

## Assuring Integrity: Challenges in the ICC Independent Oversight Mechanism

By Ezequiel Jimenez

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### 1. State Party Governance as Integrity

The 125 States Parties, as the masters of the Rome Statute, have a duty to govern the International Criminal Court ('ICC') as they are also bound to respect its independence. In this quest, the 2020 Independent Expert Review of the Court concluded, "as an international organisation, States Parties reasonably expect to be able to guide and shape the institution"<sup>1</sup> Yet, the choices pursued by the Assembly of States Parties to shape the Court must not be simply understood as "somehow self-evident, and as such not political at all"<sup>2</sup> ICC States Parties are ultimately responsible for the Court's success or demise at the same time as they operate in a political context marked by national and international pressures. In fact, the Assembly has faced severe challenges to operate within the confines of the Statute as it dealt with a crisis of legitimacy from within, as seen with the fraught relationship with the African Union, and from outside as illustrated by sanctions imposed on Court officials by non-party States like the United States and Russia. Yet, even in a politicized environment, States Parties are ultimately responsible for thoroughly governing the Court as an independent international organization.<sup>3</sup> This means, crucially, assuring all actions by the Assembly and Court officials uphold the overriding principle of integrity.

The scholarship of Bergsmo and Dittrich, and collaborators of the Integrity in International Justice project,<sup>4</sup> has studiously corroborated the axiom that no endeavour to achieve accountability can be without leadership of the highest moral calibre and integrity. Published just as the Independent Expert Review report landed in the Assembly of States Parties in 2020, Bergsmo and others showed without doubt that integrity, as stipulated at least in Articles 36(3)(a) and Article 42(3) of the Rome Statute, are legally binding on States Parties.<sup>5</sup> This means that even when States "sometimes seem to lose focus on the binding nature of the 'integrity' requirement",<sup>6</sup> its fundamental importance calls to move away from "ritual incantations to something of meaning,

take them off the page and give them life"<sup>7</sup> However, the Court and the Assembly have faced difficulties in allowing the principle of integrity to permeate across the institution unfettered. Inder<sup>8</sup> has shown deficiencies in the Registry, Laucci<sup>9</sup> has appraised firmly but friendly the myriad of internal oversight issues, and Mohammed and Nakhjavani<sup>10</sup> have assessed the effects of the absence of ethical guidance at the Court. Further, Donat Cattin and Verpile have properly located the incomplete role of the Assembly of States Parties and the Independent Oversight Mechanism to supervise and uphold integrity as a foundation of the Rome Statute. In fact, the authors agree with the Independent Expert Review whereas "the ICC is accountable to a system, but actors of the system have not performed at the level indicated in the Rome Statute"<sup>11</sup>

Blokker has questioned the degree to which good governance by international judicial governance institutions, like the Assembly of States Parties, is of "fundamental importance for the way in which international courts and tribunals can carry out their judicial tasks independently"<sup>12</sup> Indeed, Article 112 in the Rome Statute created a governance body assigning to States Parties a number of critical functions where the principle of integrity permeates across. States Parties retain the overall governance and management responsibility over the Court, elect and decide on the removal of the judges and the Prosecutor, set the annual budget, legislate changes to the Rules of Procedure and Evidence, deal with non-co-operation, and remain the sole authority to amend the Statute. Because of their governance role, States Parties must oversee the overall health of the institution and as such uphold the overriding principle of integrity by putting in place means for its enforcement, supervision and course correction. In other words, the Assembly has a duty and a responsibility to ensure it "walk the walk on the principles they proclaim"<sup>13</sup>

The question that follows is to what extent the main constituent

<sup>1</sup> Independent Expert Review of the International Criminal Court and the Rome Statute System: Final Report – 30 September 2020, 9 November 2020, ICC-ASP/19/16, p. 11 ('IER Report') (<https://www.legal-tools.org/doc/yq4r48em/>).

<sup>2</sup> Martti Koskeniemi, "A Trap for the Innocent...", in Claus Kreß and Stefan Barriga (eds.), *The Crime of Aggression: A Commentary*, Cambridge University Press, 2016, p. 1379.

<sup>3</sup> Richard J. Goldstone, "The International Criminal Court: Origins, Challenges and Desirable Reforms to Strengthen It", in Richard Falk and August Lopez-Claros (eds.), *Global Governance and International Cooperation*, Routledge, London, 2024, p. 378.

