



Seventeenth session

The Hague, 5-12 December 2018

**Report of the Registry on financial investigations conducted
by the Registry and the seizure and freezing of assets****Executive Summary*

1. The Registry submits this report for consideration in support of the initiative of the Committee on Budget and Finance to review and analyse the Court's processes for investigating the financial assets of the accused and suspects in the context of the budget proposal for 2019.
2. The Registry is currently conducting a gap-analysis to aid in developing a strategy for reviewing and standardizing all elements of financial investigations for the purpose of seizure, freezing and forfeiture of the financial assets of the accused and suspects. A policy report incorporating these findings as well as progress on questions raised in the "Report of the Committee on Budget and Finance on the work of its twenty-ninth session" ("Report") is expected by the end of 2018.
3. Pending finalization of the above-mentioned policy report, the Registry hereby provides the information pertaining to question (i) amounts spent to date on legal aid, and question (ii) amounts spent on reparations, raised in paragraph 28 of the Report.
4. The amounts spent to date on legal assistance paid by the Court to suspects, accused and convicted persons, and victims who are considered indigent, amounts to €1,873,141. A breakdown of the amounts is provided in the present report.
5. With regard to the amounts spent on reparations, the Court has assessed the liabilities of convicted persons and ordered payment of reparations in the *Lubanga*, *Katanga* and *Al Mahdi* cases. Mr Katanga and Mr Lubanga were ordered to pay reparations of \$1,000,000 and \$10,000,000, respectively. Mr Al Mahdi was ordered to pay €2,700,000 in reparations. The method for determining these amounts is discussed below.

* Previously issued as CBF/31/7.

I. Introduction

1. During the work of its twenty-ninth session, the Committee on Budget and Finance (“the Committee”) recommended that the International Criminal Court (“the Court”) provide a progress report on the following areas related to financial investigation in the context of the Registry’s budget proposal for 2019:

- (a) amounts spent to date on legal aid;
- (b) amounts spent on reparations;
- (c) criteria for establishing the indigence of recipients of legal aid, in particular what amounts have been recovered or might still be recovered;
- (d) costs to the Court for its financial investigations;
- (e) investigation strategies, as well as synergies from cooperation with national authorities and/or international organizations;
- (f) legal framework for the Court’s investigations; and
- (g) lessons learned.¹

2. The Committee also requested the Court to submit a policy report on the seizure and freezing of financial assets and decided to re-consider the request for one Financial Investigator (P-3) GTA during the next budget cycle.²

II. Registry Policy Report on financial investigation and asset recovery

3. The Registry is preparing a policy report with projected completion by the end of 2018 (“Policy Report”). This report will integrate findings from a gap-analysis currently being conducted by the Registry and will examine progress on the above-mentioned questions raised in the Report.

4. The Policy Report’s assessment of available resources and outstanding needs will also allow the Court to effectively tailor its investigative strategies. With this refinement, the Court will be more efficient in identifying synergies achieved through cooperation with national authorities and international organizations - partnerships which remain key, in the light of the limited reach and resources of the Court.

5. The Registry’s central role in conducting financial investigations in the context of legal assistance paid by the Court stems in general from regulations 84 and 85 of the Regulations of the Court (“RoC”) and the Registrar’s overall responsibility in managing the legal assistance paid by the Court pursuant to regulation 130 of the Regulations of the Registry (“RoR”). In particular, the Registry’s mandate allows for investigation into the suspects’ or accused persons’ means (1) when there are grounds to believe that an application for legal assistance paid by the Court and the supporting evidence are not accurate” (regulation 132(2) of the RoR) or (2) if legal assistance paid by the Court has been granted provisionally (regulation 132(5) of the RoR).

6. In other instances, the Chambers, on the basis of articles 57(3)(e) and 93(1)(k) of the Rome Statute (“the Statute”), will issue an order requiring a State Party to provide assistance regarding the identification, tracing and freezing or seizure of property and assets for the purpose of eventual forfeiture and, in particular, for the ultimate benefit of victims. When the Chambers issue such an order, the Registry, pursuant to rule 176(2) of the Rules of Procedure and Evidence (“RPE”), transmits the request for cooperation to States and liaises with the relevant competent authorities to fulfil the request. In order to effectively liaise with States in ensuring their execution of a Chamber’s cooperation requests, the Registry possesses the capacity to analyse the information provided by States for reporting to the Chambers, when requested, on follow-up actions to be taken by States. The Registry

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixteenth session, New York, 4-14 December 2017* (ICC-ASP/16/20), vol. II, part B.2, paras. 28 and 29.

