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Briefing by the Prosecutor on 14 November 2018

1. It is my pleasure to be with you here this afternoon on the heels of the 24th of May session convened on the same topic.
2. The objective of this meeting is two-fold:
 - (a) First, in line with my Office's transparent and open approach, in this open session with enlarged participation, I aim to outline the totality of the steps we have taken in our comprehensive response to last year's media allegations, and to highlight where the limitations for further action lie, and how these can be potentially addressed; and
 - (b) Second, I undertook in our May session to look into the possibility of sharing the outcome of the disciplinary cases involving two of my staff implicated in the media allegations once they reach their conclusion in a manner that is appropriate and in line with the practice of other international organisations and the jurisprudence of the Administrative Tribunal of the International Labour Organization. Today, I will also be providing you with an update in this regard.
3. Allow me to state at the outset that we fully recognise the concerns of States and other ICC stakeholders arising from the allegations the *European Investigative Collaborations* ("EIC") and 12 participating media outlets reported in September of last year and following. We share those concerns.
4. We also recognise the importance of providing appropriate, sufficient and satisfactory information on the Office's response to those allegations, and we have endeavoured to do so. Indeed, had it not been for incompatible schedules, and the many demands of our core activities, we would have liked to have such meetings sooner.
5. I am nonetheless pleased that this second occasion has presented itself to once again engage with you on this topic and in this open forum.
6. Before entering into the substance of my briefing, I once again thank H.E. Ambassador Horslund for convening and chairing this meeting and all of you for your presence here today. I also welcome new participants to these discussions.
7. Given the continued interest on this topic, the questions we have received from State representatives present in our May briefing, and the fact that today's open session also means we have colleagues who are new to the discussions, not to mention new delegates which have only recently arrived in The Hague, I would like to ask for your indulgence in advance as some of the points I will highlight today will, by necessity, be a reiteration of my last briefing.
8. These are important points which need to be emphasized in our good faith efforts to sufficiently inform you of our comprehensive response to the media allegations.

9. As we know, the issues raised in the media and by civil society members relate, for the most part, to the alleged conduct of the former Prosecutor, Mr Luis Moreno Ocampo, but also to two members of staff of the Office of the Prosecutor (“Office” or “OTP”).
10. The measures taken by my Office may be summed up, as follows:
11. The Office was pro-active and *immediately* put in place an internal mechanism, or working group, to:
- (a) process and promptly respond and manage media queries arising from the EIC network of journalists and other media inquiring about the allegations. We did as soon as we received a flurry of questions containing allegations against the former Prosecutor and OTP staff. In other words, there was no gap between the media queries and our response time; and
 - (b) map-out, process and address the different aspects of the allegations that required action by the Office, and on which the Office could act.
12. We were led in these efforts by our conviction in the crucial importance of the Office’s mandate and its reputation, as well as a firm commitment to our professional and due diligence obligations.
13. As it would appear the information the media allegations were based upon derived from claimed hacked e-mails, we took immediate steps internally to ensure the integrity of our own databases and provided the necessary public assurances through a press statement in October 2017, confirming that there is no indication that the Court’s systems have been compromised.
14. You can appreciate the importance of this step to ensure we protect the confidentiality of the Court’s operations and meet our duties towards victims and witnesses.
15. We have since re-verified that initial assessment and our systems, across the Court, were not compromised.
16. In parallel, out of due diligence and as per our duty of care obligations, we also attempted to obtain from the media the documents on which they were relying, partly to assess any risk to victims and witnesses. We made repeated requests, including through formal letters, to achieve this aim.
17. The EIC media reports also contained serious allegations affecting two of our staff members. The allegations as reported in the media were news and unknown to us, as they were to you.
18. The proper process under the circumstances was carefully assessed by the Office and the allegations referred to the *Independent Oversight Mechanism* (“IOM”) to establish whether following a preliminary review, the matter ought to be investigated by the IOM.
19. As I stated publicly in my press statement of 5 October 2017, the IOM determined that the allegations of misconduct ought to undergo a full investigation, and proceeded accordingly. This was in our assessment, the most efficient and fair way to deal with the matter.
20. As I stated before The Hague Working Group in our May session, when I received the results of the IOM investigation, my Office then vigilantly followed the Court’s internal processes governing staff conduct.
21. At that session, I also emphasised that as the relevant proceedings were ongoing, I must respect the confidentiality of the process and I was duty bound to do so as per the applicable legal regime governing such matters at the Court.
22. Moreover, I stated that along with my senior management, we did our utmost to ensure we protect the integrity of the proceedings, and the rights of the staff implicated to due process.
23. I gave my personal assurance that the appropriate steps have been taken by the Office in an objective and fair manner in accordance with the Court’s legal framework and endeavoured to see whether at the conclusion of the internal disciplinary proceedings, I am able to share the outcome, whatever that may be, with you.

