

**COMMITTEE ON BUDGET AND FINANCE**

**POLICY AND PROCEDURE MANUAL**

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## INTRODUCTION

The Committee on Budget and Finance (“the Committee”) was established in 2002 to act as a subsidiary advisory body to the Assembly of States Parties to the Rome Statute of the International Criminal Court (“the Assembly”) regarding matters concerning the International Criminal Court (“the Court”). The Court is a unique institution with a special mandate, which includes not only bringing justice but also providing specific care for victims, including reparations. Hence, the Assembly provided the Committee with a wide mandate in terms of budgetary, administrative and financial issues, including oversight functions, in order to ensure that all activities within the Court’s mandate have the necessary resources.

Twelve elected members serve the Committee on an independent basis, providing strategic advice to States Parties and the Court so as to ensure its most efficient management and use of resources.

After almost ten years of work, the Committee has held 18 sessions, made 596 recommendations and has contributed to the “budgetary and administrative evolution” of the Court.

For budgetary and administrative experts, the process of establishment of a new and unique international organization like the Court has been a challenge in terms of finding the best practices for a twenty-first century institution. As a result, it has been possible to introduce more flexible and dynamic rules and procedures.

Since the rotation of the Committee’s members is a natural part of its work, the current membership agreed that a manual should be compiled, containing its main recommendations in different areas, as well as an explanation of the Court’s business, its budget process and other policies, in order to give continuity to the Committee’s work by providing a reference guide to new members that may be also useful to delegates of State Parties, as well as to the Court and the Secretariat of the Assembly.

We would like on behalf of the Committee to acknowledge the particular contributions of the Heads of Organs of the Court, Judge Sang-Hyun Song, President, Mr. Luis Moreno-Ocampo, Prosecutor and Madam Silvana Arbia, Registrar, and of its judges and all staff working in a wide range of functions in making this Court a reality. Special words of appreciation on the preparation of this manual, and also for the support provided to the Committee over the years, are owed to all the staff of the Secretariat of the Assembly under the direction of Mr. Renan Villacis.

*Santiago Wins*  
*Chairperson*  
*Committee on Budget and Finance*  
*Assembly of State Parties*

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*Assembly of States Parties*

## **COMMITTEE ON BUDGET AND FINANCE**

### **POLICY AND PROCEDURE MANUAL**

#### **I. Our Business**

##### **A. Mission Statement**

1. According to Rule 9 of the Rules of Procedure of the Committee on Budget and Finance (Annex 1 to this manual), the Committee shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature as may be entrusted to it by the Assembly. In particular, it shall review the proposed programme budget of the Court, prepared by the Registrar, in consultation with the other organs referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, and shall make the relevant recommendations to the Assembly concerning the proposed programme budget. It shall also consider reports of the Auditor concerning the financial operations of the Court and shall transmit them to the Assembly, together with any comments that it may deem appropriate.

##### **B. Establishment of the Committee**

2. At its first plenary meeting, on 3 September 2002, the Assembly, by resolution ICC-ASP/1/Res.4, decided to establish a Committee on Budget and Finance in accordance with the terms of reference set out in the annex to that resolution.<sup>1</sup>

##### **C. Structure and the Committee's members**

3. Bearing in mind the requirements of paragraph 2 of the annex to the resolution establishing the Committee, the distribution of seats for the first election was as follows:

- (a) African States, two seats;
- (b) Asian States, two seats;
- (c) Eastern European States, two seats;
- (d) Group of Latin American and Caribbean States, two seats; and
- (e) Western European and Other States, four seats.<sup>2</sup>

4. According to Rule 10 of the Rules of Procedure of the Committee on Budget and Finance, each year at its first meeting, the Committee shall elect a Chairperson and a Vice-Chairperson from among its twelve members. The Chairperson and the Vice-Chairperson shall be elected for a term of one year. They shall be eligible for re-election twice.

5. According to Rule 13 of the Rules of Procedure of the Committee on Budget and Finance, the Committee may appoint, if necessary, one of its members as Rapporteur for any particular question.

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (ICC-ASP/1/3 and Corr.1), part IV, ICC-ASP/1/Res.4.

<sup>2</sup> *Ibid.*, ICC-ASP/1/Res. 5, para. 8.

6. At its tenth session,<sup>3</sup> the Assembly approved the post of the Executive Secretary to the Committee on Budget and Finance at P-5 level to assist the Committee in its work to provide more strategic recommendations to the Assembly. The incumbent will report directly to the Committee through its Chairperson, and will be part of the Secretariat of the Assembly administratively. In April 2012, and through recruitment process, this post was filled.

7. The following depicts the main responsibilities of the Executive Secretary to the Committee on Budget and Finance:

(a) Conducting studies on budgetary matters upon the request of the Committee through the Chair, and reporting on the outcome of the study;

(b) Analyzing the proposed programme budget submitted by the Court and pointing-out the high risk issues for the attention of the Committee;

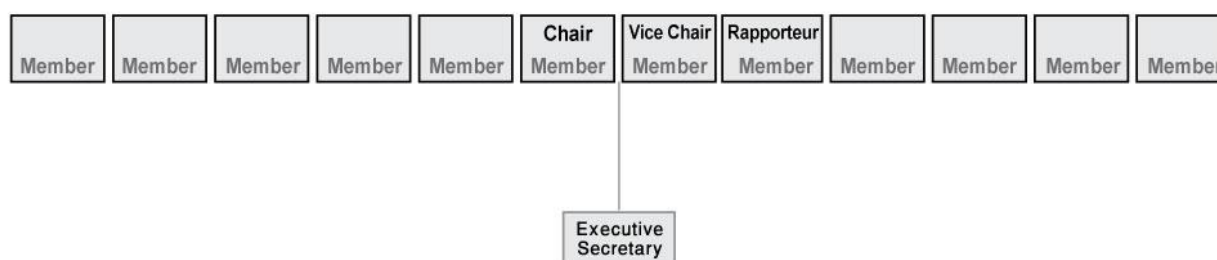
(c) On behalf of the Chair, liaising with the members of the Bureau on matters related to the Court's budget;

(d) Informing and updating the Committee on matters discussed by the Bureau Working Groups by attending the later meetings in relations to budgetary matters, as well as other issues that the Bureau has requested the Committee to consider;

(e) Organizing the regular sessions of the Committee, as well as organizing the meetings of the Chair with the Court officials and the States Parties; and

(f) Preparing inspection programmes for the Chair or the members of the Committee to carry-out, or on behalf of the Committee conducting inspection tasks and reporting accordingly on the outcome of the inspection.

### Graph 1: Organigramme of the Committee on Budget and Finance



#### D. The Committee's sessions

8. Due to the increased level of the requests submitted to the Committee from the Court through notifications to access the Contingency Fund and requests for technical opinions from the Assembly and its various subsidiary bodies, the Assembly decided that the Committee should meet when required and at least once per year.<sup>4</sup>

<sup>3</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part I.

<sup>4</sup> Rule 1 of the Rules of Procedure of the Committee on Budget and Finance.

9. According to the Court's Financial Regulations and Rules, the Committee is tasked with the following duties, roles and activities:

(a) *Regulation 4:<sup>5</sup> Appropriations*

The Registrar shall report to the Committee on Budget and Finance any payment affected or obligation incurred under regulation 4.2.

(b) *Trust funds*

Trust funds and special accounts funded wholly by voluntary contributions may be established and closed by the Registrar and shall be reported to the Presidency and, through the Committee on Budget and Finance, to the Assembly of States Parties.

(c) *Regulation 6:<sup>6</sup> Contingency Fund*

The Registrar shall submit a detailed, supplementary budget notification to the Committee on Budget and Finance through its Chairperson.

(d) *Regulation 9:<sup>7</sup> Investment of funds*

The Registrar may make short-term investments of moneys not needed for immediate requirements and shall periodically inform the Presidency and, through the Committee on Budget and Finance, the Assembly of States Parties of such investments. Any investment losses must be recorded at once by the Registrar. The Registrar may authorize the writing-off of investment losses with the approval of the Committee on Budget and Finance.

(e) *Regulation 10:<sup>8</sup> Internal control*

*Internal audit*

The Committee on Budget and Finance shall receive the reports annually, and on an ad hoc basis where appropriate, of the Internal Auditor. The Committee on Budget and Finance shall refer any matters to the Assembly of States Parties which require the attention of the Assembly.

(f) *Financial statements*

The Committee on Budget and Finance shall examine the financial statements and audit reports, including reports referred to in regulation 12.5 and the comments of the Registrar and other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, and shall forward them to the Assembly of States Parties, with such comments as it deems appropriate, for consideration and approval.

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<sup>5</sup> Financial Regulations and Rules.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

10. In addition, the Committee also covers human resources management issues, governance, premises of the Court and any other related matters that have financial or budgetary implications.

### **E. Relationships with others**

11. While the Committee is a subsidiary organ of the Assembly, its members make their recommendations as independent experts.

12. The line of communications is as follows:

- (a) Assembly to the Committee.
- (b) Bureau to the Committee.
- (c) Working Group through the Bureau to the Committee.
- (d) The Court through the Registrar to the Committee.

13. Relation to The Hague and New York Working Groups: The Committee has on several occasions received, through the Bureau, requests for opinion or guidance on particular items, such as the Independent Oversight Mechanism, the Oversight Committee on Permanent Premises or detention facilities. It has also addressed specific issues with important financial consequences, such as pensions of judges, investments, procurement practices, need for coherent rules and regulations for staff – including the assessment system, benefits, etc.

14. All this additional workload require a reflection on the future of the working methods of the Committee, the number of sessions and its coordination with other subsidiary organs in order to avoid overlapping and unnecessary expenditures.

## **II. The International Criminal Court's Business**

15. In this section, the objective is to explain how a case is started and, as the process evolves, how the different organs interact. To this end, detailed information is provided for Major Programme I, and selected information for Major Programmes II and III.

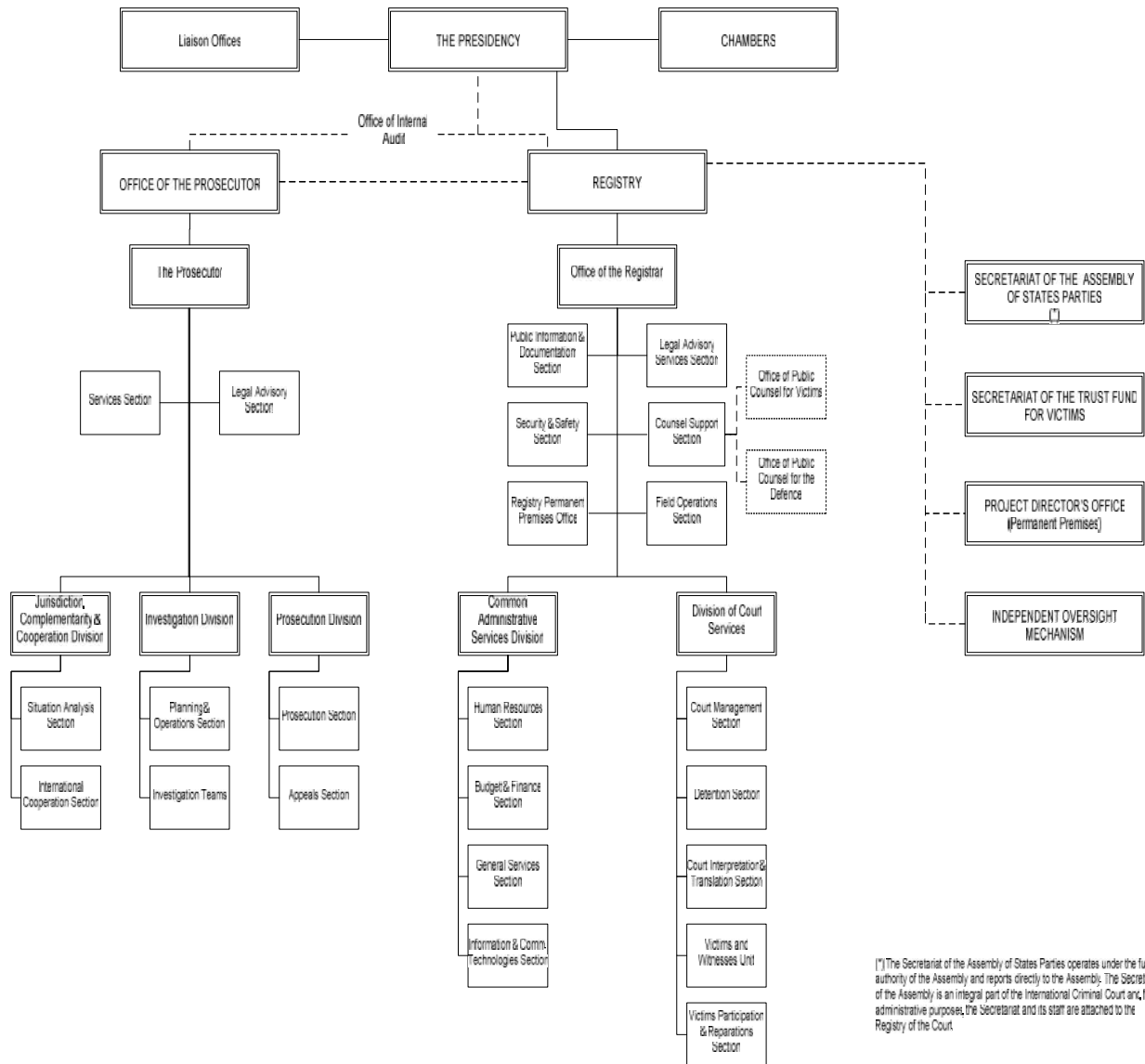
### **A. Introduction**

16. “The International Criminal Court (the Court) was established to try individuals accused of committing the most serious crimes of concern to the international community, and to signal that those crimes shall never be tolerated nor go unpunished. The Court is permanent, independent and gives a true voice to victims. For the first time, victims have their own status and are allowed to participate in the proceedings on the international level. The mandate is noble, and also ambitious,”<sup>9</sup> requiring a multifaceted structure and substantial financial resources to ensure its work.

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<sup>9</sup> *Behind the Scenes. The Registry of the International Criminal Court* (ICC-PIDS-BSR-001/10), p. 7.

**Graph 2: Organizational structure of the Court**



[\*] The Secretariat of the Assembly of States Parties operates under the full authority of the Assembly and reports directly to the Assembly. The Secretariat of the Assembly is an integral part of the International Criminal Court and, for administrative purposes, the Secretariat and its staff are attached to the Registry of the Court.

**B. Organs of the Court and their functions**

**1. The Presidency**

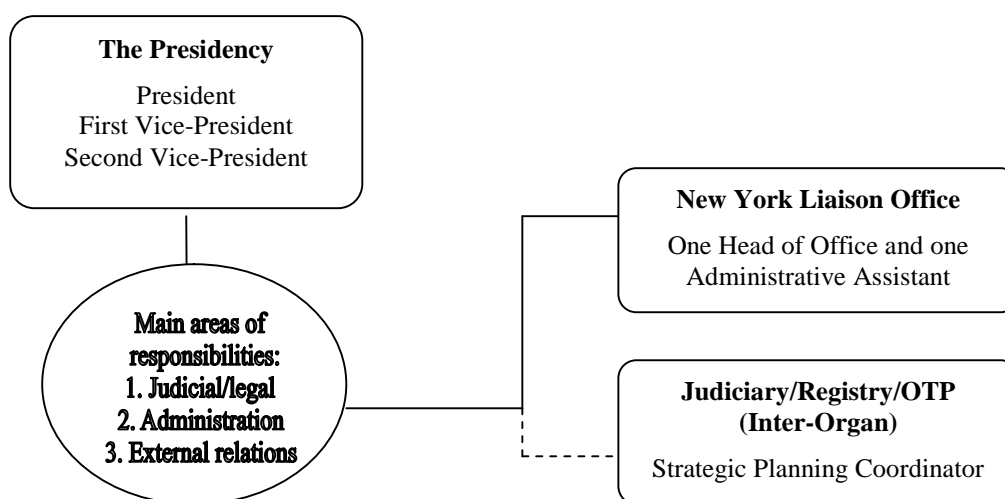
*Overview of functioning and teams of the Judiciary*

17. The Presidency is one of the Organs of the Court. It is composed of the President and First and Second Vice-Presidents, all of whom are elected by an absolute majority of the judges of the Court for a three-year renewable term. All three members of the Presidency remain active members of the Judicial Divisions during their terms, with the President as a member of the Appeals Division.

18. The Presidency has three main areas of responsibility: judicial/legal functions, administration and external relations.

19. In the exercise of its judicial/legal functions, the Presidency constitutes Chambers and assigns cases to them, conducts judicial reviews of certain decisions of the Registrar and concludes Court-wide cooperation agreements with States. The Presidency is responsible for the proper administration of the Court, with the exception of the Office of the Prosecutor, and oversees the work of the Registry. The Presidency coordinates with and seeks the concurrence of the Prosecutor on all matters of mutual concern. The Presidency's responsibilities in the area of external relations include maintaining relations with States and other entities, and promoting public awareness and understanding of the Court.

**Graph 3: The Presidency**<sup>10</sup>



## 2. The Judicial Divisions

### (a) General overview

20. The Judicial Divisions consist of eighteen judges organized into:

- (a) The Pre-Trial Division;
- (b) The Trial Division; and
- (c) The Appeals Division.

21. The Presidency assigns judges to Divisions on the basis of the nature of the functions each Division performs and the qualifications and experience of the judge. This is done in a manner ensuring that each Division benefits from an appropriate combination of expertise in criminal law and procedure and international law.

22. The Pre-Trial and Trial Divisions are composed predominantly of judges with criminal trial experience. Judges are assigned to these Divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the Division concerned. The Presidency can decide to temporarily attach a judge of the Trial Division to the Pre-Trial Division and vice versa if the Court's workload so requires (article 39(4) of the Rome Statute).

<sup>10</sup> The number of Pre-Trial and Trial Chambers constituted by the Presidency may vary according to the number of situations and ongoing cases in the different stages before the Court.

23. The Appeals Division is composed of the President of the Court and four other judges, the Trial Division and the Pre-Trial Division of not less than six judges each. The judges assigned to the Appeals Division serve exclusively in that division for their entire term of office.

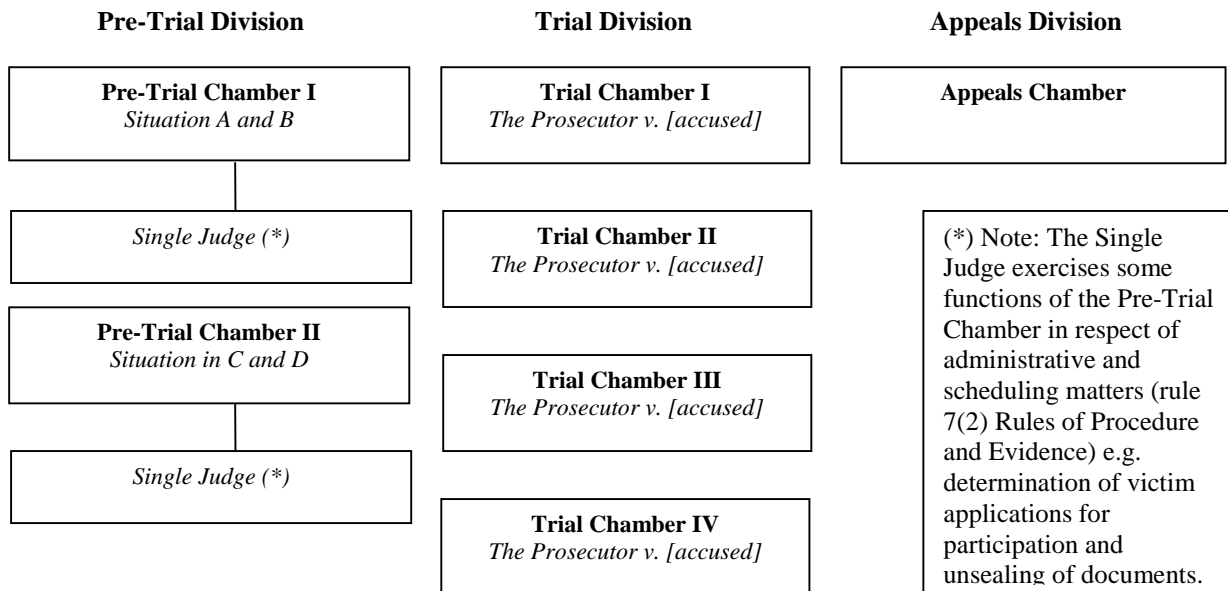
24. Each Division can be subdivided into one or more Chambers of judges. The Chambers are responsible for conducting the judicial proceedings of the Court at different stages. Each Pre-Trial and Trial Chamber consists of three judges of the respective Division and is chaired by a Presiding Judge, who conducts the proceedings in consultation with his/her two fellow judges on the bench. The Appeals Chamber consists of all five judges of the Appeals Division.

*Chambers support team structure*

25. Chambers do not operate a formal structure of a separate internal legal support team for each case, namely Chambers legal support staff specifically assigned to a specific case in a team structure. Instead, the Chambers’ structure and the case-based nature of the work both of individual judges and of their supporting legal officers and administrative assistants leads naturally to a system of virtual team-working within the three Divisions, (Pre-Trial, Trial, and Appeal) by overlapping groups of judges and staff based around the operational requirements of those directly involved in each specific case. Though some judges and staff may work on only one case at a time, in practice many of them need to work on more than one case concurrently. This variable geometry in the Chambers’ support team approach provides a logical response to continually changing needs.

**(b) Composition and functions of the Divisions and Chambers**

**Graph 4: Composition of Divisions and Chambers (as at March 2012)**





(i) *The Pre-Trial Division**Composition*

26. The Pre-Trial Division is composed of at least six judges and predominantly of judges with criminal trial experience. The judicial functions in the Pre-Trial Division are carried out by Pre-Trial Chambers, composed of three judges each. The functions of the Pre-Trial Chamber are carried out either by three judges or by a single judge, who may carry out some of the (administrative) functions of the Pre-Trial Chamber.

*General functions of the Pre-Trial Chamber*

27. The Pre-Trial Chamber plays an important role in the first phase of proceedings. This phase begins with the initiation of an investigation by the Prosecutor into a general situation in which crimes may have occurred. If the Prosecutor collects sufficient evidence, a case is developed against a particular individual or group of individuals, and brought before the Pre-Trial Chamber. The Pre-Trial Chamber then oversees the pre-trial proceedings, which commence with the initial appearance of the suspect and end with the Pre-Trial Chamber's decision on whether or not to confirm the charges brought by the Prosecutor against the suspect(s). If the Pre-Trial Chamber confirms some or all of the charges, the case is sent to a Trial Chamber constituted by the Presidency.

*Functions of the Pre-Trial Chamber at the beginning of the investigation*

28. In a situation where the Prosecutor intends to initiate an investigation on his or her own motion (*proprio motu*, Article 15 of the Rome Statute), he or she must first submit a request for authorization of an investigation to the Pre-Trial Chamber, together with any supporting material collected. The Pre-Trial Chamber then examines the Prosecutor's request and the supporting material. The Pre-Trial Chamber authorizes the commencement of the investigation if it considers that there is a reasonable basis to proceed with the investigation and that the case appears to fall within the jurisdiction of the Court, without prejudice to subsequent determinations by the Court with regard to jurisdiction and the case's admissibility.

29. If the Pre-Trial Chamber determines that the criterion of reasonable basis is not met, the Prosecutor may either decide not to proceed with an investigation or present a further request based on new facts or evidence regarding the same situation.

30. The Pre-Trial Chamber may review a decision of the Prosecutor not to proceed with an investigation either on its own initiative, or at the request of the State making a referral under article 14 of the Rome Statute, or of the United Nations Security Council under article 13 (b) of the Rome Statute.

*Functions of the Pre-Trial Chamber during the investigation*

31. The Pre-Trial Chamber ensures the overall integrity of the proceedings during the investigation.

32. Where a situation has been referred by a State Party or the Prosecutor has initiated an investigation on his or her own motion, the Pre-Trial Chamber may be asked by the Prosecutor for authorization to continue investigating where one or more States have asked him to defer to the State's own investigation.

33. From the investigation phase, the Pre-Trial Chamber continues to receive and determine victims' applications for participation in the proceedings. The Pre-Trial Chamber is also concerned with safeguarding the interests of victims and witnesses, this responsibility pertaining to victims rests with the Pre-Trial Chamber during the entire Pre-Trial phase.

*Functions of the Pre-Trial Chamber with regard to arrest and initial appearance*

34. At any time after the initiation of an investigation, the Prosecutor may apply to the Pre-Trial Chamber for the issuance of a warrant of arrest or a summons to appear. The Pre-Trial Chamber shall issue a warrant of arrest or a summons to appear if it is satisfied that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court.

35. After a warrant of arrest or summons to appear has been issued, the Pre-Trial Chamber may seek the cooperation of States to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of the victims. The Pre-Trial Chamber may, at any time following the issuance of an arrest warrant or a summons to appear, be seized under article 19 of the Rome Statute with a challenge to the jurisdiction of the Court or the admissibility of a case by a State or by an accused or a person for whom a warrant of arrest or a summons to appear has been issued. If the challenge is successful, that ends the proceedings against that person before the Court.

36. In the event that a person has been arrested or has appeared pursuant to a summons, the Pre-Trial Chamber oversees the initial appearance hearing, where it must satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under the Statute, including the right to apply for interim release pending trial. Moreover, after the initial appearance of the person, the Pre-Trial Chamber must also ensure that the person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor.

37. The Pre-Trial Chamber may, upon request of said person, issue orders or seek the cooperation of States as may be necessary to assist the person in the preparation of his or her defence.

*Functions of the Pre-Trial Chamber with regard to the confirmation of charges*

38. Within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber holds a hearing in the presence of the Prosecutor, the person charged and his/her counsel to decide on the confirmation of charges on which the Prosecutor intends to seek trial. At the hearing the Prosecutor has to support the charges with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The person has the right to object to the charges, challenge the evidence presented by the Prosecutor and present evidence.

39. The Pre-Trial Chamber then makes a determination either confirming the charges, if it is satisfied that there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged, and is also satisfied that the case is admissible before the Court. Alternatively, the Pre-Trial Chamber may decline to confirm the charges if it determines that there is insufficient evidence. It may also adjourn the hearing (i.e. close the hearing with an option of a possible continuation at a later stage) and request the Prosecutor to consider either providing further evidence, conducting further investigations or amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

*Structure of Pre-Trial Chambers' legal support teams working on the respective cases*

40. For each case before a Pre-Trial Chamber, a team of legal support staff is established to assist the three judges in the Chamber in adjudicating the case. In a case comprising only one accused and no more than 10 charges, a limited number of requests for redactions and a maximum of 200 to 300 victims participating, the team would consist of one legal officer per judge, that is, three legal officers working on the case, with the assistance of one associate legal officer and one research assistant, who could also assist other teams at the same time.

41. This structure changes when there is more than one person prosecuted in a particular case, more than 10 charges, more than 200 to 300 victims participating, or a large number of redactions (e.g. there were 25,000 pages presented for redactions in the Kenyan cases). In such a situation, the Chamber may need, per case, up to two additional associate legal officers in order to cope with the work in relation to victims and four to six additional legal assistants in order to cope with redactions. If there is more than one accused per case, the number of legal officers may also need to be increased.

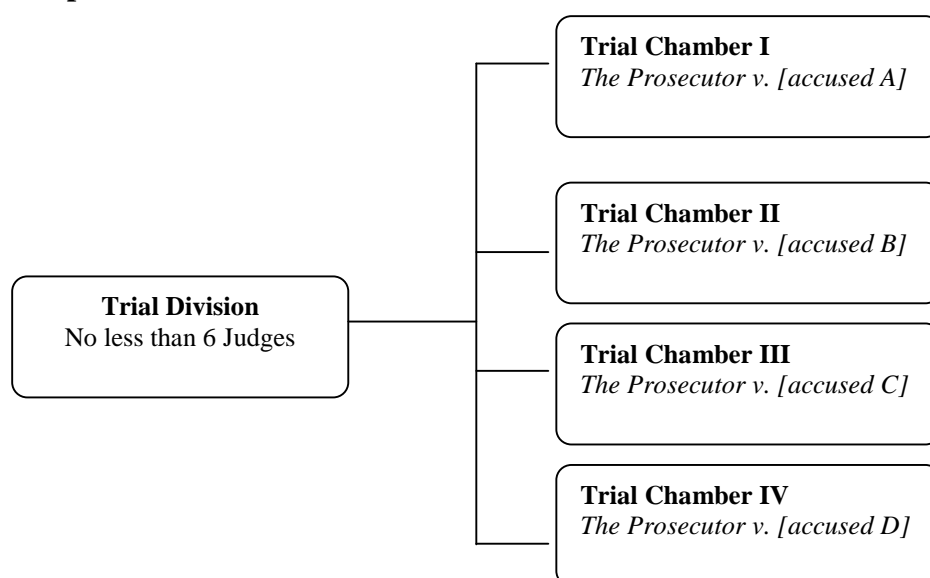
42. The senior Legal Adviser for the Pre-Trial Division is in charge of coordinating the work of the different teams for the different cases in the three Pre-Trial Chambers: he/she assigns tasks, supervises the work and revises the drafts before they are presented to the judges.

*(ii) The Trial Division*

43. The Trial Division is composed of at least six judges and predominantly of judges with criminal trial experience. They serve in this Division for a period of three years, and thereafter until the completion of any case if the hearing has already started.

44. The Presidency can decide to temporarily attach a judge assigned to the Pre-Trial Division to the Trial Division if the efficient management of the Court's workload so requires, but a judge who has participated in the pre-trial phase of a case is not, under any circumstances, eligible to sit on the Trial Chamber hearing that case.

**Graph 5: Trial Division**



### *Functions of the Trial Chamber*

45. The major role of the Trial Chamber, as expressed in article 64 of the Rome Statute, is to adopt all necessary procedures to ensure that a trial is fair and expeditious, and is conducted with full respect for the rights of the accused with regard for the protection of victims and witnesses.

46. During the trial, the Trial Chamber rules on any procedural issue, including *inter alia* the admissibility of evidence and the appropriateness and manner of victim participation. The Trial Chamber ultimately determines the innocence or guilt of the accused.

47. Trials must be held in public, unless special circumstances require that certain proceedings be conducted in closed session to protect confidential or sensitive information to be given in evidence, and victims and witnesses as provided in article 68 of the Rome Statute.

48. Once the Trial Chamber determines that the accused is guilty, it can impose a sentence of imprisonment for a specified number of years, which may not exceed a maximum of thirty years, or a term of life imprisonment. Financial penalties can also be imposed. Additionally, the Trial Chamber can order a convicted person to pay money for compensation, restitution or rehabilitation of victims.

