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## Annual report of the Head of the Independent Oversight Mechanism

### Executive summary

Major Programme VII-5, the Independent Oversight Mechanism (IOM), was established by the Assembly of States Parties at its eighth session in accordance with article 112, paragraph 4, of the Rome Statute. The purpose of the IOM is to provide comprehensive oversight of the Court and enhance its economy and efficiency through its mandate to conduct independent internal administrative investigations, evaluations and inspections.

The present report outlines the activities undertaken by the IOM from 1 October 2022 to 30 September 2023. During this period, the IOM received 46 potential allegations of possible misconduct and initiated a detailed review of 35 cases. The IOM also conducted an evaluation of the Office of the Prosecutor's Strategic Plan 2019-2021, which was near completion at the end of the reporting period. The IOM also conducted a due diligence process for candidates nominated for the Court's 2023 judicial elections. Finally, the IOM continued to collaborate with the Court, in the revision of the Court's regulatory framework, and the Assembly, through the provision of input and technical expertise in discussions related to the assessment of the Independent Expert Review recommendations touching upon the work of the IOM, as well as the development of a permanent due diligence process for elected officials.

## **I. Introduction**

1. This annual report is submitted to the Assembly of States Parties pursuant to paragraph 38 of the IOM Operational Mandate (Resolution ICC-ASP/19/Res.6., Annex II), and covers the IOM's operations during the period 1 October 2022 to 30 September 2023.

## **II. Policy Matters**

### **A. Assembly Matters**

2. As in previous reporting periods, the IOM continued to participate, where relevant, in meetings of the Bureau of Assembly and its Working Groups, most notably the Hague Working Group facilitations on Budget Management Oversight and on the review of the work and operational mandate of the IOM. During the period under review, the discussions in such facilitations continued to focus on the assessment of recommendations from the report of the Independent Expert Review (IER), which touch upon the functions of the IOM. The IOM also participated in relevant meetings of the Review Mechanism.

3. At its twenty-first session, the Assembly tasked the Bureau to continue consultations with the relevant stakeholders with a view to establishing a permanent vetting process for elected officials of the Court, envisaged to be adopted by the Assembly at its twenty-second session. The Bureau created a facilitation to discuss the establishment of this permanent due diligence process. The IOM held meetings with the co-facilitators of this facilitation to support their work, which is ongoing.

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

4. The IOM continued to collaborate with the Court with a view to revising the Court's regulatory framework related to investigations and the disciplinary framework, with the most important being the 2014 Presidential Directive on Whistleblowing and Whistleblower Protection Policy, which is expected to be promulgated at the end of 2023 or in early 2024.

5. The IOM has also been assisting the Registry in the preparation of a mandatory training programme for all personnel of the Court in connection with the Court's Administrative Instruction Addressing Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority (Court's Anti-Harassment Policy).

## **III. Summary of IOM Activities**

### **A. Investigations**

6. During the reporting period, the IOM continued with its core mandate of providing oversight to the Court by responding to allegations of potential misconduct. The IOM first conducts an Intake phase, where it determines whether the allegation falls within its mandate, *i.e.*, the facts alleged if found to be true would amount to misconduct. If so, the IOM typically conducts a Preliminary Assessment to determine whether the allegation merits a Full Investigation, by considering its credibility, materiality, and verifiability of the allegation, and formally records the matter as a case.

7. The IOM also continued to meet with individuals who wished to discuss potential complaints 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 it is not recorded as a “case” in its system, but is nevertheless logged in the IOM’s internal systems.

(i) **Statistics**

8. During this reporting period, the IOM received **46** reports of potential misconduct, **11** of which were closed at the Intake phase for either not falling within the IOM mandate or being duplicate allegations already assessed or being assessed. The remaining **35** reports constituted allegations of misconduct that led to investigations, where **14** were closed after a Preliminary Assessment following a determination that the allegations were not sufficiently credible, material or verifiable to warrant a Full Investigation; and **10** cases led to Full Investigations. The remaining **11** Preliminary Assessments were pending completion at the end of the reporting period. From the **10** cases received in the reporting period that led to Full Investigations, **3** were completed in the reporting period and **7** were outstanding.

