member of the Board or the Board Ethics Committee in connection with their handling of the complaints.

Point 5 of the Report addresses Complaints by the Former Managing Director against the Board and the Board Ethics Committee and states that she filed two complaints in December 2019 one against the Board and one against the Board Ethics Committee. A further complaint was made by the Managing Director in January 2020 against the Board. *"Due to the pending negotiation between TI and the former MD, the panel decided not to investigate the complaints"*. This report is published on 20 May 2020. The termination

of negotiations had been formally notified to the Board by Moreira's lawyer on 12 May 2020.

The Board of Directors were aware that negotiations had broken down and that Moreira had not withdrawn her complaints on 12 May 2020. In the correspondence from Moreira's lawyers on the 12 May 2020, it was explicitly requested that the IEP be advised that negotiations had stopped and were unsuccessful. The Board shared the IEP Report with stakeholders on 2 June 2020 without editing the comment concerning Moreira's complaints. The Report was discussed at the November Annual Membership Meeting (AMM) 2020 and this section of the Report remained unaltered.

### INVESTIGATOR'S COMMENT:

The Board allowed the IEP Report to stand unaltered despite being aware on the 12 May 2020 that negotiations with Moreira had been unsuccessful and had concluded. The Board circulated the report with this inaccuracy misleading stakeholders in June and again at the AMM in November 2020.

No complaints related to the Board or the conduct of the Board Ethics Committee lodged by Case #2, Case #3 or Moreira appear to have been investigated at any point in the process.

Point 6 in the IEP Report addresses "questions or complaints against the Board of Directors or its members regarding their response to or handling of any matter related to these investigations". In this section the IEP detail the timeline of disclosures to the Board and the decisions made by Board during the time from September 2018 through to 22 August 2019 when it initiated an independent investigation into the complaints.

The IEP Report states that at the beginning of 2019 the Board had a choice to either support the Managing Director or to dismiss her. It is not clear why this was a binary decision, given that no formal investigation had occurred at this stage to determine if the concerns or allegations made were substantiated.

The IEP Report concludes this section by saying: *"With hindsight, it would have been better to have an independent investigation earlier and with a broad scope although, as described above, there were, from the sight of the Board, understandable reasons for not doing so."*

The evidence indicates that the Board did not deny to the IEP that it did not act in accordance with advice from Board Ethics Committee in April 2019 to initiate an

independent investigation; or on the Managing Directors' position stated in June 2019, that the appropriate process would be an independent investigation; or on the advice and request of the complainant from Case #3, who also recommended an independent investigation.

#### INVESTIGATOR'S COMMENT:

Viewing the arrangement from an external perspective, the members of the IEP do not meet the requirements as set out in the resolution passed by AMM 2019 in being independent. This is further reinforced by the tone of the conclusions drawn concerning the actions of the Board of Directors and members of Board Ethics Committee. This appears to be an analysis without any consideration as to whether the actions of any individuals breached the mission and values of TI or the Code of Conduct.

#### PRESS RELEASE FROM TI ON WEBSITE DATED 2 JUNE 2020 AND EDITED ON 9 JUNE 2020

On 2 June 2020 TI authorised and published to all members and donors copies of a redacted Taylor Wessing report and the IEP Report. It did not publish the responses provided by Moreira to both these reports, as promised by the Chair of the Board in writing on several occasions.

Moreira obtained an injunction for TI to remove the reports and press release. It did so, replacing the information with an amended press release on 9 June 2020. This updated release stated:

*"Transparency International remains fully committed to the highest ethical standards, and we believe that systems and procedures are in place to ensure any issues related to ethics violations are dealt with swiftly and appropriately. This includes a robust Integrity System and the Board's Support Group on Safeguarding and Wellbeing."*

#### INVESTIGATOR'S COMMENT:

This statement appears inconsistent with the evidence provided to the reviewer.

## AMM MEETING 5-7 NOVEMBER 2020

On 5 November 2020, (document provided as attachment to 4 Dec 2020 letter to FCDO) Moreira sent a letter to the “donors” requesting that they call for an independent investigation into the complaints against the Board at the Annual Membership Meeting (AMM) in November 2020.

AMM 2020 was held on 5-7 November 2020. The minutes indicate two relevant agenda items. These were “Item 7: Governance Changes: Presentation and Q&A” and “Item 12: Ethics Panel Report: Presentation and Q&A”.

The minutes against item 7 state,

*“The Governance reform process began in 2017 and moved to Phase ii in 2019. Following AMM 2019, “the Committee focussed on the out-standing work of defining the Executive function (Vorstand). External consultants, Nestor Advisors, recommended clarifying that the Board (through the Chair and Vice-Chair) would not exert any management over the Secretariat as that function is reserved for the Managing Director.”*

The document outlined proposed charter changes:

1. Staggering model for the election of Board members so that there were never more than 4 members leaving at one time.
2. New executive model: to address the overlap in executive positions between chair, Vice Chair and the Managing Director positions.

These changes corroborate the evidence reviewed in this report concerning the change process. In particular, that in 2019, the Board of Directors was comprised of a large number of new members who lacked experience with the complex organisational structure of TI and individuals who did not collectively display an understanding of the size or the change that was required by both the Secretariat and the Board.

The second proposed change corroborates Moreira’s claims that the Board of Directors was not yet exercising a proper separation of roles and responsibilities and the Managing Director had experienced ongoing interference in her role during 2020.