### *Structure of Trial Chambers' legal support teams working on the respective cases*

49. The number of Trial Chambers corresponds to the number of cases. The legal support teams assisting the respective Trial Chambers are composed of the legal officers directly assigned to a Judge. An additional legal officer not directly assigned to a Judge but assisting the Chamber as whole also assists each Chamber in close liaison with the Presiding Judge and the Legal Adviser to the Trial Division. Each team is also reinforced with one assistant/associate legal officer position depending on the scope of the case (number of accused, extent of the charges) and specific procedural issues arising (for instance, number of victim applications submitted).

50. Given the overlapping composition of some of the Trial Chambers and the general need for efficiency, although the teams are mostly “case-based”, the staff assisting the Chambers are assigned flexibly and they assist on several cases as necessary.

51. The Legal Adviser to the Trial Division is part of all the legal support teams, and in light of the overview that he/she has of the workload of all the Trial Chambers, assists the President of the Division and Presiding Judges in efficiently managing the available resources.

### *(iii) The Appeals Division*

52. In accordance with article 39(1) of the Statute, the Appeals Division is composed of the President of the Court and four other Judges. The judges assigned to the Appeals Division serve exclusively in that Division for their entire term of office.

53. The Appeals Chamber is composed of all five judges assigned to the Appeals Division.

### *Functions of the Appeals Chamber*

54. The Prosecutor may appeal a decision of conviction or acquittal on grounds of procedural error, error of fact or error of law. A convicted person, or the Prosecutor on that person's behalf, may appeal a conviction on the above grounds or on any other ground that

affects the fairness or reliability of the proceedings or decision. The Prosecutor or the convicted person may appeal the sentence imposed on the ground of disproportion between the crime and the sentence. The Appeals Chamber may decide to reverse or amend the decision or sentence or order a new trial before a different Trial Chamber.

55. Other decisions made by the Pre-Trial and Trial Chamber during the course of proceedings may also be appealed by either party (known as “interlocutory appeals”; see paragraphs 84-86 below), including decisions with respect to jurisdiction and admissibility. In addition, there is provision for appeals against orders for reparations.

56. A convicted person, or other specified persons on that person's behalf, may also apply to the Appeals Chamber to revise a final judgement of conviction or sentence when new evidence has been discovered which, if available at the time of trial, would have been likely to have resulted in a different verdict. Among the other grounds for revision is the discovery that decisive evidence was false, forged or falsified, or that there was serious misconduct by a participating judge.

57. The Appeals Chamber is also responsible for the review of sentence, i.e. to determine whether, after the person has served two thirds of the sentence or 25 years in the case of life imprisonment, the sentence should be reduced. If the sentence is not reduced, the Appeals Chamber shall thereafter review the question of reduction of sentence at least every three years. Furthermore, the Appeals Chamber is the body responsible for deciding questions relating to the disqualification of the Prosecutor or a Deputy Prosecutor.

*Structure of Appeals Chambers’ legal support teams working on the respective cases*

58. A team of (associate) legal officers is assigned to each interlocutory appeal. Under the guidance of the Presiding Judge, the team provides assistance to all judges of the Appeals Chamber in relation to the appeal to which the team is assigned. The number of legal officers assigned to a given team depends *inter alia*, on the complexity of the issues on appeal. Depending on the circumstances, a legal officer may be assigned to more than one team at a time.

59. The Appeals Chamber's Legal Adviser coordinates and directs the work of the teams under the overall supervision of the President of the Appeals Division and the Presiding Judges.

**(c) Judicial Processes before the International Criminal Court**

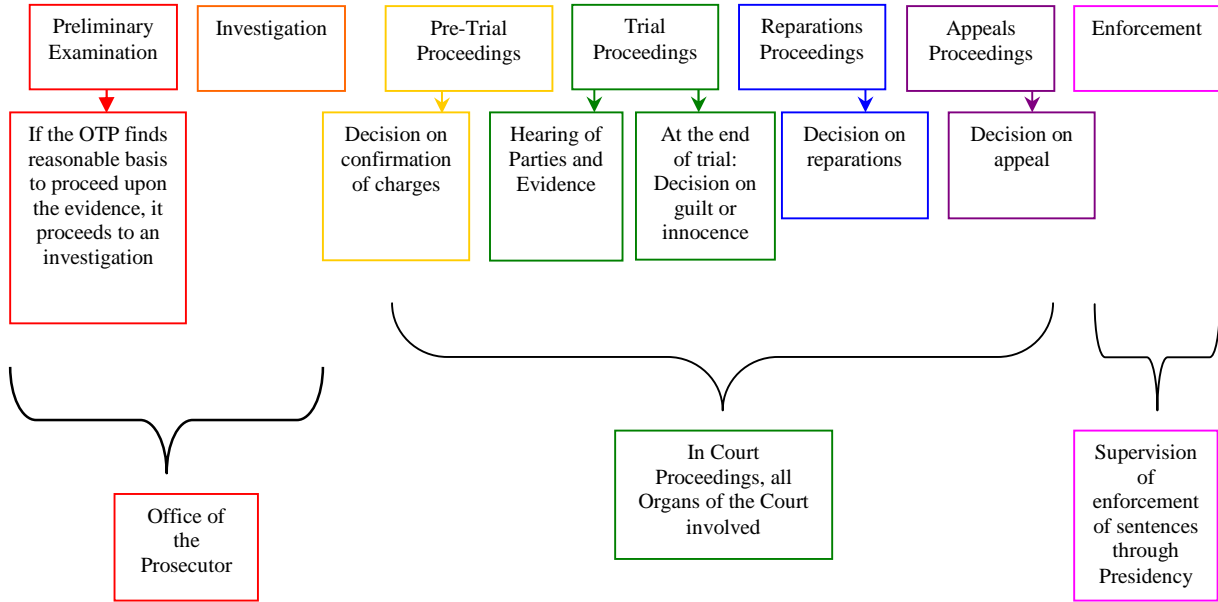
*(i) Jurisdiction*

60. The Court only has jurisdiction with respect to its statutory crimes<sup>11</sup> committed after 1 July 2002, which is after the entry into force of the Rome Statute. In addition, the crimes within the jurisdiction of the Court must have either been committed in the territory of a State Party, or by a national of a State Party. Where a state becomes a State Party after July 2002, the Court has jurisdiction over crimes in respect of that State Party from its date of accession. Lastly, the Court has jurisdiction over crimes committed after 1 July 2002 in those situations referred to it by the United Nations Security Council.

<sup>11</sup> Article 5 of the Rome Statute: genocide, crimes against humanity, war crimes and the crime of aggression. For the future activation of the Court’s jurisdiction for the latter crime see RC/Res.6, annex I, of 11 June 2010.

61. The following organigramme displays the stages of judicial proceedings before the Court from the preliminary examination to the appeals phase.<sup>12</sup>

**Graph 6: Stages of proceedings**



(ii) *Referrals and Investigations*

62. Before a case is developed against a particular individual, investigations start with a general situation in which crimes may have occurred. These situations may come before the ICC in one of three ways (so-called trigger mechanisms for the Court’s jurisdiction):

- (a) A State Party may refer a situation to the Prosecutor;
- (b) The Security Council may refer a situation to the Prosecutor; or
- (c) The Prosecutor may begin an investigation on his own initiative, or *proprio motu*.

63. In the case of referrals by a State Party or the Security Council, the Prosecutor independently analyzes the information received and determines whether or not there is a basis to begin an investigation. He/she looks at the alleged crimes, the jurisdictional requirements and whether there are any national proceedings in accordance with the principle of complementarity. If he/she considers there is a reasonable basis to open an investigation, he/she does so.

64. In the case of *proprio motu* investigations, however, the Rome Statute imposes an additional requirement before the Prosecutor may begin an investigation. If he/she wishes to open an investigation on his/her own initiative, the Prosecutor must seek authorization from a Pre-Trial Chamber of three judges. If the Pre-Trial Chamber concludes that there is a reasonable basis to begin an investigation, it will authorize the Prosecutor to do so. This provides an extra safeguard against politically motivated prosecutions.

<sup>12</sup> ICC-ASP/4/32, para. 12.

65. Investigations are carried out independently by the Office of the Prosecutor, which includes a staff of dedicated investigators. Often these investigations will take place in remote and dangerous locations of ongoing conflict, presenting security, logistical and other challenges not only for the Court's staff but also for victims, witnesses and others. In the past, the Court has had to conduct emergency evacuations of staff from the field, to implement emergency protective measures for victims and witnesses and to relocate local staff operating in the field.

66. Throughout investigations, the Pre-Trial Chamber may exercise a number of critical functions including authorizing special investigative steps, or taking measures to protect evidence.

(iii) *Pre-Trial Proceedings*

*Arrest Warrant or Summons to Appear (from a situation to a case)*

67. Following investigations in a situation before the Court, a case emerges with the application by the Prosecutor to the Pre-Trial Chamber for either a warrant of arrest, or a summons to appear for an individual suspected of being responsible for crimes within the jurisdiction of the Court.

68. In either case, the Prosecutor must establish to the satisfaction of the Pre-Trial Chamber that there are reasonable grounds to believe the person has committed a crime within the jurisdiction of the Court. The difference between a warrant and a summons is that a summons requests a person to voluntarily surrender to the Court whereas an arrest warrant is used to ask States to arrest a person and to commit him or her to detention by the Court.

69. In addition, for a case to be successfully brought before a Pre-Trial Chamber, it has to be admissible in accordance with the principle of complementarity. Pursuant to Article 17 of the Rome Statute, a case is inadmissible if it is being investigated or prosecuted by a State which has jurisdiction over it, or the State has decided not to investigate or prosecute. Only if it can be established that the State is unwilling or unable to genuinely carry out the investigation or prosecution will the Court step in. A case is furthermore inadmissible under article 20(3) of the Statute where the person concerned has already been tried for conduct which is the subject of the complaint, and a further trial by the Court is not permitted; or if the case is not of sufficient gravity to justify further action by the Court, in accordance with article 17 of the Statute.

*Confirmation of charges*

70. Once a person is arrested or voluntarily appears before the Court and the case is admissible, the next step in the proceedings is what is called the "confirmation of charges" hearing. At this hearing, the Prosecutor is required to provide sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. This hearing is an innovation from previous tribunals which rely on a more cursory indictment process found in Anglo-American and similar legal systems. The logic behind this more substantial pre-trial hearing is to avoid cases going to trials on charges for which the Prosecutor doesn't have enough evidence to justify a trial let alone convict an individual.

*Decision on the confirmation of charges*

71. If the judges of the Pre-Trial Chamber consider that there is sufficient evidence to establish substantial grounds to believe that the person committed some or all of the crimes charged, it issues a decision confirming the charges.

72. If the charges are confirmed, the Presidency constitutes a Trial Chamber by assigning three judges of the Trial Division to the case. The case file is handed over to the newly constituted Trial Chamber for the preparation of the trial hearing. In case the charges are not confirmed by the Pre-Trial Chamber, the Prosecutor may still gather additional evidence and seek to bring the charges again on that basis.

*(iv) Trial proceedings*

73. Trials are carried out by a Chamber of three judges who are responsible for ruling on points of law and making findings of fact. During the trial, the burden is on the Prosecutor to prove the accused's guilt beyond a reasonable doubt. The trial phase starts with the hand-over of the case file from the Pre-Trial Chamber to the Trial Chamber. The Trial Chamber then leaves some time to the parties for the preparation of trial (trial preparation phase) before it schedules the start of the trial hearings.

74. Trials take place in the presence of the accused; trials in *absentia* are prohibited. The Statute contains detailed provisions to protect the rights of the accused. These include the right:

- (a) To have adequate time and facilities for preparation of the defence;
- (b) To communicate freely and confidentially with counsel of the accused's choosing;
- (c) To have legal assistance provided by the Court where the accused cannot pay for it;
- (d) To be tried without undue delay;
- (e) To have the assistance of a competent interpreter and such translations as may be necessary; and
- (f) To remain silent without such silence being held against him or her.

*Trial hearing*

75. The hearing of the trial is the phase in which both parties (the Prosecutor and the Defence) present their cases, supported by evidence, before the judges in the courtroom.

76. Procedurally, the Prosecutor makes an opening statement, followed by an opening statement by the Defence. The Office of the Prosecutor then produces its evidence. The Statute provides that, except for certain specific instances, the testimony of witnesses is to be given in person. Counsel for the defence may cross-examine the Prosecution's witnesses, and the judges may also ask questions. After the Prosecution's case, the Defence then presents its case, during which the Prosecution and judges may ask questions. Proceedings conclude with closing statements by the parties.

77. During the trial, victims may participate by presenting their views and concerns to the Trial Chamber where their personal interests are affected. Victims are normally represented in court by legal representatives. The judges determine in each case how legal representatives may participate in proceedings, for example by making opening or closing statements. The Appeals Chamber has also recognized that victims may under certain circumstances introduce



evidence, question witnesses or testify on their own behalf. In no case, however, may victim participation infringe on the right of the accused to a fair trial. It is the responsibility of the Trial Chamber to ensure that appropriate procedures are followed to safeguard the rights of the accused.

*End of trial – Sentencing and Reparations proceedings*

78. At the end of the trial, if the accused is found guilty, he or she will be sentenced by the Trial Chamber. It is noteworthy that the decision on the sentence can be issued separately shortly after the issuance of the verdict on the accused's criminal liability.

79. In case of a conviction, the Trial Chamber may issue an order for reparations to victims, including restitution, compensation and rehabilitation. The Court may, where appropriate, order that the award for reparations be made directly to victims, or through the Trust Fund for Victims, which has been established for the benefit of victims.

80. In case of a conviction, sentences are carried out in the prisons of States agreeing to accept convicted persons to purge their sentences in one of their national prisons. If no State agrees to take a particular convicted person, the Netherlands, as the host state, has a residual obligation to enforce the sentence.

*(v) Appeals*

81. The Appeals Chamber may hear appeals against the final judgment of the Trial Chamber or against the sentence or reparations order. The Defence may appeal a conviction, but the Prosecution may also appeal an acquittal. Both the Prosecution and the Defence may appeal procedural errors, errors of fact or errors of law. In addition, the convicted person may appeal any other ground that affects the fairness or reliability of the proceedings or decision.

82. On appeals against sentence, if the Appeals Chamber is of the opinion that there are grounds on which the conviction might be set aside, the Appeals Chamber may invite the Prosecutor and the convicted person to submit grounds of appeal and may thereafter render a decision on conviction. Likewise, on appeal against conviction, the Appeals Chamber, if it considers that there are grounds to reduce the sentence, may invite the Prosecutor and the convicted person to submit such grounds and may render thereafter a decision on the issue.

83. In addition to appeals on the judgment or sentence, the Appeals Chamber may hear what are known in law as "interlocutory appeals", although this term does not appear in the Statute.

84. Interlocutory appeals come in two forms. First, there are certain issues which can be appealed automatically to the Appeals Chamber. These include questions related to the very legality of proceedings, such as decisions with respect to jurisdiction or admissibility. They also include decisions granting or denying release of a suspect or an accused. Second, there are other appeals which cannot be brought immediately but which require the leave of the Pre-Trial or Trial Chamber issuing the decision which the party seeks to challenge. Either party may appeal any issue which would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial if, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution may by the Appeals Chamber materially advance the proceedings.

85. Proceedings on appeal are mostly in writing. In particular with regard to interlocutory appeals, the proceedings are entirely in writing unless the Appeals Chamber decides to convene a hearing.

86. If the Appeals Chamber finds that the proceedings under appeal were unfair in a way that affected the reliability of the decision or sentence, or that the appealed decision or sentence was materially affected by error of fact or law or procedural error, it may:

- (a) Reverse or amend the decision or sentence; or
- (b) Order a new trial before a different Trial Chamber.

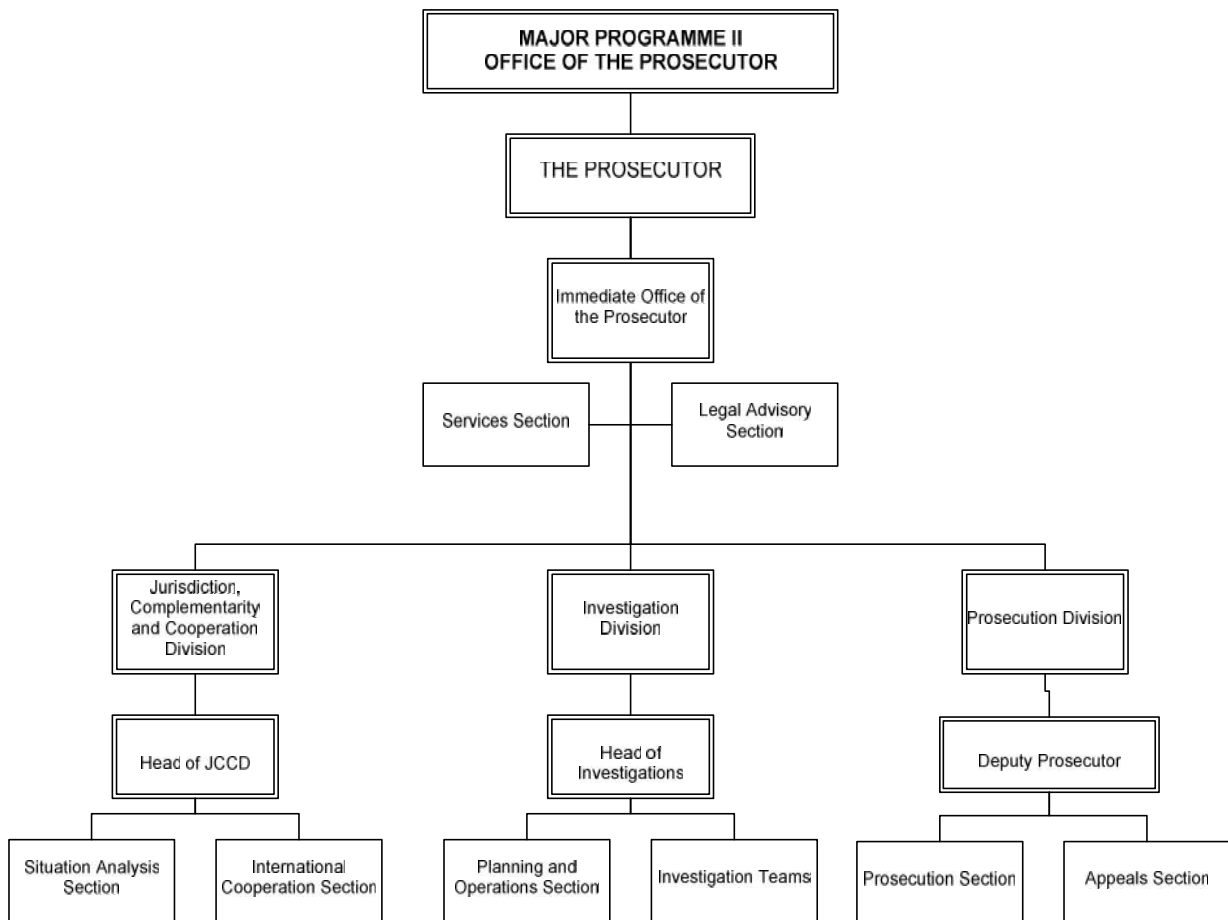
**3. Office of the Prosecutor**

**(a) General/functions**

87. The OTP has three core functions:

- (a) Conducting preliminary examinations in order to identify the situations to be investigated;
- (b) Investigating specific crimes; and
- (c) Prosecuting cases before the Chambers of the Court.

**Graph 7: Office of the Prosecutor**



**(b) Preliminary examination**

88. The Office of the Prosecutor collects all relevant information necessary to make a determination whether the criteria established by the Statute are fulfilled.

89. This phase is critical to ensure respect for the principle of complementarity and avoid incurring the cost of Court investigations when the national authorities are able and willing to conduct their own proceedings.

**(c) Investigations**

90. The Office of the Prosecutor has adopted and implemented a policy of focused investigations and prosecutions of those most responsible in each situation. This involves selecting a limited number of incidents, while aiming to provide a sample that is reflective of the gravest incidents, the main types of victimisation and the entire range of criminality. This policy is in accordance with the Office's legal mandate, and it is also a very significant factor in terms of the cost of the entire Court operations.

91. The number of suspects and incidents selected for investigation and prosecution triggers the main cost drivers: number of witnesses, protection measures, disclosure obligations, length of the proceedings and legal representation for victims and suspects.

92. The Office of the Prosecutor seeks to rely on the lowest number of witnesses necessary to prove its case by conducting focused investigations and by prioritizing documentary, physical, financial and forensic evidence. Additionally the Office of the Prosecutor aims to minimise witness protection costs by avoiding witnesses with a high risk profile, taking statements in areas of high insecurity and creating new systems of protection when possible. In doing so, the number of witnesses referred to the ICCPP has been reduced in recent cases.

**(d) Prosecutions**

93. While Chambers are responsible for taking the crucial decisions and ensuring a fair process for all the parties, the Office of the Prosecutor seeks to contribute to the efficiency of the proceedings.

**(e) Cooperation***Structure*

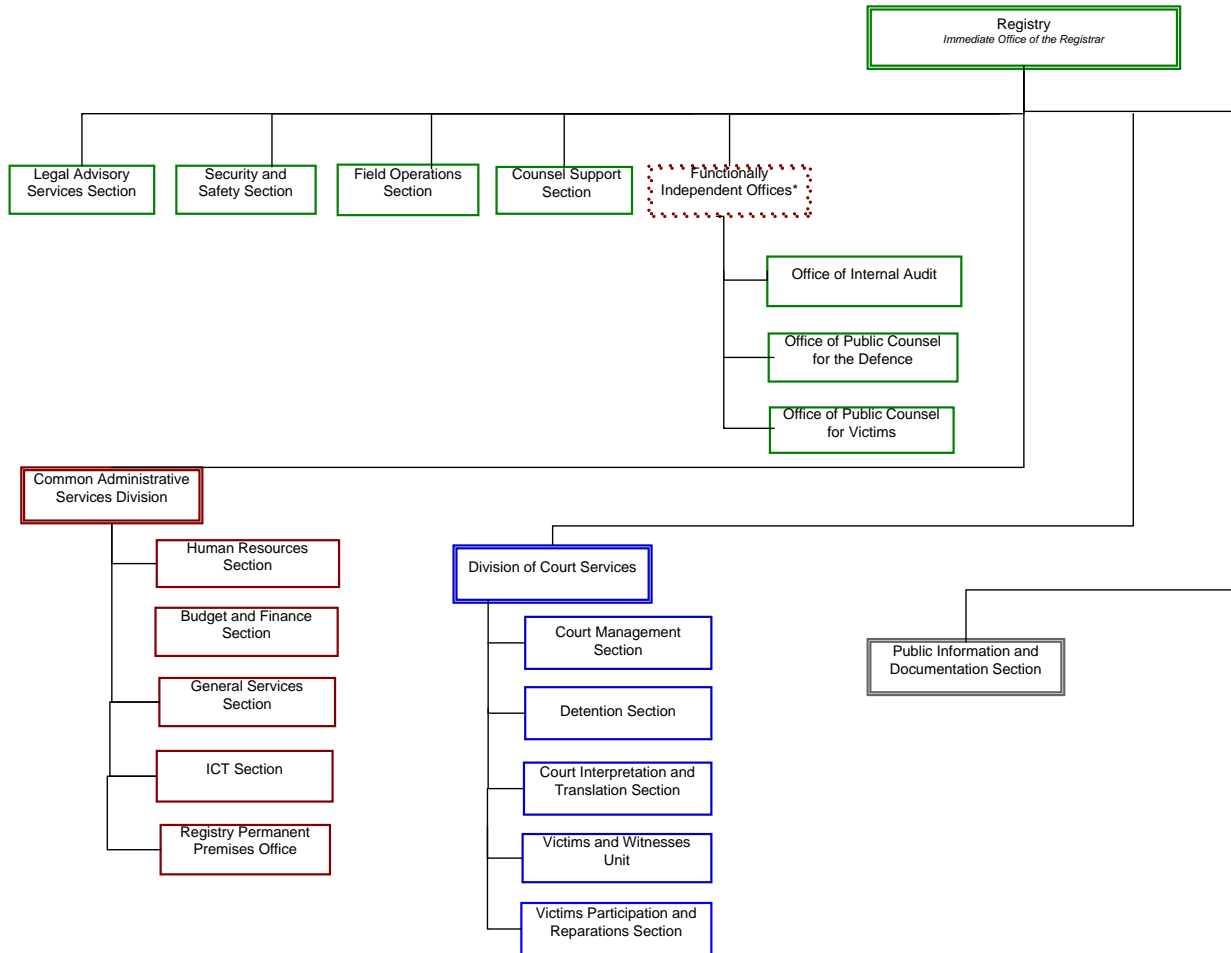
94. The Office of the Prosecutor is composed of three operational Divisions, the Jurisdiction, Complementarity and Cooperation Division (JCCD; see Office of the Prosecutor, Regulation 7), Investigation Division (ID; see the Office of the Prosecutor, Regulation 8) and Prosecution Division (PD; see Office of the Prosecutor, Regulation 9) and two supporting Sections, the Services Section (see the Office of the Prosecutor, Regulation 10) and Legal Advisory Section (LAS; see Office of the Prosecutor, Regulation 11).

95. Preliminary examinations are conducted by the Situation Analysis Section within the JCCD, in coordination with Crime Pattern Analysis within the ID, in order to prepare reports and recommendations to assist the Prosecutor in determining whether there is a reasonable basis to proceed with an investigation.

96. Upon a decision to proceed with an investigation in a situation, a Joint Team, integrating staff from the three operational Divisions is established to conduct the investigations and, upon confirmation of the charges, a Trial Team is established to conduct the prosecutions. The composition and size of each Team depends on the needs and stage of the investigation and prosecution.

#### 4. The Registry

**Graph 8: The Registry**



97. The Registry is headed by the Registrar, the principal administrative officer of the Court, and is the organ responsible for the non-judicial aspects of the administration and servicing of the Court.

98. In order to fulfil its functions, the Registry has organized itself into two divisions: the Common Administrative Services Division and the Division of Court Services, as well as a number of sections and offices. These are the Legal Advisory Services Section, the Field Operations Section, the Registry Permanent Premises Office, the Security and Safety Section, the Counsel Support Section and the Public Information and Documentation Section. The Immediate Office of the Registrar provides support to the Registrar in his functions, including providing effective oversight to the Divisions and sections under her direct supervision, and her functions concerning external relations and cooperation. The Offices of Public Counsel for the Defence and Victims (both operating under the aegis of the Counsel Support Section) and the Office of Internal Audit, while functionally independent, are located within Registry.

The Independent Oversight Mechanism, the Secretariat of the Assembly of States Parties, the Secretariat of the Trust Fund for Victims and the Project Director's Office of the Permanent Premises Project also fall under the Registry for administrative purposes.

99. Through its support functions, the Registry guarantees the efficient delivery of essential services to the different participants in judicial proceedings in order to facilitate and ensure effective investigations, trials and other judicial proceedings. These functions include field and courtroom security, field operations, administrative and other assistance to counsel for the defence and victims, publicity of the proceedings, courtroom management and other services related to the conduct of judicial proceedings, such as interpretation and ICT support. This centralized approach to the provision of essential services within the Court enables the Registry to support the different areas of the Court's operations by focusing on its clients' requirements. Similarly, through its common platform of services, the Registry seeks to ensure maximum efficiency and avoids the duplication of resources within the Court.

100. In addition to its support functions, other essential responsibilities of the Registry include cooperation with States, protection of victims and witnesses, detention, assistance to victims participating in the proceedings and outreach to affected communities. These functions are fundamental to maximizing the impact of the judicial system established under the Rome Statute and to ensuring its functioning, as well as the effective implementation of judicial decisions. Furthermore, in the case of outreach activities and victim participation, through these core functions the Court delivers justice in a meaningful way to the actual communities affected by the crimes under the Court's jurisdiction by ensuring that they have a stake in the Court's judicial process and effectively managing their expectations. Moreover, effective outreach, and the resultant enhanced understanding of the Court and its activities, encourages the cooperation by witnesses and local intermediaries that is crucial to the judicial proceedings.

101. The Registry consists of the following main divisions/sections/offices:

**(a) The Division of Court Services<sup>13</sup>**

102. "The Division of Court Services [...] provides support for the judicial activities of the Court [...]" The division comprises the following sections:

*(i) The Victims and Witness Unit<sup>14</sup>*

*Protecting and supporting victims and witnesses*

103. "Article 68 of the Rome Statute provides an obligation upon the Court as a whole to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. Appropriate support for and protection of witnesses, victims appearing before the Court is crucial to the successful functioning of the Court.

104. The Victims and Witness Unit (VWU) was created within the Registry in accordance with article 43(6) of the Rome Statute. The VWU has established a fully functional and operational system of protection, support and assistance. The Registrar negotiates relocation agreements, which are bilateral agreements between a State Party and the Court ..."

<sup>13</sup>*Behind the Scenes. The Registry of the International Criminal Court* (ICC-PIDS-BSR-001/10), p 11.

<sup>14</sup>*Ibid.*, p. 13.

(ii) *Victims Participation and Reparations Section*<sup>15</sup>

105. “If an accused were to be found guilty by the Court, the Trial Chamber could award reparations to the victims, whether on an individual or a collective basis.

(a) The Court’s texts grant victims the right to present individual applications for reparations [...] The Victims Participation and Reparations Section (VPRS) was established in order to facilitate the realization of victims’ rights both to participation and reparations.”

106. The VPRS has worked jointly with the Outreach Unit in all the situations before the Court to inform victims of their rights.

107. Since it was established, the VPRS has helped victims to make their applications [for participation in proceedings and reparations] to the Court by preparing, distributing and collecting application forms and making known the Court’s formal requirements.

108. The section analyzes applications using a specialized database, goes back to victims to obtain any missing information, and prepares reports extracting the relevant information to the Chambers in order to assist them in making their decisions.”

(iii) *The Court Management Section*<sup>16</sup>

109. “The Court Management Section ensures that the courtroom proceedings are scheduled appropriately; it produces a written record of what is said during the hearings in real time and in both working languages of the Court.”

(iv) *The Court Interpretation and Translation Section*<sup>17</sup>

110. “The section provides the following services:

- (a) Translation, revision and editing of Court documents;
- (b) Consecutive and simultaneous interpretation for meetings, trial hearings, press conferences specialized seminars, diplomatic briefings and other events;
- (c) Assistance and guidance in terminology and references; and
- (d) Recruitment, training and accreditation of field interpreters needed for work with staff in the field and/or at the seat of the Court.”

(v) *Detention*<sup>18</sup>

111. “The Detention Section’s aim is to provide safe, secure and humane conditions to those persons detained by the Court while awaiting trial and/or appeal.”

**(b) Counsel support for defendants and victims**<sup>19</sup>

112. “The right to counsel is generally guaranteed for accused persons by article 67 of the Rome Statute. These rights have been extended in the Chambers’ practice, article 67 having been applied to persons against whom the Prosecutor has brought charges before the

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<sup>15</sup> Ibid., p. 15.

