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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.¹ 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 into reports of suspected misconduct, serious misconduct, or unsatisfactory behaviour concerning elected officials, staff members, and other Court personnel.
2. This report covers the IOM's operations during the period 1 October 2019 to 30 September 2020.

¹ *Official Records...Eighth session...2008* (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.² 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 at its own discretion investigations 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. Since then, the IOM has continued to enhance oversight at the Court by carrying out its mandate with professionalism, impartiality and efficiency.

II. Policy matters

A. Review of the Mandate of the IOM

4. The IOM continued to assist the work of the Hague Working Group of the Bureau on the review of its work and operational mandate (Hague Working Group) under the facilitation of H.E. Ambassador Päivi Kaukoranta (Finland).
5. During the reporting period, and under the instruction of the Facilitator, the IOM convened several meetings with representatives of the Heads of Organs to discuss the questions and concerns raised in response to the draft revised mandate submitted in September 2019. The discussions were collaborative and constructive and the IOM and the organs of the Court reached agreement on a substantial number of paragraphs. A new draft was submitted on 17 July 2020.
6. The revised draft took into account the amendments made to Rule 26 of the Rules of Procedure and Evidence, giving the IOM exclusive jurisdiction to investigate misconduct committed by elected officials, and explicitly broadened the investigative mandate of the IOM to former elected officials and staff. It also streamlined the investigation and evaluation processes and added a section outlining accountability for IOM staff.
7. On 10 September 2020, the Working Group approved most of the provisions in the revised draft, with only a general reservation made to take into account the work of the Independent Experts. The Facilitator instructed the IOM and the Court to further discuss the few outstanding items, dealing mainly with balancing judicial and prosecutorial independence and confidentiality, and the need for accountability. With the help of the Facilitator, the IOM and the organs of the Court worked on revisions to the remaining outstanding items.
8. On 13 October 2020, a further meeting of the Working Group was convened, where no objections were made to the substance of the revised draft mandate that was proposed. Some concerns were raised regarding approving the new mandate without first having considered the recommendations of the Independent Expert Review. In the IOM's view, conveyed to the States Parties at the meeting, any changes to the IOM mandate based on the IER recommendations may significantly alter the structure, role, and responsibilities of the IOM, and would therefore take a significant time to consider, discuss, and reach agreement upon. The IOM accordingly advocates to have the revised mandate adopted at the nineteenth

² *Ibid.*

session of the Assembly, subject to it being further revised pending the outcome of the discussions on the IER recommendations, thereby signalling that it fully supports the work of the IOM by further strengthening its mandate.

B. Harmonisation of IOM Mandate with Regulatory Framework of the Court

9. The IOM also continued its discussion with the Registry regarding the revision by the Court of internal Court documents governing the receipt and treatment of complaints; the conduct of investigations; and disciplinary proceedings. The IOM was consulted and commented upon a draft prepared by the Registry Legal Office regarding the disciplinary process, which is planned to be issued by the end of 2020 or beginning of 2021.

10. The IOM also prepared the first draft of an Investigation Policy, aimed at providing a framework for establishing governing principles for investigations of allegations of misconduct at the Court. It is envisaged that the Policy will ensure that allegations of misconduct are investigated thoroughly and impartially, protecting the interest of the Court and upholding the rights and obligations of all Court personnel. The Policy is currently being reviewed by the Registry prior to wider consultation within the Court.

11. The IOM also held meetings with both Clusters 1 and 2 of the Group of Independent Experts, and provided to them information regarding the role of the IOM in the Court's governance framework. At the time of reporting, however, the IOM has not been contacted by the External Auditors regarding their evaluation of the oversight bodies of the Court.

III. Summary of IOM Activities

A. Investigations

12. The IOM continued to provide oversight to the Court by responding to allegations of potential misconduct. If the allegation falls within its mandate, *i.e.*, the facts alleged would actually amount to misconduct, the IOM can conduct a preliminary review of the allegation and formally record the matter as a case. A preliminary review assesses whether the allegation merits a full investigation, generally by assessing its credibility, materiality, and verifiability.

13. In addition, the IOM also agrees to meet with personnel (or former personnel) who wish to discuss a potential matter and seek the IOM's guidance in terms of the applicable process should a formal complaint be made. If such a consultation does not lead to a formal complaint, or if the matter otherwise does not proceed to a preliminary review, it is not recorded as a "case" in its system.

(i) Statistics

14. From 1 October 2019 to 30 September 2020, the IOM processed thirty-three (33) potential reports of misconduct, as detailed in Table 1.

