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Compilation of reports of Assembly mandate holders on Independent Expert Review recommendations

Addendum

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A. Report on the topic of Budget Management Oversight on the IER related recommendations, dated 8 November 2021

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.¹ 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.

2. The Comprehensive action plan submitted the Review Mechanism² allocated the following recommendations to the Budget Management Oversight facilitation: R366, R367, R368, R369 and R370 to be considered in the first half of 2022, as well as recommendation R145, to be considered on the second half of 2022.

3. This report to the Bureau on the outcome of consideration of the relevant Independent Expert Recommendations is submitted pursuant to resolution ICC-ASP/19/Res.7 paragraph 7:

“Requests the relevant Assembly Mandates designated as responsible for assessing and taking possible further action as appropriate on relevant recommendations to commence implementation in 2021 and to submit to the Bureau the outcome of its consideration, including on action already taken and proposals for next steps, by 1 November 2021.”

B. Meetings and discussions

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

5. At the first meeting on 14 July representatives of various oversight bodies and organs of the Court participated. On 4 October, 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 participated in the meeting. On 26 October, the Chair of Audit Committee, Ms. Margaret Wambui Ngugi Shava, participated in the meeting.

6. The meetings provided an opportunity for States Parties to discuss the Independent Expert Recommendations (IER) allocated to Budget Management Oversight by the Comprehensive action plan.

C. Independent Expert recommendations allocated to Budget Management Oversight

1. Background

7. The programme of work of the facilitation for 2021 included consideration of the External Auditor’s evaluation of the oversight bodies of the Court and the relevant recommendations of the Independent Expert Review (IER).

8. In all cases where the BMO was referenced in the Comprehensive action plan, the recommendation had been allocated to more than one body.³

9. On the basis of a coordination discussion held with the Review Mechanism, the BMO held an initial discussion on the report of the External Auditor on International Criminal Court Governance Oversight,⁴ taking

¹ ICC-ASP/19/Res.1, Sections I and J.

² https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive_Action_Plan-ENG.pdf.

³ For instance R368 regarding the External Auditor’s evaluation of the oversight bodies, both IOM and BMO have been listed under the proposed allocation; likewise R370, on the Executive Secretary of the Committee on Budget and Finance (CBF) and the Audit Committee to be transferred to the Registry, has been listed for the BMO, but also for the Court and the SGG. The facilitator noted that the R370 was to be seen in conjunction with R369 which recommends that the Secretariat of the Assembly to be absorbed into the Registry, which is a much wider recommendation and that would not be discussed in the BMO today.

⁴ ICC-ASP/20/6 and Add.1

into account the relevant IER R366, R367 and R368 (the latter in collaboration with the IOM facilitator, Ambassador Päivi Kaukoranta). The point was made that although the programme of work of the Review Mechanism foresees considering those recommendations in the first semester of 2022 and that the Review Mechanism had identified itself as the “platform for discussion”, the BMO has an Assembly mandate to consider the outcome of the External Auditor's evaluation as soon as it is available.

10. Based on the same coordination discussion with the Review Mechanism, the importance of the two exercises, the Review Mechanism and the BMO one, not to be mixed was emphasized. 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.

11. The point was made that the individual IER recommendations and the External Auditor recommendations were in correspondence with each other. Thus, in order to allow for an efficient conduct of the consultation, the five External Auditor recommendations were considered individually and for each of them the corresponding IER recommendation was mentioned whenever relevant.⁵

2. General comments

12. A view was expressed that there was a great deal of coherence between two independent processes' conclusions: the IER and the report of the External Auditor. A review was deemed necessary also because the Court was spending more resources on governance oversight compared to other international organizations (1.23 per cent for the Court, 0.5 per cent for other international organizations). There was a need to ensure the most cost-effective and efficient system to the benefit of the management oversight function that relies with the Assembly and ultimately to the benefit of the good administration of the Court. There was strong support for IER recommendation 362 as it was the Assembly that decides on the budget. The view was expressed for having States Parties experts deal directly with budgetary issues, rather than delegating such a sensitive mission to the Committee on Budget and Finance.

13. However, according to a different view major changes were not needed, as the Committee on Budget and Finance provided valuable independent technical advice which was very much appreciated, an expertise which States Parties were not able to provide. Possible improvements to how oversight bodies functioned was still necessary to consider.