<sup>16</sup> Ibid., p. 19.

<sup>17</sup> Ibid., p. 25.

<sup>18</sup> Ibid., pp. 29-30.

<sup>19</sup> Ibid., pp. 33-34.

Chamber, and article 55(2) to suspects when appearing before the Chamber as witnesses. A fair proceeding before any court of law requires that participants receive appropriate legal assistance [...]

113. The Registrar created a Counsel Support Section, which is in charge of centralizing and coordinating all assistance provide to counsel by the Court; it serves as the Registry’s focal point for the Offices of Public Counsel [...]

**(c) Independent Offices**

*(i) Office of Public Counsel for Victims*

114. In accordance with regulations 80 and 81 of the Regulations of the Court as constantly interpreted by the practice of the Chambers, the Office of Public Counsel for Victims acts as legal representative of victims in the proceedings before the Court, including reparations; supports and assists external legal representatives as appropriate; appears before Chambers in respect of specific issues.

*(ii) Office of Public Counsel for Defence*

115. As part of its mandate, the Office of Public Counsel for the Defence (OPCD) provides legal research and assistance to all defence teams, duty counsel and ad hoc counsel, to ensure their ability to comply with judicial deadlines and focus on relevant legal issues. The OPCD is also in charge of the right of the defence at the preliminary stages of the proceedings.

*(iii) Set-up of structures*

116. “The Rules of Procedure and Evidence set out the Court’s primary objectives in this regard:

- (a) The Code of Professional Conduct for counsel;
- (b) Establishment of a List of Counsel; and
- (c) A comprehensive legal aid system to guarantee that relevant persons implicated in the Court’s proceedings can benefit from legal assistance paid by the Court proportionate to their means [...]

117. “The Court has also created a List of Assistants and a List of Professional Investigators, composed of persons meeting certain minimum requirements, and facilitates the appointment of pro bono members where requested by counsel.”

**(d) Public Information and Outreach**

118. Effective and sustained public information efforts are vital to the success of the Court in conducting efficient investigations, delivering public and transparent justice, receiving requisite cooperation and support for its activities as well as contributing to the prevention of futures crimes and a lasting respect for international justice. To that end the Public Information and Documentation Section (PIDS) contributes to raise awareness and promote understanding of the Court’s mandate and its work, primarily among communities affected by cases heard before it, as well as with global audiences, including journalists, civil society organizations, and legal and academic communities. The Section is composed of the Outreach Unit, Public Affairs Unit, Protocol and Events Unit and the Library and Documentation Centre. The PIDS does not represent the Office of the Prosecutor that has its own Public

Information Unit for its specific purposes. The ASP has endorsed the Public Information Strategy (ICC-ASP/9/29) and the Strategic Plan for Outreach (ICC-ASP/5/12).

119. Outreach activities are carried out in the situation related countries to ensure that communities affected by the commission of crimes under the Court's jurisdiction can understand and follow its judicial activities. PIDS seeks to bridge the distance between the Court and these communities by establishing an effective system of two-way communication addressing their concerns and responding to their questions.

120. The Public Affairs Units provides the international media with timely and accurate information on the Court and its activities (with the exception of the OTP) giving or coordinating interviews, organizing press conferences and press briefings. It also maintains the website and produces and distributes various publications. Besides the traditional media PAU uses new social networks to reach out global audiences.

121. The Protocol and Events Unit facilitates public access to the hearings and organizes the VIP/High level visits to the headquarters, the various types of group visits such as visits by key stakeholders at the seat of the Court, judicial ceremonies (swearing-in ceremonies) and other relevant court wide events.

122. Last but not least, the Library plays the leading role in meeting the information needs of the constituents of the four organs of the Court as well as to the defense teams and legal representatives of the victims. The Library aims to select, acquire, preserve and provide access to a wide range of relevant print, non-print and electronic legal information resources.

**(e) Field Operations<sup>20</sup>**

123. "In the implementation of its ambitious judicial mandate, the Court was soon faced with a fundamental question – how to implement it effectively from its Headquarters, based in The Hague, thousands of kilometers away from where the crimes that it tries were committed."

124. According to the Report of the Court on the review of its field operations,<sup>21</sup> there are a variety of forms of field operations which are relied upon to implement the judicial mandate. These are: time-bound scalable field office presence in and/or near situation countries, exploratory missions of various organs of the Court; limited and temporary deployment of certain functions; transfer of suspect(s), holding of certain important hearings, or even parts of the trials in and/or near these countries; Court presences other than those in the countries of situation; limited deployment prior to the authorization of the Pre-Trial Chamber of the commencement of an proprio motu investigation by the Prosecutor.

125. Designed as time-bound scalable presences, the field offices and field presences are an efficient tool for the Court to the implement its judicial mandate in a given situation country in line with the general principles established in the Court's Strategy on Field Operations.<sup>22</sup> The field offices are essential to ensure protection of witnesses and victims, enable the victims to exercise their statutory rights of participation and reparations, carry out a sustainable and meaningful two-way dialogue with the affected communities, assist and support the clients, namely the counsel teams (defence and legal representatives of victims), the Office of the Prosecutor and the Trust Fund for Victims in the implementation of their independent mandates.

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<sup>20</sup> Ibid., pp. 45-48.

<sup>21</sup> Report on the review of the field operations (ICC-ASP/9/12).

<sup>22</sup> Report of the Court on the field operations strategy (ICC-ASP/10/26).



126. Where the United Nations has an established presence, the Court's field offices and presences rely on its support and assistance<sup>23</sup>. Maximizing interaction and cooperation with the UN field based mission(s) and other regional and national actors in and/or near situation countries allows the Court to draw upon their expertise and capacities, thus minimizing the costs for the Court's field operations while enhancing the impact of its work.

**(f) Security and Safety**<sup>24</sup>

127. The Security and Safety Section serves and advises all Organs of the Court on the measures necessary to provide an adequate level of protection to the personnel, information assets and tangible property of the Court and encompasses on physical security, information security, personnel security, field security, operational security, fire and safety both at Headquarters and in the field.

128. The Section liaises closely with relevant Host State authorities in security and safety issues as in every area of ICC activities, the Host State remains responsible for the security and safety of ICC personnel, premises and assets.

129. In 2005 a MOU was signed between the Court and the United National Security Coordination Department (UNSECOORD, currently known as United National Department of Safety and Security) and became a member of the United Nations Security Management System (UNSMS). As a member of the UNSMS, The Court benefits from the services, policies and common standards of the UNSMS, but it also has an obligation to comply with those policies and standards. Especially with reference to activities in the field, the SSS works closely with the UNSMS and is included in all security and emergency plans and systems.

130. "The section is composed of four units:

- (a) Field Security Unit;
- (b) Protective Security Unit;
- (c) Information Security Unit; and
- (d) Security Support Unit."

**(g) Legal Advisory**<sup>25</sup>

*Advice with respect to the Court's legal framework*

131. "The section's functions can be summarized as follows:

- (a) Provide unified and co-ordinated legal advisory service to the Registry and other organs on general legal and policy matters relating to carrying out the Court's mandate under the Statute; and
- (b) Ensure legal consistency and accuracy in the interpretation and application of all constitutive instruments of the Court and of international law in general;
- (c) Protect the legal interest of the Court and its staff and minimize legal exposure of the Court."

<sup>23</sup> In accordance with the UN-ICC Relationship Agreement (2004) and Memoranda of Understanding between the ICC and various UN missions, for example Memoranda concluded between the ICC and MONUC, the ICC and UNON, the ICC and UNOCI.

<sup>24</sup> Ibid., p. 51.

<sup>25</sup> Ibid., p. 55.

**(h) External Relations and Co-operation<sup>26</sup>**

132. “When Chambers issue a decision requiring the co-operation of States, such as the issuance of arrest warrants, the Registry prepares the necessary requests for assistance and transmits them to the States in question through the formal channels of communication. The Registry subsequently ensures a proper follow up and reports to the Chamber on the execution of the said requests.

133. The Registry also assists defence teams and legal representatives in obtaining the necessary assistance from States in order to perform their mandate.

134. Other aspects of Co-operation include negotiating and concluding agreements or ad hoc arrangements with States and international organizations in respect of *inter alia* witness relocation and interim release [...]

135. Likewise the Registry deals with a number of issues related to co-operation with the host State, such as protocol matters, detention and the premises of the Court.

136. The Registry continues to strengthen its relationship with key partners of the Court including States Parties, Non-States Parties, international and regional organizations and NGOs with the aim of building and maintaining support to the Court and facilitating the Court’s ability to fulfill its statutory mandate. In order to maintain a continued dialogue with States Parties, the Registry participates, with the other Organs of the Court, to the various Hague Working Groups and coordinates reports to be submitted to the Assembly or the Committee.”

**(i) Administration<sup>27</sup>**

137. The Common Administrative Services Division (CASD) provides a diverse range of specialized non-judicial services to support the entire Court. The Division combines the functions relating to human resources, budget and finance, general services and information and communications technologies. These functions, driven by service requirements, provide essential coordination to ensure a centralized approach and an optimal and effective utilization of human and financial resources.

*(i) Human Resources Section*

138. The Human Resources Section comprises five units: The Staffing Unit, The Staff Administration Unit, The Health and Welfare Unit, The Learning and Development Unit and The Policy Unit.

*(ii) Budget and Finance Section*

139. The Budget and Finance Section comprises the Budget Unit, Accounts Unit, Treasury, Disbursement Unit and Payroll Unit.

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<sup>26</sup> Ibid., p. 56.

<sup>27</sup> Ibid., p. 57.

*(iii) General Services Section*

140. The General Services Section is located in the Common Administrative Services Division (CASD). It comprises the Facilities Management Unit, Logistics and Transport Unit, Procurement Unit and Host State Affairs Unit.

*(iv) Information and Communication Technology Section*

141. The Information and Communication Technology Section Its main purpose is to make other people achieve their desired results with greater effectiveness and accuracy. The ICTS is internally structured in three parts: IT Operations Unit, Information Services Unit, and Project Management and Business Continuity Office.

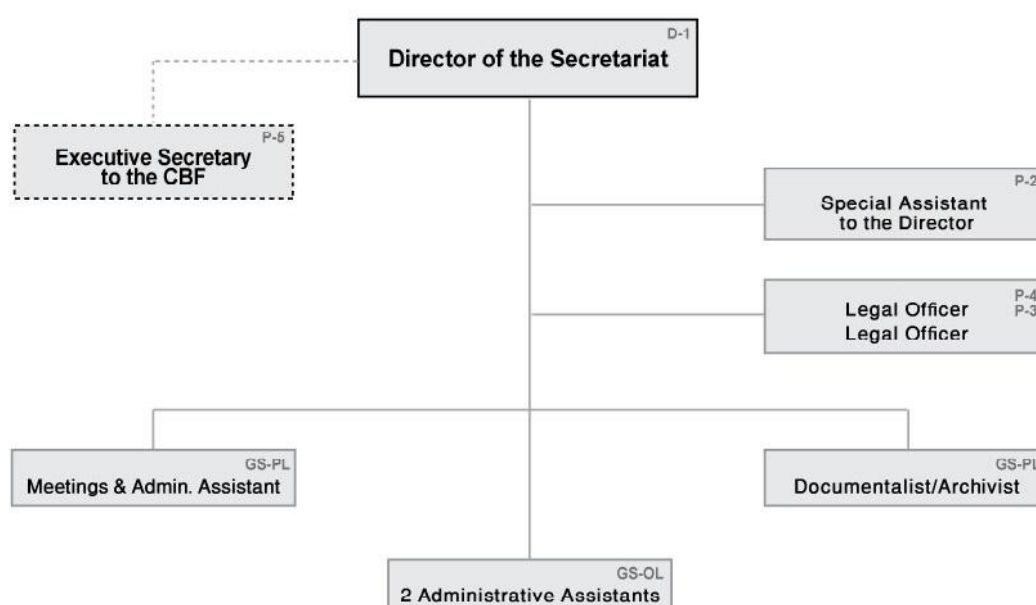
*(v) Registry's Project Office for Permanent Premises*

142. The Registry's Project Office for Permanent Premises provides and coordinates the Court's input for the Permanent Premises project. In close cooperation with the Project Director's Office, it is responsible for the preparation and definition of the Court's requirements and the control of its implementation into the design, preparation of ICC decisions, and representation of the interests of the Court in regard to the future Permanent Premises. Also, the Project Office Permanent Premises will coordinate the activities related to the transition of the Court to its new premises, including the related procurement of furniture and equipment, the hand-over of the new building, the move, and the related migration projects (ICT, Security, FMU).

## 5. The Secretariat of the Assembly of States Parties

143. At its second session, the Assembly decided to establish the Secretariat of the Assembly of States Parties ("the Secretariat") in accordance with the provisions of the annex to its resolution (ICC-ASP/2/Res.3). See annex VI to this manual.

**Graph 9: Organigramme of the Secretariat of the Assembly of States Parties**



*Services provided by the Secretariat*

144. The Secretariat provides the Assembly and its Bureau and subsidiary bodies with administrative and technical assistance in the discharge of their functions under the Statute. The conference-servicing functions of the Secretariat include the planning, preparation and coordination of the meetings of the Assembly and its subsidiary bodies, and receiving, translating, reproducing and distributing their documents, reports and decisions.

145. In addition, it provides substantive servicing of the Assembly and its subsidiary bodies. The substantive servicing functions include providing legal and substantive secretariat services such as the provision of documentation, reports and analytical summaries, and supplying advice within the Secretariat on legal and substantive issues relating to the work of the Assembly. Other functions include advising on the Financial Regulations and Rules and preparing draft resolutions on financial and budgetary needs.

146. The Secretariat organizes quality conferences for the Assembly in The Hague or in New York, and two sessions of the Committee in The Hague. In addition, the Secretariat services meetings of a number of subsidiary bodies of the Assembly, in particular, meetings of The Hague Working Group of the Bureau, and the Oversight Committee for the Permanent Premises.

147. In order to effectively disseminate documentation and information to States Parties and its subsidiary bodies, the Secretariat maintains a website and extranets for the Committee and Oversight Committee.

### **III. The Court's budget process**

#### **A. Introduction**

##### **1. Core assumptions for the Court**

148. At the heart of the budget submission for the Court lies its core mission: to conduct fair public trials within a reasonable time-frame.

149. The principles of flexibility and scalability are key to the functioning of the Court if it is to be efficient in financial terms. Also a strong analytical and strategic capacity within the Court, allows to conduct elements of its operations with a flexible and scalable workforce.

150. In summary, it is the fulfillment of its functions and the performance of its tasks which drive and define the Court's actions

151. Furthermore, the medium-term and long-term perspectives must be included in the budget submission in order to allow the Assembly of States Parties to place the current submission in a context which can be adapted as further budget submissions follow in the coming years.

152. The notion "medium-term" has been defined as three years from now, while "long-term" means a further six years.

153. The general assumptions regarding the workload in the short-, medium- and long-term perspectives are based on the Rome Statute and the Rules of Procedure and Evidence, set against the background of anticipated realities and involving widespread consultations with experts from governments, practitioners and academia.

154. It is also clear that, in order to establish charges against only the most significant perpetrators in situations where mass violence has occurred, the Prosecutor will have to investigate and analyze widely. This means that in each situation there will always be a need for a significant investigation/analysis capacity, even if the actual charges resulting from the use of that capacity are more limited in scope. However, because of the limited number of cases which are actually brought to the charging phase, it cannot be assumed that there will be a need for a similarly large capacity within the judicial pillar of the Court dealing with trials. The working of this mechanism is set out in diagrams I and II below:

### Diagrams I and II: The mechanism of judicial activities

Diagram I:

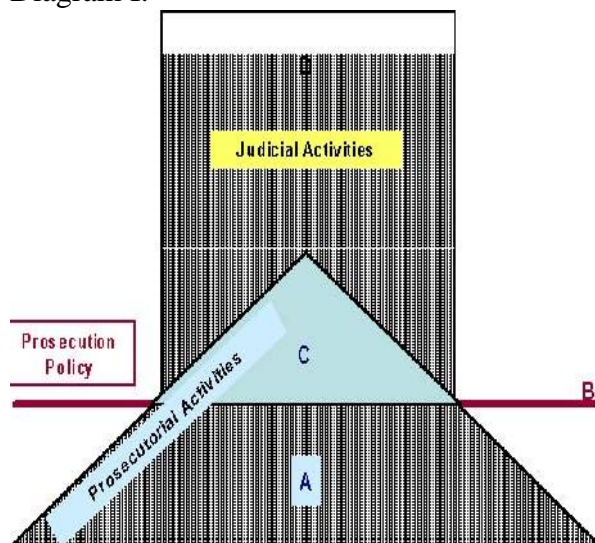
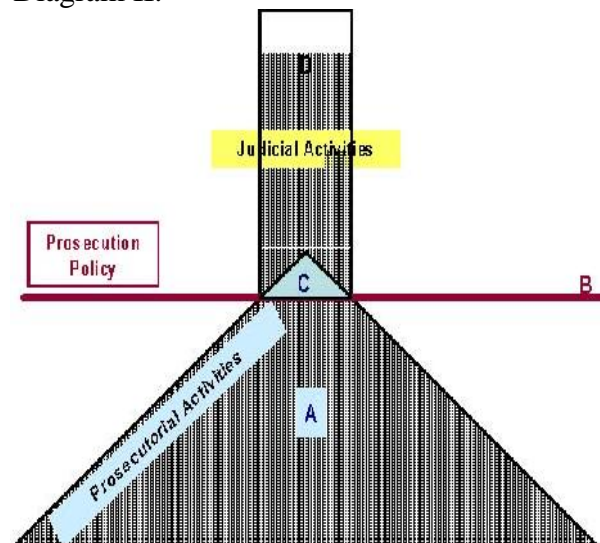


Diagram II:



155. Triangle A illustrates the workings of an average international criminal law prosecution with, as its point of departure, a broad and complex basis of facts and a wide variety of persons involved. It is from that broad basis of facts and persons involved that the Prosecutor finds his way to the main perpetrators at the top of the triangle. Line B symbolizes the line above which the Prosecutor decides that the “main perpetrators” are to be found. In diagram I, that line is drawn halfway through the triangle, indicating that the Prosecutor will bring charges against all persons in shaded area C. Shaded area C translates; within the judicial pillar of the Court, into a requirement for resources the size of rectangle D in diagram I. If, however, line B is drawn higher up the triangle, there are significantly fewer charges, which, in turn, require significantly fewer resources for the judicial pillar, which is shown by the smaller rectangle D in diagram II.

156. Against the backdrop of the mechanism set out above, it is anticipated that, in the medium and long term, approximately 60 to 70 per cent of the regular budget resources of the Court will be utilized directly or indirectly (through support by Registry) by the Office of the Prosecutor, leaving the residual 30 to 40 per cent for the judicial pillar (not taking into account reparations to victims, as explained below).

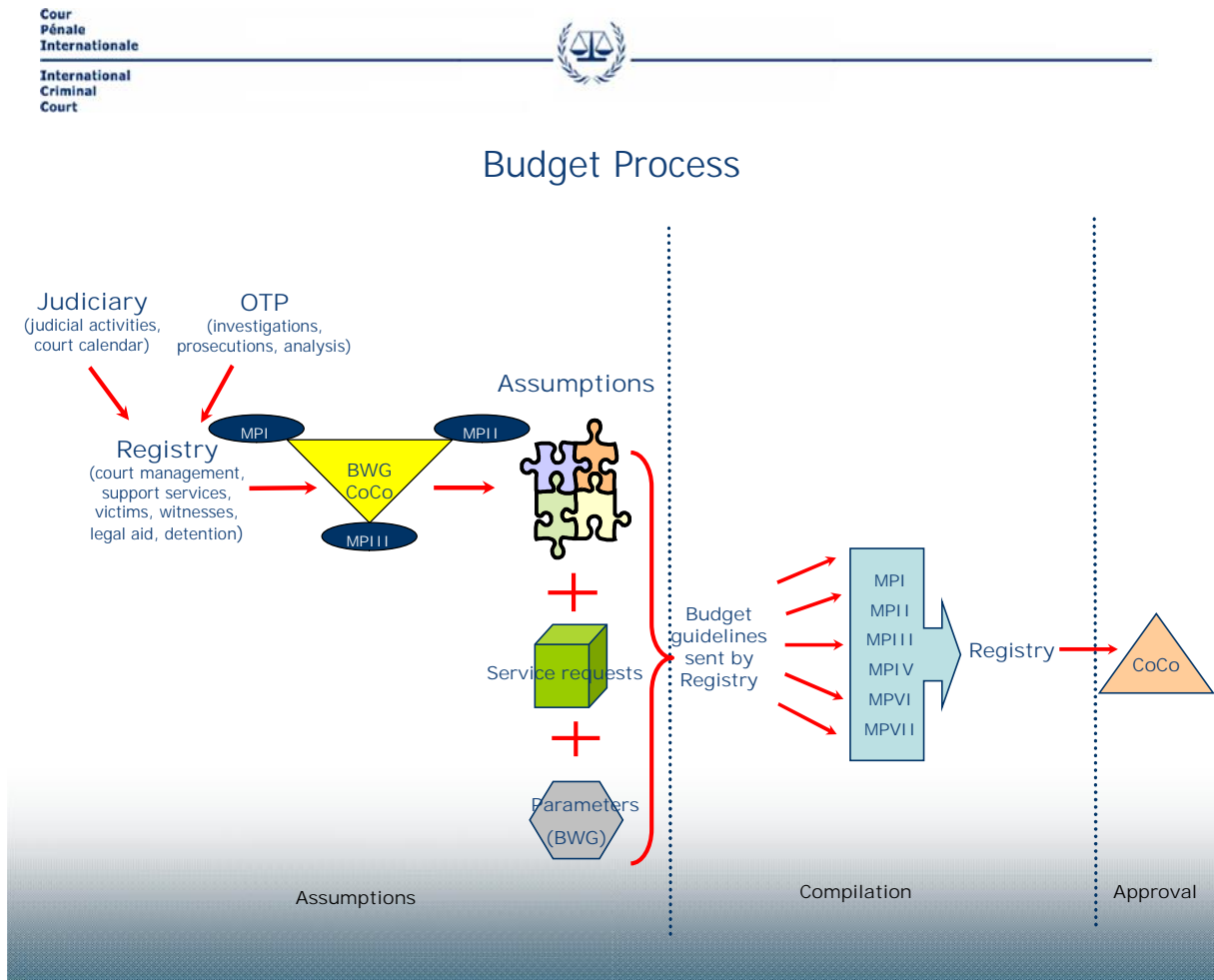
157. By contrast with the two ad hoc Tribunals (former Yugoslavia and Rwanda), the Court has been tasked with hitherto unknown responsibilities vis-à-vis victims. While, based on an examination of articles 89 to 99 of the Rules of Procedure and Evidence, it is possible to set out which resource requirements are necessary; there is a degree of unpredictability to the volume of certain aspects of the work. Hence, this novel area will have to develop a large amount of flexibility and scalability in its operations. In its most basic form, a substantial

capacity for recording, retrieving and processing large numbers of individual claimants will be required.

158. Budget process – main stages:

- (a) Assumptions and budget parameters definition;
- (b) Compilation of the budget figures; and
- (c) Approval and submission.

**Diagram III: The budget process**



**2. Budget process I – assumptions and budget parameters definition**

159. Initial information on estimated judicial and prosecutorial activity is provided by the Judiciary and the Office of the Prosecutor. Such information includes:

- (a) Judicial calendar (pre-trials, trials, appeals and reparations phases); and
- (b) Number of situations, investigations, cases and situations under preliminary examination, as well as any residual investigation.

160. Based on these parameters, Registry derives the following assumptions:

- (a) - Number of court days;

- (b) - Number of witnesses appearing in Court, number of expert witnesses giving evidence, number of support persons to witnesses and maximum duration of stay per witness;
- (c) - Number of accused in custody;
- (d) - Number of defence teams;
- (e) - Number of victims' representatives;
- (f) - Number of cells required; and
- (g) - Field presence.

### **3. Budget process II - compilation**

161. Registry sends budget guidelines (including budget assumptions and service requirements) to all major programmes.

162. Major programmes prepare budget proposals (definition of requirements, resource estimates) in their own areas, based on the common assumptions and submit to Registry.

163. Budget is compiled and reviewed by inter-organ panels to ensure completeness, consistency and to avoid duplication.

### **4. Budget process III – approval and submission**

164. Compiled budget is submitted to the Coordination Council (“CoCo”; see paragraph 263 below).

### **B. Budget calendar**

165. The fiscal year of the Court is a calendar year. However, the annual budget cycle runs from January of the previous year (t-1) to March of the subsequent year (t+1) when the accounts are closed.

166. The Court prepares the draft budget document from January to July, and then presents it to the Committee and publishes it on its webpage. The Committee convenes in its August/September session to consider the budget proposal, on the basis of which it makes recommendations to the Assembly in the form of a report. The Assembly gathers in November/December to discuss and approve the budget, taking into consideration recommendations of the Committee.

### **C. Budget format**

167. The Financial Regulations and Rules state in Regulation 3 that the Court has a budget document with a programme structure. The structure is based on the principle of Results-Based Budgeting,<sup>28</sup> the purpose of which is to formulate the budget on the basis of predefined objectives and expected results. These objectives stem from the Strategic Plan of the Court,<sup>29</sup> which state 20 goals under three headings: i) quality of justice; ii) a well-recognized and

<sup>28</sup> Results-Based Budgeting is the practice of developing budgets based on the relationship between programme funding levels and expected results from that program. The results-based budgeting process is a tool that programme administrators can use to manage more cost-efficient and effective budgeting outlays.

<sup>29</sup> The overarching context for the Court's strategic planning process is the principle that there is no higher priority than the mandates and functions set out in the Court's regulatory framework. The Court's current Strategic Plan continues to guide the planning and implementation of the Court's budget.

adequately supported institution; iii) and a model of public administration. From the list of 20 strategic objectives, the Court selects priority strategic objectives for the next budget year, which all units should take into consideration in drawing up their budget request. That way, resource requirements should be justified by the expected results, necessitating the delivery of certain outputs to achieve those results. Performance is monitored and measured by performance indicators,<sup>30</sup> so that the actual outcomes can be compared with plans. In practice, this system has its limitations due to difficulties in forecasting the level of activities at a detailed level in advance, as well as due to relative difficulty in measuring processes and their results in a meaningful way (e.g. what is the expected outcome of a trial in terms of time, quality of justice, efficiency etc).

168. The budget document is structured according to four major types of classification. First, it is divided into parts and sections. In practice, the programme structure corresponds to the organizational structure of the Court. The three major organs of the Court each constitute a major programme, divisions within the organs constitute programmes, and offices and sections constitute sub-programmes. Independent offices, as well as funds with a clearly distinguishable purpose, also constitute separate major programmes. There are currently seven major programmes in the budget.

169. Secondly, the Budget is also presented according to the nature of the Court's activities: permanent costs (called basic in the budget) and situation-related costs. It is helpful to distinguish between requested funds for an indefinite period to sustain the functioning of the Court and those requested for a limited period only. Thus situation-related expenditures are requested only from when a decision is made to open an investigation into a situation until the conclusion of any resultant case.

170. Thirdly, the budget is presented according to the nature of items of expenditure. Staff costs are separated from non-staff costs, since the former constitute 70 per cent of the total budget<sup>31</sup> and are largely non-discretionary.

171. Fourthly, the budget is presented in terms of previous commitments vs. new requirements. Previous commitments relate to financing obligations of the Court which are a result of decisions taken in previous periods. These are largely non-discretionary costs. New requirements relate to a projected increase in the level of activities or to new activities, which are sometimes more discretionary in nature<sup>32</sup>. This approach thus allows a certain room for manoeuvre.

### *Best practices*

172. *The Committee welcomed the implementation of its recommendation concerning the categorization of resources in the proposed programme budget, which used the categories of "basic" and "situation-related" to differentiate between core costs, which were likely to remain relatively constant, and other resources which are likely to vary depending on the number of situations and the phases of work in each situation. The Committee re-emphasised that situation-related resources should only be used when the situation really warrants it.*

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<sup>30</sup> Key performance indicator (KPI) is an industry term for a form of performance measurement. KPIs are commonly used by an organization to evaluate its success, or the success of a particular activity in which it is engaged.

<sup>31</sup> Including the costs of judges, even though in the budget presentation they are separate from staff costs.

<sup>32</sup> This is not always so, because the new needs may also be a result of decisions taken during the current fiscal year, which need to be funded in the coming periods.



173. Overall the Committee welcomed the shorter, more concise presentation of the budget and noted some improvement in the expected accomplishments relating to the sub-programmes. Generally, the performance indicators were fewer in number with some good examples of well-framed measures and associated targets, particularly on timeliness and throughput. Although this was not consistent throughout the budget, the Committee hoped that these good examples would help to improve the quality further in future years. The Committee requested that expected accomplishments and performance indicators be better delineated, and that the latter should be the standards of quantifiable measurement of expected accomplishments. Likewise, the Committee would have appreciated it if the presentation of future budgets would clearly indicate in the comparative tables for each programme and sub-programme the redeployment of staff and non-staff costs during the current year and provide data on current staffing levels.<sup>33</sup>

174. The Committee was again concerned at the quality of the performance indicators in the budget and the lack of high-level indicators. Given continuing difficulties in implementing results-based budgeting in the Court, the Committee strongly recommended that the Court should develop an implementation plan to address these issues, and inculcate them in the culture of the Court. This should include the provision of training for all relevant managers and officers of the Court. The Committee agreed to return to this issue at its next session to review progress in respect of the 2009 budget and requested the Court to provide a report on its progress.<sup>34</sup>

*Programme 1200: Chambers*<sup>35</sup>

175. The Committee noted that the budget stated ‘the setting of expected results and performance indicators is [...] not applicable to judicial activities’. It recalled that this assertion had been contained in the 2006 budget, but that the 2005 budget did include expected accomplishments and indicators. Judges played a major role in achieving the strategic objectives of the Court, just as they had done in the Ad Hoc Tribunals, and the Committee did not believe that the identification of expected results and indicators for Chambers posed any threat to the independence of judges or their role under the Rome Statute. The Committee therefore recommended that the Court should submit appropriate expected results and performance indicators for Chambers in future budgets.

#### **D. Multi-year framework**

176. For the purposes of comparison, the expenditures for the previous financial period and the revised appropriations for the current financial period shall be included alongside the resource requirements for the forthcoming financial period. The Committee has requested the Court from time to time to produce a multiannual budget forecast, e.g. in the area of capital investments and the Permanent Premises Project. There has also been interest by some States Parties in endorsing multiyear planning.

<sup>33</sup> Official Records ... Fourth session ... 2005 (ICC-ASP/4/32), part II, 6. (b), paras. 26 and 27.

<sup>34</sup> Official Records ... Sixth session ... 2007 (ICC-ASP/6/20), vol. II, part B.2, para. 33.

