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**Twentieth session**

The Hague, 6 – 11 December 2021

**Report 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 and then at its seventeenth sessions.<sup>2</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>3</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.

2. At its nineteenth session, the Assembly adopted the revised operational mandate of the IOM and requested the Bureau to remain seized of the review of the work and the operational mandate of the Independent Oversight Mechanism, with a view to considering recommendations of the Independent Expert Review<sup>4</sup> in this regard, subject to 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 twentieth session.<sup>5</sup>

3. On 6 April 2021 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.

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

<sup>2</sup> ICC-ASP/16/Res.6, annex I, Mandates of the Assembly of States Parties for the intersessional period, para. 15.

<sup>3</sup> ICC-ASP/17/Res.5, annex I, Mandates of the Assembly of States Parties for the intersessional period, para.15.

<sup>4</sup> ICC-ASP/19/16.

<sup>5</sup> ICC-ASP/19/Res.6, annex I, para 15 (a).

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 2021, The Hague Working Group (“the working group”) held written exchanges of views and three rounds of consultations on the review of the work and the operational mandate of the Independent Oversight Mechanism (on 28 May, 4 and 25 October). The facilitation was open to States Parties, Observer States, the Court and civil society.

6. The meetings provided, amongst others, an opportunity for States Parties to discuss the Independent Expert Review (IER) recommendations allocated to the review of the work and operational mandate of the Independent Oversight Mechanism by the Review Mechanism’s Comprehensive action plan. The Comprehensive action plan assigned the IOM facilitation as platform for discussions for recommendations R106-R128 and R131 and foresaw that recommendations R129, R130, R364 and R368 would be assessed under the Review Mechanism. R368 was going to be addressed also in the Budget Management Oversight (BMO) facilitation and R120 in the Study Group on Governance.

7. During its second and third meeting the facilitation on IOM commenced and continued with the assessment and provided a platform for discussion on recommendations R110 and R115-R121. The overall objective was to agree on a way forward with regard to the recommendations touching upon the IOM. Based on the discussion held during these meetings, a report on the topic of Review of the work and operational mandate of the Independent Oversight Mechanism on the IER related recommendations was agreed on 29 October 2021 and submitted to the Bureau of the Assembly on 1 November 2021.

### **Proposal on the establishment of a Grievance Committee**

8. A proposal was submitted by Mexico to establish a Grievance Committee, composed of an Ambassador and two legal advisers, which would provide via the Bureau of the Assembly a confidential channel to convey a complaint. This was expected to enhance trust and to guarantee the requisite follow up by the Court. The proposal would have no budgetary implications.

9. During the discussion on the proposal, some queries were raised as to the added value of this new channel, which would involve States Parties, as well as to possible risks related to confidentiality.

10. The idea of States Parties being involved in the settlement of internal disputes was deemed unusual. It was noted that there were already mechanisms within the Court to channel complaints, and that efforts should be made to enhance the existing system as suggested by the IER recommendations under consideration. The Office of the Prosecutor for example, had established a panel of four independent consultants to examine the problems identified in the IER report, including the issues of bullying and harassment.

11. For its part, the Registry indicated that there was a new harassment policy being drafted at the Court, that the Court always sought to assure confidentiality and that the concerns of the proposal could also be addressed through informal mechanisms.

12. The IOM recalled that it is not part of the Court, but a subsidiary body of the Assembly and that the issue of staff not coming forward with formal complaints pointed to the need to have an informal dispute resolution mechanism system in place.

13. In this connection, the point was made that the internal grievance procedures indeed required improvement, as there was a need for a more efficient, transparent and fair system, noting furthermore that the existing system did not allow for informal resolution of conflicts.

14. In concluding the discussion, it was stated that the thinking behind the proposal would be borne in mind as the issue of internal grievances continues to be addressed. In this context,

it was further noted that it would be useful for States Parties to consider in more detail the annual report of the Independent Oversight Mechanism, which would be submitted to the Assembly in advance of its twentieth session.<sup>6</sup>

**Development of the regulatory framework of the Court to harmonize with the IOM's new operational mandate adopted at the nineteenth session of the Assembly**

15. The IOM stated that two draft administrative instructions had been prepared to substitute a 2008 administrative instruction: a) one on internal administrative investigations at the Court; and b) one for disciplinary proceedings for staff members.

16. The draft administrative instruction on investigation had no precedent at the Court, and it reflected the corresponding rights and obligations of staff members in these investigations as set out in the IOM operational mandate adopted at the nineteenth session of the Assembly.

17. The draft disciplinary administrative instructions provided a more solid framework on how post-investigative actions are to be handled by the Court. It would only apply to staff, but not elected officials as this latter process is governed strictly by the Rules of Procedure and Evidence in terms of where the respective reports are sent and their follow-up.