<sup>4</sup> Morten Bergsmo and Viviane E. Dittrich (eds.), *Integrity in International Justice*, Torkel Opsahl Academic EPublisher, Brussels, 2020 (<https://www.toaep.org/nas-pdf/4-bergsmo-dittrich/>).

<sup>5</sup> Morten Bergsmo, "Revisiting Integrity in International Justice", Policy Brief Series No. 93 (2018), Torkel Opsahl Academic EPublisher, Brussels, 2018, p. 2 (<https://www.toaep.org/pbs-pdf/93-bergsmo/>).

<sup>6</sup> *Ibid.*

<sup>7</sup> Karim A.A. Khan KC, "Integrity and the Limits of Internal Oversight Mechanisms", CILRAP Film, 2 December 2018 (<https://www.cilrap.org/es/cilrap-film/181202-khan/>).

<sup>8</sup> Brigid Inder, "Conformity, Leadership and the Culture of Integrity at the International Criminal Court", in Bergsmo and Dittrich (eds.), 2020, p. 340, see *supra* note 4.

<sup>9</sup> Cyril Laucci, "The Wider Policy Framework of Ethical Behaviour: Outspoken Observations from a True Friend of the International Criminal Court", in *ibid.*, pp. 873–874.

<sup>10</sup> Suhail Mohammed and Salim A. Nakhjavani, "Does the International Criminal Court Really Need an Ethics Charter?", in *ibid.*, pp. 875–901.

<sup>11</sup> David Donat Cattin and Melissa Verpile, "Integrity and the Preservation of Independence in International Criminal Justice", in *ibid.*, p. 1092.

<sup>12</sup> Niels Blokker, "The Governance of International Courts and Tribunals", in Andreas Follesdal and Geir Ulfstein (eds.), *The Judicialization of International Law: A Mixed Blessing?*, Oxford University Press, 2018, p. 27.

<sup>13</sup> Sergey Vasiliev, "The Crises and Critiques of International Criminal Justice", in Kevin Jon Heller *et al.* (eds.), *The Oxford Handbook of International Criminal Law*, 2nd ed., Oxford University Press, 2020, p. 650.

cies of the Rome Statute have enabled the institution to develop in such ways that integrity becomes its *modus vivendi*. Undoubtedly, part of the answer is in the Independent Expert Review finding inadequacies at all levels of the system,<sup>14</sup> but also in a broader understanding of how power in international justice influences the governance of international tribunals. Bergsmo has alerted about the significant impact staff members, away from public view, have in the application of the integrity principle,<sup>15</sup> and Vasiliev has traced specific actions by individual States in the Assembly falling “short of good-faith and competent governance”.<sup>16</sup> The full result of deficient individual and institutional governance, as Bexell shows, usually ends in spirals of delegitimization and institutional paralysis.<sup>17</sup> Thus, integrity does not become an empty concept, but a legally binding guide putting the onus on States Parties and Court officials to act upon it in tangible ways, at least guided by the Rome Statute and auxiliary documents.

If the principle of integrity is to be understood for its foundational and legally binding requisites, a focus emerges then on the structures and incentives in place necessary to promote good governance of international judicial governance institutions<sup>18</sup> as means for its enforcement, supervision and course correction. If States Parties to the Rome Statute do not govern the ICC with the deployment of integrity as their *modus vivendi*, then the binding nature of the quest will naturally result in an institution in perpetual crisis.<sup>19</sup> While the limits of supervision are clearly stipulated for in Articles 40, 42 and 119 respecting the independence of the organs of the Court, these do not necessarily preclude carefully balanced action by the Assembly, and subsidiary bodies like the Independent Oversight Mechanism.<sup>20</sup> In a broader sense, the tension between oversight and transparency risks wrong perceptions of accountability between States Parties and the Court.<sup>21</sup> In the opposite way, if instruments, like the Independent Oversight Mechanism, are calibrated to provide a space for organizational development and excellence, the Assembly is the natural venue for management oversight discussions which, in turn, can build confidence between States Parties and the Court, preventing, among other consequences, misperceptions and possible membership withdrawals.<sup>22</sup>

Tellingly, the drafters of the Rome Statute knew an institution seeking accountability externally had to be equally reflective internally, assuring the overall integrity of the Court and its principals. Thus, Article 112(4), creating the Independent Oversight Mechanism “for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy”,<sup>23</sup> becomes a natural practical window to assess the degree of integrity assured by States Parties. However, the Independent Oversight Mechanism experienced severe challenges to become operational and institutionally mature over time. At the time of writing, new questions about integrity have emerged during the 23rd Session of the Assembly of States Parties regarding the appointment of its leadership by the Bureau. As the Assembly’s subsidiary body charged with

<sup>14</sup> IER Report, p. 59, see *supra* note 1.

