



## Assembly of States Parties

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### **Report of the Bureau on the Budget sub-topics of Budget Management Oversight and Premises**

1. This report is submitted by the facilitator for the budget, Ambassador Marlene Bonnici (Malta), pursuant to the mandate given by the Bureau to the focal points for the sub-topics of budget management oversight and premises (Ambassador Annika Markovic (Sweden), and Ms. Marija Stajic-Radivojsa (Serbia), respectively) within The Hague Working Group facilitation for the budget.
2. The focal points have prepared reports on their activities during 2019. These reports appear as annex I and annex II to this report.

## Annex I

### Report of the focal point for the topic of Budget Management Oversight

#### A. Introduction

1. The mandate for budget management oversight in 2019 is derived from the budget resolution adopted at the seventeenth session of the Assembly of States Parties.<sup>1</sup> On 12 December 2018 the Bureau approved the allocation of budget management oversight to The Hague Working Group as a sub-topic of the budget facilitation. On 26 February 2019, the Bureau appointed Ambassador Annika Markovic (Sweden) as focal point for the topic of budget management oversight.

#### B. Meetings and discussions

2. Four meetings were held on the topic of budget management oversight in 2019: on 27 June, 6 September, 4 October and 25 October.

3. The meetings provided an opportunity for States Parties to continue their consideration of the oversight structure of the Court, including the current work and priorities of the different oversight bodies and the ways in which their mandates interact. In this regard the working group received presentations at the meeting on 27 June from the Chair of the Audit Committee, the Executive Secretary of the Committee on Budget and Finance, the Head of the Independent Oversight Mechanism, and the Director of the Office of Internal Audit. At the meeting on 6 September the Chair, Vice-Chair and members of the Committee on Budget and Finance participated in an exchange with States Parties on the role of the Committee and the oversight structure of the Court. At the meeting on 4 October, a representative of the External Auditor, the *Cour des comptes*, had an exchange with States Parties on the role of the External Auditor and general oversight matters.

4. During these meetings the representatives of the different oversight bodies outlined their efforts, in line with the request of the Assembly, to coordinate “in order to improve the timely exchange of information and reporting of results amongst them, the organs of the Court, the Bureau, and the Assembly, to optimize their oversight capacities, and to avoid duplication of competence and work”.<sup>2</sup>

5. States Parties expressed their appreciation for the presentations and for the opportunity to consider these important matters further. The point was made that there seemed to have been many positive efforts to coordinate, and further initiatives in this regard were encouraged. The view was expressed that there might be more efficient and effective ways to structure the oversight arrangements for the Assembly, including from a financial resources perspective. The focal point noted that while the overall structure and number of the Court’s oversight bodies was not unusual, there may be room to look further at issues related to reporting lines and potential overlap. It was suggested that a mapping exercise could be undertaken to determine what tasks might overlap and what could be streamlined. This could also help to ensure that the issues of most concern to States Parties were being adequately addressed.

6. The point was made that the Assembly should carefully consider the costs of the various oversight bodies, and whether the structure provided value for money. In this regard, it was noted that, based on the approved 2019 budget and information provided by the Secretariat, the total cost of the different bodies in 2019 was approximately €2.1 million (or 1.4 per cent of the total budget of the Court).

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<sup>1</sup> ICC-ASP/17/Res.4, Section J.

<sup>2</sup> ICC-ASP/17/Res.4, Section J, para. 7.

## 1. External Audit

7. At the meeting on 4 October, the representative of the External Auditor briefed States Parties on the audit activities carried out in 2019. It was noted that, in addition to fulfilling the classical audit role of an independent opinion on financial statements, the External Auditor had also been mandated by the Assembly to carry out an annual performance audit. With regard to the performance audits, the representative of the External Auditor called for the Assembly of States Parties to have greater involvement in the process, particularly when defining the Terms of Reference with the scope and objectives.

8. States Parties expressed their appreciation for the work of the External Auditor. Regarding the substance of the External Auditor's reports, it was noted that the audits of the 2018 financial statements of the Court<sup>3</sup> and the Trust Fund for Victims<sup>4</sup> had resulted in an unqualified opinion, in line with the applicable international public sector standards. States supported the recommendations of the Committee on Budget and Finance that the Assembly approve the financial statements of the Court and the Trust Fund for Victims for the year 2018.

9. As regards the performance audit on the budget process,<sup>5</sup> the point was made that it might be necessary to exercise some caution, in particular with regard to recommendation 9 concerning delegating responsibility for certain liquidity matters to the Bureau. The External Auditor noted that this recommendation was purely of a technical nature but it was understood that there were political implications.