9. In addition to the cases received in the reporting period, the IOM also completed **10** investigations (**7** Preliminary Assessments and **3** Full Investigations), which were carried over from the previous reporting period.

**Table 1: IOM’s Investigative Caseload, 1 October 2022 to 30 September 2023**

New Cases Received (total: <b>46</b> )	<ul style="list-style-type: none"> <li>• Allegations closed at intake: <b>11</b></li> <li>• Cases closed after Preliminary Assessment: <b>14</b></li> <li>• Preliminary Assessments pending: <b>11</b></li> <li>• Full Investigations initiated: <b>10</b></li> </ul>
Matters carried over from last reporting period (total: <b>10</b> )	<ul style="list-style-type: none"> <li>• Cases closed after Preliminary Assessment: <b>7</b></li> <li>• Full Investigations: <b>3</b></li> </ul>
Investigations (total: <b>13</b> )	<ul style="list-style-type: none"> <li>• Completed: <b>6</b></li> <li>• Ongoing: <b>7</b></li> </ul>

10. Included in these statistics are some of the twelve matters referred to the IOM by the Prosecutor in the last reporting period based on a report of the *Ad Hoc* External Advisory Panel on Work Culture for the Office of the Prosecutor. The special process adopted by the IOM for these matters is detailed in the following section.

11. Of the 35 new cases received from across the Court during the reporting period, over 20 concerned allegations of harassment, including sexual harassment and/or abuse of authority, with five of these leading to Full Investigations and five where the Preliminary Assessment is still pending.

(ii) ***Ad Hoc External Advisory Panel on Work Culture for the Office of the Prosecutor***

12. As reported in its last Annual Report, on 10 March 2022, the Prosecutor forwarded to the IOM a report prepared by the *Ad Hoc* External Advisory Panel on Work Culture for the Office of the Prosecutor (Panel), entitled “Individual Allegations of Harassment, Sexual Harassment, Discrimination, Retaliation, and Other Serious Misconduct in the Office of the Prosecutor”. The report comprised 142 pages and outlined allegations of “Serious Misconduct” against 12 current and

former personnel of the Office of the Prosecutor (OTP), the vast majority of them senior staff, based on summarised accounts by OTP personnel, which were set out in the report.

13. For one of these 12 cases, the Panel recommended that the Prosecutor exercise his functions of managerial interventions and performance management to address the issue; the IOM concurred with this recommendation.

14. In two other cases, the matters outlined were already the subject of past or ongoing IOM investigations. Accordingly, no separate action was initiated by the IOM with respect to these two matters.

15. As to the remaining nine matters, which would ordinarily have been considered allegations of misconduct for which a Preliminary Assessment would be initiated, the IOM opted for a different approach in consideration of the circumstances under which the information was received by the Panel and the IOM's commitment to its victim-centred approach. In particular, the IOM was mindful that the Panel report noted that a number of personnel, whom the Panel had interviewed, were reluctant to make a formal complaint or, otherwise, to consent to having their information used in a formal IOM investigation. In addition, the accounts provided by these persons took the form of unsigned summaries. In these circumstances, the IOM felt it more prudent to conduct preliminary work, which included approaching the individuals listed in the Panel report with a view to better understand their interest in participating in an IOM investigation at an exceptionally prolonged Intake stage, before determining whether to open a Preliminary Assessment. In doing so, the IOM contacted over 40 potential complainants, roughly half of whom were explicitly named in the Panel report, while the others were identified through standard investigative activities. Indeed, most of these personnel expressed surprise that their account was now with the IOM, as they had understood that their information had been provided to the Panel in full confidence and had been expected to be shared only with the Prosecutor, with a view to identifying possible systemic issues regarding the working culture in the OTP rather than the pursuit of individual misconduct investigations.

a. Full Investigation

16. For one of these nine matters, individuals contacted expressed a willingness for the IOM to go forward with an investigation, but expressed concerns regarding retaliation from the alleged subject as they had to continue working with them. On **9 May 2022**, the IOM accordingly recommended to the Prosecutor that mitigating measures be taken, which would include, at a minimum, that these alleged affected individuals not work with the alleged subject pending the completion of the IOM's investigation. The Prosecutor endorsed the IOM's recommendation, and opted to suspend the alleged subject from duty with full pay pending the completion of the IOM investigation.

