

Part II

External audit, programme budget for 2011 and related documents

A. Introduction

1. The Assembly had before it the proposed programme budget for 2011 published by the Court on 2 August 2010,¹ the reports of the fourteenth² and fifteenth sessions³ of the Committee on Budget and Finance (the Committee), the financial statements for the period 1 January to 31 December 2009⁴; and the Trust Fund for Victims financial statements for the period 1 January to 31 December 2009⁵. The Assembly also had before it annex V of the Report of the Committee on the work of its fifteenth session, in which the Court outlines the budgetary implications of the Committee's recommendations on the budgets of Major Programmes.

2. Following statements made at the plenary session on 7 December 2010 by the Registrar of the Court, Ms. Silvana Arbia, and the Deputy Chair of the Committee, Ms. Rossette Nyirinkindi Katungye (Uganda), the Assembly heard a statement by the representative of the External Auditor (the National Audit Office of the United Kingdom of Great Britain and Northern Ireland).

B. External audit

3. The Assembly noted with appreciation the reports of the External Auditor and related comments of the Committee contained in its report on the work of its fifteenth session. The Assembly noted that the Committee had endorsed the External Auditor's recommendations.

C. Appointment of the External Auditor

4. The Assembly took note of the Committee's observation⁶ that the term of appointment of the External Auditor was due to expire in 2010 and that a decision would be required by the Assembly pursuant to regulation 12.1 of the Financial Regulations and Rules to either renew the term of the current Auditor or to select a new Auditor for the period 2011-2015. The Committee recalled the international practice of the appointment of External Auditors to non-renewable terms. The Committee recommended that the Assembly adopt a policy of limiting the term of the External Auditor to four years with a possibility of one renewal. Given the fact that the Court had had the same External Auditor for eight years, in order to implement this policy, the Committee recommended that the Court undertake a bidding exercise among States Parties and submit the results to the Assembly in order for the Assembly to take a decision at its ninth session. The Committee also requested the Court to submit to the ninth session of the Assembly the amendments to the Financial Regulations and Rules that may be required.

¹ *Official Records...Ninth session...2010*, (ICC-ASP/9/20), vol. II, part A.

² *Ibid.*, part B.1.

³ *Ibid.*, part B.2.

⁴ *Ibid.*, part C.1.

⁵ *Ibid.*, part C.2.

⁶ *Ibid.*, part B.2, para. 21.

5. The Assembly further noted that the Audit Committee had advised that this timeline was insufficient for an appropriate selection procedure for a new External Auditor. The Audit Committee had recommended to the Court a more extensive and comprehensive selection procedure that would include review by the Audit Committee of the specifications in February 2011; a suitable period of time for interested audit organizations to prepare tenders; measures to ensure the tender was widely disseminated, including to all States Parties; appointment of a technical evaluation panel; provision for interview of shortlisted organizations; review by the Audit Committee and Committee in June and August 2011 respectively; with recommendations to be put to the tenth session of the Assembly. The Committee requested the Court not to proceed further with the procurement action until the Assembly had decided on a selection procedure for an External Auditor. The Committee also recommended that the current External Auditor be reappointed for 2011 only, in order to allow for an appropriate selection process.

6. The Assembly endorsed the Committee's recommendation that the Assembly adopt a policy of limiting the term of the External Auditor to four years with a possibility of one renewal. The Assembly further agreed with the Audit Committee's recommendation that a detailed selection process be undertaken, with recommendations to be put to the tenth session of the Assembly. The Assembly decided to amend the Financial Regulations and Rules to this effect, and to provide for renewal of the External Auditor's term for 12 months while a selection process is undertaken.

D. International Public Sector Accounting Standards (IPSAS)

7. At its eleventh session, the Committee had recommended that the Assembly decide that the Court work towards implementation of IPSAS in the medium term. The Committee further recommended that the Court report on a project plan and next steps towards implementing IPSAS and suggested that implementation in 2011 or 2012 might be targets for the Court.⁷ At its fourteenth session the Committee responded to the Court's report on implementation of IPSAS, by requesting a more comprehensive report and a budget proposal for its consideration.⁸

8. At its fifteenth session, the Committee concurred with the External Auditor that IPSAS implementation was inevitable and that the Court should commence its IPSAS implementation strategy. Noting that a revised cost had been presented, the Committee recommended that €332,600 be added to the 2011 proposed programme budget to allow for the commencement of IPSAS implementation.⁹

9. The Assembly endorsed these recommendations.

E. General matters relating to the budget

10. The Assembly recognized the value of the report of the Committee on the Court's proposed programme budget.

⁷ *Official Records ...Seventh session... 2008* (ICC-ASP/7/20), vol. II, part B.2, para. 18.

⁸ *Official Records...Ninth session...2010*, (ICC-ASP/9/20), vol. II, part B.1, para. 42.

