

**Eighteenth session**

The Hague, 2-7 December 2019

**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 session. However, given the lengthy recruitment process for the Head of the IOM, as a result of which the first Head assumed duty only in October 2015, the Assembly had recognized that the review would not be possible at the fifteenth session, in 2016. In order to give the new Head sufficient time to acquire the necessary experience to properly inform the Assembly's review of its work and operational mandate, the Bureau decided, at its 13 July 2016 meeting, that the review would take place at the seventeenth session of the Assembly in 2018, once a reasonable amount of time had transpired with the IOM being properly staffed.

2. At its sixteenth session the Assembly of States Parties recalled the recommendation made by the Bureau at its fifth meeting in 2016<sup>2</sup> that the work and operational mandate of the IOM be fully reviewed by the Assembly at its seventeenth session. With regard to the Independent Oversight Mechanism, the Assembly decided that the Assembly fully review the work and the operational mandate of the Independent Oversight Mechanism at its seventeenth session.<sup>3</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>4</sup>

3. On 7 February 2019 The Bureau of the Assembly decided to re-appoint Ambassador Eduardo Rodríguez Veltzé (Bolivia) as facilitator to review the work and the operational mandate of the Independent Oversight Mechanism.

4. The facilitator conducted consultations and briefings in order to exchange information between States Parties and other interested parties.

<sup>1</sup> ICC-ASP/12/Res.6, annex.

<sup>2</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Bureau/ICC-ASP-2016-Bureau-05-13Jul2016.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2016-Bureau-05-13Jul2016.pdf)

<sup>3</sup> ICC-ASP/16/Res.6, annex I, Mandates of the Assembly of States Parties for the intersessional period, para. 15.

<sup>4</sup> ICC-ASP/17/Res.5, annex I, Mandates of the Assembly of States Parties for the intersessional period, para.15.

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

5. In 2019, The Hague Working Group (“the working group”) held four rounds of consultations on the review of the work and the operational mandate of the Independent Oversight Mechanism (on 10 July, 12 September, 17 October and 6 November). The facilitation was open to States Parties, the IOM and the Court only, in full recognition of the Bureau decision of 18 October 2017 adopting the “Understanding on the participation of Observer States in meetings of the Assembly of States Parties”.<sup>5</sup> At a request of a delegation the facilitator kept this issue under review.

6. During the meetings, the Head of the IOM briefed delegations on the work of the IOM and the possibilities for streamlining its mandate and its reporting obligations, including confidentiality issues, indicating that the IOM is not yet fully integrated into the framework of the Court and that there was room for improvement. The Head of the IOM also indicated that a three-level framework for the revision of the IOM could focus on: (i) streamlining the IOM’s mandate, with its purpose and mission more focused on higher-level investigations, and the IOM’s powers (given to it by the Assembly of States Parties) and any limits thereto; (ii) developing more operational-level provisions in a Court-level document, outlining in particular the ICC personnel rights and responsibilities of staff of the Court; and (iii) creating standard operational procedures delineating the obligations of all organs to fully cooperate with the IOM and providing safeguards with respect to prosecutorial discretion and judicial independence, taking into account confidentiality issues.

7. With regard to reporting obligations, it was proposed that the Head of the IOM would report to the Bureau every six months rather than every quarter, with an annual report to the Assembly containing the number, type and other details of cases received throughout the year, as well as the outcome of investigations and preliminary assessments, and any follow up action taken at the time. Such reports would not disclose the names of relevant parties involved and would respect staff members’ rights, including privacy. The Head of the IOM indicated that such a line of reporting was very much in line with similar bodies within the United Nations system.

8. Regarding the operational independence of the IOM and its accountability the Head of the IOM noted the formal supervisory function of the President of the Assembly as well as the administrative reporting line to the Registrar on issues related to human resources, procurement and budget, among others. He indicated that consultations took place with the Registry in order to formalize the limits on administrative reporting obligations while respecting the independence of the IOM.