<sup>35</sup> Official Records ... Fifth session ... 2006 ( ICC-ASP/5/32), part II, D.6 (b), para. 54.

## **E. Strategic planning**

177. At its third session in August 2004, the Committee requested the Court to prepare overarching objectives for its work, improve its application of results based budgeting and enhance consistency in the activities of each organ in a strategic plan.<sup>36</sup>

178. In 2006, the Coordination Council adopted the first Strategic Plan of the Court. The Committee welcomed this first presentation but further recommended that it needed to be translated into a meaningful set of interrelated strategic goals, expected accomplishments and performance indicators that could be used by the court to focus its work in the short to long term on achieving results.<sup>37</sup>

179. The Strategic Plan was revised in 2008. Developed as a common, overarching plan for the whole Court, the Strategic Plan is designed to provide a common framework, including common goals and objectives, for the non-judicial activities of all organs of the Court.

180. The Strategic Plan is implemented through the annual budget, with budgetary objectives being derived from the Strategic Plan, and through the development of thematic strategies on issues cutting across multiple sections, divisions or organs

181. As a result of this Strategic Plan, The Court adopted a more detailed Strategy on Outreach in 2006 and a Strategy on Victims Issues in 2009. The risk assessment conducted in 2008 was carried out under the umbrella of, and linked to, the Strategic Planning process.

182. In 2010, the Court recruited a Strategic Planning Coordinator to coordinate the development of different strategies and updating of the Strategic Plan, and to assist in related activities, in particular the refining the alignment of the Strategic Planning cycle with the other cycles of the Court (e.g. budget, risk management, audit, staff performance appraisal and external reporting).

183. The Committee is of the view that the Court needs to continue advancing on strategic planning vis-à-vis the budget preparation. Particularly, the divisional objectives have to be linked to Court-wide objectives and performance indicators defined for expected results.

## **F. Budget preparation process**

184. The budget process is triggered by making certain assumptions about the level of activity of the Court in the following fiscal year. The change in intensity and magnitude of these activities drives costs up or down; therefore they are called cost drivers. In principle, each decision with financial implications is a cost driver, but it is important to distinguish between recurrent and one-off cost drivers, and also to recognize the relative importance of cost drivers, depending on the financial impact each may have. The list of major assumptions/cost drivers is provided in the table below:

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<sup>36</sup> *Official Records ... Third session ... 2004* ( ICC-ASP/3/25), part II, (b), para. 46.

<sup>37</sup> ICC-ASP/5/CBF.1/5.

**Table 1: Assumptions for the proposed programme budget and realization of assumptions**

	2005		2006		2007		2008		2009		2010		2011	
	A*	M**	A*	M**	A*	M**	A*	M**	A*	M**	A*	M**	A*	M**
No. of situations	4	4	3	4	3	4	4	4	4	5	4	5	4	7
Pre-trials <sup>(f)</sup>	1		3		4		5		7		6		11	
Trials begin	2	0	2 <sup>(a)</sup>	0	2 <sup>(b)</sup>	0	2	0	1 <sup>(c)</sup>	2	2	1	0	1 <sup>(d)</sup>
Trials continue	0	0	0	0	0	0	1	0	2	0	1	2	1	3
Trials will finish/ be completed	0	0	0	0	0	0	0	0	0	0	1	0	2	0
Total - Trials	2		2		2		3		3		4 <sup>(e)</sup>		3	
Budget approved in thousands Euros	66,891		80,417		88,871		90,382		101,230		103,623		103,608	
Staff approved	489		624		647		679		744		768		766	
Expenses	62,120		64,678		77,646		83,660		93,492		99,355		102,200 <sup>(g)</sup>	

\* Assumed.

\*\* Materialized.

<sup>(a)</sup> Assumptions: start of the first trial in May 2006, the second in July 2006.

<sup>(b)</sup> Annex IX/budget for Trial 2:

Commencement of hearing of Lubanga 3/2006, trial 1/2009;

Commencement of hearing of Katanga and Chui 10/2007, trial 11/2009.

<sup>(c)</sup> Bemba's pre-trial and trial activities were additionally included in the proposed budget.

<sup>(d)</sup> Banda/Jerbo in trial phase.

<sup>(e)</sup> Lubanga was expected to be completed in 2010 (para.15); Katanga/Chui continues (para.18); Bemba and Abu Garda to start (paras.21 and 23).

<sup>(f)</sup> The figures indicate the number of cases in pre-trial phase. They include all cases where the charges had not yet been either confirmed or dismissed in a given year.

<sup>(g)</sup> Provisional.

### Best practices

#### *Other cost drivers*<sup>38</sup>

185. *Given the assumption of parallel trials in 2011, the Committee considered carefully the cost drivers resulting from increased judicial activity. Beyond the recommendation above regarding the scheduling of hearings, the Committee also recommended that other measures to promote efficiencies be explored. In that regard, the Committee also recommended that the judiciary consider establishing specific training modules for new judges in order to familiarize them with the considerable jurisprudence and practice that had been established in the Court.*

186. *The Committee also noted the potential for cost increases resulting from the extension of judges' terms. This may become particularly acute if the Rome Statute is interpreted to require that a full panel of judges is required to sit for reparations hearings and, if so, whether it should be the same judges who handled the trial. This matter could have two-fold implications:*

<sup>38</sup> *Official Records ... Ninth session ... 2010 (ICC-ASP/9/20)*, vol. II, part B.1, paras. 66-68.

(a) *On the workload by having three judges work on the reparations phase, instead of on other trials; and*

(b) *On the programme budget if one or more judges whose mandate would otherwise expire were to be extended for the purpose of being able to continue with the reparations phase.*

187. *In the absence of specific norms in the Rome Statute and the Rules of Procedure and Evidence, the extension of the term of a judge would be decided upon by the respective Chamber. The Committee noted that this approach could lead to divergent decisions by different Chambers. Thus, the Committee was of the view that this was a matter where the Assembly might wish to provide guidance to the Court, for example, through an interpretative declaration, to ensure a consistent approach. The Committee noted that having a single judge handle reparations would help avoid extending mandates of judges and the associated cost implications.<sup>39</sup> In this connection, the Committee recommended that the Assembly consider the possibility of using judges appointed to a specific trial, i.e. *ad litem* judges, in order to avoid situations of prolonged extension, so as to ensure greater efficiency.*

## **G. Budget cycle**

188. The Court requested the Committee's advice on the possibility of changing the budgetary cycle from annual to biennial. The Committee was of the view that while the proposal was commendable, it would not be prudent to move to a biennial budgetary cycle at this stage of the development of the Court. It was important to follow up the realization of assumptions at the end of the budget year in order to make better plans for the future. The Court was accordingly requested to report back on the realization of assumptions in its Report on Budget Performance.

### *Moving from yearly to biannual budget requires further reflection*

189. In organizations that have programmatic planning, namely the United Nations and its specialized agencies, the practice has been to have biennium programming and budgeting.

190. Since the core business of the Court does not have programming or activities to be implemented as part of a work plan, but, rather, a budget based on future assumptions, a biennium budget term might not be useful for the Court.

191. The total amount of appropriations for a single biennium or for two fiscal years is the same. However, a biennium budget would represent less work for the Court in terms of budget preparation and justification.

192. An option could be to first introduce programming in certain areas, such as outreach and training, with concrete expected results.

193. There would certainly be more constraints in terms of accessing funds, but under a zero nominal growth scenario, which seems to be the case in the current international financial context, States Parties would face additional budget requests and pressure on the Contingency Fund, which would require further revision.

<sup>39</sup> The Court considered that the possibility of having a single judge may not be an option as it had not been specifically catered for in the Rome Statute or the Rules of Procedure and Evidence. As regards the annual costs associated with the extension of a judge's mandate, such costs have been estimated to range between €403,117 and €570,795. A number of varying cost factors have to be taken into consideration when calculating the exact associated costs; these factors depend on individual circumstances. Nonetheless, the associated average annual cost of an extension of a judge's mandate would approximately be €460,023.

194. It is important to keep in mind that, after a decade of operation, the Court has not yet seen a full trial cycle completed. It was only in this last session that, for the first time, specific figures on expenditures on preliminary investigations, legal aid and other elements were provided. Moving to a biennium budget requires more concrete data, which are currently not fully available. In the meantime, the implementation of IPSAS will be a useful tool in moving towards a biennial budget cycle. Another important element is developing strategic planning tools. In 2006, the Committee received the Court's model, but there appears to have been no follow-up.

195. In conclusion, biennial budgeting has proved to be more useful when there is a programme of work, planning and expected measurable results. Furthermore, exploring such an option would need to take account of the limited accountability and results-based budgeting at the Court.

## **H. Zero-growth approach to budgeting and zero-based budgeting**

196. At the start of the budget process, there is no gap in the level of expenses that the Court needs to adhere to. This means that the Court pursues a demand-driven approach to budgeting. However, in recent years, there has been strong pressure on the Court to attempt a zero-growth approach to the preparation of the budget. In other words, in nominal terms,<sup>40</sup> the budget should not grow from one year to the next. As a principle, new expenditures should be financed from efficiency gains in other areas, i.e. doing more with the existing level of resources.

197. There has also been a push to apply the zero-based budgeting (ZBB) approach in budget preparation. The purpose of ZBB<sup>41</sup> is to avoid incremental budgeting, which locks in previous expenditure patterns and thus fails to make a critical examination of potential inefficiencies built into the budget over time. The alternative approach of ZBB is to take a fresh look at a programme or some of its elements and to build the new budget from scratch, starting from the mission of that programme and reviewing its achievements from previous periods, outputs, use of resources and level of funding.

198. While the idea of ZBB is attractive, it is very time consuming, and requires a framework of correctly calibrated incentives in order to realize its potential and to come up with a significantly different budget (or more generally, resource) proposal. A further problem is that it requires good analytical information about the costs of activities in order to establish the crucial link between activities and funding. The Court is working on its analytical accountability framework to make that management information more readily available. Further, ZBB usually works best when it is combined with other re-engineering exercises, such as the streamlining of processes. The Court has examined some of its processes over the last few years within the framework of its efficiency drive. It also started piloting ZBB in the General Services Section of the Registry in 2011.

<sup>40</sup> Zero growth in real terms would mean inflating the budget by the consumer price index only (or some other, similar index), namely approx. 3 per cent per year.

<sup>41</sup> Zero-based budgeting is an approach to planning and decision-making which reverses the working process of traditional budgeting. In traditional incremental budgeting, departmental managers justify only variances versus past years, based on the assumption that the "baseline" is automatically approved. By contrast, in zero-based budgeting, every line item of the budget must be approved, rather than only changes. During the review process, no reference is made to the previous level of expenditure. Zero-based budgeting requires the budget request to be thoroughly re-evaluated, starting from the zero-base. This process is independent of whether the total budget or specific line items are increasing or decreasing.

*Best practices*

199. *The Committee recommended that the Court review the report on zero based budgeting and the skeleton from this perspective and attempt to better define its core requirements. The revised versions of the two reports would thus be submitted by the Court to the Committee for consideration at its eighteenth session.*<sup>42</sup>

**I. Flexibility rules**

200. The Court is financed by the States Parties, so that the budget, which is approved by the Assembly of State Parties, consists of appropriations, which are essentially authorizations for the Registrar to spend and enter into commitments for the purposes of which the appropriations were adopted and up to the amounts adopted.

201. Transfers between appropriation sections are not allowed without authorization by the Assembly, unless such a transfer is made necessary by exceptional circumstances. Also, the transfer of funds between major programmes is not allowed. Quite often, towards the end of the fiscal year, it is clear that some organs have depleted their budgeted resources, in which case the Court transfers funds from the organ which is in surplus to the one in need for additional funds. It reports back to the Assembly on transfers in its Report on Budget Performance. The external auditor has suggested limiting the transfer of funds to reflect the need for effective financial management.

**J. Assessment of budget to States Parties**

202. The budgeted amount approved by the Assembly is assessed to the States Parties according to the United Nations scale of assessments. Usually there is a 100 per cent match between the approved budget and the amount assessed, but there was a deviation from this principle in 2010, when the Assembly decided that the budgeted amount would not be covered entirely by assessments, but that the Court would need to achieve efficiency gains to make good the difference.

203. In case there is cash surplus at the close of financial period (i.e. the budget implementation level is less than 100 per cent), the States Parties are entitled to an apportionment in proportion to the scale of assessments. These surpluses are surrendered only to the States Parties which have paid their contributions for that financial period in full.<sup>43</sup>

**K. Assumptions**<sup>44</sup>

204. The budget is necessarily based on assumptions and estimates to which a considerable degree of uncertainty is attached. As events over the past year have shown, factors such as the time required for the arrest and surrender of accused persons can be difficult to forecast accurately, as they are outside the control of the Court and depend primarily on the cooperation of States and other actors.

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<sup>42</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. II, part B.2, para. 72.

<sup>43</sup> Regulation 4.7 of the Financial Regulations and Rules.

<sup>44</sup> *Official Records ... Fifth session ... 2006* (ICC-ASP/5/32), part II.5, paras. 10-11.

*Assumptions 2012*<sup>45</sup>

205. The unpredictable nature of the Court’s judicial work makes it extremely difficult to produce fully reliable assumptions a year in advance of the financial period for which the Court is budgeting. Faced with a variety of possibilities, the Court has adopted a relatively conservative approach concerning the assumptions, so as to avoid over-budgeting and a possible consequent underspend. On the other hand, basing the preparation of the budget on conservative assumptions, runs the risk of under-resourcing, should the Court’s judicial activities develop further than originally foreseen.

*Best practices*

206. *The Committee recommended that the Court review the circumstances for the large discrepancy between its initial assumptions and the actual realization with respect to witnesses’ presence in The Hague in 2010 and 2011, and report to the Committee at its seventeenth session in terms of the budget assumptions for the 2012 programme budget.*<sup>46</sup>

## **IV. The Contingency Fund and the Working Capital Fund**

### **A. Overview of the Contingency Fund**

207. The Contingency Fund was established in 2004 by the Assembly in the amount of €10 million. The purpose of the Fund is twofold. It is to enable the Court to meet: (a) costs associated with a new situation following a decision by the Prosecutor to open an investigation; and (b) unavoidable expenses for developments in existing situations that could not be foreseen or could not be accurately estimated at the time of adoption of the budget. Thus recourse to the Contingency Fund is related to increased level of activity, which may be entirely under the control of the Court (such as the decision of the Prosecutor to open an investigation), but not necessarily (such as an arrest, or a United Nations Security Council referral).

### **B. Notification to access the Contingency Fund**

208. Regulation 6.7 of the Financial Regulations and Rules provides that “the Registrar shall submit a detailed, supplementary budget notification to the Committee on Budget and Finance through its Chairperson”. At its sixteenth session, the Committee noted “that the practice in the Registry was to quantify the total notional amount of all resources required by the unforeseen situation and provide this amount in its notification” and to subsequently determine what costs could be absorbed, while the Office of the Prosecutor tended to seek to redistribute its regular resources before submitting notifications for the costs that could not likely be absorbed. In light of the foregoing, the Committee recommended that the Court provide a detailed description in its notifications as to why the expenses were unforeseen or unavoidable and to update the Committee on the status of its implementation of the Contingency Fund expenditure at the Committee’s second session.<sup>47</sup>

<sup>45</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. II, part A, paras. 12-16.

<sup>46</sup> *Ibid.*, part B.2, para. 39.

<sup>47</sup> *Ibid.*, part B.2, para. 31.

### C. Fourteen-day period

209. According to the same Regulation 6.7 of the Financial Regulations and Rules, “two weeks after having notified the Chairperson of the Committee on Budget and Finance, and taking into consideration any financial comments on the funding requirements made by the committee through its Chairperson, the Registrar may enter into the corresponding commitments.” At its sixteenth session, the Committee noted that the 14-day period foreseen in Regulation 6.7 only began when the Chairperson of the Committee had received the notification in both working languages of the Committee, English and French.<sup>48</sup>

210. Access to the Contingency Fund requires the submission of a supplementary budget request in the form of a notification letter from the Registrar to the Chairperson of the Committee, stipulating the reasons for the request and the resources required. The Court would be authorized to draw the requested funds for the purpose contained in the request after a period of two weeks, taking into account any comments on the resource requirements submitted by the Chairperson. Usually the Chairperson consults the members of the Committee prior to submitting his/her comments.

211. Upon recommendation of the Committee in 2010, an amendment was made to the Financial Rules and Regulations, stipulating that the Registrar should submit *detailed* supplementary budget request. The Committee had felt that it did not receive enough information to evaluate the Court’s justifications for access to the Fund.

212. The budget year 2008 saw the first submission of a notification to access the Contingency Fund by the Registrar, and in 2009 the Fund was accessed for the first time as a result of an unforeseen increase in the Court’s level of activity. This is related to the fact that the Court was approaching a 100 per cent implementation rate of the regular budget; previously it had been possible for the Court to absorb the extra costs within the regular budget through savings.

213. Generally, the amounts requested in the Contingency Fund notifications significantly exceed the actual need to access the fund due to the long time-gap between the notification and the moment when the Fund is actually accessed, usually closer to the end of the financial year. Therefore, the Registrar secures the sufficiency of funds by over-budgeting rather than under-budgeting.

### D. Replenishment of the Contingency Fund

214. When the Contingency Fund was established in 2004, it consisted of surpluses from the 2002-2004 financial periods, which were not then surrendered to the States Parties. There was a discussion at the Committee meeting about what mechanism to use to replenish the fund. It was decided by the Assembly that a replenishment threshold of €7 million should be used, so that whenever the funds go below that level, the Assembly decides on its replenishment by the amount it deems necessary equal to or above the threshold.

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<sup>48</sup> Ibid., para. 34.



*Best practices**Establishment of a contingency fund<sup>49</sup>*

215. *The Committee recalled paragraph 14 of the report of its first session (ICC-ASP/2/7 and Corr.1) and paragraph 33 of the report of its second session (ICC-ASP/3/CBF.1/L.4), in which it expressed support for the principle of establishing a mechanism by which the Court could seek additional resources for new situations or unexpected developments that arose during a financial period. The Committee noted that, notwithstanding the clear assumptions described in the budget, a significant degree of uncertainty remained with respect to some of the activities of the Court during 2005 which impeded its ability to budget accurately.*

216. *The Committee recognized that once the annual budget of the Court had been approved by the Assembly, the Court would have limited flexibility to deal with either new situations or additional needs for existing situations. Without a flexible mechanism to obtain supplementary resources to address situations and circumstances that were unexpected or relatively uncertain, the Court would need to include on an ongoing basis a higher level of contingency in the budget than was consistent with prudent financial management. The Committee was also conscious of the difficulty that the Prosecutor, in particular, could face if an unexpected situation was referred to him and a lack of access to supplementary funding precluded him from responding in an effective and timely manner. To provide the Court with the necessary funding to deal with situations and circumstances that were not foreseen or were sufficiently uncertain that they could not be accurately estimated in the approved budget, the Committee recommends the establishment of a contingency fund.*

217. *The Committee received a report from the Court proposing the establishment of a contingency fund within the limitations imposed by the existing Financial Regulations and Rules (ICC-ASP/3/CBF.2/12/Rev.1). After careful consideration of the proposal of the Court, the Committee concluded that the Regulations and Rules did not provide sufficient flexibility and that it would be preferable to design a contingency fund that better met the needs of the Court.*

218. *The Committee accordingly recommends that the contingency fund should be available to the Court to meet:*

*(a) Costs associated with a new situation following a decision by the Prosecutor to open an investigation under article 13 of the Rome Statute; and*

*(b) Unavoidable expenses for developments in existing situations that could not be foreseen or could not be accurately estimated at the time of adoption of the budget.*

219. *The contingency fund should be utilized by means of a short, supplementary budget request transmitted to the Committee through its Chairperson, stipulating the reasons for the request and the resources required. The Court would be authorized to draw the requested funds for the purpose contained in the request after a period of two weeks, taking into account any comments on the resource requirements submitted by the Chairperson. The resource request and comments of the Chairperson would be distributed to the Assembly for consideration at its next meeting. All approved resources obtained in this way would relate only to the financial period for which the budget had already been approved and would need to be justified in full in the draft programme budget for the next financial period.*

<sup>49</sup> *Official Records ... Third session ... 2004 (ICC-ASP/3/25), part II, B.2, paras. 27-31.*

*Lifespan of the Contingency Fund*<sup>50</sup>

220. *The Committee recalled that in 2004 the Assembly had established a Contingency Fund in the amount of €10,000,000<sup>51</sup> and had decided further that the Fund would be limited to a period of four years. Accordingly, the provisional agenda for the seventh session of the Assembly included a decision on the extension or possible discontinuation of the Fund and on any other question relating to the Fund that it deemed necessary in the light of experience.*

221. The Court proposed in its report that the Contingency Fund should continue to be available to the Court and that it should be replenished as necessary in order to ensure that a facility existed for the Court to meet unforeseen costs as defined in the Financial Regulations and Rules. The Court emphasized that it viewed the Fund as an essential component of the budgetary system for the Court, without which it would require higher levels of contingency to be built into the budget on an annual basis.

*Best practices*

*Replenishment of the Contingency Fund*<sup>52</sup>

222. *In its eleventh report, the Committee had recommended that the Assembly consider three options to replenish the Contingency Fund. Under the first option, the Assembly could replenish the Fund from time to time as was necessary. Under the second option, the Fund would be replenished automatically by an amendment to the last sentence of regulation 6.6 of the Financial Regulations and Rules. Under the third option, the Assembly could decide to no longer hold funds in a Contingency Fund and instead continue to provide the commitment authority provided for in regulation 6.7 of the Financial Regulations and Rules with a new provision to charge the costs to States Parties at the end of the financial period.<sup>53</sup>*

223. *The Committee observed that the Contingency Fund was currently well capitalized and had not yet been accessed by the Court. The Committee was of the view that further experience would be required on the functioning of the Working Capital Fund and the Contingency Fund, including their capacity to address the risks for which they were created, before a decision on merger could be considered.*

224. *Therefore the Committee recommended that if the Contingency Fund should decrease below €7 million by the end of the year, then the Assembly should decide on its replenishment, including using the interest generated by the Contingency Fund each year.*

225. *The Committee also recommended that the Assembly keep the proposed threshold under review in light of further experience.*

<sup>50</sup> *Official Records ... Seventh session ... 2008 (ICC-ASP/7/20), vol. II, part B.2, para. 134.*

<sup>51</sup> *Official Records ... Third session ... 2004 (ICC-ASP/3/25), part III, ICC-ASP/3/Res.4, B., para. 1.*

<sup>52</sup> *Ibid.*, paras. 135 and 137-140.

<sup>53</sup> *Official Records ... Seventh session ... 2008 (ICC-ASP/7/20), vol. II, part B.2, paras. 137-141.*

*Best practices**Budgetary matters*<sup>54</sup>

226. *The Committee noted that 2010 would likely see the first access to actual resources from the Contingency Fund as the Court had been able in past years to cover all unforeseen activities through underspend in the regular budget.*

*In this regard, the Committee wished to sound a note of caution to the Court and the Assembly. The Committee observed that under regulation 6.7 of the Financial Regulations and Rules, the Court might access the Contingency Fund two weeks after submitting a “short, supplementary budget notification to the Committee on Budget and Finance” and “taking into consideration any financial comments” of the Committee.*

227. *The Committee noted that, as there was no prior in-depth scrutiny or approval process on the access of these funds, the Court should expect to provide greater detail in its notifications and be in a position to provide much greater detail and justifications for its actual expenditures. In this regard, the Committee recommended to the Assembly that regulation 6.7 of the Financial Regulations and Rules be amended to replace the word “short” by the word “detailed”.*

228. *Secondly, given the absence of prior in-depth scrutiny and approval, the Committee advised the Court to exercise utmost caution and restraint when preparing its supplementary budgets for accessing the Fund. In particular, the Committee cautioned the Court from taking a maximalist approach to the possible needs that might be required. In that regard, the Committee questioned whether all GTA positions submitted, as well as the acquisition of equipment and funds for training, were required in the 2010 notifications.*

229. *Thirdly, the Committee cautioned that the Court should ensure that it did not underestimate its requirements as part of its proposed regular programme budget with a view to accessing the Contingency Fund, as such a practice would undermine the integrity of the budget process.*

*Following established practice, the Committee recommended that the Assembly authorize the Court to transfer funds between Major Programmes at year end if the costs of unforeseen activities could not be absorbed within one Major Programme while a surplus existed in other Major Programmes, to ensure that all appropriations for 2010 were exhausted before accessing the Contingency Fund.*

*Budgetary matters related to the Contingency Fund*<sup>55</sup>

230. *In terms of notifications, the Committee noted that the practice in the Registry was to quantify the total notional amount of all resources required by the unforeseen situation and provide this amount in its notification. The Registry would subsequently determine what requirements could be absorbed within the regular budget as the year progressed. The Office of the Prosecutor tended to seek to redistribute its regular resources at the front end and only quantify in the notifications the expenses that could not likely be absorbed.*

<sup>54</sup> *Official Records ... Ninth session ... 2010 (ICC-ASP/9/20), vol. II, part B.2, paras. 37 and 39-43.*

<sup>55</sup> *Official Records ... Tenth session ... 2011 (ICC-ASP/10/20), vol. II, part B.2, paras. 28-31 and 33.*

231. *The Committee was informed that this differing approach was necessary because the Office of the Prosecutor was not a service provider for other areas of the Court and therefore could shift resources to new priorities without affecting other organs. The Registry was not in a position to decide at the outset what agreed services it would not provide or to which clients it would not provide them in order to shift resources. It could only seek efficiencies and determine what requirements could be absorbed at a later stage depending on the implementation of its regular budget.*

232. *The Committee took note of this explanation. That being said, the Committee was concerned that the preliminary budget notification at the beginning of the year could lead to overestimating requirements due to lack of information. Furthermore the notifications did not distinguish between expenses that were inherently short-term (consumables, services) and expenses that may have implications for subsequent regular budgets (staff, furniture and equipment). The Committee was also concerned that non-perishable items such as equipment purchased against the Contingency Fund needed to be integrated into planning for the subsequent year's budget and capital replacement plans. Such purchases made against the Contingency Fund should in principle lead to a lesser requirement for equipment in the subsequent budget.*

233. *The Committee recommended therefore that the Court enhance the information provided in its notifications. Specifically it requested the Court to provide a detailed description as to why the expenses were unforeseen or unavoidable, itemize in greater detail the proposed resource requirements, including the projected impact on the regular budget for the following year, and indicate the current and projected implementation rate of the regular budget of the Court and of the specific organs involved in the notification.*

234. *Furthermore, in order to perform its oversight function adequately, the Committee recommended that the Court provide a clearer accounting of its actual expenditures made in relation to the Contingency Fund.*

## **E. The Working Capital Fund**

235. The Working Capital Fund is intended to be a cash-flow fund to finance the Court's activities in case of cash shortage. In future, that may happen if the States Parties' contribution payments are not received until late during the financial year.

236. There have been discussions in the Committee, as well as in The Hague Working Group, about merging the two funds. The idea was to make better use of funds which were idle (and still are in case of the Working Capital Fund) by reducing the overall level of combined funds. However, since the Court had at that time had no experience with contingencies that might necessitate resorting to either of the Funds, it was felt that it was premature to take any action. Also, it was clear that the purpose of two funds is different, and their replenishment mechanisms also differ.

237. In case the Working Capital Fund is accessed,<sup>56</sup> the first priority is to replenish this fund from inflowing States Parties' contributions, after which the funds are applied for the everyday operations of the Court, and finally to replenish the Contingency Fund.

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<sup>56</sup> Regulation 6.3 of the Financial Regulations and Rules.

*Best practice**Consideration of the proposed programme budget for 2009*<sup>57</sup>

238. The Committee noted that the Court had proposed that the Working Capital Fund should remain frozen for 2009 at the 2007 level until an appropriate policy had been determined.

**V. Governance**<sup>58</sup>**A. Corporate governance framework**

239. The corporate governance framework of the Court is established by the Rome Statute and subsidiary texts and has been further developed through the Court's practices.

240. The Rome Statute establishes the basic elements of the Court's governance framework. As set out in article 34 of the Rome Statute, the Court is composed of the following organs:

- (a) The Presidency;
- (b) An Appeals Division, a Trial Division and a Pre-Trial Division;
- (c) The Office of the Prosecutor "OTP"; and
- (d) The Registry.

241. The Statute and subsidiary texts define the specific mandates of each organ and the relationships between them.

242. In March 2006, an initial assessment of the major risks facing the International Criminal Court was made and concluded that the three major potential risks the Court should avoid or contain were:

- (a) A lack of effectiveness or quality in the Court's operations;
- (b) Divisions inside the Court; and
- (c) The loss of external support for the Court.

243. An updated comprehensive enterprise risk management was carried out in 2008 by an external consultant, which identified 39 potential risks covering the breadth of the Court's activities. Of these risks, 22 were deemed to be of sufficient likelihood and impact to merit action by the Court.

244. Among the 22 risks were the related risks of "diverging or conflicting objectives / non-alignment of priorities" and "lack of clarity on responsibilities between different organs."

245. The Report of the Court on measures to increase clarity on the responsibilities of the different organs<sup>59</sup> is a very important one. However, the outcome does not seem to be particularly results-oriented, nor does it call for any concrete action; essentially, the report simply clarifies the roles of the Heads of Organs. As a result of this report, the Heads of Organs agreed on a common understanding by memorandum.

<sup>57</sup> *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. II, part B.2, para. 70.

<sup>58</sup> Content for this section taken from the Report on measures to increase clarity on the responsibilities of the different organs (ICC-ASP/9/CBF.1/12, 18 March 2010).

<sup>59</sup> ICC-ASP/9/34.

## **B. Measures taken subsequent to the 2008 risk assessment: Corporate Governance Statement**

246. The ICC Corporate Governance Statement was adopted by the President and Prosecutor on 25 February 2010 to provide concise clarification of the roles and responsibilities of the different organs at a general level, and resolve any specific issues which arise. On 15 March 2010, agreement was reached on Roles and Responsibilities of the Organs in Relation to External Communications. The Corporate Governance Statement annexed hereto sets out the foundational principles for the regulation of requests and provision of services between the Office of the Prosecutor and the Registry. Based on these principles, more specific arrangements need to be developed to establish a common understanding of the details of different services in particular areas. This understanding should encompass agreements as to the quantity and quality of services, as well as procedures for the implementation and monitoring of service requests and delivery.

## **C. Consequences for governance**

247. This basic framework has three significant consequences for the governance of the Court:

### **1. Authority over the management or administration**

248. There is a clear separation of functions and of authority between the Office of the Prosecutor and the other organs. The Presidency is required to coordinate with and seek the concurrence of the Prosecutor on matters of mutual concern, but neither the Presidency nor the Registry has any authority over the management or administration of the Office of the Prosecutor or vice versa.

249. The separation between the organs was deliberately established by the States Parties as a fundamental aspect of the Rome Statute system. This independence is central to the integrity of investigations and of judicial proceedings. Any dispute in relation to judicial functions shall be resolved by the relevant judges.