⁹ *Ibid.*, part B.2, para. 64.

F. Contingency Fund

11. The Assembly noted that the Registrar's advice was that the implementation for the 2010 budget would be 102 per cent, i.e. the 2010 budget would be fully expended and the Contingency Fund used to the extent of approximately €2 million. This would be the first actual recourse to the Contingency Fund, as the Court had been able in past years to cover all unforeseen or not accurately estimated activities through underspend in the regular budget.¹⁰ The Committee noted that, as the implementation rate of the regular budget approached 100 per cent, use of the Contingency Fund would have a more direct financial impact on States Parties than in the past, as there was less flexibility within the regular budget. Replenishment of the Fund would ultimately increase the assessed contributions of States Parties.

12. The Committee sounded a note of caution to the Court and the Assembly. 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 Assembly endorsed the Committee's recommendation that regulation 6.7 of the Financial Regulations and Rules be amended to replace the word "short" by the word "detailed".¹¹

13. The Assembly welcomed the advice of the Committee that it provided comments to the Registrar on each of the Court's notifications regarding access to the Contingency Fund. The Assembly encouraged the Committee to make a copy of these opinions available to the Bureau, to ensure that the Assembly is kept fully informed about potential use of the Contingency Fund.

14. The Assembly endorsed the recommendation of the Committee that, following established practice, the Assembly should 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.¹²

G. Established posts

15. The Court requested the conversion of seven GTAs to established posts (one in Major Programme I, five in Major Programme II, one in Major Programme III) and the establishment of two new posts in Major Programme IV and the abolition of one permanent post. The Committee recommended that the Court freeze the number of permanent posts (established posts) at its approved 2010 level until a comprehensive re-justification of all posts had been conducted.¹³

16. The Assembly endorsed the Committee's approach to the freezing of the number of established positions until a comprehensive re-justification of all posts has been conducted. The Assembly urged the Court to make greater efforts to prioritize and reallocate resources to carry out its current projected activities within existing levels. That prioritization should include the identification of positions and functions that will no longer required or were under utilized.

¹⁰ Ibid., paras. 35-40.

¹¹ Ibid., annex III.

¹² Ibid., para. 43.

¹³ Ibid., para. 81.

H. Major Programme I: Judiciary

17. At its eighth session, the Assembly decided¹⁴ to establish in Addis Ababa, Ethiopia, an African Union Liaison Office headed at the D-1 level. The Court's proposed programme budget for 2011 sought €420,900 for the establishment of this Liaison Office. The Assembly noted the decision of the African Union taken in July 2010 to "reject for now, the request by the ICC to open a Liaison Office to the African Union in Addis Ababa, Ethiopia". The Assembly reaffirmed a clear commitment to support the Court in maintaining its dialogue and diplomatic engagement with the African Union. The Assembly also reaffirmed that diplomatic engagement with the African Union was a responsibility not just for Major Programme I of the Court, but for all organs of the Court and importantly, for the States Parties themselves.

18. The Assembly noted that, as at 27 August 2010, the actual expenditure associated with the opening of the African Union Liaison Office in 2010 had been €38,300.¹⁵

19. The Assembly requested the organs of the Court to make available in 2011 appropriate human resources and an amount not less than €38,300 for travel costs, in order to ensure that the Court has sufficient resources to maintain diplomatic engagement with the African Union pending a revision of the decision by the African Union regarding the establishment of a liaison office.

20. The Assembly approved the recommendation by the Committee that the Court's proposed budget of €420,900 for establishing the African Union Liaison Office not be allocated until such time as the African Union had revised its decision. Should the African Union accede to the request by the Court to open a Liaison Office in Addis Ababa, on the basis of the draft budget for sub-programme 1310, the Court may notify the Committee of a requirement for access to the Contingency Fund to proceed with preparations for opening the Liaison Office.

I. Major Programme II: Office of the Prosecutor

21. In Programme 2300 (Investigation Division), the Committee noted the proposal by the Prosecutor to the Assembly to abolish the post of Deputy Prosecutor for Investigations, which had remained vacant for three years. The Committee noted that it would be for the Assembly to decide on the course of action to take regarding the post of an elected official. For its part, the Committee recalled that the salary for the post of Deputy Prosecutor for Investigations had not been included either in the 2010 approved budget or in the 2011 proposed budget, so that no savings would be made through its abolition.¹⁶

22. The Assembly noted that there is one other Deputy Prosecutor position (Prosecutions) which is funded and occupied.

23. The Assembly noted that this elected position was part of the original structure for the Office of the Prosecutor and had been the structure of the current Prosecutor's office for several years. The Assembly considered that the new Prosecutor should have this same flexibility to decide on the composition of the Office of the Prosecutor. The Assembly, therefore, did not approve the abolition of the post of Deputy Prosecutor for Investigations.