17. The IOM completed its investigation on **9 November 2022**, and found sufficient evidence to conclude that the subject's conduct towards their colleagues, throughout the years, created a hostile and offensive work environment in the teams they led and that their specific conduct towards nine personnel amounted to "unwelcome behaviour that reasonably ha[d] the effect of violating someone else's dignity or creating an intimidating, degrading, hostile, humiliating, or offensive work environment", as required by the Court's Anti-Harassment Policy. The IOM recommended that appropriate disciplinary action be taken against the subject. On **31 August 2023**, the IOM was informed that while disciplinary proceedings were ongoing, the subject had resigned from the service of the Court, and the Prosecutor had decided to close the disciplinary case and place a note in the subject's Official Status File.

b. Suspensions and Resignations Pending Review

18. In two other matters, while the IOM's intakes were pending, the Prosecutor decided to suspend from duty the personnel alleged to have engaged in misconduct on the basis of the Panel report alone.

19. In the first, following notification of the suspension on **10 June 2022**, the personnel resigned from duty on **23 June 2022**, with a notice of 90 calendar days. The IOM completed its intake and, having identified individuals who were willing for the IOM to proceed with an investigation, proceeded to a Preliminary Assessment into the matter. The IOM completed its Preliminary Assessment before the expiration of this notice, and on **16 September 2022**, informed the Prosecutor that based on interviews with a number of current and former staff and non-staff personnel of the Court, it found the alleged male subject's actions suggested a pattern of conduct constituting a predatory threat to young female professionals of the Court. For example, the alleged subject appeared to use his senior position in the OTP and offer assistance to young female professionals in terms of career advancement in order to eventually establish a more personal rapport. However, in light of the concerns expressed by many of the individuals interviewed to disclose their names to the subject during a Full Investigation, as required to provide proper due process, and the impending departure of the subject, the IOM decided to close the matter at a Preliminary Assessment stage, but noted that it would have conducted a Full Investigation absent the subject's separation. The IOM recommended, and the Prosecutor agreed, to have a note placed in the Official Status File of the subject, indicating that the subject separated while allegations of misconduct were pending before the IOM, and that the IOM was to be informed should they seek employment at the Court in the future, so as to consider whether to open a Full Investigation at that time.

20. In the second case, the personnel was suspended from duty on **2 September 2022**, also while the IOM's Intake was pending. Despite contacting a number of individuals, both mentioned in the Panel report as well as others identified independently, it did not identify any affected individuals willing to come forward with substantive allegations against the alleged subject. In particular, the most serious allegation raised by the Panel was not confirmed by the alleged affected individual themselves (who had not been contacted by the Panel). According to the process it had set out to handle these allegations, the IOM accordingly informed the Prosecutor, on **28 September 2022**, that it would close this matter at this Intake stage.

21. In another case, the IOM considered that the allegations were sufficiently credible, material and verifiable and would have initiated a Full Investigation, but for the personnel allegedly responsible for misconduct having recently separated from the Court. This personnel separated prior to being informed of the allegations and was therefore unaware of them. The IOM recommended that a note be placed, as in the case above, in the relevant personnel's Official Status File, a recommendation which was accepted on **20 October 2023**.

c. Remaining Five Cases

22. The remaining cases were closed by the IOM for lack of sufficiently credible evidence and/or based on the unwillingness of the relevant complainants to come forward and provide evidence as part of a formal IOM investigation. In some of these cases, consideration was given to the fact that the personnel alleged to have engaged in the misconduct were no longer employed by the Court.

(iii) *Substantiated Allegations and Disciplinary Action*

a. Fraud and Misuse of Court Resources

23. On **1 December 2022**, the IOM received allegations from the Court's health insurance providers regarding alleged fraudulent claims in the amount of approximately € 125,000 made by a Court personnel. The Registrar, following consultations with the IOM, suspended the personnel with full pay. During its investigation, the IOM presented preliminary findings to the Registrar for him to consider converting the suspension to without pay. In line with the appropriate provisions of the legal framework, on **23 December 2022**, the Registrar converted the suspension to without pay. On **29 March 2023**, the IOM finalized its investigation finding that the personnel had presented fraudulent invoices amounting to at least € 130,548 to one insurance provider and € 22,142 to another. The IOM further concluded the personnel had misrepresented their title, duties and function, and used their position and knowledge gained from their official function, to obtain a financial benefit for themselves and others. Finally, the IOM concluded the personnel in question misused the Court's resources in furtherance of these fraudulent claims and to access and store materials of a pornographic nature. The IOM recommended that disciplinary action be taken with respect to the personnel, and that the matter be referred to the competent national authorities, in accordance with paragraph 15 of the IOM Operational Mandate.

