

Assembly of States Parties

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Report on the Court's use of the Contingency Fund^{*}

Introduction

1. On 15 May 2008, the Court sent a letter with reference 2008/RM/10 to the Chairman of the Committee on Budget and Finance, informing him of the Court's intention to access the Contingency Fund for the first time (see annex A). This official letter from the Court contained a supplementary budget notification, as required by the Court's Financial Regulations and Rules, and provided details on the circumstances of the request, related to the Court's second trial in the case of Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui.

2. In a letter, dated 2 June 2008, the Chairman of the Committee responded positively to the Court's proposal (see annex B), acknowledging the rationale behind the need to access these additional funds. The Committee also approved the Court's suggested method to earmark the funds used for future reporting, as well as the Court's proposed initial assignment as GTA for the additional staff.

3. In the same letter, the Committee also requested the Court to submit a status report on the use of the Contingency Fund as proposed in the supplementary budget notification at its eleventh session.

* Previously issued as ICC-ASP/7/CBF.2/3.

Status report

Table 1: Contingency fund budget and expenditures (as at 31 July 2008)*

Contingency Fund Summary	Supplementary budget notification (thousands of euros)				Expenditures as of end July 2008 (thousands of euros)			
	Major Programme I	Major Programme II	Major Programme III	Total	Major Programme I	Major Programme II	Major Programme III	Total
<i>Subtotal Judges</i>	307.5			307.5	111.8			111.8
General temporary assistance	85.5	655.8	336.0	1,077.3		17.9	14.4	32.3
Consultants		50.3		50.3				
<i>Subtotal other staff</i>	85.5	706.1	336.0	1,127.6		17.9	14.4	32.3
Travel		100.0	90.2	190.2			48.2	48.2
Contractual services			1,822.9	1,822.9			447.9	447.9
General operating expenses			203.8	203.8			83.6	83.6
<i>Subtotal non-staff</i>		100.0	2,116.9	2,216.9			579.6	579.6
Total	393.0	806.1	2,452.9	3,652.0	111.8	17.9	594.0	723.7

(*) Preliminary intermediate report (non-audited figures)

4. Services provided in the context of legal aid are running according to plan and amount to €401,400 at the end of July. The additional judges needed for the preparation of the trial have taken up their duties, and, as indicated in the Court's proposal, two of them are booked to the Contingency Fund account. Furthermore, the Court has entered into contractual obligations with staff as indicated in the supplementary budget notification: five staff members have already started their activities, accounting for €32,300 and an additional five have been recruited and will be working at the Court at the time of the meeting of the Committee on Budget and Finance. The recruitment of the remaining staff indicated in the Court's letter is ongoing and will generate the expected expenses in General Temporary Assistance.

5. Other contractual expenses are also following the original schedule. Finally, the general operating expenses (and related travel), mainly related to witnesses and security activities, are also on target with the use of about €83,600. As a consequence, at the time of writing of this report, the Court is not expecting any significant budgetary variation from the information presented in its supplementary budget.

Requirement for a Contingency Fund

6. The Court indicated in its proposed programme budgets for 2007¹ and 2008² that its budgetary policy is one of strict reliance on established facts to justify all expenditures requested. The Court is not budgeting for any activity if there is no clear indication that it will occur in the following year. This commitment to accurate budgeting has been endorsed by the Committee on Budget and Finance³ at several occasions, with a clear understanding of the correlate requirement for a contingency fund to cover for any unexpected expenditure.

7. With the broadening of its operations, more judicial and related support activities will take place in the future, increasing the probability of occurrence of unexpected circumstances and requirements. Further access to the Contingency Fund can therefore not be ruled out in the future. It will be of utmost importance for the continuity of the Court's operations to be able to rely on this facility with the capacity to finance unexpected needs.

