



## Assembly of States Parties

Distr.: General

8 December 2020

ENGLISH

Original: English

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### Nineteenth session

New York, 7-17 December 2020

## 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).<sup>1</sup> 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 2016<sup>2</sup> that the work and operational mandate of the IOM be fully reviewed by the Assembly at its seventeenth session. With regard to the Independent Oversight Mechanism, the Assembly decided that the Assembly fully review the work and the operational mandate of the Independent Oversight Mechanism at its seventeenth session.<sup>3</sup> At its seventeenth session, the Assembly noted the progress made, requested the Bureau to continue forthwith with the review of the work and the operational mandate of the IOM and to report thereon to the Assembly at its eighteenth session, and requested the Bureau to consider amending the mandate of the IOM to include investigations of allegations against former officials during its review of the operational mandate of the IOM.<sup>4</sup> At its eighteenth session, the Assembly requested the Bureau to complete the review of the work and the operational mandate of the Independent Oversight Mechanism, including the consideration of amendments to the mandate to cover investigations of allegations against former officials, and to report thereon to the Assembly at its nineteenth session.

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<sup>1</sup> ICC-ASP/12/Res.6, annex.

<sup>2</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Bureau/ICC-ASP-2016-Bureau-05-13Jul2016.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2016-Bureau-05-13Jul2016.pdf)

<sup>3</sup> ICC-ASP/16/Res.6, annex I, Mandates of the Assembly of States Parties for the intersessional period, para. 15.

<sup>4</sup> ICC-ASP/17/Res.5, annex I, Mandates of the Assembly of States Parties for the intersessional period, para.15.

3. On 24 January 2020 the Bureau of the Assembly decided to appoint Ambassador Päivi Kaukoranta (Finland) 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, Organs of the Court, the Independent Oversight Mechanism and other interested parties.

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

5. In 2020, The Hague Working Group (“the working group”) held written exchanges of views and four rounds of consultations on the review of the work and the operational mandate of the Independent Oversight Mechanism (on 2 July, 10 September, 13 October and 17 November). The facilitation was open to States Parties, the IOM and the Court only, in full recognition of the Bureau decision of 18 October 2017 adopting the “Understanding on the participation of Observer States in meetings of the Assembly of States Parties”.<sup>5</sup> In addition, the representatives of the Governance and the Judiciary clusters of the Independent Expert Review and Mr. Hervé-Adrien Metzger, leading the evaluation of the oversight bodies for the Court, were invited to participate in the consultation as observers.

6. At the beginning of the facilitation process in 2020 Ambassador Kaukoranta noted that there were other ongoing processes assessing the role and the activities of the IOM in parallel to the Bureau mandated process of the facilitation, which may also have an impact on its mandate. These included the evaluation of the oversight bodies of the Court and the recommendations of the Independent Expert Review which would be issued later in the year.

7. During the first meeting, the Head of the IOM, Mr. Saklaine Hedaraly, briefed delegations on the work of the IOM and indicated that the consultation process on the draft IOM mandate had included lengthy but collaborative and constructive sessions with representatives of the Court Organs, which initially resulted in a preliminary agreement on most of the paragraphs.

8. Most of the deliberations throughout the year focused on the remaining unresolved issues, in particular the issue of balancing the legitimate interests of prosecutorial and judicial independence and confidentiality, and their coexistence with the interests of accountability of all persons at the Court (elected officials, staff and contractors), while safeguarding the individual rights of staff members who either make a complaint or are the subject of a complaint. There was also a need for a mechanism for the Heads of Organs to be able to alert the IOM of any potential issue where consultation may be needed, and a possibility for a third party procedure to facilitate and mediate between the IOM and Heads of Organs.

9. Other issues related to IOM reporting and its relationship with States Parties were emphasized. The issue of potential duplication of the mandate of the IOM and that of the External Auditor was also raised.

10. The new draft IOM mandate addressed the relationship between the IOM’s decision to investigate and the mandates of the Heads of Organs to open an investigation themselves. Should the IOM decide not to investigate an allegation, it may refer a matter to the relevant Head of Organ who would then decide whether to investigate, either by a staff designated by him or her or by someone hired externally to do so, and to ensure that the same process and procedures are followed as if it were carried out by the IOM.

