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Report of the Head of the Independent Oversight Mechanism

Executive summary

Major Programme VII-5, the Independent Oversight Mechanism (IOM), was established by the Assembly at its eighth session in accordance with article 112, paragraph 4, of the Rome Statute¹. The purpose of the IOM is to provide meaningful oversight of the Court through its mandate to conduct inspections and evaluations at the request of the Assembly or its Bureau, and to undertake investigations at its own discretion into reports received of suspected misconduct, serious misconduct, or unsatisfactory behaviour concerning elected officials, staff members, and other Court personnel.

This report consolidates the quarterly activity reports on its operations provided directly to the Bureau by the IOM during the period 12 October 2015 to 30 September 2016. The IOM has received full cooperation and assistance from the Court during the period in question and is now fully operational with respect to its investigation and inspection mandates, and expects to be fully operational with regard to its evaluation mandate during early 2017.

* Reissued for technical reasons.

¹ *Official Records ... Eighth session ... 2008* (ICC-ASP/8/20), vol. I, part III, ICC-ASP/8/Res.1.

I. Introduction

1. Major Programme VII-5, the Independent Oversight Mechanism (IOM), was established by the Assembly at its eighth session in accordance with article 112, paragraph 4, of the Rome Statute². It is an operationally independent office reporting to the President of the Assembly of States Parties.

2. The purpose of the IOM (the office) is to provide meaningful oversight of the Court through its mandate to conduct inspections and evaluations at the request of the Assembly or its Bureau, and to undertake investigations at its own discretion into reports received of suspected misconduct, serious misconduct, or unsatisfactory behaviour concerning elected officials, staff members, and other Court personnel.

3. The IOM became operational in late October 2015 with the appointment of its first permanent Head of Office. The IOM is required to submit quarterly activity reports on its operations to the Bureau of the Assembly. This annual report consolidates the quarterly activity reports provided directly to the Bureau by the IOM during the period 12 October 2015 to 30 September 2016.

II. IOM staffing and administrative matters

A. Staffing

4. Assembly resolution ICC-ASP/12/Res.6 set out a staffing structure for the IOM of a Head of IOM, a P-4 Senior Evaluation Specialist, a P-2 Associate Investigator, and one GS-OL administrative assistant.

5. The approved budget for 2016 assumed that recruitment to the above posts would be completed in stages during 2016. As at the end of September 2016 the GS-OL post has been filled and the recruitment exercise has been substantively completed for the P-2 post, with recruitment to the P-4 post on track for completion before year-end. A full staffing level is therefore estimated in the 2017 budget submission.

6. The staffing strategy of the IOM is based around the employment of a small core of established staff augmented by specialist inspection, evaluation and investigation staff as and when needed. This approach will enable the office to react in an efficient and effective manner to changing and demand led activities. A database of suitable external specialists is being established.

7. The IOM has benefited from the temporary secondment of two Court staff members during 2016 and is grateful to the Court for this assistance. This practice will be formalized in the future as expressions of interest in working with the IOM on specialist assignments will be invited from staff with relevant work experience and skill-sets. All such assignments will operate under IOM management with strict regard to confidentiality and conflict of interest controls, and will only be undertaken with the agreement of the relevant Head of Organ. This method of working will provide an additional flexible and efficient additional temporary staffing methodology for the IOM, potentially reduce future consultancy costs, and provide additional work experience for Court staff. Consideration will also be given to extending such a scheme to willing States Parties during 2017.

B. Administrative matters

8. IOM office procedures have been established and will be further refined during 2017 once the office has a full administrative support team in place. The use of satisfactory existing Court furniture, ICT systems and equipment has allowed the office to reduce its 2016 budget provision for such services by some 50% in its 2017 budget submission.

² Ibid.

9. A draft Standard Operating Procedure document has been developed to guide and assist in the provision of administrative assistance from the Registry whilst maintaining the operational independence of the IOM. This procedure will be reviewed and revised as necessary in future years.

