



**Administrative Instruction – Instruction administrative**

**Ref. ICC/AI/2022/001**

**Date: 14 March 2022**

**INVESTIGATIONS OF UNSATISFACTORY CONDUCT**

The Registrar, in consultation with the Independent Oversight Mechanism (“IOM”), and with the consent of the President and the Prosecutor, pursuant to sections 3.2 and 3.3 of the [Presidential Directive on Procedures for the Promulgation of Administrative Issuances](#), hereby promulgates the following:

**Section 1**

**Purpose**

- 1.1 The aim of this Administrative Instruction is to ensure that allegations of unsatisfactory conduct are investigated thoroughly and impartially, protecting the interests of the International Criminal Court (“Court”) and upholding the rights and obligations of Court personnel. This Administrative Instruction is consistent with the [Operational Mandate of the IOM](#) (“IOM Operational Mandate” or “Mandate”), as adopted by the Assembly of States Parties (“ASP”), and has been prepared in accordance with generally accepted investigation standards applicable to administrative investigations in international organisations.

**Section 2**

**Scope of application**

- 2.1 This Administrative Instruction covers all investigations of unsatisfactory conduct, whether conducted by the IOM or any other individual formally authorized to carry out investigations, including external investigators retained by the Court.
- 2.2 The principles articulated in this Administrative Instruction outline the rights and obligations of all Court personnel and elected officials, where applicable, in the context of investigations, including the rights and obligations of subjects of investigations.

- 2.3 The decision whether to take disciplinary action against any Court personnel is separate from the investigation process and does not fall within the purview of this Administrative Instruction. Investigations are not disciplinary proceedings. Disciplinary proceedings are governed by the [Administrative Instruction on Unsatisfactory Conduct and Disciplinary Proceedings](#).
- 2.4 In case of inconsistency between this Administrative Instruction and the Rome Statute, the Rules of Procedure and Evidence, any resolution of the Assembly of State Parties, the Staff Regulations or the Staff Rules, these latter instruments shall prevail.

### Section 3

#### Definitions

For the purposes of this Administrative Instruction, the following definitions apply:

- 3.1 “Court personnel” refers to a broad category of persons, not including elected officials, that hold a contract of service with the Court. It includes, *inter alia*, staff members, consultants, contractors, visiting professionals and interns.
- 3.2 “Complainant” means an individual who reports information that unsatisfactory conduct may have occurred.
- 3.3 “Elected officials” means a judge, the Prosecutor, a Deputy Prosecutor, the Registrar and the Deputy Registrar of the Court. Nothing in this Administrative Instruction should be construed as establishing new obligations on elected officials.
- 3.4 The “responsible official” is:
  - a) The Prosecutor, for reported unsatisfactory conduct on the part of staff members, consultants and contractors serving the Office of the Prosecutor; and
  - b) The Registrar, for reported unsatisfactory conduct on the part of staff members, consultants and contractors serving the other organs of the Court, as well as offices administratively linked to the Registry such as the Secretariat of the ASP and the Secretariat of the Trust Fund for Victims.
- 3.5 “Unsatisfactory conduct” means failure by a staff member to act in accordance with any official document of the Court governing rights and obligations of staff members, such as the Staff Regulations and Rules and the [Financial Regulations and Rules](#), or any relevant resolutions and decisions of the ASP, or failure to observe the standards of conduct expected of an international civil servant. Additionally, it means any failure by consultants and contractors to uphold the standards of conduct described in the Staff Rules, Staff Regulations and any relevant issuances related to expected standards of conduct.

