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Financing of the International Residual Mechanism for Criminal Tribunals

Construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch ([A/73/718](#)). During its consideration of the report, the Advisory Committee met with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 14 February 2019.

2. The report of the Secretary-General is the eighth progress report on the construction of the new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch, and provides an update on the progress made since the issuance of the previous report ([A/72/734](#)). In section IV below, the Advisory Committee provides its comments and recommendations on the deferral of the final progress report, which was requested by the General Assembly in its resolution [72/270](#).

II. Progress update and project management

A. Project update

3. In his report ([A/73/718](#)), the Secretary-General indicates that the project commenced in January 2012. Despite being initially estimated to last five years and three months, with occupancy in the first quarter of 2017, the duration of the project was shortened to four years, pursuant to paragraph 5 of General Assembly resolution [66/240 B](#) ([A/73/718](#), para. 32). The project pre-construction phase – including the selection of the greenfield site, which had been donated at no additional cost to the United Nations by the Government of the United Republic of Tanzania (see para. 21



below), the in-house production of the conceptual design of the facility, the development of programmatic and functional requirements and the procurement of architectural and construction services – was completed successfully with minimal slippages from the project timeline, which allowed for an effective start of the construction phase ([A/70/698](#), para. 44).

4. Construction work started on 27 February 2015, with the contractual requirement that it be concluded by 28 February 2016. However, progress on the site was slower than expected, owing mainly to a topographical error by the architect that halted work for 38 days at the outset, as well as delays experienced by the contractor in the sourcing and installation of the complex structural element of the curtain wall (exterior windows) ([A/70/698](#), paras. 45–46, and [A/71/753](#), paras. 35–40). Substantial completion was achieved on 1 December 2016, and the Mechanism has enjoyed full occupation and use of the premises since 5 December 2016 ([A/73/718](#), para. 32).

5. Once substantial completion was achieved, the project entered its final stage – project closeout – which is ongoing. During 2017, the project team monitored the remediation of minor defective items included on the punch list that was generated when the project reached substantial completion; discovered some design-related defects relating mainly to the heating, ventilation and air conditioning (HVAC) system and started to work with the architect towards their remediation; and assessed options for the appropriate recovery of costs arising from delays and errors of the contractor and the architect ([A/72/734](#), paras. 7 and 16–29).

6. The report of the Secretary-General contains information on the progress made since the previous report concerning the following pending project closeout activities: the review and remediation of the punch-list items ([A/73/718](#), paras. 18–21); the remediation of the design defects regarding the HVAC system (*ibid.*, paras. 22–29); and the consideration of contractual remedies regarding project delays and design defects (*ibid.*, paras. 30 and 31). A revised project schedule that takes account of the delays in the completion of the outstanding remedial works is presented in the annex to the report of the Secretary-General.

Review and remediation of the punch-list items

7. The Secretary-General indicates that, with the achievement of substantial completion, the project entered into the defect liability phase, a one-year period within the project closeout during which the contractor is required to complete any minor outstanding items and remedy defective works included on the punch list generated as part of the substantial completion inspection ([A/71/753](#), para. 42). The completion of the punch list in this project was due by December 2017, at the expiration of the one-year defects liability period. However, owing to delays in the completion of the works, that period was extended until 30 April 2018 ([A/73/718](#), para. 19). In his report, the Secretary-General indicates that, as at 1 December 2018, 786 of the 880 items (or 90 per cent) recorded on the punch list had been remediated and that final completion was expected by the end of the first quarter of 2019 (*ibid.*, para. 6).

8. The Advisory Committee was informed, upon enquiry, that the outstanding 10 per cent of the punch list included minor items, such as the remediation of window hatches and repositioning of light fixtures, as well as other issues, such as water filtration into manholes and incorrect cabling in limited areas, most of which had a minimal impact on the functioning of the facility. The Committee was also informed that, since the drafting of the report of the Secretary-General, the punch list had been informally closed following an agreement between the Mechanism and the contractor that the unremediated items on the punch list would be completed by the Mechanism's Facility Management Unit and its value, estimated at \$80,100, would be deducted

from the final payment owed to the contractor (see para. 27 below). At the time of the consideration of the report of the Secretary-General, the project team was working with the contractor and the architect towards the formal closure of the punch list.