10. The office has worked closely with the Court to assist in the revision of the Court's misconduct reporting and Protection from Retaliation Policy and to ensure that the role of the IOM in advising on, receiving and acting on reports of misconduct and/or retaliation is clearly stated and communicated.

11. During 2016 the office has established a comprehensive internal web-site to communicate the role of the IOM and to facilitate misconduct and retaliation reporting procedures. This has been augmented by ad hoc communication activities undertaken to ensure that the role of the office is widely understood within the Court. A sub-set of this information has also been made available on the Court's external website and this transparency and prevention initiative will be developed further during 2017.

III. IOM Investigation activities

12. The IOM is operational in terms of investigation activities. An Investigations Operating Manual has been developed and made available within the organization both for consultation purposes and to ensure full and complete transparency and accountability for IOM investigation activities. The procedures outlined in the manual are based upon best international practice tailored for the Court's specific environment, and will be kept under review for regular update as required.

13. Table 1 below summarizes investigation activity undertaken during the period of this report by type and activity. In future years such data will be reported on a multi-year basis for comparative purposes.

Table 1: IOM investigation activity, October 2015 to September 2016

Reports of alleged misconduct received:		9
- Named source	8	
- Anonymous	1	
Preliminary reviews:		9
- Undertaken	8	
- In progress	1	
Reports not pursued to full investigation:		7
- Not within IOM legal mandate	1	
- Insufficient evidence of misconduct	4	
- Referred to alternative resolution processes	2	
Investigations undertaken:		1
- Confirming evidence of misconduct	1	
- Not confirming evidence of misconduct	0	
Investigation recommendations made:		1
- Acted upon	1	
- Action in progress	0	
- Not acted upon	0	

14. During the period covered by this report the office received nine reports of misconduct or unsatisfactory conduct, of which two were referred to it by the Registrar, two were received through the IOM whistleblower reporting process, and five were received as direct communications to the Head of the IOM.

15. IOM procedures require that a preliminary review is undertaken into all reports in order to determine whether there is a reasonable basis to pursue the report to full investigation. Following such a review, one of the reports was pursued to full investigation, while an extended preliminary review exercise was commenced into another report received from an external source. Of the remaining reports, two were handled in a non-investigative manner whilst five were outside the mandate of the IOM.

16. The report that was followed to full investigation resulted in the making of one recommendation for a censure measure which has been acted on by the organ in question.

17. Where reports are received that contain credible information but do not warrant the pursuance to full investigation, the IOM will inform the Heads of Organs of these general issue areas, whilst maintaining confidentiality, in an annual letter in order to assist in the Court's risk management processes.

IV. Inspection activities

18. An inspection is a special, unscheduled, on-the-spot verification made of an activity directed towards the resolution of problems which may or may not have been previously identified. The IOM is mandated to undertake unscheduled/ad hoc inspections of any premises or processes at the direct request of the Bureau or when requested to do so by a Head of Organ.

19. The IOM is now operationally ready to conduct inspections. An Inspection Operations Manual has been developed in order to guide inspection activity and to make such activity fully transparent to all stakeholders. Work on the development of inspection guidance materials to assist self-inspection work in the Court will commence during 2017.

20. During the period in question no formal requests for the IOM to undertake inspection activities were received from the Bureau or from a Head of Organ; however, preliminary work has commenced on potential inspection activity during the next period.

V. Evaluation activities

21. An evaluation is a rigorous, systematic and objective assessment of the relevance, appropriateness, effectiveness, efficiency, impact and sustainability of a project or programme, based upon agreed criteria and benchmarks.

22. Preliminary work on the development of evaluation operating procedures and guidance materials has been undertaken with the expectation that this activity will be progressed by the soon to be recruited Senior Evaluation Specialist. The IOM expects to be able to conduct evaluation activity, including assisting the Court with the provision of guidance materials and support for self-evaluation work, from early 2017.

