

**Twenty-first session**

The Hague, 5-10 December 2022

**Report of the Bureau 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. At its twentieth session, the Assembly 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, and to report thereon to the Assembly at its twenty-first session.<sup>5</sup>

3. On 21 February 2022 the Bureau of the Assembly decided to appoint Mr. Christian Nygård Nissen (Denmark) as facilitator to review the work and the operational mandate of the Independent Oversight Mechanism. Following the end of the facilitators mandate in 18 July 2022, The Hague Working Group coordinator, Ambassador Katerina Sequeñová (Czech Republic), assumed responsibility for the completion of the report of the facilitation.

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.

<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-ASP19/16.

<sup>5</sup> ICC-ASP/20/Res.5, annex I, para 15 (a).

## II. Review of the work and the Operational Mandate of the Independent Oversight Mechanism

5. In 2022, The Hague Working Group (“the working group”) held written exchanges of views and four rounds of consultations on the review of the work and the operational mandate of the Independent Oversight Mechanism (on 7, 14 and 24 June, 4 July). 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.<sup>6</sup> The Comprehensive action plan assigned the IOM facilitation as platform for discussions for recommendations R106-R131, and foresaw that recommendations R364 and R368 would be assessed in coordination with the Budget Management Oversight (BMO) facilitation. During its first meeting the facilitation on IOM commenced and continued with the assessment and provided a platform for discussion on recommendations related to the ethics framework for the Court, namely R106-R108. At the second meeting, the IOM facilitation continued with the assessment of recommendations related to prevention of conflict of interests with R111-114. At its third meeting the IOM facilitation in coordination with the BMO facilitation, assessed recommendations related to internal and external oversight mechanisms with R364 and R368. Lastly the IOM facilitation started the assessment of recommendations R115-R121 regarding internal grievance procedures at the Court. The overall objective was to agree on a way forward with regard to the recommendations touching upon the IOM.

### *First meeting: Ethics Framework*

7. At its first meeting held on 7 June 2022, the facilitator presented the draft programme of work, dated 31 May 2022, that had been prepared bearing in mind two key timelines, the consideration of the IER recommendations on the first semester and the preparation of the IOM report by 31 October 2022. In line with transparency and the inclusive nature of the IER review process, the facilitation meetings were open to all interested stakeholders.

8. The facilitator recalled that pursuant Resolution ICC-ASP/20/Res.5 the facilitation is mandated to (1) review the Courts work on updating the regulatory framework in line with the new IOM operational mandate; (2) complete the assessment of the IER recommendations in line with the Comprehensive Action Plan (CAP) in advance of the Assembly; and, (3) to prepare initial possible further action on recommendations positively assessed allocated to the Assembly or Court and the Assembly.

9. The facilitation subsequently discussed the first group of recommendations related to an ethics framework for the Court (R106-109). The Registry informed that recommendation R106 coincided with a recommendation of the Audit Committee and recalled the documents already in place for different types of staff and explained the developments made to fill the policy gaps (e.g., Administrative Instruction on harassment to investigate elected officials). The Registry informed that it had engaged in an exercise to define the Court-wide values involving HRS, Staff Union, and the Gender Focal Point, which was expected to be finalized by June and to be launched by September or October.<sup>7</sup> A point was made on the importance to have all personnel at the Court covered to a certain extent and it was proposed drafting core values standard as a solution. A point was made on the importance of having such Court-wide charter considered as a framework to be enforced and, if necessary, to be the basis for any investigation or following action by the IOM. The recommendation was assessed positively but with modifications.

10. R107 related to OTP cooperation with OIA and IOM, the OTP informed that the office maintains a constructive and transparent relationship with IOM, and that the working level for the review of the internal process -initiated last August- would be at the Prosecutor and

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<sup>6</sup> <https://asp.icc-cpi.int/Review-Court/Action-Plan>

<sup>7</sup> At the time of writing of this report, the Registry has reported that the values project is expected to be completed in December 2022.

Deputy Prosecutor in order to ensure progress and effectiveness. The recommendation was assessed positively as being implemented.

