



Assembly of States Parties

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Twentieth session

The Hague, 6-11 December 2021

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 twentieth session of the Assembly of States Parties (“the Assembly”) to the Rome Statute of the International Criminal Court (ICC-ASP/20/1) has been prepared to assist the Assembly in its consideration of issues before it at its twentieth session, which will be convened in The Hague on Monday, 6 December 2021, at 10 a.m. The status of the documentation reflected herein is current as at 7 December 2021.

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 4th meeting of the nineteenth session, on 16 December 2020, the Assembly decided to hold its twentieth session in The Hague from 6 to 11 December 2021.

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 twentieth session was issued on 19 February 2021. 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/20/1)

4. Election of Bureau members

At the first resumption of the nineteenth session, the Assembly elected the members of the Bureau for the twentieth to twenty-second sessions, and noted that at the Bureau's 17th meeting, on 12 January 2021,¹ the Bureau had taken note of the seat-sharing arrangements agreed to by the Group of Asia-Pacific States and the Western European and other States Group.²

The Assembly will, on the recommendation of the Bureau, elect the Bureau members for the remainder of the term of the Bureau, according to the internal seat-sharing arrangements of the Asia-Pacific and the Western Europe and other States groups.

5. 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

¹https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19R/Bureau17.agenda%20and%20decisions%20-%20ENG.pdf (annex).

² *Official Records ... Nineteenth session, first resumption...*2021 (ICC-ASP/19/20/Add. I, Part I, para. 14 and footnote 6.

³ ICC-ASP/4/14.

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

At its nineteenth 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 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 twentieth session.⁷

Documentation

Report of the Bureau on the arrears of States Parties (ICC-ASP/20/27)

6. Credentials of representatives of States at the twentieth 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.

7. 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.

8. 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 the pre-recorded videos

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.

⁷ *Official Records...Nineteenth session... 2020* (ICC-ASP/19/20), vol. I, part III, ICC-ASP/19/Res.6, annex I, para. 16(b).

or in-person statements. Other statements may be submitted as a written statement, which will be posted on the Assembly webpage.

No documentation

9. 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/20/16)

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/20/17)

Report of the Bureau on the Study Group on Governance (ICC-ASP/20/21)

Report of the Bureau on complementarity (ICC-ASP/20/22)

Report of the Bureau on non-cooperation (ICC-ASP/20/23)

Report of the Bureau on the Review of the work and the Operational Mandate of the Independent Oversight Mechanism (ICC-ASP/20/24)

Report of the Court on cooperation (ICC-ASP/20/25)

Report of the Bureau on cooperation (ICC-ASP/20/26)

Report of the Bureau on the arrears of States Parties (ICC-ASP/20/27)

Report of the Working Group on Amendments (ICC-ASP/20/28)

Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court (ICC-ASP/20/29)

Report of the Bureau on the review of the procedure for the nomination and election of judges (ICC-ASP/20/30)

Report of the Bureau on the Budget sub-topics of Budget Management Oversight and Premises (ICC-ASP/20/31)

Report on the Constitution and Activities of the International Criminal Court Bar Association (“ICCBA”) (ICC-ASP/20/32)

Report of the Bureau on the scheduling of Assembly sessions (ICC-ASP/20/33)

10. 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 nineteenth session of the Assembly.

Documentation

Report on the activities of the International Criminal Court (ICC-ASP/20/9)

11. 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 projects and the activities of the Board of Directors of the Trust Fund for Victims for the period 1 July 2020 to 30 June 2021 (ICC-ASP/20/14)

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

Further to the decision of the Assembly at the eighteenth session to commission an Independent Expert Review of the International Criminal Court and the Rome Statute system and to appoint a Group of Independent Experts for this purpose (ICC-ASP/18/Res.7), the Assembly will consider the report and recommendations of the Group of Independent Experts and take decisions on their implementation.