<sup>15</sup> Morten Bergsmo, “Unmasking Power in International Criminal Justice: Invisible College v. Visible Colleagues”, in Morten Bergsmo, Mark Klamburg, Kjersti Lohne and Christopher B. Mahony (eds.), *Power in International Criminal Justice*, Torkel Opsahl Academic EPublisher, Brussels, 2020, p. 8 (<https://www.toaep.org/ps-pdf/28-power/>).

<sup>16</sup> Sergey Vasiliev, “Judicial Governance Entities as Power-Holders in International Criminal Justice: A Plea for a Socio-Legal Enquiry”, in *ibid.*, p. 496.

<sup>17</sup> Magdalena Bexell *et al.*, “The Politics of Legitimation and Delegitimation in Global Governance”, in Magdalena Bexell, Kristina Jönsson and Anders Uhlin (eds.), *Legitimation and Delegitimation in Global Governance: Practices, Justifications, and Audiences*, Oxford University Press, 2022, p. 32.

<sup>18</sup> Blokker, 2018, p. 27, see *supra* note 12.

<sup>19</sup> Oumar Ba, “International Criminal Justice: The Future Is the Past”, in *Journal of International Criminal Justice*, advance article, 2024, p. 4.

<sup>20</sup> Douglas Guilfoyle, “Lacking Conviction: Is the International Criminal Court Broken? An Organisational Failure Analysis”, in *Melbourne Journal of International Law*, 2020, vol. 20, no. 2, p. 42.

<sup>21</sup> Blokker, 2018, p. 40, see *supra* note 12.

<sup>22</sup> Guilfoyle, 2020, p. 42, see *supra* note 20.

<sup>23</sup> Rome Statute of the International Criminal Court, 17 July 2002, Article 112(2)(b) (<https://www.legal-tools.org/doc/7b9af9/>).

oversight, a closer look into the Mechanism’s challenges is necessary to alert us, once again, to the foundational importance of assuring integrity in the Rome Statute system by its masters, States Parties.

## 2. Strengthening the Independent Oversight Mechanism

Formally, Article 112(2)(b) in the Rome Statute assigned to the Assembly of States Parties the “management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court”.<sup>24</sup> Article 112(2)(b) can be read together with Article 112(4) establishing the Independent Oversight Mechanism – the Assembly only turned to its creation in 2009.<sup>25</sup> As the Rome Statute’s *travaux préparatoires* reveal, the Independent Oversight Mechanism was introduced akin to an internal audit function of the Court.<sup>26</sup> It was equally clear that the Mechanism had non-judicial oversight powers, respecting the independence of the organs.<sup>27</sup> As the Independent Oversight Mechanism was established to comply with the threefold mandate of “investigation, inspection and evaluation of the Court”,<sup>28</sup> the Assembly developed it over three phases.

The first phase of implementation, until 2013, focused on conducting “investigations on allegations of misconduct and to ensuring effective and meaningful oversight thereof”.<sup>29</sup> To do so, the Mechanism’s independent investigative function ensured that undue conduct by elected officials and their staff were “investigated and an effective remedy provided”.<sup>30</sup> Due to disagreements with Prosecutor Moreno Ocampo,<sup>31</sup> the investigative powers of the Mechanism were only agreed after several setbacks and eight years after the establishment of the Court. By 2013, a three-person independent unit came into operation, drawing on seconded expertise from the United Nations Office of Internal Oversight.<sup>32</sup> The second phase in 2013 further specified the inspection, evaluation and investigation roles by clarifying their purpose and legal mandate.<sup>33</sup> In doing so, the Assembly also developed a dispute-settlement scheme in the event any Court organ’s head disagreed with an investigation. Furthermore, the Assembly created a reporting procedure to the Bureau and provided a stable budget and staffing to the Mechanism.<sup>34</sup> Thus, by 2017, at the 16th session of the Assembly, the investigation, inspection and evaluation functions were fully functional.<sup>35</sup> The third phase, in 2020 during the 19th session, the Assembly agreed to expand the investigative function of the Mechanism to cover “alleged conduct of former elected officials and staff both while they were in office and when they separated from service”.<sup>36</sup> Such change allowed the Mechanism to investigate media allegations against former Court officials like those against the first Prosecutor of the Court.<sup>37</sup> Beyond