14. Some additional information was requested in relation to the status of Executive Secretariat which was not an oversight structure, but part of the Secretariat of the Assembly, which has a distinct task and function to serve the Committee on Budget and Finance and the Audit Committee. In this connection, the Chair of the Audit Committee referred to the term “Executive Secretariat” and indicated that the post of “executive secretary” is administratively located within the Secretariat of the Assembly, as envisaged by the Assembly and that the post is actually a technical position. Furthermore, she indicated that there is only one “Secretariat” which serves the two Committees.

15. Furthermore, clarification was requested in relation to the organization benchmarking that the External Auditor had conducted. The report only listed the 29 organizations in a footnote, however it did not provide information about their tasks and structure, thus it was difficult to see the advantages and disadvantages of the different systems and to draw any conclusions. Another query was raised with regard to the Court oversight costs which represented 1.23 per cent of the total Court overhead; clarification was requested in relation to the meaning of the total organization overhead.

16. A suggestion was put forward to merge the Audit Committee into the Committee on Budget and Finance, which would allow the mandate of the latter to be retained, as a way of addressing R366 of the IER.

17. As regards their independence, both the Committee on Budget and Finance and the Audit Committee stressed that they were subsidiary not to the States Parties but to the Assembly and that their recommendations were based on technical expertise.

⁵ More specifically: R366 was examined together with Recommendation Nr. 4 of the External Auditor; R367 was examined together with Recommendation Nr. 2 of the External Auditor; R368 – The point was made that it was simply a recommendation to examine the report of the External Auditor. There would not seem to be a need to discuss this recommendation; R370 was examined together with Recommendation Nr. 4 of the External Auditor which also recommended to suppress the position of Executive Secretary to the Committee on Budget and Finance.

18. The IOM reiterated what had already been presented to States Parties through written comments in the report of the External Auditor as regards the comparison of the resources on oversight, that is to urge caution when it came to what exactly was being compared.⁶

19. The point was made that where possible contradictions might exist between the recommendations and the international practice, it is the latter which should be followed.

3. Consideration of each of the five recommendations of the report of External Auditor and relevant IER recommendations

Recommendation 1

“Given the ICC’s persistent liquidity shortage, and the high level of ICC’s governance oversight cost ratio compared to other International Organisations, the External Auditor recommends that no reform of the ICC Organisation 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.”

20. The Committee on Budget and Finance stated that it was important to assure that costs were reasonable and noted that any reform led to costs.

21. Support was expressed to have at the end of the review process a more cost-efficient institution, with the Assembly having prerogative to decide on the budget, as indicated in IER recommendation 362.

Recommendation 2⁷

“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 Audit Committee could ask for amendments, which would need in their turn to be approved and endorsed by the CoCo. The Office of Internal Audit (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 Director of OIA.”

22. The point was made that the two independent assessments highlighted that there was a problem that needed to be addressed.

23. According to another view, the External Auditor and IER recommendations reflected the situation that previously existed at the Court, nevertheless that system had proved to be ineffective.

24. Further clarification was requested as to what challenges and issues the proposal by the External Auditor was trying to address.

25. For its part, the Audit Committee stated that with regard to both recommendations, the proposed arrangement did not conform to the international auditing standards as it would lead to a conflict of interest situation having the auditor report to the auditee (the heads of organs).

26. The Office of Internal Audit (OIA) noted that the internal audit function is to support the management of the organization; it should report to the executive management of the organization (Heads of Organs) to be in compliance with the International Professional Practices Framework of internal audit. This is the model implemented in the international public organizations; it is not an external assessment body and that indeed there was a drift within the organization because the Court was less engaged in the internal audit work; if the Court had been more engaged with the work of Internal Audit then the situation would have been reversed. The view was expressed that the Audit Committee had an important role in case of an infringement of the independence of the Internal Audit Function where the Audit Committee should intervene and support the internal audit function in conducting its role independently.

⁶ The note from the Head of the IOM is found in appendix 8 of the report of the External Auditor, which states inter alia: “...while table 1 of the report accurately depicts the relative costs of the respective oversight bodies, it may be misleading to compare the figures with other international organizations, where the figures often include only the internal audit and investigation functions, and not the costs the evaluation function, or other committees (such as finance committees, etc.)”

