

**Seventeenth session**

The Hague, 5-12 December 2018

**Report of the Bureau on
the Review of the work and the Operational Mandate of
the Independent Oversight Mechanism****I. Introduction**

1. At its twelfth session in 2013, the Assembly of States Parties (Assembly) adopted the operational mandate of the Independent Oversight Mechanism (IOM).¹ The Assembly decided that the work and the operational mandate of the IOM would be fully reviewed at its fifteenth session. However, given the lengthy recruitment process for the Head of the IOM, as a result of which the first Head assumed duty only in October 2015, the Assembly had recognized that the review would not be possible at the fifteenth session, in 2016. In order to give the new Head sufficient time to acquire the necessary experience to properly inform the Assembly's review of its work and operational mandate, the Bureau decided, at its 13 July 2016 meeting, that the review would take place at the seventeenth session of the Assembly in 2018, once a reasonable amount of time had transpired with the IOM being properly staffed.

2. At its sixteenth session the Assembly of States Parties recalled the recommendation made by the Bureau at its fifth meeting in 2016² that the work and operational mandate of the Independent Oversight Mechanism be fully reviewed by the Assembly at its seventeenth session.³ With regard to the Independent Oversight Mechanism, the Assembly decided that the Assembly will fully review the work and the operational mandate of the Independent Oversight Mechanism at its seventeenth session.⁴

3. The Bureau of the Assembly decided to appoint Ambassador Eduardo Rodríguez Veltzé (Bolivia) on 4 March 2018 as facilitator to review the work and the operational mandate of the Independent Oversight Mechanism.

4. The facilitator conducted consultations and briefings in order to exchange information between States Parties and other interested parties.

II. Review of the work and the Operational Mandate of the Independent Oversight Mechanism

5. In 2018, The Hague Working Group ("the working group") held four consultations on the review of the work and the operational mandate of the Independent Oversight Mechanism (on 1 June, 31 July, 23 October and 16 November). The IOM and the Court were invited to some parts of the meetings where their input/presence was required. A view

¹ ICC-ASP/12/Res.6, annex.

² https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2016-Bureau-05-13Jul2016.pdf

³ ICC-ASP/16/Res.6, para. 120.

⁴ ICC-ASP/16/Res.6, annex I, Mandates of the Assembly of States Parties for the intersessional period, para. 15.

was expressed that future meetings on this topic should in principle be held in public, pursuant to the 18 October 2017 decision of the Bureau.

6. The facilitation took note that on 16 July 2018 the Bureau had decided to appoint Mr. Saklaine Hedaraly as the new Head of the IOM. He entered on duty on 1 November 2018.⁵ The facilitation also noted that a senior investigator had also been recruited on a short-term basis and had started work in early September.

7. During the facilitation meetings the issue of identifying the purpose, methodology and scope of the review was discussed, taking into account the weaknesses of the operational mandate of the IOM and identifying the gaps that need to be addressed. Such gaps included: the potential duplication or overlap between the different oversight mechanisms in the Court; confidentiality of investigation reports and the level of reporting; lack of mandate to investigate former elected officials; and guiding principles. The need to look at best practices across the United Nations offices with similar oversight functions was considered. Some States expressed the view that the aim of the review should be to empower the IOM.

8. The issue of confidentiality of investigation reports and the level of reporting was also raised at the Bureau level discussions. During those discussions it was noted that the Bureau would benefit from more detailed activity reports in the future, and that the format of the quarterly reports could be more in line with the reports of other similar oversight bodies, particularly within the United Nations system, or along the lines of the Administrative Tribunal of the International Labour Organization (ILOAT) judgments for investigations which have been concluded. Nonetheless this was an issue that remained wanting and that was not clearly addressed in the mandate. Additionally, a reference was made to potential inconsistencies between the French and English versions of the IOM mandate. In particular, the meaning of confidentiality and the terminology used: “reports of misconduct” and “signalement des fautes”. The issue of the possibility of having the IOM provide the Bureau with redacted investigation reports was raised.

9. It was suggested within the facilitation to continue the consultations with the newly appointed Head of the IOM to explore the possibility of drafting a paper on the IOM’s confidentiality and disclosure policy and the potential gaps in the IOM mandate in this regard, as well as options on how to address the gaps. It was also suggested that the IOM could prepare a draft provision regarding investigation of potential misconduct by former elected officials and other staff members of the Court, based on a study on how other oversight bodies at the international/regional level deal with this matter. This was seen as having particular importance in light of media reports which appeared in the last trimester of 2017 concerning alleged misconduct of former elected officials. It was further suggested that a proposal be developed which aims at specifying the obligations of elected officials and other staff members of the Court after the end of service and to align the IOM mandate and related procedures to allow investigations in this respect.