11. R108 and R109 were addressed together given that they were intimately related, notwithstanding the assessment of R109 had been scheduled for the first half of 2023. The facilitator recalled that under the current procedure, when investigating elected officials, the IOM shall refer back to the judges on the way forward. R108 proposed that the IOM outsource all that work to an independent panel outside the structures of the Court to conduct the investigations and issue the recommendations. R109 proposed to vest such independent panel with the authority to remove elected officials. It was noted that these recommendations would also be addressed during the judge's retreat in September 2022 and that the President had requested the IOM to conduct an evaluation of the working culture on the judiciary.

12. The ICC Presidency indicated that while the Court welcomed both recommendations, it considered R108 could constitute an intermediary step to towards R109, as this latter recommendation would require amendments to the Rome Statute (e.g., 2018 amendment of the Rules of Procedure and Evidence to give power to the IOM).

13. Some States Parties expressed the need to differentiate judicial and non-judicial misconduct where there is not a judicial procedure. In terms of investigation of misconduct of elected officials, States Parties agreed that an independent mechanism such as the IOM could investigate and be cost efficient. However, States stressed that an initial assessment would be needed for further clarifications. The recommendations were assessed positively with the caveat that it could be addressed once the judges have addressed the matter. The facilitator also requested delegations to consult with capitals for definite instructions on the way forward with the assessment of these two recommendations.

#### ***Second meeting: Prevention of conflict of interest***

14. At its second meeting, held on 14 June 2022, the facilitation revisited R107 and R108 and discussed the recommendations related to prevention of conflict of interest (R110-114).

15. R107 was revisited to hear the views of the Office of Internal Audit (OIA). It was stressed that the OIA has auditing challenges within the Court, due to significant delays to obtain information. She indicated that the OIA reports to the Audit Committee, which has expectations regarding the delivery of the Audit Plan and the engagements of the Office. She noted that this was extremely difficult to manage and that a smoother cooperation with the audit process would help improve effectiveness and working conditions of the OIA. The facilitator encouraged the OTP and all organs of the Court to take the comments from the Director into the review of their procedures. The OTP assessed this recommendation very positively and was committed to it and noted that the new Prosecutor was committed to review all these processes and see how to make cooperation more efficient. The recommendation was confirmed to be assessed positively and being implemented.

16. With regard to R108 the facilitator noted that the model proposed by the IOM tried to accommodate the spirit of R108 but at the same time make it administratively easier from an implementation point of view. The proposal entailed retaining the investigative powers concerning complains against elected officials with the IOM but at a later stage the results of the factual investigation would be handed over to an external panel of national judges or formal judges. Mr. Guillou (IER expert) informed that the background of the recommendation came from the fact that, first, at the domestic level most of the time investigations against judges are done by judges themselves, and second, the request by some of the judges interviewed.

17. The facilitation took note of the proposal noting that perhaps in some special cases it could be necessary to have a fully-fledged investigative panel for specific circumstances but that could be captured in a later stage when discussion on implementation took place. It was confirmed that R108 was positively assessed with modifications.

18. Given that R108 was a step forward towards R109, the facilitation agreed to already take a step towards implementation, and requested the IOM to produce a non-paper spelling out more in detail the different elements that would go into the proposal with different variables for States Parties to decide on. For instance, the threshold for convening a panel

and the possibility of convening a full investigative panel and a number of other issues would need to be determined at a later stage. With the non-paper, the facilitation could go to the Bureau with a decision in principle and request the next Assembly to mandate detailed design and implementation.

19. The Registry recalled its negative assessment of R110 due to the fact that it was not possible for the Court's elected officials to join the United Nations Financial disclosure programme (FDP) as they only accept staff members in the system. Setting up a different program for the Court would be time-consuming and very costly. Mr. Guillou (IER expert) indicated that with this recommendation the IER was not reacting to a problem in particular but rather wanted to propose the latest trend in terms of prevention of corruption. He stressed that such matters are always best addressed before a specific issue materialises. He suggested keeping this proposal for potential implementation in the future if the need arises. The facilitator recalled that during the assessment of this recommendation the previous year it was noted that there were two UN officials in the UN system who did not participate in the FDP –namely the President of the General Assembly and the Secretary-General–, the matter was dealt with at a previous stage when they applied as candidates for those positions and made some disclosures with the United Nations Office of Internal Oversight Services. Following this system, the possibility where candidates would make declarations at the time of their election to the IOM could be explored.

