



Assembly of States Parties

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Twenty-first session

The Hague, 5-10 December 2022

Annotated list of items included in the provisional agenda

Note by the Secretariat

The following annotated list of the items contained in the provisional agenda for the twenty-first session of the Assembly of States Parties (“the Assembly”) to the Rome Statute of the International Criminal Court (ICC-ASP/21/1) has been prepared to assist the Assembly in its consideration of issues before it at its twenty-first session, which will be convened in The Hague on Monday, 5 December 2022, at 10 a.m. The status of the documentation reflected herein is current as at 4 December 2022.

1. Opening of the session by the President

In accordance with article 112, paragraph 6, of the Rome Statute, the Assembly meets once a year in regular session. At the 8th meeting of the twentieth session, on 9 December 2021, the Assembly decided to hold its twenty-first session in The Hague from 5 to 10 December 2022.

2. Silent prayer or meditation

Pursuant to rule 43 of the Rules of Procedure of the Assembly of States Parties, immediately after the opening of the first plenary meeting and immediately preceding the closing of the final plenary meeting, the President shall invite the representatives to observe one minute of silence dedicated to prayer or meditation.

3. Adoption of the agenda

Rules 10 to 13 and 18 to 22 of the Rules of Procedure concerning the agenda are applicable to regular sessions.

In accordance with rules 10 and 11 of the Rules of Procedure, the provisional agenda for the twenty-first session was issued on 3 February 2022. In accordance with rule 19 of the Rules of Procedure, the agenda shall be submitted to the Assembly for approval as soon as possible after the opening of the session.

Documentation

Provisional agenda (ICC-ASP/21/1)

4. States in arrears

According to article 112, paragraph 8, of the Rome Statute, “A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years.”

At its fourth session, the Assembly took note of the report of the Bureau on the arrears of States Parties¹ and the recommendations therein and invited the Bureau to report back to the fifth session of the Assembly on the status of arrears, including on suggestions, if necessary, of measures to promote the timely, full and unconditional payment of assessed contributions and advances towards the costs of the Court. Furthermore, the Assembly decided that requests for exemption under article 112, paragraph 8, of the Rome Statute, should be submitted by States Parties to the Secretariat of the Assembly at least one month before the session of the Committee on Budget and Finance (“the Committee”), so as to facilitate the Committee’s review of the requests and that the Committee should advise the Assembly before the Assembly decided on any requests for exemption under article 112, paragraph 8, of the Rome Statute.²

At its fifth session, the Assembly renewed the appeal to States Parties in arrears to settle their accounts with the Court as soon as possible. In this connection, the Assembly adopted resolution ICC-ASP/5/Res.3 containing recommendations setting out a specific procedure for requesting exemptions from the loss of voting rights³ and decided that the Bureau should review on a regular basis the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by States Parties, as appropriate.⁴

At its twentieth session, the Assembly decided that the Bureau, through the President of the Assembly, the Coordinator of the working group and the facilitator, should continue to monitor the status of payments received throughout the financial year of the Court and

¹ ICC-ASP/4/14.

² *Official Records ... Fourth session ... 2005* (ICC-ASP/4/32), part III; ICC-ASP/4/Res.4, paras. 40, 43 and 44.

³ *Official Records ... Fifth session ... 2006* (ICC-ASP/5/32), part III; ICC-ASP/5/Res.3, annex III.

⁴ *Ibid.*, para. 42.

consider additional measures to promote payments by all States Parties, as appropriate, continue to engage in dialogue with States Parties that have outstanding contributions or are in arrears, and via the annual facilitation on the topic of arrears, report thereon to the Assembly at its twenty-first session.⁵

Documentation

Report of the Bureau on the arrears of States Parties (ICC-ASP/21/32)

5. Credentials of representatives of States at the twenty-first session

a) *Appointment of the Credentials Committee*

Rule 25 of the Rules of Procedure of the Assembly of States Parties, provides that a Credentials Committee shall be appointed at the beginning of each session. It shall consist of representatives of nine States Parties, which shall be appointed by the Assembly on the proposal of the President.

b) *Report of the Credentials Committee*

Representation and credentials are regulated by rules 23 to 28 of the Rules of Procedure. In accordance with rule 24, the credentials of representatives of States Parties and the names of alternates and advisers shall be submitted to the Secretariat if possible not later than 24 hours after the opening of the session. The credentials shall be issued by the Head of State or Government or by the Minister for Foreign Affairs or by a person authorized by either of them.