9. The Advisory Committee trusts that the Secretary-General will provide an update on the formal closure of the punch list items to the General Assembly at the time of its consideration of his report.

Remediation of the HVAC system

10. The Secretary-General indicates in his report that, during the first year of occupancy of the facility, the project team recorded design-related deficiencies related to the HVAC system. Specifically, the HVAC system as designed and installed in the cold vault and in the main repository of the archives building did not fully meet the air quality, temperature control and relative humidity standards required by the Mechanism ([A/73/718](#), paras. 22 and 23). Upon enquiry, the Advisory Committee was informed that redesign and remedial works were required for both the cold vault and the main repository, in order to fully meet the functional requirements set by the Mechanism and ensure the long-term preservation of its archives.

11. The Secretary-General further indicates that, in June 2018, the Mechanism obtained from the architect a plan for the redesign of the HVAC system for the cold vault, at no additional cost to the United Nations (*ibid.*, para. 24). Upon enquiry, the Advisory Committee was informed that the architect had taken responsibility for the deficiencies in the cold vault, but not for those in the main repository. The project team subsequently approached the subcontractor that had originally supplied and installed the HVAC system about redesigning the defective system in the main repository and undertaking the remedial works necessary in both the cold vault and the main repository. However, in November 2018, the Mechanism learned that the subcontractor had left the HVAC business. The Mechanism then turned to the project's main contractor, who agreed, in principle, to carry out the remediation works in the cold vault and the main repository, under the supervision and final certification of the architect. At the time of the Committee's consideration of the report of the Secretary-General, the procurement of the required services and equipment was under way and work had not yet commenced. However, the Committee was informed, upon enquiry, that the remedial work was still estimated to be completed by mid-2019, as indicated in the report of the Secretary-General (*ibid.*, para. 29).

12. The Secretary-General indicates in his report that the remediation of the HVAC system would result in additional expenditure, estimated at approximately \$280,000, to be charged against the project's contingency fund (*ibid.*, para. 38). The Advisory Committee was informed that the decision to cover the remediation work and replacement equipment through the project's resources had been taken in order to ensure that the installed HVAC system would meet the standards required by the Mechanism (see also sect. III below).

13. The Advisory Committee requests that the Secretary-General provide an update on the remediation of the HVAC system to the General Assembly at the time of its consideration of his report.

14. The Advisory Committee notes with concern the reported further delays in the closeout phase of the project. The Committee recommends that the General Assembly request the Secretary-General to ensure full implementation of the project within the scope of the project approved by the Assembly, without further delay and within the revised timeline and the approved resources of the project ([A/71/812](#), para. 7, and [A/72/785](#), para. 11; see also para. 19 below).

Consideration of contractual remedies regarding project delays and design defects

15. The Secretary-General indicates that, during the reporting period, the Mechanism continued to examine options for the appropriate recovery of direct and indirect costs arising from delays that might be attributable to the Mechanism's contractual partners, where economically feasible, pursuant to paragraph 7 of General Assembly resolution 70/258 (A/73/718, para. 30).

16. The Advisory Committee was informed, upon enquiry, that delays in the completion of construction works, the remediation of the punch-list items and the remediation of the HVAC system were attributable to both the architect and the contractor and that the Mechanism's assessment of the division of responsibility between each contractual party was ongoing, in consultation with the Office of Legal Affairs and the Global Asset Management Policy Service, within the Department of Management Strategy, Policy and Compliance. The Committee was further informed that the ongoing assessment regarding the exercise of contractual remedies and cost recovery options was being balanced with the need to ensure the timely completion of the remaining works. The financial implications of the delays and defects attributable to the contractual parties are discussed in section III below.

