



## Assembly of States Parties

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## Report on the performance of the Court's legal aid system in 2017\*

### *Executive Summary*

1. This first annual report on the implementation of the legal aid system is submitted at the request of the Committee on Budget and Finance.
2. In 2017, the legal aid programme of the International Criminal Court provided the reasonably necessary resources for the representation of defendants and victims, as mandated by the Rome Statute and the Rules of Procedure and Evidence, as well as by decisions adopted in Chambers.
3. This report offers a panoramic view of the budgetary performance of the legal aid programme.

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## I. Introduction

1. This report is presented at the request of the Committee on Budget and Finance (“the Committee”), in compliance with the reporting obligation of the International Criminal Court (“the Court”) under Resolution ICC-ASP/11/Res.1.<sup>1</sup>

## II. Legal aid for defence

2. The Assembly of States Parties (“the Assembly”) approved a budget of €3,528,190 to be used for legal aid for the defence in 2017. The table below offers a comparison between the assumptions on which this budget was established and actual developments in cases before the Court.

**Table 1: Comparison of assumptions used for the 2017 defence legal aid budget and actual developments<sup>2</sup>**

Case/Defendant	Assumptions		Actual developments		Approved budget 2017	Expenditure* in 2017	Regular budget	CF
	Months	Stage	Months	Stage <sup>3</sup>				
Lubanga	12	Reduced <sup>4</sup>	12	Reparations <sup>5</sup>	129,250	€31,580	€231,580	
Katanga	12	Reduced	12	Reparations	129,250	€136,067	€136,067	
Ntaganda	12	Trial <sup>6</sup>	12	Trial	622,400	€909,479	€729,409	€180,070
Bemba (art. 5)	12	Appeals	12	Appeals	296,500	€47,500	€247,500	
Bemba (art. 70)	6	Appeals	12	Appeals <sup>7</sup>	50,000	€14,728	€70,554	€144,174
Kilolo	6	Appeals	12	Appeals	82,122	€17,783	€88,301	€129,482
Mangenda	6	Appeals	12	Appeals	82,122	€180,781	€87,012	€93,769
Babala	6	Appeals	12	Appeals	82,122	€207,844	€89,603	€118,241
Arido	6	Appeals	12	Appeals	82,122	€178,914	€1,008	€87,906
Banda	12	Preparation	12	Preparation	0.00	€78,000	€78,000	
L. Gbagbo	12	Trial	12	Trial	487,500	€439,545	€439,545	
Blé Goudé	12	Trial	12	Trial	542,400	€25,260	€25,260	
Al Mahdi	0	No Trial	12	Reparations	0.00	€206,932	€6,240	€17,0692
Ongwen	12	Trial	12	Trial	542,400	€641,255	€641,255	
Duty and ad hoc counsel <sup>8</sup>					400,000	€76,674	€76,674	
<b>Total</b>					<b>3,528,188</b>	<b>€4,692,342</b>	<b>€3,768,013</b>	<b>€924,333</b>

\* Expenditure 2017 is based on preliminary, unaudited figures which are subject to change.

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eleventh session, The Hague, 14-22 November 2012* (ICC-ASP-11/20), vol. I, part III.A, ICC-ASP/11/Res.1, section H, para. 4.

<sup>2</sup> All terms in the present document are used in the context of the Court’s Legal Aid Policy. See Registry’s single policy document on the Court’s legal aid system, ICC-ASP/12/3.

<sup>3</sup> The term “stage” refers to the “various stages of the proceedings”, as referred to in the Rules of Procedure and Evidence and the Regulations of the Court. The various stages are illustrated in Diagram 1 under paragraph 43 and Diagram 2 under paragraph 58 of the Legal Aid Policy.

<sup>4</sup> Refers to a phase where activity in the proceedings of the Court is considerably reduced, therefore reducing the legal aid entitlements, as described in Chapter VI.C.2. of the Legal Aid Policy.

<sup>5</sup> Reparations phase as explained in paragraph 57 of the Legal Aid Policy.

<sup>6</sup> Trial phase refers to the period between the final decision on the confirmation of charges and the closing statements (Chapter IV.A.1 of the Legal Aid Policy).

<sup>7</sup> Appeals phase refers to the period between the judgment and the final decision on appeal. Since 15 November 2017, all article 70 cases have been on reduced activity, in accordance with paragraphs 115-121 of the Registry’s single policy document on the Court’s legal aid system.