Under rule 25, a Credentials Committee, consisting of representatives of nine States Parties to be appointed at the beginning of each session by the Assembly on the proposal of the President, shall examine the credentials of representatives of States Parties and report to the Assembly without delay.

6. Organization of work

The Assembly will consider and adopt a programme of work at the beginning of the session on the basis of a proposal by the Bureau.

7. General debate

Each State Party, Observer State, Invited State, international organizations and a limited number of representatives of civil society shall be invited to participate in the general debate. The modalities of holding the general debate would include pre-recorded videos or in-person statements. Other statements may be submitted as a written statement, which will be posted on the Assembly webpage.

No documentation

8. Report on the activities of the Bureau

In accordance with article 112, paragraph 2(c), of the Rome Statute, the Assembly shall consider the reports and activities of the Bureau and take appropriate action in that regard.

Documentation

Annual report of the Head of the Independent Oversight Mechanism (ICC-ASP/21/8)

⁵ *Official Records ... Twentieth session ... 2021* (ICC-ASP/20/20), vol. I, part III; ICC-ASP/20/Res.5, annex I, para. 16(b).

Report of the Bureau on the Plan of action of the Assembly of States Parties for achieving universality and full implementation of the Rome Statute of the International Criminal Court (ICC-ASP/21/21)

Report of the Bureau on the Study Group on Governance (ICC-ASP/21/18)

Report of the Bureau on complementarity (ICC-ASP/21/19)

Report of the Bureau on non-cooperation (ICC-ASP/21/33)

Report of the Bureau on the Review of the work and the Operational Mandate of the Independent Oversight Mechanism (ICC-ASP/21/25)

Report of the Court on cooperation (ICC-ASP/21/24)

Report of the Bureau on cooperation (ICC-ASP/21/35)

Report of the Bureau on the arrears of States Parties (ICC-ASP/21/32)

Report of the Working Group on Amendments (ICC-ASP/21/22)

Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court (ICC-ASP/21/27)

Report of the Bureau on the review of the procedure for the nomination and election of judges (ICC-ASP/21/29)

Report of the Bureau on the Budget sub-topics of Budget Management Oversight and Premises (ICC-ASP/21/30)

Report on the Constitution and Activities of the International Criminal Court Bar Association (“ICCBA”) (ICC-ASP/21/23)

Report of the Bureau on the scheduling of Assembly sessions (ICC-ASP/21/28)

Report by the facilitators on the third election of the Prosecutor of the ICC – Lessons learnt (ICC-ASP/21/16)

Report of the Judicial Remuneration Panel (ICC-ASP/21/17)

9. Report on the activities of the Court

Under article 112, paragraph 2(b), of the Rome Statute, the Assembly shall provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court. In accordance with article 112, paragraph 5, of the Rome Statute, the President of the Court, the Prosecutor and the Registrar or their representatives may participate in meetings of the Assembly. As provided in rule 34 of the Rules of Procedure, they may make oral or written statements and provide information on any question under consideration. Accordingly, the President of the Court will present a report on the activities of the Court since the twentieth session of the Assembly.

Documentation

Report on the activities of the International Criminal Court (ICC-ASP/21/9)

10. Report of the Board of Directors of the Trust Fund for Victims

By its resolution ICC-ASP/1/Res.6,⁶ the Assembly established a Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, as well as a Board of Directors of the Trust Fund for the benefit of victims.

In accordance with paragraph 11 of resolution ICC-ASP/1/Res.6, the Board shall report annually to the Assembly on the activities and projects of the Fund and on all offered voluntary contributions, regardless of whether they were accepted or refused.

⁶ *Official Records ... First session, New York, 3-10 September 2002* (ICC-ASP/1/3 and Corr.1), part IV.

