



## Assembly of States Parties

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## Annual report of the Head of the Independent Oversight Mechanism

### *Executive summary*

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 Statute.<sup>1</sup> 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.
2. This report consolidates the quarterly activity reports on its operations provided directly to the Bureau by the IOM during the period 1 October 2017 to 30 September 2018. The IOM is grateful for the received cooperation and assistance from the Court during the reporting period.

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<sup>1</sup> *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part III, ICC-ASP/8/Res.1.

## **I. Introduction**

1. The Independent Oversight Mechanism (IOM) was established by the Assembly of State Parties at its eighth session in accordance with article 112, paragraph 4, of the Rome Statute.<sup>2</sup> It is an operationally independent office reporting to the President of the Assembly.

2. 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 of suspected misconduct, including 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. This Head resigned in December 2017, creating a void which, with the addition of an increase in investigation work, significantly challenged the limited IOM resources, leading to cases being unfortunately not pursued by the IOM.

## **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 P4 Senior Evaluation Specialist, a P2 Associate Investigator, and one GS-OL Administrative Assistant.

5. During the reporting period, the full staffing complement was in force only from October to December 2017 when the previous Head resigned. The Senior Evaluation Specialist acted as Head from that time to the end of the reporting period. A new Head was recruited and came on board effective 1 November 2018. A Senior Investigator was also hired towards the end of the reporting period, in September 2018, on a Short-Term Assignment to increase the investigation capacity.

6. The IOM needs to have the flexibility to respond to situations where its investigations workload surges rapidly and suddenly. In addition, evaluations of a strategic nature envisaged for 2019 are large-scale and foresee the use of external consultants. Therefore, in addition to its core staff, the IOM relies on a consultancy budget to fulfil its mandate.

### **B. Administrative matters**

7. During 2018, the office has further improved its internal website to communicate the role of the IOM and to facilitate misconduct and retaliation reporting procedures. The internal tracking system of IOM recommendations has been improved.

## **III. Investigation activities**

### **A. Activity report**

8. Table 1 below summarises investigation activity undertaken during the reporting period.

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<sup>2</sup> Ibid.

**Table 1: IOM investigation activity - Oct 2017 to Sept 2018**

	<i>Oct 2016 - Sept 2017</i>	<i>Oct 2017 - Sept 2018</i>
<i>Reports of alleged misconduct received:</i>	15	27
- Named source	14	27
- Anonymous	1	0
- Declined for lack of capacity	0	6
<i>Preliminary reviews:</i>	15	21
- Undertaken	15	21
- In progress	0	0
<i>Reports not pursued to full investigation:</i>	12	14
- Not within IOM legal mandate	1	1
- Insufficient evidence of misconduct	7	5
- Referred to alternative resolution processes	4	5
- Referred after preliminary review	0	2
- Recorded for Information	0	1
<i>Investigations undertaken:</i>	3	7
- Completed	2	7
- In progress	1	0

9. During the period covered by this report, the office received 27 reports of misconduct or unsatisfactory conduct, of which eight were received from the Registry, five from the Presidency, and the others directly by the IOM, an increase from the previous reporting period, not unexpected as the IOM gains more visibility within the organization. Regrettably, the limited IOM resources, compounded by the absence of a Head, contributed to six cases not being pursued at least partly because of this constraint, while the number of full investigations doubled during the reporting period. The IOM has also received reports immediately following the reporting period which it is currently reviewing.

10. At the moment, the above summary of investigation activity is modelled on previous IOM reports and practice. In the context of reviewing the proper level of disclosure of IOM activity, IOM will, as described below, review the format and substance of its report summarizing its activities, ensuring that the right balance is struck between transparency and confidentiality.

11. An important part of IOM's investigation function is advisory in nature. The Office is encouraged to have seen a number of staff directly seeking to consult and report to the IOM. The IOM has held a number of informal preliminary discussions with third parties, a majority of which have enabled non-investigative resolutions to be pursued. The IOM observed that staff and other personnel have felt confident in the independence and confidentiality of the IOM in such cases.

12. The IOM has also developed an awareness raising programme consisting of a series of six inter-related themes, with the first session on misconduct delivered in September. Discussions during these sessions helped to clarify for staff the IOM investigations mandate, procedures and role in relation to misconduct allegations.

