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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 Andrés Terán Parral (Ecuador), pursuant to the mandate given by the Bureau to the focal points for the sub-topics of budget management oversight and premises (Ambassador Annika Markovic (Sweden), 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 2020. 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

A. Introduction

1. The mandate for budget management oversight in 2020 is derived from the budget resolution adopted at the eighteenth session of the Assembly of States Parties.¹ On 18 December 2019 the Bureau approved the allocation of budget management oversight to The Hague Working Group as a sub-topic of the budget facilitation. On 24 January 2020, the Bureau appointed Ambassador Annika Markovic (Sweden) as focal point for the topic of budget management oversight.

B. Meetings and discussions

2. Two meetings were held on the topic of budget management oversight in 2020: one on 20 February and one on 20 October 2020. The meeting on 20 October was held by remote-link due to the restrictions imposed by COVID-19.

3. The meetings provided an opportunity for States Parties to continue their consideration of various matters related to the topic of budget management oversight, including audit and strategic planning.

1. Appointment of the External Auditor

4. At its meeting on 20 October the working group considered the recommendation of the Audit Committee regarding the procurement of a new External Auditor for the Court and the Trust Fund for Victims. It was noted that the term of the current External Auditor, the *Cour des comptes*, would end with the financial statements for 2020, and that the Audit Committee was mandated under its Charter with making recommendations to the Assembly concerning the appointment of the External Auditor.

5. In the report of its eleventh session, the Audit Committee recommended that the Assembly appoint the Board of Audit and Inspection of the Republic of Korea as the new External Auditor.² The Committee on Budget and Finance endorsed that recommendation in the report of its thirty-fourth session, and, on the recommendation of the Audit Committee, authorized the Registrar to cooperate with the Board of Audit and Inspection of the Republic of Korea in order to make the necessary arrangements for the procurement of external auditing services, subject to the approval of the Assembly.³

6. The working group received a briefing from the Chair of the Audit Committee on the procurement process, and agreed to endorse the recommendation of the Audit Committee to appoint the Board of Audit and Inspection of the Republic of Korea as the External Auditor of the Court and the Trust Fund for Victims for the years 2021-2024.

2. Evaluation of the oversight bodies

7. One of the outcomes of the discussions on budget management oversight in 2019 had been a recommendation that the Assembly request the External Auditor, the *Cour des comptes*, to undertake an evaluation of the oversight bodies, and to recommend possible actions on their respective mandates and reporting lines.⁴ States Parties discussed the draft Terms of Reference for the evaluation at the meeting on 20 February. At the meeting on 20 October, the focal point noted that progress on the evaluation had been affected by the limitations imposed by COVID-19. In order to provide a transparent and well-informed

¹ ICC-ASP/18/Res.1, Sections I and J.

² AC/11/5, para. 54.

³ ICC-ASP/19/5, para. 23.

⁴ See resolution ICC-ASP/18/Res1, Section I, para. 6.

result for the Assembly, the External Auditor considered it necessary to have an in-person workshop with as many of the key interlocutors as possible.

8. The working group was informed that the External Auditor intended to complete the task as soon as possible, but that it may not be possible before the nineteenth session of the Assembly.

3. Amendments to the Charter of the Audit Committee

9. At the meeting on 20 February, the working group considered the draft amendments to the Charter of the Audit Committee which had been proposed by the Committee in the report of its tenth session.⁵ It was recalled that the Assembly had taken note of the proposed amendments at its eighteenth session, and requested the Audit Committee to provide more detailed background information. The Assembly had also decided to consider the amendments, together with any additional information provided by the Committee, and taking into consideration the outcome of the evaluation which was to be undertaken by the External Auditor, in order to take a decision as appropriate.⁶ The point was made that further information would be useful regarding the reasoning and urgency for the amendments to the Charter. Some States Parties noted that the forthcoming evaluation by the External Auditor as well as the Independent Expert Review⁷ may have relevance to the mandate of the Audit Committee. The view was expressed that it would be important to ensure the Charter was in line with existing international standards regarding the audit functions of an institution such as the Court.