Documentation

Report to the Assembly of States Parties on the projects and the activities of the Board of Directors of the Trust Fund for Victims for the period 1 July 2021 to 30 June 2022 (ICC-ASP/21/14)

11. Consideration and adoption of the budget for the twenty-first financial year

In accordance with article 112, paragraph 2(d), of the Rome Statute, the Assembly shall consider and decide on the budget of the Court.

Regulation 3 of the Financial Regulations and Rules of the Court provides that the Registrar shall prepare the proposed programme budget for each financial period and submit it to the States Parties as well as to the Committee on Budget and Finance for consideration. The Committee shall make the relevant recommendations to the Assembly.

At its third session, the Assembly endorsed the recommendation of the Committee that the Court should include in future performance reports data on financial performance and results achieved rather than outputs. This information should be submitted annually to the Assembly through the Committee either in the draft programme budget or in a separate performance report.⁷

Documentation

Report on activities and programme performance of the International Criminal Court for the year 2021 (ICC-ASP/21/11)

Report of the Court on Human Resources Management (ICC-ASP/21/7)

Report of the Committee on Budget and Finance on the work of its thirty-eighth session (ICC-ASP/21/5)⁸

Report of the Committee on Budget and Finance on the work of its thirty-eighth resumed session (ICC-ASP/21/5/Add.1)⁹

Proposed Programme Budget for 2023 of the International Criminal Court (ICC-ASP/21/10, Corr.1 and Add.1)¹⁰

Report of the Committee on Budget and Finance on the work of its thirty-ninth session (ICC-ASP/21/15)¹¹

Report of the Registry on the approximate costs allocated so far within the Court in relation to referrals by the Security Council (ICC-ASP/21/6)

Report of the Bureau on the Budget sub-topics of Budget Management Oversight and Premises (ICC-ASP/21/30)

Proposed Programme Budget for 2023 of the International Criminal Court – Executive Summary (ICC-ASP/21/INF.2/Rev.1)

12. Consideration of the audit reports

Regulation 12 of the Financial Regulations and Rules provides that the Assembly shall appoint an Auditor to conduct audits in conformity with generally accepted common auditing standards, subject to any special directions of the Assembly and in accordance with the additional terms of reference set out in the annex to the Financial Regulations and Rules.

At its nineteenth session, the Assembly decided to appoint the Board of Audit and Inspection of the Republic of Korea as the new External Auditor of the Court and the Trust Fund for Victims for four years starting with the financial year 2021.¹²

⁷ *Official Records ... Third session ... 2004* (ICC-ASP/3/25), part II.A.8 (b), para. 50, and part II.A.1, para. 4.

⁸ *Official Records ... Twenty-first session ... 2022* (ICC-ASP/21/20), vol. II, part B.1.

⁹ *Official Records ... Twenty-first session ... 2022* (ICC-ASP/21/20), vol. II, part B.2.

¹⁰ *Ibid.*, part A.

¹¹ *Ibid.*, part B.3.

¹² *Official Records ... Nineteenth session ... 2021* (ICC-ASP/19/20), vol. I, part III; ICC-ASP/19/Res.1, para I.2.

In accordance with regulation 12.7, the External Auditor shall issue a report on the audit of the financial statements and relevant schedules relating to the accounts for the financial period. In accordance with regulations 12.8 and 12.9, audit reports, before their submission to the Assembly, are subject to examination by the Registrar and the Committee on Budget and Finance. The Assembly considers and approves the financial statements and audit reports forwarded to it by the Committee.

The Assembly will also consider the reports of the Audit Committee on the work of its fifteenth and sixteenth sessions.¹³

Documentation

External auditor: Performance audit report on temporary personnel 2022 (ICC-ASP/21/3)

Financial statements of the International Criminal Court for the year ended 31 December 2021 (ICC-ASP/21/12)¹⁴

Financial statements of the Trust Fund for Victims for the year ended 31 December 2021 (ICC-ASP/21/13)¹⁵

13. Election of six members of the Committee on Budget and Finance

By resolution ICC-ASP/1/Res.4, the Assembly established a Committee on Budget and Finance. The Committee is composed of 12 members of different nationalities who shall be experts of recognized standing and experience in financial matters at the international level from States Parties. They shall be elected by the Assembly for a term of office of three years on the basis of equitable geographical distribution.

