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**Twentieth session**

The Hague, 6 – 11 December 2021

**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 Frances Galatia Latinou Williams (Cyprus), pursuant to the mandate given by the Bureau to the focal points for the sub-topics of budget management oversight and premises (Ambassador William Roelants (Belgium), 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 2021. 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 to the Assembly of States Parties**

#### **A. Introduction**

1. The mandate for budget management oversight in 2021 is derived from the budget resolution adopted at the nineteenth session of the Assembly of States Parties.<sup>1</sup> On 18 February 2021 the Bureau approved the allocation of budget management oversight to The Hague Working Group as a sub-topic of the budget facilitation. On 31 May 2021, the Bureau appointed Ambassador William Roelants de Stappers (Belgium) as focal point for the topic of budget management oversight.

#### **B. Meetings and discussions**

2. Five meetings were held on the topic of budget management oversight on 14 July, 4 and 26 October, and 8 and 17 November 2021, with States Parties and the Court. The meetings were held by remote-link due to the restrictions imposed by COVID-19.

3. Participants in the meeting have included representatives of various oversight bodies and relevant offices: the Chair of the Committee on Budget and Finance, Ambassador Werner Druml, the Chair of the Audit Committee, Ms. Margaret Wambui Ngugi Shava, the Vice-Chair of the Audit Committee, Mr. Aiman Ibrahim Hija, the Director of the Office of Internal Audit, Ms. Florence Bole, and the head of the Independent Oversight Mechanism (IOM,) Mr. Saklaine Hedaraly.

4. The meetings provided an opportunity for States Parties to continue their consideration of various matters related to the topic of budget management oversight.

5. The discussion of the Independent Expert Review (IER) recommendations allocated to Budget Management Oversight by the Comprehensive action plan of the Review Mechanism have been reflected in a separate report submitted to the Bureau of the Assembly on 8 November 2021.

##### **1. Evaluation of the oversight bodies**

6. In accordance with resolution ICC-ASP/19/Res.1, section I, para. 3, the BMO had an Assembly mandate to consider the report of the External Auditor on International Criminal Court Governance Oversight.<sup>2</sup>

7. As indicated in the BMO report on IER related recommendations, given that there were two important exercises, the Review Mechanism and the BMO one, it was stated that the BMO discussion could however complement the Review Mechanism process. When the recommendations by the External Auditor are in line with the recommendations of the IER, the External Auditor's recommendations would serve as input to the assessment discussion by the Review Mechanism. It was up to States Parties to determine what value they placed on the recommendations by the External Auditor.

##### **2. Consideration of the report of the Audit Committee on the work of its thirteenth and fourteenth sessions**

8. The Chair of the Audit Committee, Ms. Margaret Wambui Ngugi Shava, gave a presentation on the reports of the Audit Committee on the work of its thirteenth and fourteenth

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<sup>1</sup> ICC-ASP/19/Res.1, Sections I and J.

<sup>2</sup> ICC-ASP/20/6 and Add.1.

sessions,<sup>3</sup> focusing inter alia on risk management, governance of the Court, values and ethics, oversight of internal audit matters, the oversight of external audit matters, the pending report of the External Auditor on the Pillar assessment, the handover process to the new External Auditor (the Bureau of Audit and Inspection of the Republic of Korea) and the follow-up on recommendations of the External Auditor. The working group had an exchange of views on some of the issues contained in the report(s).

### **3. Consideration of the Financial statements of the International Criminal Court for the year ended 31 December 2020**

9. The working group agreed to the recommendation by the Committee on Budget and Finance contained in paras. 265-266 of the report on the work of its thirty-seventh session to approve the Financial statements of the International Criminal Court for the year ended 31 December 2020.

### **4. Consideration of the Financial statements of the Trust Fund for Victims for the year ended 31 December 2020**

10. The working group agreed to the recommendation by the Committee on Budget and Finance contained in paras. 267-268 of the report on the work of its thirty-seventh session to approve the Financial statements of the Trust Fund for Victims for the year ended 31 December 2020.