11. The new draft also included technical changes and new terminology, including examples such as merging the terms misconduct and unsatisfactory conduct by way of a footnote, or also merging terms such as allegations and complaints (to reflect rule 26 of the Rules and Procedures and Evidence), or renaming an “initial examination” as an “initial review” for consistency purposes. In addition, a new paragraph on the obligations of former officials was included, which would also extend to staff members and consultants. Other technical issues associated with personnel-related grievances, such as for example, a staff member challenging a performance appraisal or entitlements, were left out of the IOM

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<sup>5</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Bureau/ASP2017-Bureau06-decision-ENG-ObsvrStates.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ASP2017-Bureau06-decision-ENG-ObsvrStates.pdf)

mandate as these are issues where the Court has proper mechanisms in place to address them. Those types of matters are not for the IOM to investigate unless they are related to an allegation of harassment or abuse of authority, in which case the IOM could intervene.

12. Regarding the possibility of the IOM carrying out vetting procedures for future elections of officials in light of the recommendations made by the Committee of the Election of the Prosecutor, there are potential limitations as it is very different to carry out investigations within the Court where IOM has access, than for example having to request access to information outside the Court's remit.

13. As regards the overall interaction of the IOM and the Court as a whole in the future, Mr. Hedaraly proposed to add new text at the end of the section on investigations that would read: "*The IOM shall assist the Court in establishing further governing principles for the review of allegations of misconduct, consistent with this Mandate.*" He clarified that the reason for this proposal was that when procedures in the Court are developed they create rights and obligations for staff members, and that it would be important that these be reflected in the Court's internal regulations, be it by administrative instructions or presidential directives.

14. A complete draft for a revised operational mandate for the Independent Oversight Mechanism, acceptable to the IOM and the Court organs, was presented at the third facilitation meeting.

15. Following the publication of the report of the Independent Expert Review on 30 September, the facilitation would wait for further guidance from the Bureau in relation to the implementation of Independent Expert Review (IER) recommendations in the future. The IER recommendations regarding the IOM were quite significant and would require a thorough discussion and thus a considerable amount of time. The representative of the Presidency observed that a number of aspects of the IER report were consistent with some concerns of the Presidency, in particular issues regarding judicial independence. The Presidency was of the view that the draft mandate represented a significant improvement to previous drafts. The representative of the Office of the Prosecutor noted that while the OTP saw the relevance of the recommendations of the IER report on the IOM, it is ready to go ahead and adopt the revised mandate. The representative of the Registry noted that the IOM plays a fundamental role for the ICC and it needs all the means possible to carry out its work and that the current draft mandate took into account all the concerns raised by the IOM and the Court organs and as a result improved the previous mandate.

16. If the negotiated draft for a revised operational mandate was to be set aside at this stage the deficiencies with the current mandate would remain. They have been the initial reason why so much work had gone into developing the current draft text which was now ready and acceptable to the IOM and the Court organs. Mr. Hedaraly pleaded States Parties to adopt the agreed upon mandate which would also send a message that the IOM is important and that this mandate would make it more effective and efficient. He added that adopting the revised mandate now would allow the IOM to operate and would not in any way limit States Parties from adopting further changes later on if and when the IER recommendations were implemented.

17. In light of the reservations by some States Parties with respect to adoption of the revised operational mandate before thorough discussion on the recommendations by the Independent Expert Review, language referring to the future work on the basis of these recommendations was proposed by the facilitator to be included in the draft resolution.

18. The draft report and the draft language for the omnibus resolution was considered and agreed as amended at the fourth facilitation meeting. In this connection it was noted that the evaluation of the oversight bodies of the Court<sup>6</sup> may also bring forward issues that have to be addressed in the future work.

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<sup>6</sup> ICC-ASP/18/Res.1 (2019), I, para.6.

### **III. Recommendations**

19. The recommendations, including the proposed text on the adoption of the revised mandate of the Independent Oversight Mechanism, annexed to this report are submitted via the Bureau for the consideration of the Assembly.