250. Administrative issues arising between the Office of the Prosecutor and the other organs must be solved through coordination with full respect for this independence.

### **2. The Registry under the control of the Presidency**

251. The Registry is, in its entirety, hierarchically subordinate to the Presidency. This arrangement provided for in the Statute ensures a sound, efficient and well-directed administration by placing the Registry under the control of the Presidency. The Presidency is responsible for ensuring that the activities of the Registry are directed towards the overall objectives of the Court and that they are carried out in full compliance with the relevant rules and regulations as well as decisions of the Assembly. How this is done and the precise delimitation of responsibilities between the Presidency and Registry is left to the discretion of the Court, subject to the management oversight of the Assembly as specified in article 112, paragraph 2(b), of the Rome Statute.

252. The likelihood and impact of the risk of divisions between the Presidency and the Registry, as well as the measures which can be taken to address them, are therefore similar to those faced by any hierarchically-structured organization.

### 3. The judicial nature

253. The administration of the Court must take into account the institution's particular judicial nature. The competence of the Registry, the Office of the Prosecutor or Presidency for administrative matters may overlap with the competence of a Chamber in so far as an issue concerns the judicial functions of the Court. While the organs may take action within their respective competences, they must also comply with the Court's judicial decisions. As the members of the Presidency are also judges, care must be taken to ensure that they are able to exercise their responsibility for overseeing all of the Registry's activities, even those related to Court proceedings, without prejudging specific issues which may be brought before them in their judicial capacity.

#### D. Risk management

254. In order to managing the risks, the Court has the following set of tools:

##### 1. A system of Court-wide administrative issuances<sup>60</sup>

255. In 2003, the Court established a common, unified system for the setting of Court rules, policies and procedures. This system is at the core of the Court's operational administration on a day-to-day basis. Presidential Directive ICC/PRESG/2003/1, promulgated by the President with the agreement of the Prosecutor, creates three sets of administrative issuances.

256. Presidential Directives, issued by the President on behalf of the Presidency and in consultation with the Prosecutor, are required for the promulgation of procedures for the implementation of regulations, resolutions and decisions adopted by the Assembly. They may also be promulgated in connection with any other significant policy decision, including matters concerning the proper administration of the Court. Presidential Directives are binding on the entire Court. The Prosecutor may choose to opt out of a Presidential Directive if he or she determines it would infringe the independent management or administration of the Office of the Prosecutor. In such a case, the Prosecutor and President must consult with a view to finding a common solution.

257. Administrative Instructions are promulgated, with the consent of the President and the Prosecutor, by the Registrar or by other officials to whom the Registrar has delegated specific authority. They are used to prescribe procedures for the implementation of Presidential Directives, including procedures for the implementation of the Financial Regulations and Rules and the Staff Regulations and Rules, or to regulate the administration of practical and organizational matters of general concern, including setting forth office practices and procedures.

258. Presidential Directives and Administrative Instructions are the only means by which the Court may establish rules, policies or procedures intended to be of general application. A third set of Administrative Issuances, Information Circulars are used for isolated announcements of one-time or temporary interest. These circulars are issued by the President, the Prosecutor or the Registrar or by other officials to whom specific authority has been delegated by one of them.

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<sup>60</sup> Content for this section taken from the Report on measures to increase clarity on the responsibilities of the different organs (ICC-ASP/9/CBF.1/12, 18 March 2010).

259. To date, 81 Administrative Issuances have been promulgated, including six Presidential Directives and 30 Administrative Instructions. In addition to the first Presidential Directive setting out the framework for Administrative Issuances, Presidential Directives have been issued to promulgate the Staff Regulations, to set out guidelines for the establishment of Trust Funds, to set out the Information Security Policy of the Court, and to establish the Audit Committee and to revise its structure and functioning. The Court has used Administrative Instructions to establish rules, policies or procedures in relation to, inter alia, the establishment and operation of the Procurement Review Committee, the delegation of authority under the Financial Regulations and Rules, sexual and other forms of harassment, accountability of staff members for Court property, information protection and information security, disciplinary procedures and various rights and obligations of staff members.

## **2. Coordination Council (“CoCo”)**

260. The Regulations of the Court, adopted by the judges in 2004 and endorsed by the Assembly, created the Coordination Council. Comprising the President on behalf of the Presidency, the Prosecutor and the Registrar, the Coordination Council is mandated to “discuss and coordinate on, where necessary, the administrative activities of the organs of the Court.”<sup>61</sup>

261. While it is the primary forum for coordination between the organs of the Court at the highest level, the Coordination Council does not alter the statutory relationship between the organs. It is not a decision-making but a coordinating body. While every effort is made to achieve unanimity of all participants in the Coordination Council, agreements reached between the President and the Prosecutor are binding on the Registrar by virtue of the President’s authority over the Registrar. The agreements of the Coordination Council are to be respected and proposed deviations from agreements are to be brought to the Coordination Council first before the President or Prosecutor decides to deviate from an agreement. Under the Coordination Council’s umbrella, coordination takes place throughout the Court at all levels.

262. Its recurring functions include monitoring administrative developments such as the implementation of the Court’s budget and of its recruitment plans, setting the annual priorities for the budget, approving the final budget for submission to the Assembly, preparing a Court-wide approach to meetings of the Assembly and the Committee and developing and overseeing the implementation of the Court’s strategic plan. Other issues which frequently have been discussed by the Coordination Council include interim and permanent premises and the Court’s governance framework.

## **3. Inter-organ coordination mechanisms**

263. Under the aegis of the Coordination Council, standing inter-organ working groups exist to oversee the implementation of the Strategic Plan, budget preparation and implementation, audit matters and external communications. A standing inter-organ working group exists to develop human resources-related administrative issuances, and other inter-organ rules, policies or procedures.

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<sup>61</sup> Regulation 3 of Regulations of the Court.



## E. Conclusions regarding governance

264. The risks of divisions between the organs and a lack of clarity in the roles and responsibilities of the organs are to a considerable extent inherent in the Statute and should be welcomed insofar as they safeguard judicial and prosecutorial independence. While respecting these independences fully, the Court has sought to minimize any divisions and to maximize clarity. These risks can be further better managed through:

- (a) Institution of a management control system;
- (b) A common understanding of services; and
- (c) More clarity on roles and responsibilities of the organs in specific areas.

### *Best practices*

265. *The Committee recalled that two areas of risks in the administration of the Court had been identified at the thirteenth session, namely the existing divisions among the organs and a lack of clarity of roles.*

266. *The Committee welcomed the work undertaken with regard to the strengthening of the Court's corporate governance framework, inter alia, through the adoption of a formal "corporate governance statement", which aimed at clarifying the roles and responsibilities of the different organs at a general level and Committee encouraged the Court to continue its efforts in strengthening the governance arrangements and to report on its implementation and operation at the sixteenth session of the Committee.*<sup>62</sup>

## F. Independence of judges<sup>63</sup>

### *Best practices*

267. *As stated in the report of the Committee on Budget and Finance on the work of its fourteenth session, the Committee had considered the report of the Court on measures to increase clarity on the responsibilities of the different organs, prepared by the President of the Court,<sup>64</sup> and had requested the President to present a follow-up report on the implementation and operation of the governance arrangements for the sixteenth session of the Committee.*<sup>65</sup>

268. *However, the Committee decided to consider issues of governance at this session on the basis of certain concerns raised by the External Auditor with respect to the Statement of Internal Control;<sup>66</sup> and of questions from The Hague Working Group regarding the mandate of the Committee and that of the Independent Oversight Mechanism.*<sup>67</sup>

<sup>62</sup> *Official Records ... Ninth session ... 2010 (ICC-ASP/9/20)*, vol. II, part B.1, paras. 46-47.

<sup>63</sup> *Official Records ... Ninth session ... 2010 (ICC-ASP/9/20)*, vol. II, part B.2, paras. 22-24.

<sup>64</sup> ICC-ASP/9/CBF.1/12.

<sup>65</sup> *Official Records ... Ninth session ... 2010 (ICC-ASP/9/20)*, vol. II, part B.1, paras. 46-47.

<sup>66</sup> *Ibid.*, part C.1, paras. 49-53 and recommendation 11.

<sup>67</sup> 1. To what extent are evaluation and inspection of the Court, excluding its judicial functions, already covered by the mandate of the Committee on Budget and Finance? Should the Committee be of the view that it does cover evaluation and inspection, the Committee is requested to illustrate the extent and scope of these functions already performed by the Committee?

269. Similarly, the Committee had previously asked for information on the number of days each judge had spent in The Hague in 2009. This question prompted a discussion with representatives of the Presidency and Chambers as to the proper understanding of the independence of judges under article 40 of the Rome Statute and the relationship of the Court to the Assembly of States Parties under article 112, paragraph 2(b). However, the Committee found that no relevant information had been provided.

## **G. Oversight**

### **1. External governance mechanisms**

270. The Court's external governance mechanisms consist of the Assembly, its Bureau and its subcommittees, namely the Committee on Budget and Finance and the Oversight Committee of the Permanent Premises, as well as the working groups of the Bureau, namely the New York Working and The Hague Working Group.

#### **(a) Committee on Budget and Finance**

271. The Committee was established by the Assembly of States Parties by resolution ICC-ASP/1/Res.4 in September 2002. It has 12 members, elected by the Assembly, such that four members serve for a period of one year, four for a period of two years and the remaining four for a period of three years. According to the founding resolution, the Committee shall meet when required and at least once per year. In practice, they have generally been meeting twice a year, in April and August.

272. The mandate of the Committee is to conduct technical examination of any document submitted to the Assembly that contains financial or budgetary implications and any other matter of a financial, budgetary or administrative nature as may be entrusted to it by the Assembly. This includes, inter alia:

- (a) Review of the proposed programme budget of the Court, with a view to making relevant recommendations to the Assembly concerning the proposed programme budget;
- (b) Consideration of the reports of the External Auditor concerning the financial operations of the Court, with any comments to the Assembly as it deems appropriate;
- (c) Review of the annual report on the activities of the Audit Committee;
- (d) Review of the annual report of the activities of the Office of Internal Audit and the Audit Committee's comments on the report, for onward submission to the Assembly; and
- (e) Review of progress reports on the Permanent Premises Project submitted to it by the Oversight Committee of the Permanent Premises, and advice to the Assembly on any submissions with financial implications.

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In the absence of generally accepted definitions of evaluation and inspection, in answering this question the Committee on Budget and Finance should take as a starting point the definitions contained in the United Nations documents by which the United Nations Office of Internal Oversight Services was established, as well as the report of the Court (paras. 6 and 7). (These definitions can be found in paras. 13-15 of the facilitator's introductory paper, dated 2 March 2010. Further guidance as to the meaning of inspection and evaluation may be found in paras. 4 -11 of the Court's Paper, dated 30 June 2010).

2. What is the Committee on Budget and Finance's position regarding the relationship between its mandate and work, and the mandate of the Independent Oversight Mechanism as provided in article 112, para. 4, of the Rome Statute (comprising investigation, evaluation and inspection)?

273. The mandate of the Committee is therefore wide. In accomplishing its task of advising the Assembly with its decision-making it carries out budgetary, financial and administrative analysis and also focuses on evaluating specific areas like human resources management or procurement. In conducting its work it deliberates on reports and other information provided by the Court, interviews Court managers and staff and may also conduct ad hoc inspections and site visits in areas under its scrutiny. For example, it has in the past visited field operations and the interim premises, and conducted spot-check verifications of inventory.

**(b) Oversight Committee of the Permanent Premises**

274. The Oversight Committee of the Permanent Premises was established by the Assembly by resolution ICC-ASP/6/Res.1 in December 2007 as a temporary body until the completion of the project. The Assembly elects the 10 members of the Committee from among the States Parties for a renewable term of two years. The mandate of the Oversight Committee of the Permanent Premises is to provide a standing body to act on behalf of the Assembly in the construction of the permanent premises of the Court, providing strategic oversight, with routine management of the project resting with the Project Director.

275. In practice, the scope of work of the Oversight Committee of the Permanent Premises includes:

- (a) Providing overall monitoring and oversight of the project to ensure that project objectives are achieved within budget and that risk and issues are identified and managed;
- (b) Preparing information, recommendations and draft resolutions for decision by the Assembly, including issues relating to operationalization of the governance structure;
- (c) Making key strategic decisions including the authorization of changes to the project scope and objectives that are beyond the authority of the Project Director; and
- (d) Resolving any issues referred to it by the Project Director, the Court or the host State.

276. Although according to its mandate the Oversight Committee of the Permanent Premises shall meet at least four times a year, in reality it has been meeting much more frequently, on average more than once a month. This has allowed it to exercise regular monitoring and oversight of the project, including of a technical and financial nature.

**(c) New York Working Group (NYWG) / The Hague Working Group (HWG)**

277. Pursuant to resolution ICC-ASP/3/Res.8, the previous Bureau established in December 2004 two Working Groups (subsidiary bodies) of equal standing, based respectively in The Hague and in New York. The Working Groups “shall assist the Bureau in those matters referred to them pursuant to the distribution of work adopted at the sixth meeting of the Bureau on 3 December 2005, and any other matter determined by the Bureau in the future.”

278. The issues currently dealt with by the NYWG and HWG, either through Advisory Committees, Study Groups, or Facilitators, include:

NYWG: Arrears, Nominations, and Peace and Justice.

HWG: Complementarity, Independent Oversight Mechanism, Strategic Planning, Victims and Affected Communities and Trust Fund for Victims, Cooperation, Budget, and Study Group on Governance.

279. In most cases, these tasks are carried out by one or two persons (facilitators/co-facilitators). Facilitators are appointed to lead the discussions on the different topics. The two Working Groups report on each of these issues to the Bureau, prior to the session of the Assembly, where these reports are adopted and become the reports of the Bureau to that session of the Assembly. The facilitators often set out their proposed work plan for the year, which is presented to the respective Working Group and approved (or amended). As the groups are informal, the usual practice is for each facilitator to schedule meetings as appropriate for the respective topic.

280. The Study Group on Governance was established at the ninth session of the Assembly in December 2010 “to facilitate a structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence.”<sup>68</sup> The study group, established within the Hague Working Group of the Bureau for a period of one year, was divided into three clusters dealing with the following issues:

- (a) Cluster 1: Relationship with the Court and the Assembly;
- (b) Cluster 2: Strengthening the Institutional Framework within the Court; and
- (c) Cluster 3: Increasing the efficiency of the criminal process.

## **2. Internal Mechanisms**

281. In order to strengthen internal audit capacity and internal mechanisms of control and evaluation, the Assembly established additional oversight body, such as the Audit committee.

### *Audit Committee*

282. The current Audit Committee of the Court was established by Presidential Directive ICC/PRES/D/G/2009/1 on 11 August 2009 and consists of four external members, of which one is the Chairman of the Committee, and the three Heads of Organs. The external members are appointed by the President, in consultation with the Prosecutor and with the advice of the Registrar. The Audit Committee has met only a few times since its establishment in 2009. Prior to this, it existed as an internal management committee consisting of the three Heads of Organs.

283. The mandate of the Audit Committee is to provide strategic advice on organizational matters to the Heads of Organs. It assists them in fulfilling their oversight responsibilities for the financial reporting process; the system of internal control; the risk management system; the internal and external audit processes; and the Court’s process for monitoring compliance with regulations and rules approved by the Assembly. This includes:

- (a) Reviewing and formulating recommendations on the effectiveness of the Court’s control, audit and risk management systems;
- (b) Reviewing and formulating recommendations on the implementation and impact of internal and external audit recommendations accepted by management and on resolving cases of disagreements between management and the Internal or External Auditor; and

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<sup>68</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I, part III, ICC-ASP/9/Res.2.

(c) Reviewing and formulating recommendations on the performance of the Office of Internal Audit and of the External Auditor.

284. An effective audit committee could increase the integrity and efficiency of the audit processes, risk management and the system of internal control and financial reporting. Audit committees should act independently in matters related to their mandate, such as audit, risk management, control, ethics, regulatory compliance, and financial management and reporting.

285. The Audit Committee is relatively new and has yet to streamline its scope of work and working methods. See further, paragraph 307 below.

### **3. Independent oversight functions**

286. “Oversight entities, such as internal and external audit, inspection, evaluation and investigation provide a third layer of assurance over the effective management of risks. They apply professional methodologies and techniques to provide an independent and objective assessment of the management assurance functions and controls established and implemented for the management of risks. Most oversight functions are regulated by professional standards and practices as adopted by their constituents (professional associations and regulatory bodies). The key requirements for all oversight functions are a) organizational independence from management; b) objectivity, proficiency and due professional care in the conduct of work; and c) unrestricted access to all staff and records and ability to undertake evaluation of any management activity.”<sup>69</sup>

### **4. Inspection and evaluation**

#### *Definition of the inspection and evaluation functions*

287. Useful guidance as to what inspection and evaluation actually mean can be found in the United Nations documents by which the Office of Internal Oversight Services (OIOS) was established. Thus, General Assembly resolution A/RES/48/218 B of 12 August 1994, establishing the OIOS, gives the following tasks to that office with respect to inspection and evaluation:

“The Office shall evaluate the efficiency and effectiveness of the implementation of the programmes and legislative mandates of the Organization. It shall conduct programme evaluations with the purpose of establishing analytical and critical evaluations of the implementation of programmes and legislative mandates, examining whether changes therein require review of the methods of delivery, the continued relevance of administrative procedures and whether the activities correspond to the mandates as they may be reflected in the approved budgets and the medium-term plan of the Organization;”<sup>70</sup>

288. The inspection function of the OIOS is further elaborated in the United Nations Secretary-General’s Bulletin ST/SGB/273 of 7 September 1994, where it is provided that:

“the Office shall conduct ad hoc inspections of programme and organizational units whenever there are sufficient reasons to believe that programme oversight is ineffective and that the potential for the non-attainment of the objectives and the waste of resources

<sup>69</sup> Report of the United Nations Office of Internal Oversight Services on the assurance mapping study in the International Criminal Court, dated 25 May 2011.

<sup>70</sup> A/RES/48/218 B, para. 5 (c) (iii).

is great, and otherwise as the Under-Secretary-General for Internal Oversight Services deems appropriate. These inspections shall recommend to management corrective measures and adjustments as appropriate.”<sup>71</sup>

289. The evaluation function of the OIOS is further elaborated in the United Nations Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation, published in the Secretary-General’s Bulletin of 19 April 2000:

“The objective of evaluation is:

(a) To determine as systematically and objectively as possible the relevance, efficiency, effectiveness and impact of the Organization’s activities in relation to their objectives; and

(b) To enable the Secretariat and Member States to engage in systematic reflection, with a view to increasing the effectiveness of the main programmes of the Organization by altering their content and, if necessary, reviewing their objectives.”<sup>72</sup>

## **5. Auditing**

### **(a) External Auditor**

290. The External Auditor’s responsibility is to express an opinion on the financial statements based on his audit in accordance with Regulation 12 of the Financial Regulations. The External Auditor conducts his audit in accordance with International Standards on Auditing issued by the International Auditing and Assurance Standards Board. Those standards require him and his staff to comply with ethical requirements and to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

291. According to Regulation 12 (Audit), the Assembly of States Parties shall appoint an Auditor, who may be an internationally recognized firm of auditors or an Auditor General or an official of a State Party with an equivalent title. The Auditor shall be appointed for a period of four years and his/her appointment may be renewed.

292. The audit shall be conducted in conformity with generally accepted common auditing standards, subject to any special directions of the Assembly of States Parties and in accordance with the additional terms of reference set out in the annex to these Regulations.

293. The Auditor may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Court.

294. The Auditor shall be completely independent and solely responsible for the conduct of the audit.

295. The Assembly of States Parties may request the Auditor to perform certain specific examinations and issue separate reports on the results.

296. The Registrar shall provide the Auditor with the facilities required in the performance of the audit.

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<sup>71</sup> ST/SGB/273, para.15.

<sup>72</sup> ST/SGB/2000/8.

297. The Auditor shall issue a report on the audit of the financial statements and relevant schedules relating to the accounts for the financial period, which shall include such information as the Auditor deems necessary with regard to matters referred to in regulation 12.3 and in the additional terms of reference as set out in the annex to these Regulations.

298. The Registrar, in consultation with the other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, shall examine the audit reports, including reports referred to in regulation 12.5, and shall forward the financial statements and the audit report to the Committee on Budget and Finance, with such comments on the audit report as they deem appropriate.

299. The Committee on Budget and Finance shall examine the financial statements and audit reports, including reports referred to in regulation 12.5 and the comments of the Registrar and other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, and shall forward them to the Assembly of States Parties, with such comments as it deems appropriate, for consideration and approval.”

**(b) Internal Auditor**

300. Internal audit is governed by Rule 110.16 of the Financial Regulations and Rules.

301. “Internal financial control

(a) There shall be an Office of Internal Audit which shall conduct independent audits of the financial transactions and the administrative systems underlying such transactions, in conformity with generally accepted common auditing standards and notably evaluating compliance of all transactions with established regulations, rules, policies, procedures and administrative instructions. As a result of its audit, the Office of Internal Audit shall provide comments and recommendations to the Registrar and, in areas falling under the authority of the Prosecutor, by virtue of article 42, paragraph 2, of the Rome Statute, also to the Prosecutor;

(b) The Committee on Budget and Finance shall receive the reports annually, and on an ad hoc basis where appropriate, of the Internal Auditor through the Chair of the Audit Committee. The Committee on Budget and Finance shall refer any matters to the Assembly of States Parties which require the attention of the Assembly; and

(c) The Office of Internal Audit shall have free access to all books, records and other documents which are, in its opinion, necessary for the performance of the audit.

302. Obligations for the current financial period or commitments for current and future financial periods shall be incurred only after allotments or other appropriate authorizations have been made in writing under the authority of the Registrar.”

**(c) Audit Committee**

303. The Audit Committee is provided for in the Court’s Financial Regulations and Rules. Following repeated recommendations to the Court by the External Auditor between 2004 and 2008, the Audit Committee’s Terms of Reference contained in Presidential Directive ICC/PRES/D/G/2009/1 of 11 August 2009 establish the Audit Committee as a body with a majority of (four) external members, one of whom functions as Chairperson. The President, Registrar and Prosecutor of the Court are members *ex officio*. The Audit Committee is intended to provide managerial guidance to the Court.

*Best practices*

304. *The Committee welcomed the measures taken by the Court, pursuant to the request of the Assembly at its seventh session,<sup>73</sup> to revisit the terms of reference of the Audit Committee, with a view to aligning its composition more closely with the model recommended by the Committee and the External Auditor. In this regard, the Court informed the Committee that the Terms of Reference were being revised to provide, inter alia, that the Audit Committee would be comprised of a majority of external members and would play a purely advisory role, thereby obviating the need for a veto for the President and the Prosecutor. The Committee noted that neither the Charter for Internal Audit nor the Presidential Directive ICC/PRES/D/G/2008/001, dated 4 August 2008, relating to the Audit Committee yet reflected the proposed changes to the Audit Committee, and requested that they be updated.<sup>74</sup>*

305. *The Court informed the Committee that revised terms of reference<sup>75</sup> had entered into force on 11 August 2009 which provided for a majority of external members and a governance structure as proposed by the External Auditor and endorsed by the Committee.<sup>76</sup> One external member has been recruited and the Audit Committee would meet on 4 September 2009. The Court advised the Committee that it was making serious efforts to identify the remaining external members.<sup>77</sup>*

306. *The Committee welcomed the information, provided by the Internal Auditor that the Audit Committee had become fully operational and included four external members. In line with observations made at its thirteenth session,<sup>78</sup> the Committee requested the Court to provide the revised terms of reference of the Audit Committee,<sup>79</sup> which would include information on the remuneration of external members, for the Committee's next session.<sup>80</sup>*

307. *With respect to the Audit Committee, the Committee endorsed the recommendation of the External Auditor for the Audit Committee to review its terms of reference and to ensure that it minimized duplication with existing bodies such as the Committee on Budget and Finance and the Oversight Committee of the permanent premises project.<sup>81</sup>*

308. *The Committee was informed by the Director of the Office of Internal Audit that the Audit Committee had held its last meetings from 28 February to 1 March 2011. The Committee took note of the assurance mapping study that was currently being undertaken by external experts. The Committee, reiterating the importance of minimizing duplication between oversight bodies, recalled its recommendations at its fifteenth session<sup>82</sup> and recommended that the Presidency review the terms of reference of the Audit Committee taking into account both the concerns expressed by the Committee and the outcome of the assurance mapping study.<sup>83</sup>*

<sup>73</sup> *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. I, part II, para. 6.

<sup>74</sup> *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. II, part B.1, para. 11.

<sup>75</sup> Presidential Directive ICC/PRES/D/G/2009/1, 11 August 2009.

<sup>76</sup> External Auditor's Report 2008 (ICC-ASP/8/14), paras. 26-28.

<sup>77</sup> *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. II, part B.2, para. 22.

<sup>78</sup> *Ibid.*, para. 23.

<sup>79</sup> Presidential Directive ICC/PRES/D/G/2009/1, 11 August 2009.

<sup>80</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. II, part B.1, para. 14.

<sup>81</sup> *Ibid.*, part B.2, para. 13.

<sup>82</sup> *Ibid.*, para. 20.

<sup>83</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. II, part B.2, para. 19.



## 6. Independent Oversight Mechanism

### (a) The scope of the inspection and evaluation functions

309. At its eighth session, the Assembly adopted resolution ICC-ASP/8/Res.1, by which it decided to establish an independent oversight mechanism (IOM) in accordance with article 112, paragraph 4, of the Rome Statute.

310. The scope of the inspection and evaluation functions of the IOM has to be determined taking into consideration the primary function of the Court, that is, prosecution and trying persons accused of crimes of an extremely serious nature. In that sense, it is critical to ensure that the inspection and evaluation functions of the IOM are not seen as in any way putting into question the judicial independence of the Court.

311. It was decided that the independent professional investigative capacity would be implemented immediately, while the additional elements of oversight, as provided for in the Statute, such as inspection and evaluation, would be brought into operation subject to a decision of the Assembly at its next session.<sup>84</sup> The Assembly is due to adopt a Manual of Procedures. An amendment to the Rules of Procedure and Evidence will subsequently be necessary to update the complaints procedure for elected officials to take into account the existence of the IOM.

### (b) Action by the Committee

#### *Best practices*

312. *The Committee was informed of recent informal discussions involving the Court and the New York Working Group on the question of an ‘independent oversight mechanism’. The Committee noted that the discussions appeared to have been wide-ranging, traversing misconduct by staff and disciplinary procedures within the Court, misconduct by elected officials of the Court, accountability for criminal conduct and sexual exploitation, and evaluation of the managerial performance of the Court. The Committee was not aware of any clear objective for a new oversight mechanism, nor was it aware of any definite problem which needed to be addressed.*

313. *The Committee observed that discussions might be advanced by reviewing the existing mechanisms for investigating and addressing misconduct and the existing governance structure for ensuring managerial accountability. On that basis it should be possible to identify any gaps or inadequacies that should be addressed.*

314. *Moreover the Committee expected that any decision to establish or redirect resources for investigations would be based in a clearly identified need and the frequency of allegations of misconduct thus far did not appear to suggest that a dedicated investigatory function would be justified by the volume of work. The committee therefore suggested that the court should also consider the possibility of entering into a memorandum of understanding with the Office of internal Oversight Services (OIOS).*

<sup>84</sup> Financial Regulations and Rules, annex, para. 6 (a).

315. *The Committee agreed that the existing governance structure already provided adequate independent oversight of the management performance of the Court. The External Auditor provided independent auditing services including evaluating the Court's financial statements and systems and selectively assessing managerial performance. The Office of Internal Audit had an appropriate level of operational independence, which had been attested recently by a peer review of the Office as well as the opinion of the External Auditor. While the Committee saw some potential to improve the model of the Audit Committee (see above), the Committee did not see a rationale for creating additional mechanisms for assessing managerial performance. If problems were identified with the current governance structure, they might best be addressed in the first instance by considering carefully the scope of external audit and the Court's internal audit plans. The Committee indicated its willingness to provide further advice to the Assembly on this subject.*<sup>85</sup>

316. Since the Assembly decided to approve the provision of an IOM, the need for clarification on the functions and possible duplication with other advisory organs, such as the Committee, has been raised.

#### *Best practices*

317. *On this the Committee concluded that there would seem to be little scope for overlap with the IOM which was currently staffed to focus on setting up investigation procedures something that the committee did not undertake. The committee was concerned with the potential for excessive oversight that might cause duplication and consume resources should the inspection and evaluation functions of the IOM be activated.*

318. *From this perspective the Committee recommended that fuller consideration be undertaken of all existing oversight mechanisms for the court, their respective mandates, areas of activity and their reporting responsibilities, with a view to avoiding unnecessary duplication and potentially unnecessary costs.*<sup>86</sup>

## **VI. Human resources**<sup>87</sup>

319. The International Criminal Court is an independent international organization, which is not part of the International Civil Service Commission (ICSC). However, the decision by the Assembly to be part of the United Nations pension fund requires observing the general principles applicable to salaries by the ICSC.

320. On the establishment of the Court, the Committee realized it represented a unique opportunity to propose an innovative approach to human resources policies and the condition of services of international staff, reflecting new realities. Since its initial discussions, the Committee has always been concerned about the high cost of creating a permanent international bureaucracy and challenged the Court to become a model of international public administration.

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<sup>85</sup> *Official Records ... Seventh session ... 2008 (ICC-ASP/7/20)*, vol. I, part II, B.2, paras. 35, 36, 38 and 40.

<sup>86</sup> *Official Records ... Ninth session ... 2010 (ICC-ASP/9/20)*, vol. II, part B.2, paras. 28-29.

<sup>87</sup> The views expressed in this section are those of Mr. Santiago Wins, Chairperson of the Committee.

321. This process is rather complex since in the twentieth century the creation of international organizations with heavy bureaucracies led to rigid structures and generous benefits, which do not reflect the current realities, nor the expectations of member states with respect to the use of limited financial resources. The ongoing reform process in other international organizations is a clear sign of the need for the court to forecast and propose innovative solutions to ensure its mandate and work with minimal resources.

