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Report of the Audit Committee on the work of its fourteenth session

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Executive Summary

1. This report provides a summary of the findings and recommendations of the fourteenth session of the Audit Committee (“AC”) of the International Criminal Court, which was held from 26 to 28 July and on 11 August 2021. Due to the restrictions imposed following the COVID-19 pandemic, the session was held via remote link and the fourteenth session focused during its fourteenth session on: (a) governance of the Court; (b) values and ethics; (b) oversight of internal audit matters; (c) oversight of external audit matters; (d) follow-up on previous recommendations; and (e) other relevant matters.
2. Under the topic of **governance of the Court**, the AC was pleased to note that the Court had implemented its previous recommendations on the Organisational Manual and noted that, as this is a living document, it will continue to be reviewed and updated as required.
3. Under **values and ethics**, the AC noted the development of the Court-wide Ethics Charter that is currently on-going and which will continue during 2021. Contrary to the recommendation made at its fourth session, when the AC recommended that the Court use in-house capacity, the AC noted that the Court is hiring a consultant who will work until the end of 2021 to develop statements of values. Furthermore, the Committee noted that the Charter on Court-wide values will be adopted after dissemination to the Assembly of States Parties (“Assembly”). The AC recommended that the Court update it on the progress of the Court-wide Ethics Charter and submit a time table for this project at its fifteenth session.
4. As part of its **oversight of internal audit matters**, the AC was pleased to note the improvements in the two audit reports submitted by the Office of Internal Audit (“the OIA”). The Committee, however, expressed its concerns regarding the feasibility of implementing the 2021 Internal Audit Plan. Therefore, the AC recommended that the Director of the OIA reassess the situation for the 2021 approved audit assignment that has not yet been completed and report to the AC no later than the end of August 2021 on those audit assignments that will be carried over to 2022.
5. On the topic of **oversight of external audit matters**, the AC noted that the out-going External Auditor, *Cour des comptes*, did not issue any recommendations but rather observations in its report on the financial statements of the Court and the Trust Fund for Victims for the year 2020 and further noted that the Court is awaiting the European Commission’s input to finalize the Pillar C assessment. The AC appreciated the comprehensive in-session presentation provided by the new External Auditor, the Bureau of Audit and Inspection (“BAI”) of the Republic of Korea on the handover process and on the status of the Work Plan proposal.
6. Furthermore, the AC carefully reviewed the **Draft Report of Cour des comptes on ICC Governance Oversight**, submitted at the end of the last day of its session. The AC was disappointed with the unclear methodology used by the outgoing External Auditor that has led to these five recommendations being raised. These recommendations, if implemented, will generate problems rather than solutions as they are not following international standards or best practices. Therefore, the AC recommended that the Assembly not approve the recommendations of the out-going External Auditor.
7. The AC noted that the Committee was not involved at any stage during the **review by the Group of Experts** and was not consulted by the **Review Mechanism**. Nevertheless, the AC reflected on some recommendations that are related to its mandate and function such as governance, values & ethics, risk management, and internal control and believes that it can assist the Review Mechanism and States Parties in their discussions. The AC agrees with recommendations R3 and R107, however, it raises great concern about recommendations R366, R367, R368 and R370 of the Independent Expert Review. In the Committee’s view, the implementation of these recommendations will dangerously jeopardize the governance oversight structure established by the Assembly.

I. Introduction

1. The Audit Committee of the International Criminal Court (“AC”) held its fourteenth session from 27 to 29 July and on 11 August 2021. Due to the constraints imposed by COVID-19, the session was held via remote-link.
2. This report summarizes the main outcomes and recommendations made by the AC at its fourteenth session. The documentation considered by the AC is listed in Annex III to this report.
3. Reports of the AC are shared with the management of the International Criminal Court (“the Court”), the Office of Internal Audit (“the OIA”), the External Auditor, and the Independent Oversight Mechanism, for the purposes of information and follow-up on recommendations. The reports of the AC are publicly available on the AC webpage via the following link: https://asp.icc-cpi.int/en_menus/asp/AuditCommittee/Pages/default.aspx

II. Procedural matters related to the fourteenth session

4. The AC held four meetings during its fourteenth session. The session was attended by the following members:
 - (a) Mr. Samir Abu Lughod (Jordan);
 - (b) Mr. Aiman Ibrahim Hija (Australia);
 - (c) Ms. Margaret Wambui Ngugi Shava (Kenya);
 - (d) Ms. Elena Sopková (Slovakia); and
 - (e) Ms. Clarissa Van Heerden (South Africa).
5. The Executive Secretary to the Committee on Budget and Finance, Mr. Fakhri Dajani, acted as the Secretary to the Audit Committee and, together with his team, provided substantive and logistical servicing and support.

A. Adoption of the agenda

6. The AC adopted the following agenda for its fourteenth session:
 - 1) Opening of the session
 - a. Adoption of the agenda and organization of work
 - b. Participation of observers
 - 2) Governance of the Court
 - a. Amendments to the Organizational Manual of the Court
 - 3) Values and Ethics
 - a. Update on the Court-wide Ethics Charter
 - 4) Oversight of internal audit matters
 - a. Audit reports of the Office of Internal Audit
 - b. Fleet management policy
 - c. Status of implementation of the 2021 Internal Audit Plan (Q1&Q2)
 - d. Draft 2022 Internal Audit Plan
 - e. OIA and Court’s follow-up on the outstanding recommendations from the External Assessor
 - f. Update on the annual performance of the Director of the Office of Internal Audit
 - 5) Oversight of external audit matters
 - a. Financial Statements of the Court for the year 2020
 - b. Financial Statements of the Trust Fund for Victims for the year 2020
 - c. Pillar assessment
 - d. Risk management: comprehensive review of the risk management
 - e. Update on the External Auditor’s workshop
 - f. The Independent Expert Review of the ICC and the Review Mechanism
 - g. Handover document to the new External Auditor