20. With regard to R111 the facilitator indicated that the current guidelines on extra-judicial activities of Judges should be formalised into a binding policy by the Presidency, after clarifying the extent to which Judges can engage in extra-judicial activities during work hours and the type of outside activities that are acceptable. The Presidency clarified that every Presidency of the Court from day one has issued guidelines on the external activities of the judges. When the judges of the Court want to engage in extra-judicial activity the President of the Court reviews it for approval. The review looks into (1) what sort of impact does this have on the judicial workload of the judge; and, (2) whether there is a conflict or perceived conflict of interests. In addition, the judges added a provision in paragraph 5 in the Code of Judicial Ethics that says that in interactions with civil society and other stakeholders the judges will engage with care and consideration. Article 40 of the Rome Statute essentially refers to that. The judges differ from the recommendation with regards running a draft of the policy by the ASP and getting comments because of the confidence in them. The facilitation concluded that while the judges appreciate the matter raised by the experts they prefer to do it differently. R111 was assessed negatively.

21. R112, R113 and R114 call for the establishment of an Ethics Committee as an independent entity, with court-wide competency and a preventive and advisory role (R112). Over the longer term once the Judicial Council mentioned in R109 and R126 is created, this final responsibility for the Ethics Committee would ideally be transferred to the Council. With regard to composition (R113) the Committee would be called to address issues on a needs-basis and work, in principle remotely. The Ethics Committee would be formed of three current or former judges, from ASP States Parties, from national and international jurisdictions, with knowledge and experience in matters of ethics. Members would be appointed for five-six years for a non-renewable mandate, ensuring diversity in gender, legal systems and geographical representation. They could be appointed as follows: two national judges with experience in ethics by ASP Presidency based on the Bureau's proposal, one former ICC judge appointed by the Court President. Regarding its mandate (R114), in the long term, a joint Ethics Committee servicing several international courts and tribunals is recommended to ensure coherence in standards and rationalise expenses.

22. In its overall response, the assessment by the Court was positive in principle to these recommendations but also indicated that further careful consideration would be warranted regarding integration into the Court's legal framework and the costs that would entail, as it would most likely have an impact on the budget. The IOM agreed with this assessment.

23. Mr. Guillou clarified that the IER report was quite detailed on this matter reflecting a current trend in international organizations and also on the private sector. It would be very useful for judges and elected officials for preventing problems.

24. It was noted that there is a link to the creation of an ethics charter (R106) and the creation of ethics and business conduct office (R122). The recommendation was welcomed but caution was raised regarding creating a body that then would keep growing.

25. The facilitation agreed that the recommendations were positively assessed but that implementation would require a more careful consideration to make sure it is made in a way that is not only consistent with the Court's regulatory framework but also be mindful of efficiency and not adding unnecessary bureaucracy and costs.

***Third meeting: Internal and External Oversight Mechanisms (in coordination with BMO)***

26. At its third meeting, held on 24 June 2022, the facilitation discussed the group of recommendations related to the internal and external Oversight Mechanisms (R364 and R368). These recommendations were assessed in coordination with the Budget Management Oversight facilitation as they overlapped.

27. R364 concerns the effectiveness and authority of that OIA and the IOM. On the one hand, there is a need for oversight and monitoring of the Court's management and operations and on the other hand the need to protect the independence and confidentiality of the Court Organs. Mr. Guillou highlighted that there had been some improvements from OTP and other improvements over the following years, but it was not clear whether practice had changed. When clarifying a question regarding what was meant by the term "enhanced authority" in the recommendation Mr. Guillou explained that the aim of the recommendation was not to change the scope of the work of the IOM or the OIA but to make the work effective.

