



Assembly of States Parties

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Thirteenth session

New York, 8-17 December 2014

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 thirteenth session of the Assembly of States Parties (“the Assembly”) to the Rome Statute of the International Criminal Court (ICC-ASP/13/1) has been prepared to assist the Assembly in its consideration of issues before it at its thirteenth session, which will be convened at United Nations Headquarters, New York, on Monday, 8 December 2014, at 10 a.m. The status of the documentation reflected herein is current as at 28 November 2014.

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. In accordance with rule 5 of the Rules of Procedure of the Assembly of States Parties ("Rules of Procedure"),¹ the Assembly, at the 12th meeting of its twelfth session, on 27 November 2013, decided to convene its thirteenth session in The Hague from 8 to 17 December 2014.

2. Silent prayer or meditation

Pursuant to rule 43 of the Rules of Procedure, 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. Election of the President of the Assembly of States Parties for the thirteenth to sixteenth sessions

In accordance with rule 29 of the Rules of Procedure of the Assembly of States Parties², unless the Assembly decides otherwise, the Assembly shall elect a new composition of the Bureau at the regular session marking the end of the term of office of the Bureau. The Bureau so elected shall assume its functions only at the conclusion of the session at which it is elected and shall hold office until the end of its term.

At its eighth meeting on 18 September 2014 the Bureau decided to recommend to the Assembly that H.E. Mr. Sidiki Kaba, Minister of Justice of Senegal, be elected President of the Assembly at the beginning of its thirteenth session.

4. Election of two Vice-Presidents and 18 members of the Bureau

In accordance with article 112, paragraphs 3 (a) and (b), of the Rome Statute, the Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms. Furthermore, the Bureau shall have a representative character, taking account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.

Pursuant to rule 29 of the Rules of Procedure, as amended by resolution ICC-ASP/3/Res.2, at the 5th meeting of its third session, the Assembly agreed on the future composition of the Bureau:

- (a) Group of Western European and other States: 5 seats;
- (b) Group of African States: 5 seats;
- (c) Group of Latin American and Caribbean States: 4 seats;
- (d) Group of Eastern European States: 4 seats; and
- (e) Group of Asia-Pacific States: 3 seats.

5. 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.

¹ *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* (ICC-ASP/1/3 and Corr.1), part II.C.

² As amended by resolution ICC-ASP/12/Res.8, annex III.

In accordance with rules 10 and 11 of the Rules of Procedure, the provisional agenda for the thirteenth session was issued on 23 September 2014. 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.

Pursuant to rule 12 of the Rules of Procedure of the Assembly of States Parties, Kenya and the Court submitted requests for inclusion of supplementary items in the agenda of the thirteenth session of the Assembly:

- (a) Request by Kenya for inclusion of a supplementary agenda item ‘Special Session to discuss the Conduct of the Court and the Office of the Prosecutor’.
- (b) Request by the Court for inclusion of a supplementary item ‘Applicability of the former Court’s pension regime to former Court’s judges Cotte and Nsereko’.

Pursuant to rule 13 of the Rules of Procedure of the Assembly of States Parties, Uganda submitted a request for inclusion of an additional item ‘Pension entitlements for former judges Bruno Cotte (France) and Professor Daniel N. Nsereko (Uganda)’ in the agenda of the thirteenth session of the Assembly.

Documentation

Provisional agenda (ICC-ASP/13/1)

List of supplementary items requested for inclusion in the agenda of the thirteenth session of the Assembly (ICC-ASP/13/34/Rev.1 and Add.1)

Request by Uganda for inclusion of an additional item in the agenda of the thirteenth session of the Assembly (ICC-ASP/13/35)

6. 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 Parties³ 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.⁴

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 rights⁵ 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.⁶

³ ICC-ASP/4/14.

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

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

⁶ *Ibid.*, para. 42.

At its twelfth session, the Assembly decided to biannualize the report on the arrears of States Parties.⁷

7. Credentials of representatives of States at the thirteenth 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.

8. 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.

