



General Assembly

Distr.: General
18 February 2020

Original: English

Seventy-fourth session

Agenda item 147

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/74/662](#)). 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 2020.

II. Progress update

2. In his report, the Secretary-General recalls that the project, which commenced in January 2012, reached substantial completion on 1 December 2016 and that the Mechanism has occupied and conducted its operations from its new premises since 5 December 2016 (*ibid.*, paras. 1 and 4). Once substantial completion was achieved, the project entered its final stage – the project closeout – which is ongoing.

3. The report of the Secretary-General contains, *inter alia*, information on key project closeout activities, including ongoing and completed remediation works (*ibid.*, paras. 12–15, 19–22 and 32–40), the consideration of contractual remedies regarding design defects and project delays (*ibid.*, paras. 26–31) and the closure of accounts and settlement of claims and liabilities with the contractor (*ibid.*, paras. 23–25).

Remediation works

4. The Secretary-General describes in his report the progress made with respect to remaining remediation works concerning: (a) the rectification of the punch list of minor outstanding and defective items (see para. 5 below); (b) works stemming from



internal and external audit recommendations (see para. 6 below); and (c) the remediation of design defects regarding the heating, ventilation and air conditioning (HVAC) system (see paras. 7–9 below).

Rectification of the punch list

5. In his report, the Secretary-General indicates that the punch list of minor outstanding and defective items generated as part of the substantial completion inspection has been formally closed, either by completion of the required work by the contractor or by assigning a valuation to the unremedied works (about 10 per cent of the punch-list items) for an amount to be deducted from the final payment to the contractor (see para. 12 below). Unrectified punch-list items that have an impact on the functioning of the facility, such as incorrect cabling, have been or are being addressed by the Facilities Management Unit of the Mechanism ([A/74/662](#), para. 22).

Works stemming from audit recommendations

6. In his report, the Secretary-General also discusses remediation works stemming from recommendations contained in audits undertaken by the Office of Internal Oversight Services and the Board of Auditors. Some works, mainly relating to safety and security, such as the rerouting of water pipes through the data centre and the construction of a fence foundation, have been completed, while others, such as the construction of ablution facilities for use by security personnel and the remediation of the impact of sandstorms on the office building, remain pending (*ibid.*, paras. 12–15).

Remediation of the heating, ventilation and air conditioning system

7. The Secretary-General recalls in his report that, during the first year of occupancy of the facility, the project team recorded design-related deficiencies relating to the HVAC system, which remain unresolved to date. Specifically, the HVAC system, as designed and installed in the cold vault and in the main repository of the archives building, does not fully meet the air quality, temperature control and relative humidity standards required by the Mechanism to preserve the archives of the International Criminal Tribunal for Rwanda (*ibid.*, para. 33). The Advisory Committee was informed, upon enquiry, that it was determined that the deficiencies arose from the incorrect design of the HVAC system by the architect (see para. 13 below on the contractual responsibility of the architect).

8. The Secretary-General describes in his report the efforts deployed by the Mechanism to rectify the issue. In June 2018, upon the request of the Mechanism, the architect provided a conceptual redesign to address the shortcomings of the HVAC system in the cold vault, but did not do so for the main repository ([A/74/662](#), para. 34). The Mechanism then turned to the project's contractor, which indicated its availability to supply and install the HVAC system redesign for both the cold vault and the main repository. However, owing to concomitant negotiations with the contractor regarding the recovery of costs resulting from delays in the completion of the construction, progress in the HVAC remediation work stalled (*ibid.*, paras. 35–37; see also para. 12 below on the contractual responsibility of the contractor). In order to move forward, in September 2019, the Mechanism engaged the services of a consulting firm employed by the Economic Commission for Africa (see [A/74/662](#), para. 38). Upon enquiry, the Advisory Committee was informed that the consulting firm would provide design services, prepare tender documentation, conduct tender assessments, mobilize resources for the project, provide construction oversight and conduct post-construction testing and commissioning. The Committee requested, but did not receive, the amount of the contract with the consulting firm or the expenditure incurred for the services already provided, including preliminary fixes that have resulted in acceptable air quality ranges in the archives repositories.

9. In his report, the Secretary-General indicates that the remediation of the HVAC system is expected to last until September 2020, which reflects a delay of approximately 15 months compared with the previously provided timeline of mid-2019 (*ibid.*, para. 40; see also [A/73/718](#), para. 29). He further indicates that the remediation cost, which would be charged against the project's contingency provision, is expected not to exceed \$280,000 ([A/74/662](#), para. 44). Upon enquiry, the Advisory Committee was informed that a more precise cost estimate was currently unavailable, as the solicitation of tenders for the implementation of the consulting firm's redesign had yet to be completed.