## Annex I

### Independent Oversight Mechanism

1. **Recalls** its decisions in resolutions ICC-ASP/15/Res.5 and ICC-ASP/16/Res.6 to fully review the work and the operational mandate of the Independent Oversight Mechanism at its seventeenth session and its decisions in resolutions ICC-ASP/17/Res.5 and ICC-ASP/18/Res.6 to request the Bureau to continue the review and to complete it, including the consideration of amendments to the mandate to cover investigations of allegations against former officials, and to report thereon to the Assembly at its nineteenth session;
2. **Welcomes** the discussions held during ~~2019~~2020 on the review of the work and operational mandate of the Independent Oversight Mechanism, ~~and stresses the importance~~ **which is a subsidiary body** of completing that review and reporting to the Assembly at its nineteenth session of States Parties;
3. ~~Notes~~ **Welcomes** the ~~initial~~ draft for a revised operational mandate for the Independent Oversight Mechanism ~~presented by its Head during the 2019~~, **annexed to the report on the review of the work and operational mandate of the Independent Oversight Mechanism,<sup>1</sup> as a result of thorough** discussions; ~~and also notes the comments on that draft received from the~~ held among States Parties, with representatives of the Court's Organs and the Independent Oversight Mechanism;
4. **Takes note** of the Final Report of the Independent Expert Review of the International Criminal Court and the Rome Statute System,<sup>2</sup> in particular its recommendations related to the work and operational mandate of the Independent Oversight Mechanism, which deserves thorough discussions among States Parties and consideration and may call for further revisions of the mandate;
5. **Decides to adopt** the revised operational mandate for the Independent Oversight Mechanism annexed to the present resolution, which shall replace the provisions of the mandate in the annex to resolution ICC-ASP/12/Res.6, and shall apply provisionally until, and without prejudice to, any decision of the Assembly to amend or replace the mandate after its consideration of the report and the recommendations of the Independent Expert Review;
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. **Reiterates** 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. **Takes note of the Annual report of the Head of the Independent Oversight Mechanism;<sup>3</sup>**
9. **Reaffirms** the importance of the Independent Oversight Mechanism reporting to States Parties on the results of its activities;
10. **Emphasizes** the importance of adherence to the highest professional and ethics standards by all Court staff and elected officials, ~~notes the need~~ **efforts being made** to further strengthen the professional and ethical framework for elected officials, **acknowledges** the essential role played and work done by the Independent Oversight Mechanism, **welcomes** the

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<sup>1</sup> ICC-ASP/19/24.

<sup>2</sup> ICC-ASP/19/16.

<sup>3</sup> ICC-ASP/19/26.

steps **that continue to be** taken by the Court to investigate the potential impact on the Court's work in light of allegations of misconduct surrounding former officials ~~and, welcomes the Interim Report provided by the Office of the Prosecutor,<sup>4</sup> notes that following~~ the Office of the Prosecutor's ~~recommendation that the Assembly consider expanding the~~ **recommendations and ensuing consultations, the revised operational** mandate of the Independent Oversight Mechanism ~~to enable~~ **enables** it to investigate the alleged conduct of former elected officials and staff both while they were in office and when they separated from service **as prescribed in its para. 10, takes note of the status report provided by the Office of the Prosecutor,** and *urges* the Court to complete this investigation fully and transparently, to identify any necessary follow-up action for the Court and/or the Assembly, and to report to the Assembly in advance of its ~~nineteenth~~ **twentieth** session;

11. *Welcomes* the progress reported in formally aligning the Regulations of the Court with the mandate of the Independent Oversight Mechanism and *encourages* the Court, with the support of the Independent Oversight Mechanism, as necessary, 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.

### **Mandates of the Assembly of States Parties for the intersessional period**

*Requests* the Bureau to ~~complete~~ **remain seized of** the review of the work and the operational mandate of the Independent Oversight Mechanism, ~~including the consideration of amendments with a view to the mandate~~ **considering recommendations of the Independent Expert Review in this regard, subject** to ~~cover investigations of allegations against former officials~~ **relevant decisions of the Assembly on the implementation of the Report of the Independent Expert Review,** and to report thereon to the Assembly at its ~~nineteenth~~ **twentieth** session.

