



**Assembly of States Parties**

Distr.: General  
1 November 2012

Original: English

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**Eleventh session**

The Hague, 14-22 November 2012

**Report of the Bureau on the  
Independent Oversight Mechanism**

**Note by the Secretariat**

Pursuant to paragraph 65 of resolution ICC-ASP/10/Res.5 of 21 December 2011, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on the Independent Oversight Mechanism. The present report reflects the outcome of the informal consultations held by The Hague Working Group of the Bureau with the Court.

## I. Background

1. This report is submitted pursuant to the mandate given to the facilitator, Ambassador Jorge Urbina Ortega (Costa Rica), on the issue of the Independent Oversight Mechanism (“the IOM”), upon his appointment by the Bureau of the Assembly of States Parties (“the Assembly”) at its seventh meeting, held on 28 February 2012.
2. At its eighth session, the Assembly adopted resolution ICC-ASP/8/Res.1,<sup>1</sup> by which it was decided to establish an independent oversight mechanism in accordance with article 112, paragraph 4, of the Rome Statute. It was decided that the independent professional investigative capacity would be implemented immediately, while the inspection and evaluation elements would be brought into operation subject to a later decision of the Assembly.
3. At its ninth session, the Assembly adopted resolution ICC-ASP/9/Res.5,<sup>2</sup> by which it was decided that the investigative function of the IOM shall operate in accordance with the provisions in the appendix to that resolution (“the Operational Mandate”), and decided further that the Bureau shall prepare a report on the operationalization of the investigative function of the IOM and the operation of the inspection and evaluation functions within the oversight mechanism, including the terms of reference and related financial implications, with a view to a decision on its adoption at the tenth session of the Assembly.
4. Resolution ICC-ASP/9/Res.5 also invited the Temporary Head of the IOM to continue to work on the development of functions, regulations, rules, protocols and procedures of the investigative function of the IOM and submit them to the Assembly for approval. It also invited the Court to continue to work with the Temporary Head on the amendments to existing legal instruments, with a view to the adoption, at the tenth session of the Assembly, of all amendments necessary for the full operationalization of the investigative function of the IOM.
5. At its tenth session, the Assembly adopted resolution ICC-ASP/10/Res.5<sup>3</sup> that recognized the importance of a fully functional IOM to the efficient and effective operation of the Court and decided to continue discussions on the matter in close consultation with the organs of the Court, with a view to the Bureau submitting to the eleventh session of the Assembly a comprehensive proposal that would make possible its full operationalization.
6. Resolution ICC-ASP/10/Res.5 also invited the IOM working in close consultation with the organs of the Court, Staff Union Council and States Parties, to develop an anti-retaliation/whistleblower policy, with a view to its adoption by the Court at the earliest time possible, and decided to delegate to the Bureau the following decisions, after taking into consideration possible budgetary implications and operational requirements, and, if necessary, consulting the Committee on Budget and Finance: a) the hiring of the Head of the IOM, b) if necessary, the extension of the mandate of the Temporary Head of the Independent Oversight Mechanism, and c) when to commence recruitment of the P-2 staff member of the IOM.
7. The Working Group discussed the IOM at its informal consultations held on 3 and 17 April, 3, 22 and 29 May, 5 June, 3 and 10 July, 20 and 25 September, and 4 October 2012. The facilitator also conducted a series of informal meetings with different stakeholders on the issue.

## II. Recruitment of the Temporary Head and Head of the IOM

8. On 30 August 2011, on the recommendation of the Selection Panel, the President of the Assembly requested the Registrar to proceed with the recruitment of Ms. Kristina Carey (United States) as the Temporary Head of the IOM. She accepted the offer and formally started her role in November 2011.

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (ICC-ASP/8/20), vol. I, part II, ICC-ASP/8/Res.1.

<sup>2</sup> *Official Records... Ninth session... 2010* (ICC-ASP/9/20), vol. I, part III, ICC-ASP/9/Res.5.