10. In the report on its eleventh session, the Audit Committee emphasized that the proposed amendments mainly sought to improve the format, terminology and language of the original Charter, and to ensure that it was in line with the processes adopted after the re-establishment of the Audit Committee.⁸ The report also noted that there may be value in deferring the amendments to the Charter until after the completion of the evaluation of the oversight bodies by the External Auditor, and after the completion of the Independent Expert Review of the Court.⁹

11. At the meeting held on 20 October the working group noted that it would be necessary to return to the matter in 2021.

4. Strategic Plan of the Trust Fund for Victims, 2020-2021

12. At the meeting on 20 October, the working group received a presentation on the new Strategic Plan of the Trust Fund for Victims (TFV) for 2020-2021. The Strategic Plan had been adopted in August 2020 by the Board of the TFV, and had been developed in light of the recommendations of the Independent Oversight Mechanism (IOM) in its December 2019 report. The Strategic Plan also took into account the impact of COVID-19. The new Plan was aligned with the Plan of the Court, and would follow the same three-year cycle in the future. The Strategic Plan was also supported by an “Activity Tracker” and a “Management Brief”, both of which would be made public on the TFV website. The Strategic Plan contained two main strategic goals, to provide better focus and more clarity: Impact and Performance. There was a focus on performance at the organizational level, including the efficiency and effectiveness of the TFV, good governance, transparency and accountability. The Strategic Plan also highlighted some of the challenges facing the TFV, specifically: a) to be responsive to victims’ rights and needs, and ensure maximum impact and value; b) to be seen to be responsible – i.e. to increase the visibility of actions and results, and demonstrate they are concrete and respond to the satisfaction of the victims; and c) to promote and benefit from greater systemic efficiency and make sure reparations were proportional and sustainable.

⁵ AC/10/5, paras. 87-88 and annex II.

⁶ Resolution ICC-ASP/18/Res.1, section I, para. 7.

⁷ The Final Report of the Independent Expert Review of the International Criminal Court and the Rome Statute System was submitted on 30 September 2020 (ICC-ASP/19/16).

⁸ AC/11/5, para. 86.

⁹ AC/11/5, para. 87.

C. Recommendations

13. The focal point, through the Bureau, submits the proposed language contained in the appendix to this report for the consideration of the Assembly.

Appendix

Proposed resolution language for 2020

To be inserted into the budget resolution

Audit

The Assembly of States Parties,

Having regard to the Charter of the Audit Committee, adopted at its fourteenth session,¹ as amended,

Noting the reports of the Audit Committee on the work of its eleventh and twelfth sessions,²

Further noting the recommendations of the Committee on Budget and Finance concerning audit matters,³

1. *Welcomes* the reports of the Audit Committee on the work of its eleventh and twelfth sessions;
2. *Decides* to appoint the Board of Audit and Inspection of the Republic of Korea as the External Auditor of the International Criminal Court and the Trust Fund for Victims for four years starting with the financial year 2021;
3. *Recalls* its request to the External Auditor, the *Cour des comptes*, to conduct an evaluation of the oversight bodies of the Court as part of its work in 2020, replacing the performance audit, and to recommend possible actions on their respective mandates and reporting lines, while fully respecting the independence of the Court as a whole, and *looks forward* to considering the outcome of that evaluation as soon as it is available; and
4. *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 and *decides* to consider those amendments, taking into consideration the outcome of the evaluation to be undertaken by the External Auditor and the report of the Independent Expert Review,⁴ in order to take a decision as appropriate.

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. *Welcomes* the report of the Office of the Prosecutor on the implementation of its Strategic Plan for 2016-2018, and *requests* the Court to continue to assess, develop and apply the lessons learned contained therein;
4. *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;

¹ Official Records ... Fourteenth session ... 2015 (ICC-ASP/14/20), vol. II, part B.3, annex IV.