18. The IOM indicated that although under rule 26 of the Rules of Procedure and Evidence, it can investigate elected officials, the draft administrative instructions would not cover these investigations, which will continue to be covered by the IOM in an *ad hoc* manner for the time being. In answer to a question, the IOM clarified that its intention was for elected officials to be treated equally as staff. In order to formalize that process, the IOM would discuss with the elected officials whether they would agree to follow the same process. Thus the powers of the IOM remain the same when it investigates elected officials and staff, consultants and contractors; it follows more or less the same process, but that process will not be formalized in the same way for elected officials as for the others. Should the elected officials not agree, the IOM may return to the Assembly on this point.

19. In terms of the timelines, the two administrative instructions were in the final stages, having been approved by the heads of the organs. The formal comments from the Staff Union Council (SUC), which is the final part of this process, were pending, although it had been consulted on earlier drafts. It was expected that the administrative instructions could be disseminated to States Parties by the end of November 2021.

20. Furthermore, the Court shared its expectation to promulgate, after receiving approval from the Heads of Organs and receiving the comments from the SUC, two additional administrative instructions by the end of 2021 on:

- a) discrimination, harassment, including sexual harassment, and abuse of authority;  
and
- b) sexual exploitation and abuse.

21. As regards its mandate to investigate elected officials and the applicable framework being different from the one for staff, the IOM stated that it does have the mandate to investigate elected officials, staff members, consultants and contractors. However, the specifics of the administrative instructions, such as timelines, the type of objections that can be made, who can be present in the interviews, how to conduct the interviews would not be applicable in the same manner. This was a legal matter since it was not clear that an administrative instruction could create obligations for elected officials. The IOM clarified that its intention was for elected officials to be treated equally as staff. In order to formalize that process, the IOM would discuss with the elected officials whether they would agree to follow the same process. Thus the powers of the IOM remain the same when it investigates elected officials and staff, consultants and contractors; it follows more or less the same process, but that process will not be formalized in the same way for elected officials as for the others.

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<sup>6</sup> ICC-ASP/20/16.

### **III. Recommendations**

22. The recommendations, annexed to this report are submitted via the Bureau for the consideration of the Assembly.

## Annex

### Language to be included in the omnibus resolution

#### Independent Oversight Mechanism

1. *Recalls* its decision in resolution ICC-ASP/19/Res.6 adopting the revised Operational Mandate of the Independent Oversight Mechanism and requesting the Bureau to remain seized of review of the work and operational mandate of the Independent Oversight Mechanism, with a view to considering recommendations of the Independent Expert Review in this regard, subject to relevant decisions of the Assembly on the implementation of the Report of the Independent Expert Review,<sup>1</sup> and to report thereon to the Assembly at its twentieth session;
2. *Welcomes* the discussions held during 2021 on the review of the work and operational mandate of the Independent Oversight Mechanism, which is a subsidiary body of the Assembly of States Parties;
3. *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;
4. *Recalls that* the revised Operational Mandate of the Independent Oversight Mechanism applies 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;
5. *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 where required, and, to the extent possible, consistent ethics charters and codes of conduct;
6. *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;
7. *Welcomes* the annual report of the Head of the Independent Oversight Mechanism;<sup>3</sup>
8. *Reaffirms* the importance of the Independent Oversight Mechanism reporting to States Parties on the results of its activities;
9. *Emphasizes* the importance of adherence to the highest professional and ethics standards by all Court staff and elected officials, *notes* the 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 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, *welcomes* that following the Office of the Prosecutor's recommendations and ensuing consultations, the revised operational mandate of the Independent Oversight Mechanism 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 *invites* the Court to provide at the earliest opportunity in advance of the twenty-first session of the Assembly any relevant update and recommendation on any necessary follow-up action for the Court and/or the Assembly;

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<sup>1</sup> ICC-ASP/19/16.

<sup>2</sup> ICC-ASP/19/24.

<sup>3</sup> ICC-ASP/20/16.

10. *Welcomes* the progress reported in formally aligning the Regulations of the Court with the operational mandate of the Independent Oversight Mechanism,<sup>4</sup> in particular Administrative Instruction on Investigation of Unsatisfactory Conduct and Administrative Instruction on Unsatisfactory Conduct and Disciplinary Proceedings as well as the upcoming new Administrative Instruction on Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority, and *encourages* the Court, with the support of the Independent Oversight Mechanism, as necessary, to finalize the work while ensuring 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 remain seized of the review of the work and the operational mandate of the Independent Oversight Mechanism, with a view to considering also recommendations of the Independent Expert Review in this regard, and to report thereon to the Assembly at its twenty-first session.

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<sup>4</sup> ICC-ASP/19/Res.6, annex II.