23. No formal requests to the IOM to undertake evaluation activities were received from the Assembly or from the Bureau during the period in question.

VI. Internal evaluation exercises undertaken by the Court

24. Where its resources allow, the IOM is also mandated to conduct evaluation work at the request of a Head of Organ or to provide coordination, technical guidance, and /or assistance to internal evaluation activities. In all such cases the final evaluation report is addressed to and owned by the relevant Head of Organ. Assembly resolution ICC-ASP/12/Res. 6 requires that the IOM provide the Assembly with summary information concerning such internal evaluations³.

25. While preliminary discussions on potential areas for IOM evaluation assistance in the next period have been held, no internal studies meeting the strict definition of an

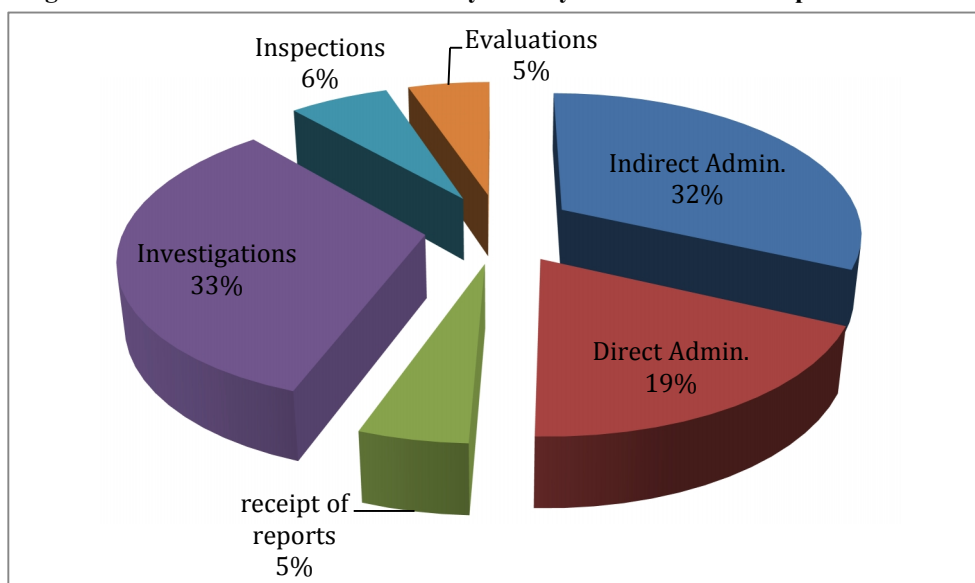
³ *Official Records ... Twelfth session ... 2012* (ICC-ASP/12/20), vol. I, part III, ICC-ASP/12/Res.6, section B.

evaluation⁴ have been undertaken by the Court with IOM assistance during the period under review.

VII. IOM activity breakdown

26. The following diagram shows a breakdown of IOM staff time by activity in 2016. Direct administration includes planning, communications, developing standards and guidance notes, and reporting. Indirect administration includes leave, closure days, recruitment and budget work, and office administration.

Diagram 1: IOM staff time breakdown by activity October 2015 to September 2016



27. The percentage of total staff time spent on indirect administration is expected to reduce considerably in future years as the office becomes fully staffed and administrative procedures are regularized. A target of less than 20% has been set for the next annual reporting period.

28. Provisional operational performance indicators have been set for each of the office's three functions, with a focus on the meeting of operational deadlines and target response rates. These will be reported on in future activity reports to the Bureau.

VIII. Observations on the IOM's mandate

A. Assembly review of the operational mandate of the IOM

29. The operational mandate of the IOM was set out by the Assembly at its 12th meeting in November 2013 (ICC-ASP/12/Res. 6). At this meeting the Assembly noted (at paragraph 7 of Resolution 6) that "*the work and the operational mandate of the Independent Oversight Mechanism will be fully reviewed by the Assembly at its fifteenth session*" (i.e. 2016).