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<sup>4</sup> ~~Interim Report provided by the Office of the Prosecutor in response to paragraph 140 of resolution ICC/ASP/17/Res.5 (ICC-ASP/18/INF.5).~~

## Annex II

# Operational Mandate of the Independent Oversight Mechanism

### I. Mission of the IOM

1. The Independent Oversight Mechanism (hereinafter “IOM”) is a subsidiary body of the Assembly of States Parties to the Rome Statute (hereinafter “the Assembly”), established in accordance with article 112, paragraph 4, of the Rome Statute, by Assembly resolution ICC-ASP/8/Res.1, as amended by the present resolution.
2. As prescribed by article 112, paragraph 4 of the Rome Statute, the purpose of the IOM is to provide comprehensive oversight of the Court through the conduct of independent internal administrative investigations, evaluations, and inspections, in order to enhance its economy and efficiency.
3. The IOM shall exercise complete operational independence in the fulfilment of its functions and will report to the Assembly as provided for in paragraph 15 of resolution ICC-ASP/8/Res.1.
4. The IOM shall have the authority to initiate on a reasonable basis, carry out and report on any action which it considers necessary to fulfil its responsibilities with regard to its functions without any hindrance or need for prior authorisation, except as set forth in the present resolution. The IOM shall not be prohibited from carrying out any action within the purview of its mandate. In the case of any inconsistency between this mandate and any provision of the Court’s internal regulatory framework, the former shall prevail.

### Oversight Activities

5. The authority of the IOM does not in any way impede the authority or independence granted by the Rome Statute to the Presidency, judges, Registrar, or Prosecutor. In particular, the IOM will fully respect judicial and prosecutorial independence and minimize any impact by the conduct of its activities on the effective functioning of the Court.
6. Should the IOM deem that actions are required to fulfil its mandate that may potentially affect judicial or prosecutorial independence, or affect ongoing Court proceedings or investigations, it shall first consult the Presidency or Prosecutor to determine a course of action which would both respect the judicial or prosecutorial independence and not unduly interfere with Court proceedings or prosecutorial activities, while allowing the IOM to provide the oversight required. Should there be no agreement in respect of such course of action, the Presidency or Prosecutor shall agree with the Head of the IOM on an independent third-party procedure to facilitate and mediate the disagreement. In addition, the IOM will alert the relevant Head of Organ about any planned evaluation, inspection, or investigation, unless it determines that it would be inappropriate to do so. Upon such consultation, the Presidency or Prosecutor may raise any concerns connected to judicial or prosecutorial independence which have not been identified by the IOM.
7. In matters concerning judicial and prosecutorial independence, the IOM and relevant Head of Organ shall proceed in good faith at all times with a view to ensuring accountability, in accordance with the Rome Statute and the Rules of Procedure and Evidence.

#### A. Investigation

##### Legal mandate

8. The IOM shall promptly receive all allegations of misconduct<sup>5</sup> against any staff member or consultant/contractor retained by the Court, and determine after an initial review those

<sup>5</sup> For the purposes of this mandate, misconduct is used interchangeably with unsatisfactory conduct, defined in Chapter X of the Court Staff Rules as: “Failure by a staff member to act in accordance with any official document of the Court governing rights and obligations of staff members, such as the Staff Regulations and Rules and the Financial Regulations and Rules, or any relevant resolutions and decisions of the Assembly of States Parties, or failure to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory

that should be further assessed by the IOM. These include the making of allegations against an elected official, staff, or consultant/contractor in bad faith.

9. In accordance with relevant provisions of the Rome Statute and of the Rules of Procedure and Evidence,<sup>6</sup> the IOM shall also be the only body authorized to receive and investigate complaints of misconduct and serious misconduct against any elected official. The outcome of any investigation under this paragraph should be reported in accordance with Rule 26 of the Rules of Procedure and Evidence.
10. The IOM also has the discretionary authority to assess or investigate any allegations of misconduct, serious misconduct, or unsatisfactory conduct against any former elected official, staff member, or consultant/contractor, provided the elected official, staff member, or consultant/contractor was in the service of the Court at the time the alleged misconduct took place. This paragraph also covers allegations of misconduct with respect to obligations undertaken by elected officials, staff members, or consultants/contractors during their service and that extend after their term of service.
11. The IOM will not investigate contractual disputes or human management issues, including work performance, conditions of employment or personnel-related grievances. The IOM will also not investigate offences under article 70 of the Rome Statute.