24. In line with the practice of other similar organisations, and in keeping with my on-going confidentiality obligations, I am now in a position to provide the following information:

(a) Following the IOM investigation and findings, I referred both cases to the Court's Disciplinary Advisory Board;

(b) Throughout all related proceedings, I ensured that the serious allegations implicating the two staff are fully assessed, objectively and impartially, with full respect for due process rights;

(c) Following a lengthy disciplinary process and on the basis of a thorough and careful consideration of the recommendations of the Disciplinary Advisory Board, on the 3rd and 10th of August, respectively, I decided to dismiss the two staff members implicated, with immediate effect, for serious misconduct on their part;

(d) When recently announcing this decision to my staff, I reiterated our collective responsibility to ensure that the Office adheres, without exception, to the highest standards of integrity and professional conduct in the discharge of its important responsibilities, reaffirming zero tolerance for conduct that deviates from these office norms; and

(e) The two staff have since been separated from service. They can still exercise their right of appeal before the International Labour Organisation Administrative Tribunal in Geneva. As this means that their cases are still *sub judice*, you can appreciate that I cannot enter into further details of their cases.

25. To reiterate, we have also carried out a thorough mapping of the different media allegations, identifying where we can and must act.

26. With respect to certain other allegations arising from the EIC media articles, we initiated internal procedures to gather all the information we can; this matter is operational, and has to be dealt with in relation to a specific case before a Trial Chamber. In this regard, in addition to taking steps to obtain the material in possession of the EIC network, we have undertaken a comprehensive data recovery from archived systems, including internal email accounts. The reproduction of the data was a time- and labour-intensive effort. The review of the material generated is presently ongoing. Thus far, our ongoing assessment of the material collected has given us no cause for concern.

27. Additionally, we have responded to the letter sent by the Norwegian Helsinki Committee, calling for an independent inquiry; we have provided that response to The Hague Working Group before our May session. The letter has since been posted on the Norwegian Helsinki Committee website.¹ The Committee's concern relates mainly to the alleged conduct of the former Prosecutor; a concern which I understand is also of importance to you, as it is to us. I'll come back to this point shortly in my briefing.

28. But first, allow me to readdress one of the controversies relating to the communication between the former Prosecutor and myself. The thrust of the OTP's response to certain media reports was meant to reassure the wider public by the fact that I took my own decisions, free of any influence from my predecessor.

29. When assuming office, I took carriage of all of the situations and cases that Mr Ocampo had opened and on occasion communication between us with respect to these was to be expected and is entirely normal.

30. However, the point is that I work in an independent manner, and have always taken my own decisions in an independent, impartial and objective way, respecting the discharge of my responsibilities.

31. As I expressed the last time we met in May, I have never and will never, as long as I am Prosecutor of the ICC, take instructions from anyone, not least those external to the Office, in the discharge of my mandated duties under the Statute.

¹ <https://www.nhc.no/content/uploads/2018/06/220518ResponseofICCProsecutortoLetteroftheNorwegianHelsinkiCommitteedated12March2018.pdf>.

32. As Prosecutor, I trust that my track-record of adhering strictly by the dictates of the Statute speaks for itself. Those who know me and work closely with me, including state representatives who interact with the Office, know how jealously I guard the Office's independence and impartiality in the exercise of my decision-making powers under the Statute. That will never change.

33. Our public response reiterated another fact: that I have also asked Mr Ocampo to refrain from any public pronouncement or activity that may, by virtue of his prior role as ICC Prosecutor, be perceived to interfere with the activities of the Office or harm its reputation.