- 3.6 “Investigation” means an analytical fact-finding process designed to gather information to determine whether unsatisfactory conduct has occurred, and, if so, the person(s) responsible. It is an administrative process concerned with the potential failure to observe the standards of conduct expected of Court personnel and serves as a basis for disciplinary proceedings or other appropriate action. Investigations include all fact-finding inquiries, both during the Preliminary Assessment and the Full Investigation, in accordance with section 5 below. They aim at gathering and reviewing the evidence available, both inculpatory and exculpatory, that is, evidence that either substantiates or disproves an allegation.
- 3.7 “Preliminary Assessment” involves the process of collecting, preserving, securing and evaluating basic evidence to determine whether there is a legitimate basis to warrant a Full Investigation. A Preliminary Assessment often includes an interview of the complainant and/or affected individual, and a review of the documents submitted by the complainant, if any.
- 3.8 “Full Investigation” is the collection of all reasonably available evidence, both inculpatory and exculpatory, in order to establish the material facts, conclude on the allegation(s) at issue and formulate a recommendation, which in turn will allow the responsible official to decide on action to be taken.
- 3.9 “Investigator” includes investigators formally employed and retained by the IOM, as well as any other individual formally authorized to carry out investigations including external investigators retained by the Court.
- 3.10 “Subject” means a staff member, consultant or contractor who is the focus of a Full Investigation either by virtue of an allegation made or evidence gathered during the course of a Preliminary Assessment.
- 3.11 “Affected individual” means the person towards whom the conduct constituting suspected unsatisfactory conduct is directed.
- 3.12 “Witness” means a person who provides information to the investigator relevant to the investigation.
- 3.13 “Disciplinary measures” means the measures listed under Staff Rule 110.6 (a).
- 3.14 “Managerial action” includes, but is not limited to, an advisory communication, training and/or coaching. Such action does not constitute a disciplinary measure.
- 3.15 “Administrative measures” include, but are not limited to, an oral or written reprimand by a supervisor, reassignment and/or change of duties. Such measures do not constitute disciplinary measures.

## Section 4

### Reporting

- 4.1 Court personnel who become aware of, or receive information regarding, suspected unsatisfactory conduct, past or present, have a duty to report this information promptly and an obligation to cooperate with duly authorized investigations, audits, and oversight activities such as evaluations and inspections. Court personnel shall be protected from retaliation for complying with these duties. Deliberately making false allegations, or providing information that is known to be false, or making a statement that recklessly disregards the accuracy of the information, however, amounts to unsatisfactory conduct and may lead to disciplinary or other appropriate action.
- 4.2 Information about suspected unsatisfactory conduct may be received from Court personnel, individuals who are not employed by the Court or any other source. This includes any information obtained during an investigation, the disciplinary proceedings, an audit, a management enquiry or review, or a judgment from a national court.
- 4.3 Information about suspected unsatisfactory conduct may be brought to the attention of:
  - a) The Prosecutor, for suspected unsatisfactory conduct on the part of staff members, consultants and contractors serving the Office of the Prosecutor; or
  - b) The Registrar, for suspected unsatisfactory conduct on the part of staff members, consultants and contractors serving the other organs of the Court, as well as offices administratively linked to the Registry such as the Secretariat of the ASP and the Secretariat of the Trust Fund for Victims; or
  - c) The IOM.
- 4.4 Those individuals who may not wish to approach any of the above directly may confide in a manager or supervisor, who shall in turn be responsible for bringing the information about suspected unsatisfactory conduct to the attention of either the responsible official or the IOM on the individual's behalf.
- 4.5 In accordance with the IOM Operational Mandate, the IOM shall receive all allegations of suspected unsatisfactory conduct and has discretionary authority to determine which ones to pursue. If any such allegations are reported to any other Court personnel or elected official, they should be promptly forwarded to the IOM.
- 4.6 The IOM considers all allegations of suspected unsatisfactory conduct irrespective of their source. Information about suspected unsatisfactory conduct may be reported anonymously. However, the anonymity of such reports may render the initiation or completion of an investigation or disciplinary proceedings more difficult. Consequently, those reporting such information are encouraged to identify themselves,

knowing that their names will be kept confidential, and that there are measures in place to protect them against retaliation.

- 4.7 The person reporting information under 4.1 need not include concrete evidence of the alleged unsatisfactory conduct. However, they should include sufficient details for the report to be assessed under the Court's legal framework. In particular, the report should contain as much detail as possible about the alleged unsatisfactory conduct, such as the names of the implicated staff member(s) and any potential witnesses, and any available supporting documentation.
- 4.8 Unless expressly provided for in the present Administrative Instruction or other administrative issuances, Court personnel and third parties are not entitled to information about an investigation or action taken.

## **Section 5**

### **Investigation process**

- 5.1 Once a report has been received by the IOM, the investigation process usually proceeds in three phases: Intake, Preliminary Assessment and Full Investigation.
- 5.2 The IOM has discretionary authority to decide which matters to investigate.