<sup>3</sup> *Official Records... Tenth session... 2011* (ICC-ASP/10/20), vol. I, part III, ICC-ASP/10/Res.5.

9. Following the mandate of the Assembly of States Parties on the hiring of the Head of the IOM, and based on a recommendation of The Hague Working Group of 17 February 2012, the Bureau decided, on 28 February 2012, to request an extension of the secondment of the Temporary Head of the IOM for a period of one year. The President of the Assembly communicated this decision to the United Nations Secretariat, which conveyed its agreement to the extension until 31 May 2013. The Registry's Human Resources Section formalized the agreement.

10. Also at its seventh meeting, on 28 February 2012, the Bureau, decided to defer the recruitment of the Head of the IOM until the question of the operationalization of the investigation, evaluation and inspection functions indicated in article 112, paragraph 4, of the Rome Statute had been decided.

### III. Operationalization of the inspection, evaluation and investigation functions of the IOM

11. A consensus was reached in 2011 according to which it would be more efficient to operationalize the IOM when a comprehensive agreement is reached on the modalities for the operation of its three functions, given the apparent inter-connectivity of the issues related to its full operationalization.

12. At the request of the facilitator, the IOM prepared a series of documents on the inspection and evaluation functions in order to support deliberations within The Hague Working Group. The *sui generis* nature of the Court was flagged by the Temporary Head as an important consideration when operationalizing the inspection and evaluation functions. The documents considered the existing bodies of the Assembly and within the Court that carry out inspections and evaluations, and also highlighted the different nature of the inspections and evaluations that are required by the Assembly, in order to better fulfill its mandate. In a 6 July 2012 paper,<sup>4</sup> the Temporary Head of the IOM pointed out that “[s]everal entities within the ICC make use of evaluative elements in their present work. However, none of them conducts evaluations *per se* and none has a mandate to conduct evaluations in a systematic or structured manner” as it was reflected in the Assurance Mapping Study.<sup>5</sup>

13. On 5 June 2012, the organs of the Court produced a document entitled “Court Working Paper on Inspection and Evaluation Functions” as they recalled their paper “Inspection and Evaluation within the Current Oversight Framework of the International Criminal Court” of 30 June 2010. In that document, the organs of the Court affirmed that “[i]nspection and evaluation are part of a wider oversight framework within organizations, which is itself a tool of broader good governance. Within the oversight framework, some inspection and evaluation elements already exist in the work of existing oversight bodies, but there is no single entity which is fully undertaking these functions in a coherent and functional manner.” And further “[t]he Court sees benefit in having such functions within the scope of the Independent Oversight Mechanism (...)”.<sup>6</sup>

14. The Hague Working Group discussed whether the independent evaluation that the IOM could provide to the Assembly of States Parties was desirable or necessary. The Temporary Head of the IOM made clear that “[t]here is a need to provide the information gleaned from programme evaluations to the Organization, including the ASP, in a systematic and comprehensive manner.” And further, “No entity within the Court currently does so and the products which are created by the entities which include evaluative elements in their current work do not provide the ICC with the systematic and comprehensive strategic overview that it requires.”<sup>7</sup>

<sup>4</sup> “Second Working Paper on evaluation in the International Criminal Court, prepared by the Independent Oversight Mechanism, dated 6 July 2012.

<sup>5</sup> Report on the Assurance Mapping Study in the International Criminal Court, prepared by the United Nations Office of Internal Oversight Services, 25 May 2011(ref: 11-00415), para. 60.

<sup>6</sup> Inspection and Evaluation within the Current Oversight Framework of the International Criminal Court, prepared by the International Criminal Court, dated 30 June 2010, paras.35 and 37.

<sup>7</sup> Second Working Paper on evaluation in the International Criminal Court, prepared by the Independent Oversight Mechanism, dated 6 July 2012, para. 48.

15. While it is clear that in the current framework no single body is carrying systematic evaluations, there is still need for further discussions on the operational requirements for the operationalization of this function within the IOM.

16. Likewise, deeper discussion on the value and need of independent inspections for comprehensive oversight of the Assembly seems necessary.