² AC/11/5 and AC/12/5, available on the website of the Audit Committee at: https://asp.icc-cpi.int/en_menus/asp/AuditCommittee.

³ ICC-ASP/19/5, paras. 20 to 24 and ICC-ASP/19/15, paras. 214 to 227.

⁴ ICC-ASP/19/16.

5. *Recalls* its invitation to the Court to hold annual consultations with the Bureau in the first trimester on the implementation of its strategic plans during the previous calendar year, including on use of and improvements on performance indicators;
6. *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; and
7. *Notes* the oversight roles of the Audit Committee, the Committee on Budget and Finance, the External Auditor, the Independent Oversight Mechanism, and the Office of Internal Audit, and *recommends* that these bodies continue to expand their coordination in order to improve the timely exchange of information and reporting of results amongst them, the organs of the Court, the Bureau, and the Assembly, to optimize their oversight capacities, and to avoid duplication of competence and work.

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 2020 was derived from resolution ICC-ASP/18/Res.1, which was adopted by the Assembly of States Parties at its eighteenth 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 nineteenth session of the Assembly”.

2. The Bureau appointed Ms. Marija Stajic-Radivojsa (Serbia) as focal point for the topic of premises on 24 January 2020.

B. Meetings and discussions

3. In 2020, The Hague Working Group (“the working group”) held three consultations on the budget sub-topic of premises: on 15 October, 16 November and 9 December. 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. 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-fifth session.⁵

5. At the meeting on 15 October, States Parties received a briefing on the “Report of the Court on updated and detailed plans and a multi-year financing mechanism for capital replacements.”⁶ At the meeting on 16 November, States Parties received a presentation from the Court on the distinction between maintenance (both preventive and corrective) and capital replacement, the expenditure on those items in 2020, and the proposed budget for 2021.

6. At the meeting on 15 October, a query was raised as to whether the premises sub-topic should be addressed within the budget facilitation.

Expenditure in 2020

7. During the presentation on 16 November, the Court provided an outline of expenditure on maintenance and capital replacement in 2020, and in particular how the Court had managed within the reduced funding envelope approved by the Assembly at its eighteenth session.

8. A representative of the Registry informed the working group that the Court had undertaken a reprioritization exercise in light of the approved budget for capital replacement, and had identified the most vulnerable elements (external doors and windows; electrical infrastructure; security and safety installations). The Registry had then closely monitored the performance of those elements during the year, so that it was able to react immediately in case of any issues. In line with the guidance from the Assembly, items had only been replaced when a breakdown had already occurred or was imminent. In response to a query, the representative of the Registry noted that such an approach had produced some challenging situations, but there had been no significant business interruptions as a result. However, the likelihood of such interruptions would increase if the same approach were taken over a longer period, as the components continue to age and thus represent a higher risk of failure.

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 had reduced the frequency of usage, key components were still required to be

⁵ ICC-ASP/19/15.

⁶ Report of the Court on updated and detailed plans and a multi-year financing mechanism for capital replacements (ICC-ASP/19/8).

operational to support Court activities, such as hearings. In addition, it had been necessary to operate the Building Management System and the security and safety installations continuously throughout the period.

Proposed budget for 2021

10. The Court had submitted a proposed budget of €2,270.0 thousand for Major Programme V: Premises in 2021, comprising €1,891.0 thousand for maintenance (corrective and preventive) and €378.9 thousand for capital replacement.⁷ 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 2020.⁸ 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.⁹

Maintenance

11. The working group was informed that the budget for both preventive and corrective maintenance (€1,891.0 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 €378.9 thousand.