- h. Status update of the External Auditor’s Work plan proposal
- 6) Follow-up on previous recommendations
 - a. Follow-up on recommendations of the External Auditor
 - b. Follow-up on recommendations of the Office of Internal Audit
 - c. Follow-up on recommendations of the Audit Committee
- 7) Other matters
 - a. Work plan of the fifteenth session of the Audit Committee

B. Participation of observers

7. The President of the Court, Judge Hofmánski, delivered the welcoming remarks on behalf of the Court. The Registrar of the Court briefed the AC on a number of matters. The Director of the Office of Internal Audit summarized the main findings and recommendations of the internal audit reports. The Budget Management Oversight focal point (“BMO”) from The Hague Working Group of the Bureau of the Assembly of States Parties (“Assembly”), Ambassador William Roelants de Stappers (Belgium), delivered his remarks to the Committee on different topics.

8. The representatives of the External Auditor, the Republic of Korea’s Bureau of Audit and Inspection (“BAI”), briefed the Committee on the handover process and the status update of the External Auditor’s Work plan. The outgoing External Auditor briefed the AC on the outcome of the Financial Statements of the Court and the Trust Fund for Victims (“TFV”) for the year 2020, and the Pillar assessment.

9. The Committee wished to thank all observers for their presentations.

III. Consideration of issues on the agenda at the fourteenth session

A. Governance of the Court

1. Amendments to the Organisational Manual of the Court

10. At the thirteenth session of the AC, the Court submitted the final version of the Organizational Manual of the Court for consideration by the Committee.

11. The Committee noted the efforts undertaken by the Court; however, it issued a number of recommendations correcting some of the contents of the manual. At its fourteenth session, the Court submitted the “Report of the Court on its Organizational Manual”, addressing the AC’s recommendations.

FINDINGS AND RECOMMENDATIONS

12. The AC welcomed the revised version of the Organizational Manual, which reflects all the recommendations issued by the AC at its thirteenth session, and noted that as a living document it will continue to be reviewed and updated as required.

13. Furthermore, the AC observed that recommendations Nos. 80-82 raised in the Independent Expert Review report addressed the coordination between Country Offices and the Headquarters. **The Audit Committee recommended that the Organizational Manual should reflect the implementation of those recommendations if they are introduced, and in this context wished to be informed about any pertinent amendments to the Organizational Manual at its seventeenth session.**

B. Values and Ethics

1. Update on the Court-wide Ethics Charter

14. At its fourth session in 2017, in line with the “One-Court principle”, the AC emphasized the need to unite all staff working for the Court around the same values, while acknowledging at the same time that it was reasonable to have organ-specific texts to describe the professional conduct expected

from staff members in the exercise of specific work. Therefore, the AC requested that the Court use in-house capacity to submit a revised values and ethics framework for consideration by the Committee, based on the Court's values and general code of conduct applicable for all staff members¹ which sets out the professional conduct expected from each staff member in the performance of their work in advance of its eighth session in 2018. The AC further invited the organs of the Court, and their sections, wherever appropriate, to draft a specific code of conduct for specific activities,² which would articulate and make reference to the Court's values and code of conduct. In this regard, the AC requested that the Court ensure homogeneity and the consistent application of rules relating to values and ethics, in particular by avoiding incoherence or conflict between the Court-wide framework and organ-specific approaches. This recommendation was approved by the Assembly.

15. In 2018, the External Auditor recommended that the Court develop and publish an ethics charter.

FINDINGS AND RECOMMENDATIONS

16. The AC noted that the Independent Expert Review report in its recommendation No. 106 stated that: *"The Court should develop a single Court-wide Ethics Charter, laying down the minimum professional standards expected of all individuals working with the Court (staff, elected officials, interns, and visiting professionals, external counsel and their support staff, consultants). Additional Codes of Conduct for specific roles can supplement the Court's Code of Conduct, as per the Audit Committee's recommendations. The instrument should foresee continued application of certain obligations (such as confidentiality) for officials and staff, after they leave their office or post"*.

17. The AC noted the development of the Court-wide Ethics Charter is currently on-going and will continue during 2021. Contrary to the recommendation raised at its fourth session, when the AC recommended that the Court use in-house capacity, the AC noted that the Court is hiring a consultant who will work until the end of 2021 to develop statements of values. Furthermore, the Committee noted that the Charter on Court-wide values will be adopted once it has been disseminated to the Assembly.

18. The Audit Committee recommended that the Court update it on the progress of the Court-wide Ethics Charter and submit a timetable for this project at its fifteenth session.

C. Oversight of Internal Audit matters

1. Audit reports of the Office of Internal Audit

19. The OIA submitted two reports:

- a. Audit of the Definition of Strategy for Management of Country Offices - final audit report;³ and
- b. Final Audit Report – Audit of the Effectiveness of the Risk Based Vetting Process .⁴

FINDINGS AND RECOMMENDATIONS

20. The AC observed that all of the nine recommendations issued by the OIA in the aforementioned two reports had been accepted by the Court and the AC would follow up regularly on the implementation of these recommendations.

¹ Cf. Administrative Instruction, ICC/AI/2011/002 of 4 April 2011.

² The AC was provided with the Code of Conduct for Investigators as an example.

³ AC/14/6.

⁴ AC/14/8.

21. The AC noted the improvements made in the reports, where the OIA has started to include in its reports the recommended five elements of the internal audit reporting (5Cs),⁵ which has had a positive effect on the information provided to the reader of the internal audit reports.

