

**Twentieth session**

The Hague, 6-11 December 2021

**Report of the Court on its assessment of medium and long-term arrangements for capital replacements in the light of budgetary appropriations for 2021****Executive Summary**

The Court welcomed the approval granted by the Assembly to start the capital replacement programme in 2020. Due to budgetary constraints, the methodology originally adopted by the Court to estimate medium and long-term capital replacements plan shifted from industry standards and manufacturers' instructions to replacing components as they break or show signs of breaking.

The Court has had to reduce drastically its estimates for capital replacement expenditure in 2022. Following similar reductions in 2020 and 2021, the list of pending replacements has increased to a potential deficit against recommended expenditure of more than €1,800,000 at the end of 2022. This deficit will roll over to 2023. Because of the reduced funds for capital replacements, the Court continues to commit only to replacing or repairing those essential items that have failed or are in danger of imminent failure. The risk of this strategy is the likelihood of higher costs for corrective maintenance and capital replacements in the longer term, and of building critical failures occurring at any time.

**I. Introduction**

1. At its thirty-fifth session, the Committee on Budget and Finance ("the Committee") recommended reassessing the medium- and long-term capital replacement plan in light of budgetary appropriations for 2021, taking into account the need to minimize operational risks for the International Criminal Court ("the Court") and giving priority to maintenance over replacement whenever economically sensible, in line with the principle of sustainability. The Committee looked forward to receiving updated information at its thirty-seventh session.<sup>1</sup> Furthermore, the Assembly of States Parties reiterated the need for the capital replacement to be fully justified and limited only to those elements which are absolutely necessary, requested the Court to continue to ensure that all measures are taken to achieve savings and

\* Previously issued as CBF/37/12.

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Nineteenth session, The Hague, 14-16 December 2020* (ICC-ASP/19/20), vol. II, part B.2, para 105.

efficiencies, including using alternatives to capital replacement whenever possible, and invited the Court to submit rolling medium- and updated long-term capital replacement plans and estimates in line with these principles.<sup>2</sup>

2. In this report, the Court explains the methodology currently used to assess the medium- and long-term capital replacement plan and the difficulties involved in reassessing it within the limits of the 2021 appropriations.

## **II. Capital replacements: industry standards methodology versus repair approach**

3. The Court, in cooperation with its maintenance contractor, has applied industry standards and manufacturers' instructions for the estimates that constitute the medium- and long-term capital replacement plans. This methodology provides widely recognized parameters for future capital replacement projections while providing assurances of reliable long-term operability, business continuity, containment of maintenance costs and preservation of the asset that is the Court's premises.

4. The Court welcomed the approval granted by the Assembly to start the capital replacement programme in 2020, albeit with a lower budget envelope than that required. In order to optimize results, the Court has reprioritized planned capital replacement items since 2020. However, as the available budget envelope has been further reduced, and the Court has departed from the above-mentioned methodology towards a reactive approach (replacing only those elements that have already failed or show signs of imminent breakdown), the Court can no longer rely on the same parameters offered by industry standards and manufacturers' instructions to reassess its original medium- and long-term capital replacement plan. A fixed budget envelope – which would in reality constitute a reduction as a result of inflation – allows only short-term planning for this year and next (at the latest) through the monitoring of the functioning of the various building components, while taking into account other parameters, such as vulnerability and criticality for the operations of the Court, and risk appetite for business continuity.

5. Indeed, the smooth running of many different components of the building which have gone far beyond their useful life is at increased risk. In some cases, failures may give rise to business disruption. The risk can be illustrated by the yearly and cumulative funding gap between the original and the actual capital replacement investments as presented in Annex I to this report. Each year that the gap widens, the risk to the Court's business continuity increases and the value of its premises decreases. Annex I presents the amounts at prices for 2020, as presented in the Report of the Court on updated and detailed plans and a multi-year financing mechanism for capital replacements.<sup>3</sup>

## **III. Control of expenditure in 2021**

6. Following reprioritization, the capital replacement priorities in 2021 are: electrical and security installations (electrical infrastructure, security and safety installations, elevators, and the Building Management System), estimated at €275,000; mechanical and plumbing elements (cooling and water supply), estimated at €54,000; and elements related to external doors and windows, the physical outdoor security perimeter, and replacement of façade cables, estimated at €50,000. In addition, a number of unforeseen replacement needs related to the fire safety installations have arisen. Some allotted funds have been reprioritized to replace these defective elements.

## **IV. Predicted expenditure in 2022**

7. The Committee has considered that “The consideration of alternative arrangements to further integrate maintenance and capital replacement would strongly benefit from external advice” and “hoped that State Parties would be in a position to nominate experts for this

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<sup>2</sup> *Official Records ... Nineteenth session ... 2020* (ICC-ASP/19/20), vol. I, part III, ICC-ASP/19/Res.1 G.2.

<sup>3</sup> CBF/34/10.

purpose. Such external expert advice could also be useful during the whole life cycle of the premises.”<sup>4</sup>

8. The Court looks forward to the possibility of engaging with such an expert and, in the meantime, continues to take a reactive approach to capital replacements.

9. The original accumulated total predicted for capital replacements in 2022, taking into account the reduced funding in the previous two years, was in excess of €1,800,000 (2020 prices). Because of budgetary constraints, this has been reduced to a proposed amount of €331,600. The Court is therefore required to monitor carefully all systems and building components that would otherwise have been replaced or partially replaced, subject to budget expediency. The Court will pay special attention in 2022 to:

- heating and cooling distribution, particularly water pumps;
- electrical infrastructure/emergency power infrastructure;
- security and safety installations, particularly the server infrastructure managing access to the premises, operability of the security control room, issuance of pass and ID badges, cameras/biometric palm readers, and security cameras;
- external doors, particularly those most used at the main entrances to the building; and
- other areas of the building which are vulnerable in the medium to long term, including the integrity of the façades, roofs and maintenance cradles for the façades.

10. There are no plans to carry out any replacements of an aesthetic nature such as worn flooring, ceiling elements or wall coverings.

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<sup>4</sup> ICC-ASP/20/5/AV, para. 99.

## Annex I

### Five-Year Capital Replacement Plan 2022 – 2026 (including allotment and actuals for 2021)

Building Components for Replacement	2019	2020	2021	2022*
Planned Capital Replacements	€ 0	€ 975,000	€ 1,475,854	€ 605,034
Allotted	€ 0	€ 425,000	€ 378,900	€ 331,600
Variance from proposed	€ 0	€ 550,000	€ 1,096,954	€ 273,434
Cumulative Variance	€ 0	€ 550,000	€ 1,646,954	€ 1,920,388

\* In 2022, the original amount proposed to the Committee was reduced by the Court in its proposed budget to facilitate zero nominal growth for Major Programme V: Premises.

The cumulative variance in 2022 reflects that from the 5-year plan presented in 2020.