24. In light of the IOM investigative findings, as well as the personnel's response to the allegation and their responsibilities within the Court, in addition to the gravity of the unsatisfactory conduct, on **22 May 2023**, the Registrar elected to not refer the matter to the Disciplinary Advisory Board and summarily dismissed the personnel, as provided for by the regulatory framework of the Court.

b. Unauthorized Outside Activity and Conflict of Interest

25. On **12 September 2022**, the IOM received allegations regarding unauthorized outside activities and possible conflict of interest from a Registry personnel in light of a formal document indicating that the personnel was employed with a counsel before an active case at the Court. On 15 September 2022, given the nature of the allegations and the risks to ongoing Court activities, following consultation with the IOM, the Registrar decided to suspend the subject with full pay.

26. On **2 December 2022**, the IOM completed its investigation and found that while the document was authentic and did indeed state a current employment relationship, there was in fact no such formal agreement as of yet, and there seemed to have been a misunderstanding as to the terms of a future collaboration between the personnel and the counsel. As the IOM was satisfied that there was no such current employment relationship, the Registrar lifted the suspension of the personnel. On **24 February 2023**, on the basis of the IOM investigation report, the Registrar concluded that the actions of the personnel demonstrated poor judgment rather than misconduct, and accordingly decided on appropriate **managerial action** through proper performance management.

c. Verbal Assault

27. On **27 October 2021**, the IOM received a complaint alleging a verbal assault by one personnel against another creating an intimidating, degrading, hostile, humiliating and offensive work environment potentially amounting to workplace harassment. In the course of the investigation, the personnel under investigation

was under protracted medical leave, expanding the timeframe of the investigation, and following notification of the IOM investigation, resigned from their position. On **4 May 2023**, in light of the totality of the evidence, and notwithstanding the isolated nature of the incident, the IOM concluded that there was sufficient evidence to support the allegation that the personnel in question spoke to their colleague in a manner that amounted to workplace harassment. However, in light of the subject's separation from the Court, the IOM recommended placed a note in their Official Status File, which was accordingly done on **1 September 2023**.

(iv) *Selected Cases Closed Without a Recommendation for Disciplinary Action*

a. Election of the Registrar

28. On **20 February 2023**, the IOM received allegations, also sent to the Presidents of the Court and the Assembly of State Parties, related to the election of the Registrar. While many of the allegations raised did not fall within the IOM's operational mandate, one allegation stated that personnel of the Human Resources Section (HRS) of the Court had "misled" the Judges by manipulating the recruitment process, in particular the determination of the eligible candidates. On **17 March 2023**, the IOM completed its Preliminary Assessment and concluded that it had not identified any evidence of any pressure or influence by any State Party on the staff of the HRS, as was alleged. While it was not for the IOM to review the substantive criteria and their interpretation by the HRS, it was sufficient to note that there had been no undue influence or manipulation of the process to favour, make eligible or disqualify any specific candidate. The IOM accordingly found that the allegations were not sufficiently credible to warrant a Full Investigation, and informed the complainant as well as the Presidents of the Court and the Assembly accordingly.

b. Extension of Judicial Mandates

29. In the context of their financial audit of the Court's financial statements, the Court's External Auditors, the Board of Audit and Inspection of the Republic of Korea (External Auditors), informed the IOM of some issues they had identified regarding the compensation paid to departing Judges of the Court, and specifically those whose mandates had been previously extended and warranted additional payments. The IOM reviewed these allegations, including the supporting information provided by the External Auditors, and concluded that they warranted an investigation.