Documentation

Overall Response of the ICC to the IER report (ICC-ASP/20/2)

Report of the Review Mechanism submitted pursuant to ICC-ASP/19/Res.7 (ICC-ASP/20/36)

13. Election of the Deputy Prosecutor

Article 42, paragraph 4, of the Rome Statute, provides that the Deputy Prosecutor(s) shall be elected by secret ballot by an absolute majority of the members of the Assembly from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. In accordance with article 42 (4) of the Rome Statute, unless a shorter term is decided upon at the time of the election, the Deputy Prosecutor shall hold office for a term of nine years and shall not be eligible for re-election. The procedure for the nomination and election of Deputy Prosecutor(s) is regulated by Assembly resolution ICC-ASP/1/Res.2.

Documentation

Election of the Deputy Prosecutor of the International Criminal Court (ICC-ASP/20/34)

Election of the Deputy Prosecutors of the International Criminal Court: guide for the fourth election (ICC-ASP/20/37/Rev.1)

14. Election of the members of the Board of Directors of the Trust Fund for Victims

By resolution ICC-ASP/1/Res.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. The relevant resolutions for the nomination and election of the members of the Board are ICC-ASP/1/Res.6 (as amended by resolutions ICC-ASP/4/Res.5 and ICC-ASP/4/Res.7) and ICC-ASP/1/Res.7.

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

At its fourth meeting, on 2 June 2021, the Bureau decided that the seventh election of the members of the Board of Directors of the Trust Fund for Victims would be held during the twentieth session of the Assembly and that the nomination period would run from 7 June to 29 August 2021 (CET). On 30 August 2021, since the number of candidates remained less than the number of seats and not all regions had presented a candidate, the President extended the nomination period for a period of two weeks, until 12 September 2021 (CET), pursuant to paragraph 4 of resolution ICC-ASP/1/Res.7. At the close of the nomination period, on 12 September 2021, five candidates had been nominated.

The Assembly will elect members of the Board of Directors for a three-year term, to commence on 6 December 2021, to fill the vacancies arising upon the conclusion of the terms of office of the five current members of the Board on 5 December 2021.

Documentation

Seventh election of members of the Board of Directors of the Trust Fund for Victims (ICC-ASP/20/18)

15. Election of the members of the Advisory Committee on nominations of judges

Article 36, paragraph 4 (c), of the Rome Statute provides that the Assembly “may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee’s composition and mandate shall be established by the Assembly of States Parties.” At the eleventh session, the Assembly established the Advisory Committee and, on the recommendation of the Bureau,⁹ appointed by consensus the nine members of the Committee. At its seventeenth session, the Assembly, on the recommendation of the Bureau, appointed by consensus the nine members of the Advisory Committee on nominations for a three-year term commencing on 5 November 2018. The Assembly will, on the recommendation of the Bureau, appoint members of the Advisory Committee.

Documentation

Designation of the members of the Advisory Committee on Nominations (ICC-ASP/20/19)

16. Consideration and adoption of the budget for the twentieth 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

Report of the Court on Human Resources Management (ICC-ASP/20/3)

Report of the Court on its assessment of alternative arrangements to further integrate maintenance and capital replacements (ICC-ASP/20/4)

⁹ Report of the Bureau Working Group on the Advisory Committee on Nominations (ICC-ASP/11/47).

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

Report of the Committee on Budget and Finance on the work of its thirty-sixth session (ICC-ASP/20/5)¹¹

Report on activities and programme performance of the International Criminal Court for the year 2020 (ICC-ASP/20/7)

Report of the Court on its assessment of medium and longterm arrangements for capital replacements in the light of budgetary appropriations for 2021 (ICC-ASP/20/8)

Proposed Programme Budget for 2022 of the International Criminal Court (ICC-ASP/20/10, Corr.1 and Corr.2)¹²

Report of the Registry on the approximate costs allocated so far within the Court in relation to referrals by the Security Council (ICC-ASP/20/11)

Report of the Committee on Budget and Finance on the work of its thirty-seventh session (ICC-ASP/20/15)¹³

