

## Resolution ICC-ASP/12/Res.6

*Adopted at the 12th plenary meeting, on 27 November 2013, by consensus*

### ICC-ASP/12/Res.6 Independent Oversight Mechanism

*The Assembly of States Parties,*

*Recalling* the Rome Statute of the International Criminal Court and, in particular article 112, paragraphs 2(b) and 4, thereof,

*Recalling* its resolution ICC-ASP/8/Res.1 establishing the Independent Oversight Mechanism,<sup>1</sup>

*Further recalling* its resolutions ICC-ASP/9/Res.5,<sup>2</sup> ICC-APS/10/Res.5<sup>3</sup> and ICC-ASP/11/Res.4,<sup>4</sup>

*Welcoming* the report of the Bureau on the Independent Oversight Mechanism,<sup>5</sup>

1. *Decides* that the Independent Oversight Mechanism shall perform the functions of investigations, inspection and evaluation in accordance with article 112, paragraph 4, of the Rome Statute;
2. *Urges* the Independent Oversight Mechanism to continue to work on the development of the legal framework of the three functions of the Independent Oversight Mechanism and to submit them to the Assembly for consideration at its next session. Pending approval, the Independent Oversight Mechanism shall operate subject to provisional rules that it shall establish in accordance with the legal framework of the Court and in accordance with established international best practices;
3. *Invites* the Court to continue to work with the Independent Oversight Mechanism on the amendments to existing legal instruments, with a view of the adoption, at the next session of the Assembly, of all the amendments necessary for the full operationalization of all functions of the Independent Oversight Mechanism;
4. *Decides* that, in view of the mandate of the office, the Independent Oversight Mechanism shall consist of four staff members: the head of the office, who shall be at the P-5 level, an evaluations officer, who shall be at the P-4 level, one further professional staff member at the P-2 level and administrative support at the general service level;
5. *Invites* the Bureau to commence the recruitment of the Head of the Independent Oversight Mechanism at the earliest possible date;
6. *Recommends* that, in considering the candidates with a view to recruiting the staff of the Independent Oversight Mechanism, the following elements, which include, inter alia, criteria governing the employment of staff of the Court provided in the Rome Statute, be taken into account:
  - a) The highest standards of efficiency, competency and integrity;<sup>6</sup>
  - b) The following criteria set forth in article 36, paragraph 8, on the election of judges, which apply mutatis mutandis to the employment of staff:<sup>7</sup>
    - i) equitable geographical representation; and
    - ii) a fair representation of female and male persons;
  - c) That the Head of the Independent Oversight Mechanism should have significant experience, whether national or international, in judicial institutions and bodies;

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

<sup>2</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I, part III.

<sup>3</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part III.

<sup>4</sup> *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. I, part III.

<sup>5</sup> Report of the Bureau on the Independent Oversight Mechanism, ICC-ASP/12/27.

<sup>6</sup> Rome Statute of the International Criminal Court, article 44, paragraph 2.

<sup>7</sup> *Ibid.*

d) That the selected candidates have the ability to communicate effectively, via written and oral means, in at least one, and preferably in both working languages of the Court, and to negotiate effectively through the establishment of constructive interpersonal relationships in a multicultural setting. Knowledge of another official language of the Court would be an added advantage and asset; and

e) That the vacancies be filled preferably by nationals of a State Party to the Rome Statute, or of a State which has signed and is engaged in the ratification or accession process, but that nationals from non-States parties may also be considered; and

7. *Decides* that functions of the Independent Oversight Mechanism shall operate in accordance with the provisions of the annex to this resolution. The work and the operational mandate of the Independent Oversight Mechanism will be fully reviewed by the Assembly at its fifteenth session.

## Annex

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### I. Introduction

1. The Independent Oversight Mechanism (hereinafter “IOM”) is a subsidiary body of the Assembly of States Parties to the Rome Statute (hereinafter “the Assembly”), which shall assume the functions prescribed in Assembly resolution ICC-ASP/8/Res.1,<sup>1</sup> as amended by the present resolution.
2. The IOM shall exercise operational independence under the authority of the President of the Assembly.
3. The purpose of the IOM is to ensure the Assembly of the effective and comprehensive oversight of the Court in order to enhance its efficiency and economy.
4. In the conduct of its duties, and in accordance with article 112, paragraph 4, of the Rome Statute, the IOM shall have the authority to initiate on a reasonable basis, carry out and report on any action which it considers necessary to fulfil its responsibilities with regard to its functions without any hindrance or need for prior clearance, except as set forth in the present resolution. The IOM shall not be prohibited from carrying out any action within the purview of its mandate.