Replenishment of the Contingency Fund

8. The Court's budgetary implementation is improving, as noted by the Committee in its last session⁴. Last year's implementation rate was 90.5 per cent, compared to 79.7 per cent in 2006, 83.4 per cent in 2005 and 81.4 per cent in 2004. As a consequence of this improved implementation rate, it will become more difficult for the Court to rely on financial flexibility within the allocated budget to finance new activities. Although the Court will always primarily try to fund unexpected activities from savings, as indicated in its recent letter to the Chairman of the Committee mentioned above, the Court's improved implementation will also mean that the Court's ability to do so is declining.

9. The Court's financial position might also become more precarious in connection with the States Parties contribution payment pace. As of 30 June 2008, the Court has received only 82 per cent of its due contributions. A combination of improved budgetary implementation with slow contribution payment rate, might, in the future, force the Court to resort to the Contingency Fund, instead of financing unexpected activities from the regular budget.

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November - 1 December 2006* (International Criminal Court publication ICC-ASP/5/32), part II.D.5, paragraph 14.

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007* (International Criminal Court publication ICC-ASP/6/20), vol. II, A, paragraph 55.

³ Ibid. B.2, paragraph 54.

⁴ See ICC-ASP/7/3, paragraph 23.

10. As indicated in resolution ICC-ASP/3/Res.4, the Assembly of States Parties⁵ decided to review the Court's Contingency Fund set-up in 2008, in light of experience. The Court's accurate budgeting policy relies on the existence of a Contingency Fund, especially in the context described above of broadening of activities and improvement of budget implementation. It therefore depends on a fully replenished Contingency Fund, despite a, so far, limited actual use of the fund. Any change in the set-up or structure of this budgetary support would have repercussions on the Court's budgetary policy and would have to be evaluated carefully in the future.

⁵ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third session, The Hague, 6-10 September 2004* (International Criminal Court publication ICC-ASP/3/25), part III, resolution ICC-ASP/3/Res.4, part B, paragraph 1.

Annex A

Copy of a letter from the Court to the Chairman of the Committee on Budget and Finance

David Dutton
Chairman of the ICC Committee on Budget and Finance
Environment Branch
Department of Foreign Affairs and Trade
Barton, ACT 0221
Australia

Reference: 2008/010/RM

Date: 15/05/2008

Dear Mr Chairman,

Pursuant to Regulation 6.7 of the Financial Regulations and Rules (“FRR”) I am herewith submitting a short, supplementary budget notification in the amount of €3,652,000 with a view to obtaining any financial comments of the Committee of Budget and Finance before entering into commitments engaging the Contingency Fund.

With the arrest and surrender of Mr Germain Katanga and Mr Mathieu Ngudjolo Chui the Court has to meet unavoidable costs in an existing situation, namely the situation of the Democratic Republic of Congo, that were not foreseen at the time of the adoption of the budget 2008.

With kind regards,
Mme Silvana Arbia
Greffière de la Cour Pénale Internationale
Registrar, International Criminal Court

Supplementary Budget

1. Introduction

1.1 Use of Contingency Fund

According to the Financial Regulations and Rules⁶ the Contingency Fund has been established to cover, *inter alia*, “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”. The Registrar, before entering into commitments has to notify the Committee Budget and Finance (“CBF”).

The budget 2008 provides only for such expenditures that were justified by established facts at the time of the submission. In the case of judicial proceedings, for example, the determinant for requesting funds is the arrest and surrender of individuals to the seat of the Court. It was already indicated in the budget 2008⁷ that any arrest and surrender after its submission will trigger the use of the Contingency Fund.

The CBF welcomed the Court’s proposal to utilize the Contingency Fund in the event of additional arrests provided that the Court first sought to maximize use of its existing capacities.⁸

In this regard the Court makes every effort to offset as much as possible the costs related to the additional activities and as such the Contingency Fund will be approached only on a need basis and not above the resources requested.

1.2 Developments in the existing situation

In the Situation of the Democratic Republic of the Congo, the Pre-Trial Chamber, on 6th July 2007, issued warrants of arrest against Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui.