#### Procedure

12. Following the IOM's initial review under paragraph 8, the IOM may decide to investigate the matter, in which case no further action should be taken by any other body within the Court until such time as the IOM has completed its investigation, unless after consultation the IOM has agreed that this would not affect the conduct of its investigation.
13. Should the IOM decide, further to an initial review under paragraph 9, not to investigate a matter, it may refer the matter to the relevant Head of Organ if appropriate. Should the Head of Organ nevertheless decide to carry out an investigation, it should be conducted, whether by a staff designated by the Head of Organ or an external investigator, in accordance with the Court's Regulatory framework with respect to the conduct of administrative investigations.
14. Should the IOM find, following a formal investigation that any allegation of unsatisfactory conduct under paragraph 9 above has been substantiated, it should present its report to the relevant Head of Organ, along with its recommendation on whether to initiate disciplinary proceedings. The Head of Organ shall report back to the IOM on whether disciplinary proceedings were initiated, and if so, whether any disciplinary measure was imposed, and the nature of the measure. If no disciplinary proceedings were initiated or no disciplinary measure imposed, it should inform the IOM as to the reason for not doing so.
15. Where an investigation reveals that criminal acts may have been committed by elected officials, staff members or consultants/contractors, the IOM may also refer the matter to the relevant Head of Organ, and recommend that the matter be further referred to the relevant national authorities.
16. The IOM may also, including in cases of unsubstantiated allegations, make observations and recommendations to any Head of Organ, Division, or Section if investigation findings reveal weaknesses in adherence to administrative or operations policies, guidelines, procedures or practices, or if specific issues arising from the investigation require immediate corrective action to strengthen internal controls and prevent similar incidents from happening in the future.
17. The confidentiality of sources of allegations should be strictly safeguarded, and any relevant identifiable information not included in any IOM report, unless disclosure is necessary to guarantee the rights of any elected official, staff member, or consultant/contractor. Such disclosure should only occur after the consent of the source has been obtained.

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*conduct within the meaning of staff regulation 10.2(a), leading to the institution of disciplinary proceedings and the imposition of disciplinary measures."*

<sup>6</sup> Articles 46 and 47 of the Rome Statute, and Rules 24-26 of the Rules of Procedure and Evidence.



18. The IOM shall assist the Court in adapting the Court's internal regulatory framework for the review of allegations of misconduct, consistent with this mandate.

B. Evaluation

19. An evaluation is a rigorous, impartial, systematic and independent assessment of an activity, project, programme, strategy, policy, topic, theme, sector, operational area or institutional performance. It analyses the level of achievement of both expected and unexpected results using criteria such as relevance, effectiveness, efficiency, impact and sustainability. In sum, evaluation assesses what works, what does not and why, highlighting both intended and unintended consequences concerning the subject evaluated.<sup>7</sup>
20. After consultation with the Heads of Organs, the IOM shall prepare an independent annual programme of evaluations to propose to the Assembly, taking into account the IOM's capacity in this respect. The Assembly or Bureau may also request the IOM to conduct evaluations other than those in the IOM annual programme of evaluations, providing also a rationale for such evaluations and a suitable budget and resources as required. The IOM will assess such requests on the basis of evaluability criteria to determine whether an evaluation can be carried out. If the result of an evaluability assessment is that the evaluation cannot be carried out, the IOM will consult with the requesting authority regarding alternative options.
21. Should part of or the entire annual programme of evaluations proposed by the IOM be rejected by the Bureau, without any other evaluation request made by the Assembly or the Bureau, the Heads of Organ will be encouraged to request the IOM to conduct an evaluation. Such request will also be reviewed by the IOM to determine its suitability, and an alternative proposed if necessary. In the absence of any evaluation request from the Assembly, the Bureau or the Heads of Organ, the IOM has the independent and discretionary power to initiate an evaluation on its own accord, after consultation with the relevant Head of Organ.
22. The IOM may, upon request of the Assembly, Bureau or any Head of Organ, provide quality assurance, coordination and secretariat support for any evaluation conducted by an external consultancy or by any high-level peer-review panel established by the Assembly, Bureau or Head of Organ, for the purposes of evaluating any aspect of the Court's operations.
23. The IOM may provide, upon request of a Head of Organ, technical support to the relevant Organ in establishing or reviewing an internal monitoring and evaluation system of any project, programme or initiative.
24. The IOM shall be the custodian of all evaluations, including those conducted under the purview of Heads of Organs. The Heads of Organ will report to the IOM all internal evaluations planned and completed by providing general information on these, such as the topic, scope, and timeline. Such internal evaluations are defined according to the evaluation principles of the UNEG Norms and Standards for Evaluation, and excludes reviews, performance indicators and audits, monitoring and other similar analyses not considered formal evaluations. The IOM shall have unrestrained access to all internal evaluation reports conducted by the Court.
25. Notwithstanding the confidentiality obligations attached to IOM work as found in this resolution, the IOM's annual programme of evaluations, all evaluation requests made by the Assembly or the Bureau, as well as evaluation executive summary reports will be made public. Where publication of any report regarding any evaluation would be inappropriate for reasons of confidentiality, or where it could place in jeopardy the safety and security of any individual, or run the risk of violating the due process rights of individuals, the report may be redacted or in exceptional cases withheld at the direction of the President of the Assembly or the Head of Organ, as appropriate.