2. Fleet management policy

22. At its eleventh session, the AC noted that the reports of the OIA would be more useful for the Court if they included more strategic recommendations for the operations of the Court. As an example, the AC considered that the audit report on the management of motor vehicles could have included a cost-benefit analysis of alternative approaches, such as vehicle leasing or the use of rental vehicles.

23. The AC further noted from the report that the Court lacked a comprehensive fleet management policy and recommended that the Court work on this and report to the Committee in the report of its fourteenth session.

24. The AC considered the “Report of the Court on fleet management policy⁶” submitted by the Court.

FINDINGS AND RECOMMENDATIONS

25. The AC noted that the Surface Transport Manual, which is considered to be the Policy on fleet management, will be completed by the end of the third quarter of 2021. The AC noted that fleet vehicles are mostly used in the situation countries rather than at HQ and, therefore, the management of HQ vehicles has not been included in the Surface Transport document. The document has been prepared with all stakeholders, including Country Office Chiefs, CO that are entitled to local fleet vehicles, counterparts at the HQ, and the drivers themselves.

26. The Audit Committee further noted that the Surface Transport Manual does not include information about vehicle leasing as an option when purchasing vehicles, therefore, the Audit Committee requested that the Court consider including a chapter on vehicle leasing as an option when acquiring new vehicles and report to the Committee at its sixteenth session.

3. Status of implementation of the 2021 Internal Audit Plan (Q1&Q2)

27. The AC considered the Status of Implementation of the 2021 Internal Audit Plan⁷ and the Annex Worksheet on planning criteria for the first and second quarter.

FINDINGS AND RECOMMENDATIONS

28. The AC noted that as at 30 June 2021, out of the 12 approved audit assignments, the OIA had only been able to complete two of them. The AC further noted, as stated by the Director of the Office of Internal Audit, that at least two of the approved audit assignments will be potentially postponed to 2022. This carrying over of audit assignments from year to year has recurred every year, and the AC wondered whether the proposed number of audit assignments had significantly exceeded what the OIA can handle or whether there were other reasons. Taking into account these circumstances, the AC raised concerns about the feasibility of the Status of Implementation of the Internal Audit Plan for 2021. **Therefore, the Audit Committee recommended that the Director of the Office of Internal Audit reassess the situation for the 2021 approved audit**

⁵ The five elements are: Condition: 1. What is the particular problem identified? 2. Criteria: What is the standard or policy that was not met? 3. Cause: Why did the problem occur? 4. Consequence: What is the risk/negative outcome or opportunity forgone because of the finding? And 5. Corrective action: Recommending what management should do in order to rectify the problem and by when.

⁶ AC/14/7.

⁷ AC/14/2 and AC/14/2-Anx.1; AC/14/11 and AC/14/11-Anx.1.

assignment that has not yet been completed and report to the Audit Committee no later than the end of August 2021 on those audit assignments that will be carried over to 2022.

4. Draft 2022 Internal Audit Plan

29. The AC considered the “Office of Internal Audit: Work Plan for 2022 and list of topics for subsequent years,” which had been submitted by the OIA for consideration and validation by the AC.

30. At its tenth session,⁸ the AC recommended that the selection of audit topics be based on a risk assessment and be in line with the “One-Court” Principle. The AC recommended that the OIA specify the overall risk level for each audit assessment and incorporate such information in the annual Draft Internal Audit Plan and further recommended that the elements⁹ raised by the AC and the related recommendations made by the CBF be taken into consideration.

31. The draft internal audit plan submitted by the OIA for consideration and validation by the AC included 11 audit assignments with no advisory services.

FINDINGS AND RECOMMENDATIONS

32. The AC noted the ambitious Draft Provisional Internal Audit Plan for 2022 that had been submitted and expressed its concerns about the feasibility/ability of its implementation taking into account the current delays regarding the Status of implementation of the 2021 Internal Audit Plan. The AC further noted that at least two audit assignments confirmed by the Director and to be carried forward to 2022 are not reflected in the Draft 2022 Internal Audit Plan.

33. The AC noted that some audit assignments could be merged based on their nature. **Therefore, the Audit Committee suggested that the Director of the Office of Internal Audit consider submitting a new plan that will be provisionally approved via email communication and the plan will then be discussed thoroughly at its fifteenth session in March 2022.**

5. OIA and the Court’s follow-up on the outstanding recommendations from the External Assessor

34. The AC selected the auditing company *Lochan&Co.* as the external assessor of the internal audit services of the OIA for a five-year period. At its eight session, the AC endorsed all recommendations issued in the *Lochan&Co.* report and requested the OIA and the Court to develop an action plan.

35. The AC considered the “Fourth Joint Report of the Court and the Office of Internal Audit on action plans for the implementation of the external assessor’s recommendations”.¹⁰

FINDINGS AND RECOMMENDATIONS

36. The AC noted that 22 out of the 25 recommendations issued had been implemented, or were being continuously performed as they become embedded in the Court’s business processes, and that one recommendation had not been implemented. The AC also noted that the two recommendations relating to the Audit Charter were in process of being implemented and remained unchanged as at May 2021.

37. The Audit Committee requested that the Court provide it an update on the status of those outstanding recommendations that remained in progress at its fifteenth session.

⁸ AC/10/5, paras 34 and 37.

⁹ AC/10/5, paragraph 37: “(i) give priority to high-risk areas; (ii) include audits in relation to all organs of the Court in line with the “One-Court” Principle and paragraph 4 of the OIA Charter; and (iii) ensure effectiveness and efficiency in relation to the planned number of man-days per audit engagement”.

¹⁰ AC/14/3.