### **5. External Auditor performance audit of the administrative management of the Presidency and the Office of the Prosecutor**

11. The working group considered the External Auditor performance audit of the administrative management of the Presidency and the Office of the Prosecutor.<sup>4</sup>

### **6. Future performance audits**

12. The working group received an indication of performance audit topics which States Parties could consider to request the External Auditor to undertake. States Parties concurred with the proposals made by the External Auditor for performance audits to be undertaken in 2022 on:

- a) Legal Aid, and
- b) Temporary Personnel

### **7. Strategic Plans of the Court, the Office of the Prosecutor, the Registry and the Trust Fund for Victims**

13. In light of the change in leadership of the Court, it was not possible to have an update on the strategic plans in the second semester of 2021. As in the case of prior years, the working group would invite the Court to hold consultation on the implementation of and updates to the strategic plans in the first trimester of 2022.

### **8. Appointment of Audit Committee members**

14. The working group was informed that, in accordance with the approved Charter of the Audit Committee, an Ad hoc selection panel<sup>5</sup> had recommended the re-appointment of Mr. Aiman Ibrahim Hija (Australia) as member of the Audit Committee for another three year term commencing on 1 January 2022.

<sup>3</sup> AC/13/5 and AC/14/5. The statement by the Chair of the Audit Committee was circulated to States Parties and the Court on 26 October. The reports of the Audit Committee are available at: [https://asp.icc-cpi.int/en\\_menus/asp/AuditCommittee/Pages/default.aspx](https://asp.icc-cpi.int/en_menus/asp/AuditCommittee/Pages/default.aspx)

<sup>4</sup> ICC-ASP/20/35.

<sup>5</sup> The recruitment panel was composed by the Vice-President of the Assembly, Amb. Katerina Sequensova (Czech Republic), who represented the President of the Assembly and chaired the panel, the Chair of the Audit Committee, Ms. Margaret Wambui Ngugi Shava, and two members of the Audit Committee, Mr. Samir Abu-Lughod and Ms. Clarissa van Heerden.

15. The working group also noted that the Committee on Budget and Finance had recommended the re-appointment of Ms. Margaret Wambui Ngugi Shava to represent it in the Audit Committee for another three year term commencing on 1 January 2022.<sup>6</sup>

## **C. Recommendations**

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

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<sup>6</sup> Report of the Committee on Budget and Finance on the work of its thirty-seventh session, para. 259.

## Appendix

### Proposed resolution language for 2021

#### To be inserted into the budget resolution

##### A. Audit

*The Assembly of States Parties,*

*Having regard* to the Charter of the Audit Committee, adopted at its fourteenth session,<sup>7</sup> as amended,

*Further noting* the recommendations of the Committee on Budget and Finance concerning audit matters,<sup>8</sup>

*Taking note* of the findings and recommendations in the final report of the Independent Expert Review of the International criminal court and the Rome Statute system related to Internal and External Oversight Mechanisms,

1. *Welcomes* the reports of the Audit Committee on the work of its thirteenth and fourteenth sessions;
2. *Welcomes* the report of the External Auditor on the International Criminal Court governance oversight<sup>9</sup>, and *decides* to continue the consideration of the outcome of the evaluation in accordance with the resolution on the review of the International Criminal Court and the Rome Statute system<sup>10</sup>, with a view to further rationalize and streamline the governance oversight system in order to maximize its efficiency, cost effectiveness and coherence;
3. *Welcomes* the report of the External Auditor<sup>11</sup> on the performance audit of the administrative management of the Presidency and the Office of the Prosecutor and the conclusions and recommendations contained therein; *notes with appreciation* the efforts undertaken by the Court in implementing the “One Court” principle regarding administrative functions, and *requests* all organs of the Court to make best efforts to further streamline and coordinate administrative functions, including identifying synergies and eliminating duplications between the organs of the Court, in accordance with the resolution on the review of the International Criminal Court and the Rome Statute system;<sup>12</sup>
4. *Decides* to re-appoint Ms. Margaret Wambui Ngugi Shava (Kenya) as a member of the Audit Committee for a term of three years starting on 1 January 2022, while serving as an active member of the Committee on Budget and Finance;
5. *Takes note* of the recommendation made by the ad hoc selection panel and *decides* to re-appoint Mr. Aiman Ibrahim Hija (Australia) as a member of the Audit Committee for a term of three years starting on 1 January 2022, and
6. *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<sup>13</sup> and *decides* to consider those amendments, taking into consideration the outcome of the evaluation undertaken by the