Table 1: IOM’s Investigative Caseload, 1 October 2019 to 30 September 2020

| | |
|---|--|
| Matters Received (total: 19) | <ul style="list-style-type: none"> • No IOM Preliminary Review: 13 • New Cases progressed to IOM Preliminary Review: 6 |
| Matters Carried Over from last reporting period (total: 14) | <ul style="list-style-type: none"> • No IOM Preliminary Review: 1 • Cases: 12 <ul style="list-style-type: none"> • Preliminary Reviews: 9 • Investigations: 4 |
| Preliminary Review Outcome (total: 15) | <ul style="list-style-type: none"> • Cases closed after Preliminary Review: 6 • Preliminary Reviews Leading to Investigation: 2 • Cases where Preliminary Review remains pending: 7 |
| Investigations (total: 6) | <ul style="list-style-type: none"> • Completed: 6 (details below) • Pending: 0 |

15. The new cases received during the reporting period included allegations of misconduct against an elected official from outside parties, harassment, assault by a staff member against an external party, undisclosed conflict of interest, and conduct by a staff member inconsistent with the standards of an international civil servant.

16. The fourteen matters which did not proceed to a Preliminary Review by the IOM included two harassment cases which the IOM could not review for lack of capacity, and these were forwarded for review by the relevant Head of Organ to the Disciplinary Appeals Board. Other matters were not pursued by the IOM because they did not fall within the IOM’s mandate as they did not constitute misconduct, were not serious enough to warrant an investigation, or were more suitable for an informal resolution. In these cases, the matters were sent back to the Head of Organ, or in one case to the relevant Director as risks were identified for the Court’s operations.

17. Of the six cases closed after a Preliminary Review, two consisted of allegations against an elected official which the IOM found to be manifestly unfounded, and both were communicated to the Assembly during the reporting period.

(ii) Completed Investigations

a. Substantiated Allegations and Discipline

18. In its report last year, the IOM identified two investigations where allegations of misconduct against a staff member had been substantiated and where the disciplinary process was still pending.

1. Violation of Local Laws

19. In one case, a driver was involved in a car accident injuring himself as well as a third person, and causing serious damage to ICC property. The IOM found that the driver had diverted from his mission without authorization and had significantly exceeded the applicable speed limit. The IOM found that it was a “minor miracle” that no individual had been more seriously hurt or killed and that there was sufficient evidence to conclude that the Staff Member had violated applicable local laws and had failed in his duties to use ICC property

and equipment for official purposes only. The IOM recommended to the Registrar on **9 April 2019** that appropriate disciplinary action be taken with respect to the staff member, and the Registrar referred the matter to the Disciplinary Advisory Board (DAB) for advice. The DAB disagreed with the IOM report and recommended to the Registrar that no disciplinary action should be taken against the staff member. The Registrar rejected the DAB recommendation and based on the IOM report, found the allegations to be proven beyond a reasonable doubt for disciplinary purposes, and imposed the sanction of a **written censure** to the staff member.

2. Sexual Harassment

20. The second case investigated in the previous reporting period concerned an allegation by a former intern at the Office of the Prosecutor (OTP), who alleged that a senior OTP Staff Member behaved towards them in a manner that amounted to sexual harassment and abuse of authority. Specifically, the complaint alleged a series of meetings and communications, which included conversations of a personal nature, comments deemed sexually suggestive, and a contemporaneous offer from the senior staff member to consider the intern for a forthcoming paid junior position on their team and under their supervision. On **17 September 2019**, the IOM concluded that the allegations had been partially substantiated. It concluded that while there was insufficient evidence to conclude that the senior staff's conduct constituted the offer of a professional opportunity in exchange for sexual favours, the senior staff member's conduct constituted unwelcome sexual advances or other of a sexual nature which interfered with the intern's work and reasonably created an intimidating, degrading, hostile, humiliating, or offensive work environment pursuant to the Court's regulatory framework. The Prosecutor referred the matter to the DAB, which fully endorsed the IOM's findings and conclusions. The Prosecutor found that the facts established by the IOM left no room for any reasonable doubt, and decided to impose the sanction of a **written censure** against the staff member.

3. Conduct Incompatible with Civil Servant Status

21. The IOM received an allegation that during the eighteenth session of the Assembly of States Parties in December 2019, someone had removed, without authorization, artwork exhibited by a State Party in the World Forum. The IOM, with the help of the security team of the Court and the World Forum, identified the person, who was a Court staff member. The staff member admitted that they had removed the artwork to make a political statement. The IOM concluded that the staff member had acted in violation of their obligations as international civil servants, and recommended to the Registrar on **18 December 2019** that appropriate disciplinary action be taken against the staff member. The Registrar considered the behaviour to constitute serious misconduct, for which he was not required to consult the DAB, and imposed the sanction of **summary dismissal** against the staff member.