6. Update on the annual performance of the Director of the Office of Internal Audit

38. At its thirteenth session,¹¹ the AC recommended that the AC Chair continue to work with the Director of the OIA and the relevant offices of the Court on the annual performance evaluation of the Director of the OIA and update the Committee at its fourteenth session.

39. The AC Chair updated the Committee on the annual performance evaluation of the Director of the OIA.

FINDINGS AND RECOMMENDATIONS

40. The AC noted that the Director of the OIA and the Chair of the AC had agreed upon the performance objectives, however, the Director of the OIA has yet to submit to the Chair of the AC a signed copy of the agreed objectives. **The Audit Committee requested that the Chair of the Audit Committee update it on the progress of this process at its fifteenth session.**

D. Oversight of external audit matters

1. Financial Statements of the Court for the year 2020

41. The AC considered the “Financial Statements of the International Criminal Court for the year ended 31 December 2020”.¹² Based on the opinion of the External Auditor, the financial statements give a fair view of the financial position of the International Criminal Court as at 31 December 2020, as well as financial performance, changes in net assets and cash flow for the 12-month period ended 31 December 2020 in conformity with the International Public Sector Accounting Standards (“IPSAS”).

FINDINGS AND RECOMMENDATIONS

42. The AC noted that the External Auditor had not issued any recommendations, rather a financial report with observations, and further noted the outgoing External Auditor’s clarification that recommendations are only issued when the auditor foresees an issue or risk in the coming 12 months.

43. **The Audit Committee recommended that the Assembly of States Parties approve the Financial Statements of the Court for the year ending 31 December 2020.**

2. Financial Statements of the Trust Fund for Victims for the year 2020

44. The AC considered the “Financial Statements of the Trust Fund for Victims of the International Criminal Court for the year ended 31 December 2020”.¹³ Based on the opinion of the External Auditor, the financial statements give a fair view of the financial position of the TFV as at 31 December 2020, as well as financial performance, changes in net assets, cash flow and the comparison of budget and actual amounts for the 12-month period ending 31 December 2020 in conformity with IPSAS.

FINDINGS AND RECOMMENDATIONS

45. The AC noted that that the External Auditor had not issued any recommendations, but rather a financial report with observations.

46. **The Audit Committee recommended that the Assembly of States Parties approve the Financial Statements of the Trust Fund for Victims for the year ending 31 December 2020.**

¹¹ AC/13/5, paragraph 78.

¹² AC/14/13.

¹³ AC/14/14.

3. Pillar assessment

47. At its thirteenth session,¹⁴ the Court informed the AC that, following the EU grant requirement, the outgoing External Auditor was assigned to conduct a pillar assessment for pillars number seven, eight and nine.

48. The AC considered the Draft Pre-final Report as at May 31st 2021 – Pillar assessment of the International Criminal Court¹⁵ submitted by *Cour des comptes*. The AC noted that the Court is awaiting comments from the European Commission to prepare the final report.

FINDINGS AND RECOMMENDATIONS

49. The AC looked forward to receiving the final report on the Pillar assessment. The AC further noted the preliminary conclusion of the Draft report and discussed point 2.1(8) of the report concerning the “publication of information on recipients” and noted that the outgoing External Auditor did not foresee any issue in the coming 12 months regarding the publication of information on recipients.

50. The AC noted that while the Court is awaiting the European Commission’s comments to finalize the report, such comments were not likely to impact on future grants, if any, its impact will be reflected in the inclusion of some clauses in the grant agreement.

4. Risk management: comprehensive review of risk management

51. The Committee was informed that a comprehensive report would be submitted at the next session of the Committee. Therefore, this agenda item was postponed till the fifteenth session of the Committee.

5. Update on the External Auditor’s workshop

52. At its eighteenth session, the Assembly requested that the outgoing External Auditor 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”. The workshop, initially scheduled for 9 and 10 March 2020, was postponed to 24 and 25 May 2021 due to the Covid-19 outbreak. The Chair, Vice-Chair and the Executive Secretary attended the workshop.

53. The AC Chair briefed the Committee on the outcome of the workshop.

FINDINGS AND RECOMMENDATIONS

54. On Wednesday 28 July 2021 at 17:16, towards the end of the last day of the AC session, the outgoing External Auditor sent his draft “Report On ICC Governance Oversight” requesting that those who had attended the Workshop send their input to him by 13 August 2021. As a result, the AC decided to keep its session open and to meet again on 11 August 2021 in order to review and respond to the Draft Report. The AC appreciated the invitation by the outgoing External Auditor to respond to the draft report that contains five recommendations.

55. In reviewing the draft “Report On ICC Governance Oversight” with its five recommendations, the AC was disappointed with the unclear methodology used by the outgoing External Auditor that has led to these five recommendations being raised. Such recommendations, if implemented, will lead to problems rather than solutions as they are not following best practices. Response of the Audit Committee on the Draft Report of the outgoing External Auditor is in Annex I to this report. **Therefore, the Audit Committee recommended that the Assembly of States Parties does not approve the recommendations of the outgoing External Auditor.**

¹⁴ AC/13/5, paragraph 59.

¹⁵ AC/14/16.

6. The Independent Expert Review of the ICC and the Review Mechanism

56. On 6 December 2019, the Assembly, through its resolution ICC-ASP/18/Res.7, requested that a group of independent experts to conduct an independent expert review (IER) of the Court and the Rome Statute system. The experts were mandated to make recommendations to the Assembly and the Court on specific complex technical issues under the clusters Governance, Judiciary, and Investigations and prosecutions. The Assembly underlined the fact that for this process to be successful, it must involve all States Parties, the Court and other relevant stakeholders. On 30 September 2020, the experts issued their IER report containing 384 recommendations.