10. A point was made to express concerns with recommendation 1, relating to article 42(2), in view of its potential implications for the full independence of the Prosecutor to manage and administrate the Office, including repercussions for witness protection issues, and questioned whether this was beyond the mandate of the External Auditor. In response the representative of the External Auditor noted that, from the External Auditor's point of view, namely the optimization and efficiency of the organization and accountability for common administrative tasks, the External Auditor had only sought to clarify to what extent this provision prevents the Prosecutor from transferring funds to the Registry as a provider of shared services. The External Auditor indicated that in his view this was an issue that could be raised with the incoming Prosecutor, to clarify his or her position on this matter. In response to this last point it was observed that such a suggestion goes beyond the scope of the mandate of the External Auditor.

11. Regarding the work of the External Auditor in 2020, a proposal was made for the performance audit to focus on reviewing the oversight mechanisms and their respective mandates and reporting lines. It was also proposed that the External Auditor could focus on the topic of efficiency targets. The representative of the External Auditor noted that a review of the oversight mechanisms would perhaps be more appropriate as an evaluation rather than a performance audit. It was stressed that such an evaluation should be carried out while fully respecting the independence of the Court as a whole.

## 2. Audit Committee

12. The working group endorsed the recommendation from the Committee on Budget and Finance that the Assembly re-appoint Ms. Elena Sopkovà to represent that Committee on the Audit Committee for another term commencing 1 January 2020.<sup>6</sup> Regarding the two vacancies on the Audit Committee, the working group endorsed the recommendation from the *ad hoc* Selection Panel that the Assembly re-appoint Mr. Samir Abu Lughod (Jordan) and appoint Ms. Clarissa Van Heerden (South Africa) as members of the Audit Committee for a three year term starting on 1 January 2020.

<sup>3</sup> ICC-ASP/18/12.

<sup>4</sup> ICC-ASP/18/13.

<sup>5</sup> ICC-ASP/18/2/Rev.1.

<sup>6</sup> ICC-ASP/18/15/AV, para. 232.

13. In relation to the proposed amendments to the Charter of the Audit Committee contained in annex III to the report on the work of its tenth session, the point was made that more time was required to consider those amendments fully. The point was also made that more background information from the Audit Committee would be helpful. It was noted that the outcomes of the proposed evaluation by the External Auditor and the proposed Independent Expert Review of the Court may also be relevant.

**C. Recommendations**

14. The focal point, through the Bureau, submits the proposed language contained in the annex to this report for the consideration of the Assembly.

## Appendix

### Proposed resolution language for 2019

#### To be inserted into the budget resolution

##### Audit

*The Assembly of States Parties,*

*Having regard to* the Charter of the Audit Committee, adopted at its fourteenth session,<sup>1</sup> as amended,

*Noting* the reports of the Audit Committee on the work of its ninth and tenth sessions,<sup>2</sup>

*Further noting* the recommendations of the Committee on Budget and Finance concerning audit matters,<sup>3</sup>

1. *Welcomes* the reports of the Audit Committee on the work of its ninth and tenth sessions;
2. *Decides* to extend the term of the External Auditor, the *Cour des comptes*, for a further year, so as to include the financial statements of the Court and the Trust Fund for Victims for 2020;
3. *Notes* that a detailed selection procedure for procurement of an External Auditor will be completed in time for the nineteenth session of the Assembly of States Parties;
4. *Decides* to re-appoint Ms. Elena Sopkovà as a member of the Audit Committee for a term of three years starting on 1 January 2020, while serving as an active member of the Committee on Budget and Finance;
5. *Takes note* of the recommendations made by the *ad hoc* Selection Panel and *decides* to re-appoint Mr. Samir Abu Lughod (Jordan) and to appoint Ms. Clarissa Van Heerden (South Africa) as members of the Audit Committee for a term of three years starting on 1 January 2020;
6. *Requests* the External Auditor to conduct an evaluation of the oversight bodies of the Court as part of its work in 2020, replacing the performance audit, and to recommend possible actions on their respective mandates and reporting lines, while fully respecting the independence of the Court as a whole; and
7. *Takes note* of the proposed amendments to the Charter of the Audit Committee contained in annex III to the report of the Audit Committee on its tenth session, *requests* the Audit Committee to provide more detailed background information on the proposed amendments, and *decides* to consider those amendments, including any additional information provided by the Committee and taking into consideration the outcome of the evaluation to be undertaken by the External Auditor, in order to take a decision as appropriate.

<sup>1</sup> Official Records ... Fourteenth session ... 2015 (ICC-ASP/14/20), vol. II, part B.3, annex IV.