4. Harassment

22. The IOM also received allegations from one member of personnel regarding a pattern of unacceptable behaviour by their supervisor, in addition to three specific instances of harassment. The IOM concluded that some of the alleged behaviour from the supervisor did not constitute harassment but rather showed significant lapses in management, demonstrating poor performance in the area of staff management. There was, however, sufficient evidence to conclude that other aspects of the conduct constituted harassment as defined in the relevant administrative instruction on harassment. On **7 February 2020**, the IOM recommended that administrative and/or disciplinary measures be imposed on the staff member. The Registrar, on the advice of the DAB, imposed the measure of a **written reprimand**.

5. Harassment, Abuse of Authority, and Retaliation

23. The IOM investigated allegations of harassment, abuse of authority and retaliation brought by a staff member against senior managers in their unit. The IOM completed its investigation on **30 June 2020**, and submitted its report, which recommended disciplinary action against two of the senior managers, but not against the others. The matter is still **pending** with the Registrar.

b. **Other Completed Investigations**

1. Elected Official

24. The IOM received a confidential allegation from staff in Chambers regarding meetings between a judge and a former state official while a case which may have implicated this state was under consideration. The IOM preliminary assessment confirmed that contact did occur. The mere fact that a number of legal officers were troubled enough by the meetings to claim whistle-blower protection and report the matter to the IOM confidentially and anonymously established a *prima facie* case that these meetings may have caused harm to the proper administration of justice before the Court, or its standing and proper internal functioning. The IOM therefore determined that the allegation could not be found to have been manifestly unfounded and needed be investigated under Rule 26(4).

25. The IOM investigation, however, did not find any evidence suggesting any undue influence on the concerned Judge with respect to any decision in the related case. An issue remained regarding the mere fact of the meetings would amount to misconduct or serious misconduct under the applicable provisions of the Rome Statute and Rules of Procedure and Evidence. The IOM accordingly, on **11 December 2019**, presented its findings to the Presidency, which, after reviewing the IOM report, concluded that the factual information contained in the IOM report demonstrated no form of misconduct and accordingly **no action** to be taken.

2. Conduct Incompatible with Civil Servant Status

26. The IOM received allegations regarding the publication of an academic article. The IOM investigated whether the staff member who published the article followed the applicable rules and regulations of the Court to obtain approval for publication, or violated any of their obligations as a civil servant by doing so. The IOM concluded that the staff member had followed all the applicable requirements existing at the time to obtain approval, and did not identify any evidence of bad faith by the staff member in doing so. On **18 August 2020**, the IOM recommended to the Registrar that **no action** be taken in that matter. The Registrar followed the IOM recommendation.

3. Attempt to Breach Security Protocols

27. The IOM received an allegation that a staff member had attempted to breach the Court's security system by asking a colleague to introduce an electronic storage device in one of the Court's secure areas. The IOM investigated the matter, and while it found that the storage was indeed provided to the colleague, there was insufficient evidence to establish that there had been an improper motive or attempt to breach security protocols, and no security breach occurred. The IOM accordingly closed the case on **24 August 2020** with **no further action recommended**.

B. Evaluation

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

(i) Administration of the Secretariat of the Trust Fund for Victims

29. During this reporting period, the IOM presented its final report on the evaluation of the administration of the Secretariat of the Trust Fund for Victims (STFV), requested by the Assembly at its 17th Session.³ An examination of the challenges facing the TFV, as well as the limited time and resources available to the IOM to conduct this evaluation, informed the decision to focus the evaluation on the implementation of the reparation mandate by the STFV. The evaluation assessed the Secretariat's role in the reparations mandate; human and financial resources available to carry out the reparations mandate; some of the projects and outputs produced to date; responsiveness to Court-ordered reparations; internal organisation and coordination with Court stakeholders; resource mobilisation capability and efforts; and the oversight mechanisms of the STFV in terms of accountability, reporting and communication on reparation activities and results.

30. Efforts were focused towards understanding the processes and procedures in place at the TFV in relation to its mandate, as well as the realities in operationalising reparations programmes. Through an understanding of the underlying causes that may affect the STFV's work either positively or negatively, the IOM issued evaluation recommendations on the basis of the findings and conclusions. The evaluation assessed a four year time period (2015 to 2019) since the issuance of the first Reparation Order.