<sup>24</sup> *Ibid.*

<sup>25</sup> Decision Concerning an Independent Oversight Mechanism, ICC-ASP/7/Decision 1, 13 February 2009, p. 1 (<https://www.legal-tools.org/doc/4f7928/>).

<sup>26</sup> Proposals Submitted by the United States of America, UN Doc. A/AC.249/1998/DP.1, 2 March 1998, p. 3 (<https://www.legal-tools.org/doc/40b4aa/>).

<sup>27</sup> Vasiliev, 2020, p. 519, see *supra* note 16.

<sup>28</sup> Rome Statute of the International Criminal Court, Article 112(4), see *supra* note 23.

<sup>29</sup> Establishment of an Independent Oversight Mechanism, ICC-ASP/8/Res.1, 26 November 2009, p. 3 (<https://www.legal-tools.org/doc/bf0e8c/>).

<sup>30</sup> William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, 2nd ed., Oxford University Press, 2017, p. 1446.

<sup>31</sup> Vasiliev, 2020, p. 519, see *supra* note 16.

<sup>32</sup> Establishment of an Independent Oversight Mechanism, ICC-ASP/8/Res.1, 26 November 2009, p. 3 (<https://www.legal-tools.org/doc/bf0e8c/>).

<sup>33</sup> Independent Oversight Mechanism, ICC-ASP/12/Res.6, 27 November 2013, p. 3 (<https://www.legal-tools.org/doc/64ebeb/>).

<sup>34</sup> *Ibid.*

<sup>35</sup> Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/16/Res.6, 14 December 2017, p. 14 (<https://www.legal-tools.org/doc/36d60d/>).

<sup>36</sup> Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/19/Res.6, 16 December 2020, p. 17 (“ICC-ASP/19/Res.6”) (<https://www.legal-tools.org/doc/95d4rr/>).

<sup>37</sup> ICC, “Statement on Recent Media Allegations”, Press Release, 5 October

the critical investigation function, the Independent Oversight Mechanism played a role to vet candidates to assure high moral character and integrity for the positions of Prosecutor, Deputy Prosecutor, Registrar and judges as well as carried out evaluations into the Registry, the Trust Fund for Victims,<sup>38</sup> and the Secretariat of the Assembly.<sup>39</sup>

Yet, as the Independent Oversight Mechanism was established to comply with the threefold mandate, its institutional maturity continued to be debated. The Assembly of States Parties has faced criticism for its inability to deploy its oversight function to reform areas where the Court fails to achieve its objectives.<sup>40</sup> For example, the Assembly remained a focus of appraisal when evaluating how it dealt with allegations of misconduct by members of the Prosecution and Registry, and documented bullying and harassment of staff.<sup>41</sup> In 2024, the Bureau of the Assembly received new questions as it agreed on an external investigation into the Prosecutor bypassing the Independent Oversight Mechanism.<sup>42</sup> More so, Evenson,<sup>43</sup> Wilmschurst,<sup>44</sup> Trahan,<sup>45</sup> Vasiliev,<sup>46</sup> Clements<sup>47</sup> and Smith<sup>48</sup> have pointed out an overall context of failures in management, trial effectiveness, outreach, participation of victims, and cybersecurity, all affecting the performance of the Court which is under the purview of States Parties.

In 2020, the Independent Expert Review identified severe issues with the effectiveness of the Independent Oversight Mechanism, its reputation among staff and its meagre resource allocation.<sup>49</sup> In fact, during the period between 2013 and 2024, the Head of the Independent Oversight Mechanism shared ten annual reports with the Assembly signalling an impeding ability to carry out its responsibilities with, at times, a decimated team plagued with resignations,<sup>50</sup> extended sick leave, and chronically vacant positions.<sup>51</sup> In 2024, the Independent Oversight Mechanism had five staff supported by two visiting professionals while their investigative volume of work jumped from 33 cases in 2019–2020<sup>52</sup> to 61 in 2023–2024,<sup>53</sup> a 45 percent increase. Furthermore, even at the stark incremental rate of practice of the Independent Oversight Mechanism, the Bureau of the Assembly required more than

12 months<sup>54</sup> to solicit applications, evaluate candidates, and appoint a new Head of the Mechanism, finally in place in December 2024.<sup>55</sup> The Bureau of the Assembly appointed Mr. Silvain Sana, who came directly from a post in the Office of the Prosecutor.