Mr. Germain Katanga was surrendered to the Court on 07 October 2007, Mr. Mathieu Ngudjolo Chui was arrested and surrendered to the Court on 06 February 2008.

Pre-Trial Chamber I decided, on 10 March 2008, to join the cases of The Prosecutor v. Germain Katanga and The Prosecutor v. Mathieu Ngudjolo Chui. The confirmation hearing for both persons is scheduled to begin on 27 June 2008.

The decision to join the cases has been appealed by the Defence. The decision of the Appeals Chamber on the issue is pending.

Once the charges are confirmed the case will be assigned to the Trial Chamber so as to commence the preparations for the trial.

Thus, at present it is assumed that there will be a joined case and the preparations of the trial will commence by mid September/beginning of October.

1.3 Costs associated with these developments

The costs related to all activities following the arrest and surrender of the above two persons were not included in the regular budget 2008. The costs that will be incurred in 2008, and

⁶ See FRR, Regulation 6.6 and following.

⁷ See ASP Sixth Session, New York, 30 November – 14 December 2007, Official Records, Volume II, ICC-ASP/6/20, page 14.

⁸ Ibid, page 229.

therefore requested from the Contingency Fund, are in relation to pre-trial proceedings and the preparation of the trial, assumed to start mid September/beginning of October.

The costs amounting to €3,652,000 are provided in more detail below.

The additional staff needed are budget on a General Temporary Assistance basis. This has been done on the understanding that the Court on its own cannot establish posts. However, these positions will be requested as situation-related established posts in the 2009 budget.

Other costs are both, one off costs, such as the transfer of the accused, but also recurring ones, such as the legal aid. Recurring costs will consequently be requested also in the 2009 budget.

1.4 Implementation of 2008 regular budget

With an expenditure of approximately 30 % as at end of April there is no indication at this time that there will be sufficient resources from the regular budget to meet the costs of these additional activities.

Having due regard for the principles of efficiency and effectiveness and mindful of the request of the CBF to maximize use of existing capacities, the Court as previously mentioned makes every effort to offset as much as possible the costs related to the additional activities and will use the regular budget in the first instance.

2. Resource requirements

2.1 Major Programme I – Judiciary

Judges and staff costs: Three judges and related staff (3 Legal Officers P-3 and 1 Administrative Assistant GS-OL) are needed for the preparation of a trial. For the new Trial Chamber 1 judge, 1 Legal Officers P-3 and the Administrative Assistant are taken from existing resources. Costs for judges include pension, based on the new pension scheme, and other commons staff costs such as assignment grants and travel expenses.

2.2 Major Programme II – Office of the Prosecutor (OTP)

Staff costs: A total of 11 GTA Professional positions are required to augment existing resources. The Jurisdiction, Complementarity and Cooperation Division require an Associate Cooperation Adviser to work solely for the Katanga/Chui trial. The Investigation Division needs to replenish its investigative and analytical capacity in the same amount that was previously applied and approved by the CBF to avoid a suspension or a delay of other operations.

For the Prosecution Section, four professional posts and three GSOL posts are taken from existing resources. A further six GTA professional positions will be required to complete the Trial Team. The Appeals Section will require one additional Appeals Counsel to handle all interlocutory and other appeals resulting from the case.

Non-staff costs: Additional travel costs are needed to cover unplanned missions for witness preparation (including field interpretation), investigative missions triggered by Court orders or defence activities, on-site visits for trial and appeals preparation. It is further anticipated that support of expert witnesses will be needed. Four work months at an equivalent to the P-5 level are foreseen to cover all relevant areas (e.g. legal, military, forensic).

2.3 Major Programme III – Registry

Staff costs: Trial 2 with two defendants and with two defence teams impacts primarily on the Division of Court Services as it inevitably increases the number of submissions by the parties, decisions, hearings (status conferences) and transcripts. It also leads to an increased number of filings to be signed by the Director of Court Services and increased translation and interpretation requirements. A total of 3 professional GTA posts, i.e. one assistant legal officer and two paraprofessional interpreters, and 2 GS-OL GTA posts, i.e. one language assistant and one courts records assistant, is required to augment existing resources.

