

**Twenty-third Session**

The Hague, 2-7 December 2024

**Report of the Bureau on the Review of the work and the
Operational Mandate of
the Independent Oversight Mechanism****I. Introduction**

1. The Assembly of States Parties (“the Assembly”) established the Independent Oversight Mechanism (IOM)¹ and adopted its operational mandate² at its twelfth session in 2013, and decided that the work and operational mandate of the IOM would be fully reviewed at its fifteenth session.³ At its fifteen session the Assembly noted that the IOM expected to be fully staffed by the end of 2016 and that it was operational in respect of its investigation and inspection functions, with its evaluation function to also become fully operational during 2017.⁴

2. At its sixteenth session in 2017, the Assembly noted that the IOM was fully staffed and fully operational in respect of its investigation, inspection and evaluation functions.⁵ The Assembly also noted that interim working procedures concerning areas where the IOM mandate might conflict with the Court’s Rules of Procedure and Evidence had been put in place, and that a proposal to formally align the Court’s regulations with the IOM mandate had been submitted for consideration.⁶

3. At its seventeenth session in 2018, the Assembly adopted the amendment to rule 26 of the Rules of Procedure and Evidence concerning the receipt and admissibility of complaints by the IOM.⁷ The Assembly also requested the Bureau to consider amending the mandate of the IOM to include investigations of allegations against former officials during its review of the IOM’s operational mandate.⁸ At its eighteenth session in 2019, the Assembly requested the Bureau to complete the review of the work and operational mandate of the IOM.⁹

4. The Assembly adopted¹⁰ the revised operational mandate of the IOM¹¹ at its nineteenth session in 2020. The Assembly also requested the Bureau to remain seized of the review of the work and operational mandate of the IOM, with a view to considering the recommendations of the Independent Expert Review (IER).¹² At its twentieth session in 2021, the Assembly recalled that the revised Operational Mandate of the IOM applied provisionally until, and without prejudice to, any decision of the Assembly to amend or replace the mandate

* Re-issued for technical reasons.

¹ ICC-ASP/12/Res.6, para. 1.

² ICC-ASP/12/Res.6, annex.

³ ICC-ASP/12/Res.6, para. 7.

⁴ ICC-ASP/15/Res.5, para. 109.

⁵ ICC-ASP/16/Res.6, para 118.

⁶ ICC-ASP/16/Res.6, para 121.

⁷ ICC-ASP/17/Res.2.

⁸ ICC-ASP/17/Res.5, annex I, para. 15(b).

⁹ ICC-ASP/18/Res.6.

¹⁰ ICC-ASP/19/Res.6, para. 141.

¹¹ ICC-ASP/19/Res.6, annex II.

¹² ICC-ASP/19/Res.6, annex I, para. 15(a).

after its consideration of the report and the recommendations of the IER.¹³ At its twenty-first¹⁴ and twenty-second¹⁵ sessions in 2022 and 2023 respectively, the Assembly requested the Bureau to continue its review work and to report thereon to the Assembly.

5. On 6 March 2024 the Bureau of the Assembly decided to reappoint H.E. Ms. Beti Jaceva (North Macedonia) as facilitator to review the work and the operational mandate of the IOM. Over the course of the year, the facilitator held informal consultations and briefings with States Parties, Court Organs, the Independent Oversight Mechanism, and other interested stakeholders.

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

1. In 2024, the facilitation held three meetings in 2024. Two meetings held on 29 April and 14 October, were held open to States Parties, Observer States, the Court, and civil society. One meeting held on 8 July, was open to States Parties and the Court only.

2. The meetings provided, amongst others, an opportunity for States Parties to conclude the assessment and continue discussions on the implementation of 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.¹⁶

First meeting:

3. At the first meeting of the facilitation held on 29 April 2024, the facilitator presented the draft programme of work for 2024, with key timelines focusing on the consideration of IER recommendations in the first half of the year and the preparation of the report of the facilitation by 31 October.