31. From the information gathered in the evaluation, the IOM made a number of observations and recommendations, largely centred around three areas: 1) issues concerning the strategic focus with respect to reparations, and the interaction and prioritization of the assistance and reparation mandates; 2) issues related to the internal management of the STFV, including the management of its financial and human resources; and 3) the role of the Board of Directors of the TFV in providing oversight to and accountability of the STFV.

32. The Board of Directors of the TFV welcomed the IOM evaluation report, and have developed, with the help of the STFV, an action plan to address the IOM recommendations.

(ii) Interaction of Victims with the Court

33. In the absence of any formal request by the Assembly, Bureau, or Heads of Organ for an evaluation in 2020, the IOM, after consultation with the President of the Assembly, proposed to the Bureau three evaluation themes that the IOM considered to have a strong rationale to be subject to an evaluation, following a review of the Court's and other Organ's strategic plans, work conducted by other oversight bodies as well as in consideration of issues identified in previous evaluations. The three themes were:

- a. Evaluation theme 1: The interaction of victims with the International Criminal Court;
- b. Evaluation theme 2: The development of internal capacity to apply the policy on sexual and gender-based crimes in the office of the Prosecutor; and
- c. Evaluation theme 3: Financial investigations and asset recovery capabilities of the Court.

³ Resolution ICC-ASP/17/20, Section L, para. 7.

34. The IOM consulted with the Heads of Organs on these themes in January and February and forwarded their comments to the Bureau in March, along with the proposal. In a letter received by the IOM on 14 June, the Bureau notified the IOM of its decision of 28 May 2020 to request the IOM to conduct an evaluation of the “the interaction of victims with the International Criminal Court”. The IOM will submit an interim report to the Assembly by 31 October 2020. The overall objective of the evaluation will be to (i) provide an independent assessment of the relevance, coherence, effectiveness and gender-sensitivity of the institutional processes for victims to engage with the Court, (ii) to identify areas of institutional process improvements and (iii) to contribute towards a Court-wide strategy on victims in the 2019-2021 and beyond.

35. The evaluation so far involved interviewing over 35 Court staff from relevant offices including the Chambers, the Office of the Prosecutor, the Office of Public Counsel for Victims, the Trust Fund for Victims, the Victim Participation and Reparation Section, and the Victims and Witnesses Section. It also included a survey sent to staff who support field activities related to victim participation; a survey for external legal representatives of victims; and an analysis of key internal and external documents. All interviews were conducted virtually due to the COVID-19 pandemic and the surveys were administered online.

36. The documents examined included judicial filings, core documents of the Court regulation including the Rome Statute and others, Court policy and strategy papers, performance reports of the Court, the information on the Court website, internal documents, VPRS Victims Application Management System (VAMS) data, manuals etc. The interim report will consider the findings and recommendations of the Independent External Review that are related to victim participation and other related matters.

C. Inspection

37. 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. No inspection was conducted during the reporting period.

IV. IOM staffing and administrative matters

38. Assembly resolution ICC-ASP/12/Res.6 set out a staffing structure for the IOM comprising of a P5 Head of IOM, a P4 Senior Evaluation Specialist, a P2 Associate Investigator, and one GS-OL Administrative Assistant. In the 2020 budget, the Assembly also granted a GTA position of Senior Investigator. The recruitment for this new position was delayed because of the COVID-19 pandemic and other administrative issues, but has now been completed, and the selected candidate is expected to join soon.

39. On 31 March 2020, the IOM’s Associate Legal Officer (P2) resigned from the Court to join another UN Agency on promotion. Given the type and number of cases before the IOM, the IOM deems that it is important for the second IOM investigator to have the ability to lead cases by themselves, as well as support the Senior Investigator on more complex matters involving complex allegations, elected officials, or senior managers at the Court. Accordingly, the IOM has recruited a temporary investigator at the P3 level who is expected to join soon, to assist with the

backlog of cases until the end of December 2020. The IOM will reassess its needs next year, which will then be reflected in the 2022 budget.

IV. Final remarks

40. In accordance with paragraph 38 of the Annex to resolution ICC-ASP/12/Res.6, the IOM has circulated a draft of this annual report to the Heads of Organs, giving them the opportunity to comment. The comments received were duly considered and incorporated in this report where appropriate. Where comments were not incorporated, the relevant Head of Organ was informed of that fact, and invited to provide its views in an annex to the report, as contemplated in the above-referenced paragraph.