### II. Functions

5. The effective and comprehensive oversight of the Court by the IOM will be conducted through inspection, evaluation and investigation as prescribed by article 112, paragraph 4, of the Rome Statute.

#### A. Inspection

##### 1. Legal mandate

6. The IOM shall conduct unscheduled/ad hoc inspections of any premises or processes, as requested by the Bureau. Such inspections are defined as special, unscheduled, on-the-spot verifications made of an activity directed towards the resolution of problems which may or may not have been previously identified.<sup>2</sup>
7. The Independent Oversight Mechanism may conduct unscheduled or ad hoc inspections when requested by a Head of Organ.

##### 2. Procedures

8. The IOM will implement recognized best practices and adhere to the highest ethical standards in carrying out all inspections.
9. All requests of the Bureau to the IOM to conduct inspections will be notified to the appropriate Head of Organ.
10. An inspection requested by the Bureau shall be preceded by a consultation with the appropriate Head of Organ, within five working days of the notification.
11. The concerned Head of Organ may appoint a representative of his/her office, who may witness the inspection.

<sup>1</sup> Establishment of an Independent Oversight Mechanism, adopted at the 7<sup>th</sup> plenary meeting on 26 November 2009, by consensus. See: *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II.

<sup>2</sup> See *JIU Glossary of Evaluation Terms* (JIU/REP/78/5).

### **3. Confidentiality**

12. All requests to the IOM to conduct an inspection will be kept confidential, subject to the provisions of paragraph 5 above.

13. All information gathered during an inspection shall be kept confidential by the IOM, in accordance with and subject to the provisions of paragraphs 43 and 44 below.

14. Upon completion of an inspection requested by the Bureau, the IOM shall deliver the report to the President of the Assembly, who shall forward it to the Assembly or its Bureau, as appropriate. The Assembly or the Bureau is solely responsible for any subsequent distribution or publication.

15. In those cases where the IOM agrees to conduct an inspection following a request from a Head of Organ, it shall deliver its inspection report to the requesting authority upon completion, who will be solely responsible for any subsequent distribution or publication.

## **B. Evaluation**

### **1. Legal mandate**

16. The IOM shall provide evaluations of any programme, project or policy as requested by the Assembly or the Bureau. Evaluation is defined as a judgement made of the relevance, appropriateness, effectiveness, efficiency, impact and sustainability of a project or programme, based on agreed criteria and benchmarks. It involves a rigorous, systematic and objective process in the design, analysis and interpretation of information to answer specific questions. It provides assessments of what works and why, highlights intended and unintended results, and provides strategic lessons to guide decision-makers and inform stakeholders.<sup>3</sup>

17. The IOM may conduct an evaluation if requested by a Head of Organ.

18. The IOM may, upon request of the Assembly, its Bureau or any Head of Organ, provide coordination for any evaluation conducted by an external consultancy or by any high-level peer-review panel established by the Assembly, its Bureau or any Head of Organ, for the purposes of evaluating any aspect of the Court's operations.

19. The IOM may provide, upon request of any Head of Organ, technical support to the relevant Organ in establishing or maintaining internal monitoring or evaluation of any project, programme or initiative.

20. The IOM shall have unrestrained access to all internal evaluations conducted by the Court.

### **2. Procedures**

21. The IOM will implement recognized best practices and adhere to the highest ethical standards in carrying out all evaluations.

22. If, following an assessment of its resources and of the pending requests for evaluation from the Assembly or the Bureau, the IOM determines that it cannot undertake the evaluation requested by a Head of Organ, it shall provide a written response to the requesting authority, providing technical guidance so that the evaluation can be conducted internally or make recommendations on outsourcing options.

### **3. Confidentiality**

23. All requests for carrying out an evaluation, addressed to the IOM by the Assembly, its Bureau or the Court, will be kept confidential by the IOM.

24. All information gathered during an evaluation process shall be kept confidential by the IOM, in accordance with and subject to the provisions of paragraphs 43 and 44 below.

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<sup>3</sup> See United Nations Development Programme, Evaluation Policy, para. 9 (<http://web.undp.org/evaluation/policy.htm>).