Maintenance

17. On a related matter, the previous report of the Secretary-General indicated that the project team was monitoring the handover of operation and maintenance tasks from the contractor to a firm duly contracted to carry out regular maintenance of the facility post-completion (A/72/734, para. 24). Upon enquiry, the Advisory Committee was informed that the procurement of a general maintenance contract was ongoing and that, in the interim, maintenance had been conducted through a variety of means, including separate maintenance contracts for specialized equipment, one-off maintenance services, a local (skilled and unskilled) labour contract and facilities assistants on staff. **The Committee stresses the importance of the provision of adequate maintenance services and trusts that updated information in that regard will be included in the next report of the Secretary-General.**

B. Project management*Project team*

18. The Secretary-General provides information on the project team responsible for the overall coordination and oversight of the project (A/73/718, para. 12). As indicated, the Assistant Secretary-General and Registrar of the Mechanism has served as the project owner throughout the post-construction phase. He was assisted in that role, first, by the former Chief of Registry, who had been part of the project team since the planning phase until his separation in March 2018, and, second, by the Acting Chief of the Registry until November 2018. During 2018, the Chief Administrative Officer of the Mechanism was appointed Coordinator of the closeout phase. Following the departure of the project manager, who had served on the project from the planning phase until the achievement of substantial completion at the end of 2016 (A/71/753, para. 21), the Mechanism recruited two project managers: the first from July 2017 until July 2018, when he was recalled to his parent organization; and the second from August 2018 to present.

19. **The Advisory Committee recommends that the General Assembly request the Secretary-General to ensure that the project team, with the support of the relevant Headquarters departments, monitor more closely and more proactively the closeout phase of the project and take the measures necessary to mitigate the**

risk of further delays in the implementation of the outstanding remediations. The Committee trusts that the next report of the Secretary-General will contain comprehensive information on the causes of the delays during the reporting period, as well as on accountability for those delays and any action taken in that regard. The Committee also expects that management weaknesses in the project will be fully analysed and documented as part of the project's lessons learned (A/72/785, paras. 14 and 23).

20. In addition, the Advisory Committee again stresses the importance of proactive and sustained project ownership, project management continuity and oversight in all phases of the project, through to its completion. With respect to project management continuity, the Committee recommends that all existing and future construction projects adequately plan for and put in place appropriate procedures to mitigate risks that may arise from ordinary changes in the composition of the project team (A/72/785, para. 13).

Host State

21. In his report, the Secretary-General indicates that the cooperation between the Mechanism and the Government of the United Republic of Tanzania continued to be excellent throughout the reporting period (A/73/718, para. 13). The Advisory Committee recalls that the Government provided land, an access road and connections to utilities, such as water, electricity and telephone services, for the new premises of the Mechanism, at no additional cost to the United Nations (A/71/812, para. 8). **The Committee reiterates its appreciation to the Government of the United Republic of Tanzania for its contributions throughout the construction project.**

III. Project expenditures and costs

22. The Secretary-General notes in his report that the total resources approved by the General Assembly for the project amount to \$8,787,733, inclusive of a provision for contingency in the amount of \$1,050,371 (A/73/718, para. 40). Table 1 of that report shows that, at the end of 2018, total expenditures were reported at \$7,647,490, with a projected expenditure of \$656,723 from January 2019 until completion of the project. The table also shows that the revised deficit projected to be covered by the contingency provision amounts to \$566,851.

Use of the contingency provision

23. With regard to the use of the contingency provision, the Advisory Committee was informed that, while no contingency funds would be used for the punch-list remediations, the Secretary-General anticipated using \$280,000 from the current contingency balance of \$483,500 (A/73/718, para. 38 and table 2) to cover the costs of remediating the HVAC system (see para. 12 above). Following this anticipated drawdown, it is expected that a total amount of \$850,000 would be charged to the approved contingency fund of \$1,050,371, resulting in a projected balance of approximately \$200,000 to be returned to Member States at the conclusion of the project. As to the appropriateness of using contingency funds to address the remediation of a design error, the Committee was informed, upon enquiry, that the Secretariat considered the anticipated drawdown to be in line with the relevant resolutions of the General Assembly, including resolution 71/272, which states, inter alia, that contingency provisions serve to provide necessary safeguards against unforeseen cost overruns during project implementation.