The appointment of the new Head of the Independent Oversight Mechanism calls for examination in light of actioning the principle of integrity as a *modus vivendi* of the Court. If the Mechanism is to set itself to the highest levels of integrity when investigating or evaluating Court organs, it is impossible not to contemplate the question of the professional background and origin of those leading such process. To recall the decade-old debate about the powers of the Mechanism to investigate undue conduct in the Office of the Prosecutor, the current circumstance designed by States Parties opens concerns about recusals or impediments of the new Head of the Independent Oversight Mechanism to fulfil its very important mandate. One can predict a situation where the difficult and crucial role of the Mechanism in probing misconduct in the Office of the Prosecutor is called into doubt as perceptions of issues of integrity, conflict of interest or even malicious attempts to derail its work emerge. The current legal framework of the Mechanism makes it abundantly clear that it “exercises full operational independence from the Court” reporting “directly to the President of the Assembly”.<sup>56</sup> As such, it would be reasonable to expect that the appointment to the sensitive role of Head applies the principle of integrity to the maximum extent, in order to shield the oversight function from erosion of trust or future due-process issues. Even as the legal framework includes provisions for third-party mediation and resolution if the Mechanism is ever in conflict with the head of a Court’s organ when exercising its mandate, reaching this point is not desirable for a Rome Statute system overburdened by challenges. Nothing suggests that the persons involved lack the experience, professional integrity or have ulterior plans for the Mechanism. Rather, the States Parties should be questioned – especially the 21 members of the Bureau – on how they arrived at the appointment without conducting a serious risk-assessment about the perceptions of integrity and very real and tangible short-term recusal challenges. So uncomfortable and damaging can erosion of independence, integrity and stature of the Independent Oversight Mechanism be. Participants of the Integrity in International Justice project asked already in 2018 whether it should even be located in the same physical building as the Court.<sup>57</sup>

Unlike other positions at the Court, the Head of the Independent Oversight Mechanism does not command the same level of inquiry or involvement by States Parties as, for example, the election of judges. Indeed, while an external and dedicated Advisory Committee issues reports appraising candidates for judgeships, including vetting for high moral character and integrity, the appointment of the Head of the Mechanism is driven by the Bureau, assisted by Registry. In the latest recruitment process, the Bureau took the step to be assisted by an external panel of five experts in the shortlisting of candidates.<sup>58</sup> Yet, the terms of reference of the expert panel did not include selection criteria. As such, the legally binding integrity principles in the Statute that could have guided the selection *mutatis mutandis* were equally missing. So were questions of conflict of interest. In fact, the word ‘integrity’ is absent from the whole document.<sup>59</sup> Furthermore, aware of increasing pressure on States Parties to take into account insights of the Independent Expert Review in overseeing the Court, the option to conduct a wider exchange with candidates by external stakeholders, including civil society and professional organizations in the ambit of the Mechanism was unfortunately not pursued. In addition, the candidates’ materials, shortlist and

2017 (<https://www.legal-tools.org/doc/babdf6/>).

<sup>38</sup> Annual Report of the Head of the Independent Oversight Mechanism, ICC-ASP/20/16, 17 November 2021 (<https://www.legal-tools.org/doc/syuc7x7r/>).

<sup>39</sup> Annual Report of the Head of the Independent Oversight Mechanism, ICC-ASP/23/18, 16 October 2024, p. 9 (‘ICC-ASP/23/18’) (<https://www.legal-tools.org/doc/0j3u2v6q/>).

<sup>40</sup> Morten Bergsmo *et al.*, “ICC State-Party Governance in Times of Disunity”, Policy Brief Series No. 146 (2023), Torkel Opsahl Academic EPublisher, Brussels, 2023 (<https://www.toaep.org/pbs-pdf/146-governance/>).