9. General debate

No documentation

10. 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

Report of the Bureau on cooperation (ICC-ASP/13/23)

Report of the Bureau on the strategic planning process of the International Criminal Court (ICC-ASP/13/27)

Report of the Bureau on the Study Group on Governance (ICC-ASP/13/28)

Report of the Bureau on complementarity (ICC-ASP/13/30)

Report of the Bureau on victims and affected communities, Trust Fund for Victims and reparations (ICC-ASP/13/32)

Report of the Bureau on legal aid (ICC-ASP/13/33)

⁷ *Official Records ... Twelfth session ...* 2013 (ICC-ASP/12/20), vol. III ICC-ASP/12/Res.8, annex I, para. 10.

Report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court (ICC-ASP/13/36)

Report of the Bureau on non-cooperation (ICC-ASP/13/40)

11. 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 previous session of the Assembly.

Documentation

Report on the activities of the Court (ICC-ASP/13/37)

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

By its resolution ICC-ASP/1/Res.6,⁸ 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.

Documentation

Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2013 to 30 June 2014 (ICC-ASP/13/14)

13. Advisory Committee on Nominations

The establishment of the Advisory Committee on nominations of judges is foreseen in article 36, paragraph 4 (c), of the Rome Statute. Its terms of reference are set out in the report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court.⁹

According to its terms of reference, the Advisory Committee on nominations of judges is mandated to “facilitate that the highest-qualified individuals are appointed as judges of the International Criminal Court”. The information and analysis presented by the Committee is to inform the decision-making of States Parties and is not in any way binding on them or on the Assembly of States Parties.

The Committee is composed of nine members, nationals of States Parties, reflecting the principal legal systems of the world and an equitable geographical representation, as well as a fair representation of both genders, based on the number of States Parties to the Rome Statute. They are drawn from eminent interested and willing persons of a high moral character, who have established competence and experience in criminal or international law. Members of the Committee are not the representatives of States or other organizations. They serve in their personal capacity, and do not take instructions from States Parties, States or any other organizations or persons.

⁸ *Official Records ... First session, New York, 3-10 September 2002* (ICC-ASP/1/3 and Corr.1), part IV.

⁹ ICC-ASP/10/36, annex.

Committee members are designated for three year terms, with the possibility of being re-elected only once. The first election of the Committee members took place at the eleventh session of the Assembly in 2012. Four of the first members were chosen to serve only for one three year term, so as to stagger membership and provide continuity.

Documentation

Report of the Advisory Committee on Nominations of Judges on the work of its third meeting (ICC-ASP/13/22)

14. Election of six judges

On 24 January 2014 the Bureau decided to open the nomination period for the election of six judges, in accordance with paragraphs 3 of resolution ICC-ASP/3/Res.6, as amended by resolutions ICC-ASP/5/Res.5 and ICC-ASP/12/Res.8.

Under the terms of article 36 of the Rome Statute, six judges will be elected to serve for a term of nine years. According to article 36, paragraphs 3 and 5, the judges are to be nominated from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective State for appointment to the highest judicial offices. Every candidate for election to the Court should also have an excellent knowledge of and be fluent in at least one of the working languages of the Court. In addition, two lists of candidates have been established:

List A: Candidates having established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings;

List B: Candidates having established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court.

For purposes of this election to the Court, at least two judges will be elected from List B. In addition, at least two judges will be elected from the Eastern European group and one from the Asia-Pacific group. Furthermore, at least one male judge will be elected.

In accordance with the decision of the Bureau at its 24 January 2014 meeting, the nomination period for the elections for the posts of six judges was open between 28 April and 20 July 2014 and was extended, by the decision of the President of the Assembly, until 3 August 2014.

Documentation

Fifth election of judges of the International Criminal Court (ICC-ASP/13/3 and Add.1)

Election of the judges for the International Criminal Court: guide for the fifth election (ICC-ASP/13/21)

Report of the Advisory Committee on Nominations of Judges on the work of its third meeting (ICC-ASP/13/22)

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

By its resolution ICC-ASP/1/Res.4, the Assembly decided to establish 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 17 March 2014, the Bureau of the Assembly of States Parties (“the Assembly”) decided that the election of six members of the Committee on Budget and Finance would take place at the thirteenth session of the Assembly. Pursuant to the decision, the nomination period for the candidates for six seats on the Committee on Budget and Finance ran from 9 June to 31 August 2014 and was extended, by the decision of the President of the Assembly, until 14 September 2014.