57. The Assembly established a Review Mechanism, which was mandated by resolution ICC-ASP/19/Res.7 to transmit to the Assembly and to the Bureau a proposal for a comprehensive action plan, by 30 June 2021, for the assessment of the IER recommendations, including requirements for possible further action, as appropriate. The AC welcomed discussions with the BMO on this item.

FINDINGS AND RECOMMENDATIONS

58. The AC noted that the Committee was not involved at any stage during the review by the group of independent experts and was not consulted by the Review Mechanism. The AC sets out its input on the six recommendations that are related to its mandate and function in Annex II. The AC agrees with recommendations R3 and R107, however, it raises great concern on recommendations R366, R367, R368 and R370 of the Independent Expert Review. In the Committee's view, the implementation of these recommendations will dangerously jeopardize the governance oversight structure established by the Assembly. The AC believes that other recommendations related to governance, values and ethics, risk management, and internal control are within the mandate of the AC and that it can assist the Review Mechanism and States Parties in their discussions. Therefore, the AC is committed to engaging with the Review Mechanism on all the recommendations related to the AC functions.

7. Handover document to the new External Auditor, Board of Audit and Inspection

59. At its thirteenth session, the AC was informed that the outgoing External Auditor, *Cour des comptes*, would prepare the handover for the successor External Auditor, BAI.

60. At its fourteenth session, the BAI representative provided an in-session presentation to the AC on the handover document.

FINDINGS AND RECOMMENDATIONS

61. The AC welcomed the comprehensive presentation by the Korean Board of Audit and Inspection.

8. Status update on the External Auditor's Work plan proposal

62. The External Auditor updated the AC and gave a presentation on the status of the work plan proposal.

FINDINGS AND RECOMMENDATIONS

63. The AC took note of the work plan proposal and looked forward to receiving an update on the work done at its fifteenth session.

E. Follow up on previous recommendations

1. Follow-up on recommendations made by the External Auditor

64. The outgoing External Auditor delivered a presentation to the AC, including a summary of the follow-up of External Audit recommendations.

FINDINGS AND RECOMMENDATIONS

65. The AC noted that 22 recommendations raised by the out-going External Auditor were still pending, of which four related to financial audits, and 18 related to previous performance audits. The outgoing External Auditor stated that out of the 22 recommendations seven had been implemented, eleven recommendations were considered closed being similar to those issued by the IER or when a recommendation has been reported by the Court to the CBF or to the Assembly, and four recommendations that were partially implemented remained open.

2. Follow-up on recommendations made by the Office of Internal Audit

66. The AC discussed the “Report on the Implementation of Audit Recommendations for the 1st semester of 2021,”¹⁶ which considered the implementation rate for the period from 1 January 2021 to 30 June 2021. The AC received an update from the OIA on the implementation of internal audit recommendations.

67. The OIA report indicated that on the 1st of January 2021, there were 72 recommendations “in progress”, from 23 audit reports issued between 2016 and 2020. During the first semester 2021, 57 of these recommendations (79 per cent) remained “in progress”.

FINDINGS AND RECOMMENDATIONS

68. The AC noted with concern that only 17 per cent of the recommendations had been implemented within the first three years and that only 37 per cent of the recommendations had been implemented by management.

69. The OIA Director explained the OIA’s policy, whereby it closes outstanding recommendations after five years of inactivity, unless the owner of the recommendation decided to continue with the recommendation.

70. The Audit Committee requested that the Director of the Office of Internal Audit provide at its fifteenth session information on the outstanding recommendations for the years 2017, 2018, 2019 and 2020.

3. Follow-up on recommendations made by the Audit Committee

71. At its thirteenth session,¹⁷ the AC requested that the Executive Secretary provide an update on the implementation status of the recommendations at its fourteenth session.

72. The 5th edition of the Register of Recommendations (March 2021) provides an update on the recommendations of the Committee. The Executive Secretary updated the AC on the implementation status of the recommendations.

FINDINGS AND RECOMMENDATIONS

73. The Audit Committee is satisfied with the follow-up on the implementation of its recommendations made by the Executive Secretary and requested that he report on the recommendations and their implementation once a year at its second session.

¹⁶ AC/14/10.

¹⁷ AC/13/5, para 64; AC/12/5, para 55.

F. Other matters

1. Future sessions of the Committee

74. The fifteenth and sixteenth sessions of the AC are scheduled to take place from 7 to 9 March 2022 and from 18 to 20 July 2022, respectively.

75. The AC decided to focus on the following matters during its fifteenth session: the Court's governance structure; oversight of internal audit matters; oversight of external audit matters, including the consideration of the financial statements of the Court and the TFV; risk management; and follow-up on previous recommendations.

Annex I: Letter addressed to the External Auditor regarding his Draft report on ICC Governance Oversight



L'Assemblée des États Parties
The Assembly of States Parties

AUDIT COMMITTEE

Reference: ASP/AC/2021/09

Secretariat – Secrétariat

The Hague, 12 August 2021

Mr. Michel Camoin
Director of ICC's External audit
Cour des comptes
13, rue Cambon – 75100 PARIS Cedex 01
France

Dear Mr. Camoin,

I am referring to the External Auditor's Draft report on ICC Governance Oversight ("the Report") that was sent on 28 July 2021, where you have asked those who participated in the workshop to comment on the Report by 13 August 2021.

The Audit Committee ("AC") reviewed the Report and would like to point out my reflection on your Note that contained ten questions, which was sent to you after the workshop that took place between 24 and 25 May 2021 summarizes the AC's position on most of the elements in the present Report. Below is the response of the AC on the five recommendations in the Report:

Recommendation No. 1. (Priority 2) The External Auditor recommends the ASP to give through its Bureau a permanent access to the Audit Committee to a limited number of delegates as observers. The role of these delegates would be to serve as "focal points" to provide information to their colleagues of other delegations on the current activity of the independent Audit Committee.