**Table 2: Headcount ICC - 31 January 2012**

<i>No</i>		<i>Actual per 31 January 2012</i>	
[1]	Elected Officials/Judges**	<b>23</b>	
			MP I 19
			MP II 2
			MP III 2
			MP IV 0
			MP VI 0
			MP VII-1 0
			MP VII-5 0
[2]	Staff on established posts*	<b>701</b>	
			MP I 47
			MP II 199
			MP III 438
			MP IV 7
			MP VI 7
			MP VII-1 3
			MP VII-5 0
[3]	Vacant Established Posts*	<b>60</b>	
			MP I 1
			MP II 16
			MP III 39
			MP IV 2
			MP VI 0
			MP VII-1 0
			MP VII-5 2
[4]	General Temporary Assistance	<b>198</b>	
			MP I 16
			MP II 92
			MP III 84
			MP IV 3
			MP VI 3
			MP VII-1 0
			MP VII-5 0
[5]	Contractors / Consultants	<b>47</b>	
			MP I 2
			MP II 10
			MP III 35
			MP IV 0
			MP VI 0
			MP VII-1 0
			MP VII-5 0

No		Actual per 31 January 2012
[6]	Interns / Visiting Professionals	<b>95</b>
		MP I 26
		MP II 36
		MP III 32
		MP IV 0
		MP VI 1
		MP VII-1 0
		MP VII-5 0
Total = [1]+[2]+[4]+[5]+[6]		<b>1064</b>

\* Excluding elected officials.

\*\* Currently 4 elected officials / 19 judges on board.

322. It is important to observe that, in the longer term, staff costs represent around 70 per cent of the total budget of this organization. For this reason, the Committee recommended that the Court commence an analysis of the proper ratio of staff to other costs for an institution of its nature.

323. The practice of applying the ICSC Standards<sup>88</sup> for salaries and benefits represents a substantial cost, which increases automatically year after year. The alternative of creating the Court's own model could be cumbersome, since it would be complex to administer, and costs might be higher in some areas, such as the pensions system.

324. For this reason the Committee has provided substantive advice and guidance on development of HR policies, particularly by ensuring that the introduction of new practices observes the most efficient use of resources.

325. In its resolution ICC-ASP/1/Res.10 the Assembly approved the general criteria for selection of staff of the International Criminal Court.

## A. Personnel

326. The Court's personnel consist of elected officials, professional and higher category staff, general services staff, consultants, general temporary assistance and interns. For benefits purposes, some of these categories are not staff members and have specific entitlements.

## B. Conditions of service

### 1. Types of contracts

327. In the light of the need for the organization of the Court to be flexible and scalable, and in order to maximize efficiency and economy, not all staff will be employed on permanent contracts. In line with the core philosophy elaborated in the budget for the first financial period, the structures which are foreseen would support a nucleus of longer-term, highly skilled staff, complemented by staff recruited as and when necessary. In a scenario where one or more situations are before the Court, it is assumed that approximately 40 per cent of the required staff would be on short-term contracts.<sup>89</sup>

<sup>88</sup> The ICSC advises the UN system organizations with respect to cost of living, salaries and benefits of international staff. It provides a reference on international standards.

<sup>89</sup> *Official Records ... Second session ... 2002* (ICC-ASP/2/10), part II, para. 22.

328. As one of the objectives of the Court is to be a flexible and non-bureaucratic institution, the Committee has insisted on the importance of having contracts of limited duration. At its first session, in August 2003, the Committee commended the Court for its adoption of fixed-term contracts for all staff. It also commended the Court's decision to use flexible staffing arrangements, including general temporary assistance, to meet the fluctuating demands that the Court was likely to face.<sup>90</sup>

329. Since then, all staff members join the Court on a fixed-term appointment of three years. All initial fixed-term appointments are subject to a period of probation.

330. The Committee has expressed the view that the Court should have a certain number of contracts of limited duration, as it is the practice in other international organizations, such as OPCW and IAEA, which offer up non-renewable contracts of up to seven years. This could provide an opportunity for civil servants of non-represented countries to serve at the Court for a limited period of time, without the additional expenses of pension or health insurance costs.

331. Recently, the Court informed the Committee that it was considering the issue of longer-term contracts for its staff than the current three-year maximum renewable contracts. The Committee recommended that clear criteria and safeguards be developed, including linkages with the appraisal system, before implementation.<sup>91</sup>

332. The Committee further noted that performance management, contract review and extension were part of an overall package of effective human resource management. In that regard, the Committee recommended that the Court develop clear and consistent criteria upon which contract extensions would be based. Furthermore, the Committee recalled its discussion during its first session in 2003, where the use of fixed-term contracts was adopted as a way of providing flexibility and staff motivation responding to the unique circumstances of the Court. Therefore, the Committee recommended that a further evaluation be conducted of the different types of contracts (fixed term, continuous and permanent) and their applicability for the particular situation of the Court before proceeding with any changes to the current system.<sup>92</sup>

## 2. General Temporary Assistance

333. General Temporary Assistance (GTA) constitutes a distinct category of staff. GTA appointments are for a continuous period of less than one year. While they can be extended, they should not, however, carry any expectation of, nor imply, such extension. A temporary appointment is subject to a period of probation.

### *Use of GTA and established posts*

334. The Committee has observed that there is no clear and consistent criteria for determining which posts should be funded through GTA and which through established posts. For example, it would seem logical that all situation-related posts are GTAs.

335. GTA should also be limited to:

- (a) Technical cooperation in the field; and
- (b) Posts financed from extra-budgetary funds.

<sup>90</sup> Ibid., para. 24.

<sup>91</sup> *Official Records ... Ninth session ... 2009* (ICC-ASP/9/20), vol. II, part B.1, para. 62.

<sup>92</sup> *Official Records ... Second session ... 2002* (ICC-ASP/2/10), part II, para. 24.

336. While GTA provides needed flexibility to deal with contingencies and short-term requirements, the Court should apply discipline in the creation and filling of GTA positions, and further improvement could be made in terms of identifying and reporting on the budgeting of GTA.

*Best practices*

337. *The Committee recalled its request at its fifteenth session on need of standard policy and written directives for the use of GTAs in each organ and on the criteria used in such recruitment.*

### **3. Consultants**

338. An individual consultant is either a recognized specialist or authority contracted for services by the Court, either in an advisory or consultative capacity or to provide the skills, expertise and knowledge needed to deliver a specific service or product. In both cases, the individuals should have specialist skills and knowledge not available in the Court and for which there is a temporary and not a continuing need within the organization. An individual consultant may provide their service on-site or off-site.

339. The duration of consultant contracts should be in line with the international practice: up to 11 months in any consecutive 12-month period.

*Best practices*

340. *When addressing this issue, the Committee noted the need for recourse to consultants for specific purposes, but was of the view that, in light of the increased budget for GTA staff, some of the functions could be performed by such staff. The Committee recommended that the use of consultants should be minimized and that the Court should limit its use of consultancy to key areas where external expertise was essential.*<sup>93</sup>

341. *Also the Committee invited the Court to provide more details about the duration and criteria for remuneration of consultants in its future reports and develop a policy and criteria for the hiring of consultants.*<sup>94</sup>

### **C. Establishment and classification of posts**

342. Prior to the approval of a new position, the Registry has to submit the job description and its classification for consideration of the Committee with all the relevant information. With the information provided and the justification for the need of each post, the Committee decides whether or not to recommend its approval by the Assembly in the budget document.

343. The procedure for approval of posts comprises different phases:

- (a) Job description, classification and justification: requirements for the post, conditions of service;
- (b) Consideration by the Committee and recommendation to the Assembly;

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<sup>93</sup> *Official Records ... Seventh session ... 2008 (ICC-ASP/7/20)*, vol. II, part II, B.2, para. 80.

<sup>94</sup> *Official Records ... Tenth session ... 2011 (ICC-ASP/10/20)*, vol. II, part B.1, para. 63.

- (c) Approval by the Assembly, recruitment process, criteria; and
- (d) Reclassification of posts, justification and redeployments.

#### D. Job classification

344. There are two categories for classification of posts; 1) Professional and higher categories; and 2) General Service's posts.

345. The Professional and higher categories comprise five Professional grades (P-1 to P-5) and two Director levels (D-1 and D-2), as well as the levels of Assistant Secretary-General and Under-Secretary-General in the UN system.

346. For General Service posts, the grading level goes from G-1 to G-7. The ICSC is developing a single standard to be used by all UN agencies for the classification of their General Service posts. The Court is following the ICSC. However, it categorizes the General Service levels into two categories: 1. GS-OL (levels from GS-1 to GS-5; and 2. GS-PL (levels from GS-6 to GS-7, which are considered equivalent to the level of professional staff).

347. Job classification is a systematic way to categorize work focused on the job duties which are evaluated against criteria established by the ICSC classification standards. The principal objective of job classification is to provide similar levels of remuneration of staff by applying these international standards. This involves grouping together similar or comparable types of work according to the functions to be performed, so that they can be ranked by levels of difficulty and differentiated from other, dissimilar work. There are classification standards for each of the occupational categories: Professional and General Services.

348. After an initial classification of all posts in 2005, in 2007 the Court conducted a new reclassification exercise for positions that had undergone a significant change of functions.

349. The first classification review took place in 2005. This was not a reclassification exercise but an initial classification exercise. When the Court was established, the Staffing Table was based on budgeted post levels only. In 2005, therefore, a classification review was conducted. As a result, a total of 352 posts were classified. In 2007, some remaining initial classifications were undertaken of 59 posts. The first reviews for reclassifications were submitted in 2007. Table 3 below depicts the initial classification that took place in 2005, the remaining classification in 2007, and the reclassification exercise in 2007 by major programme:

**Table 3: Classification and reclassification exercises in 2005 and 2007**

	<i>Major Programme I</i>	<i>Major Programme II</i>	<i>Major Programme III</i>	<i>Major Programme IV</i>	<i>Total</i>
Classification in 2005	35	104	206	7	352
Classification in 2007	5	7	47	0	59
<b>Total</b>	<b>40</b>	<b>111</b>	<b>253</b>	<b>7</b>	<b>411</b>
Reclassification in 2007	16	8	19	1	44

350. For this exercise, the Court followed the methodology established by the International Civil Service Commission. Firstly, work surveys were prepared for each position under

review, based on the work assigned and performed. Secondly, the assigned responsibilities of positions were analyzed and evaluated by a job evaluation specialist, who also conducted interviews with staff and managers in order to gain a greater understanding of the work and responsibilities involved. Thirdly, the recommendations made by the consultant specialist were presented to the Coordination Council and reviewed by the Heads of Organs. The Court noted that a distinction should be made between the number of proposed reclassifications of a certain generic position type and the number of incumbents that might be occupying such positions.

*Best practices*

351. *While the Committee agreed that the Court should have some flexibility to re-grade posts within budgetary periods, it was concerned that there might be pressure to use a regrading exercise as a means of promoting and rewarding individuals. The Committee reiterated that reclassification was justified only in cases where a substantial change in functions and responsibility took place. The Committee recommended against any post reclassifications pending a full examination of the Court's proposed approach, including justification for each post proposed for reclassification, at the Committee's April session.*<sup>95</sup>

352. Furthermore the Committee recalled that the Court, being a non-career-oriented, non-bureaucratic organization, does not have a promotion system, and reclassifications should not be used to substitute this absence.

353. The Committee noted that, under Staff Regulation 2.1 and in conformity with the principles laid down by the Assembly of States Parties, the Registrar, in consultation with the Prosecutor, shall make appropriate provision for the classification of posts according to the nature of the duties and responsibilities required and in conformity with the United Nations common system of salaries, allowances and benefits. The Committee agreed that all posts should be classified correctly and consistently, in accordance with the relevant criteria. At the same time the Committee believed that it was the responsibility of managers to ensure that duties were allocated to posts in accordance with the grades of the posts.

354. The Committee expects that reclassifications are proposed only where substantial changes to the nature or arrangement of work in a particular area created new requirements that could not be covered by reallocating duties. The Committee warned against the possible temptation to use reclassification as a means of promotion or reward, or to inflate grades.

*Best practices*

355. *The Committee agreed that there should be no need to conduct general or periodic reclassification exercises in future. The allocation of duties according to post grades was a part of the normal management function of the Court, and reviews of particular posts should take place only where a specific need arises in a work unit. Reclassifications should be exceptional, reflect substantial modifications of duties and be fully justified in the annual proposed budget.*

356. *For reclassifications within the General Service grades, the Committee recommended that the Court be granted the flexibility to reclassify such posts where there was need to do*

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<sup>95</sup> *Official Records ... Fifth session ... 2006 (ICC-ASP/5/32), part II, 6(b), para. 52.*



*so. Any such General Service reclassifications should then be reported in the next proposed budget.*

*357. The Committee also discussed with the Court the need to clearly distinguish between classification of a post and assessment of an individual. The Committee expected that individuals who occupied posts that were reclassified upwards would be rigorously assessed on the basis of their competencies to fulfill the duties of the higher grade. The Committee understood that individuals would not be promoted where they did not meet the standards pertaining to the higher grade, and that in some cases it would be appropriate to hold a new selection procedure.<sup>96</sup>*

## **E. Recruitment**

358. Once a post has been classified and approved within the Budget by the Assembly, the recruitment procedure should start. The Committee has encouraged the Court to ensure transparency in its recruitment process, taking into account the guiding principles as approved by the Assembly, particularly with respect to geographical distribution and gender balance.

359. On several occasions the Committee has welcomed the Court's policy of seeking to recruit staff of the highest standards of efficiency, competency and integrity, having regard to equitable geographical representation, a fair representation of female and male personnel, and representation of the principal legal systems of the world, in accordance with the Rome Statute.

360. The Committee has further recommended that Heads of Organs should continue to be responsible for the selection of staff and for ensuring that the highest standards of efficiency, competency and integrity apply in the employment of staff while taking account of the principal legal systems of the world, equitable geographical distribution and fair representation of women and men.

361. As a matter of principle, all positions in the Court are advertised externally and internally. This differs from the practice of other international organizations, where some positions are open first by priority to internal candidates.

362. In order to ensure transparency in the recruitment process, the Committee has stated that it should comprise different phases, including pre-screening, pre-selection committee, evaluation panel, as is standard practice in human resources management.

363. Recently, the Committee has reiterated the importance of establishing an advisory board on personnel matters, as is also the standard practice of international organizations, in order to improve transparency in the recruitment process. This proposal was presented in order to address some specific concerns about the lack of transparency in the recruitment process, the continued imbalance in geographic representation in the Court and the lack of comprehensive written administrative instructions.

### *Best practices*

*364. The Committee has recommended that the Court consider the costs and benefits of mechanisms to ensure the transparency of its recruitment processes such as developing a*

<sup>96</sup> *Official Records ... Sixth session ... 2007 (ICC-ASP/6/20)*, vol. II, part B.1, paras. 69-71.

*confirmation board that would include staff representatives as is the practice in other international organizations.*<sup>97</sup>

365. In reviewing recommendations for appointment, the Personnel Advisory Board shall ensure compliance with the Staff Regulations and Rules, and with existing policies and procedures in the Organization.

## **Main Requirements**

### **(a) Education**

366. Candidates for posts in the Professional and higher categories should normally possess at the minimum a completed, advanced university degree: masters or equivalent, i.e. from four to six years of university studies.

367. In some specific occupational groups, the requirement of an advanced university degree may be replaced by a combination of relevant qualifications/certification and professional experience.

### **(b) Work experience**

368. In the United Nations system, work experience is measured taking into account the following:

(a) Length of work experience: Relevant professional experience is taken into account after the first university degree;

(b) Relevance of work experience: Work experience will only be significant if the experience acquired is relevant to the functions of the post; and

(c) Actual performance and achievements, and type of work experience should be closely considered, due regard being given to the level/scope of responsibility, supervisory experience, performance assessments and tangible results achieved.

### *Best practices*

*369. In this respect, the Committee suggested that the Court take a more innovative approach in terms of recruitment of staff by having a more flexible approach to selection of staff. While other international organizations consider seniority<sup>98</sup> the only condition for eligibility to a senior-level position, the Committee invited the court to be more flexible and consider competencies and capabilities as the main elements for recruitment.*

*370. In the past, the Committee noted that there was a tendency in the Court's selection process and job advertisements to rely too heavily on years of experience and seniority rather*

<sup>97</sup> *Official Records ... Ninth session ... 2010 (ICC-ASP/9/20)*, vol. II, part B.1, para. 55.

<sup>98</sup> Seniority refers to the years of relevant work experience a candidate possesses as specified in the vacancy announcement and as of the time of application. In the UN Secretariat, seniority also applies to the time in grade. In order to be considered for a higher-level position, a staff member must have spent a certain number of years at the lower level. For example, a P-3 has to have spent three years at the P-3 level before he or she can be considered eligible for a P-4. For P-4 to P-5 it is five years, etc. However, these requirements are not applied at the Court, where a P-2 can apply for a P-5 post as long as he or she has the required years of relevant work experience and required academic qualifications. The Court is thus considerably more flexible than the UN Secretariat.

*than competencies. Without discounting the importance of relevant experience, the Committee agreed that the Court should seek to develop selection criteria for all jobs that focus on competencies and capabilities. It welcomed the Court's advice that it had used competency-based techniques in conducting interviews and encouraged the Court to ensure that future amendments to application requirements increase the ability of the Court to differentiate applicants on the basis of competencies.*

**(c) Language skills**

371. English and French are the working languages of the Court.

**F. Salaries and benefits**

**1. Common staff costs / inflation**

372. Since the Court uses as a reference the United Nations Common System, the salaries of its staff members are based on the United Nations Common System methodology.

373. "Common system costs" are included in each proposed programme budget based on standard salary rates calculated by the International Civil Service Commission (ICSC) for the United Nations and other common system organizations.

374. The standard salary costs are derived from the average base salary for each grade in the Professional and General Service categories of staff, plus a post adjustment multiplier, a common staff costs multiplier, and a representation allowance.

375. Since common system salaries are calculated in United States (US) dollars, the post adjustment system is designed to achieve an equal level of purchasing power between salaries denominated in US dollars in New York and salaries paid in other currencies at other duty stations (in this case, The Hague). As such, the system incorporates forecast changes in the cost-of-living differential between The Hague and New York and variations in the exchange rate of the US dollar against the euro.

**2. Salaries of international Professional and higher category staff**

376. The level of salaries for United Nations international Professional staff is determined on the basis of the Noblemaire principle, which states that the international civil service should be able to recruit staff from all its Member States, including the highest paid. In application of the Noblemaire principle, the salaries of Professional staff are set by reference to the highest paying national civil service. The International Civil Service Commission (ICSC) carries out periodic checks to identify the national civil service with the highest pay levels. The United States federal civil service has to date been taken as the highest paid national civil service (the "comparator" service).

377. The United Nations net base salary scale of Professional staff, which applies equally in all duty stations worldwide, is set by reference to the salaries paid to comparable staff in the United States federal civil service. The methodology provides for a margin of between 10 per cent and 20 per cent in favour of United Nations salaries, to provide some compensation for the expatriate nature of service in the United Nations.

378. The net base salary scale is reviewed each year by the ICSC on the basis of salary increases received by the comparable US federal civil servants in the previous 12 months. The

ICSC's recommendations are then submitted to the United Nations General Assembly for approval.

379. The net base salary scale of Professional staff is also used to determine the amounts of the repatriation grant (payable when international Professionals repatriate to another country on separation from the Organization) and the termination indemnity (payable when a contract is terminated before its expiry date). As the calculation of these two allowances is based on the net base salary scale alone, that is excluding post adjustment, any increase in the salary scale has a direct financial impact on staff costs.

### **3. Post adjustment**

380. The post adjustment system is designed to ensure that Professional salaries have the same purchasing power at all duty stations. As the cost of living varies significantly between duty stations, overall Professional salaries (that is, net base salary plus post adjustment) are set at different levels at each duty station to compensate for these observed differences in living costs. Differences in living costs are measured through periodic surveys conducted by ICSC at all duty stations every five years. These surveys measure the cost of living of a duty station relative to the cost of living at the base of the system (New York). The results are reflected in a post adjustment index for each duty station.

381. In order to take account of local changes in the cost of living, post adjustment indices are normally updated by ICSC every 12 months (but more frequently in duty stations with relatively high inflation). And as the salaries of international Professional staff are calculated in US dollars but payable in local currency, the post adjustment mechanism is also used to protect salaries against exchange rate fluctuations.

### **4. Salaries of General Service staff and National Professional Officers**

382. National Professional Officers (NPO) and General Service (GS) staff members are recruited locally. Their salaries and allowances are established in accordance with the Flemming Principle, which states that the conditions of service for locally recruited staff should reflect the best prevailing conditions found locally for similar work.

### **5. Other benefits**

383. The Committee considers that the Court offers an attractive remuneration package:

- (a) Rental subsidy;
- (b) Dependency allowances if staff members have an eligible dependent spouse and/or child(ren);
- (c) Under certain conditions an education grant if staff members have eligible children in school;
- (d) Travel and shipping expenses when staff members move from one duty station to another;
- (e) At some duty stations, a hardship allowance linked to living and working conditions is also paid;
- (f) Assignment grant to assist staff members in meeting initial extraordinary costs when arriving at or relocating to a new duty station; and

(g) Hazard pay and rest and recuperation break when staff members serve in locations where the conditions are particularly hazardous, stressful and difficult.

384. On conditions of service, the Committee has recommended that the conditions of service applicable to staff are clearly established and applied evenly in all organs. The Committee further requested that the Court establish clear guidelines in order to ensure appropriate application of service benefits.<sup>99</sup>

### G. Budgetary impact of ICSC standards on the Court

385. In following the United Nations common system, the Court's common system costs have represented yearly increases in the budget as follows:

**Table 4: United Nations common system impact on the Court's budget**

<i>Year</i>	<i>Amount of increase</i>
2007	€1.49 million
2008	€2.74 million
2009	€2.00 million
2010	€1.00 million
2011	€1.00 million
2012	€2.20 million

#### *Best practices*

386. *The Committee took note of the Report of the Court on its salary framework and observed that the decision to adopt the United Nations common system standards had been taken by the Assembly and that this decision has a certain financial impact upon the Court's budget.*<sup>100</sup>

387. *At its seventh session the Committee considered that the information provided had been insufficient to judge whether that increase was justified and recommended that it should be accommodated within the existing levels for staff costs given the high level of under spending on staff. At its fifth session the Assembly agreed that "the recommendation of the Committee should be endorsed as an overall cut in the budget, made advisable under specific circumstances, and should not be regarded as a general policy for dealing with inflation costs."*<sup>101</sup>

388. *The Committee was informed that the Court had reduced its estimates for staffing costs in 2009 by calculating costs on the basis of the Court's experience instead of using salary grades prepared in New York. The Committee endorsed this approach and welcomed the decrease to the 2009 budget thereby achieved.*<sup>102</sup>

389. *While the Court was not part of the United Nations common system, the result of the*

<sup>99</sup> *Official Records ... Ninth session ... 2010 (ICC-ASP/9/20), vol. II, part B.1, para. 61.*

<sup>100</sup> *Official Records ... Eighth session ... 2009 (ICC-ASP/8/20), vol. II, part B.2, para. 55.*

<sup>101</sup> *Official Records ... Sixth session ... 2007 (ICC-ASP/6/20), vol. II, part B.2, para. 40.*

<sup>102</sup> *Official Records ... Seventh session ... 2008 (ICC-ASP/7/20), vol. II, part II, B.2, para. 57.*

*decision to be part of the United Nations Joint Staff Pension Fund required the use of the United Nations salary scale.*<sup>103</sup>

## **H. Pending issues regarding the ICSC system at the ICC**

390. On several occasions the Committee has wondered if the ICSC system was the ideal for an organization with a budget denominated in Euros and in which staff (with the exception of some local field staff) are paid in Euros.

391. Further, the forecasts relating to estimated staff costs are by nature imprecise, and, unlike the United Nations and some other common system organizations, the Court does not report the actual level of common system costs at the end of the financial period. There was as yet insufficient experience to assess whether the actual staff costs incurred by the Court matched the multiplier for common staff costs. The Committee also noted that the system was expensive to administer since it required monthly amendment of post adjustment and salaries for all staff.

### *Best practices*

*392. Finally, the Committee has requested the Court, in consultation with the International Civil Service Commission, to consider whether organ-specific adjustments to this system are possible and to examine the best practices of other international organizations within the common system.*<sup>104</sup>

## **I. Pension scheme**

393. Staff members with an appointment of six months or more, or those who complete six months of service without an interruption become participants in the United Nations Joint Staff Pension Fund. A compulsory contribution is deducted from their monthly salary.

## **J. Health insurance for retirees**

394. In 2010, the Court informed the Committee that it was considering offering a health premium subsidy scheme to eligible staff members who retire in or after 2011. The Court was of the view that it could absorb any costs for the next 10-15 years without increasing the programme budget.

### *Best practices*

*395. The Committee again emphasized that any proposal with direct financial implications for the programme budget must be reviewed by the Committee and approved explicitly by the Assembly, regardless of whether the Court can finance the proposal without increasing the budget. Flexibility and surplus funds should not be used by the Court to cover new long-term obligations without prior explicit approval of the Assembly. As there was insufficient time to properly discuss the specific proposal during this session, the Committee was not in a position to make a recommendation to the Assembly at this point. The Committee, noting that*

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<sup>103</sup> Official Records ... Ninth session ... 2010 (ICC-ASP/9/20), vol. II, part B.2, para. 72.

<sup>104</sup> Official Records ... Sixth session ... 2007 (ICC-ASP/6/20), vol. II, part B.2, para. 44.

*other international organizations offered a 50/50 ratio contribution scheme, was not convinced that the ratio proposed by the Court was appropriate and therefore requested the Court to re-submit the proposal with a more precise calculation on the basis of a 50/50 coverage.*

## **K. Conditions of service for staff serving in the field**

396. The Committee was informed that the Court was conducting a review of the conditions of staff in field offices and that the creation of a Field Service category for security staff was under consideration as the security staff in the current situation countries were not locally recruited and hence received the salary of Hague-based staff together with international benefits.

397. On the issue of ensuring attractive conditions of service and compensation systems for all staff at headquarters and field locations, the Committee was informed of the efforts of the Court to attract and retain qualified personnel, including a proposal to introduce a field service category for field staff. The Committee noted that the Court was comparing the Mission Subsistence Allowance (MSA) system used by the United Nations Department of Peacekeeping Operations with the Special Operations Living Allowance (SOLA) used by some funds and programmes within the United Nations system for staff working at non-family duty stations, as a possible means to attract and retain staff at these duty stations.

398. The Committee noted that the implementation of the SOLA regime would have programme budget implications. In this connection, the Committee requested the Court to indicate the number of staff that would be affected by such a change and the respective programme budget implications, so that the Committee and the Assembly could make an informed decision.

399. In 2010 the Court implemented improved conditions of service for internationally-recruited professional staff serving at field duty stations in line with conditions applied by the United Nations funds and programmes.

### *Best practices*

*400. The Committee had concerns with the approach taken by the Court and recalled that any proposals with budget implications must be explicitly approved by the Assembly, after consideration by the Committee.<sup>105</sup>*

401. In that regard, it was pointed out that informing the Committee of a review of conditions of service in the field was not the equivalent of an authorization from the Assembly. The Committee was also concerned that the Court chose to adopt the conditions applied by the UN funds and programmes. The Committee pointed out that there were other options available to the Court and that the General Assembly had itself decided to harmonize the conditions applied by the funds and programmes with the UN Secretariat.

### *Best practices*

*402. The Committee recommended that any application of enhanced conditions of service at*

<sup>105</sup> *Official Records ... Tenth session ... 2011 (ICC-ASP/10/20)*, vol. II, part B.1, para. 68.

*field duty stations take into account that the conditions applied by the UN funds and programmes will themselves be adjusted. The Committee requested the Court to make a full accounting of the costs of the changes for the conditions of service for internationally-recruited professional staff serving at field duty stations, including an explanation of the decision to apply the conditions used by the UN funds and programmes and plans to follow the UN system as the conditions of the funds and programmes are harmonized with the UN Secretariat, and report to the Committee at its eighteenth session.*<sup>106</sup>

## L. Training

403. The Committee has highlighted the importance of learning and training and noted that the Court had provided training in some areas e.g. performance management, team-building, communication skills. The Committee stressed the importance of ensuring that all staff receives appropriate training, subject to the availability of funds.

404. The Court indicated that it recognized that investing in staff training was a key element for staff development and noted that the current stage in the development of the Court was an opportune moment for the Court to look more closely at this area. It had thus prepared proposals for leadership development and training.

405. The Committee noted that some of this training is to allow officials to maintain or acquire essential qualifications and certifications while other training is of a less prescriptive nature. The Committee recommended that the Court identify priority areas for training and that it prepare long-term training plans and models such as a system of training for trainers.

406. While recognizing the importance of training for maintaining a well functioning work force and as an important element of good human resource management, the Committee was of the view that the training in the major programmes should be better prioritized. Therefore, the Committee recommended that the Court prepare a strategic training plan linked to the risk management that would identify training required for core functions (e.g. maintenance of permits and licenses) and other types of training with a plan for prioritization. The report should include a plan to enhance “training the trainer” opportunities.

**Table 5: Training costs per major programme in ‘000 euro**

<i>Major Programme</i>	2005	2006	2007	2008	2009	2010	2011*
Judiciary - I	22.6	7.5	0.0	0.5	0.5	20.9	10.4
Office of the Prosecutor - II	153.1	139.2	180.0	154.9	154.9	93.1	62.5
Registry - III	626.8	498.7	690.2	793.9	824.6	725.4	598.3
Secretariat of the Assembly of States Parties - IV	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Secretariat of the Trust Fund for Victims - VI	8.3	0.0	0.0	38.4	38.4	11.3	0.6
Project Director's Office (permanent premises) - VII-1	0.0	0.0	0.0	0.0	0.0	0.0	3.2
<b>Total</b>	<b>810.9</b>	<b>645.4</b>	<b>870.2</b>	<b>987.7</b>	<b>1,018.4</b>	<b>850.7</b>	<b>675.0</b>

\*Provisional.

<sup>106</sup> Ibid.



## **M. Redeployments and justifications of existing posts**

407. The Committee is of the view that, as the establishment phase of the Court is ending, and given that the Court was acquiring more experience with its needs in terms of work volume and staff requirements, the Court should be better able to identify core needs and corresponding staff with more predictability.

408. Another important aspect is the importance that all posts are kept under permanent review and encourage redeployments.

409. The Committee noted that the Court had already shown its willingness to redeploy staff as its structure and needs evolved, and for example the Committee welcomed the initiative by the Prosecutor to redistribute resources and responsibilities among staff and review its current structure. The decision to re-allocate a P-5 position to the Prosecution Division by redistributing the responsibilities of the Chef de Cabinet to other positions was welcomed as a good example of flexibility and pooling of resources.

### **1. Resource sharing**

410. The Committee has also recommended the possibility of the pooling of staff where possible, in order to reduce costs and to provide the opportunity for staff to diversify their professional expertise. Particularly the Committee has suggested the possibility of a pooling of staff resources with respect to legal officers having similar competence within the Registry.

411. At its ninth session, the Committee had noted that the revised structure for Chambers' legal support would maintain support for individual judges and Chambers, while providing additional staff for each Chamber as a whole rather than assigning staff to individual judges.<sup>107</sup>

412. The Committee therefore recommended that the Court examine the possibility of a pooling of resources for judicial support between the Chambers and the Registry. This step would allow for flexibility in the deployment of staff according to need. The Committee noted that the movement of legal staff from the Office of the Prosecutor to the Chambers and vice versa would not be feasible for reasons of confidentiality and to protect the independence of the organs.