34. Let me be clear: I took this step before the media allegations broke as we were witnessing from Mr Ocampo's public activities that he is increasingly opining on matters on which the Office is seized, and those interventions may not necessarily be in the interests of the Office and the Court.

35. The former Prosecutor left office six years ago, this summer. The OTP has been transformed in many ways since, by my personal efforts and those of my committed and principled team. I earnestly believe it is this transformation that should be the focus and this new reality should provide you with all of the re-assurance that you need.

36. It is my intention to produce a combined evaluation of the previous and present strategic plans of the Office as part of my legacy document. This will summarize for States the significant changes and improvements made in the state and performance of the Office.

37. Additionally, where allegations of sufficient concern are made about the conduct of OTP members, at any level, there are mechanisms available to my Office that permit such allegations to be dealt with in a way that both protects the integrity of the OTP and is fair to the staff members concerned.

38. Our ability to refer such matters to the IOM is part of the process available to us. The IOM was established by the Assembly of States Parties for just such a purpose. The IOM is an important mechanism that assists us, in a fair and proper way, to investigate allegations of impropriety against current members of staff and elected officials, to protect the integrity of the OTP and the Court. This is crucial.

39. As it concerns the alleged conduct of the former Prosecutor, as I stated during our May session, the IOM legal framework does not allow it to examine the alleged conduct of former staff or elected officials of the Court; in fact, the Court's legal framework as a whole – similar to organisations like the United Nations, as well as other international courts and tribunals - is constrained in this regard.

40. The provisions in the Statute, Rules and Regulations of the Court which regulate the enforcement procedure in case of misconduct by elected officials do not extend the Court's disciplinary authority to former elected officials, either in respect of alleged misconduct committed while they were still in office which comes to light following separation from service or with respect to misconduct allegedly committed after separation.

41. It may be added here that the relevant substantive provisions and the available types of sanctions - removal from office, reprimand, fine of maximum six month's salary - seem to indicate that such extension was not intended or envisaged. Finally, the absence of enforcement mechanisms for this situation would also correspond to the situation in other, comparable international organisations.

42. In other words, the recourse for meaningful action to take concerning the alleged conduct of former elected officials is simply not there due to the current status of the Court's legal framework. To fill this legal lacuna, 'legislative amendments' would be required.

43. To address this very concern, last year, largely at my own personal urging, at the Court's Coordinating Council, comprised of the Court's Principals, we initiated an inter-organ review of the Court's various ethical rules and regulations, and identified needs as well as possibilities to strengthen them, especially in relation to former staff members and elected officials.

44. As a result of that process, the good news is that, compared to other similar organisations, the Court has in place a fairly comprehensive regulatory framework governing conduct of its sitting officials and staff. This is reassuring, and the Court must indeed make use of this framework as effectively as possible to strengthen its culture of professional ethics – as we have been doing at the Office.

45. Again, the legal lacuna or legal deficit lies with the Court's inability to act concerning the alleged conduct of its *former* officials and staff.

46. This is where the limitation lies, and this is where we believe more work and your assistance are required.

47. More concretely, the states are already involved in discussions on making amendments to the mandate of the IOM. One obvious area, in our view, is to look into the possibility of expanding the powers of the IOM, enabling it to investigate the alleged conduct of former elected officials both while they were in office, and when they separated from service, to the extent such conduct has a nexus to the Court and would *prima facie* constitute misconduct.

48. Similarly, if I may suggest, any related text being negotiated in omnibus resolutions or in discussions amongst states, the proposal to expand the IOM mandate in the manner I have just described should be given due attention and consideration.

49. That, in my assessment, would be an important contribution to the institution and an appropriate response. States can also explore whether it would be viable or legally possible to have such an amendment apply retroactively.

50. The suggestion to amend the mandate of the IOM would be helpful in creating an investigative mechanism to establish the facts. This by itself, we believe, is a step forward and has value in terms of accountability and transparency.

51. I do wish to flag, however, that enforcement may still present challenges. Even where positive findings of misconduct are found by such an expanded investigative capacity, the ability of the Court to impose any sanction would be frustrated by the fact that the elected official is no longer working for the Court. For instance, how could removal from office be a feasible and effective sanction when the person is no longer at the Court?