Report of the Bureau on the Budget sub-topics of Budget Management Oversight and Premises (ICC-ASP/20/31)

Proposed Programme Budget for 2022 of the International Criminal Court – Executive Summary (ICC-ASP/20/INF.3)

17. 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 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 2012.¹⁴ At its fourteenth session, the Assembly agreed to extend the term of the External Auditor by two years so as to include the financial statements of the Court and the Trust Fund for Victims for 2016 and 2017, and decided to expand the scope of that mandate by including performance audits.¹⁵ At its fifteenth session, the Assembly agreed to extend the term of the External Auditor by a further two years so as to include the financial statements of the Court and the Trust Fund for Victims for 2018 and 2019.¹⁶ At its eighteenth session, the Assembly agreed to extend the term of the External Auditor for a further year, so as to include the financial statements of the Court and the Trust Fund for Victims for 2020.¹⁷

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 thirteenth and fourteenth sessions.¹⁸

¹¹ *Official Records... Twentieth session... 2021* (ICC-ASP/20/20), vol. II, part B.1.

¹² *Ibid.*, part A.

¹³ *Ibid.*, part B.2.

¹⁴ *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part II, para. 10.

¹⁵ *Official Records ... Fourteenth session ... 2015* (ICC-ASP/14/20), vol. I, part III, ICC-ASP/14/Res.1, para K.2.

¹⁶ *Official Records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. I, part III, ICC-ASP/15/Res.1, para K.2.

¹⁷ *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. I, part III, ICC-ASP/18/Res.1, para I.2.

¹⁸ Available on the website of the Assembly at http://asp.icc-cpi.int/en_menus/asp/AuditCommittee.

Documentation

External auditor: Final report on the International Criminal Court Governance Oversight (ICC-ASP/20/6)

Financial statements of the International Criminal Court for the year ended 31 December 2020 (ICC-ASP/20/12)¹⁹

Financial statements of the Trust Fund for Victims for the year ended 31 December 2020 (ICC-ASP/20/13)²⁰

External Auditor audit report on the administrative management of the departments of the Presidency and the Office of the Prosecutor (ICC-ASP/20/35)

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,²¹ 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 Assembly will consider the report of the Working Group.

Documentation

Report of the Working Group on Amendments (ICC-ASP/20/28)

19. Cooperation

By resolutions ICC-ASP/15/Res.3²² and ICC-ASP/15/Res.5,²³ 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 2021, the Assembly will hold a plenary session on cooperation, which will address as the main topics cooperation agreements and the launch of a network of national focal points in matters of identification and freezing of assets.

Documentation

Report of the Court on cooperation (ICC-ASP/20/25)

Report of the Bureau on cooperation (ICC-ASP/20/26)

20. 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)²⁴ 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

¹⁹ *Official Records... Twentieth session.... 2020* (ICC-ASP/20/20), vol. II, part C.1.

²⁰ *Ibid.*, part C.2.

²¹ *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, annex II.

²² Para. 31.

²³ Annex I, para. 3 (h).

²⁴ ICC-ASP/12/Res.6, annex.

session of the Assembly, once a reasonable period had transpired with the IOM being properly staffed.²⁵

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.²⁶

Documentation

Annual report of the Head of the Independent Oversight Mechanism (ICC-ASP/20/16)

Report of the Bureau on the Review of the work and the Operational Mandate of the Independent Oversight Mechanism (ICC-ASP/20/24)

21. 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-first session and the venue of its twenty-second session.

22. 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-seventh session, the Committee decided tentatively to hold its thirty-eighth session virtually on 11 January, its resumed thirty-eighth session from 9 to 13 May 2022 and its thirty-ninth session from 12 to 23 September 2022.²⁷ The Assembly will take a decision on the dates and venue of the thirty-eighth and thirty-ninth sessions of the Committee.

23. Other matters

²⁵ https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2016-Bureau-05-13Jul2016.pdf.

²⁶ ICC-ASP/19/Res.6, annex I, para 15 (a).

²⁷ ICC-ASP/20/15, para. 286.