28. The OIA indicated that in line with the Rome Statue, it did not conduct audit of prosecutorial and judicial activities, to respect the independence of OTP and Chambers. However, this did not prevent the OIA of auditing administrative or financial controls or processes. The main challenges OIA faces relate to delays in obtaining information. While OIA staffing was sufficient additional funds for external support such as external consultants is needed. The IOM indicated to have sufficient staff, and that its new mandate provided a much stronger and clearer authority and that the main challenges concerned the shifting priorities given the increasing demands on the Court. The Registry highlighted the importance of the work of these oversight bodies with enough resources to carry out their mandate, and that their requests represent a priority for the Registry.

29. The facilitation agreed, while this seemed to be to some extent work in progress, to positively assess this recommendation but to come back to some issues in the budget negotiations. The Director of the OIA and the Head of the IOM in coordination with the Court agreed to draft together a short bullet point document with the developments to be later added to the facilitations report.

30. The External Auditor, in its report of 13 October 2021<sup>8</sup> and in line with R368, recommended merging the Office of Internal Audit and the Independent Oversight Mechanism in one Major Programme (Recommendation No.5 - Priority 1). Mr. Guillou clarified that the IER was doing their work at the same time as the evaluation of the oversight bodies and therefore could not know what were the proposals the time. R368 was simply calling for an evaluation of the oversight bodies. The IER contemplated recommendation 5 but did not propose it for the same reasons mainly that the reporting lines are different. If the two are merged a change of the architecture and reporting lines would be required.

31. The IOM indicated that while it is common practice of many organizations to have the function of investigation and audit in the same body, it is different for the Court. This is because the ASP vested the IOM with the authority to investigate elected officials. In other organizations, the investigation function would not have the authority to investigate the Head of the organization. The OIA should report to the Head of the Court and not to the Audit Committee. In the current context, merging the two functions in the same body would mean that the same office would be reporting to the Head of the organization but would also have the authority to investigate them. While it is something that may be possible, it would require changes that would be inconsistent with has been discussed on the investigation of elected officials. The IOM raised the concern of potential duplication given the lack of formal

<sup>8</sup> ICC-ASP/20/06.

coordination, as the OIA will be conducting audits and an external auditor performance audits.

32. The OIA noted that the Court is a €150 million international organization but also a judicial institution, and clarified that audits that can be performed on the financial and administrative activities of the Court are extremely limited and do not relate to prosecutorial or judicial activities. The IOM suggested that the ASP could help by clearly identifying who can do what between these bodies (CBF, AC, OIA, IOM, and the External Auditor), and also streamlining their calendars to avoid duplication of work.

33. The point was made that there is a plurality of oversight mechanisms and the reasons why they exist. There is therefore a need for coordination, due to the different reporting lines and avoiding duplication of work. The Registry also stressed that the number of audits and their recommendations generate an enormous workload to the Court.

34. The facilitation indicated that no conclusions would be drawn at this stage on this matter, although the direction this discussion was heading was clear. It was agreed that the recommendation to merge will be discussed further at the BMO facilitation.

35. The facilitator of the BMO facilitation indicated that this recommendation had been assessed positively in that facilitation but noted that the report of that facilitation would include this reflection.

#### ***Fourth meeting: Internal Grievance Procedures***

36. At its final meeting, held on 7 July 2022, the facilitation discussed the fourth group of recommendations related to internal grievance procedures (R115-R121). These recommendations had already preliminarily been discussed at the facilitation during the previous year and there was an interest in discussing them further before the assessment is concluded. These are quite complex topics and the facilitator anticipated that no final assessment would be possible during the meeting but the aim was to start discussing the issues to have something to build on in later meetings to be able to conclude the assessment reasonably soon. He further noted that for this assessment to work the States Parties and the Court would have to coordinate and find common ground as these recommendations are interlinked and the assessment of one recommendation would affect other recommendations.

37. The Registry presented the Report of the Court on the Internal Justice System, dated 24 June 2022.<sup>9</sup> The report aimed at summarizing different options available to the Court and the implications that would follow from the potential implementation of these recommendations, and, in particular the pros and cons of moving the Court's settlement of disputes from the Administrative Tribunal of the International Labour Organization (ILOAT) to the United Nations Appeals Tribunal (UNAT) and the differences between the two jurisdictions. The Court is not taking any position on this matter at the moment. In preparing its report, the Court consulted with and received information from a wide range of stakeholders, including the United Nations (UN) Office of Administration of Justice, the Office of the UN Ombudsman and Mediation Services, the Office of Staff Legal Assistance, the International Court of Justice, and several international organizations that are part of the UN system.