17. The question remains whether all three functions must be operational under one body, or if there is merit on outsourcing some of their elements. Further discussion is necessary on the subject-matter.

18. The Working Group decided that new deliberations on the investigation function of the IOM were to be deferred to the second half of the year, before the eleventh session of the Assembly of States Parties. Nevertheless, due to time constraints, no discussion on the operationalization of the investigative function took place in 2012. The Office of the Prosecutor, on 25 June 2012, produced a contribution paper on the investigation function of the IOM, in which it recalled its position. Further consideration of this issue should continue in the future.

19. Once a consensus is reached on the modalities to make operational all three functions of the IOM, it will also be necessary to consider the budgetary implications of decisions implementing the full operationalization of the mechanism.

#### **IV. Anti-retaliation/whistleblower protection policy**

20. In resolution ICC-ASP/10/Res.5, the Assembly of States Parties invited the Independent Oversight Mechanism, working in close consultation with the organs of the Court, Staff Union Council and States Parties, to develop an anti-retaliation/whistleblower policy, with a view to its adoption by the Court at the earliest time possible. The Court, in close consultation with the Temporary Head, elaborated a draft policy. In light of issues which were raised during its internal consultation process, the Court is determining the best mechanism by which to promulgate the policy as well as how to integrate this policy into its broader guidance framework to create comprehensive protection for this activity.

#### **V. Programme of work of the IOM for 2013**

21. As a result of the dialogue between the Vice-President of the Assembly, Ambassador Markus Börlin (Switzerland), the facilitator and the Temporary Head of the IOM, the latter presented a provisional programme of work for 2013, which was agreed upon by The Hague Working Group (annex I). The Working Group commended this important step.

#### **VI. Budgetary implications (staffing)**

22. The current Temporary Head and, once appointed, the future Head of the IOM will be a professional P-4 level. In accordance with resolution ICC-ASP/9/Res.5, paragraph 1, if the Assembly decides to operationalize the inspection and evaluation functions of the IOM it shall also review the staffing capacity and grade of the head and other staff members, if deemed necessary. The resolution states also that, if the evaluation and inspection functions are not operationalized, the staffing capacity and grades of the investigative function of the IOM may be reviewed by the Assembly, once the mechanism has been operational for a reasonable period of time.

23. In resolution ICC-ASP/10/Res.5, the Assembly of States Parties decided to delegate to the Bureau the hiring of the Head, the extension of the mandate of the Temporary Head and the decision on when to commence the recruitment of the P-2 staff member, after taking in consideration the budgetary implications and operational requirements. Since no decision has been taken on the operationalization of the functions of the IOM, the staffing requirements should remain the same for 2013.

## VII. Conclusions and recommendations

24. The following recommendations to the Assembly of States Parties have been adopted by consensus by The Hague Working Group:

### **Recommendation 1**

25. That The Hague Working Group, in consultation with the organs of the Court and the IOM, undertake further discussion on a comprehensive proposal on the operationalization of all three functions of the IOM in accordance with article 112, paragraph 4, of the Rome Statute

### **Recommendation 2**

26. That the IOM continue to work in close consultation with States Parties, on the following interconnected issues:

(a) The development of regulations, rules and procedures for the implementation of the functions of the IOM with a view to submitting, at the next session of the Assembly, a comprehensive proposal that will allow for the full operationalization of the IOM;

(b) Amendments to existing legal instruments necessary for the full operationalization of the IOM; and

(c) All other tasks included in the programme of work for the Temporary Head of the IOM (annex I).

### **Recommendation 3**

27. That negotiations on the implementation of a fully functional IOM continue in 2013. Those negotiations should aim at reaching consensus on the operational modalities of all three functions of the mechanism, i.e. inspection, evaluation and investigation. On the basis of an agreement on those modalities, the Bureau will submit a comprehensive proposal on the fully functional IOM to the next session of the Assembly.

### **Recommendation 4**

28. To delegate to the Bureau decisions regarding mandates and/or recruitment of the Temporary Head as well as on when to commence recruitment of other staff, as decided by the Assembly.