<sup>2</sup> AC/9/5 and AC/10/5, available on the website of the Audit Committee at: [https://asp.icc-cpi.int/en\\_menus/asp/AuditCommittee](https://asp.icc-cpi.int/en_menus/asp/AuditCommittee).

<sup>3</sup> ICC-ASP/18/15, paras. 231 to 257.

**Budget Management Oversight**

*The Assembly of States Parties,*

1. *Notes* that the Strategic Plans of the Court, the Office of the Prosecutor and the Registry are dynamic and updated on a regular basis;
2. *Notes* the Strategic Plans of the Court, the Office of the Prosecutor and the Registry for the period 2019-2021 and *also notes* that the Strategic Plans benefit from the views and comments States Parties make in the dialogue with the Court, the Office of the Prosecutor and the Registry;
3. *Welcomes* the report of the Office of the Prosecutor on the implementation of its Strategic Plan for 2016-2018, and *requests* the Court to continue to assess, develop and apply the lessons learned contained therein;
4. *Reiterates* the importance of strengthening the relationship and coherence between the strategic planning process and the budgetary process, which is crucial for the credibility and sustainability of the longer-term strategic approach;
5. *Recalls* its invitation to the Court to hold annual consultations with the Bureau in the first trimester on the implementation of its strategic plans during the previous calendar year, including on use of and improvements on performance indicators;
6. *Invites* the Court, the Office of the Prosecutor and the Registry to report annually to the Assembly on the implementation of the Strategic Plans; and
7. *Notes* the oversight roles of the Audit Committee, the Committee on Budget and Finance, the External Auditor, the Independent Oversight Mechanism, and the Office of Internal Audit, and *recommends* that these bodies continue to expand their coordination in order to improve the timely exchange of information and reporting of results amongst them, the organs of the Court, the Bureau, and the Assembly, to optimize their oversight capacities, and to avoid duplication of competence and work.

## Annex II

### Report of the focal point for the topic of premises

#### A. Introduction

1. The mandate for the budget sub-topic of premises in 2019 was derived from resolution ICC-ASP/17/Res.4, which was adopted by the Assembly of States Parties at its seventeenth session. In section G, paragraph 2 of that resolution, the Assembly reaffirmed that “the Bureau is entrusted with the mandate concerning the governance structure and total cost of ownership [of the Court’s premises], via its Hague Working Group which has a facilitation on the budget or, if necessary, a subcommittee thereof”.

2. The Bureau appointed Ms. Marija Stajic-Radivojsa (Serbia) as focal point for the topic of premises on 17 July 2019.

#### B. Meetings and discussions

3. In 2019, The Hague Working Group (“the working group”) held four consultations on the topic of premises: on 23 July, 3 October, 24 October and 21 November. The Court participated in these meetings.

4. During the meetings, States Parties had the opportunity to consider and discuss updates from the Court<sup>1</sup> on premises matters, in particular the topic of capital replacement. In addition, States Parties had the benefit of the recommendations of the Committee on Budget and Finance (“the Committee”), as set out in the reports of its thirty-second and thirty-third sessions.<sup>2</sup>

5. States Parties highlighted the significant increase in the proposed budget for Major Programme V: Premises for 2020.<sup>3</sup> The Court explained that this was partly related to a price index increase in the contract for preventive and corrective maintenance, but mainly due to the inclusion, for the first time, of capital replacement costs.

##### 1. Maintenance

6. States Parties were informed that the new maintenance contractor for the Court, as of January 2019, was Heijmans NV. That company had been contracted to provide a complete maintenance solution for the premises, including preventive maintenance, corrective maintenance and capital replacements. The contract included provisions for regular reporting as well as specific performance indicators and incentives.<sup>4</sup>

7. In response to a query regarding the procedure followed for the procurement, the Registry advised that the contractor had been selected following an international procurement process in 2017 and 2018, the results of which had been conveyed to the Committee. The contractor was selected as the cheapest and the best candidate after separate technical and commercial evaluation by external consultants.

8. Some States Parties expressed concern at the price index increase in 2020, noting that the contract had only been concluded very recently. A State Party noted that the Netherlands, as the host State, should bear a specific responsibility in relation to the costs of building maintenance and replacement. The reasoning for separating maintenance from capital replacement costs was also put in question. In response to the remark concerning the host State’s responsibility, the Netherlands emphasized that as the host country it already contributed significantly to the Court. It had provided a loan for the construction of the new premises of €93.6 million, to be paid off in yearly payments over 30 years, with interest of 2.5 per cent. However, €18.6 million of the loan had been gifted by the Netherlands, which

<sup>1</sup> CBF/32/10 and CBF/33/8.