38. The Registry presented the potential consequences for the Court's internal grievances system of implementing the IER's recommendations both for administrative and disciplinary cases and for both elected officials and staff members. The Court currently recognises the jurisdiction of the ILOAT. The Statute of the ILOAT grants status to "officials", which the ILOAT interprets as comprising both staff members and elected officials. In this regard, the main difference between the ILOAT and the UNAT systems is that the latter applies to staff members only and not elected officials.

39. The UNAT's narrow interpretation of "staff member" would effectively remove access to justice for the Court's judges and other Elected Officials. Therefore, the discussion in the UNAT scenario would be whether to create a First Instance Panel, composed of independent judges or former judges, who would have final authority over claims presented by Elected

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<sup>9</sup> <https://asp.icc-cpi.int/sites/asp/files/2022-10/Report-Court-Internal-Justice-System-IER-R115-121-ENG.pdf>

Officials of the Court, or leave Elected Officials with no judicial remedy in cases affecting them. Elected officials would also need to be consulted on this change.

40. On R115, the Registry indicated that it is not possible to have a justice system for all due to the different contractual relationship between these individuals and the Court. The Court however recognised with regard to the workplace culture the need to find ways to address these issues while capturing the spirit of this recommendation. R115 was negatively assessed by the Court but steps have been taken to capture the spirit of this recommendation.

41. With regard to R116 concerning the dissolution of the Disciplinary Advisory Board (DAB) and the Appeals Board (AB), as well as ad hoc mediation currently operated by staff, and R117 regarding employment of a First Instance Dispute Judge, the Registry indicated that there would be two options: reshaping the internal system by including an external independent Chair to the AB and DAB, which would either continue to make recommendations, or make decisions. If it would make decisions, there would be no final decision by the Registrar or the Prosecutor and the new AB and DAB would then replace the need to have a First Instance Judge. In such a scenario, the Terms of reference of the AB and DAB would give the last word to the external chair in case of disagreement with the staff members of the board. Caution was raised with regard to how the staff members are selected and noted that they would need the necessary background and receive appropriate training.

42. With regard to R120 calling to explore whether resorting to the UN Appeals Tribunal for administrative matters, rather than the ILOAT, would be more cost efficient for the Court, the Registry indicated that the Court report on the Court's internal justice system indicated that the costs by ILOAT and UNAT judgement were relatively the same, except that the UNAT system requires the establishment of a First Instance which would have additional costs (whether in the form of a First Instance Judge or Panel, or by having recourse to the UNDT). These additional costs as well as other potential costs related to joining the UNAT system but not related to the recommendations would ultimately make the overall costs of joining UNAT more expensive than staying within the ILOAT system. The Registry noted that the Court was of the view that moving into the UNAT would not necessarily make the Court move closer to the UN common system, as there are many UN agencies that recognize the ILOAT jurisprudence and also apply the UN common system. Finally, the Registry stressed that that only staff members would be able to appeal a decision at the UNAT leaving elected officials without judicial recourse.

43. In summarising the views on recommendations R116, R117 and R120, the Registry noted that the Court doesn't have a view but acknowledged that moving to the UNAT would deeply affect elected officials and they would need to be consulted and this has not been done yet. On the issue of dissolving or reshaping the AB / DAB the Court also does not have a position yet because there was not a clear suggestion or proposal but, following the discussion and the different elements contributed by delegations and the Staff Union Council (SUC), the Court would consult internally and come back to States Parties with a position.

44. The facilitator concluded that from the States Parties discussions there was no clear or manifest preference for accepting or rejecting either of the recommendations at this stage, which would mean that more time to continue discussions would be required and decided to keep this recommendations open for further discussion at a subsequent meeting. He suggested in advance of any further consultations on this that the Court provide a small options paper, with the different options of accepting, accept with modifications or rejected the recommendations and the potential need to engage with elected officials on the implications and consequences of the potential outcome decision.