² *Ibid.*, para. 74.

also assists the Presidency, as appropriate, in monitoring the financial situation of the sentenced persons on an ongoing basis in order to enforce fines, forfeiture orders or reparations orders, pursuant to regulation 117 of the RoC.

7. Operationalizing this lattice of the Court’s legal texts requires the Registry to expand its network and to work closely with national authorities to carry out the mandates of the Court. A number of efforts conducted by the Registry to develop synergies with national authorities and/or international organizations have been underlined in the “Report by the Registry on recent developments in the Court’s cooperation with States Parties: freezing of assets and voluntary cooperation”³ dated 15 March 2017. The Registry will include in the above-mentioned Policy Report on financial investigation and asset recovery, an update to the aforementioned report to reflect the efforts it has conducted since its submission.

8. The gap-analysis will clarify the legal framework for the Court’s financial investigations, integrate lessons learned from past experience, and ultimately, will assist the Court in developing a cohesive strategy for streamlining all elements of financial investigations and recovery of assets. Once this strategy is fully implemented, the Court will be able to readily track and more realistically project the costs associated with financial investigations.

III. Breakdown of the amounts spent to date on legal assistance paid by the Court

9. The amounts spent to date on legal assistance paid by the Court to suspects, accused and convicted persons, and victims who are considered indigent, amounts to €1,873,141. The breakdown of the amounts is as follows (see annex):

- (a) Breakdown for Defence Legal Aid: €38,376,975; and
- (b) Breakdown for Victims Legal Aid: €1,496,166.

10. To date, no legal assistance paid by the Court has been recovered.

IV. Amounts spent on reparations

11. The Court has assessed and ordered reparations in three cases, namely the *Lubanga*, *Katanga* and *Al Mahdi* cases.

12. When determining the most appropriate amount of reparations, the Chamber looks to the factors set down in the RPE: the scope and extent of any damage, loss, or injury; the number of victims; and the scope and the modalities of reparations foreseen. In determining the most appropriate reparations, it is paramount to heed the expectations and needs voiced by the victims in various consultation exercises.

13. Accordingly, the reparations awarded in *Lubanga* amounted to \$10,000,000;⁴ in *Katanga*, to \$1,000,000;⁵ and in *Al Mahdi*, to €2,700,000.⁶

14. At this stage, amounts have been spent on reparations awards only in the *Katanga* case. Detailed information related to the distribution of the reparations awards is still classified as confidential. As mentioned above, it is important to highlight that the amount spent on reparations awards or administrative costs related to the implementation of such awards is not relevant to the determination of the financial liability of convicted persons.⁷ Those costs do not affect the financial liability of the convicted persons for the monetary amount established in the order or investigation of their financial assets.

³ Report by the Registry on recent developments in the Court’s cooperation with States Parties: freezing of assets and voluntary cooperation, CBF/28/13, 15 March 2017.

⁴ “Corrected version of the ‘Decision Setting the Size of the Reparations Award for Which Thomas Lubanga Dyilo is Liable’”, ICC-01/04-01/06-3379-Red-Corr-tENG, 21 December 2017, p. 123.

⁵ “Order for Reparations pursuant to Article 75 of the Statute” with one public annex (Annex I) and one confidential annex *ex parte*, Common Legal Representative of the Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga (Annex II), ICC-01/04-01/07-3728-tENG, 24 March 2017, p.118.

⁶ “Reparations Order”, ICC-01/12-01/15-236, 17 August 2017, p. 60.

⁷ “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2”, ICC ICC-01/04-01/06-3129, 3 March 2015, para. 5.

Annex

Legal aid expenditures for defence and victims incl. Contingency Fund (2005-2017)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
Legal aid for defence, incl duty/ ad hoc counsel	66,806	724,717	716,211	1,432,854	1,975,050	3,899,440	3,844,694	3,838,798	3,633,096	3,578,156	4,878,669	4,950,002	4,838,482	38,376,975
Legal aid for victims	0	20,315	54,054	214,659	1,155,763	231,557	2,010,549	2,387,098	1,756,865	1,745,744	1,233,556	1,344,596	1,341,410	13,496,166
Total legal aid	66,806	745,032	770,265	1,647,513	3,130,813	4,130,997	5,855,243	6,225,896	5,389,961	5,323,900	6,112,225	6,294,598	6,179,892	51,873,141