¹⁴ *Official Records ...Eighth session... 2009* (ICC-ASP/8/20), vol. I, part II, ICC-ASP/8/Res.3, para. 28 and ICC-ASP/8/Res.7, section H.

¹⁵ *Official Records...Ninth session...2010*, (ICC-ASP/9/20), vol. II, part B.2, paras. 89-90.

¹⁶ *Ibid.*, para. 93.

J. Major Programme III: Registry

24. The Assembly recalled resolution ICC-ASP/8/Res.4¹⁷ on the funding of family visits for indigent detainees and, in pursuance of paragraph 4, recommended that the Assembly establish a special fund within the Registry of the Court for the purpose of funding family visits for indigent detainees. The Assembly charged the Registry with promoting the special fund and soliciting and collecting contributions from States Parties, other States, non-governmental organizations, civil society, individuals and other entities. The Assembly requested the Registrar to take any necessary steps to ensure that management of the special fund would be without administrative cost to the special fund and the voluntary contributions therein.

25. The Assembly welcomed the announcement by one State Party that it would make an immediate contribution to the fund of €85,000. The Assembly called on States Parties, other States, non-governmental organizations, civil society, individuals and other entities to make contributions to the special fund.

26. The Assembly endorsed the Committee's recommendation that no appropriation for family visits for indigent detainees be made in the budget for 2011. The Assembly decided that all future family visits for indigent detainees be funded from voluntary funding.

K. Amount of appropriation

27. The Court's draft programme budget proposed a total budget of €107.02 million. This was a 4.7 per cent increase over the budget allocated for 2010. The Committee's examination of the Court's proposed budget found a number of areas where, based on actual and forecast expenditure, as well as actual experience, a number of savings could be made. The Committee recommended the budget allocation be reduced by 3.1 per cent to a total of €103.9 million. The Committee's recommended budget is a 1.6 per cent increase over the budget allocated for 2010.

28. There was division in the Assembly between those that supported adoption of the budget recommended by the Committee and those that supported a budget of the same amount as in 2010. There was general appreciation of the valuable work performed by the Committee in providing technical advice on the Court's proposed programme budget.

29. The Assembly approved a budget appropriation for 2011 of €103.6 million, being the budget allocation for 2010 plus the rate of inflation of The Netherlands (1.3%).¹⁸ In response, the Court advised that it had made considerable efforts to identify savings in major programmes without affecting performance and these reductions were contained in the table of allocations in the budget resolution.

30. The Assembly urged the Court to exercise fiscal restraint and to identify efficiency gains. The Assembly noted the increased costs which would be faced in 2012 (interim premises rent, capital replacement, implementation of IPSAS). It challenged the Court to find savings and efficiencies to offset these costs.

31. In addition to its normal budget for 2012, the Assembly requested the Court to draw up budget options for 2012, which costed the full range of core Court activities (investigations, prosecutions and trials) and also costed those other important activities, which could be achieved within the same budget allocation as 2011. This would assist the Court and the Assembly in making decisions on funding priorities.

32. One delegation suggested that a two-tiered approach be adopted to the payment of assessed contributions. States Parties would pay 95 per cent of their assessed contribution. At the end of the financial year, the Court would review its level of expenditure and determine, on that basis, whether a request to the States Parties for the remaining 5 per cent of the assessed contribution would be justified.

¹⁷ *Official Records ...Eighth session... 2009* (ICC-ASP/8/20), vol. I, part II.

¹⁸ July 2010 inflation rate. Harmonized index of consumer prices, European Central Bank.

L. Judges' pensions

33. On 5 October 2010, the Presidency of the Court sent a letter to the Bureau regarding a reconsideration of the pension regime for judges insofar as it relates to:

a) Whether the pension benefits for two judges elected in 2007 to fill judicial vacancies are governed by the original pension scheme regulations of 10 September 2004 or the amended regulations of 14 December 2007; and

b) The pension benefits for judges elected after the sixth session of the Assembly.

34. The Bureau decided to have the matter addressed in the framework of the budget discussions at the ninth session of the Assembly. The Secretariat of the Assembly disseminated a paper, dated 8 December 2010, containing a chronology of decisions of the Assembly and the Committee on the pension scheme of judges.

35. The Assembly heard a presentation by Judge Adrian Fulford on behalf of the Judges' Pension Committee. The Assembly emphasized that the decision reached by the Assembly at its sixth session and embodied in the amendments to the Pension Scheme Regulations for Judges, adopted by resolution ICC-ASP/6/Res.6,¹⁹ should not be reopened. The Assembly decided that the issue of the regime that should apply to the two judges elected at the sixth session of the Assembly be referred to the Committee on Budget and Finance for its opinion.

¹⁹ *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part III.