The AC strongly disagrees with this recommendation and believes that it will impair the independence of the AC and its function. Whenever a State Party requires more clarification and information on the work and outcome of the AC other than what has been provided through its reports and through having the Budget Management Oversight focal point ("BMO") addressing it during the sessions, the AC is committed to engage with the BMO and discussing such required clarification and information on the work and outcome of the AC.

Furthermore, the AC is committed to engage with States Parties and the Court on any issue of concern. Various recommendations by the IER will be dealt with by the AC in the context of the Review Mechanism with an open mind.

Recommendation No. 2. (Priority 1) The External Auditor recommends to the Coordination Council (CoCo) to formally endorse, under the ex-post control of the AC, the annual internal audit program. The AC could ask for amendments, which would need in their turn to be approved and endorsed by the CoCo. The OIA should report directly to the CoCo, and the CoCo, with the advice of the AC, should be fully responsible for the evaluation of the Head of OIA.

The AC strongly disagrees with this recommendation as it leads to a conflict of interest situation having the auditor reports to the auditee (the Heads of Organs).

In 2014, your Office (Cour des comptes) in its report on the 2013 Financial Statements of the ICC recommended: “[...]To ensure that the Office of Internal Audit is **in line with the audit standards and best practices**, the External Auditor recommends that OIA be accountable to the heads of organs for administrative matters and to the Audit Committee for the appointment, dismissal and performance appraisal of the OIA Director. The Committee shall approve the Internal Audit Charter and the Internal Audit Office’s annual audit plan and review the effectiveness of the internal audit activities.[...]” **It is unclear to the AC why you have changed your Office’s recommendation that were in line with the Auditing Standards and best practices?**

The AC emphasizes that monitoring and reviewing of the work of the OIA is part of its mandate, as provided in its Charter. The Report did not provide any issue with the current set-up and did not justify the proposed recommendation.

The AC reiterates that the best professional practice is for the AC to approve the Internal Audit plan and for the Internal Audit function to report to the AC. While, dual reporting lines are common, reporting lines to Senior Management are generally limited to administrative matters only.

Recommendation No. 3. (Priority 1) Given the ICC’s persistent liquidity shortage, and the high level of ICC’s governance oversight cost ratio compared to other International Organizations, the External Auditor recommends that no reform of the ICC Organization as a whole, and of the governance oversight organs in particular, should lead to increased expenditure, unless equivalent decrease(s) are found and decided in other domains, and a priority should be given to reforms that can provide measurable economies.

The AC is of the view that the ultimate objective in any reform is not to increase the expenditures. However, in practice changes or reforms had a bill attached to it. In addition, the implementation of recommendation No. 4 would not enhance the efficiency or effectiveness of the oversight structure of the ICC and would result in a negative “value for money”.

- *Recommendation No 4. (Priority 1). The External Auditor recommends:*
- *to suppress the CBF composed of independent experts and its Executive Secretariat and to transfer partially its advisory competence to the AC, while its role in the preparation/negotiation of the budget proposal with ICC’s internal Budget Working Group would be fully transferred to THWG or a sub-group;*
- *to submit each year, before summer, the initial budget proposal simultaneously, both to the AC, who would be invited to issue a synthetic technical opinion on the initial budget proposal (as for any other financial proposal submitted to ASP), and to THWG, who could immediately start to prepare and negotiate, in direct contact with ICC’s Budget Working Group, the ASP’s final consensual decision on budget to be taken in December.*

The AC strongly disagrees with the recommendations on establishment of a “hybrid” AC and strongly believes that both the AC and the Committee on Budget and Finance (“CBF”) with the support of their Executive Secretary should continue without any modification to their set-up and to their independent functions.

The AC recalls that members of both the CBF and the AC are independent experts who provide their expertise on a pro bono basis. Building upon the Rome Statute articles 112.2.(b) and (d) and 112.4, the CBF was established in 2002 by the Assembly of the States Parties (“ASP”) pursuant Resolution ICC-ASP/1/Res.4. The Terms of Reference annexed to the above-mentioned Resolution, approved by the ASP, provide that the CBF is responsible of the “technical examination of any document submitted to the Assembly that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature, as may be entrusted to it by the Assembly of States Parties.” While the Registrar is responsible for the budget proposal on behalf of the Court and the ASP of its approval, the CBF does not intervene in the process, rather, it provides (non-binding) recommendation to the ASP.

The role of the AC is, however, different from that of the CBF. The AC has specific responsibilities focusing on areas mainly relating to internal controls, risk management, values and ethics, and internal and external audit matters, while the CBF’s mandate is on issues that have budgetary, financial and administrative matters. In order to fulfil the mandate of both Committees with strategic approach, the Assembly approved the establishment of the Executive Secretary function, which has proven to be very effective and efficient for the work of both Committees.

Recommendation No. 5 (Priority 1). The External Auditor recommends to merge OIA and IOM in one Major Programme.

In order to provide a well-informed response to this recommendation, the AC would like to receive further details on this proposal from the practical side and in relation to whether amendments are required to the Rome Statute and to the respective rules.

I would appreciate that this letter be annexed to your final report that will be submitted to the Assembly.