10. At the meeting held on 23 October, the facilitator prepared some draft language for potential amendments to be included in the applicable normative framework of the Court (for elected officials and, as appropriate, for staff), as well as a draft text for a code of conduct/ethics and professional conduct. He noted that it may not be feasible to agree on a concrete text in 2018, but suggested to continue the discussion further in 2019. Other suggestions on ways to address the issue were made, for example by including specific elements in new contracts with (elected) officials.

11. The facilitation also took note of two issues that had arisen in the context of the rule 26 amendment discussion regarding consistency with the IOM mandate: a) the handling of anonymous complaints and b) the confidentiality of complaints and the reporting of the results of investigations. It was suggested that the IOM could assist with finding language to reflect the changes in the IOM mandate which would need to be made if the amendments

⁵ The first Head of the IOM, Mr. Ian Fuller, entered on duty on October 2015. He presented his resignation on 18 October 2017 and with effect from 10 December 2017. In December 2017 the Bureau began the recruitment process for the selection of a new Head.

to rule 26 of the Rules of Procedure and Evidence were adopted by the Assembly. The details on this issue are contained in the report of the Study Group on Governance.⁶

12. Regarding the Court's values and ethics framework, the facilitation took note of the Audit Committee annual report.⁷ The facilitation also took note of the final audit report on Human Resources management of the External Auditor,⁸ particularly recommendation 9 to develop and publish an ethics charter.⁹ It was noted that no single code of conduct is applicable to elected officials and staff, but that there are different normative regimes which apply to some organs, including different codes of conduct. The facilitator noted that in this regard the Bangalore Principles of Judicial Conduct, adopted by the United Nations in 2002, might be a central element to be borne in mind in the preparation of that revised value and ethics framework.¹⁰ The facilitation took note that the Audit Committee had requested that the Court provide it with an update on this issue at its ninth session in 2019. In this regard the facilitator urged States Parties to further consider this matter raised by the External Auditor and the Audit Committee, which would require attention from States Parties in 2019, since its importance would merit opportune discussion, also bearing in mind the aspects previously mentioned about the alleged misconduct of former elected officials of the Court. Such consideration, it was posited by the facilitator, could include considering the adoption in 2019 of the Bangalore Principles of Judicial Conduct.

III. Recommendations

13. The recommendations annexed to this report are submitted via the Bureau for the consideration of the Assembly.

⁶ ICC-ASP/17/36.

⁷ ICC-ASP/17/15, Annex VI, para 26.

⁸ ICC-ASP/17/7, paras 238 and 240.

⁹ Idem. "Recommendation 9: The External auditor recommends that the ICC develop and publish an ethics charter."

¹⁰ https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

Annex

Draft language to be included in the omnibus resolution

Independent Oversight Mechanism

1. *Notes* that the Independent Oversight Mechanism is fully staffed as of 1 November 2018 and that it is operational in respect of its investigation, inspection and evaluation functions;
2. [*Takes note* of the amendment to rule 26 of the Rules of Procedure and Evidence concerning the receipt and admissibility of complaints by the Independent Oversight Mechanism;]
3. *Welcomes* the discussions held during 2018 on the review of the work and operational mandate of the Independent Oversight Mechanism, and *stresses* the importance of completing that review and reporting to the Assembly at its eighteenth session;
4. *Also notes* that discussion on and potential mechanisms for the reporting of areas where the Independent Oversight Mechanism might advise the Bureau to consider requesting that the Independent Oversight Mechanism undertake an inspection or evaluation will be incorporated into the full review of the Independent Oversight Mechanism mandate and organisation for Assembly consideration at its eighteenth session;
5. *Recalls* that a proposal to formally align the Regulations of the Court with the mandate of the Independent Oversight Mechanism is under consideration and *encourages* the Assembly, the Court, and the Independent Oversight Mechanism, as appropriate, to ensure that all relevant documents are updated and aligned with the mandate of the Independent Oversight Mechanism in order to harmonize the applicable rules;
6. *Welcomes* the complementary initiatives undertaken by the Bureau, the Assembly oversight bodies and the Court to try to ensure that the different organs of the Court have streamlined and updated ethics charters/codes of conduct, which should be consistent to the extent possible;
7. *Reaffirms* the critical importance of the Independent Oversight Mechanism in carrying out its work in an independent, transparent and impartial manner free from any undue influence;
8. *Reaffirms* the importance of the Independent Oversight Mechanism reporting to States Parties on the results of its activities;

Mandates of the Assembly of States Parties for the intersessional period

Requests the Bureau to continue forthwith with the review of the work and the operational mandate of the Independent Oversight Mechanism and to report thereon to the Assembly at its eighteenth session; and