<sup>2</sup> ICC-ASP/18/5 and ICC-ASP/18/15.

<sup>3</sup> ICC-ASP/18/10, paras. 656 to 659.

<sup>4</sup> ICC-ASP/18/5, para. 79.

leaves €75 million to be paid off by the Court. The Netherlands underlined it does not bear a special responsibility for the replacement costs of the premises.

## 2. Capital replacement

9. The maintenance contractor had provided the Court with an updated “five year plan” for capital replacements, the details of which were contained in the report of the Court to the Committee on Budget and Finance.<sup>5</sup> The proposed budget of the Court for Major Programme V for 2020 included the first instalment of the costs outlined in that five-year plan.

10. States Parties noted that, in the report of the Committee on Budget and Finance on the work of its thirty-third session,<sup>6</sup> the Committee was “of the strong view that capital replacement should be commenced starting in 2020”, emphasizing that delays would not only raise overall maintenance and replacement costs in the long run and reduce the asset value of the premises, but would also raise security and operational risks for the Court.<sup>7</sup> At the same time, the Committee had highlighted the importance of securing stable funding for long-term capital replacement in a predictable manner, without unnecessary fluctuations of annual budgets.<sup>8</sup>

11. It was noted that the Committee had requested the Court to submit a comprehensive report for its next session in May 2020, containing:<sup>9</sup>

- (a) Updated and detailed medium and long-term plans and estimates;
- (b) A proposal for a multi-year financing mechanism including a financial reserve to cope with unforeseen and emergent needs; and
- (c) A possible mechanism to provide incentives to the contractor to lower costs through identifying more economical procurement, taking advantage of technological progress and market conditions, among others.

12. Furthermore, the Committee had recommended that the Assembly approve a reduced amount of €975 thousand for capital replacement in 2020, requesting the Court to operate within this envelope.<sup>10</sup> The Committee also noted that it would consider recommending the same amount for 2021, after having reviewed the medium and long-term cost plans and estimates.<sup>11</sup>

13. In addition, the Committee had recommended setting up a mechanism whereby one or more external *pro bono* experts from States Parties could provide advice in the planning and implementation of capital replacement plans, reporting periodically to The Hague Working Group facilitation on premises, and also sharing the information with the Committee.<sup>12</sup>

14. Some States Parties expressed their support for the recommendations of the Committee as an important mechanism to maintain the value of the building. Some also supported the possibility of *pro bono* expert advice. At the same time, some States Parties emphasized that they wished to avoid creation of another expert body or committee, which could lead to unnecessarily long discussions and additional costs. It was also emphasized that various actors were already providing advice on premises, including the Committee, the Court and the contractor.

15. Attention was drawn to paragraph 82 of the Committee’s report on the work of its thirty-second session, and the recommendation that updated forecasts should discuss prioritization and savings and efficiencies. Some States Parties emphasized that the

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<sup>5</sup> CBF/32/10.

<sup>6</sup> ICC-ASP/18/15.

<sup>7</sup> ICC-ASP/18/15, para. 111.

<sup>8</sup> ICC-ASP/18/15, para. 111.

<sup>9</sup> ICC-ASP/18/15, para. 114.

<sup>10</sup> ICC-ASP/18/15, para. 115.

<sup>11</sup> ICC-ASP/18/15, para. 115.

<sup>12</sup> ICC-ASP/18/15, para. 116.



estimates should be regularly updated. Some States Parties also noted that the main contractor was not an entirely independent party, and its estimates should therefore be viewed with some caution. The point was also made that the standard life cycles provided by manufacturers should be treated with caution given they had a vested interest in early replacement. The Registry noted that the recommended lifespan of all elements due to be replaced had also been analyzed by the Court's Facilities Management Unit and the main contractor.

16. In response to a query regarding the lessons to be learned from other organizations, including in relation to the appropriate percentages to be invested in maintenance, a representative of the Registry confirmed that the Court participated in an inter-agency network of facilities management experts which met regularly to discuss issues and exchange views. It was also noted that there were some unique elements in the Court's premises for which there was no direct comparison or precedent.

17. The Registry recalled that the topic of capital replacement and ownership of the premises had been discussed at some length with the Oversight Committee for the Permanent Premises.<sup>13</sup> The Registry indicated that if the planned capital replacements were not carried out, it could cause disruptions to daily operations and lead to higher maintenance costs. Furthermore it was noted that since the main contractor was also the contractor for many other buildings, including other international organizations in The Hague, the contractor procured large volumes of goods which were then utilized not only at the Court's premises but also at other buildings, leading to cost savings.