10. **The Advisory Committee regrets that, more than three years after occupancy, further delays have been reported in the completion of the remediation works. The Committee is particularly concerned that the rectification of the design error affecting the HVAC system, whose proper functioning is critical for the long-term preservation of the archives of the International Criminal Tribunal for Rwanda, is still pending, following attempts to resolve the issue and repeated delays over the years. The Committee therefore recommends that the General Assembly request the Secretary-General to intensify his efforts in order to ensure full implementation of the project, without further delay and within the revised timelines and approved resources (see also [A/74/662](#), para. 40, [A/73/763](#), para. 14, [A/72/785](#), para. 11, and [A/71/812](#), para. 7). The Committee expects that the Secretary-General will provide an update on the remediation of the HVAC system and its costs, including as regards the engaged consulting firm, to the Assembly at the time of its consideration of the present report.**

Consideration of contractual remedies regarding design defects and project delays

11. 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 may be attributable to the Mechanism's contractual partners, where economically feasible, as requested by the General Assembly in its resolutions [70/258](#) and [73/288](#) ([A/74/662](#), para. 26).

12. Pursuant to this request, in consultation with the Office of Legal Affairs, the Global Asset Management Policy Service and the Procurement Division, the Mechanism decided to seek the recovery of delay damages from the contractor in the amount of approximately \$230,000 and withheld this sum from its last payment to the contractor (*ibid.*, paras. 29 and 31). While under the terms of the construction contract, the contractor could be liable for delay damages of up to \$661,400 (see [A/73/763](#), para. 26), the Secretary-General indicates that the amount of \$230,000 was deemed to adequately balance, on the one hand, the rights and interests of the United Nations to recover costs arising from delays by the contractor and, on the other hand, the need to maintain its cooperation with a view to the expeditious completion of the remaining works ([A/74/662](#), para. 30). The Secretary-General, however, further indicates that the contractor has expressed its intention to contest the Mechanism's decision to withhold this amount (*ibid.*, para. 31).

13. As set out in the report of the Secretary-General, the Mechanism also continues to explore the viability of options for the recovery of costs stemming from defects and errors attributable to the architect and, in the interim, has retained fees in the amount of \$77,472, corresponding to the payment for the final stage of the contract with the architect (*ibid.*, para. 28). The Advisory Committee was informed, upon enquiry, that the contractual responsibility of the architect included the provision, at its sole cost and expense, of any services required to rectify its errors, omissions or negligent acts, including those of its subconsultants.

14. The Advisory Committee again stresses that the United Nations should not bear responsibility for any direct or indirect costs resulting from errors or delays attributable to its contractual partners and reiterates its expectation that the full amount of the related additional costs will be recovered (see [A/73/763](#), para. 28, [A/72/785](#), para. 21, and [A/71/812](#), para. 14). Noting, in particular, that the options for the recovery of costs stemming from defects and errors attributable to the architect are still being explored, the Committee emphasizes the importance of the expeditious and judicious settlement of this matter in order to enable the prompt completion of the project closeout.

15. The General Assembly, endorsing the recommendation of the Advisory Committee, requested the Mechanism to provide information regarding office space per staff member and comparisons with the standard Secretariat ratios (see [A/73/763](#), para. 30). Upon enquiry, the Committee was informed that, using the standard calculation methodology, the space allocation per staff in the office building was 13.9 m², which was within general global trends for newly constructed or newly renovated spaces.

III. Project expenditure and costs

16. 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/74/662](#), para. 41). The table contained in that report, which is reproduced below, shows that the total expenditure at the end of 2019 amounts to \$8,484,892, inclusive of charges against the contingency provision. This amount includes the payment of \$233,897 made by the Mechanism to the contractor in December 2019, which reflects the agreed deduction related to the valuation of uncompleted punch-list items and the withholding of delay damages in the amount of \$230,000 (*ibid.*, para. 25; see also paras. 5 and 12 above). The table also shows a project balance amounting to \$302,841, subject to the settlement of final accounts.

Project expenditure, including charges against the contingency provision for the period 2013–2019

(United States dollars)

Description	Appropriation			Expenditure (including charges against the contingency provision)			
	Approved	Approved contingency	Total	2013–2018 disbursements	2019 final disbursements	Total expenditure 2013–2019	Project balance ^a
	(1)	(2)	(3)=(1)+(2)	(4)	(5)	(6)=(4)+(5)	(7)=(3)-(6)
Construction	6 365 887	954 883	7 320 770	6 267 479	233 897	6 501 376	819 394
Architect and project management	1 371 475	95 488	1 466 963	1 983 516	—	1 983 516	(516 553)
Total	7 737 362	1 050 371	8 787 733	8 250 995	233 897	8 484 892	302 841

^a Subject to the settlement of final accounts.