<sup>7</sup> *Official Records ... Fourteenth session ... 2015 (ICC-ASP/14/20)*, vol. II, part B.3, annex IV.

<sup>8</sup> *Official Records ... Twentieth session ... 2020 (ICC-ASP/20/20)*, vol. II, part B.1, paras. 109 to 111 and *Official Records ... Twentieth session ... 2020 (ICC-ASP/20/20)*, vol. II, part B.2, paras. 257 to 274.

<sup>9</sup> ICC-ASP/20/6 and Add.1.

<sup>10</sup> ICC-ASP/20/Res.3.

<sup>11</sup> ICC-ASP/20/35.

<sup>12</sup> ICC-ASP/20/Res.3.

<sup>13</sup> 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).

External Auditor, the report of the Independent Expert Review,<sup>14</sup> and the report of the Review Mechanism in order to take a decision as appropriate.

## **B. Budget Management Oversight**

*The Assembly of States Parties,*

1. *Notes* that the Strategic Plans of the Court, the Office of the Prosecutor, the Registry and the Trust Fund for Victims 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 of the Trust Fund for Victims for the period 2020-2021 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 the Registry and the Trust Fund for Victims;
3. *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;
4. *Invites* the Court, the Office of the Prosecutor, the Registry and the Trust Fund for Victims to report annually to the Assembly on the implementation of the Strategic Plans in writing, and *invites* the Court to hold annual consultations with the working groups of the Bureau in the first trimester on the implementation of its strategic plans during the previous calendar year;
5. *Recalls* the management oversight responsibility entrusted to the Assembly of States Parties and the mandates of the Audit Committee, the Committee on Budget and Finance, the External Auditor and the Independent Oversight Mechanism as well as the Office of Internal Audit, and *encourages* these bodies to intensify their coordination in order to optimize oversight capacity and reporting, ensure an effective division of labour and avoid duplication of competence and work, in conformity with the resolution on the review of the International Criminal Court and the Rome Statute system;<sup>15</sup>

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<sup>14</sup> ICC-ASP/19/16.

<sup>15</sup> ICC-ASP/20/Res.3.

## 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 2021 was derived from resolution ICC-ASP/19/Res.1, which was adopted by the Assembly of States Parties at its nineteenth session. In section G, paragraph 6 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, and request[ed] that a report on the topic be submitted for consideration by the twentieth session of the Assembly”.

2. The Bureau appointed Ms. Marija Stajic-Radivojsa (Serbia) as focal point for the topic of premises on 6 April 2021.

#### B. Meetings and discussions

3. In 2021, The Hague Working Group (“the working group”) held two consultations on the budget sub-topic of premises: on 14 October and 25 November. The Court participated in these meetings.

4. The meetings provided an opportunity for the working group to consider and discuss updates from the Court on premises matters and a pro bono expert ideal profile. In addition, the working group had the benefit of the recommendations of the Committee on Budget and Finance (“the Committee”), as set out in the report of its thirty-seventh session.<sup>16</sup>

5. At the meeting on 14 October, States Parties received a briefing on the report of the Court on its assessment of medium- and long-term arrangements for capital replacements in the light of budgetary appropriations for 2021<sup>17</sup> and the report of the Court on its assessment of alternative arrangements to further integrate maintenance and capital replacements.<sup>18</sup> At the meeting on 25 November States Parties initially considered the draft resolution text.

6. A visit to the premises of the Court took place on 9 November 2021. The technical tour allowed 19 delegates to be informed on various issues concerning the premises.