52. That does not preclude the possibility of taking appropriate remedial action, on an *ad hoc* basis, and the results of the investigation itself, as I stated earlier, could be helpful in terms of both equipping the Court with a tool to respond to such instances to establish the facts, look to institute effective sanctions where possible, and hopefully also serve as a deterrent.

53. You are already aware of the Code of Conduct for the Office of the Prosecutor² which I put in place a year after assuming office as Prosecutor, related trainings, and other measures we have taken to demonstrate the importance we attach, as an Office, to professional ethics and to equip ourselves accordingly.

54. As you know, the ICC and the OTP are also subject to a number of external oversight mechanisms to strengthen good governance, which include of course, the Assembly of States Parties and its many Working Groups, the Committee on Budget and Finance, the Audit Committee, the external auditors, and the IOM, not to mention the ICC's and the Office's own internal governance mechanisms.

55. I, along with my senior management, have been working to improve the culture of the OTP. When I assumed office as Prosecutor, one of my first acts was to establish a task force on working climate within the OTP. The task force reported to me, and we have been implementing its recommendations.

56. A by-product of the work of the taskforce is that I have put in place Core Values of *Dedication, Integrity and Respect* for the OTP. I want to emphasise that our Core Values form the bedrock of the OTP's organisational culture, and related trainings have been organised office-wide on these Core Values. A similar initiative is now being contemplated

² <https://www.icc-cpi.int/iccdocs/oj/otp-COC-Eng.pdf>.

for the Court as a whole as part of our inter-organ efforts in the newly launched staff well-being framework.

57. We have been building an office culture focused on excellence, open communication, dedication, integrity and respect, as well as lessons learned.

58. Our internal self-assessment and lessons learned initiatives take many forms, including milestone triggered lessons learned processes, regular evidence reviews, and other efforts, all aimed at critically assessing and enhancing our performance. To cite an example, as many may already be aware, we have engaged in a full review of the Office's performance in the Kenya situation, and have sought the assistance of external experts as part of that process. I will soon be making the conclusions of that initiative public.

59. The Court is achieving real successes, and the OTP, as the 'engine' driving the Court, has equipped itself in many ways to contribute to that success.

60. The results are beginning to demonstrate the progress we have made.

61. What we are now, and how we are building for the future, should be the real focus of attention. Our strategic plans and their evaluation offer our stakeholders insight into where we stand as an Office in terms of performance and how we are adapting to a rapidly changing environment.

62. Based on all of the measures and steps we have taken as an Office, and the reality of the OTP today, I respectfully submit that we do not see the added value of a further "independent inquiry", putting aside the real questions of who would conduct such an inquiry and at what cost in time, energy and resources.

63. As I have outlined, we have taken a *comprehensive* approach to the media allegations and with absolute good faith and commitment, have looked at and acted upon all relevant allegations where we had the legal basis to do so, and assessed all pertinent questions arising from the media allegations. I reiterate here that those we could not act upon are those where we have no legal basis to act. I refer to the points I already made in this regard when proposing amendments to the IOM mandate.

64. In this context, it would, in my respectful submission to you, be superfluous and would serve to distract us from the important progress we are making in the rigorous and committed exercise of our mandate at a time we are making important progress across our situations.

65. The OTP today is a different Office which is shown through its results in and outside of the courtroom and has in place a different organization and culture.

66. In closing, last year's media allegations have given rise to a number of understandable questions and matters requiring action. In a spirit of transparency, candour and good faith, I have attempted to address these matters in my remarks by detailing the steps diligently taken by my Office to respond to these issues in a comprehensive and vigilant manner on the basis of the Court's legal framework.

67. I hope I have demonstrated the seriousness and commitment with which we have dealt with these important issues.

68. Should it be helpful, following today's session, I would be pleased to have these remarks circulated to The Hague Working Group. Additionally, shortly, we hope to provide you with a brief report summarizing the steps we have taken as well as key points I have outlined concerning the legal lacunae in the Court's legal framework in regards to the conduct of former elected officials.

69. I thank you for so patiently listening to me. I hope my remarks have been helpful and I look forward to your questions.