30. On **28 June 2023**, the IOM concluded that the information it gathered was not sufficient to displace the presumption that the former Judges discharged their functions properly, in that the extensions were necessary for the completion of the work in question and could therefore not substantiate any abuse of the judicial process for private financial gain. The IOM however recommended to the Presidency of the Court take into account all financial implications with respect to future mandate extensions, not only in terms of salary payments, but also in terms of entitlements, in order to avoid any abuse of the judicial process, as well as any appearance thereof, which would significantly affect the reputation of the Court. The IOM also informed the President of the Assembly of the results of its investigation and recommendations in accordance with Rule 26(4) of the Rules of Procedure and Evidence.

c. Procurement Irregularity

31. On **30 January 2023**, the IOM received an anonymous allegation claiming a provider of services to the Court was selected without a proper procurement process. The IOM's investigation confirmed that an exemption had been properly requested for the contracting of the provider in accordance with the Financial Regulations and Rules and in light of the COVID-19 pandemic and difficulty of predicting the Court's service requirements. This exemption to diverge from the standard procurement process was duly authorized by the Registrar. The IOM did not identify any information to support the allegation that any personnel acted improperly in the conduct of the procurement process and consequently closed the matter on **1 May 2023**.

d. Workplace Harassment

32. On **23 November 2022**, the IOM received allegations of workplace harassment against a number of senior managers of the Court. Specifically, the complaint alleged a number of actions as harassment, bullying and gaslighting including exclusion from meetings and decisions, dismissal of strategy opinions, requests to follow instructions without input or question, reluctance to promote into leadership positions and limiting external work opportunities. The IOM did not consider the claims to credibly amount to harassment, bullying or gaslighting, noting that a manager's disagreement on operational matters, or making managerial decisions without the input from, or explanations to, personnel under their supervision, while potentially poor management, does not necessarily amount to harassment or bullying. In light of the above, the IOM closed the matter on **27 September 2023**.

## B. Evaluations

33. An evaluation is an independent, rigorous, impartial, systematic and objective assessment of the relevance, effectiveness, efficiency, impact and sustainability of an activity, project, programme, strategy, policy, topic, theme, sector, operational area or institutional performance. It considers intended, as well as unintended, positive and negative consequences, and assesses what works well and less well. Its results are intended to be useful for decision-making and overall organisational accountability and learning.

34. As in previous years, the evaluation work plan was developed following close consultations with the Heads of Organs and engagement with the Bureau in the second half of 2022, which led to a selection of an evaluation of the OTP's Strategic Plan (OSP) 2019-2021. The IOM also presented a long list of evaluative topics extending beyond the annual work plan for the Bureau's consideration.

35. On 14 June 2023, the IOM received a request from the Bureau to conduct an evaluation of the work of the Secretariat of the Assembly of States Parties (SASP), focusing on issues of governance, resources, effectiveness, streamlining of functions and geographical representation. The inception of this evaluation is scheduled for late 2023, and the evaluation in early 2024.

36. In addition, a five year stocktake on evaluation recommendations and their implementation was conducted. Evaluation stakeholders generally appreciated the opportunity to reflect on implementation progress. The analysis of the changes implemented as a result of evaluation recommendations also integrated related changes conducted in the context of the ongoing implementation of the IER recommendations. Annex A provides further details on the results of the stocktake.



## Evaluation of the Office of the Prosecutor's Strategic Plan 2019-2021

37. The Evaluation of the International Criminal Court's Office of the Prosecutor's Strategic Plan (OSP) 2019 – 2021 was requested by the Prosecutor to review the results in the 2019 – 2021 period, including the transition year of 2022 and draw lessons learned on strategic planning and performance management, as well as the results and performance related to the delivery of the Plan itself. The evaluation is attempting to respond to three key questions: first, how clear and coherent was the OSP and the process; how effective was the delivery of the OSP; and lastly, how efficient and adaptable OTP was in implementing the OSP, considering how the COVID-19 pandemic and other challenges may have impacted delivery.

38. The Evaluation report was initially planned to be submitted to the Presidency of the Assembly and the Prosecutor no later than 30 June 2023, however, due to a considerable delay experienced in receiving documents from the OTP given communicated competing priorities, capacity constraints, and change in staffing, the report is scheduled to be completed by the end of the year.

### **C. Inspection**

39. An inspection is a special, unscheduled, on-the-spot verification of an activity directed towards the resolution of problems which may or may not have been previously identified.