#### ***Intake***

- 5.3 The IOM will acknowledge receipt of all reports made, except where not possible (e.g., lack of means to contact the complainant). All reports received by the IOM will be assessed through an intake process within 14 calendar days of receipt. During the intake process, the IOM will review all allegations to determine whether the alleged behaviour appears to constitute unsatisfactory conduct falling within its Mandate. Examples of allegations that fall outside the scope of the IOM Operational Mandate include, but are not limited to: offences under article 70 of the Rome Statute; and contractual disputes or human resource management issues, such as performance management issues and performance-related disagreements, or personal grievances arising from administrative decisions taken within the proper discretion of the relevant supervisors and management.
- 5.4 Should the IOM determine that the allegation does not fall within its Mandate, it shall inform the complainant accordingly and close the matter.
- 5.5 Should the IOM determine that the allegation falls within its Mandate, it may decide to investigate the matter in accordance with sections 5.8-5.19 below, in which case no further action shall be taken by any other body within the Court, without first consulting the IOM, until the IOM has completed its investigation.
- 5.6 The IOM may also decide to refer a matter to the relevant responsible official. Factors to be considered by the IOM in determining whether the matter should be pursued by

the IOM or referred to a responsible official include, but are not limited to, the seriousness of the allegation, the complexity of any potential investigation, the seniority of the alleged subject(s), and the capacity of the IOM to investigate the matter within a reasonable timeframe.

- 5.7 The IOM may also refer to the relevant responsible official those matters where the allegation may, in the assessment of the IOM, be more suitably handled through managerial action and/or administrative measures. Before any such referral, the complainant and/or affected individual must agree to the matter being referred to the relevant responsible official. In the absence of such agreement, the IOM may elect to proceed with the investigation itself or to close the matter.

### *Investigation*

- 5.8 Investigations include all fact-finding inquiries, both during the Preliminary Assessment and the Full Investigation.
- 5.9 At any time during an investigation, upon assessment of the evidence, the IOM may recommend to the relevant responsible official that an individual be suspended from duty pursuant to Staff Rule 110.5 and section 9 of the Administrative Instruction on Unsatisfactory Conduct and Disciplinary Proceedings pending the completion of the investigation. The IOM may also recommend any other protective measure, in accordance with the Court's legal framework. Suspension does not constitute a disciplinary measure and shall be without prejudice to the rights and entitlements of the individual.

### Preliminary Assessment

- 5.10 If the IOM determines that the matter appears to fall within its Mandate, it may decide to initiate an investigation by undertaking a Preliminary Assessment. In principle, each case should initially go through a Preliminary Assessment. However, the Head of the IOM may exceptionally decide, based on the information available, to proceed directly to a Full Investigation without a Preliminary Assessment.
- 5.11 The Preliminary Assessment allows for the collection of information needed to make an informed decision as to whether a Full Investigation is warranted. The investigator shall endeavour to complete Preliminary Assessments within 90 calendar days of their initiation whenever possible.
- 5.12 During the Preliminary Assessment, the potential subject is typically not informed of either the existence of an investigation nor of the allegations against him or her, unless the investigator determines that it is necessary under the circumstances. No reference to the investigator's decision to open a Preliminary Assessment shall be included in the official status file of the potential subject. The potential subject is not notified of the decision to close the matter without a Full Investigation, unless they had been informed of the Preliminary Assessment.

- 5.13 Should the IOM conclude, following the Preliminary Assessment, that the allegation does not warrant a Full Investigation, it may make recommendations to the relevant responsible official with respect to financial, reputational, or other risks to the Court identified in the Preliminary Assessment, or with respect to addressing issues underlying the allegation. In matters where the IOM determines that no Full Investigation is warranted, no such investigation shall be conducted by any organ of the Court.
- 5.14 Should the IOM conclude, following the Preliminary Assessment, that the allegation is sufficiently credible, material, and verifiable to warrant a Full Investigation, the IOM will initiate such a Full Investigation, unless it determines that it would not be a judicious use of its resources, in which cases it may refer the matter to the responsible official. Should the responsible official then decide to proceed with a Full Investigation, it may do so, and consult with the IOM as necessary.