### **2. Justification of existing posts**

413. The Committee has further recommended that the Court should identify any posts that are no longer required and propose such posts for abolition.

414. Recently the Committee recommended freezing all posts and conducting a comprehensive review and justification of their need. This is a follow-up to the Committee previous recommendations that the Court should be able to establish the leanest structure possible without compromising its ability to produce legal judgments of the highest quality.

415. The Committee clarified that its recommendation to freeze the number of established positions meant that the Court should not put forward requests for new established positions until a comprehensive justification of all existing posts had been conducted. Hence there should be no net increase of established posts in the 2012 budget.

<sup>107</sup> *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. II, part B.2.C.2(h), para. 56.

416. The Committee welcomed the Court assuming the challenge of managing its range of functions, including new ones, with the resources allocated to existing staffing levels.

417. The Committee requested further that it be provided with the ‘skeleton’ of the Court in the case where the Court finds itself without judicial activity as a way to promote a fundamental review of the processes established within the Court, with a view to determining the core activities of the Court, the most efficient way to deliver core activities, and whether processes and procedures implemented during the establishment phase of the Court were still appropriate.

418. The Committee recalled that the Court had had difficulty in defining its staffing requirements for the various court procedures, therefore, the Committee recommended that the Court review the report on zero based budgeting and the skeleton from this perspective and attempt to better define its core requirements

419. The Committee also recommended that, where established posts have been vacant for two years or more, the Court provides a renewed justification for the positions to the Committee as part of its annual budget submission.

#### *Best practices*

420. *The Committee recommended that the Court review the report on zero based budgeting and the skeleton from this perspective and attempt to better define its core requirements. The revised versions of the two reports would thus be submitted by the Court to the Committee for consideration at its eighteenth session.*<sup>108</sup>

#### **N. Geographical representation**

421. The Committee has given special consideration to the geographical distribution and gender balance of the staff recruited by the Court.

422. The Committee has repeatedly encouraged the Court to continue to develop systems for disseminating vacancy announcements to relevant groups and individuals in underrepresented countries. The Committee pointed out that it was essential for the networks distributing vacancy announcements to operate quickly, either by internet or by facsimile, in order to ensure that potential applicants had sufficient opportunities to apply. The Committee recognized that work was continuing in The Hague Working Group on this subject, and hoped that the Group would develop effective measures by which the Court could cooperate with States to identify and attract candidates from underrepresented States.

423. The Committee observed that the Court needed to improve the dissemination of information about vacancies at the Professional level, in particular as regards under and non-represented States. This was evidenced by the statistics on human resources submitted to the Committee.

#### *Best practices*

424. *The Committee also recommended that the Court take appropriate steps to provide for equitable geographical representation on the recruitment boards to the extent possible.*

425. *Additional measures to improve geographical representation have been proposed, such*

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<sup>108</sup> *Official Records ... Tenth session ... 2011 (ICC-ASP/10/20)*, vol. II, part B.1, para. 72.

*as through national competitive examinations or through advertising vacancies in national newspapers of underrepresented or non-represented countries.*

426. *The Committee recommended that the Court consider options for increasing representation, such as enhancing contacts with representatives of the countries concerned, in order to promote awareness and advertising in local media and the possibility of targeted recruitment missions.*

427. The Committee invited the Court to consider budget-neutral/low cost alternatives for reaching out to under and non-represented States, such as:

- (a) Liaising regularly with the Bureau's focal point on geographical representation and gender balance;
- (b) Organizing regular briefings for Embassies of such States in The Hague;
- (c) Organizing regular briefings for United Nations Missions by the New York Liaison Office;
- (d) Exploring the use of modern telecommunications to hold video-conference information sessions with interested audiences;
- (e) Inviting officials from capitals to visit the Court for an information session or organizing information sessions during some of the regional seminars held by the Court for other purposes; and
- (f) Explore the possibility of implementing a fast-track recruitment process for nationals of non-represented and underrepresented States Parties, as well as other measures in the practice of the United Nations.

## **O. Junior Professional Officer programme**

428. The Committee noted that the Court was considering new modalities for the hiring of young professionals.<sup>109</sup> The Committee observed that such practices can result in an unfair advantage for the young professionals, who may be fast-tracked in recruitment exercises, thereby affecting the regional balance within the institution. Furthermore, the Committee recalled that the Assembly had adopted clear guidelines for the selection and engagement of gratis personnel.<sup>110</sup>

429. The Committee noted that, according to article 44, paragraph 4, of the Rome Statute, the Court may employ gratis personnel only in accordance with guidelines to be established by the Assembly. In the view of the Committee, the existing guidelines did not seem to be applicable to Junior Professional Officer (JPO) as they only applied to "specialized functions".

430. On the proposed JPO programme, the Committee generally welcomed the Court's intention to establish this programme, as it will provide a good opportunity for young and capable professionals and will assist in the Court's outreach activities.

431. The Committee therefore recommended that the Court develop a special proposal on the JPO programme, including new guidelines to be submitted to the Committee. The Committee also emphasized that the implementation of the JPO programme should not in any way have a negative effect on geographical representation of regular professional posts.

<sup>109</sup> ICC-ASP/8/10, para. 38.

<sup>110</sup> *Official Records ... Fourth session ... 2005* (ICC-ASP/4/32), part III, ICC-ASP/4/Res.4, annex II.

432. The Committee took note of the information provided by the Court on its proposal for establishing a JPO programme and recommended that the Court refine its proposal to ensure that all costs associated with a JPO programme are identified. In this regard, it recommended that the Court identify concrete areas where the work of JPOs would be a contribution for the Court without entailing additional bureaucracy and costs.

433. The Committee also recommended that the Court consider the number of JPOs per year that can be accommodated within the premises of the Court, the costs of additional workstations, as well as the costs for administering the programme. These costs should in principle be fully recovered from the sponsoring countries.

## P. Travel

434. In terms of innovations proposed, particularly considering the high level of the travel budget, the Committee recommended that the conditions of travel be established on a different basis from other international organizations, and that that only economy-class travel would be provided for staff. This practice has, over the years, led to significant savings for the Court, representing approximately between 2 and 3 million euros of savings per year.

**Table 6: Travel costs per major programme in '000 euro**

<i>Major Programme</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011*</i>
Judiciary-I	110.1	116.5	143.6	124.2	234.9	51.4	67.0
Office of the Prosecutor-II	1,634.4	1,676.0	1,648.3	1,756.0	1,948.8	2,005.6	1,877.1
Registry-III	881.4	880	1,560.5	1,412.2	1,389.1	2,047.2	1,746.8
Secretariat of the Assembly of States Parties-IV	110.7	140.8	222.8	200.7	210.3	454.8	298.5
Secretariat of the Trust Fund for Victims-VI	0.0	24.6	107.6	90.5	82.5	120.9	125.6
Project Director's Office (permanent premises)-VII-1	10.8	415.3	0.0	0.5	4.4	14.9	19.3
Independent Oversight Mechanism-VII-5	0.0	0.0	0.0	0.0	0.0	3.0	4.3
<b>Total</b>	<b>2,747.4</b>	<b>3,253.2</b>	<b>3,682.8</b>	<b>3,584.1</b>	<b>3,870.0</b>	<b>4,697.8</b>	<b>4,138.7</b>

\*Provisional.

## Q. Other recommendations on policy development

435. The Committee has provided further guidance to the Court in order to improve the conditions of service of personnel, with reasonable expectations and clear rules on an equal basis for all staff.

436. The Committee has requested the Court to further develop clear guidelines regarding special leave and benefits such as dependency or education grants. It seems that different organs apply different criteria and that this should be streamlined.

437. A well-functioning performance-management system would contribute to the fair treatment and improved motivation of staff. The Committee recommended that the Court set a time-frame for the conduct of performance appraisals of all staff and that it continue to explore improvements for this system. On performance appraisals, the Committee noted the considerable progress achieved by the Court. The Committee recommended that, to further build on this progress, the generic appraisal criteria be more broadly circulated, that systems be reinforced to ensure consistent and uniform application of the appraisal system throughout

the Court, that the appraisal review process be reinforced and that appraisals be further linked to the strategic objectives and the contract renewal process.<sup>111</sup>

### *Best practices*

438. *With respect to sub-programme 3230, “Human Resources Section”, the Committee again noted the high number of staff required. The Committee was informed that the current post numbers were sufficient only for recruitment, and that it had been necessary to defer policy development. While the Committee recognized that the recruitment workload would be high in 2003 and 2004, it expected that the load would then begin to fall. Thus, the Committee had reservations about approving 18 human resources posts (a ratio of 1 human resources post for each 22 posts in the Court), plus substantial general temporary assistance. Accordingly, the Committee recommended that the Assembly not approve three of the proposed new General Service posts, and that the Registrar should decide how to spread this reduction.*<sup>112</sup>

#### *Review of the financial situation*

##### *Financial statements*

439. *Several areas were identified by the Committee as warranting attention from the Auditor in the future, including results-based budgeting, information technology investment and human resources management. The Committee emphasized the importance of continuing its close dialogue with the external and internal auditors in the future.*<sup>113</sup>

#### *Observations and recommendations of the Committee*

440. *The Committee also noted that duplication of administrative structures was occurring in the Office of the Prosecutor. While the Committee believed that a small administrative and human resources capacity in the Immediate Office of the Prosecutor was appropriate and helped ensure the independence of the Prosecutor, it was concerned that the Office of the Prosecutor had begun to assume administrative functions that ought to be performed by the Registry for the Court as a whole.*<sup>114</sup>

##### *Human resources*

441. *The Committee agreed that the human resources policies of the Court were vital for the realisation of the Court’s objectives: the Court needed human resources practices that would help attract and retain high-performing staff. It therefore recommended that the Court move quickly to commence this exercise and requested that it examine (among others) the following issues:*

- (a) Alternatives within the common system for remuneration of staff, with a view to identifying models that are most appropriate to the Court’s work;*
- (b) The potential for merging grades (broadbanding);*
- (c) Measures to ensure that the performance management system is effective and fair;*

<sup>111</sup> *Official Records ... Ninth session ... 2010 (ICC-ASP/9/20), vol. II, part B.1, para. 63.*

<sup>112</sup> *Official Records ... Second session ... 2003 (ICC-ASP/2/10), part II, A.6. para. 45.*

<sup>113</sup> *Official Records ... Third session ... 2004 (ICC-ASP/3/25), part II, (b), para. 16.*

<sup>114</sup> *Ibid.*, para. 62.

- (d) Possibilities to link performance to pay and other incentives; and
- (e) Measures to enhance career development and assistance.<sup>115</sup>

442. The Committee underlined the importance of security of staff, in particular, of field staff. The Court informed the Committee that its security standards complied with the United Nations Security Management System, and that the conditions and levels of security established by the United Nations were implemented at all its field offices.<sup>116</sup>

## R. Conclusion

443. After almost ten years, the Court is a well established and operative institution. The main purpose of this manual is to provide guidance on the basis of past experience, to address the natural challenges, by addressing them a comprehensive manner, in order to continue strengthening the credibility of the Court and increase support from the international community.

444. One of the main challenges will be addressing accountability, which at the managerial level, is still not very clear. This is not only the case for this new institution, but is also a frequent issue in other international organizations. For this reason, it is important to remind that “Accountability” is defined in line with United Nations General Assembly resolution 64/259, here quoted in full:

“Accountability is the obligation of the secretariat and its staff members to be answerable for all decisions made and actions taken by them, and to be responsible for honoring their commitments, without qualification or exception.”

It thus includes the following elements:

- (a) Delegation of authority;
- (b) Achieving objectives in an efficient manner;
- (c) Compliance with resolutions and all regulations;
- (d) Performance reports; and
- (e) System of rewards and sanctions.

445. There are two different concepts, known as process accountability and performance accountability.

446. Process accountability, or ‘compliance’, which focuses on how an organization or a bureaucracy achieves something rather than on what is actually accomplished.

447. Performance accountability, which is of more recent vintage and focuses not on the ‘how’ but on the ‘what’: results, outputs and outcomes. For performance accountability to work, there must be delegation of authority, adequate measures of outputs, and tools in place to deal with managers and organizational units that are performing below agreed targets. These are the next challenges for the Court in terms of management.

448. The second challenge is in terms of budgeting. The budget process at the Court is seen as a process for technicians only, without relevant and proper involvement of substantive

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<sup>115</sup> *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. II, part B.1, para. 60.

<sup>116</sup> *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. II, part II, B.1, para. 49.

divisions. It is essential to involve staff and give them the opportunity to suggest improvements.

449. This is clearly still reflected still in the lack of uniformity in the budget submissions over the years.

450. Also a lot remains to be done in order to effectively combine the strategic framework and the budget presentation. The budget process operates in a politically highly sensitive environment, which is normal, but appears disproportionate in relation to the level of the budget for an institution of this size.

451. Finally, the perception of evaluation at the Court is seen as primarily an oversight and accountability instrument, this has impaired the development of evaluation as a learning tool and agent of change. The fact is that evaluation is a minor oversight function, compared, for example, with audit. Neither The Hague Working Group nor the Assembly can meet the expectation that evaluations are discussed substantively and that steering is based on evaluation results. The Assembly focuses more on procedural issues (i.e. On 'doing the thing right') and not on the effectiveness (outcomes and impacts) of the work carried out by the Court. As a result, neither the Court nor States Parties fully value the contribution evaluations can make to a more effective institution.

452. In conclusion, addressing these main three challenges will ensure the achievement of the goal of becoming a model of international administration. After ten years of experience and in depth knowledge of the Court, the Committee on Budget and Finance is in a strong position to continue providing not only recommendations for day to day financial and administrative matters, but more of strategic nature to ensure an effective and credible institution, in line with the high ideals enshrined in the Rome Statute.

## ANNEXES TO THE CBF MANUAL

### Annex I

#### The Committee on Budget and Finance<sup>1</sup>

1. The Assembly of States Parties establishes, in accordance with the present resolution, a Committee on Budget and Finance composed of 12 members.
2. The Assembly shall elect the members of the Committee on Budget and Finance, who should not be of the same nationality, on the basis of equitable geographical distribution. The members of the Committee shall be experts of recognized standing and experience in financial matters at the international level from States Parties. They shall carry out their duties for three calendar years and may be re-elected. Of the 12 members who are initially elected, 6 shall be elected for a period of two years and the remaining 6 for a period of three years. In the event of a vacancy, an election shall be held in accordance with the procedure for the nomination and election of members of the Committee on Budget and Finance. The procedure shall apply *mutatis mutandis*, subject to the following provisions:
  - (a) The Bureau of the Assembly of States Parties may fix a nomination period which is shorter than the one used for other elections.
  - (b) The Bureau of the Assembly of States Parties may elect the member.
  - (c) A member elected to fill a vacancy shall serve for the remainder of the predecessor's term and may be re-elected.
3. The Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature, as may be entrusted to it by the Assembly of States Parties. In particular, it shall review the proposed programme budget of the Court, prepared by the Registrar, in consultation with the other organs referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, and shall make the relevant recommendations to the Assembly concerning the proposed programme budget. It shall also consider reports of the Auditor concerning the financial operations of the Court and shall transmit them to the Assembly together with any comments which it may deem appropriate.
4. The Committee on Budget and Finance shall meet when required and at least once per year.
5. The Assembly of States Parties shall keep under review the number of members of the Committee on Budget and Finance.

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<sup>1</sup> *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part IV, ICC-ASP/1/Res.4, annex, and as amended by resolutions ICC-ASP/2/Res.5 and ICC-ASP/4/Res.6.



## Annex II

### Members of the Committee on Budget and Finance\*

<p><b>First session</b>  <b>New York, 4 - 8 August 2003</b></p> <p><i>Chairperson</i></p> <p>Mr. Karl Paschke (Germany)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. Myung-jae Hahn (Republic of Korea)</p> <p><i>Other members:</i></p> <p>Mr. Lambert Dah Kindji (Benin)  Mr. David Dutton (Australia)  Mr. Eduardo Gallardo Aparicio (Bolivia)  Mr. Fawzi A. Gharaibeh (Jordan)  Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)  Mr. John F.S. Muwanga (Uganda)  Ms. Elena Sopková (Slovakia)  Ms. Inna Šteinbuka (Latvia)  Mr. Michel-Etienne Tilemans (Belgium)  Mr. Santiago Wins Arnábal (Uruguay)</p>	<p><b>Second session</b>  <b>The Hague, 29 - 31 March 2004</b></p> <p><i>Chairperson</i></p> <p>Mr. Karl Paschke (Germany)</p> <p><i>Other members:</i></p> <p>Mr. Lambert Dah Kindji (Benin)  Mr. Eduardo Gallardo Aparicio (Bolivia)  Mr. Fawzi A. Gharaibeh (Jordan)  Mr. Myung-jae Hahn (Republic of Korea)  Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)  Mr. John F.S. Muwanga (Uganda)  Ms. Elena Sopková (Slovakia)  Ms. Inna Šteinbuka (Latvia)  Mr. Michel-Etienne Tilemans (Belgium)  Mr. Santiago Wins (Uruguay)</p>
<p><b>Third session</b>  <b>The Hague, 2 - 6 August 2004</b></p> <p><i>Chairperson</i></p> <p>Mr. Karl Paschke (Germany)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. John F.S. Muwanga (Uganda)</p> <p><i>Rapporteur</i></p> <p>Mr. David Dutton (Australia)</p> <p><i>Other members:</i></p> <p>Mr. Lambert Dah Kindji (Benin)  Mr. Eduardo Gallardo Aparicio (Bolivia)  Mr. Fawzi A. Gharaibeh (Jordan)  Mr. Myung-jae Hahn (Republic of Korea)  Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)  Ms. Elena Sopková (Slovakia)  Ms. Inna Šteinbuka (Latvia)  Mr. Michel-Etienne Tilemans (Belgium)  Mr. Santiago Wins (Uruguay)</p>	<p><b>Fourth session</b>  <b>The Hague, 4 - 6 April 2005</b></p> <p><i>Chairperson</i></p> <p>Mr. Karl Paschke (Germany)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. John F.S. Muwanga (Uganda)</p> <p><i>Rapporteur</i></p> <p>Mr. David Dutton (Australia)</p> <p><i>Other members:</i></p> <p>Mr. Lambert Dah Kindji (Benin)  Mr. Eduardo Gallardo Aparicio (Bolivia)  Mr. Fawzi A. Gharaibeh (Jordan)  Mr. Myung-jae Hahn (Republic of Korea)  Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)  Ms. Elena Sopková (Slovakia)  Ms. Inna Šteinbuka (Latvia)  Mr. Michel-Etienne Tilemans (Belgium)</p>

\* The Committee on Budget and Finance is composed of 12 members elected by the Assembly.

<p><b>Fifth session</b> <b>The Hague, 10 - 14 October 2005</b></p> <p><i>Chairperson</i></p> <p>Mr. Karl Paschke (Germany)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. Eduardo Gallardo Aparicio (Bolivia)</p> <p><i>Rapporteur</i></p> <p>Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)</p> <p><i>Other members:</i></p> <p>Mr. Lambert Dah Kindji (Benin) Mr. Fawzi A. Gharaibeh (Jordan) Mr. Myung-jae Hahn (Republic of Korea) Mr. John F.S. Muwanga (Uganda) Ms. Elena Sopková (Slovakia) Mr. Michel-Etienne Tilemans (Belgium) Mr. Santiago Wins (Uruguay)</p>	<p><b>Sixth session</b> <b>The Hague, 24 - 26 April 2006</b></p> <p><i>Chairperson</i></p> <p>Mr. Karl Paschke (Germany)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. Eduardo Gallardo Aparicio (Bolivia)</p> <p><i>Rapporteur</i></p> <p>Mr. David Dutton (Australia)</p> <p><i>Other members:</i></p> <p>Mr. Lambert Dah Kindji (Benin) Mr. Fawzi A. Gharaibeh (Jordan) Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland) Mr. John F.S. Muwanga (Uganda) Ms. Elena Sopková (Slovakia) Mr. Michel-Etienne Tilemans (Belgium) Mr. Santiago Wins (Uruguay)</p>
<p><b>Seventh session</b> <b>The Hague, 9 - 13 October 2006</b></p> <p><i>Chairperson</i></p> <p>Mr. David Dutton (Australia)</p> <p><i>Vice-Chairperson</i></p> <p>Ms. Elena Sopková (Slovakia)</p> <p><i>Rapporteur</i></p> <p>Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)</p> <p><i>Other members:</i></p> <p>Mr. Lambert Dah Kindji (Benin) Mr. Eduardo Gallardo Aparicio (Bolivia) Mr. Fawzi A. Gharaibeh (Jordan) Mr. Myung-jae Hahn (Republic of Korea) Mr. John F.S. Muwanga (Uganda) Mr. Juhani Lemmik (Estonia) Mr. Karl Paschke (Germany) Mr. Michel-Etienne Tilemans (Belgium) Mr. Santiago Wins (Uruguay)</p>	<p><b>Eighth session</b> <b>The Hague, 23 - 27 April 2007</b></p> <p><i>Chairperson</i></p> <p>Mr. David Dutton (Australia)</p> <p><i>Vice-Chairperson</i></p> <p>Ms. Elena Sopková (Slovakia)</p> <p><i>Rapporteur</i></p> <p>Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)</p> <p><i>Other members:</i></p> <p>Mr. Lambert Dah Kindji (Benin) Mr. Eduardo Gallardo Aparicio (Bolivia) Mr. Fawzi A. Gharaibeh (Jordan) Mr. Juhani Lemmik (Estonia) Ms. Rossette Nyirinkindi Katungye (Uganda) Mr. Karl Paschke (Germany) Mr. Michel-Etienne Tilemans (Belgium) Mr. Santiago Wins (Uruguay)</p>

<p><b>Ninth session</b> <b>The Hague, 10 - 18 September 2007</b></p> <p><i>Chairperson</i></p> <p>Mr. David Dutton (Australia)</p> <p><i>Vice-Chairperson</i></p> <p>Ms. Elena Sopková (Slovakia)</p> <p><i>Rapporteur</i></p> <p>Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)</p> <p><i>Other members:</i></p> <p>Mr. Eduardo Gallardo Aparicio (Bolivia) Mr. Fawzi A. Gharaibeh (Jordan) Mr. Myung-jae Hahn (Republic of Korea) Mr. Juhani Lemmik (Estonia) Ms. Rossette Nyirinkindi Katungye (Uganda) Mr. Karl Paschke (Germany) Mr. Michel-Etienne Tilemans (Belgium) Mr. Santiago Wins (Uruguay)</p>	<p><b>Tenth session</b> <b>The Hague, 21 - 25 April 2008</b></p> <p><i>Chairperson</i></p> <p>Mr. David Dutton (Australia)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. Santiago Wins (Uruguay)</p> <p><i>Other members:</i></p> <p>Mr. David Banyanka (Burundi) Mr. Lambert Dah Kindji (Benin) Ms. Carolina María Fernández Opazo (Mexico) Mr. Gilles Finkelstein (France) Mr. Fawzi A. Gharaibeh (Jordan) Mr. Myung-jae Hahn (Republic of Korea) Mr. Gerd Saupe (Germany) Mr. Ugo Sessi (Italy) Ms. Elena Sopková (Slovakia)</p>
<p><b>Eleventh session</b> <b>The Hague, 4 - 12 September 2008</b></p> <p><i>Chairperson</i></p> <p>Mr. David Dutton (Australia)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. Santiago Wins (Uruguay)</p> <p><i>Other members:</i></p> <p>Mr. David Banyanka (Burundi) Mr. Lambert Dah Kindji (Benin) Ms. Carolina María Fernández Opazo (Mexico) Mr. Gilles Finkelstein (France) Mr. Fawzi A. Gharaibeh (Jordan) Mr. Myung-jae Hahn (Republic of Korea) Mr. Juhani Lemmik (Estonia) Mr. Gerd Saupe (Germany) Mr. Ugo Sessi (Italy) Ms. Elena Sopková (Slovakia)</p>	<p><b>Twelfth session</b> <b>The Hague, 20 - 24 April 2009</b></p> <p><i>Chairperson</i></p> <p>Mr. Santiago Wins (Uruguay)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. Ugo Sessi (Italy)</p> <p><i>Rapporteur</i></p> <p>Mr. Masud Husain (Canada)</p> <p><i>Other members:</i></p> <p>Mr. David Banyanka (Burundi) Ms. Carolina María Fernández Opazo (Mexico) Mr. Gilles Finkelstein (France) Mr. Shinichi Iida (Japan) Mr. Juhani Lemmik (Estonia) Ms. Rossette Nyirinkindi Katungye (Uganda) Mr. Gerd Saupe (Germany) Ms. Elena Sopková (Slovakia)</p>

<p><b>Thirteenth session</b>  <b>The Hague, 24 August - 1 September 2009</b></p> <p><i>Chairperson</i></p> <p>Mr. Santiago Wins (Uruguay)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. Ugo Sessi (Italy)</p> <p><i>Rapporteur</i></p> <p>Mr. Masud Husain (Canada)</p> <p><i>Other members:</i></p> <p>Mr. David Banyanka (Burundi)  Ms. Carolina María Fernández Opazo (Mexico)  Mr. Gilles Finkelstein (France)  Mr. Fawzi A. Gharaibeh (Jordan)  Mr. Shinichi Iida (Japan)  Mr. Juhani Lemmik (Estonia)  Ms. Rossette Nyirinkindi Katungye (Uganda)  Mr. Gerd Saupe (Germany)  Ms. Elena Sopková (Slovakia)</p>	<p><b>Fourteenth session</b>  <b>The Hague, 3 - 8 May 2010</b></p> <p><i>Chairperson</i></p> <p>Mr. Santiago Wins (Uruguay)</p> <p><i>Vice-Chairperson</i></p> <p>Ms. Rossette Nyirinkindi Katungye (Uganda)</p> <p><i>Rapporteur</i></p> <p>Mr. Masud Husain (Canada)</p> <p><i>Other members:</i></p> <p>Mr. David Banyanka (Burundi)  Ms. Carolina María Fernández Opazo (Mexico)  Mr. Gilles Finkelstein (France)  Mr. Fawzi A. Gharaibeh (Jordan)  Mr. Shinichi Iida (Japan)  Mr. Juhani Lemmik (Estonia)  Mr. Gerd Saupe (Germany)  Mr. Ugo Sessi (Italy)  Ms. Elena Sopková (Slovakia)</p>
<p><b>Fifteenth session</b>  <b>The Hague, 23 - 31 August 2010</b></p> <p><i>Chairperson</i></p> <p>Mr. Santiago Wins (Uruguay)</p> <p><i>Vice-Chairperson</i></p> <p>Ms. Rossette Nyirinkindi Katungye (Uganda)</p> <p><i>Rapporteur</i></p> <p>Mr. Masud Husain (Canada)</p> <p><i>Other members:</i></p> <p>Mr. David Banyanka (Burundi)  Ms. Carolina María Fernández Opazo (Mexico)  Mr. Gilles Finkelstein (France)  Mr. Fawzi A. Gharaibeh (Jordan)  Mr. Shinichi Iida (Japan)  Mr. Juhani Lemmik (Estonia)  Mr. Gerd Saupe (Germany)  Mr. Ugo Sessi (Italy)  Ms. Elena Sopková (Slovakia)</p>	<p><b>Sixteenth session</b>  <b>The Hague, 11 - 15 April 2011</b></p> <p><i>Chairperson</i></p> <p>Mr. Santiago Wins (Uruguay)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. Juhani Lemmik (Estonia)</p> <p><i>Rapporteur</i></p> <p>Mr. Masud Husain (Canada)</p> <p><i>Other members:</i></p> <p>Mr. David Banyanka (Burundi)  Ms. Carolina María Fernández Opazo (Mexico)  Mr. Gilles Finkelstein (France)  Mr. Fawzi A. Gharaibeh (Jordan)  Ms. Rossette Nyirinkindi Katungye (Uganda)  Mr. Gerd Saupe (Germany)  Mr. Ugo Sessi (Italy)  Ms. Elena Sopková (Slovakia)  Mr. Masatoshi Sugiura (Japan)</p>

<p><b>Seventeenth session</b>  <b>The Hague, 22 - 31 August 2011</b></p> <p><i>Chairperson</i></p> <p>Mr. Santiago Wins (Uruguay)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. Juhani Lemmik (Estonia)</p> <p><i>Rapporteur</i></p> <p>Mr. Masud Husain (Canada)</p> <p><i>Other members:</i></p> <p>Mr. David Banyanka (Burundi)  Ms. Carolina María Fernández Opazo (Mexico)  Mr. Gilles Finkelstein (France)  Mr. Fawzi A. Gharaibeh (Jordan)  Ms. Rossette Nyirinkindi Katungye (Uganda)  Mr. Gerd Saupe (Germany)  Mr. Ugo Sessi (Italy)  Ms. Elena Sopková (Slovakia)  Mr. Masatoshi Sugiura (Japan)</p>	<p><b>Eighteenth session</b>  <b>The Hague, 23 - 27 April 2012</b></p> <p><i>Chairperson</i></p> <p>Mr. Gilles Finkelstein (France)</p> <p><i>Vice-Chairperson</i></p> <p>Mr. David Banyanka (Burundi)</p> <p><i>Rapporteur</i></p> <p>Mr. Hugh Adsett (Canada)</p> <p><i>Other members:</i></p> <p>Ms. Carolina María Fernández Opazo (Mexico)  Mr. Fawzi A. Gharaibeh (Jordan)  Mr. Samuel P.O. Itam (Sierra Leone)  Mr. Juhani Lemmik (Estonia)  Ms. Mónica Soledad Sánchez Izquierdo (Ecuador)  Mr. Gerd Saupe (Germany)  Mr. Ugo Sessi (Italy)  Ms. Elena Sopková (Slovakia)  Mr. Masatoshi Sugiura (Japan)</p> <p><i>Executive Secretary:</i></p> <p>Mr. Fakhri Dajani</p>
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## Annex III

### Corporate Governance Statement of the International Criminal Court<sup>1</sup>

1. Divisions among the organs, whether real or perceived, are among the most significant risks facing the Court, internally and externally, and must be managed accordingly while fully respecting the independent mandate of different organs.

(a) Representatives of the organs should work together in a spirit of openness and cooperation with an aim to finding common solutions to common problems.

(b) Representatives of the organs should refrain from discussing matters of internal management with external stakeholders.

2. The Presidency is responsible for the proper administration of the Court, with the exception of the Office of the Prosecutor.

3. The Office of the Prosecutor (“OTP”) acts independently as a separate organ of the Court. The Prosecutor has full authority over the management and administration of the OTP, including the staff, facilities and other resources thereof. Neither the Presidency nor the Registry may infringe on the Prosecutor’s independent management or administration of the OTP.

4. The Registry is responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42 of the Rome Statute. The Registry is headed by the Registrar who is the principal administrative officer of the Court. The Registrar exercises his or her functions under the authority of the President of the Court.