Please accept, Mr. Camoin, the assurances of my highest consideration,

Yours sincerely,

[signature]

Chairperson
Audit Committee
Assembly of States Parties

CC: Judge Silvia Fernandez de Gurmendi, President, Assembly of States Parties
Ambassador Kateřina Sequensová, Vice-President, Assembly of States Parties

Annex II: Independent Expert Review and the Review Mechanism

i. Background and history of establishing the ICC Audit Committee

1. The former British External Auditor of the Court in its report in 2005 raised a recommendation (No. 10) to establish an Audit Committee:¹⁸ *“The key benefit from the Audit Committee is that it contains a small number of independent and objective members, who can provide a detailed level of oversight and bring practical experience to specific audit issues. It would normally meet on three occasions during the year, and provide minutes and an annual report to the Assembly as a record of its review of internal controls and its comments on the audited financial statements[...]. We recommend that the Committee on Budget and Finance and the Assembly consider the establishment of an Audit Committee with appropriate terms of reference to review the adequacy of internal controls and to provide objective assurance on the operation of the internal and external audit functions on a regular basis”.*

2. Based on the recommendation of the former British External Auditor, the Committee on Budget and Finance (CBF) made a recommendation to the Assembly at its seventh session in 2006 to “[...] establish and strengthen the audit committee of the Court through the appointment of a majority of external independent members and urged the Court to do so promptly”.¹⁹

3. In 2005, the Court established an Oversight Committee.

4. In 2006, the former British External Auditor recalled the need to have the Committee composed of external independent experts: *“On governance issues, while the Court set up an Oversight Committee in 2005, there is no external independent representation on this committee, which would represent best practice for audit committees, and the input to this existing oversight process is potentially much the same as the Co-ordination Council (Co-Co) which reflects a similar representation. We would encourage the Court to develop the Oversight Committee further by introducing a majority of external independent members”.*²⁰ Moreover, the former British External Auditor in the same report under Recommendation 7 recommended “[...] that the Court should establish an independent audit committee with a majority of external independent representatives. The audit committee should focus on promoting effective internal control; provide a focus to make best use of assurance resources; monitor internal and external audit outputs; and assess the effectiveness of risk management”.²¹

5. At its sixth session in 2006, the CBF reiterated its concerns about the composition of the AC members: *“The Committee [...] remained concerned about the composition of the committee and the lack of a non-executive stakeholder”.*²²

6. On 4 August 2008, the Court promulgated Presidential Directive (Ref: ICC/PRES/D/G/2008/001) to establish an Audit Committee comprising the President, Prosecutor and Registrar, together with a maximum of two external members appointed by the Coordination Council. The President, Prosecutor or Registrar may be represented in the Committee by an individually appointed and mandated person.

7. On 10 November 2010, the Bureau of the Assembly requested that the United Nations Office of Internal Oversight Services (OIOS) undertake an assurance mapping study into the internal and external oversight mechanisms of the Court. For the study, the OIOS used the Practice Advisory 2050-2 “Assurance Maps” of the International Professional Practices Framework of the Institute of Internal

¹⁸ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November-3 December 2005 (ICC-ASP/4/32), part B. 1, para. 52 (page 247 – 248).*

¹⁹ *Official Records... Fifth session... 2006 (ICC-ASP/5/32), part D.6(b), para. 23.*

²⁰ *Ibid.*, page 289, para. 11.

²¹ *Ibid.*, page 294, para. 48.

²² *Ibid.*, page 229, para. 69.

Auditors. The OIOS stated in its report that: “*An effective audit committee can increase the integrity and efficiency of the audit processes, risk management and the system of internal control and financial reporting. Audit Committees should be independent and collectively possess the competencies in matters related to the Committee’s mandate, such as audit, risk management, control, ethics, regulatory compliance, and financial management and reporting. While best practice demonstrates that audit committees should consist only of external members reporting to the governing body, there may be exceptions to this depending on the organization.*”

8. In 2014, the out-going External Auditor, *Cour des comptes*, in its audit report of the 2013 financial statements of the ICC, recommended to terminate the then-existing Audit Committee as it was not functioning as intended. This was due to its composition: of its five members, three were the ICC principles and the remaining two were externals. Therefore, the out-going External Auditor recommended “*to establish a new Audit Committee in line with best professional practices, assisting the Assembly of State Parties in fulfilling its oversight responsibilities for the financial reporting process, the system of internal control, and the internal and external audit process.*” Consequently, the Assembly, at its fourteenth session in 2015, approved the re-establishment of the Audit Committee.²³

9. In 2014, “the [CBF] recommended that a new Audit Committee be established and consist of four or five external members with an appropriate mix of skills and experience in finance and accounting, Court-specific and industry-wide business knowledge, internal and external auditing, risk management, regulatory compliance, legal, IT and information security. The Audit Committee members would be appointed for a term of three years, and the terms should be staggered for continuity purposes. Designated members of the Committee could organise the selection of the independent Audit Committee members.

10. The [CBF] also recommended that the existing Audit Committee be terminated immediately and that, as a transitional measure until the new Audit Committee is established, an ad hoc Audit Committee be set up for 2015 comprising two members of the Committee on Budget and Finance with relevant experience, the Vice President of the Assembly in The Hague, a representative of the External Auditor, and a representative of the Court as an observer. This temporary arrangement would be most cost-effective, since no budget for the Audit Committee was envisaged for 2015”.²⁴

11. On 13 February 2015, the Presidential Directive (Ref: ICC/PRES/D/G/2008/001) was revoked by a Presidential Directive (Ref: ICC/PRES/D/G/2015/001), whereby the then Audit Committee was dissolved.

12. During 2015, the Ad-hoc Audit Committee met and drafted the Charter of the Audit Committee, selected new members and submitted the names through the CBF to the Assembly for approval, reviewed the Internal Audit Charter and its audit plan for 2015.

13. At its fourteenth session held from 18 November to 26 December 2015, the Assembly approved the appointment of the new members of the Audit Committee.

²³Official Records... Fourteenth session... 2015 (ICC-ASP/14/20), vol. II, part B.3, Annex IV.