17. The Secretary-General indicates in his report that he intends to include information on the final settlement of claims and liabilities in the context of the performance report on the budget of the Mechanism for 2020 ([A/74/662](#), para. 46). Upon enquiry, the Advisory Committee was informed that any unspent balance,

including from the contingency provision, would be offset against the assessment of the approved budget of the Mechanism for 2022.

18. **The Advisory Committee reiterates that the use of the contingency provision must be in full compliance with the guidance provided by the General Assembly, including with respect to ensuring that all remaining unused contingency funds be returned to Member States at the conclusion of the project (see [A/73/763](#), para. 24, and [A/72/785](#), para. 20).**

IV. Lessons learned and best practices

19. In his report, the Secretary-General also provides a list of lessons learned and best practices for application, as appropriate, to other construction projects undertaken by the United Nations ([A/74/662](#), annex). The list covers various phases and aspects of the project, including governance, risk management, cost control, procurement and coordination with the host State.

20. With respect to the coordination with the host State, the Secretary-General highlights that cooperation with the host State in all aspects of the project is essential (*ibid.*, para. 46). In this project, the Secretary-General has consistently considered the cooperation with the United Republic of Tanzania to be excellent (see, for example, [A/74/662](#), para. 9). **The Advisory Committee reiterates its appreciation to the Government of the United Republic of Tanzania for its contribution to the project as a whole (see also [A/73/763](#), para. 21).**

21. Upon enquiry, the Advisory Committee was provided with greater context and clarifications on a number of best practices and lessons learned. Some experiences reconfirmed the validity of best practices from other projects that had been successfully applied in this project, such as the critical involvement of senior managers to establish the project objectives in the planning phase in order to limit the number of change orders during construction. Other experiences revealed challenges specific to the project, such as the importance for the project team to work with existing facilities management staff, which had not been possible at the outset of the project because the Mechanism had been a new entity with no dedicated facilities services staff.

22. The Advisory Committee was further informed that lessons learned and best practices from past construction and renovation projects were incorporated into the global guidelines for the management of construction projects of the Global Asset Management Policy Service. These lessons were shared with project teams throughout the Organization so that the teams could benefit from the experience and know-how acquired in other capital projects.

23. **The Advisory Committee considers that the information provided in the annex to the report of the Secretary-General is not sufficiently specific and analytical. The Committee therefore recommends that the General Assembly request the Secretary-General to compile a more detailed and updated version of the list of best practices and lessons learned, which would also reflect the know-how gained during the ongoing implementation of the project's remaining activities, for their incorporation into the global guidelines for the management of construction projects (see also para. 26 below).**

V. Submission of the final project report

24. The Secretary-General indicates that the report under consideration is the final report on this project ([A/74/662](#), para. 2). In response to a query as to why a final

report had been submitted before the completion of the project, the Advisory Committee was informed that the report had been submitted in compliance with the request of the General Assembly in its resolution [73/288](#). The Committee was further informed that the scope and cost of the ongoing remediation of the HVAC system represented a minor part of the project that should not preclude its consideration as complete, and that any outstanding information regarding the project, including on the settlement of final accounts and liabilities, would be presented in the context of the performance report on the budget of the Mechanism for 2020.

25. The Advisory Committee notes that the request of the General Assembly for the submission of a final report was premised on the completion of the remaining project activities and was accompanied by the expectation that the report would provide, *inter alia*, information regarding the conclusion of necessary remedial works, accountability for experienced delays and the final project budget (see [A/73/763](#), para. 30). The Committee also recalls that twice before the Secretary-General had been unable to submit a final report, as requested by the Assembly, because the project had not been completed and had submitted, instead, further progress reports (see *ibid.*, para. 29).

26. **Taking into account that, at the present stage, remediation works remain to be completed, contractual claims have yet to be settled and the final project expenditure, including any balance to be returned to Member States, continues to be unavailable, the Advisory Committee considers that the Secretary-General's categorization of his report as final is premature. The Committee recommends therefore that the General Assembly request the Secretary-General to complete the remaining remediation works and pending closeout activities without further delay and to submit a final report to the Assembly at its seventy-fifth session, containing comprehensive, detailed and transparent information on the conclusion of all pending activities, including the final settlement of accounts. The final report should also include an updated list of lessons learned and best practices (see para. 23 above). The Committee encourages the Secretary-General to also provide information on the implementation of sustainability features in this project, including through the maximization of local capacity and materials (see also [A/71/753](#), paras. 16–19 and 43–45).**

VI. Conclusion and recommendation

27. The proposed actions to be taken by the General Assembly are contained in paragraph 50 of the report of the Secretary-General. **The Advisory Committee recommends that the General Assembly take note of the report of the Secretary-General, subject to the Committee's comments and recommendations above.**