25. Upon completion of an evaluation requested by the Assembly or its Bureau, the IOM shall deliver an evaluation report to the President of the Assembly, who shall forward it to the Assembly or its Bureau, as appropriate. The Assembly or the Bureau is solely responsible for any subsequent distribution or publication.

26. In those cases where the IOM agrees to conduct an evaluation requested by a Head of Organ, it shall deliver the evaluation report to the requesting authority upon completion, who will be solely responsible for any subsequent distribution or publication.

## C. Investigation

### 1. Legal mandate

27. The authority of the IOM does not in any way impede the authority or independence granted by the Rome Statute to the Presidency, judges, Registrar or Prosecutor of the Court. In particular, the IOM will fully respect the judicial and prosecutorial independence and its activities will not interfere with the effective functioning of the Court.

28. The IOM may receive and investigate reports of misconduct<sup>4</sup> or serious misconduct,<sup>5</sup> including possible unlawful acts by a judge, the Prosecutor, a Deputy Prosecutor, the Registrar and the Deputy Registrar of the Court (hereinafter “elected officials”), all staff subject to the Staff and Financial Regulations and Rules of the Court (hereinafter “staff” or “staff member”) and all contractors and/or consultants retained by the Court and working on its behalf (hereinafter “contractors”).<sup>6</sup> An investigation is defined as a legally based and analytical process designed to gather information in order to determine whether wrongdoing has occurred and, if so, the persons or entities responsible.<sup>7</sup>

29. The IOM will not investigate contractual disputes or human resource management issues, including work performance, conditions of employment or personnel-related grievances.

30. The IOM will not investigate offences under article 70 of the Rome Statute.

### 2. Procedure

31. In carrying out all investigations, the IOM will implement recognized best practices and adhere to the highest ethical standards.

32. The IOM shall notify the Presidency, Registrar or Prosecutor of the receipt of a report that merits an investigation of misconduct or serious misconduct, including possible unlawful acts, by staff and contractors under their respective authority. Such notification does not include revealing the identity of the information source or any such circumstance, which might lead to the identification of the source, and such notification, must be treated as strictly confidential.

33. All reports of misconduct or serious misconduct, including possible unlawful acts, made against an elected official, staff member or contractor shall, if received by the Court, be submitted to the IOM.<sup>8</sup> Any person submitting such reports may also elect to submit a copy to the Presidency of the Court for informational purposes only. Likewise, staff members submitting a report against other staff members may elect to submit a copy of their report to the Prosecutor or Registrar, as appropriate.

<sup>4</sup> As defined in rule 25.1.b of the Rules of Procedure and Evidence. Misconduct, also described in the Staff Rules as “unsatisfactory conduct”, which includes any act or omission by elected officials, staff members or contractors in violation of their obligations to the Court pursuant to the Rome Statute and its implementing instruments, Staff and Financial Regulations and Rules, relevant administrative issuances and contractual agreements, as appropriate.

<sup>5</sup> As defined in rule 24.1.b of the Rules of Procedure and Evidence.

<sup>6</sup> The term “contractor” or “consultant” does not include an “intermediary”, who is broadly defined as an individual or entity that facilitates contact between the Court and a witness, victim or other source of information. Therefore the scope of the Independent Oversight Mechanism does not extend to the activities of an “intermediary” and any reported misconduct received by the mechanism regarding an “intermediary” shall be duly referred to the relevant organ head for their information.

<sup>7</sup> OIOS Investigations Manual, March 2009, ([http://www.un.org/depts/oios/pages/id\\_manual\\_mar2009.pdf](http://www.un.org/depts/oios/pages/id_manual_mar2009.pdf)), p.3.

<sup>8</sup> The IOM shall duly consider all reported misconduct claims submitted to it, however, the mechanism retains discretionary authority to decide which matters to investigate. Those matters which the IOM does not intend to investigate will be referred to the relevant entity for their appropriate action.

34. Any investigation of a staff member or contractor by the IOM shall be preceded by a consultation with the appropriate Head of Organ. That consultation shall take place within five working days of the IOM's notice to the Head of Organ of an intention to investigate a matter. The IOM shall use all appropriate diligence to address concerns of heads of organs in order to avoid any negative impact on on-going investigative, prosecutorial and judicial activities resulting from the proposed investigation.