One further professional GTA post is required for the OPCD to provide legal support directly related to the two defendants. The legal aid scheme of the Court is based on the premise that the OPCD lends support to the defence teams, particularly during the pre-trial phase bearing in mind that new teams need to become fully acquainted with the unique framework of the Rome Statute.

Non-staff costs:

- (i) Contractual services: Counsel will be provided by the Division of Victims and Counsel to both the defendants and the victims according to the Court's legal aid scheme. Costs are foreseen for legal representation for the two persons, i.e. two defence teams, each providing for three team members during the pre-trial phase and five members during the trial phase; and three legal teams for victims, each providing for two team members during the pre-trial phase and three members during the trial phase.
- (ii) Travel: Family visits of detained persons are included under this item. Also the travel related to witness support and protection within the DRC; in addition four trips to the DRC are included that are only related to the specific case.
- (iii) General operating expenses include costs related to witness support and protection, such as in-country resettlement, initial response system to any threat to witnesses, and additional costs related to detention, such as the medical and physical welfare of detainees. Finally, the costs for a special flight for the transfer of Mr. Ngudjolo Chui are also contained in this budget.

Trial 2 – Budget Summary

Contingency Fund Summary	<i>Proposed Contingency Fund (thousands of euros)</i>			
	<i>Major Programme I</i>	<i>Major Programme II</i>	<i>Major Programme III</i>	<i>Total</i>
<i>Subtotal Judges</i>	307.5			307.5
General temporary assistance Consultants	85.5	655.8 50.3	336.0	1,077.3 50.3
<i>Subtotal other staff</i>	85.5	706.1	336.0	1,201.6
Travel Contractual services incl. training General operating expenses		100.0	90.2 1,822.9 203.8	190.2 1,822.9 203.8
<i>Subtotal non-staff</i>		100.0	2,116.9	2,216.9
Total	393.0	806.1	2,452.9	3,652.0

Annex I
GTA Posts by Major Programme
(all costs in thousands of euros)

	Subprogramme	Grade	2008
MP I			
Chambers (*)			
Legal Officer	1200	P-3	28.5
Legal Officer	1200	P-3	28.5
Legal Officer	1200	P-3	28.5
Administrative Assistant	1200	GSOL	0.0
Staff Costs			85.5
MP II			
Jurisdiction, Complementarity and Cooperation Division (2200)			
Ass. International Cooperation Advisor	2200	P-2	56.6
Investigation Division (2300)			
Investigator	2330	P-3	60.7
Associate Investigator	2330	P-2	56.6
Associate Analyst	2320	P-2	56.6
Prosecution Section (2420) (*)			
Trial Lawyer	2420	P-4	77.1
Trial Lawyer	2420	P-3	60.7
Associate Trial Lawyer	2420	P-2	56.6
Associate Trial Lawyer	2420	P-2	56.6
Assistant Trial Lawyer	2420	P-2	56.6
Case Manager	2420	P-1	56.6
Appeals Section (2430)			
Appeals Counsel	2430	P-3	60.7
Staff Costs			655.8
MP III			
Division of Court Services (3300)			
Assistant Legal Officer	3310	P-1	64.8
Court Records Assistant	3320	GSOL	41.6
Language Assistant	3330	GSOL	41.6
Paraprofessional Interpreter	3340	P-1	40.5
Paraprofessional Interpreter	3340	P-1	40.5
Witness Protection Support Assistant	3350	GSOL	7.5
Witness Protection Support Assistant	3350	GSOL	7.5
Witness Protection Support Assistant	3350	GSOL	7.5
Witness Protection Support Assistant	3350	GSOL	7.5
Office of Public Counsel for the Defence			
Counsel	3540	P-4	77.0
Staff Costs			336.0