40. No Inspection activity was conducted during this reporting period.

### **D. Other Activities**

#### **(i) *Due Diligence Processes for Elected Officials***

41. At its twenty-first session, the Assembly requested the Bureau to establish a Due Diligence Process for Candidates for 2023 Judicial Elections (due diligence process), on the basis of a proposal developed by the IOM in consultation with the Advisory Committee on Nominations (ACN) of Judges, and taking into account the *ad hoc* due diligence processes previously established for the election of the Deputy Prosecutors and the Registrar. The due diligence process was aimed at assisting the Assembly in determining whether the candidates for judicial elections at the Court in 2023 met the requirement of high moral character as set out in article 36(3)(a) of the Rome Statute. It was intended to complement the review of the ACN of the qualifications and experience of nominated candidates to facilitate the election of the most qualified candidates as Judges.<sup>1</sup>

42. Pursuant to the due diligence process, the IOM, with the assistance of the Registry and the support of the Secretariat of the Assembly of States Parties, carried out an in-depth background check of criminal, academic and employment records of nominated candidates, which included an open-source review and the interview of over 100 former and current employers, peers and staff of nominated candidates.

43. On 4 April 2023, the IOM established a confidential channel for the receipt of allegations of misconduct against nominated candidates, disseminated through the ICC website and social media accounts, amongst others, which was open until 29 June 2023. The IOM did not receive any allegations against nominated candidates through the confidential channel, although it seemed that many of the individuals

<sup>1</sup> Resolution ICC-ASP/21/Res.2, para. 82; Annex to the agenda and decisions of the third meeting of the Bureau, held on 10 March 2023, available at: [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/Bureau3-Agenda-Decisions.pdf.pdf](https://asp.icc-cpi.int/sites/default/files/asp_docs/Bureau3-Agenda-Decisions.pdf.pdf).

contacted by the IOM were unaware of the due diligence process or the existence of a confidential channel to receive allegations.

44. On 29 June 2023, the IOM communicated to the ACN some of the information it received that did not relate directly to the high moral character of the candidates, but which could be relevant to their qualifications or experience. On 28 August 2023, the IOM submitted to the Presidency of the Assembly its final report. Based on the information received and reviewed, the IOM did not identify any concern regarding the high moral character of any of the nominated candidates which would prevent them from meeting the requirements of article 36(3)(a) of the Rome Statute.

**(ii) *Outreach Activities and External Collaborations***

45. The IOM continued to conduct information sessions with new personnel of the Court, as well as interns and visiting professionals. A specific information and awareness sessions was also conducted with respect to the IOM evaluation mandate in March 2023, and one with the Court on the new Administrative Instructions related to the IOM's investigation function.

46. The IOM also continued to actively participate in meetings of oversight bodies of United Nations organisations such as the United Nations Representatives of Investigation Services, the United Nations Evaluation Group, the European Evaluation Society and the Conference of International Investigators. Representatives of the IOM played an active role in these meetings, exchanging ideas and best practices. In particular, during the reporting period, IOM representatives discussed with counterparts the process of Appreciative Inquiry, which formed the basis of its evaluation of the Workplace Culture in the Judiciary, conducted in 2022.

## **IV. IOM Staffing and Administrative Matters**

47. During the reporting period, the IOM was fully staffed for a brief period of time with the arrival of its Associate Investigator in February 2023. Unfortunately, this personnel left their position in August 2023, and the IOM is currently trying to fill this position from the roster of suitable candidates it had identified during the recruitment process.

48. The IOM also took advantage of the Registry's paid volunteer opportunity to support its evaluation function. During the reporting period, the IOM, with the support of the Human Resources section, selected two Visiting Professionals to join the IOM, each for a six-month period.

## **V. Final remarks**

49. In accordance with paragraph 39 of the IOM Operational Mandate, the IOM has circulated a draft of this annual report to the Heads of Organs, giving them the opportunity to provide comments for the IOM's consideration. The comments received were duly considered and incorporated in this report where appropriate. As contemplated in the above-referenced paragraph, the Heads of Organ were also informed of the opportunity to provide its views in an annex to the report, and none of the Heads of Organs indicated a desire to do so.