35. Should, following consultation between the IOM and the relevant Head of Organ, there be a basis to believe that the proposed investigation by the IOM is outside of its legal mandate, the Head of Organ shall report such concerns to the Bureau and may seek a determination of the matter from the Presidency of the International Criminal Court. In order to reach that determination, the Presidency will follow the procedure established in regulation 120.1 of the Regulations of the Court.<sup>9</sup> A determination of the matter will be issued within 15 working days. Should the Presidency not be able to reach a decision within 15 working days, it may order a one-time extension of an additional 15 working days. The proposed investigation shall be suspended pending the Presidency's decision and such decision shall be final and binding.

36. Investigations into reported misconduct or serious misconduct, including possible unlawful acts, by contractors will be undertaken pursuant to the terms of the contract where stipulated, otherwise the IOM will act in accordance with its own established procedures reflecting recognized best practices.

37. The transmittal to the IOM of reports of misconduct or serious misconduct, including possible unlawful acts, with knowledge of their falsity or with wilful disregard of their truth or falsity shall constitute misconduct, for which disciplinary measures may be imposed.

### **3. Confidentiality**

38. Reports of possible misconduct or serious misconduct received by the IOM shall be treated in complete confidence, in accordance with and subject to the provisions on paragraphs 43 and 44 below.

39. The procedures and related arrangements described below are designed to protect individual rights:

i) Staff of the IOM shall be responsible for safeguarding the reported allegations from accidental, negligent or unauthorized disclosure, as well as for ensuring that the identity of the staff members and others who submitted such reports to the office is not disclosed, except as otherwise provided in the present resolution;

ii) Unauthorized disclosure of the said reports by staff of the IOM shall constitute misconduct, for which disciplinary measures may be imposed;

iii) The identity of a staff member or other person who submits reports to the IOM may only be disclosed by the office where such disclosure is necessary for the conduct of proceedings, whether administrative, disciplinary or judicial and only with their consent. However, such protection will not be provided when a staff member or other person discloses their own identity to a third party, including the Court, or submits a knowingly false or wilfully reckless report to the office;

iv) Confidential reports of misconduct or serious misconduct, including possible unlawful acts, may be used in the official reports of the IOM, without attribution directly or indirectly as to the source or identity of the individuals involved or implicated.

### **4. Recommendations and follow-up**

40. The results of investigations conducted by the IOM shall be transmitted to the Presidency, Registrar or Prosecutor of the Court, as appropriate, together with recommendations, including those for consideration of possible disciplinary or jurisdictional action.

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<sup>9</sup> Regulation 120 of the Regulations of the Court should be amended to include the determination of whether a proposed investigation is within the legal mandate of the IOM.

41. Where criminal acts by elected officials, staff members or contractors of the Court are reasonably suspected to have occurred, the IOM shall hand over the results of the investigation to the Court. The IOM may recommend that the Court refer the matter for possible criminal prosecution to relevant national authorities, such as those of the State where the suspected criminal act was committed, the State of the suspect's nationality, the State of the victim's nationality and, where applicable, of the host State of the seat of the Court.

### **III. Mode of operation**

#### **A. Operational independence**

42. The staff of the IOM shall have direct and prompt access to all elected officials, staff and contractors, and shall receive their full cooperation. Failure to provide such cooperation, without reasonable excuse, shall be duly reported upon and may result in disciplinary action.

43. Additionally, staff of the IOM shall have access to all (electronic or otherwise) Court records, files, documents, books or other materials, assets and premises, and shall have the right to obtain such information and explanations as they consider necessary to fulfil their responsibilities.

44. Any unauthorized disclosure of information shall constitute misconduct, for which disciplinary measures may be imposed.

45. Notwithstanding the provisions outlined in paragraphs 42 and 43 above, the right of access granted to the IOM shall be subject to confidentiality considerations envisaged by the Rome Statute in the context of judicial proceedings, a pre-existing obligation of confidentiality to the originator of the information or document, the safety and security of witnesses, victims and third parties, and the protection of national security information of States Parties.<sup>10</sup>

#### **B. Reporting procedures**

46. The Independent Oversight Mechanism will submit quarterly activity reports directly to the Bureau and will submit a consolidated annual report on its operations to the Assembly. Within this annual report, the IOM shall also provide the Assembly with a comprehensive section on the internal evaluations carried out by the Court during that year.