<sup>8</sup> With the budgeted €400,000 for duty and ad hoc counsel, 92 appointments were made for, *inter alia*, duty counsel to conduct interviews, under article 55(2) of the Rome Statute, and legal advisers to assist witnesses, as instructed by various Chambers under rule 74 of the Rules of Procedure and Evidence. The final expenditure in this respect was €76,674, with an implementation rate of 69.16 per cent.

3. The final implementation rate of the defence budget, including the above-mentioned duty and ad hoc counsel, was 105.3 per cent,<sup>9</sup> after absorption of the additional cost attributable to decisions by Chambers, as well as differences between budget assumptions and actual developments, which required the allocation of additional resources in several cases. The implementation rate also takes into consideration €26,200 received following a request for access to the Contingency Fund for legal aid for defence.

4. With regard to the query raised by the Committee in relation to the legal aid funds provided by the Court to the defence in the cases of *Gaddafi* and *Banda*, the Registry confirms that funds were provided to the defence for Mr Banda in order to maintain a limited follow-up of the case considering the outstanding warrant for arrest.<sup>10</sup> No funds have been paid to the defence for Mr Saif Al-Islam Gaddafi in the absence of any such request. For 2018, funds have been requested for both cases for the aforementioned reason, taking into consideration the appointment of counsel in *Banda*.

### III. Legal aid for victims

5. The Assembly approved a budget of €1,002,800 to be used for legal aid for victims in 2017. The table below offers a comparison between the assumptions on which this budget was established and actual developments in cases before the Court.

**Table 2: Comparison of assumptions used for the 2017 victims legal aid budget and actual developments**

Case/Defendant	Assumptions		Actual developments		Approved budget 2017	Expenditure* in 2017	Regular budget	CF
	Months	Stage	Months	Stage				
Lubanga <sup>11</sup>	12	Reduced	12	Reparations	262,300	€38,582	€38,582	
Katanga	12	Reduced	12	Reparations	262,300	€51,840	€51,840	
Bemba	12	Trial	12	Appeals	300,000	€55,414	€35,179	€20,235
Al Mahdi	0	No Trial	12	Reparations	0.00	€196,672	€2,017	€174,655
Ongwen	12	Trial	12	Trial	128,000	€54,009	€3,321	€200,688
Situation					50,000			
<b>Total</b>					<b>1,002,800</b>	<b>€1,296,517</b>	<b>€900,939</b>	<b>€395,578</b>

\* Expenditure 2017 is based on preliminary, unaudited figures which are subject to change.

6. The final budget implementation rate for legal aid to victims was 90.7 per cent,<sup>12</sup> after absorption of the additional cost attributable to differences between, on the one hand, budget assumptions and, on the other hand, actual developments and allocation, as appropriate, of additional resources to legal representation teams. The implementation rate also takes into consideration €425,260 received following a request for access to the Contingency Fund for legal aid for victims.

<sup>9</sup> This refers to the implementation rate of the approved budget and of the total expenditure - actuals, based on SAP Disbursements at 15 February 2018 - of legal aid for defence.

<sup>10</sup> Report of the Committee on Budget and Finance on the work of its twenty-ninth session (ICC-ASP/16/15), p. 33, para. 188.

<sup>11</sup> Two teams of Legal Representatives of Victims.

<sup>12</sup> This refers to the implementation rate of the approved budget and of the total expenditure - actuals, based on SAP Disbursements at 15 February 2018 - of legal aid for victims.

## IV. Conclusions

7. The overall implementation rate for the legal aid budget in both the regular budget and the funds received following access to the Contingency Fund was 101.8 per cent.<sup>13</sup>
  8. Of the total expenditure for legal aid for both defence and victims, €4,668,952 was charged to the regular budget and €1,319,911 to the Contingency Fund.
  9. Following the mandate received from the Assembly,<sup>14</sup> the Registrar is in the process of preparing a new legal aid policy, with the assistance of a consultant, and will subsequently commence the requisite consultations with States Parties, associations of lawyers and non-governmental organizations.
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<sup>13</sup> Expenditure is based on preliminary, unaudited figures which are subject to change.

<sup>14</sup> *Official Records ... Fifteenth session ... 2016* (ICC/ASP/15/20), vol. I, part III, Resolution ICC-ASP/15/Res.5, Annex I, para. 8.