²⁴Official Records... Thirteenth session... 2014 (ICC-ASP/13/15), vol. II, part B.2, page 249, paras. 134 and 135.

ii. **Response of the Audit Committee on the IER recommendations related to its function**

Recommendation R3: *The IER report recommended a non-permanent Judicial Audit Committee should be called on to carry out audits of the administration of justice activities in Chambers and OTP. The Judicial Audit Committee should be made up of current or former, national or international judges and prosecutors with relevant experience, appointed similarly to the Committee recommended in R113.*

14. The AC welcomes the idea of auditing the Chambers and OTP more thoroughly where the task can be outsourced as specialized auditors are required.

Recommendation R107: *The IER report recommended that the incoming Prosecutor should review internal processes and procedures to ensure effective and efficient cooperation with the OIA and IOM. Additional measures can be envisaged to alleviate concerns, such as more comprehensive confidentiality agreements that IOM staff would commit to.*

15. The AC welcomes the recommendation.

Recommendation R366: *The IER recommended the merger of the AC and CBF into one Organ of budgetary control and audit. The mandate of CBF-Audit Committee members should be extended to a five-six years, non-renewable term.*

16. The External Auditor, in his report on the financial statements for 2004 and 2005, recommended establishing an independent audit committee that should focus on promoting effective internal control; provide a focus to make best use of assurance resources; monitor internal and external audit outputs; assess the effectiveness of risk management and thus separate the functions of the CBF and the Audit Committee. The ASP endorsed the External Auditor's recommendation.

17. In addition, the IER report did not set out the pros and cons of merging these two Committees and what would be achieved by merging two different areas of expertise, where the CBF is mandated to look at budget, finance and administration matters, while the Audit Committee is mandated to look at the governance structure, risk management, ethics and values, and the internal and external audit matters.

18. There is also one important substantive reason why budget preparation and audit should not be concentrated in one hand and that is conflict of interest. Otherwise, at a certain point the same persons and body that have made a proposal for the budget would then have to assess the efficiency and effectiveness of that same proposal. That would create a systemic conflict of interest.

19. The AC does not see the value and relevance of implementing this recommendation and believes that the merger of both Committees would be a step backwards. In addition, the composition of the membership will change over time even without imposing limitations on the members' term.

Recommendation R367: *The IER recommended: As a work unit located in the Registry, the OIA would more properly report to the Principals rather than to the Audit Committee, a subsidiary body of the ASP. This would not prevent the OIA from appearing before the new budgetary control and audit body as required, and responding to its requests. The new body's role towards the OIA would be overseeing the adequacy of the framework set up for the Court's internal audit function, rather than oversight of the substance of the OIA's work.*

20. The AC is concerned about the recommendation by the IER to change the reporting line of the OIA, which would result in a conflict of interest. Since the Principals are within the boundaries

of auditing, this would lead the Principals to recuse themselves, creating a breach both in the reporting line and in the audit.

Recommendation R368: *The ASP is recommended to make use of the upcoming recommendations of the External Auditor, tasked with assessing the Court's oversight bodies, to find ways to streamline and render more efficient its oversight structures.*

21. The out-going External Auditor submitted his draft report that contained five recommendations to those who attended the workshop. On 12 August 2021, the AC responded to those recommendations, and a copy of the letter sent by the Chair of the Audit Committee is in Annex I to this report.

Recommendation R370: *In line with the Experts' recommendation for the ASP Secretariat to be absorbed into the Registry, it is envisaged that the Executive Secretary of the CBF and Audit Committee position, currently located in the ASP Secretariat, also be transferred to the Registry, where it would maintain its functional independence.*

22. The AC supports the recommendation to maintain the functional independence of its Executive Secretary. In addition, the AC believes that sufficient resources should be provided to its Executive Secretary at all times in order to ensure the independent and proper functioning of the CBF and the AC.

Annex III: List of documents

Document symbol *Title*

AC/14/1	Provisional agenda of the fourteenth session of the Audit Committee
AC/14/2	Status of implementation of the 2021 Audit Plan, 31 st March 2021
AC/14/2-Anx.1	Planning criteria 2021 OIA Work Plan
AC/14/3	Fourth Joint Report of the Court and the Office of Internal Audit on action plans for the implementation of the external assessor's recommendations
AC/14/4	Report of the Court on its Organizational Manual
AC/14/4-Anx.1	Organizational Manual of the International Criminal Court (amended)
AC/14/6	Audit of the Definition of Strategy for Management of Country Offices: set up, scale down and closure- Audit Report (Final)
AC/14/7	Report of the Court on fleet management policy
AC/14/8	Audit of the Effectiveness of the Risk Based Vetting Process Report on the Audit of Asset Management – Final Report
AC/14/9	Office of Internal Audit: Work Plan for 2022 and list of topics for subsequent years
AC/14/9-Anx.1	Office of Internal Audit: Work Plan for 2022 and list of topics for subsequent years-Annexes
AC/14/10	Report on the Implementation of Audit Recommendations for the 1st semester of 2021
AC/14/11	Status of implementation of the 2021 Audit Plan as at 30 th June 2021
AC/14/11-Anx.I.	Annex- Status of implementation of the 2021 Audit Plan, 30 th June, 2021
AC/14/12	Follow-up on AC Recommendations
AC/14/13	Financial statements of the International Criminal Court for the year ended 31 December 2020
AC/14/14	Financial statements of the Trust Fund for Victims of the International Criminal Court for the year ended 31 December 2020
AC/14/15	Update on the development of a Court-wide Ethics Charter
AC/14/16	Draft Pre-final Report - May 31 st 2021 – Pillar assessment of the International Criminal Court