### **Recommendation 5**

29. That the draft annex II attached hereto be included as a resolution at the eleventh session of the Assembly.

## **Annex I**

### **Tentative programme of work for the Temporary Head of the IOM for 2013**

#### **A. Introduction**

1. The following programme of work is based upon two assumptions. First, the Assembly will not agree on the modalities for the IOM to perform the functions described in article 112.4 of the Rome Statute, during its eleventh session. Second, the Assembly will encourage the continuation of discussions with a view for the Bureau to submit to its twelfth session, a comprehensive proposal for the full operationalization of the IOM in 2014.

2. Thus, this tentative Program of work includes tasks to be performed by the Temporary Head, dedicated to offering a solid basis for recommendations to the Assembly, to gathering knowledge and experience on the ongoing practices and promoting adequate oversight by the Assembly in order to enhance the efficiency and economy of the Court. This programme also includes tasks dedicated to the promotion and harmonization of best practices within the Court.

#### **B. Programme of work**

3. The Temporary Head will continue to provide technical support to the Presidency of the Assembly of State Parties and The Hague Working Group of the Bureau, in particular assisting the facilitation of negotiations on operational aspects of IOM's functions.

4. The Temporary Head will finalize the investigations manual and its guidance documents (instructions and standard operation procedures).

5. The Temporary Head will draft an evaluations manual and its guidance documents (instructions and standard operation procedures).

6. The Temporary Head will liaise with the elements conducting investigations in the Court in order to encourage harmonization of best practices and to provide technical guidance and support, when authorized by the Presidency of the Assembly. Such authorization shall be produced only at the request of any of the heads of the organs of the Court.

7. The Temporary Head will conduct investigations on a provisional basis after being authorized by the Presidency of the Assembly. Such authorization shall be produced only at the request of any of the heads of the organs of the Court.

8. The Temporary Head will conduct programme evaluations, on a temporary basis, when requested by the Bureau.

9. The Temporary Head of the IOM will assist the Assembly in the process of recruiting the permanent Head and other staff of the Mechanism, when required by the Bureau.

## Annex II

### Draft resolution on the Independent Oversight Mechanism

*The Assembly of States Parties,*

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

*Recalling* its resolutions ICC-ASP/8/Res.1, ICC-ASP/9/Res.5, and ICC-ASP/10/Res.5 on the Independent Oversight Mechanism

*Welcoming* the report of the Bureau on the Independent Oversight Mechanism,

1. *Recognizes* the importance of a fully operational Independent Oversight Mechanism in accordance with resolutions ICC-ASP/8/Res.1, ICC-ASP/9/Res.5 and ICC-ASP/10/Res.5 to the efficient and effective operation of the Court;
2. *Takes note of* the report of the Bureau on the Independent Oversight Mechanism and the programme of work for the Independent Oversight Mechanism for 2013 attached to that report;
3. *Decides* to continue discussions on the Independent Oversight Mechanism, fully respecting the provisions in the Rome Statute regarding judicial and prosecutorial independence and the management oversight of the Assembly of States Parties, including articles 40, 42 and 112, with a view to the Bureau submitting to the twelfth session of the Assembly a comprehensive proposal that would make possible the full operationalization of the Independent Oversight Mechanism;
4. *Acknowledges with satisfaction* information concerning the anti-retaliation/whistleblower draft policy developed by the Court in close consultation with the Independent Oversight Mechanism and the Staff Union Council, and *invites* the Court to adopt it at the earliest time possible;
5. *Decides further* to delegate to the Bureau the following decisions, after taking into consideration possible budgetary implications and operational requirements and, if necessary, consulting the Committee on Budget and Finance:
  - (a) The extension of the mandate of the Temporary Head of the Independent Oversight Mechanism and, when appropriate, the hiring of the Head of the Independent Oversight Mechanism; and
  - (b) The timing of the commencement of the recruitment of the P-2 staff member for the Independent Oversight Mechanism.

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