(a) All activities of the Registry fall under the ultimate authority of the President and within the overall responsibility of the Presidency.

(b) The role of the Presidency vis-à-vis the Registry is primarily to oversee the work of the Registry at a general level and to provide guidance on major issues.

(i) The Registrar should ensure the sound management of the Registry and the day-to-day (non-judicial) administration of the Court without necessitating involvement of the Presidency.

(ii) The Registrar shall create and maintain adequate mechanisms ensuring that the Presidency is sufficiently informed to fulfill its oversight responsibilities with respect to all areas of the Registry’s competence, that information from the Presidency is transmitted as necessary within the Registry and that the activities of the Registry are fully consistent with the guidance of the Presidency.

(c) Should the Presidency nevertheless deem it necessary to become involved in a specific issue of administration, the Registrar will ensure the implementation of any instruction of the President or Presidency.

5. In discharging their responsibilities for the proper administration of the Court, the Presidency and Prosecutor shall coordinate with and seek concurrence on all matters of mutual concern while respecting their independent mandates. As the responsibilities of the Registry fall fully within the Presidency’s overall administrative responsibilities, the same

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<sup>1</sup> Report of the Court on measures to increase clarity on the responsibilities of the different organs (ICC-ASP/9/CBF.1/12), annex, page 10.

obligation to coordinate and seek concurrence runs to the Registrar and to subordinate officials and staff of the Registry.

(a) The Presidency or Registrar and the Prosecutor shall seek maximum consensus on matters of mutual concern, consistent with the Rome Statute. In seeking consensus, the independence between the OTP and the other organs shall be respected. In areas of recurring coordination, the scope of matters of mutual concern and the processes for consultation should be defined between the relevant organs.

(b) The Registrar (or subordinate staff) and the Prosecutor (or subordinate staff) shall coordinate with and seek concurrence on matters of mutual concern to the Registry and the Office of the Prosecutor, in particular on anything which may potentially affect or could be considered to potentially affect the provision of services to the OTP. Before raising an issue of OTP-Registry coordination with the Presidency, the Prosecutor should, unless exceptional circumstances exist, first consult the Registrar.

(c) As the obligation is to seek consensus and not necessarily to obtain consensus, the lack of consensus shall not infringe the organs' abilities to act independently. The Prosecutor may take any measure he deems necessary for the management and administration of the OTP. The Presidency or Registry may take any measures they deem necessary for the proper administration of the Court, including the promulgation by the Presidency of Presidential Directives of Court-wide applicability. The Prosecutor may suspend the application of any such measures with regard to the Office of the Prosecutor.

6. Whereas the Prosecutor is independent in the management and administration of the OTP, the Prosecutor relies where appropriate on the Registry for services. This arrangement requires close consultation and coordination.

(a) The proper delivery of services will be ensured through a common understanding of the services to be provided, including:

- (i) Yearly identification of services required during the budget cycle, including volume and quality level;
- (ii) Agreement on the processes for request and provision of services;
- (iii) Monthly forecast of the actual requirements for the coming 3 months during the running year;
- (iv) Establishment of strategic indicators enabling Presidency oversight of the Registry; and
- (v) Review of the service delivery three times per year.

(b) Proposals to change services or which may potentially affect the provision of services will be discussed in advance between the Registry and the OTP in order to ensure proper coordination.

(c) If required services cannot be delivered, then consultation will take place to resolve the matter.

(d) In case no agreement can be reached between the Registry and the OTP in relation to one of the previous points, then, as a last resort, the matter may be discussed between the President and Prosecutor, or may be brought before Chambers where applicable.

## Annex IV

### **Roles and Responsibilities of the Organs in Relation to External Communications<sup>1</sup>**

#### **A. Introduction**

1. The purpose of this paper is to provide clarity on the roles and responsibilities of the organs in relation to external communications, specifically external relations and public information outreach being dealt with separately in the Court's "Outreach Strategy"). This paper supplements the broader Corporate Governance Statement, adopted by the President and Prosecutor on 25 February 2010 and should be read in light of that statement.

#### **B. Definitions**

2. As previously defined by the Court in its Integrated Strategy for External Relations, Public Information and Outreach:

(a) *External relations* is a dialogue between the Court and States Parties, Non-States Parties, international organizations, NGOs and other key partners that have direct roles in the activities and the enabling environment of the ICC.

This process aims towards building and maintaining support and cooperation facilitating the Court to fulfill its statutory mandate.

(b) *Public information* is a process of delivering accurate and timely information about the principles, objectives and activities of the Court to the public at large and target audiences, through different channels of communication, including media, presentations, and the website.

#### **C. The roles and responsibilities of the organs in external communications**

3. The ultimate responsibility for the external relations of the Court rests with the Presidency and the Prosecutor. They coordinate and seek consensus on matters of mutual concern. The Presidency and the Prosecutor agreed in the context of the One Court principle and related integrated strategy for external relations, public information and outreach, that the President will act as "the external face of the Court". The Presidency will coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern, including messages pertaining to issues related to the remit of the Prosecutor. The Presidency and Prosecutor shall define strategic court wide messages.

4. In case of disagreements at strategic level, they will consult on how best to present such disagreements externally.

5. Under the authority of the Presidency or the Prosecutor, each organ, in consultation with the other organs as described below in Section IV, has specific roles and responsibilities in external communications, consistent with the governance framework of the Court as set out in the Statute and the elaborated in the Corporate Governance Statement.

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<sup>1</sup> Ibid., annex, p. 12.



6. Within this general framework, the roles of the organs can be summarized as follows:

(a) *Presidency and Chambers*

*External Relations*

- (i) The President represents the Court, at the highest level as described above.
- (ii) The President may delegate representational functions to the Vice-Presidents, other judges, the Registrar or Presidency staff. In consultation with the President, the Registrar may further delegate such responsibilities to the Deputy Registrar or Registry staff. In the event of any delegation, the President will communicate his or her expectations and any necessary guidance and will remain ultimately responsible for ensuring accountability for performance.
- (iii) When the Prosecutor assesses that he/she cannot be represented by the delegated representatives, he/she will so inform the President and the delegated representatives will speak only on behalf of the Presidency/Registry.
- (iv) The Presidency's responsibility includes providing strategic guidance to and overseeing the external relations activities inherent in the Registry's other functions.

*Public Information*

- (i) The Presidency provides guidance to the Registry on questions of strategy and oversees the public information activities of the Registry.
- (ii) The Presidency and the judges can contribute significantly to advancing the public information objectives of the Court and should be incorporated in public information plans.

(b) *Office of the Prosecutor*

- (i) As provided in the Statute, the Prosecutor is entirely independent and conducts OTP-specific external relations and communications as he or she sees fit.
- (ii) The OTP coordinates with the Presidency/Registry on matters of mutual concern.

(c) *Registry*

*External Relations*

- (i) The Registry's external relations activities comprise those activities inherent in the performance of the Registry's other functions and those tasks delegated to the Registry by the Presidency. The Registry maintains its neutrality at all times.
- (ii) The Registrar is accountable to the Presidency for the performance of all of the Registry's external relations activities.
- (iii) On matters of mutual concern, the Registry coordinates with and seeks the concurrence of the OTP.

### *Public Information*

(i) The Registry is responsible, under the overall guidance of the Presidency, for the development and implementation of the public information strategies, plans and activities of the Court. The Registry will consult with the OTP on public information as appropriate, at all times safeguarding the neutral role of the Registry.

(ii) The Registry shall provide services to the OTP in accordance with a common understanding to be agreed between the Registry and the OTP on the quantity and nature of services as well as procedures for the implementation and monitoring of service requests and delivery.

## **D. Defining matters of mutual concern and the processes of coordination**

7. It is not possible prospectively to define in an exhaustive manner the nature and extent of appropriate coordination on any particular issue of external relations or public information. This should be determined on a case-by-case basis by relevant substantive officers, acting within the scope of their authority. The following guidelines may prove useful:

### **1. Defining matters of mutual concern**

#### **(a) Examples of matters of mutual concern**

(a) Development and implementation of Court-wide external communications strategies to achieve the Court's Strategic Objectives, in particular those related to external communications;

(b) External agreements binding the Court as a whole;

(c) Annual reports of the Court to the Assembly of States Parties ("ASP") and the United Nations;

(d) Preparation of and participation in meetings involving the different organs of the Court (e.g. meetings of the ASP, the Committee on Budget and Finance, Diplomatic Briefings and NGO roundtables); and

(e) Preparation of and participation in Hague Working Group discussions on specific issues of mutual concern (e.g. cooperation, complementarity, strategic planning, victims, budget).

#### **(b) Areas of particular concern to either the Presidency/Registry or the OTP:**

8. Issues of particular concern to either the Presidency/Registry or the OTP should be dealt with normally by the organ concerned. In relation to some recurring issues, the following general guidelines can be followed:

(a) Internal administration: The Presidency and Registry should not comment on issues of purely internal administration of the OTP and vice versa.

(b) Preliminary examination issues/investigative or prosecutorial strategy questions: The Presidency/Registry should take particular care to refrain from expressing opinions on prosecutorial strategy or policy or prognosticating on decisions which have been made or are to be made by the OTP. The Presidency/Registry may explain general procedures and may recount the situations which the Prosecutor has indicated are under analysis.

(c) Forthcoming judicial decisions: Care must be taken to avoid being seen to make promises as to the content or timing of judicial decisions which have not been handed down (including issues of enforcement of sentences and in situ proceedings).

(d) Hague Working Group: Preparation of and participation in discussions of the Hague Working Group on topics of concern only to either the Presidency/Registry or OTP (e.g. legal aid for defence, family visits, Prosecutorial Strategy) should be handled by the organ(s) concerned.

## **2. Processes for inter-organ coordination**

9. In a “one Court” approach, overall Court-wide Strategic Goals and Objectives have been set by the President, Prosecutor and Registrar in the Court’s Strategic Plan (see in particular Strategic Goal 2 and Strategic Objectives 4-7, 14 and 15). On other strategic issues of mutual concern, the Presidency/Registry and Prosecutor may agree on general strategies and broad messages which would provide guidance to officials and staff of the Presidency, Registry and OTP. The Presidency, Prosecutor and Registrar should monitor implementation of any such strategies by their staff, with the Presidency also overseeing the Registry.

10. The Presidency/Registry and the OTP will respectively determine their internal organization and identify which staff members are responsible for particular external communications issues, including coordination on matters of common concern. These decisions should be communicated to the other organs and should be respected. In coordinating with the other organ(s), staff of the Presidency/Registry and the OTP should seek maximum consensus on external communications matters of mutual concern without unnecessarily restricting the ability of the organs of the Court to react effectively and efficiently to opportunities and challenges.

11. In the event consensus cannot be reached between the Presidency/Registry and the OTP within a reasonable timeframe as determined by the specific context, the Presidency/Registry and OTP may pursue independent action. In such case it should be clarified to external stakeholders that Presidency/Registry and OTP only represents themselves. The escalation of issues to superiors should follow the hierarchy within the Presidency/Registry.

## Annex V

### Legal aid

1. The Committee on Budget and Finance (“the Committee”) gave careful consideration to the issue of the funding of legal aid. The Committee observed that notwithstanding an increase of almost €5 million in the funds allocated in the 2012 proposed programme budget to fund legal aid for the defence and for victims<sup>1</sup> it had not received a special report on the issue. The Court’s request for 2012 was for €7,573,700 in legal aid.

2. According to the explanations heard by the Committee, this amount had been calculated by the Court taking into account the current scales of the legal aid system and future situations. The Committee had before it an informal paper by the Registrar entitled “Overview of the Legal Aid System of the Court” dated 27 June 2011. According to this paper, the composition of a basic defence team – of an accused person or victims – depends on two variables:

- (a) The phases of the trial; and
- (b) The composition of the defence team.

3. With one Counsel, one Legal Assistant and one Case Manager, the cost of this team in the pre-trial and appeals phases is €21,817 per month. Under the current rules of the Court, it is possible to add one Associate Counsel for the trial phase of the proceedings, bringing the monthly cost to €30,782. To this must be added a further amount of €3,012, representing the monthly salary of one Investigator (P-4 level) and one resource person (GS-OL). In total, the monthly sum paid to the defence team can be as high as €43,794.<sup>2</sup>

4. The Committee further noted that these payments made by the Registrar on the basis of supporting evidence submitted by counsel do not exclude other expenses. The current system provides for:

- (a) The reimbursement of expenses up to a flat-rate monthly allocation of €4,000;
- (b) Compensation, under certain conditions, of professional charges when counsel is present at the seat of the Court for a period of more than 15 days. Monthly compensation for professional charges may not exceed 40 per cent of the total monthly remuneration of the relevant team member’s fees; and
- (c) If the need arises, a request for additional resources may be made by the person entitled to receive legal assistance paid by the Court or his/her counsel.

5. To begin with, the Committee was surprised that it had not been consulted by the Registrar either about the tariff increases, which do not correspond to the financial data contained in the Court’s report from 2008,<sup>3</sup> or about a possible reclassification of the Case Manager from G-5 to P-1. Given the financial impact of these decisions, it was incumbent on the Registrar to inform the Committee of these plans.

6. The first figures supplied to the Committee relating to legal aid for the defence and for victims in the Lubanga and Katanga/Ngudjolo Chui trials were as follows:

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<sup>1</sup> ICC-ASP/10/10, sub-programme 3190, table 52, version F.

<sup>2</sup> Calculation is made on a monthly basis.

<sup>3</sup> ICC-ASP/7/23.

- (a) Costs incurred for the defence between 2005 and 23 August 2011: €6,638,500; and
- (b) Costs incurred for victims during the same period: €2,802,400.

7. This amount, which did not take into account the costs incurred by the Court under the first two cases in the Democratic Republic of the Congo (Lubanga and Katanga/Ngudjolo Chui), namely €41,585,800, is likely to increase further with the possible appeals and reparations phases.

8. The Committee has already drawn attention in the past to the growing financial impact of the current legal aid system on the Court's finances.<sup>4</sup> The search for efficiency gains and savings inevitably raises questions about what this system should be expected to deliver. In light of the significant increase in the cases before the Court, striking a balance between the right of individuals to defend themselves must take account not only of the obligations arising from the Court's basic documents, but also of choices lying within the sole remit of the Assembly of States Parties (the "Assembly").

9. First, one can decide to maintain the current system and provide legal aid without pre-determining the financial framework. This system has the advantage of not limiting the conditions of access of the defence and victims to the proceedings before the Court. However, it carries the clear risk of an automatic increase each year in funds requested. Thus, in the 2012 proposed programme budget, almost €5 million more will be necessary for legal aid.

10. Second, the Committee believes it should be possible through a number of criteria to introduce greater flexibility into the system while at the same time respecting the obligations of the Court. On the one hand, it is possible to modify the present system of compensation of counsel by limiting, per budget year, the total amount allotted to teams, taking care to distinguish between the defence of the accused and the defence of victims. Taking into account the amounts agreed in the Lubanga and Katanga/Ngudjolo Chui cases, the Committee suggests that the Assembly should set an overall ceiling of €500,000 per accused per year. This amount would make possible a 45 per cent reduction over the annual average cost given for the trial phases of the first two cases between 2009 and 2010. Moreover, it is possible to envisage dropping the compensation of professional charges since, by definition, the main remuneration is intended precisely to compensate counsel for the case file. Furthermore, while acknowledging the benefits of using external counsel, the Committee had already made the point that a system in which victims would be represented only by the Office of Public Counsel for Victims (OPCV) would be more cost efficient.<sup>5</sup> In any case, the OPCV already provided sizeable support to external counsel, having assisted 39 legal representatives and more than 2,300 victims. To the extent that the Court is the only international criminal court to accept the participation of victims, all comparisons with other international courts are not based on the same situations. Such a system should not rule out the possibility of obtaining external counsel in the event of conflicting interests between the groups of victims. In that case, and applying the above-mentioned threshold reduction of 45 per cent, an amount of €223,000 per group of victims requiring, exceptionally, recourse to external counsel, could be allocated to external counsel.

11. The Committee stresses that it is up to the Assembly to define the general direction it believes the legal aid system should take and that, in light of the cases now before the Court, the number of people seeking funding under this budget item is likely to continue increasing.

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<sup>4</sup> Interim report on different legal aid mechanisms before international criminal jurisdictions (ICC-ASP/7/12), and *Official Records ... Seventh session ... 2006* (ICC-ASP/7/20), vol. II, part B.2, paras. 123-127.

<sup>5</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. II, part B.1, para. 77.

**Table 1: Actual costs per case, including Contingency Funds; SAP data per 23 August 2011 (in thousands of euros)**

	2005	2006	2007	2008	2009	2010	2011	Total
<b>Field</b>								
Support		5,868.00	8,927.20	8,215.90	8,328.00	9,885.40	6,183.60	47,408.10
Uganda	2,415.70	3,413.80	3,230.70	2,833.40	2,277.10	2,080.90	1,178.50	17,430.10
DRC	2,213.00	4,776.30	4,853.00	6,242.50	7,147.10	7,613.40	4,662.70	37,508.00
Darfur	1,740.90	3,510.30	4,814.70	5,541.80	5,385.10	3,738.00	1,951.70	26,682.50
CAR			1,206.80	2,996.90	3,792.00	1,813.30	1,333.30	11,142.30
Kenya						3,366.00	2,846.60	6,212.60
Libya							1,108.70	1,108.70
<i>Subtotal</i>	<i>6,369.60</i>	<i>17,568.40</i>	<i>23,032.40</i>	<i>25,830.50</i>	<i>26,929.30</i>	<i>28,497</i>	<i>19,265.10</i>	<i>147,492.30</i>
<b>Court in session</b>								
Support	339.40	3,667.80	6,264.60	7,075.00	8,929.10	10,971.10	6,312.60	
Trial 1 and 2 in DRC	239.40	2,399.00	3,887.70	5,850.90	9,100.30	13,445.40	6,663.00	
Trial 3/ appeal Bemba			77.10	403.80	1,093.80	2,482.20	1,573.20	
CIS Kenya							434.00	
CIS Libya							69.20	
<i>Subtotal</i>	<i>578.80</i>	<i>6,066.80</i>	<i>10,229.40</i>	<i>13,329.70</i>	<i>19,123.20</i>	<i>26,898.70</i>	<i>15,052.00</i>	<i>91,278.60</i>
<b>Total</b>	<b>€6,948.40</b>	<b>€23,635.20</b>	<b>€33,261.80</b>	<b>€39,160.20</b>	<b>€46,052.50</b>	<b>€55,395.70</b>	<b>€34,317.10</b>	<b>€238,770.90</b>

**Table 2: Summary of costs paid for Legal aid for defence and victims per situation/case \* 2005-2011 as at 23 August 2011 (in thousands of euros)****Legal aid for Counsel for defence**

	<i>CIS DRC</i>	<i>CIS SUD</i>	<i>CIS UGA</i>	<i>CIS CAR</i>	<i>FOP OPS</i>	<i>FOP UGA</i>	<i>FOP DRC</i>	<i>FOP SUD</i>	<i>FOP CAR</i>	<i>ICC GEN</i>	<i>Total</i>
2005	66.80										66.80
2006	597.40	49.60	63.10		1.00					13.60	724.70
2007	582.10	51.20	79.40			0.60	2.90				716.20
2008	660.60	2.80				70.00	20.20	36.50	22.70		812.80
2009	1,731.20			4.70		22.60	35.90	24.80			1,819.20
2010	1,874.80	410.10		511.80			44.90	54.30			2,895.90
2011**	1,125.60	382.20					66.50	4.50			1,578.80
<b>Total</b>	<b>€6,638.50</b>	<b>€895.90</b>	<b>€142.50</b>	<b>€516.50</b>	<b>€1.00</b>	<b>€93.20</b>	<b>€170.40</b>	<b>€120.10</b>	<b>€22.70</b>	<b>€13.60</b>	<b>€8,614.40</b>

**Legal aid for Counsel for victims**

	<i>CIS DRC</i>	<i>CIS SUD</i>	<i>CIS UGA</i>	<i>CIS CAR</i>	<i>FOP OPS</i>	<i>FOP UGA</i>	<i>FOP DRC</i>	<i>FOP SUD</i>	<i>FOP CAR</i>	<i>ICC GEN</i>	<i>Total</i>
2005											0.00
2006	20.30										20.30
2007	54.10										54.10
2008	149.40						9.10	1.40			159.90
2009	880.20	83.40		30.10			3.90		158.20		1,155.80
2010	1,106.40	43.70		85.00							1,235.10
2011**	592.00	47.40		288.40							927.80
<b>Total</b>	<b>€2,802.40</b>	<b>€174.50</b>		<b>€403.50</b>			<b>€13.00</b>	<b>€1.40</b>	<b>€158.20</b>		<b>€3,553.00</b>

\* CIS stands for Court in Session which is directly related to trials while FOS stands for Field Operations which is related to investigations and field operations.

\*\* Expenditure as at 23 August 2011.

**Table 3: Breakdown of Legal Aid expenditure per case (Lubanga – Katanga-Ngudjolo)  
(in euros)****Legal aid for defence**

<b>Lubanga</b>	2006	2007	2008	2009	2010	2011	Total case
Counsel	114,213.00	96,263.00	175,478.00	175,478.00	175,478.00	102,362.00	
Associate Counsel		35,238.00	145,233.00	145,233.00	145,233.00	84,719.00	
Legal Assistants	32,767.00	73,003.00	146,712.00	140,599.00	146,712.00	85,582.00	
Case-Managers	12,665.00	38,793.00	58,464.00	58,464.00	58,464.00	34,104.00	
Expenses (incl. travel)	37,669.00	37,158.00	13,521.00	63,852.00	83,409.00	53,294.00	
Investigations	53,332.00	25,973.00	39,653.00	61,679.00	32,730.00	23,678.00	
<b>Total</b>	<b>€250,646.00</b>	<b>€306,428.00</b>	<b>€579,061.00</b>	<b>€645,306.00</b>	<b>€642,026.00</b>	<b>€383,740.00</b>	<b>€2,807,206.00</b>

<b>Katanga</b>	2007	2008	2009	2010	2011	Total case
Counsel	14,899.00	129,984.00	174,574.00	168,212.00	84,106.00	
Associate Counsel			92,531.00	107,580.00	62,755.00	
Legal Assistants	4,705.00	73,356.00	110,034.00	127,356.00	74,291.00	
Case-Managers	134.00	58,464.00	58,464.00	58,464.00	34,104.00	
Expenses (incl. travel)	3,528.00	33,105.00	64,518.00	70,159.00	31,350.00	
Investigations		33,198.00	51,943.00	38,007.00	45,226.00	
<b>Total</b>	<b>€23,266.00</b>	<b>€328,107.00</b>	<b>€552,064.00</b>	<b>€569,778.00</b>	<b>€331,832.00</b>	<b>€1,805,047.00</b>

<b>Ngudjolo</b>	2008	2009	2010	2011	Total case
Counsel	99,418.00	129,984.00	129,984.00	75,824.00	
Associate Counsel	17,930.00	107,580.00	107,580.00	62,755.00	
Legal Assistants	56,397.00	98,859.00	146,712.00	85,582.00	
Case-Managers	48,720.00	58,464.00	58,464.00	32,480.00	
Expenses (incl. travel)	20,657.00	81,916.00	134,547.00	64,610.00	
Investigations	4,735.00	27,419.00	38,301.00	48,761.00	
<b>Total</b>	<b>€247,857.00</b>	<b>€504,222.00</b>	<b>€615,588.00</b>	<b>€370,012.00</b>	<b>€1,737,679.00</b>



**Legal aid for victims**

<b>Lubanga V02</b>	2006	2007	2008	2009	2010	2011	Total case
Counsel	13,364	21,164	60,455	113,946	97,391	71,420	
Associate counsel					-	-	
Legal Assistants					-	-	
Case-Managers			4,744	50,070	48,720	34,104	
Expenses (incl. travel)	5,760	21,188	37,150	58,452	70,533	20,213	
Investigations				4,506	-	-	
<b>Total</b>	<b>19,124</b>	<b>42,352</b>	<b>102,348</b>	<b>226,974</b>	<b>216,644</b>	<b>125,737</b>	<b>733,180</b>

<b>Lubanga V01</b>	2006	2007	2008	2009	2010	2011	Total case
Counsel			29,332	142,932	78,952	33,805	
Associate Counsel					-	-	
Legal Assistants					-	-	
Case-Managers			3,000	54,467	48,395	34,104	
Expenses (incl. travel)		467	24,848	60,547	57,955	14,152	
Investigations					-	-	
<b>Total</b>	<b>-</b>	<b>467</b>	<b>57,180</b>	<b>257,945</b>	<b>185,302</b>	<b>82,061</b>	<b>582,955</b>

<b>Katanga/Ngudjolo</b>	2006	2007	2008	2009	2010	2011	Total case
Counsel			19,316	54,769	95,765	21,664	
Associate Counsel					-	-	
Legal Assistants					-	-	
Case-Managers				16,156	48,720	29,232	
Expenses (incl. travel)			12,541	3,372	35,800	13,927	
Investigations					-	-	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>31,857</b>	<b>74,297</b>	<b>180,285</b>	<b>64,823</b>	<b>351,262</b>

<b>Katanga/Ngudjolo</b>	2006	2007	2008	2009	2010	2011	Total case
Counsel				65,532	108,320	54,160	
Associate Counsel					-	-	
Legal Assistants				25,325	56,200	36,678	
Case-Managers				9,744	48,720	29,232	
Expenses (incl. travel)			9,848	13,011	49,851	30,663	
Investigations					48,796	39,278	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>9,848</b>	<b>113,611</b>	<b>311,887</b>	<b>190,011</b>	<b>625,357</b>

## Annex VI

### The Secretariat of the Assembly of States Parties<sup>1</sup>

1. The Assembly of States Parties to the International Criminal Court hereby establishes the Secretariat of the Assembly of States Parties to the International Criminal Court (the Secretariat), which shall begin its operations on 1 January 2004.

2. The seat of the Secretariat shall be established at The Hague.

3. The Secretariat shall operate under the full authority of the Assembly and report directly to the Assembly in matters concerning its activities. The Secretariat shall be an integral part of the Court. For administrative purposes, the Secretariat and its staff shall be attached to the Registry of the Court. As a part of the staff of the Registry and, as such, of the Court, the staff of the Secretariat shall enjoy the same rights, duties, privileges, immunities and benefits.

4. The functions of the Secretariat shall be to provide the Assembly and its Bureau, the Credentials Committee, the Committee on Budget and Finance, the Special Working Group on the Crime of Aggression, as well as, upon explicit decision by the Assembly, any subsidiary body that may be established by the Assembly, with independent substantive servicing as well as administrative and technical assistance in the discharge of their responsibilities under the Rome Statute, where applicable by means of pooling with resources available with the Court, as provided in paragraph 8 below.

5. Within the framework established in paragraphs 3 and 4 above, the functions of the Secretariat shall include:

5.1 Conference-servicing functions:

(a) Planning, coordination and servicing of meetings, including the provision of interpretation services;

(b) Preparation, processing and publishing of documentation, including the editing, translation, printing and distribution of documents;

(c) Coordination of the effective functioning of conference and support services (staff, interpretation/translation, conference rooms, supplies, equipment, security services) before and during meetings;

5.2 Core legal and substantive functions:

(a) Substantive secretariat servicing, including: provision of documentation; preparation of pre-session and in-session documents, reports and analytical summaries; preparation of notes and statements for the President of the Assembly or chairpersons of the serviced bodies; provision of interpretation; provision of legal advice on rules of procedure and the conduct of business; liaising with delegations; and making arrangements, upon request, for informal consultations among delegations;

(b) Advice within the Secretariat on legal and substantive issues relating to the work of the Secretariat and on the ramifications of the activities and decisions of the serviced bodies;

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<sup>1</sup> *Official Records ... Second session ... 2003* (ICC-ASP/2/10), part IV, ICC-ASP/2/Res.3, annex.

(c) Corresponding with Governments, the Court, non-governmental organizations and other relevant bodies and individuals;

(d) Protocol and credentials, including the administration of the solemn undertakings by judges, the Prosecutor and the Registrar and the management of participation rights (credentials of States Parties, observers, other invited States, non-governmental organizations), travel arrangements;

(e) Public relations;

(f) Cooperation with the host country;

(g) Bringing to the attention of the serviced bodies any matter which in the opinion of the Secretariat requires their consideration;

#### 5.3 Core financial functions:

(a) Provision of advice on the Financial Regulations and Rules, drafting of statements on budgetary implications, and assistance in the preparation of texts on financial and budgetary matters;

(b) Preparation of the section of the draft budget of the International Criminal Court that relates to the Assembly and its Secretariat;

#### 5.4 Administrative functions:

(a) Secretarial work;

(b) Management of Secretariat personnel;

(c) Administration of the budget of the Secretariat;

(d) Building and property management;

(e) Maintenance of records and archives, and library;

#### 5.5 Any other functions that the serviced bodies entrust to the Secretariat.

6. The Secretariat shall be directed by the Director of the Secretariat, who will be selected by the Bureau of the Assembly, in consultation with States Parties, on the basis of a competitive procedure, initiated by the Registrar, and thereupon appointed by the Registrar.

The Director of the Secretariat shall have a comprehensive knowledge of the purposes, principles and procedures of the International Criminal Court and shall demonstrate that he/she possesses, if possible through experience gained at the international level, broad managerial and administrative skills.

7. Other personnel resources shall include staff necessary to provide the substantive, administrative and technical assistance specified in paragraphs 4 and 5 above.

8. The functions of the Secretariat shall be exercised in a manner consistent with the Statute and with the principles of effective financial administration and economy. To that end:

8.1 The Secretariat shall operate under the Financial Regulations and Rules and the Staff Rules and Regulations, in a manner that secures the adequate participation of the Secretariat in decisions on matters that affect its staffing and its operations. The Secretariat shall be subject to the internal and external auditing established for the Court;

8.2 The Secretariat and the other sections of the Court shall attempt, within the bounds of mutual respect for the independent exercise of their respective functions and of maintaining high levels of professionalism, integrity and competence, to find joint responses to situations of increased workload at the Secretariat, by making available to the Secretariat, to the greatest possible extent, the relevant expertise and physical resources of the other sections of the Court, whenever possible based on arrangements that the Secretariat and the other sections of the Court should agree in anticipation of such situations;

8.3 In situations where increased workload at the Secretariat cannot be met through cooperation with the other sections of the Court as called for in paragraph 8.2 above or through other means, the Secretariat shall respond to such situations, within the established budgetary framework, by outsourcing certain administrative, protocol or logistical services;

8.4 General operating services, building and property management, procurement services, library services and personnel services shall be pooled to the maximum extent with corresponding services of the Court.

9. The Secretariat shall be funded from the budget of the International Criminal Court. It shall have no income of its own and may not receive voluntary contributions directly from Governments or international organizations unless the Assembly decides otherwise.

10. The Director of the Secretariat shall be responsible to the Bureau of the Assembly for the proper functioning of the Secretariat.

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