24. **The Advisory Committee reiterates that the use of the contingency provision must be in full compliance with the guidance provided by the General**

Assembly on this matter, including with respect to ensuring that all remaining unused funds be returned to Member States at the conclusion of the project (A/72/785, para. 20).

Cost recovery

25. The Advisory Committee was informed upon enquiry that, while direct and indirect costs attributable to the contractor and the architect, including the delay in the completion of works prior to substantial completion and the remediation of the HVAC system, were estimated at approximately \$827,000, those estimates continued to be reassessed by the Mechanism, in consultation with the Office of Legal Affairs, the Office of Supply Chain Management and the Global Asset Management Policy Service.

26. The Advisory Committee was further informed that, under the terms of the construction contract, the contractor was liable for delay damages up to \$661,400, corresponding to 50 days of delay during the construction phase. As substantial completion had been reached with a delay of 199 days, the total capped amount of delay damages could, in principle, be recouped. The Committee was further informed that the architect's contractual responsibility for design errors included redesigning at no additional cost to the United Nations and that the project team was assessing the viability of each of the possible avenues for recovery of costs stemming from defects and delays attributable to the architect.

27. Pending the ongoing evaluation of the available contractual remedies, the Mechanism has retained the final payment of the contractor, amounting to \$579,251 (A/73/718, para. 20). Furthermore, as indicated to the Advisory Committee, the value of the outstanding punch-list items that had yet to be remediated by the contractor, estimated at \$80,100, would also be withheld from the final payment to the contractor (see para. 8 above). With respect to the architect's final payment, the Committee was informed that the Mechanism had retained fees in the amount of \$77,472 corresponding to the payment for the last stage of the contract with the architect (post-substantial completion phase).

28. The Advisory Committee again stresses that the United Nations should not bear responsibility for paying any direct or indirect costs resulting from design defects or delays and expects that the full amount of the related additional costs will be recovered (A/71/812, para. 14, and A/72/785, para. 21).

IV. Submission of the final project report

29. The report of the Secretary-General under consideration was submitted as a progress report rather than as a final report (see para. 2 above). Upon enquiry, the Advisory Committee was informed that the report had been presented as a progress report owing to the fact that key outstanding closeout tasks were still being addressed, including the planned closure of the punch-list items and the finalization of the process to remediate the design defects of the HVAC system, scheduled for the end of the second quarter of 2019, but that it was expected that the next report, to be submitted to the General Assembly at its seventy-fourth session, would be the final report on the project. The Committee notes that this is the second time that the Secretary-General has not been in a position to submit a final report, as requested by the Assembly, owing to further delays in the completion of the project.

30. The Advisory Committee notes that, for the second consecutive year, the project has not been completed and that therefore a final report could not be submitted. The Committee reiterates its previous recommendations that the

General Assembly request the Secretary-General to submit without any further delay a final project report to the Assembly at its seventy-fourth session (A/71/812, para. 23, and A/72/785, para. 22). The Committee expects that the final report will contain, inter alia, comprehensive, detailed and transparent information regarding the completion of the necessary remedial works, the final project budget, best practices and lessons learned. In addition, the final report should include information on the causes for the delays in implementation and accountability therefor (see para. 19 above). As previously requested (A/71/812, para. 19), the final report should also contain information concerning the prescribed space per staff member and comparisons with standard Secretariat ratios, as well as any other relevant information, including with respect to the maintenance contract, that has not been provided to date.

V. Conclusion and recommendation

31. The Advisory Committee recommends that, subject to its recommendations and observations above, the General Assembly take note of the report of the Secretary-General.