9. The Head of the IOM noted with regard to the investigation function of the IOM the importance of better defining the IOM’s investigative powers and highlighted the need to have robust confidentiality provisions and a commitment to protecting sources of allegations. He further noted the need to define the IOM’s investigative jurisdiction, i.e. whether the IOM should be the exclusive body for investigations of misconduct, given the different existing investigative jurisdictions between and within the Court’s system and the IOM, and issues of exclusive, primary and concurrent jurisdictions. He noted that the inspection and evaluation functions of the IOM are currently under-utilized and have some overlap with other internal oversight mechanisms of the Court.

10. The Head of the IOM also noted the concurrent jurisdiction between the IOM and the Disciplinary Advisory Board in certain issues, for example harassment cases. In his view such concurrent jurisdiction should be eliminated, and he suggested that the Disciplinary Advisory Board could play a role in the disciplinary process after the IOM investigations are finalized. With regard to potential overlap between the IOM and the Office of Internal Audit the head of the IOM indicated that although there is potential for overlap, in practice there has not been and he did not anticipate duplication of work as good communication and coordination practices exist between the two bodies. He added that they are currently exploring possibilities for working together and resolving issues related to

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<sup>5</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Bureau/ASP2017-Bureau06-decision-ENG-ObsvrStates.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ASP2017-Bureau06-decision-ENG-ObsvrStates.pdf)

ownership of the process and the respective reporting responsibilities towards the Assembly.

11. The Head of the IOM raised the issue of determination of jurisdiction when the Head of the IOM and a Head of a Court organ disagree, and suggested that the President of the Assembly could mediate in such situations. Additional issues raised included the different interpretations by Court organs of the same administrative instructions, the roles of internal oversight bodies and the need to better streamline their mandates and procedures.

12. The organs of the Court addressed a question from the facilitator with regard to the matter related to the creation of a code of conduct for the Court. In their response they indicated that the Court has no Court-wide code of conduct but that due to the specific nature of different professions and positions within the organization the Court already has specialized codes of conduct (such as the Code of Judicial Ethics for Judges,<sup>6</sup> the Code of Conduct for Counsel,<sup>7</sup> the Code of Conduct for staff of the Court,<sup>8</sup> the Code of Conduct for the Office of the Prosecutor<sup>9</sup> and other Codes for specialized staff such as investigators). These were in line with international standards when compared to other courts and tribunals. The working group encouraged the Court to continue working on this matter.

13. The Head of the IOM noted that the proposed amendments were aimed at streamlining the work of the IOM, its reporting obligations, its operational independence and its investigatory powers. The amendments also covered some confidentiality issues as well as the accountability of the IOM itself. He indicated that these changes were based on best practices from other comparable United Nations organizations. He also addressed the issue of capacity of the office to carry out its mandate.

14. The Head of the IOM noted that the proposed amendments dealing with IOM investigative powers had a particular emphasis on making the IOM the sole recipient of complaints/allegations. In a situation when the IOM decides not to investigate the issue it would send it back to the respective Head of organ for them to take the appropriate measures. The proposed amendments would give the IOM a more proactive role by presenting a list of topics for evaluations for the Assembly to decide. He noted that special attention was given to coordination with the Office of Internal Audit to avoid duplication of work.

15. Regarding the integration of the IOM in the regulatory framework of the Court, the Head of the IOM indicated that he had conducted discussions with the Court organs to address some ambiguities in outdated internal Court documents which existed before the establishment of the IOM in 2019, in particular issues regarding the mandate of the IOM and follow up measures/disciplinary actions following the findings of the IOM. He also clarified that the IOM is not involved in the decision on any disciplinary action, which was up to the Head of organ.<sup>10</sup> The IOM can however, collaborate if some clarifications are needed, for example with regard to its investigation process or its findings.