On 23 June 2022, the Bureau of the Assembly of States Parties decided that the election of six members of the Committee on Budget and Finance would take place at the twenty-first session of the Assembly. Pursuant to the decision of the Bureau, the nomination period for the candidates for six seats on the Committee on Budget and Finance ran from 24 June to 15 September 2022 (Central European Time).

The distribution of seats among the regional groups for the purpose of the first election was established in paragraph 8 of resolution ICC-ASP/1/Res.5 as follows:

- (a) Two seats for the Group of African States;
- (b) Two seats for the Group of Asian States;
- (c) Two seats for the Group of Eastern European States;
- (d) Two seats for the Group of Latin American and Caribbean States; and
- (e) Four seats for the Group of Western European and Other States.

The six members whose terms of office will end on 31 December 2022 are from the following regional groups:

- (a) African States - one seat;
- (b) Eastern European States - one seat;
- (c) Latin American and Caribbean States - one seat; and
- (d) Western European and Other States - three seats.

At the close of the nomination period on 15 September, six nominations had been received. Of the six nominations, two were submitted by the Group of African States; one by the Group of Eastern European States; one by the Group of Latin American and Caribbean States; and three by the Group of Western European and other States.

¹³ Available on the website of the Assembly at http://asp.icc-cpi.int/en_menus/asp/AuditCommittee.

¹⁴ *Official Records ... Twenty-first session ... 2022* (ICC-ASP/21/12), vol. II, part C.1.

¹⁵ *Ibid.*, part C.2.

The members will be elected for three-year terms commencing on 1 January 2023 and ending on 31 December 2026, in accordance with the 12 November 2019 recommendation of the Bureau (https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-Bureau-10.pdf).

Documentation

Election of members of the Committee on Budget and Finance (ICC-ASP/21/31)

14. Recommendations concerning the election of the Registrar

Under the terms of article 43, paragraph 2, of the Rome Statute of the International Criminal Court, the Registry of the Court is to be headed by the Registrar, who shall be the principal administrative officer of the Court. Pursuant to paragraph 3 of the same provision, the Registrar shall be a person of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

Rule 12 of the Rules of Procedure and Evidence¹⁶ provides, in paragraph 1, that “the Presidency shall establish a list of candidates who satisfy the criteria laid down in article 43, paragraph 3, and shall transmit the list to the Assembly of States Parties with a request for any recommendations.”

Upon receipt of any such recommendations from the Assembly of States Parties, the judges, acting under the terms of article 43, paragraph 4, of the Rome Statute, and in accordance with the procedure laid down in paragraphs 2 and 3 of rule 12 of the Rules of Procedure and Evidence, shall, as soon as possible, elect the Registrar by an absolute majority by secret ballot, taking into account the above-mentioned recommendations of the Assembly of States Parties.

Documentation

Election of the Registrar of the International Criminal Court (ICC-ASP/21/2 and Add.1)

Draft recommendation concerning the election of the Registrar of the International Criminal Court (ICC-ASP/21/36)

15. Review of the International Criminal Court and the Rome Statute system

Further to the decision of the Assembly at the nineteenth session to establish a Review Mechanism under the auspices of the Assembly, led by two State Party Representatives and supported by three ad country focal points,¹⁷ and its decision at the twentieth session to extend the mandate of the Review Mechanism,¹⁸ the Assembly will consider the report and recommendations of the Review Mechanism and take decisions thereon.

On 7 December 2022, the Assembly will hold a plenary session on the Review of the International Criminal Court, which will address as main topics the implementation of the recommendations of the Group of Independent Experts¹⁹ and the future of the Review Mechanism. The Review Mechanism was established following the report of the Group of Independent Experts, who had been appointed by the Assembly by resolution ICC-ASP/18/Res.7.

Documentation

Report of the Review Mechanism submitted pursuant to ICC-ASP/21/Res.3 (ICC-ASP/21/34)

¹⁶ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.A.

¹⁷ ICC-ASP/19/Res.7, para. 4.

¹⁸ ICC-ASP/20/Res.3, para. 5.

¹⁹ ICC-ASP/19/16.