4. The Registry presented updates on the implementation of R112, R113, and R114, noting the launch earlier in the year of a core values exercise to integrate organizational values into the Court's work, marking a first step toward establishing an ethics function. A benchmarking exercise of ethics functions in similar organizations was underway to guide this process, with legal frameworks and efficiency being key considerations. The Registry noted that it would also consider the potential integration of an ethics function in the 2025 proposed budget.

5. The facilitator recalled previous discussions on R108, and the options presented by the IOM and the ICC Presidency. Some States Parties expressed support for option A, which preserved the independence and powers of the IOM, following the 2018 amendment of rule 26 of the Rules of Procedure and Evidence. Concerns were raised about option E, proposed by the elected officials, particularly its potential to undermine the IOM's independence due to the supervisory role of ad hoc panels and logistical issues like roster formation and panel timelines.

6. It was also noted that delegations had received several important documents regarding the investigations conducted on a misconduct case, as well as a letter from the ICC Presidency regarding a disciplinary measure against an elected official, and for those reasons delegations did not see why the current model should be amended in a way that could compromise the independence of the IOM. The facilitator indicated that the preferred options were A and E and recalled that option E would require amending rule 26, while option A would not.

7. One State Party supported option E, proposed by the elected officials, stating it better aligned with R108's focus on the investigation phase. The delegation emphasized that R108 envisioned a dedicated investigation model for elected officials, which option E provides. However, other delegations raised concerns about option E's potential impact on the IOM's independence, and favoured instead option A, which would maintain IOM's role.

8. The IOM indicated that setting up panels would require extensive preparation, addressing issues such as composition, selection criteria, and logistics, and questioned whether former ICC judges should serve on these panels, but clarified that the final decision

¹³ ICC-ASP/20/Res.5, para. 146.

¹⁴ ICC-ASP/21/Res.2, annex I, para. 15(a).

¹⁵ ICC-ASP/22/Res.3, annex I, para. 15(a).

¹⁶ <https://asp.icc-cpi.int/Review-Court/Action-Plan>.

rested with the States Parties. The ICC Presidency noted that if option E was selected, the relationship between the panel and the IOM would need further clarification.

9. A proposal was made for a smaller group of interested delegations to meet to work towards a consensus. Additionally, there was a request for the next facilitation meeting to be a closed session to focus on options A and E and to discuss recent IOM investigations and disciplinary actions.

Second meeting:

10. At the second facilitation meeting held on 8 July 2024, the facilitator recalled that at the meeting was held in closed session to address a State Party's request to find a compromise on two options (A and E) concerning IER recommendation 108, as well as a request to discuss the process of IOM investigations into misconduct and disciplinary measures.

11. Concerning R108, the facilitator noted that several States Parties favored option A, proposed by the IOM, which balanced the IOM's powers and independence without requiring amendments and aligned with the spirit of the recommendation. Option E, supported by one State Party, focused on the investigation phase, as suggested by the IER, but raised concerns about the IOM's independence due to the role of ad hoc panels. The facilitator noted that after informal consultations, there was a general preference for option A.

12. The delegation that had initially supported option E, following consultations showed support for option A, aiming to build consensus and ensure flexibility. The delegation raised concerns about the vetting, availability, and costs related to panel members, including travel expenses, which should be discussed in future meetings, while stressing the importance of carefully drafting the panel's terms of reference.

13. It was suggested that further discussions could take place within the Study Group on Governance (SGG), and that the IOM should address these concerns. To minimize costs, it was recommended to avoid a standing panel, instead creating a roster of judges for quick ad hoc panel formation. The delegation also emphasized the significance of the Ethical Principles, suggesting their inclusion in this year's omnibus resolution. The facilitator concluded the discussion on recommendation R108, positively considering the suggestion to move the discussion to the SGG and reflecting the updates in Matrix.

14. The meeting also addressed IOM investigations on misconduct and disciplinary measures, focusing on the need for States Parties to clarify procedural aspects of reporting and potentially clarifying the IOM mandate to find an appropriate balance between transparency, confidentiality, and accountability. The discussion revealed various concerns and measures from delegations, highlighting the importance of State Parties' input to improve processes and address issues effectively. The facilitator concluded noting that while the current meeting format was beneficial for initial discussions, alternative and more suitable formats would be considered for future discussions on these topics.