### Full Investigation

- 5.15 The investigator shall conduct investigations expeditiously and endeavour to complete Full Investigations within 6 months of their initiation whenever possible. Priority should be given by the investigator to those matters where the alleged unsatisfactory conduct is the most serious. This may take into account, *inter alia*, financial, security and/or reputational risks for the Court, urgency or the impact on Court personnel. Accelerated procedures may be applied to priority investigations as required to address risks. At the completion of each Full Investigation, the investigator will prepare an investigation report setting out all relevant evidence, along with their analysis thereof and the findings and conclusions reached. The findings and conclusions of a Full Investigation are based solely on the facts gathered, evidence reviewed, and reasonable inferences derived therefrom.
- 5.16 Investigation reports finding that allegations of unsatisfactory conduct are not substantiated shall be kept by the IOM and typically not disseminated further. If the allegation was reported by the responsible official, the IOM shall inform the responsible official that the investigation is completed and the allegation was unsubstantiated. If the case was closed after the subject was notified of the allegations, the subject shall be informed of the closure of the case. Depending on the circumstances of the case, the IOM shall also inform the complainant and/or affected individual of the completion of the investigation in accordance with sections 6.19 and 6.21 below.
- 5.17 Investigation reports finding that allegations of unsatisfactory conduct are substantiated shall be submitted to the responsible official with authority to initiate disciplinary or other appropriate action against the relevant Court personnel.
- 5.18 All investigation reports are strictly confidential, and their contents may not be disclosed further, other than to comply with legal requirements such as the Court's disciplinary proceedings or related appeals. Disclosure under any other circumstances is permitted only with the approval of either the Head of the IOM or, if applicable, the

relevant responsible official, after discussion with the IOM regarding necessary redactions.

- 5.19 Where the investigation reveals that criminal conduct may have been committed, the IOM may also refer the matter to the relevant responsible official, and recommend that the matter be further referred to the relevant national authorities.

#### Investigations by a responsible official

- 5.20 Investigations by a responsible official shall be conducted in accordance with the present Administrative Instruction, and all relevant documentation, including the investigation report, should be provided to the IOM at the conclusion of the investigation.
- 5.21 The responsible official shall instruct appropriate and experienced individuals to conduct Preliminary Assessments and Full Investigations on its behalf. The responsible official should normally appoint at least two individuals who have been trained and/or are experienced in conducting investigations.
- 5.22 If the IOM decides to refer a matter to a responsible official in accordance with section 5.6 above, the responsible official shall conduct a Preliminary Assessment to determine whether a Full Investigation is warranted.
- 5.23 The responsible official shall decide, within 10 working days from the date of conclusion of the Preliminary Assessment, whether a Full Investigation is warranted.
- 5.24 Should the responsible official conclude, following the Preliminary Assessment, that the allegation does not warrant a Full Investigation, the responsible official shall decide either to:
- a) Close the matter without further action; or
  - b) Take managerial action and/or administrative measures, except that no reprimand may be imposed unless unsatisfactory conduct has occurred.
- 5.25 Should the responsible official conclude, following the Preliminary Assessment, that a Full Investigation is warranted, the responsible official shall decide either to:
- a) Proceed with a Full Investigation; or
  - b) Request the IOM to initiate a Full Investigation. Should the IOM determine that a Full Investigation would not be a judicious use of its resources, it shall refer the matter back to the responsible official who shall conduct the Full Investigation.



## Section 6

### Governing principles

#### *Access and cooperation*

- 6.1 The IOM shall have full, free and prompt access to all Court personnel and elected officials, and shall receive their full cooperation. Other investigators shall have the same rights with regards to Court personnel and shall consult with the IOM in matters involving requiring information from elected officials. Court personnel and elected officials have a duty to cooperate promptly with any investigative requests, including but not limited to requests for information, making themselves available for interview and/or responding promptly, fully and truthfully to any requests for information. Failure to cooperate with an investigation without reasonable excuse, providing information that is intentionally false or misleading, or attempts to impede, obstruct or improperly influence an investigation, may constitute unsatisfactory conduct and lead to disciplinary or other appropriate action.
- 6.2 Investigators shall have full, free and prompt access to all (electronic and others) Court records, files, documents, emails, books or other materials, assets and premises, as well as any Court-issued electronic device, and shall have the right to obtain such information and explanations as they consider necessary to fulfil their responsibilities.
- 6.3 Notwithstanding the above, this right of access shall be subject to: confidentiality considerations necessary for the exercise of the Court's mandate under the Rome Statute; any pre-existing obligation of confidentiality to the originator of the information or document; the safety and security of witnesses, victims and third parties; and the protection of national security information of States Parties. This exception also includes medical records, access to which requires prior written consent from the Court personnel or elected official concerned. Such confidentiality concerns may be raised in accordance with paragraph 36 of the IOM Operational Mandate.