45. The Registry noted that R118 had already been positively assessed and was being implemented. The Registry further confirmed that a vacancy announcement for an Ombudsperson had already been published, and that the recruitment will take place at the end of August or beginning of September. The individual would be hired as an external consultant and that the position would be kept ungraded as recommended by the IER. The SUC would be involved in the selection panel of the Ombudsperson which hopefully would add a level of trust from staff members. The Terms of Reference of the Ombudsperson includes many ways to informally intervene in a dispute different from a mediation. It was noted that the core of the recommendations is that there should be stronger informal dispute resolution mechanisms before going to the first instance judge, which would be a more

legally binding remedy. The point was made that recruiting externally was wise but at the same time, it was important that this person be accessible and have presence in the Court. The Court would assess at a later stage how the implementation of this recommendation works for the Court system.

46. It was noted that the Ombudsperson was not an office but one person and there should be realistic expectations as to what this person can achieve. In this regard, the suggestion to make use of additional support and other resources to help this person was seen as necessary to avoid this person become overburden by the tasks at hand. The SUC added that the ICC had a number of trained mediators among staff and encouraged, in addition to the appointment of the Ombudsperson, the creation of a pool of staff mediators to assist and support the Ombudsperson.

47. R119 was negatively assessed but the Court would nevertheless transmit the recommendation to the Ombudsperson together with the remarks made in this consultations as well as the submissions made by the SUC for consideration once the Ombudsperson will take up his or her functions. In relation to the last part of R119 concerning complaints dealing with underperformance, the Registry indicated that a reference was made in the Court's internal justice system report that the system proposed by the experts would depart from UN practice, and that the Court would make a proposal that can be later discussed once the facilitation comes back to these recommendations that would require further considerations.

48. Concerning R121 namely that any exercise envisaged by the Court in this field should consider the convenience of strengthening transparency, confidentiality and trust for the staff, the facilitation took note of the positive assessment of this recommendation and of the intention of the Court to let the spirit of this recommendation inform the rest of the review work in this regard.

### **III. Recommendations**

1. In light of the departure of the facilitator, it was not possible to complete the considerations of the remaining recommendations R122-R125 and R131. It was noted that R129 and R130 were already assessed positively in 2021, and R126-R128 were scheduled for discussion on the first half of 2023. Assessment of the remaining recommendations would therefore be undertaken in 2023.

2. The facilitation requested the IOM to produce a non-paper regarding R108 and R109 specifying in greater detail the modalities for possible implementation with different options for the consideration of the States Parties.

3. The facilitation requested the Court in coordination with the Director of the OIA and the Head of the IOM, to submit a document regarding R364, indicating the developments made with regard to the effectiveness and authority of these bodies. Regarding R368, the facilitation indicated that the recommendation to merge the oversight bodies would be further discussed at the Budget Management Oversight (BMO) facilitation.

4. The facilitation decided that further consultations would be needed on R116, R117 and R120, and requested, in advance of any further consultations, the Court to provide a paper with the different options on accepting, accepting with modifications or rejecting the recommendations, and the possible need to engage with elected officials on the implications and consequences of any final decision on the matter.

5. Due to the demanding exercise of the assessment of recommendations and the departure of the facilitator, no additional time was available to have separate discussions on the regulatory framework of the Court and consistency with the revised IOM mandate. The facilitation will continue discussions on this matter to 2023.



## 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~~ **twenty-first** session;
2. *Welcomes* the discussions held during 2022 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 and* that following the Office of the Prosecutor's recommendations and ensuing consultations, the revised operational mandate of the Independent Oversight Mechanism<sup>4</sup> 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 paragraph 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~~ **second** session of the Assembly any relevant update and recommendation on any necessary follow-up action for the Court and/or the Assembly;

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

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

<sup>3</sup> ICC-ASP/21/8.

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

10. Welcomes the progress ~~made reported~~ in formally aligning the ~~Regulations~~ **regulatory framework** of the Court with the operational mandate of the Independent Oversight Mechanism, 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~~ **continue working to ensure** 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 **and to follow up on the recommendations contained in the report of the facilitation report**, 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~~ **twenty-second** session.

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