

**Eighteenth session**

The Hague, 2-7 December 2019

**Report of the Bureau on the arrears of States Parties****I. Introduction**

1. Pursuant to articles 112, 115 and 117 of the Rome Statute, the expenses of the Court and of the Assembly of States Parties (“the Assembly”), as outlined in the budget considered and decided by the Assembly, shall be provided by, inter alia, contributions made by States Parties. The contributions of States Parties shall be assessed in accordance with an agreed scale of assessment based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

2. Pursuant to regulation 105.1 of the Financial Regulations and Rules, “assessed contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.5 or as of the first day of the calendar year to which they relate, whichever is the later.” For the purposes of this report, lack of full payment within this timeframe is considered an “outstanding contribution.” Pursuant to the same regulation, “[a]s of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.” Further, as per 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. 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.”

3. The Assembly has regularly “emphasize[d] the importance of endowing the Court with the necessary financial resources, and urge[d] all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Rome Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly.”<sup>1</sup>

4. At its seventeenth 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 re-establishment of an annual facilitation on the topic of arrears, report thereon to the Assembly at its eighteenth session.”<sup>2</sup>

<sup>1</sup> ICC-ASP/12/Res.8, para 60; ICC-ASP/13/Res.5, para 86.; ICC-ASP/14/Res.4, para. 100; ICC-ASP/15/Res.5, para. 117; ICC-ASP/16/Res.6, para. 127; ICC-ASP/17/Res.5, para. 144.

<sup>2</sup> ICC-ASP/17/Res.5, annex I, para. 16(b).

5. Also at its seventeenth session, in the resolution on the budget,<sup>3</sup> the Assembly urged all States Parties to make timely payments of their assessed contributions and requested the Court and States Parties to make serious efforts and take necessary steps to reduce the level of arrears and outstanding contributions as far as possible to avoid liquidity issues for the Court.<sup>4</sup> The Assembly also requested the Court to develop guidelines, consistent with existing rules and regulations, for States Parties which are in arrears and subject to the provisions regarding loss of voting rights, and which face significant economic hardship, to enter into voluntary and sustainable payment plans.<sup>5</sup> The Assembly further requested the Court to submit the guidelines to the Committee on Budget and Finance (“the Committee”) in advance of its thirty-second session, and to keep States Parties informed of any such payment plans and their implementation through the facilitation on the budget. The issue of payment plans is accordingly under consideration in the budget facilitation.

6. The Bureau allocated the mandate for the topic of arrears to the New York Working Group on 12 December 2018, and on 7 February 2019 Mr. Mohammad Nore Alam (Bangladesh) was appointed as the facilitator for the topic of arrears.

7. The objectives of the facilitation on the topic of arrears are as follows:

(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 the 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 States Parties in question;

(d) To keep under review the mechanism allowing States Parties to seek exemptions from article 112; 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.

## II. Status of contributions and arrears

8. As of 31 October 2019, the total outstanding contributions, including for the regular budget, the Working Capital Fund, the Contingency Fund, and the host State loan, stood at €37,537,582.

9. As of 31 October 2019, 76 States Parties were fully settled, 22 States Parties had outstanding contributions for the 2019 budget, and 25 States Parties were in arrears, 12 of which were ineligible to vote and were required to make a minimum payment in order to avoid the application of article 112, paragraph 8, of the Rome Statute.

10. In the report on the work of its thirty-second session, as part of its consideration of the guidelines for payment plans submitted by the Court, the Committee on Budget and Finance “strongly recommended that such requests for exemption only be granted following the payment of the minimum amounts identified and after presenting payment plans for the remaining balance”.<sup>6</sup> The Committee was also of the view that there are alternative ways of dealing with States in arrears that should be explored, and that the Assembly could also decide other measures to limit the participation of States in arrears in certain areas.<sup>7</sup>

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<sup>3</sup> ICC-ASP/17/Res.4.