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 end on 20 April 2015 belong to the following regional groups:

- (a) African States, one seat;
- (b) Asia-Pacific States, two seats;
- (c) Eastern European States, one seat;
- (d) Latin American and Caribbean States, one seat; and
- (e) Western European and Other States, one seat.

By the closing date of the nomination period, 14 September 2014, seven nominations had been received. Of the seven nominations, one was submitted by the Group of African States; three by the Group of Asia-Pacific States; one by the Group of Eastern European States; one by the Group of Latin American and Caribbean States; and one by the Group of Western European and Other States.

By communication, dated 17 November 2014, the Embassy of the Republic of Korea announced the withdrawal of the candidature of its candidate.

Documentation

Election of members of the Committee on Budget and Finance (ICC-ASP/13/4)

16. Election to fill a vacancy of the Committee on Budget and Finance

Pursuant to paragraph 2(a) of the annex to resolution ICC-ASP/1/Res.4, the Bureau decided on 15 August 2014 that the election to fill the vacancy which arose from the resignation of Mr. Gilles Finkelstein (France) would take place during the thirteenth session of the Assembly and the nomination period to fill the vacancy would run from 14 September to 26 October 2014.

By the closing date of the nomination period, 26 October 2014, one nomination by the Group of Western European and Other States had been received.

Documentation

Election to fill a vacancy on the Committee on Budget and Finance (ICC-ASP/13/38)

17. Consideration and adoption of the budget for the fourteenth 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.¹⁰

Documentation

Registry's fourth quarterly report on legal aid (ICC-ASP/13/2)

Report of the Committee on Budget and Finance on the work of its twenty-second session (ICC-ASP/13/5)

Registry report on ways to improve the legal aid procedures (ICC-ASP/13/6)

Report of the Court and the Trust Fund for Victims on the rules to be observed for the payment of reparations (ICC-ASP/13/7)

Report on budget performance of the International Criminal Court as at 30 June 2014 (ICC-ASP/13/8)

Report of the Court on policy issues (Accruals, anti-fraud and whistleblower, and multi-year project) (ICC-ASP/13/9)

Proposed Programme Budget for 2014 of the International Criminal Court (ICC-ASP/13/10 and Add.1)

Financial statements for the period of 1 January to 31 December 2013 (ICC-ASP/13/12 and Corr.1)

Trust Fund for Victims: Financial statements for the period of 1 January to 31 December 2013 (ICC-ASP/13/13)

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 2011 to 30 June 2014 (ICC-ASP/13/14)

Report of the Committee on Budget and Finance on the work of its twenty-third session (ICC-ASP/13/15)

Report of the Court on the organizational structure (ICC-ASP/13/16)

First quarterly report of the Registry on legal aid (ICC-ASP/13/17)

Report of the Court on human resources management (ICC-ASP/13/18)

Report on activities and programme performance of the International Criminal Court for the year 2013 (ICC-ASP/13/19)

Registry's sixth quarterly report on legal aid (ICC-ASP/13/24*)

Report on the anticipated financial impact of the new strategy of the Office of the Prosecutor (ICC-ASP/13/25)

Report on the review of the organizational structure of the Registry (ICC-ASP/13/26)

¹⁰ *Official Records ... Third session ... 2004* (ICC-ASP/3/25), part II.A.8(b), para. 50, and part II.A.1, para. 4.

18. 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 the 11th meeting of its first session, on 22 April 2003, the Assembly was informed that the Bureau, acting under the delegated authority of the Assembly,¹¹ had appointed the National Audit Office of the United Kingdom of Great Britain and Northern Ireland as Auditor for the Court for a period of four years.¹²

In accordance with regulation 12.7, the 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.

At its tenth session, the Assembly endorsed the Committee's recommendation to appoint *la Cour des comptes* (France) as the new External Auditor of the International Criminal Court and the Trust Fund for Victims for four years starting with the financial year 2012.¹³

Documentation

Financial statements for the period 1 January to 31 December 2013 (ICC-ASP/13/12 and Corr.1)

Trust Fund for Victims - Financial statements for the period 1 January to 31 December 2013 (ICC-ASP/13/13)

19. Premises of the Court

At its sixth session, the Assembly adopted resolution ICC-ASP/6/Res.1, whereby it, inter alia, decided that the permanent premises of the Court should be constructed on the Alexanderkazerne site. Furthermore, the Assembly established an Oversight Committee, composed of ten States Parties, to provide strategic oversight for the permanent premises project in accordance with annex II of that resolution.¹⁴

Annex II of that resolution also provides, inter alia, that the Oversight Committee shall submit any draft resolutions or information to the Assembly through the Bureau and provides that the Chairperson of the Oversight Committee shall report to the Assembly.