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<sup>7</sup> The definition of evaluation is adapted from the United Nations Evaluation Group's (UNEG) Norms and Standards for Evaluation (2016).

26. The IOM will issue the final report for an evaluation requested by the Assembly or the Bureau to the President of the Assembly, who will then be responsible for any subsequent dissemination.
27. For evaluation requested by a Head of Organ pursuant to paragraph 21, the report will be submitted to the Head of Organ, who will be responsible for its dissemination. The IOM will also include a summary of any such evaluation in its Annual Report.

### C. Inspection

28. The IOM may conduct unscheduled or *ad hoc* inspections of any premises or processes, as requested by the Bureau or a Head of Organ. Such inspections are defined as special, unscheduled, on-the-spot verifications made of an activity directed towards the resolution of problems which may or may not have been previously identified.<sup>8</sup>
29. All requests of the Bureau to the IOM to conduct inspections will be notified to the appropriate Head of Organ, and shall be preceded by a consultation with the appropriate Head of Organ. The concerned Head of Organ may appoint a representative of his/her office to witness the inspection.
30. Upon completion of an inspection requested by the Bureau, the IOM shall deliver the report to the President of the Assembly, who shall forward it to the Assembly or its Bureau, as appropriate. The Assembly or the Bureau is solely responsible for any subsequent distribution or publication.
31. In those cases where the IOM agrees to conduct an inspection following a request from a Head of Organ, it shall deliver its inspection report to the Head of Organ upon completion, who will be solely responsible for any subsequent distribution or publication. The IOM will report on any such inspection in its Annual Report.

## **II. Powers and Authority**

32. The IOM shall have full, free and prompt access to all (electronic or otherwise) Court records files, documents, books or other materials, assets and premises, and shall have the right to obtain such information and explanations as they consider necessary to fulfil their responsibilities.
33. The IOM shall also have full and free access to all elected officials, staff, contractors, or any other personnel of the Court, and all such personnel shall have the duty to cooperate promptly with any IOM request, including requests for information, to be interviewed and/or to provide explanations. Failure to provide such cooperation, without reasonable excuse, may result in disciplinary action.
34. Any IOM request under paragraphs 32 and 33 above must be kept confidential and not shared with anyone, including any other elected official, staff or consultant/contractor, unless explicitly provided for in the Court's regulatory framework or expressly authorized by the IOM. Failure to maintain such confidentiality may result in disciplinary action.
35. Notwithstanding the provisions outlined in paragraphs 32 and 33 above, the right of access granted to the IOM shall be subject to confidentiality considerations necessary for the exercise of the Court's mandate under the Rome Statute, in particular in the context of criminal investigations, judicial proceedings, any pre-existing obligation of confidentiality to the originator of the information or document, the safety and security of witnesses, victims and third parties, and the protection of national security information of States Parties.
36. Any objection to comply with any IOM request under paragraphs 32 and 33 should be raised by the elected official, staff member, or consultant/contractor concerned at the earliest opportunity with the IOM, who will then consult with the appropriate Head of Organ. If the Head of Organ is of the view that the request would violate one of the confidentiality considerations of paragraph 35, the Head of Organ should formally notify the Head of the IOM accordingly. The IOM and Head of Organ shall make all reasonable efforts to allow the IOM access to material that will allow it to fulfil its functions, without

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<sup>8</sup> See *JIU Glossary of Evaluation Terms* (JIU/REP/78/5).

jeopardizing the confidentiality considerations contained in paragraph 35, including by providing redacted information that could satisfy both the mandate of the IOM and the confidentiality of the information.

37. Despite their best efforts, should the Head of Organ and Head of the IOM not agree regarding whether the information is protected from disclosure under paragraph 35, or if the Head of the IOM considers that unrestricted access to the information is nevertheless necessary to fulfil the mandate of the IOM, the Head of Organ and Head of the IOM should agree on an independent third-party procedure to facilitate and mediate the disagreement, while ensuring that all confidentiality obligations under the Rome Statute are duly respected.