<sup>4</sup> ICC-ASP/17/Res.4, section C, para. 1.

<sup>5</sup> ICC-ASP/17/Res.4, section C, para. 2.

<sup>6</sup> ICC-ASP/18/5, para. 30.

<sup>7</sup> ICC-ASP/18/5, para. 35.

11. In the report on the work of its thirty-third session, the Committee urged all States Parties to make their payments on time in order to ensure that the Court has sufficient funds throughout the year, and recalled its previous recommendation that the President of the Assembly and Court officials take up this issue with States that have outstanding dues whenever they have bilateral meetings.<sup>8</sup> The Committee also reiterated its concern regarding the trend of increasing arrears in recent years, which resulted in a significant risk of a liquidity shortfall, as had also been highlighted in the report of the External Auditor on the budget process of the Court.<sup>9</sup> In addition, the Committee recalled the recommendation of the External Auditor that, in order to strengthen the process of recovering outstanding contributions, States Parties in arrears for the preceding two full years should only be allowed to vote once the payment schedule is fulfilled, or that requests for exemption should be granted only after the payment of a minimum amount identified and once a payment plan for the remaining balance has been presented. The Committee considered that the upcoming elections of judges and the Prosecutor presented a situation where voting rights would be highly sought after and thus urged States in arrears to settle their accounts in a timely manner.<sup>10</sup>

### III. Consultations and sharing of information

12. As in previous years, information on the status of contributions to the Court was annexed to the reports of the two sessions of the Committee.<sup>11</sup> In addition, as mandated by the Assembly at its seventeenth session,<sup>12</sup> States Parties received a monthly financial report from the Court which included information on the status of contributions.

13. The Secretariat periodically updated the facilitator on the status of contributions and arrears. On 11 April and 11 October 2019 the Secretariat sent letters to the States Parties subject to the provisions of article 112, paragraph 8, of the Statute.

14. During 2019, the facilitator met with relevant State Party delegations from Permanent Missions to the United Nations, particularly those with significant outstanding contributions, to discuss both the amount and status of their arrears. The facilitator also reached out to delegations from States Parties that are currently subject to article 112, paragraph 8, of the Statute, and urged them to restore their voting rights by settling their arrears.

### IV. Conclusions and recommendations

15. Bearing in mind the worrisome state of outstanding contributions and arrears, the status of contributions should be kept under close observation. The Assembly must continue to undertake focused efforts to ensure that no assessed contributions to the Court remain outstanding and to ensure that the requests for payment are acted upon by all States Parties. For this reason the facilitator recommends that the Assembly continue to have an annual facilitation on the matter of arrears.

16. The facilitator concludes his inter-sessional work by recommending to the Assembly the inclusion in the omnibus resolution of the paragraphs contained in the annex to this report.

<sup>8</sup> ICC-ASP/18/15/AV, para. 169.

<sup>9</sup> ICC-ASP/18/15/AV, para. 187, referencing ICC-ASP/18/2/Rev.1.

<sup>10</sup> ICC-ASP/18/15/AV, para. 171.

<sup>11</sup> See ICC-ASP/18/5 and ICC-ASP/18/15.

<sup>12</sup> ICC-ASP/17/Res.4, section N, para. 10.

## Annex

### Draft text for the omnibus resolution

1. Paragraph 143 of the 2018 omnibus resolution (ICC-ASP/17/Res.5) is maintained:  
*“Takes note with concern of the report of the Bureau on the arrears of States Parties.”*
2. Paragraph 144 of the 2018 omnibus resolution (ICC-ASP/17/Res.5) is maintained:  
*“Emphasizes the importance of endowing the Court with the necessary financial resources, and urges all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Rome Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly;”*
3. The following paragraphs are to be included in the Mandates section of the 2019 omnibus resolution:

With regard to the **programme budget**,

*“Decides 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 nineteenth session;”*

*“Requests the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;”*

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