16. The Office of the Prosecutor and the Registry provided written comments on the draft proposal by the IOM. At the 17 October meeting of the facilitation, the President of the Court, Judge. Chile Eboe-Osuji, made an oral presentation in which he commented on the proposed amendments for the IOM. In his presentation the President of the Court noted that proposing to enlarge the powers of the IOM could result in further significant erosion of judicial independence, recalling that the IOM is a subsidiary body of the Assembly. He concluded his intervention by noting that the best approach would be for the establishment of a Judicial Council, which would, inter alia, take over the function of inquiries into

<sup>6</sup> [https://www.icc-cpi.int/NR/rdonlyres/A62EBC0F-D534-438F-A128-D3AC4CFDD644/140141/ICCBD020105\\_En.pdf](https://www.icc-cpi.int/NR/rdonlyres/A62EBC0F-D534-438F-A128-D3AC4CFDD644/140141/ICCBD020105_En.pdf)

<sup>7</sup> [https://www.icc-cpi.int/NR/rdonlyres/BD397ECF-8CA8-44EF-92C6-AB4BEBD55BE2/140121/ICCASP432Res1\\_English.pdf](https://www.icc-cpi.int/NR/rdonlyres/BD397ECF-8CA8-44EF-92C6-AB4BEBD55BE2/140121/ICCASP432Res1_English.pdf)

<sup>8</sup> <https://www.icc-cpi.int/resource-library/Vademecum/Code%20of%20Conduct%20for%20Staff%20Members.PDF>

<sup>9</sup> The Code was promulgated in 2013 and is applicable to all OTP staff and elected officials: <https://www.icc-cpi.int/iccdocs/otp-COC-Eng.pdf>

<sup>10</sup> In response to paragraph 140 of resolution ICC/ASP/17/Res.5, the Office of the Prosecutor submitted on 13 November 2019 an interim report thereon (ICC-ASP/18/INF.5). The report indicated that a Court-wide report, outlining the measures already in place as well as the steps taken and planned to further strengthen the professional and ethical framework for elected officials, would be submitted to the Assembly at its nineteenth session.

complaints against judges and elected officials, and indicated that he would submit a proposal thereon.

17. In response to paragraph 140 of resolution ICC/ASP/17/Res.5, on 13 November 2019 the Office of the Prosecutor submitted an interim report thereon.<sup>11</sup> The interim report indicated that a Court-wide report, outlining the measures already in place as well as the steps taken and planned to further strengthen the professional and ethical framework for elected officials, would be submitted to the Assembly at its nineteenth session. Given the date of the submission the Hague Working Group did not have time to consider the report.

### **III. Recommendations**

18. The recommendations annexed to this report are submitted via the Bureau for the consideration of the Assembly.

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<sup>11</sup> ICC-ASP/18/INF5.

## Annex

### Draft language to be included in the omnibus resolution

#### Independent Oversight Mechanism

1. *Welcomes* the discussions held during 2019 on the review of the work and operational mandate of the Independent Oversight Mechanism, and *stresses* the importance of completing that review and reporting to the Assembly at its nineteenth session;
2. *Notes* the initial draft for a revised operational mandate for the Independent Oversight Mechanism presented by its Head during the 2019 discussions; and *also notes* the comments on that draft received from the Court;
3. *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 ethics charters/codes of conduct, which should be consistent to the extent possible;
4. *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;
5. *Reaffirms* the importance of the Independent Oversight Mechanism reporting to States Parties on the results of its activities;
6. *Emphasizes* the importance of adherence to the highest professional and ethics standards by all Court staff and elected officials, *notes* the need 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 taken by the Court to investigate the potential impact on the Court's work in light of allegations of misconduct surrounding former officials and *welcomes* the Interim Report provided by the Office of the Prosecutor,<sup>1</sup> *notes* the Office of the Prosecutor's recommendation that the Assembly consider expanding the mandate of the Independent Oversight Mechanism to enable it to investigate the alleged conduct of former elected officials and staff both while they were in office and when they separated from service, and *urges* the Court to complete this investigation fully and transparently, to identify any necessary follow-up action for the Court and/or the Assembly, and to report to the Assembly in advance of its nineteenth session;
7. *Welcomes* the progress reported in formally aligning the Regulations of the Court with the mandate of the Independent Oversight Mechanism and *encourages* the Court, with the support of the Independent Oversight Mechanism, as necessary, 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 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;

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<sup>1</sup> Interim Report provided by the Office of the Prosecutor in response to paragraph 140 of resolution ICC/ASP/17/Res.5 (ICC-ASP/18/INF.5).