Third meeting:

15. At the third facilitation meeting held on 14 October 2024, the facilitator reported on the 29 IER recommendations allocated to the facilitation, with 12 assessed positively, 2 positively with modifications, 14 negatively, and 1 not applicable. She noted that of the positively assessed recommendations, 5 had been implemented (R107, R118, R129, R130, and R365), while 9 were pending. She added that the implementation of R108 had been handed over to the SGG, and that R364 and R368 had been assigned to the Budget Management Oversight (BMO) facilitation. She noted that only six recommendations, namely R112, R113, R114, R121, R123, and R128 remained allocated to the IOM facilitation.

16. Ms. Antonia Pereira de Sousa, Chief of Office to the Registrar, also representing her colleagues from the Presidency and the OTP, provided an update on progress since the April meeting. She noted, grouping together recommendations R112, R113, R114, R121, and R123, that the definitions of core values had been finalized and adopted. She reported that a consultant had been hired to develop a plan for communicating and integrating these values into strategies, policies, working methods, and performance appraisals, including training and awareness materials.

17. Regarding the ethics function, she highlighted the drafting of an Ethics Charter requested by the Audit Committee, with a preliminary draft expected by February 2025. Additionally, a benchmarking exercise had been carried out to explore the idea of an integrated

ethics function, supported by a recent Joint Inspection Unit report analysing ethics functions across 24 UN entities. She indicated that the Staff Wellbeing and Engagement Committee was conducting internal consultations to identify gaps in the existing ICC framework that could be improved through an ethics function. Recommendations were expected to be submitted to the Coordination Council of the Court for decision-making in early 2025.

18. The facilitator noted that the Head of the IOM had sent a letter to the ASP President on 4 October regarding the draft evaluation policy of the International Criminal Court. The ASP President subsequently requested the facilitation to address this matter.

19. Mr. Saklaine Hedaraly (head of the IOM) presented the draft policy emphasizing its role in enhancing the evaluation function through learning and improving rather than disciplinary approaches. He reviewed the IOM's evaluation progress over six years and stressed the need to integrate evaluations into the Court's framework. He highlighted the importance of follow-up on evaluations and the role of States Parties in ensuring the implementation of recommendations. The new policy aims to improve transparency and clarify roles, particularly between the IOM and entities like the Trust Fund for Victims. He also emphasized the need for more resources, including a junior evaluator, and encouraged States Parties to consider the suggestion to address staffing needs through the UNV program.

20. Mr. Hedaraly agreed with the suggestion of a three-year initial review period for the evaluation policy. He clarified the roles of the advisory and reference groups, noting logistical challenges but no budgetary implications. He emphasized streamlining the evaluation planning process, ensuring cost considerations for evaluations, and allowing requests from the Bureau. He reassured that the policy would not increase IOM's budget and recommended allocating a percentage of project budgets for evaluations. He also highlighted accountability through management's response to recommendations, addressed decentralized evaluations, and noted ongoing collaboration with the Trust Fund for Victims. He concluded that scaling up evaluations depended on resource allocation.

21. The facilitator thanked Mr. Hedaraly for developing the draft policy and acknowledged the constructive engagement of the Court organs. She then proposed that the facilitation draft language for the omnibus resolution to welcome and endorse the policy.

22. Regarding potential amendments to the IOM's mandate stemming from the permanent due diligence procedure for elected officials, the facilitator recalled that the ASP21 mandated the Bureau to establish a permanent due diligence process in December 2022. This led to a draft proposal presented by the ASP President in April 2023, which was approved at ASP22 in December 2023, with a request for the Bureau to propose any necessary amendments by the twenty-third session.

23. Mr. Hedaraly emphasized that amending the IOM mandate was a decision for the States Parties, noting that the current mandate lacked a formal diligence process, which has been handled informally by the Bureau with IOM participation. To make IOM's role permanent, he suggested adding provisions to clarify this function and address budgetary impacts. He advocated for mandate amendments to define responsibilities.