<sup>41</sup> IER Report, p. 47, see *supra* note 1.

<sup>42</sup> Ezequiel Jimenez, “The Independent Oversight Mechanism: Procedural Questions into the External Investigation of the Prosecutor”, in *Opinio Juris*, 6 January 2025.

<sup>43</sup> Elizabeth Evenson, “Too Few Trials, Too Many Tribulations: The ICC’s Terrible Year and Where to Go from Here”, in *Case Western Reserve Journal of International Law*, 2020, vol. 52, no. 1, p. 442.

<sup>44</sup> Elizabeth Wilmschurst KC, “Strengthen the International Criminal Court”, Chatham House, Royal Institute of International Affairs, 2019.

<sup>45</sup> Jennifer Trahan, “The Assembly of States Parties”, in Margaret deGuzman and Valerie Oosterveld (eds.), *The Elgar Companion to the International Criminal Court*, Edward Elgar Publishing, Cheltenham, 2020, p. 259.

<sup>46</sup> Vasiliev, 2020, p. 632, see *supra* note 13.

<sup>47</sup> Richard Clements, “ReVisiting the ICC Registry’s ReVision Project”, in *Journal of International Criminal Justice*, 2019, vol. 17, no. 2, p. 272.

<sup>48</sup> Stephen Eliot Smith, “Is the International Criminal Court Dying? An Examination of Symptoms”, in *Oregon Review of International Law*, 2022, vol. 23, p. 76.

<sup>49</sup> IER Review, p. 59, see *supra* note 1.

<sup>50</sup> Annual Report of the Head of the Independent Oversight Mechanism, ICC-ASP/17/8, 8 November 2018, p. 2 (<https://www.legal-tools.org/doc/bauh3t/>).

<sup>51</sup> ICC-ASP/23/18, p. 11, see *supra* note 39.

<sup>52</sup> Annual Report of the Head of the Independent Oversight Mechanism, ICC-ASP/19/26, 30 October 2020, p. 4 (<https://www.legal-tools.org/doc/rjk6dzkh/>).

<sup>53</sup> ICC-ASP/23/18, p. 3, see *supra* note 39.

<sup>54</sup> Bureau of the Assembly of States Parties, Seventh Meeting, 5 July 2023, p. 2 (<https://www.legal-tools.org/doc/qirdum/>).

<sup>55</sup> Assembly of States Parties to the Rome Statute of the ICC, “ASP23: First Plenary Meeting – Opening of the Session, 2 December 2024”, *YouTube*, 2 December 2024 (available on *YouTube*).

<sup>56</sup> ICC-ASP/19/Res.6, p. 31, see *supra* note 36.

<sup>57</sup> Khan, 2018, see *supra* note 7.

<sup>58</sup> Bureau of the Assembly of States Parties, Tenth Meeting, 1 November 2023, p. 9 (<https://www.legal-tools.org/doc/hew1na/>).

<sup>59</sup> *Ibid.*



deliberations of the panel and Bureau were confidential and only accessible to States Parties. While an argument might be made to restrict the level of public involvement in the recruitment of a senior position internal to the Assembly of States Parties (given the potentially politically charged overseer role this position plays, its supervision by the Bureau and increasing workload), the integrity of the Mechanism might have been best assured with a different, more transparent, process. In fact, Bureau members have been confronted in the past with the demand for a clearer recruitment practice. Between 2014 and 2015, at the time of the inaugural recruitment of the Head of the Mechanism, Uganda and other African States complained about the outcome, insisting on an alternative appointment.<sup>60</sup> The procedural issues of the Bureau's first recruitment experience led to a litigious escalation culminating before the Administrative Tribunal of the International Labour Organization.<sup>61</sup>

In the spirit of learning and possible future change, the Assembly has an opportunity to mandate the Bureau to reflect on the requisite modification of subsequent appointments to the Independent Oversight Mechanism. The Assembly has asked for similar reviews after the elections of Prosecutor and on the manner it makes its recommendation to the judges regarding the appointment of Registrar. Similarly, States Parties should develop a robust process to recruit senior officials of the Assembly, including the Head of the Independent Oversight Mechanism, the Director of the Secretariat, and the Executive Director of the Trust Fund for Victims. In the quest to assure the integrity of and faith in the overseer role of the Independent Oversight Mechanism, States Parties should explore the desirability of barring staff-movement between the Court and the Mechanism.