#### Expenditure in 2021

7. During the presentation on 14 October, the Court outlined the change of approach that had to be taken and in particular how the Court managed within the reduced funding envelope approved by the Assembly at its nineteenth session.

8. The Court indicated that given the impact of inflation on the maintenance contract the allocation to the capital replacement plan decreases every year within the budget envelope, The Registry added that, despite the fact that the building looks new and is functional in all aspects, there are many services running on 24/7 bases, and that some of these systems need to be replaced, but that the Court had deferred such replacement as much as possible. The estimates and proposals for medium and long-term plans have been based on industry standards and manufacturer’s instructions, however, now, capital replacements have been limited to repairing/replacing only those essential items that have already failed or are about to fail. The Court also noted that its approach had become fully reactive on capital replacements; as a consequence, the likelihood of higher maintenance costs and of future capital replacements had increased.

9. In response to a query regarding the impact of the COVID-19 pandemic on the premises, the Registry advised that while the lower number of staff physically present in the building

<sup>16</sup> ICC-ASP/20/15.

<sup>17</sup> ICC-ASP/20/8.

<sup>18</sup> ICC-ASP/20/4.

reduced the frequency of usage, most of the systems were still required to be operational, including the Building management System and security and safety installations. Small savings have been made for heating and cooling.

10. As regards the query on comparison with other international organizations, the Registry stated that the Court is the only international organization in The Hague that owns the building.

#### **Assessment of alternative arrangements**

11. During the first meeting, the working group also received a briefing on the report of the Court on its assessment of alternative arrangements to further integrate maintenance and capital replacements<sup>19</sup> which was requested by the Committee on Budget and Finance. The representative of the Registry stated that such integration as an alternative to the existing arrangement is possible because the Court believes that there is enough technical and economic capacity and expertise in the market, as well as interest in the market that such procurement exercise would be successful. The scope, the financial value and the business volume of such contract would be attractive to bidders; therefore it has the potential to be a viable solution considering the revenue expectations. However, the Registry added that as a precondition for such a business model to be successful, it needs to cover multiple stages of the life cycle of the building. It would have to be a longer term contract to create benefits and it would also mean that primary operational risks would be allocated to the contractor, instead of under the Court's responsibility, which was presently the case.

12. In response to a query on a cost assessment in terms of the overall cost for capital replacement and on the arrangements for mark-ups in case capital replacements would be further integrated with maintenance under one contract, the Registry replied that the assessment was done in-house with no additional costs, while mark-ups are to be considered such as administrative and management fees as part of a contract.

13. In connection to the question raised concerning the expected budgetary impact of the long-term commitment that would be expected from States Parties in order to allow further merging of maintenance and capital replacement, the Registry recalled the cost estimates submitted in the medium to long term plan and the comprehensive plans in 2020.

14. Further query was raised on financial consequences related to allocation of risk and expectations of contractor. In addition, a question was posed whether a 20-30 year contract, where the contractor would need consistent, reliable funding, would contradict the annuity of the Court's budget. Further information was requested on the budgetary implications of such a merger. In response, the Registry stated that at the moment the Court is not considering further integration of maintenance and capital replacements under one contract. The report was requested by the Committee on Budget and Finance and explores possible options, including advantages and disadvantages. Currently, the Court implements capital replacements through the contractor for maintenance who procures the components while the Court checks the market to avoid overcharge. Another business model would be to go to the market requesting interested bidders to submit proposals for maintenance and capital replacement fully integrated in one service model, which would transfer the operational risk to the service provider.

#### **Proposed budget for 2022**

15. The Court had submitted a proposed budget of €2,270.0 thousand for Major Programme V: Premises in 2022, comprising €1,938.4 thousand for preventive and corrective measures and €331.6 thousand for capital replacement.<sup>20</sup> In preparing the budget, the Court had sought to keep the total budget for Major Programme V at the same level as that approved for 2021. The Committee on Budget and Finance had reviewed the proposed budget and recommended that the Assembly approve the requested amount of €2,270.0 thousand.<sup>21</sup>

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<sup>19</sup>ICC-ASP/20/4.