## **B. Harmonisation of the IOM mandate with existing Court rules and regulations**

13. The IOM was invited to take part in the process of amending rule 26 of the Rules of Procedure and Evidence (RPE) by the Co-facilitators of the Study Group on Governance, Cluster 1: *Increasing the efficiency of the criminal process*. The IOM attended several of the working meetings of the Group and is pleased to note that the draft text of amendments to rule 26 has been tabled at the seventeenth session of the Assembly of State Parties.

14. The need to reconcile the IOM mandate and existing Court rules and regulations has already been raised in the last IOM annual report. In addition to amending rule 26 of the

RPE, alignment vis-à-vis other regulatory documents is also required. Although these other regulatory documents do not preclude the IOM specific procedural mandate, they should be updated to explicitly refer to the role of the IOM mandate in the overall regulatory framework.

15. Table 2 outlines these regulatory documents, most of which pre-date the creation of the IOM, and which also need to be updated to reflect current international norms and best practices and reflect recent UN-wide initiatives, in particular in the area of sexual misconduct. While the IOM is ready to participate actively in this process, it is the custodians of these regulatory provisions that are legally authorised to initiate amendment of these regulatory documents.

**Table 2: ICC regulatory documents to be reviewed in relation to IOM’s operational mandate in investigation**

<i>Regulation</i>	<i>Reference</i>	<i>IOM referenced (Yes/No)</i>
The Court’s Policy on Whistleblowing and Whistleblower Protection	ICC/PRESG/G/2014/003	Yes
The Court’s Anti-Fraud Policy	ICC/PRESG/G/2014/002	Yes
Administrative Instruction on Harassment and Sexual Harassment	ICC/AI/2005/005	No
Administrative Instruction on Disciplinary Procedures	ICC/AI/2008/001	No
Information Circular Rules of Procedure of the Disciplinary Advisory Board	ICC/INF/2007/003	No
Equal Employment Opportunity and Treatment	ICC/AI/2005/006	No

#### IV. Evaluation and inspection activities

16. The IOM is mandated to undertake both evaluations and inspections at the direct request of the Bureau or Heads of Organs. No formal requests to the IOM to undertake evaluation or inspection activities were received from the Assembly or from the Bureau during the period in question.

17. In addition to evaluations, the IOM can also be requested to provide coordination, technical guidance, and/or assistance to other internal evaluation activities. No such requests were made during the reporting period.

18. Assembly resolution ICC-ASP/12/Res.6 requires that the IOM provide the Assembly with summary information concerning inspection and evaluation activity undertaken exclusively by the Court (i.e., without IOM involvement).<sup>3</sup> The IOM has not received any indication of such activity during the reporting period.

##### A. Activity report: Evaluations

19. 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.

20. One evaluation was requested by a Head of Organ before the reporting period and concerned an operational evaluation of courtroom audio-visual equipment practices and procedures. The evaluation commenced in June 2017 and while the evaluation work has been completed in this reporting period, the report has not yet been finalized due to the absence of key staff. The IOM is hopeful that this evaluation will be finalized before the end of the 2018 calendar year, and looks forward to reporting further on this evaluation.

<sup>3</sup> *Official Records ... Twelfth session ... 2013* (ICC-ASP/12/20), vol. I, part III, ICC-ASP/12/Res.6, section B.

21. Some evaluation activity was also undertaken to support the Human Resources Division with respect to a Court-wide survey of ethics and values, but this was put on hold given other Court-wide initiatives undertaken by Human Resources

## **B. Activity report: Inspections**

22. 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.<sup>4</sup>

23. No formal request for inspections was made by the Heads of Organs during the reporting period. However, since the IOM was visiting the Field Offices in Mali and Côte d'Ivoire in 2018 concerning its other mandates, it was deemed efficient to also carry out a follow-up to the inspections that the IOM had carried out in 2017.<sup>5</sup> Both of these follow-up inspections focused on the administrative arrangements at these offices and assessed if any significant changes occurred since the inspections carried out in 2017.

## **V. Policy matters**

### **A. External review of IOM**

24. The operational mandate of the IOM has foreseen that “the work and the operational mandate” of the IOM be reviewed by the Assembly.<sup>6</sup> The IOM has participated in initial discussions with The Hague Working Group regarding how such a review could take place. The IOM looks forward to further discussing this issue and assisting the Assembly in establishing the proper scope for this review, including a review of the current IOM mandate and any changes necessary to it. Discussions in the Working Group have also highlighted further areas where additional analysis and consultations may be necessary, including in the proper scope of disclosure of information relating to IOM activity, as noted earlier.