To protect against conflict of interest and erosion of trust among staff, States Parties and other stakeholders, the Assembly could also develop a process akin to its concluded item of staff tenure. Once considered a taboo topic, the Assembly took the Independent Expert Review plea to “encourage fresh thinking and bring more dynamism to the Court”<sup>62</sup> by adopting a maximum of seven-year tenure for senior staff. It did so by changing the Staff Regulations and Rules and establishing a precise reporting-system for any deviations from the policy.<sup>63</sup> In this way, States Parties can tackle the needed reform of tenure policy at the Independent Oversight Mechanism to shield it against trust deficit. In doing so, the Assembly might take on Staff Regulation 4.4, which arguably puts a premium on filling Court vacancies with existing staff.<sup>64</sup>

Yet, the premise of integrity as a *modus vivendi* across the Rome Statute system must take place regardless of minor or substantive changes to regulations and auxiliary documents, in this case, aiding the institutional set up of the Independent Oversight Mechanism. The Assembly as a governance corpus requires committed diplomats and experts to bring forward the legally binding nature of integrity in the Rome Statute in practical and tangible ways. The recent practice of the

<sup>60</sup> Bureau of the Assembly of States Parties, Thirteenth Meeting, 19 November 2014, p. 4 (<https://www.legal-tools.org/doc/380c8e/>).

<sup>61</sup> International Labour Organization, Administrative Tribunal, *M. v International Criminal Court*, Judgment, 23 May 2023, No. 4683 (<https://www.legal-tools.org/doc/gtj8uzpp/>).

<sup>62</sup> Resolution of the Assembly of States Parties Regarding the Implementation of the Tenure Policy, ICC-ASP/23/Res.2, 6 December 2024, p. 1 (<https://www.legal-tools.org/doc/dj3wqk66/>).

<sup>63</sup> *Ibid.*

<sup>64</sup> Consolidated Text of the Staff Regulations and Rules of the International Criminal Court, Presidential Directive, ICC/PRES/D/G/2024/002, 20 December 2024, Regulation 4.4 (<https://www.legal-tools.org/doc/daddbwa4/>).

Review Mechanism and ongoing work of the Study Group on Governance might be two seminal spaces for States Parties to develop this necessary work.

### 3. Conclusions: New Binding Commitments?

Recalling Bergsmo and Dittrich, “focusing on the standard and practice of ‘integrity’ is an open-ended necessity for international justice institutions, none of which is exempted from the common challenge of professionalisation”.<sup>65</sup> It is exactly in the shared space between these two pursuits that the Assembly of States Parties has the responsibility to influence and steer. Assuring integrity at the ICC requires addressing structural and procedural gaps that can compromise trust in its governance and oversight mechanisms. As discussed above, one pressing issue is to study the impact of the principle of integrity on the movement of staff between the Court and the Independent Oversight Mechanism. Such transfers raise concerns of conflicts of interest, impartiality, and the perception of integrity in the Mechanism's critical role of investigating, evaluating and inspecting the organs of the Court.

To uphold the foundational principle of integrity, the Assembly of States Parties should bar staff transfers between the Court and the Independent Oversight Mechanism. This would prevent situations where prior affiliations or career trajectories could undermine the independence of investigations or evaluations. This reform, mirroring recent initiatives like the adoption of tenure limits for senior Court staff, would safeguard the Mechanism's operational credibility and reinforce its perceived impartiality. By introducing regulations to prevent direct staff transfers, the Assembly would address the inherent tension in having the Mechanism oversee individuals or organs that its members previously served. This would also help to eliminate doubts regarding the impartiality of its leadership, especially in high-stakes investigations involving senior officials of the Court, like the ongoing external investigation of the Prosecutor. Furthermore, enhanced recruitment protocols and transparency in the selection process for Mechanism leadership positions could complement this policy, ensuring that appointments are driven by merit and guided by the Statute's legally binding integrity principles.

Implementing such safeguards would demonstrate the commitment of States Parties to strengthening the institutional independence of the Mechanism and ensuring that its oversight role is unimpeachable. In doing so, the Court can better align its internal practices with its external mandate for accountability at a time of increased opposition by powerful non-States Parties.

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<sup>65</sup> Bergsmo, 2018, p. 1, see *supra* note 5.



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