47. All reports made by the IOM to the Bureau or Assembly shall respect the confidentiality of staff members, elected officials and contractors. All reports created in accordance with paragraph 45 shall be copied to the Presidency, the Prosecutor, the Registrar and the Committee on Budget and Finance.

48. Prior to submission of the annual report, the IOM shall circulate the draft of the annual report it proposes to submit to the Presidency, Prosecutor and Registrar. The Court shall have an opportunity to comment upon the draft report. The IOM shall duly consider any comments and inform the appropriate organ in case of any disagreement. The Court shall have the opportunity to provide its views on any matter contained in the report as an annex to the report.

#### **C. Recommendations and follow-up**

49. The Presidency, Registrar or Prosecutor, as appropriate, shall provide the Head of the IOM twice yearly with written updates regarding the follow-up of disciplinary procedures involving cases previously investigated by the IOM, together with information, if any, on the application of sanctions made in individual cases.

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<sup>10</sup> This includes articles 54, 57, 64, 68, 72 and 93 of the Rome Statute.

50. The President, Registrar or Prosecutor, as appropriate, shall also provide the Head of the IOM with an annual written update regarding the implementation of recommendations made in the course of any inspection, evaluation or review process undertaken by the IOM or by an external panel coordinated by the IOM.

#### **IV. Staff and budget**

51. The Head of the IOM shall be selected by the Bureau of the Assembly.

52. The evaluation of the work performance of the Head of the IOM shall be undertaken by the President of the Assembly. The Head of the IOM may be removed only for cause and by the decision of the Bureau of the Assembly.

53. Any complaints regarding the actions of the Head of the IOM shall be submitted to the President of the Assembly, who shall assess such complaints for impact on any investigation and the possibility of investigative misconduct, as well as any performance implications.<sup>11</sup> The President of the Assembly shall submit a copy of all such complaints and a report of the outcome thereof to the heads of organs. Such reports will be treated as confidential.

54. All staff members of the IOM are considered staff of the Court. As such, their appointment, conditions of employment and standard of conduct must be in accordance with the Staff and Financial Regulations and Rules and relevant administrative issuances of the Court. Therefore, as part of the Court, the staff of the IOM shall enjoy the same rights, duties, privileges and immunities, benefits of all staff members. The Registry shall facilitate any administrative arrangements.

55. By resolution ICC-ASP/8/Res.1,<sup>12</sup> the Assembly established the IOM as a separate and distinct new major programme budget to recognize and ensure its operational independence.

56. Future programme budget proposals for the provision of adequate resources for the effective functioning of the IOM shall be submitted by the Head of the office for consideration by the relevant Court entities according to established procedures for final review and approval by the Assembly.

57. The Head of the IOM shall have delegated certifying authority for all of the accounts of the office, which are subject to internal and external auditing established for the Court.

58. The Head of the IOM shall exercise control over personnel and resources of the office that is necessary to achieve its objectives, in accordance with the Staff and Financial Regulations and Rules of the Court.

#### **V. Final provisions**

59. In the conduct of its duties, the IOM shall respect the individual rights and all conditions of employment for elected officials, staff members and contractors, and shall act with strict regard for fairness and due process.

60. Pending the adoption by the Court of the “Anti retaliation / whistle blower Policy”, the IOM will take action on any act of retaliation. The actions of the IOM will be guided by the following guidelines:

a) No action may be taken against staff or others as a reprisal for submitting a report, providing information or otherwise cooperating with the IOM;

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<sup>11</sup> Investigative misconduct is any material deviation from prescribed norms, procedures or practices in an investigation that is perpetrated intentionally or with reckless disregard for proper practices. In some instances, investigative misconduct may also constitute unsatisfactory conduct as provided for in the Staff Regulations and Rules of the Court and such conduct shall be duly addressed within the existing disciplinary structure of the Court by the Registrar upon the recommendation of the President of the Assembly of States Parties.

<sup>12</sup> *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II.



b) Any reprisal action taken against any person suspected of having submitted a report, provided information or otherwise cooperated with the IOM shall constitute misconduct, for which disciplinary measures may be imposed; and

c) Disciplinary proceedings shall be initiated and disciplinary action shall be taken in respect of any elected official or staff member who is proven to have retaliated against a staff member or other person who has submitted a report, provided information or otherwise cooperated with the IOM.

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