#### *Protection from Retaliation*

- 6.4 Court personnel and elected officials are entitled to protection from retaliation for reporting suspected unsatisfactory conduct in good faith or cooperating with a duly authorized investigation, in accordance with the [Court's whistleblowing and whistleblower protection policy](#).
- 6.5 No direct or indirect detrimental action may be recommended, threatened or taken against Court personnel or elected officials for reporting suspected unsatisfactory conduct in good faith or cooperating with a duly authorized investigation.
- 6.6 Any such retaliatory action shall constitute unsatisfactory conduct, and may result in disciplinary or other appropriate action against the person responsible.
- 6.7 The protection against retaliation only applies to Court personnel or elected officials acting in good faith and providing information which they reasonably believe is true.

### *Confidentiality*

- 6.8 Reports of suspected unsatisfactory conduct received by the IOM shall be treated in complete confidence.
- 6.9 All investigations are carried out in a confidential manner, to protect the rights of all individuals involved in the investigative process, and to preserve the integrity of the investigation itself.
- 6.10 Investigators must keep information related to an investigation confidential, and may only use such information to make findings and reach conclusions in the context of the investigation. In particular, the initial source of a report of unsatisfactory conduct shall not be divulged, except for those cases where failure to provide this information to the subject would make it impossible for them to fully respond to the allegations (e.g., in some cases of harassment, sexual harassment or abuse of authority). In cases where disclosure is necessary, the person making the allegation should be informed of the need to disclose their identity to allow them to decide whether they wish to go forward with their complaint.
- 6.11 During the course of the investigation, investigators may nevertheless disclose information relating to or arising from the investigation on a reasonable “need to know” basis, when required by the legitimate needs of the investigation.
- 6.12 Court personnel or elected officials who become aware, through any channel and from any source, of an investigation shall treat such information as confidential and refrain from any disclosure, unless agreed to by the investigator. In particular, following a request by an investigator for information or an interview, the relevant Court personnel or elected official is under an obligation to keep the contents of the interview and/or the request for information confidential, including from their supervisors, who may be informed when necessary only of the need for the individual to attend an interview. Any unauthorized disclosure of information shall constitute unsatisfactory conduct, and may result in disciplinary or other appropriate action.

### *Rights and obligations of subjects*

- 6.13 The subject shall have a right to presumption of innocence throughout the investigation. The existence of an investigation into a matter does not mean that any unsatisfactory conduct has occurred. The subject shall be given a full and fair opportunity to respond to the allegations, present evidence and nominate witnesses.

### Information on the status of the investigation

- 6.14 The subject shall be periodically informed of the status of the investigation, especially when there are unexpected delays in the investigation.

## Interviews

- 6.15 Whenever practicable, and to the extent possible, an interview with the subject should be conducted in person, by two investigators, and in the working language of the Court of the subject's choosing, or with the assistance of an interpreter. Prior to any interview, the investigator shall notify the subject of the allegations against them, generally describing the facts that are alleged to have occurred and the provisions of the regulatory framework that the subject is alleged to have violated. The notice should also include the subject's rights and obligations. Such notification will normally be in writing, and shall not occur less than 24 hours before the interview unless there are exceptional reasons to believe that such advance notice would jeopardize the integrity or effectiveness of the investigation, or if the subject has agreed to a shorter period.
- 6.16 During the interview, the evidence collected during the investigation, and in particular the most important elements of inculpatory evidence, shall be presented to the subject for them to provide their comments and respond. The investigator should carefully consider what evidence is disclosed, and may withhold some details of the evidence (e.g., through redaction or non-disclosure as to the identity of a witness and/or complainant), as long as the subject is provided with sufficient factual information to comment upon or rebut the evidence.
- 6.17 The subject's interview shall be audio or video-recorded, with a copy of the transcript of the interview made available to the subject if such a transcript is prepared. The subject may also agree to a summary of the interview in the form of a statement, which the subject can review and amend, before signing after agreeing that it accurately summarises what was said in the interview.
- 6.18 The subject has no right to the presence of representation or counsel during interviews. Exceptionally and where the circumstances require, subjects may request to have a staff member present for emotional support during their interviews, at the discretion of the investigator and under the conditions specified in section 6.23 below.

