



## Assembly of States Parties

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## Report of the Bureau on the arrears of States Parties

### I. Introduction

1. The present report is being submitted pursuant to the mandate given to the facilitator, Mr. Rikiya Takahashi (Japan), on the issue of arrears, upon his appointment by the Bureau of the Assembly of States Parties (“the Assembly”) on 28 September 2012. The report follows the submission of reports to the fourth, fifth, sixth, seventh, eighth, ninth and tenth sessions of the Assembly by the previous facilitators on the same issue and aims to build on their findings and recommendations.<sup>1</sup> It should thus be read in conjunction with the said reports, whose recommendations have been endorsed by the Assembly. The facilitator held informal consultations with the New York Working Group on 5 October 2012.

2. The facilitation on the issue of arrears has a number of objectives:

(a) To find ways to ensure that no assessed contributions to the Court remain outstanding, by promoting a culture of financial discipline;

(b) To seek ways of cooperating with States Parties that have not met their financial obligations in order to reverse any outstanding balances;

(c) To examine what could be done in cases in which these outstanding contributions amount to arrears under article 112 of the Rome Statute and/or when obligations have not been met due to circumstances beyond the control of the State Parties in question;

(d) To keep under review the mechanism allowing States Parties to seek exemptions to article 112;<sup>2</sup> and

(e) To enhance communication among the Assembly, the Court and States Parties in arrears, so as to address the issue of outstanding assessed contributions more effectively.

3. In addition to endorsing the recommendations of the Bureau on the arrears of States Parties,<sup>3</sup> the Assembly, at its sixth session, “urge[d] all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions”<sup>4</sup> and “decide[d] 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 prompt payment of contributions by States Parties, as appropriate.”<sup>5</sup>

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<sup>1</sup> ICC-ASP/4/14, ICC-ASP/5/27, ICC-ASP/6/19, ICC-ASP/7/26, ICC-ASP/8/41, ICC-ASP/9/27 and ICC-ASP/10/34.

<sup>2</sup> Article 112, paragraph 8, of the Rome Statute provides as follows: “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. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.”

<sup>3</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth Session, New York, 30 November - 14 December 2007* (ICC-ASP/6/20), vol. I, part III, ICC-ASP/6/Res.2, para. 48, and annex III.

<sup>4</sup> *Ibid.*, para. 46.

<sup>5</sup> *Ibid.*, para. 48.

## II. Status of contributions and States in arrears as of 5 October 2012

4. As of 5 October 2012, seven States Parties are in arrears. The total amount of outstanding contributions to the Court by States Parties in arrears stands at €77,417, a decrease of 5.4% from last year, while the total outstanding contributions as of 5 October 2012 by all States Parties since 2002, amounts to €1,856,971. The seven States Parties will be required to make a minimum payment before the eleventh session of the Assembly (to be held from 14 to 22 November 2012), so as to avoid inducing the application of article 112 of the Rome Statute.

5. The total outstanding contributions by all States Parties to the approved programme budget for 2012 amounts to €1,105,549, which is equivalent to 10.2 percent of the total budget of €108,800,000.

## III. Informal consultations

6. The summary of the informal consultations held on 5 October 2012 is as follows:

(a) It was noted that the total outstanding contributions by all States Parties since 2002 had marked an increase of approximately 26% compared to last year. The view was expressed that given the budgetary pressures experienced by the Court, status of arrears should be kept under close examination which is not only confined to States Parties in arrears subjected to article 112, but all States Parties not met with their respective financial obligations to the Court.

(b) The desirability of improving coordination with and within States Parties was noted. It was suggested that States Parties be reminded regularly to pay their assessed contributions, both in New York and in The Hague, with a clear indication of the date by which their payments should be received. They were also informed that the forthcoming session of the Assembly brings with it elections in which they would be unable to participate if they do not make the minimum required payment or apply for and be granted an exception under article 112, paragraph 8, of the Statute.

(c) The manner in which the Assembly has granted waivers to States Parties in arrears under article 112, paragraph 8, of the Rome Statute was considered, and it was noted that no sanctions mechanism was yet in place. It was suggested that the Assembly might consider a greater regulation of the granting of such waivers. The Assembly should distinguish between States Parties genuinely unable to pay and those that chose not to pay for political reasons.

## IV. Conclusions

7. The best solution on arrears is to prevent States Parties from falling into arrears in the first place, but consideration must also be given to working with States Parties with outstanding contributions with a view to reducing the amount of outstanding contributions.

8. Finding ways to encourage and assist States Parties in arrears that are subject to article 112, continues to be one of the main aims of States Parties' strategies to combat arrears. In order to improve the situation, communication with those States Parties in arrears needs to be strengthened as much as possible. Furthermore, bearing in mind that the elections would take place at the eleventh session of the Assembly, the Secretariat of the Assembly was requested to send a note multiple times to the affected States ahead of the eleventh session of the Assembly of States Parties, reminding them of the outstanding contributions and informing them of the procedure available under article 112 (8) of the Rome Statute should they wish to seek exemption.

9. Measures suggested for the greater regularization of the granting of waivers included a limit on the number of years that a State may apply for such a waiver.

10. Considering the relatively large amount of outstanding contributions falling outside the scope of article 112, it is suggested that more attention continue to be given to this issue in future considerations by States Parties.