Capital replacement

12. At the meeting on 15 October, the working group received a briefing on the “Report of the Court on updated and detailed plans and a multi-year financing mechanism for capital replacements”, which States Parties had received on 12 October. The report had been submitted by the Court to the Committee for consideration at its thirty-fourth session, but had been deferred for consideration at the thirty-fifth session as a result of the restrictions imposed by COVID-19. The report contained a medium (five year) plan and a long term plan for capital replacements, as well as suggestions for a financing mechanism. The Committee had noted that, in light of the lower proposed budget for 2021, the Five-Year Plan would have to be updated.¹⁰ The Committee recommended reassessing the medium and long-term capital replacement plans in light of budgetary appropriations for 2021, taking into account the need to minimize operational risks for the Court and giving priority to maintenance over replacement whenever economically sensible, in line with the principle of sustainability.¹¹ The Committee also recommended that the Court submit to the Assembly, through the Committee, as part of the proposed programme budget each year, an updated Five-Year Plan for capital replacement, ensuring that operational risks for the Court are limited as far as possible.¹²

13. On the topic of financing for capital replacement, the Committee had noted that the Court advocated the establishment of a fund to assure reliable funding. The Committee continued to not support the establishment of a fund, but indicated that it would be prepared to reassess the situation at its thirty-seventh session.¹³ During discussions in the working group, States Parties reiterated that they were not in favour of establishing a fund.

14. The Committee had reiterated its recommendation from its thirty-third session that the Assembly consider appointing one or more external *pro bono* experts from States Parties to provide expert advice in terms of the planning and implementation of capital replacement plans.¹⁴ The Committee had also recommended that the Court explore alternative arrangements to further integrate maintenance and capital replacement programmes into one contract, as an alternative solution to the current contractual arrangements.¹⁵

⁷ ICC-ASP/19/10, para. 664.

⁸ ICC-ASP/19/10, para. 663.

⁹ ICC-ASP/19/15, para. 107.

¹⁰ ICC-ASP/19/15, para. 100.

¹¹ ICC-ASP/19/15, para. 105.

¹² ICC-ASP/19/15, para. 100.

¹³ ICC-ASP/19/15, para. 103.

¹⁴ ICC-ASP/19/15, para. 104.

¹⁵ ICC-ASP/19/15, para. 106.

Artwork donations

15. The working group welcomed with appreciation the donation of three artworks for the premises of the Court in 2020:

a) the donation by Australia of a painting by a senior female Aboriginal artist, Wawiriya Burton, entitled “Ngayuku Mamaku Ngura – My Father’s Country”, which speaks about the importance of law and justice for a safe and peaceful society;

b) the donation by Ireland, entitled “Oak”, of green glass fibre reinforced concrete benches representing the strength of the mighty oak tree, a traditional Irish symbol of truth, justice, courage and wisdom, qualities inherent in the work of the Court, and also depicting “An Bradán Feasa (Salmon of Knowledge)”, an important metaphor in Irish folklore mythology; and

c) the donation by Romania of a painting representing Vespasian V. Pella, a Romanian lawyer, scholar and diplomat who was an early advocate of the idea of establishing an International Criminal Court, which was unveiled in a ceremony on 9 November 2020.

C. Recommendations

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

Appendix

Proposed resolution language for 2020

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,¹

1. *Approves* capital replacement for the premises of the Court at the level of €378.9 thousand in 2021, 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, *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, and *invites* the Court to submit a rolling medium and updated long-term capital replacement plans and estimates in line with these principles;
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 intention of the Committee to review the medium and long-term plans and 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,² 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 recommendation of the Committee³ regarding a mechanism for *pro bono* expert advice from States Parties in the planning and implementation of capital replacement, and *invites* States Parties to further explore this possibility and put forward suggestions in this regard;
6. *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 twentieth session of the Assembly; and
7. *Welcomes with appreciation* the artwork donations to the premises of the Court made by several States Parties in 2020.

¹ ICC-ASP/19/15, paras. 95 to 107.

² ICC-ASP/19/15, paras. 105 and 106.

³ ICC-ASP/18/15, para. 116 and ICC-ASP/19/15, para. 104.