### **III. Reporting**

38. The IOM shall provide an Annual Report on its operations to the Assembly. The Annual report shall provide information regarding investigations, evaluations and inspections carried out by the IOM, ensuring that it respects privacy rights of elected officials, staff members, and consultants/contractors. In particular, the Annual Report shall not contain the names or publicly identifiable information regarding any individual involved in any investigations.
39. Prior to its submission, the draft should be circulated to each Head of Organ, who may provide comments for the IOM's consideration. Any Head of Organ may also provide formal comments to the Annual Report which shall be annexed to the Annual Report and submitted with it to the Assembly.
40. The Annual Report (including any annexes) shall be a public document.
41. The IOM shall also provide an Interim Report to the Bureau of the Assembly, covering the six-month period following the previous Annual Report, and which shall include a summary of the IOM's operations for this period. The Interim Report shall be copied to the Heads of Organs and the Committee on Budget and Finance, and any further disclosure should be done only with the approval of the President of the Assembly.
42. Both the Interim Report and the Annual Report shall be presented at a Bureau meeting, and the Head of the IOM shall be available to provide further information, without disclosing information that is confidential and/or would be prejudicial to the rights of any elected official, staff member, or consultant/contractor, or would interfere with Court proceedings or investigations.
43. The IOM shall also provide *ad hoc* reports to the Bureau upon its request, or at the discretion of the Head of the IOM, who may do so after consultation with the President of the Assembly.

### **IV. Staff and Accountability**

44. In carrying all its activities, the IOM will implement recognized best practices and adhere to the highest ethical standards.
45. Except where explicitly provided in this resolution, the work of the IOM shall be confidential, and the IOM shall be responsible for safeguarding all confidential information provided to it. Unauthorized disclosure of any confidential information by staff members of the IOM shall constitute unsatisfactory conduct, for which appropriate disciplinary measures may be imposed.
46. Staff members of the IOM shall not be engaged in any non-IOM related operational duties for the Court, nor engage in any activity that might give an appearance of jeopardizing their independence, such as membership in any body that requires election or nomination.
47. The IOM exercises full operational independence from the Court, and accordingly reports directly to the President of the Assembly.
48. The Head of the IOM shall be selected by the Bureau of the Assembly. The evaluation of the work performance of the Head of the IOM shall be undertaken by the President of the Assembly. The Head of the IOM may be removed only for cause and by the decision of the Bureau of the Assembly.

49. Notwithstanding paragraph 47, the IOM is nevertheless bound by the regulatory framework of the Court. For administrative purposes, therefore, the Head of the IOM shall follow the Court processes for approvals related to Human Resources, Budget and Finance, and Procurement, including requiring the approval of the Registrar for any action in these areas. However, the Registrar shall not use its discretion to deny any IOM request, provided that the proper administrative processes have been followed. Any disagreement between the Registrar and the Head of the IOM in this respect shall be resolved by the President of the Assembly, whose decision shall be final.
  50. All staff members of the IOM are considered staff of the Court. As such, and unless otherwise inconsistent with the present mandate, their appointment, conditions of employment and standard of conduct must be in accordance with the Staff and Financial Regulations and Rules and relevant administrative issuances of the Court. Therefore, as part of the Court, the staff members of the IOM shall enjoy the same rights, duties, privileges and immunities, benefits of all staff members. The Registry shall facilitate any administrative arrangements.
  51. Any allegation of unsatisfactory conduct by any staff member of the IOM shall be promptly reported to the Head of the IOM, who upon consultation with the President of the Assembly, will decide on the proper course of action.
  52. Any allegation of unsatisfactory conduct by the Head of the IOM shall be reported to the President of the Assembly, who shall decide on the proper course of action.
  53. Any investigation into the conduct of any staff member of the IOM should be carried out in accordance with the standards applicable to investigations of any other staff member of the Court.
  54. Any disciplinary measure imposed on a staff member of the IOM should be imposed by the Registrar in consultation with the Head of the IOM. Any disciplinary measure against the Head of the IOM shall be made by the Bureau of the Assembly upon recommendation by the Registrar. Any disciplinary measure against any staff member of the IOM should be taken or recommended only following the disciplinary process of the Court, including the due process rights of the staff member of the IOM in question.
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