### **B. Increasing evaluation and inspection activities**

25. As previously noted, the IOM does not have an explicit mandate to set its own evaluation and inspection programme of work, as the activities of evaluation and inspection are contemplated to be based on requests from the Bureau and Head of Organs, and no such requests were received in the reporting period.

26. To effectively carry out its evaluation and inspection mandate and strengthen its independence, IOM suggests a proposal for an annual programme based on areas that IOM has assessed merits evaluation and inspection activity. This is in line with international best practice in many oversight office and activity.

27. An interim procedure for evaluations that complies with IOM’s current operational mandate is being contemplated whereby the IOM could provide to the Bureau a proposal of evaluation themes that the Bureau could then request and which could be undertaken during the next reporting periods.

28. As per IOM’s operational mandate, Heads of Organs are also being consulted and asked to elicit any evaluation proposal requests for the 2019-2020 period.

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<sup>4</sup> *ibid.*

<sup>5</sup> In line with IOM’s discretionary authority to do so: ICC-ASP/12/Res.6, Annex I, paragraph 4, and in prior consultation with the Registrar and the Director of External Operations.

<sup>6</sup> *Ibid.*, para. 7.

## VI. Additional activities and IOM activity breakdown

### A. Additional activities undertaken

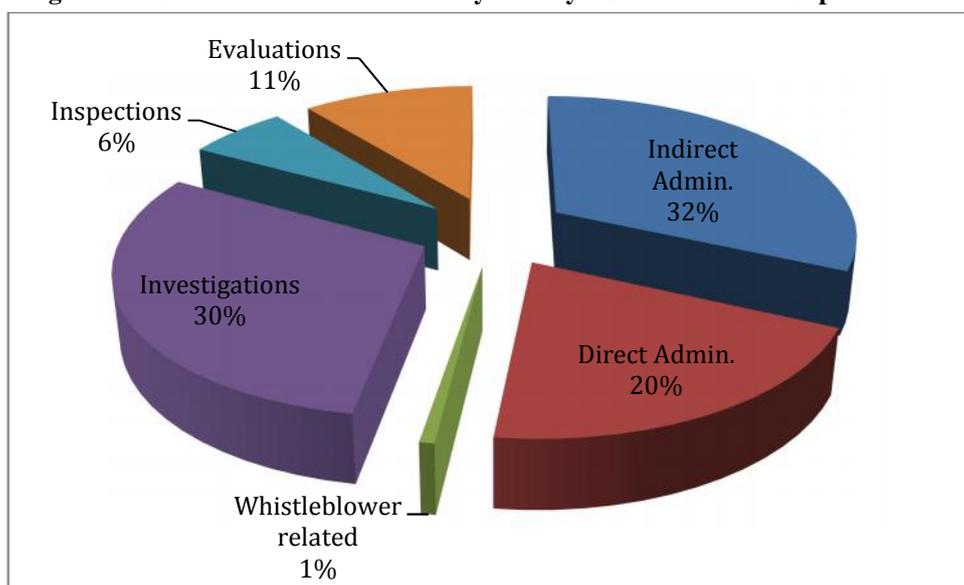
29. Whilst always having due regard to its operational independence, the IOM is also committed to fulfilling its responsibility to support the objectives of the Court. In this regard, the IOM has also undertaken other activities where compatible with its mandate and its skillsets and not judged to create a potential conflict of interests. These activities have included: assisting in the development of the Court's staff engagement survey, delivering induction training on ethics and values to new Court staff and assistance with relevant Court administrative panels and recruitment exercises.

30. In terms of additional activities outside the ICC that contributed to professionalization and normative work, the IOM has facilitated four sessions at the ICC and other host organisations in The Hague on evaluation related topics (evaluation policy, outcome monitoring, evaluating the performance of an international criminal court, gender-sensitive evaluation) and one workshop on theory of change through the Hague-based Evaluation Network. The IOM was also represented in the Annual Conference of International Investigators and is an active member of the United Nations Representatives of Investigative Services (UN-RIS) network.

### B. IOM activity breakdown

31. The following diagram shows a breakdown of IOM staff time by activity during the period in question. 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 2017 to September 2018**



32. The percentage of total staff time spent on indirect administration represents no change from the prior year. In 2018 compared to 2017, more time was overall spent on investigations, somewhat less on evaluation and inspection. Administrative work increased during this reporting period, which is commensurate with an increase in investigations, but also partly due to engagement in recruitment work.