18. Some States Parties noted that the building was a relatively new structure and it was therefore difficult to justify any capital replacements at such an early stage. Regarding the security systems, the Registry emphasized that they had already been operational for five years as they were continuously tested for functionality prior to the move to the new premises.

19. During the meeting on 3 October, a tour of the premises enabled the Court to highlight the technical components that were due for replacement, including elements of the Building Management System (BMS) and the Security Management System (SMS), as well as the Central Control Room (CCR) and the central Heating-Ventilation and Air Conditioning (HVAC) room.

20. A query was raised as to what elements would not be funded due to the recommended reductions by the Committee. At the meeting on 24 October, the Registry delivered a presentation outlining how the amount of €975 thousand, as recommended by the Committee, would be utilized in 2020 and 2021. Some of the capital replacement to be postponed included the monitors in the Technical Control Room and CCR, the workstations of the security system clients, the sensors in the tourniquets, and the sand filters in the mirror pond. The Registry had prioritized the BMS as it was responsible for subsystems, such as control of heating and cooling, fire safety, lighting, etc., and since failure in the subsystem could contribute to failure of the entire server system as well as replacement of the SMS server infrastructure.

21. It was noted by some States Parties that the costs of floor finishing amounted to the highest component of capital replacement, over €1.2 million in five years, and a query was raised as to whether any savings were feasible. The Registry indicated that the floor finishing itself was not expensive (€35 per square meter) but it had to cover a large area (40,000 square meters). The Registry also advised that the proposed figure for capital replacement, as well as the condition of carpeting, would be reassessed closer to 2022 when such replacement was envisaged.

22. In response to a query related to the possibility of a multi-year financing mechanism,<sup>14</sup> the Registry replied that in its view the best way forward was to establish a fund for capital replacements, to be funded by a set amount of €3 to €4 million per year for the next thirty years. A proposal along these lines would be submitted to the Committee on Budget and Finance together with a rolling long-term plan, in order to avoid projected spikes.

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<sup>13</sup> See ICC-ASP/14/Res.5, annex II.

<sup>14</sup> ICC-ASP/18/15, para. 114.

**3. Artwork donations**

23. The working group welcomed with appreciation the two donations of artwork for the premises of the Court that had been received in 2019: the donation by Mexico of the artwork “Wings of Mexico” by Jorge Marin, which had been unveiled in a ceremony on 12 September; and the donation by Cyprus of three paintings from the series “Violated Beauty” by Lefteris Olympios, which had been unveiled on 11 October.

**C. Recommendations**

24. The focal point through the Bureau submits the proposed language contained in the annex to this report for the consideration of the Assembly.

## Appendix

### Proposed resolution language for 2019

#### To be inserted into the budget resolution

##### Premises of the Court

*The Assembly of States Parties,*

*Noting* the recommendations of the Committee on Budget and Finance regarding maintenance and capital replacement for the premises of the Court,<sup>1</sup>

1. *Approves* the commencement of capital replacement for the premises of the Court at the level of [€ .... thousand] in 2020, while underlining the need to see maintenance and capital replacement in conjunction;
2. *Emphasizes* the need for the capital replacement to be fully justified and limited only to those elements which are absolutely necessary, *requests* the Court to ensure that all measures are taken to achieve savings and efficiencies, including using alternatives to capital replacement whenever possible, and *invites* the Court to submit a long-term plan and estimates for capital replacement in line with these principles;
3. *Notes* that any capital replacement needs arising in the foreseeable future should be financed within the scope of the regular budget process;
4. *Welcomes* the intention of the Committee to review the medium and long-term plans and estimates for capital replacement, as well as financial and administrative mechanisms, at its thirty-fourth session<sup>2</sup> and *invites* the Committee to undertake a detailed analysis and evaluation of the proposed budget taking into account the need for prioritization;
5. *Takes note of* the recommendation of the Committee<sup>3</sup> regarding a mechanism for *pro bono* expert advice from States Parties in the planning and implementation of capital replacement, and *invites* States Parties to further explore this possibility and put forward suggestions in this regard;
6. *Reaffirms* that the Bureau is entrusted with the mandate concerning the governance structure and total cost of ownership, via its Hague Working Group which has a facilitation on the budget, and *requests* that a report on the topic be submitted for consideration by the nineteenth session of the Assembly; and
7. *Welcomes with appreciation* the artwork donations to the premises of the Court made by several States Parties in 2019.

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<sup>1</sup> ICC-ASP/18/5, paras. 76 to 83, and ICC-ASP/18/15, paras. 107 to 117.

<sup>2</sup> ICC-ASP/18/15, para 114.

<sup>3</sup> ICC-ASP/18/15, para. 116.