16. Cooperation

By resolutions ICC-ASP/15/Res.3²⁰ and ICC-ASP/15/Res.5,²¹ the Assembly requested the Bureau to maintain a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court, other interested States, relevant organizations and non-governmental organizations in order to further strengthen cooperation with the Court.

On 8 December 2022, the Assembly will hold a plenary session on cooperation titled “New ways to improve cooperation regarding witness protection and respond effectively to the new challenges ahead”, which will address as the topics of voluntary cooperation and protection of witnesses.

Documentation

Report of the Court on cooperation (ICC-ASP/21/24)

Report of the Bureau on cooperation (ICC-ASP/21/35)

17. Review of the work and operational mandate of the Independent Oversight Mechanism

At its twelfth session, the Assembly of States Parties adopted the operational mandate of the Independent Oversight Mechanism (IOM)²² and decided that the work and the operational mandate of the IOM would be fully reviewed at its fifteenth session. The Bureau decided, at its 13 July 2016 meeting, that the review would take place at the seventeenth session of the Assembly, once a reasonable period had transpired with the IOM being properly staffed.²³

At its nineteenth session, the Assembly adopted the revised operational mandate of the IOM and requested the Bureau to remain seized of the review of the work and the operational mandate of the Independent Oversight Mechanism, with a view to considering recommendations of the Independent Expert Review in this regard, subject to relevant decisions of the Assembly on the implementation of the report of the Independent Expert Review, and to report thereon to the Assembly at its twentieth session.²⁴

At its twentieth session, the Assembly requested the Bureau to remain seized of the review of the work and the operational mandate of the Independent Oversight Mechanism, with a view to considering recommendations of the Independent Expert Review²⁵ in this regard, and to report thereon to the Assembly at its twenty-first session.²⁶

Documentation

Report of the Bureau on the Review of the work and the Operational Mandate of the Independent Oversight Mechanism (ICC-ASP/21/25)

Annual report of the Head of the Independent Oversight Mechanism (ICC-ASP/21/8)

18. Amendments to the Rome Statute and the Rules of Procedure and Evidence

By resolution ICC-ASP/8/Res.6, the Assembly established a Working Group of the Assembly of States Parties for the purpose of considering, as from its ninth session, amendments to the Rome Statute proposed in accordance with article 121, paragraph 1, of the Statute at its eighth session,²⁷ as well as any other possible amendments to the Rome Statute and to the Rules of Procedure and Evidence, with a view to identifying amendments

²⁰ Para. 31.

²¹ Annex I, para. 3 (h).

²² ICC-ASP/12/Res.6, annex.

²³ https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2016-Bureau-05-13Jul2016.pdf.

²⁴ ICC-ASP/19/Res.6, annex I, para 15 (a).

²⁵ ICC-ASP/19/16.

²⁶ ICC-ASP/20/Res.5, annex I, para 15 (a).

²⁷ *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, annex II.

to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly of States Parties.

The Assembly will consider the report of the Working Group on Amendments.

Documentation

Report of the Working Group on Amendments (ICC-ASP/21/22)

19. Twentieth anniversary of the entry into force of the Rome Statute

No documentation

20. Decision concerning the date of the next session of the Assembly of States Parties

In accordance with rule 5 of the Rules of Procedure of the Assembly of States Parties, the date of commencement and the duration of each session of the Assembly shall be decided by the Assembly at its previous session. The Assembly will take a decision on the dates and venue of its twenty-second session and the venue of its twenty-third session.

21. Decisions concerning the dates and venue of the next sessions of the Committee on Budget and Finance

In accordance with paragraph 4 of the annex to resolution ICC-ASP/1/Res.4, the Committee on Budget and Finance shall meet when required and at least once per year. At its thirty-ninth session, the Committee decided tentatively to hold its fortieth session virtually on 23 January 2023, its forty-first session from 8 to 12 May 2023 in The Hague and its forty-second session from 4 to 15 September 2023 in The Hague.²⁸ The Assembly will take a decision on the dates and venue of the fortieth, forty-first and forty-second sessions of the Committee.

22. Other matters

²⁸ ICC-ASP/21/15, para. 359.