### *Rights and obligations of complainants, witnesses and affected individuals*

#### Information on the status of the investigation

- 6.19 Affected individuals of the reported unsatisfactory conduct (e.g., victims of harassment, sexual harassment, discrimination/unequal treatment, assault, or theft) shall be periodically informed of the status of the investigation. They shall also be informed generally of the outcome of the investigation, and in particular whether or not the allegation was substantiated. Where the allegation was found not to be substantiated, such affected individuals should be provided with more specific information, taking into account the rights of other Court personnel and elected officials.
- 6.20 The investigator's decision not to conduct a Full Investigation or finding that an allegation was not substantiated may be appealed in accordance with Chapter XI of the

Staff Rules. The responsible official will interfere only in the case of manifest error, without infringing upon the IOM's operational independence.

- 6.21 Complainants who are not affected individuals have no formal right to be informed of the outcome of the investigation. However, they should be informed that the investigation is completed, and may be informed generally if the allegation was substantiated or not.

### Interviews

- 6.22 Interviews with Court personnel who are complainants, witnesses or affected individuals should, whenever possible, be audio or video-recorded. A statement summarising the interview should be prepared by the investigator, which must be reviewed and confirmed by the relevant Court personnel as accurate. In case of disagreement, recourse may be had to the recording of the interview. At the discretion of the investigator, a verbatim transcript of the interview may serve in lieu of a confirmed statement.

- 6.23 Where the circumstances require, vulnerable complainants, witnesses and affected individuals, particularly those external to the Court, may request to have a third party observer of their choosing be present during their interviews at the discretion of the investigator. Prior to the interview, the observer shall undertake, in writing, not to disclose the contents of the interview. The observer must be available at the time scheduled for the interview, and should not be connected to the investigation. The observer may only provide support to the interviewee and shall not interfere with the interview. The investigator may ask the observer to leave if the integrity of the interview is being jeopardized, and the interview will proceed without the observer.

### *Investigators' standard*

- 6.24 An investigation is a process requiring the highest personal integrity, respect for all involved and accountability. Investigators should demonstrate competence, and must comply with the highest ethical standards. Additionally, they must use the authority of their position and power of their function responsibly, and shall promptly disclose any real or perceived conflict of interest with respect to an investigation.
- 6.25 Investigators shall maintain objectivity, impartiality and fairness throughout the investigation process. Investigators shall perform their duties independently. They shall also be free from improper influence and retaliation for carrying out their duties.
- 6.26 Allegations of unsatisfactory conduct against IOM staff shall be dealt with in accordance with the Court's regulatory framework, including the IOM Operational Mandate, the Administrative Instruction on Unsatisfactory Conduct and Disciplinary Proceedings, and this Administrative Instruction.

## Section 7

### Report to IOM on disciplinary proceedings

- 7.1 The Registrar or the Prosecutor, as appropriate, shall report to the IOM whether disciplinary proceedings were initiated on allegations investigated, and if so, whether any disciplinary measure was imposed and the nature of the measure. If no disciplinary proceedings were initiated or no disciplinary measure was imposed, the Registrar or the Prosecutor, as appropriate, should inform the IOM as to the reason for not doing so.

## Section 8

### Final provisions

- 8.1 This Administrative Instruction shall enter into force on 14 March 2022. Investigations of unsatisfactory conduct initiated prior to the entry into force of this Administrative Instruction shall be continued in accordance with the provisions of this Administrative Instruction except insofar as there is a conflict between its provisions and those in the [Administrative Instruction on Disciplinary Procedures \(ICC/AI/2008/001\)](#), in which case the provisions of ICC/AI/2008/001 shall prevail.
- 8.2 Any amendments to this Administrative Instruction shall be prepared in consultation with the Head of the IOM.



Peter Lewis  
Registrar