(*) Costs stated are offsetting against savings in regular budget

Annex B

Copy of a letter, dated 2 June 2008, from the Chairman of the Committee on Budget and Finance to the Court

Ms. Silvana Arbia
Registrar
International Criminal Court
The Hague

Dear Registrar,

I refer to your letter of 15 May 2008 advising of the Court's intention to draw on the Contingency Fund pursuant to Regulation 6.7 of the Financial Regulations and Rules and providing a short, supplementary budget notification in the amount of €3,652,000. I have consulted the members of the Committee on Budget and Finance and received further information on the Court's proposal from Mr. Ralph Martens.

I note that Regulation 6.7 of the Financial Regulations and Rules provides that the Registrar may enter into financial commitments, taking into account any financial comments by the Committee. I am pleased to advise of the comments of the Committee in this letter.

In the report of its ninth session (ICC-ASP/7/3, paragraph 54), the Committee reiterated its support for the Contingency Fund as a mechanism to ensure the Court was able to meet unexpected needs and avoid seeking funds for assumptions that might not materialise. The Committee welcomed the Court's proposal to utilise the Fund if further arrests occurred provided that the Court first sought to maximise use of its existing capacities.

The Committee notes that the Court is proposing to draw from the Contingency Fund in accordance with the intentions set out in the 2008 Budget, which was prepared on the basis that the Court would have one detainee and one trial during 2008. The Committee understands that the arrests of Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui will create additional financial requirements in 2008 which were not anticipated in the 2008 Budget. The Committee therefore agrees that the rationale for drawing on the Contingency Fund meets the criteria in Regulation 6.6(b) of the Financial Regulations and Rules: 'unavoidable expenses for developments in existing situations that could not be foreseen or could not be accurately estimated at the time of the adoption of the budget'.

In addition, the Committee adheres to its view that the Court should seek to maximise use of its existing capacities before drawing on the Fund. It therefore agrees that the Court should seek to find further savings to offset additional expenses, especially where savings may be possible from the delayed start of the Court's first trial or where progress towards the trial of Mr. Katanga and Mr. Chui may be slower than anticipated.

In this regard, I understand that the Court intends to book all expenses for the purposes set out in the supplementary budget notification against a special account. It would then only draw from the Contingency Fund at the end of the year when it may be possible for some of the expenses to be met from unspent provisions in the 2008 Budget, thereby reducing the total amount to be drawn from the Fund. The Committee supports this approach, provided that continuous efforts are made within the Court to minimise additional expenses and the total likely to be drawn from the Fund at the end of 2008.

The Committee also takes note of the Court's advice that all additional staff proposed in the supplementary budget notification will be funded as general temporary assistance (GTA) rather than as established posts. The Committee supports this approach, and requests that the Court fully justify all additional resources in the proposed 2009 Budget.

With respect to legal aid, it is the understanding of the Committee that all resources that may be drawn from the Contingency Fund would be spent in accordance with the system of legal aid approved by the Assembly of States Parties at its sixth session. The Committee also notes that the policy questions pertaining to family visits remain under consideration in the Assembly, and recalls the comments in paragraph 32 of the report of its tenth session.

Finally, the Committee wishes to emphasise the importance of the Court enabling the Committee and the Assembly to review the Court's use of the Contingency Fund. I therefore request that the Court provide the Committee at its eleventh session, and in accordance with Regulation 6.8 of the Financial Regulations and Rules, a report on the Court's use of the Contingency Fund as proposed in the supplementary budget notification. Since it is unlikely that the Court would finalise its use of the Fund before the Committee's September meeting, I further request that the Court provide to the Committee in April 2009 a final report on the use of Fund during 2008 in the context of the report on 2008 performance.

I would be pleased to discuss this matter with you or to clarify any of the Committee's comments.

Yours sincerely,

(Signed)

David Dutton
Chair
Committee on Budget and Finance

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