<sup>20</sup> ICC-ASP/20/15, paras. 139-140.

<sup>21</sup> ICC-ASP/20/15, para. 147.

*Maintenance*

16. The working group was informed that the budget for both preventive and corrective maintenance (€1,938.4 thousand) was governed by the contract with the maintenance contractor. That contract included provision for indexation, which had led to a 2.5 per cent increase in costs. The Court proposed to absorb this increase by reducing the amount available for capital replacement to €331.6 thousand.

*Capital replacement*

17. At the meeting on 14 October, the working group received a briefing on the report of the Court on its assessment of medium and long-term arrangements for capital replacements in the light of budgetary appropriations for 2021,<sup>22</sup> requested by the Committee on Budget and Finance. The Committee understood that for 2022, due to budgetary constraints, the methodology originally adopted by the Court to estimate medium- and long-term capital replacements had to be shifted from following industry standards and manufacturer's instructions to limiting the replacement of components as they break or show signs of imminent breakdown.<sup>23</sup> This departure from the capital replacement programme based on a medium- and long-term plan and adopting a reactive approach may currently be the only possible way of ensuring business continuity and the preservation of assets. However, it will not be sustainable in the long-term.<sup>24</sup>

18. The Committee took note that in 2022 special attention would be given to heating and cooling distribution and electrical infrastructure for example, as well as security and safety installations, and that replacements of an aesthetic nature were not foreseen.<sup>25</sup>

**Nomination of a pro bono expert**

19. The working group was briefed on the nomination made by Austria of a pro bono expert. Mr. Michael Rotter is currently the CEO of the company that manages and maintains the Vienna International Centre – UN building. Mr. Rotter is also an Austrian representative to the major replacement fund in Vienna. The representative from Austria provided that Mr. Rotter's expertise and years of experience would be very helpful. Appreciation and support was expressed by delegations.

**Artwork donation**

20. The working group welcomed with appreciation the donation by Ireland entitled "Oak", which was unveiled in a ceremony on 18 March 2021.

**C. Recommendations**

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

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<sup>22</sup> ICC-ASP/20/8.

<sup>23</sup> ICC-ASP/20/15, para. 141.

<sup>24</sup> ICC-ASP/20/15, para. 142.

<sup>25</sup> ICC-ASP/20/15, para. 145.

## Appendix

### Proposed resolution language for 2021

#### 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>26</sup>

1. *Approves* capital replacement for the premises of the Court at the level of [€331.6 ] thousand in 2022, while underlining the need to see maintenance and capital replacement in conjunction;
2. *Reiterates* the need for the capital replacement to be fully justified and limited only to those elements which are absolutely necessary; and *requests* the Court to continue to ensure that all measures are taken to achieve savings and efficiencies, including using alternatives to capital replacement whenever possible;
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 Committee's review of estimates for capital replacement, as well as financial and administrative mechanisms including possible alternatives to current contractual arrangements, at its thirty-sixth and thirty-seventh sessions,<sup>27</sup> and *invites* the Committee to continue to undertake a detailed analysis and evaluation of the proposed budget taking into account the need for prioritization;
5. *Recalls* the recommendations of the Committee<sup>28</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 put forward **further** suggestions in this regard;
6. ***Welcomes Mr. Michael Rotter (Austria) as a pro bono expert and invites the Court to engage with him and benefit from his advice in its future work on capital replacement;***
7. *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 **twenty-first** session of the Assembly; and
8. *Welcomes* with appreciation the artwork donations to the premises of the Court made by State Party in 2021.

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<sup>26</sup> *Official Records ... Nineteenth session ... 2020* (ICC-ASP/19/20), vol. II, part B.2, paras. 95 to 107.

<sup>27</sup> *Ibid.*, paras. 105 and 106.

<sup>28</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.2, para. 116 and *Official Records ... Nineteenth session ... 2020* (ICC-ASP/19/20), vol. II, part B.2, para. 104.