The permanent premises project continues to proceed on schedule. The premises are expected to be completed and ready for occupation by the Court from September 2015. The Registrar therefore had formally given notice to the landlords that the Court wishes to terminate the leases for the current interim premises as of end-December 2015.

Costs remain within the unified project budget set by the Assembly at €195.7 million, at its twelfth session¹⁵ including both the reduced construction budget of €184.4 million and the transition budget of €1.3 million. However, there are currently pressures on both sub-budgets, and no risk allowance remained for transition activities in the revised €1.3 million budget. In order to take measures which give financial security to the project in the worst-case scenario, authorization is needed to commit funds beyond the current cap of €195.7 million. The Assembly is requested to raise the unified project budget from €195.7 million to €200 million, i.e. an authorization to spend up to an additional €4.3 million in case of need.

¹¹ *Official Records ... First session, New York, 3-10 September 2002* (ICC-ASP/1/3 and Corr.1), part I, para. 29.

¹² *Official Records... First session (first and second resumptions) ... 2003* (ICC-ASP/1/3/Add.1), part I, para. 40.

¹³ *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part II, para. 10.

¹⁴ *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part. III, ICC-ASP/6/Res.1, paras. 1 and 4.

¹⁵ *Official Records ... Twelfth session ... 2013* (ICC-ASP/12/20), vol. III ICC-ASP/12/Res.2.

The Committee submits to the approval of the Assembly a decision whereby the Committee is delegated authority to decide, as a measure of last resort and as necessary and appropriate, on any project budget increase of up to €4.3 million in 2015 up to a total of €200 million (from €195.7 million).

Documentation

Report on the activities of the Oversight Committee (ICC-ASP/13/39)

20. 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,¹⁶ 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 to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly of States Parties.

The judges of the Court, acting pursuant to article 51, paragraph 2 (b), of the Rome Statute, have submitted proposals to amend rule 76(3), rule 101(3) and rule 144(2)(b) of the Rules of Procedure and Evidence, and to introduce rule 140*bis*. The Assembly would consider the proposed amendments on the basis of the report of the Working Group on Amendments.

Documentation

Report of the Bureau on the Study Group on Governance (ICC-ASP/13/28)

Report of the Working Group on Amendments (ICC-ASP/13/31)

21. Cooperation

By resolution ICC-ASP/12/Res.3, the Assembly requested the Bureau to maintain a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court and non-governmental organizations as well as other interested States and relevant organizations in order to further strengthen cooperation with the Court.

The Assembly also noted with appreciation the need to include cooperation as a standing agenda item for future sessions of the Assembly. On 11 December 2014, the Assembly will hold a panel discussion in plenary session to consider the topic of cooperation.

Documentation

Report of the Court on cooperation (ICC-ASP/13/23)

Report of the Bureau on cooperation (ICC-ASP/13/29, Add.1 and Add.2)

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

In accordance with rule 5 of the Rules of Procedure, the date of commencement and the duration of each session of the Assembly shall be decided by the Assembly at its previous session. At its twelfth session, the Assembly decided to hold its thirteenth session in New York from 8 to 17 December 2012 and its fourteenth session in The Hague..¹⁷

¹⁶ *Official Records ... Eighth session ...* 2009 (ICC-ASP/8/20), vol. I, annex II.

¹⁷ *Official Records ... Twelfth session ...* 2013 (ICC-ASP/12/20), vol. I, part I para. 49.

23. 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 twenty-third session, the Committee decided, tentatively, to hold its twenty-fourth session from 20 to 24 April 2015 and its twenty-fifth session from 21 September to 2 October 2015, respectively.¹⁸

24. Other matters

¹⁸ *Official Records ... Thirteenth session ...* 2014 (ICC-ASP/13/20), vol. II., part B.2, para. 174.