⁷ Recommendation 2 of the External Auditor should be examined in conjunction with recommendation R367 of the Independent Expert Review.

27. A different view was expressed that international audit standards and best practices require that the Office of Internal Audit reports on substantive matters through the Audit Committee to the legislative body (Assembly). Reference was made to the IIA Standard 1110 concerning the Organizational Independence.

28. For its part the Court indicated that anything which strengthened the engagement between the organization and the internal audit was welcomed and expressed its willingness to consider any solution in order to change the current approach.

Recommendation 3

“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 nonvoting members. 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.”

29. Divergent views were expressed as regards the issue of transparency, as on one hand the current arrangements such as facilitation meetings or briefings with the respective members of the Committee on Budget and Finance and the Audit Committee were deemed sufficient to provide States Parties an opportunity to discuss any recommendations made by either Committee. On the other hand, it was stated that there did not seem to be a lot of possibilities for dialogue between the Assembly and the Audit Committee in particular, thus this relationship was not satisfactory.

30. The Committee on Budget and Finance stated that improving the communication with States Parties after the report has been issued, would be welcomed. If the Committee on Budget and Finance was changed it could become a hybrid committee of political consideration and of technical expertise, but this would introduce risks into its functioning and outcome and would as well also endanger the confidentiality.

Recommendation 4⁸

- *“ to suppress the CBF composed of independent experts and to transfer its competence in the preparation/negotiation of the detailed budget proposal with ICC’s internal Budget Working Group to The Hague Working Group (THWG) or one of its sub-groups;*
 - *to submit each year, before Summer, the initial budget proposal to The Hague Working Group, which could immediately start preparing and negotiating, in direct contact with ICC’s internal Budget Working Group, the ASP’s final consensual decision on budget to be taken in December,*
 - *as an option to ask the Audit Committee, who would be given an advisory role, to issue a synthetic initial technical opinion on the budget proposal;*
 - *to suppress the Executive Secretariat, in order to restore the principle of subsidiarity of the governance oversight organs towards the Assembly.”*

31. Some States Parties considered the role of the Committee on Budget and Finance to be useful and thus should be retained. It was posited that the assessment by the Committee on Budget and Finance put States Parties on a more equal footing when discussing the budget proposals. There was support towards the value of the Committee on Budget and Finance in providing technical benchmark to which States Parties could refer to in their discussions.

32. Another point was made that should States Parties decide to keep the Committee on Budget and Finance, a careful look should be given at the IER recommendation on the limitation of the term of the members. For its part, the Committee on Budget and Finance indicated that the average term of a member was five years, with only a few having been members for a long period but whose institutional memory was valuable for the work of the Committee.

Recommendation 5

“The External Auditor recommends merging the Office of Internal Audit and the Independent Oversight Mechanism in one Major Programme.”

33. From the perspective of States Parties, a view was shared that when considering this recommendation, it was necessary to bear in mind the mandates of both the OIA and the IOM and also that the IER process might bring new functions to the IOM. As a result, there would be the need to assess whether those functions could be served well.⁹ Furthermore it was noted that the reporting line of the IOM had not been questioned by States Parties.

⁸ Recommendation 4 of the External Auditor should be examined in conjunction with recommendations R366 and R370 of the Independent Expert Review.

⁹ In 2020 the entire mandate of the IOM had been reviewed.

34. The IOM stated that the discussion of what function should be given to the IOM by States Parties should be consolidated otherwise certain discussions such as what is IOM, what would the States Parties want the IOM to do, the fact that the IER has a different view of what the role of the IOM should be compared to the one envisaged from the External Auditor, could overlap.

35. A suggestion was put forward by the Vice-Chair of the Audit Committee for the auditors to be transferred under the management of the IOM since the Audit Committee would not interfere with the investigation area. Such transfer was said to be in line with the UN practice.

4. Way forward

36. Given the discussion held by BMO on the above IER recommendations, and the allocation set out by the Comprehensive action plan, it is suggested that the discussions continue in 2022 on the basis of that allocation, with the added input of the additional information which has been requested.¹⁰ The assessment of these BMO-related recommendations should then be finalized in advance of the twenty-first session of the Assembly.

¹⁰ See above, paragraph 15. The requests for additional clarifications have been received on 4 October 2021 during the second meeting of the BMO.