30. When the above resolution was passed it was expected that the IOM would have been in operation for some two years prior to such a review. The Bureau at its fifth meeting of 2016 has therefore recommended that this review take place at the seventeenth session of the Assembly in 2018. The IOM welcomes such a review and will present a paper to the Bureau during 2017 on suggested modalities for this exercise.

⁴ Ibid.

B. Interim observations on the operational mandate of the IOM

31. The implementation of the IOM and its mandate has created a small number of potential contradictions concerning misconduct reporting and investigation processes within the Court's regulatory systems. These potential contradictions are largely administrative in nature and the IOM is working with the Court to carefully consider these issues as they arise. One example of such an issue is a potential contradiction between Rule 26.2 of the Court's Rules of Procedure and Evidence and section C of ICC-ASP/12/Res.6 on the administration of reports of misconduct received concerning elected officials. A suggested amendment to the wording of the Court's Rules of Procedure and Evidence will be submitted for consideration by the Assembly in the near future. In the meantime a satisfactory working practice has been put in place.

32. In a similar vein, the investigative component of the IOM's mandate does not include specific handling procedures in the unlikely event of a report of misconduct that implicates the Heads of Organs themselves. Such reports in practice require amended administrative processes in order to properly manage conflicts of interests and to ensure confidentiality whilst properly observing all accountability requirements. This is a topic that is being widely debated amongst oversight offices and regulatory bodies within the international community. The IOM will review arrangements in other organizations and bodies, consult with relevant persons on possible approaches, and submit a report on this matter to the Bureau. In the meantime, the default position remains to apply the same investigative procedures for all categories of staff and elected officials.

33. In addition, as noted at sections IV and V of this report, the IOM has no authority to initiate inspection and evaluation activity at its own discretion: all such activity must be undertaken at the request of either the Bureau or the Assembly, or at the direct request of a Head of Organ. Notwithstanding this, the IOM has received several reports during 2016 through the investigation reporting mechanism reporting alleged inefficiencies and issues that the reporters consider merit an IOM inspection or evaluation response. A means of addressing such requests, together with procedures by which the Assembly, Bureau or the Committee on Budget and Finance might propose or request inspection and evaluation work to be undertaken by the IOM will be presented to the Bureau in the first trimester of 2017.

Annex I

Draft paragraphs for inclusion in the omnibus resolution

1. *Notes* that the IOM expects to be fully staffed by the end of 2016 and that it is now fully operational in respect of its investigation and inspection functions, with its evaluation function to also become fully operational during 2017.
2. *Welcomes* that the IOM has worked closely with the Court to ensure the effective functioning of the Court's reporting and protection from retaliation policies.
3. *Recalls* the recommendation made by the Bureau at its fifth meeting in 2016 that the work and operational mandate of the IOM be fully reviewed by the Assembly at its seventeenth session.
4. *Notes* that the Head of the IOM will report to the Bureau during 2017 on interim working procedures concerning areas where the current IOM mandate might conflict with the Court's Rules of Procedure and Evidence, on specific administrative procedures for the handling of reports received against Heads of Organs, and on administrative procedures for the communication of Assembly requests for inspection and evaluation work by the IOM. All such interim procedures will be incorporated into the full review process for Assembly consideration at its seventeenth session.

Annex II

Draft language for inclusion in the annex on mandates of the omnibus resolution

With regard to the **Independent Oversight Mechanism**,

1. *Notes* that the Head of the IOM will report to the Bureau during 2017 on interim working procedures concerning areas where the current IOM mandate might conflict with the Court's Rules of Procedure and Evidence, on specific administrative procedures for the handling of reports received against Heads of Organs, and on administrative procedures for the communication of Assembly requests for inspection and evaluation work by the IOM. All such interim procedures will be incorporated into the full review process for Assembly consideration at its seventeenth session.
2. *Decides* that the work and the operational mandate of the Independent Oversight Mechanism will be fully reviewed by the Assembly at its seventeenth session.