24. The facilitator clarified that the facilitation was established to review the IOM's operational mandate and to align the Court's regulatory framework. She recalled that while most jurisdictional conflicts had been resolved, some inconsistencies remained. However, she questioned the necessity of continuing the IOM facilitation.

25. Mr. Hedaraly acknowledged progress in harmonizing the Court's regulatory framework but highlighted the need to update the anti-fraud policy and develop a conflict-of-interest policy. He questioned whether the current facilitation was the best approach for these issues, suggesting that other facilitations might be better suited for the discussion.

26. Ms. Pereira de Sousa stated that the direction of discussions is primarily guided by the States Parties, who determine the topics of engagement, while stressing the importance of continuing dialogue about the Court's work and efforts to align various policies with the IOM mandate. The facilitator noted the facilitation's success in revising the IOM's operational mandate and resolving significant jurisdictional conflicts with the Court's regulatory framework, as well as following up on most IER recommendations.

27. The facilitator was of the view that the facilitation had reached a point where it may no longer necessary to dedicate an entire facilitation to these topics. In this regard, the Vice-Presidency of the Assembly (Poland) mentioned that informal consultations had already started to streamline existing facilitations, and that it would consider the IOM facilitation as part of broader restructuring efforts. In closing the meeting, the facilitator expressed deep gratitude on behalf of the States Parties to Mr. Hedaraly for his candid participation, cooperation, and unwavering support during his tenure as Head of the IOM.

III. Recommendations

28. Following informal consultations held among States Parties and the Hague Working Group coordinator and Vice President of the Assembly (Poland), regarding the streamlining of existing facilitations, it was decided that the facilitation continue in 2025 overseeing the implementation of the remaining IER recommendations and any other related issues related to the IOM, namely:

- i) To 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 and regulatory framework of the Court.
- ii) To follow up on the implementation of the remaining six recommendations, namely R112, R113, R114, R121, R123, and R128. Noting that R108 as well as R364 and R368 had been assigned for follow-up at the SGG and BMO facilitation respectively.
- iii) To follow-up on any potential amendments to the IOM's mandate that may be necessary, including those stemming from the permanent due diligence procedure for elected officials.

Annex

Language to be included in the omnibus resolution

Independent Oversight Mechanism

1. *Recalls* its decision in resolution ICC-ASP/22/Res.3 requesting the Bureau to remain seized of review of the work and operational mandate of the Independent Oversight Mechanism and to follow up on the recommendations contained in the report of the facilitation, 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-fourth session;
2. *Welcomes* the discussions held during 2024 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,¹ 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 ongoing review of the status of implementation of the remaining recommendations of the Independent Expert Review, including amendments emanating from the establishment of the due diligence procedure for elected officials;
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;²
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, *acknowledges* the essential role played and work done by the Independent Oversight Mechanism, and that the revised operational mandate of the Independent Oversight Mechanism³ 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-fourth session of the Assembly any relevant update and recommendation on any necessary follow-up action for the Court and/or the Assembly;
10. *Welcomes* the progress made in formally aligning the regulatory framework of the Court with the operational mandate of the Independent Oversight Mechanism, in particular the Administrative Instruction on Investigation of Unsatisfactory Conduct and the Administrative Instruction on Unsatisfactory Conduct and Disciplinary Proceedings, as well as the 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 continue working to ensure that all

¹ ICC-ASP/19/16.

² ICC-ASP/23/18.

³ ICC-ASP/19/Res.6, annex II.

relevant documents are updated and aligned with the mandate of the Independent Oversight Mechanism in order to harmonize the applicable rules.

11. *Welcomes* the draft evaluation policy of the Court presented at the facilitation by the Head of the IOM on 14 October 2024, *emphasizes* its importance in enhancing the evaluation function and *endorses* the policy.

Mandates of the Assembly of States Parties for the intersessional period

15. With regard to the Independent Oversight Mechanism,

(a) 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, 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-fourth session.