## INVESTIGATOR'S COMMENT:

The minutes appear to indicate that without investigating Moreira's complaints about the role of the Board of Directors, the Board of Directors had accepted some responsibility for the problems encountered during 2020, and agreed to take action to reduce the likelihood of these systemic issues reoccurring.

The minutes for agenda Item 12 Ethics Panel Report: Presentation and Q&A, record that it was a "Closed session for Official Chapter Representatives (OCR's), Individual Members, and members of the Board of Directors and International Council Members."

The minutes state that the Report by the IEP was circulated to the Movement on 2 June 2020 and *"Mr Baumer concluded that there is no need or legal justification for further investigations and would proceed to asking the Membership to implement the recommendations."*

The AMM minutes also report that the Chair provided an overview of the current situation with Moreira. The Independent Ethics Panel presented the final report which had been circulated to the Movement on 2 June 2020. The conclusion of the IEP was that there was no need or legal justification for further investigation.

The members voted on the inclusion of the Independent Panel recommendations into the agenda. Passes by 66 votes in favour and 2 against, 2 absenters.

The recommendations of the IEP included *"The TI Movement should look ahead and fully support the interim MD. No further investigation – concerning all matters known so far – in the period before March 2020 should be undertaken"* was passed by 67 votes in favour, 2 votes against and 2 abstentions.

The Chair also announced that they have commenced looking for a replacement CEO and recruitment will include *"psychological assessments to detect problems before they appear."*

#### INVESTIGATOR'S COMMENT:

This statement implies that the Board of Directors considers Moreira to be suffering from psychological problems, bolstering the Board of Directors' argument that her complaints are unfounded and without justification even though they have not been investigated.

On 11 November 2020, the Annual Membership Meeting's (AMM) decision was communicated to Moreira via an email from Dr Rainer Buchert containing a message from the Chair of the Board of TI. The emails stated: *"I openly communicated to the members about the complaints Patricia Moreira raised against the Board.....the members discussed this openly and made by clear vote the decision not to continue with any more investigation related to the time of Patricia being the Managing Director."*<sup>16</sup>

It is noted that there is no record in the AMM minutes or in the IEP report where the details of Moreira's allegations are set out.

#### INVESTIGATOR'S COMMENT:

It is unclear whether the Board of Directors have ever articulated the nature and details of Moreira's complaints about the Board and Board Ethics Committee to the membership. The AMM 2020 minutes do not indicate that this has occurred.

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<sup>16</sup> Attachment 69.

## 9. PRESENTATION TO TI OMBUDSMAN BY MOREIRA

In December 2019 Moreira submitted her complaints regarding the conduct of the Board of Directors and members of Board Ethics Committee to the TI Ombudsman, Dr Rainer Buchert. Dr Buchert advised Moreira that he could not act on her complaints and in an email on 10 January 2020 made the following statement:

*“The ombudsman is, according to German understanding and our contract drafting, a lawyer who receives confidential information from whistleblowers about suspected criminal offenses or comparable serious irregularities. Its task is to protect the identity of whistleblowers and to pass on the confidential information to those responsible for a company or organization. This enables them to investigate information about risks that they were previously unaware of.*

*The ombudsman does not act as an arbitrator and cannot represent the legal interests of individual employees.*

*You are obviously in a labor dispute with the head of the General Secretariat and are also represented by a lawyer. All those responsible are aware of the facts underlying the legal dispute. Therefore, there is neither the possibility nor the need for the Ombudsman to act.*

*In this respect, I ask for your understanding that I cannot act on the matter in question.*

*Summarising:*

- 1. You are not a whistleblower whose identity needs to be protected*
- 2. You do not report any new facts or suspicions that the Board does not yet know. It's primarily about legal assessments*
- 3. An ombudsman is not allowed to represent individuals of the organization individually*

*Finally: In legal disputes, there are no longer any options for an ombudsman to act. The ombudsman is not an arbitrator or mediator. “*

It is not known to the reviewer what the Terms of Reference for the Ombudsman are, or the contract between TI and Dr Buchert. However, the TI Policy on Whistleblowing states:

*“The TI-S Whistleblower Policy (currently under review) can be used by any individuals working under any form of contract or agreement with the secretariat to raise concerns about misconduct and wrongdoing, such as acts of a fraudulent, dangerous or criminal nature, incidences of corruption or any other serious reputational risk for the secretariat, and suspicion thereof.”*(<https://www.transparency.org/en/the-organisation/ethics-integrity>. viewed 21 April 2021)



Under the definition provided for in the TI-S Whistleblower Policy Moreira would be defined as a whistleblower.

As to the question of whether Moreira needed protection, the facts indicate that one month after she lodged her complaint she was dismissed from her role as Managing Director, and TI attempted to enter into a non-disclosure agreement with Moreira which included a condition that she dismiss her allegations against the Board.

## INVESTIGATOR'S COMMENT

Whilst it is acknowledged that a decision to dismiss a Managing Director is rarely made on the basis of a single event, the facts would support the notion that Moreira was in need of protection from retribution as a result of making her complaints against the Board.

In this context the role of the external Ombudsman as it appears, is ineffective at dealing with complaints concerning the Board as there is no higher authority to pass the complaint to, or any independent process for investigating concerns regarding the conduct of the Board.

This report is submitted for your consideration

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