

ASSEMBLY OF STATES PARTIES

COMMITTEE ON BUDGET AND FINANCE

Statement of the Chair of the Committee on Budget and Finance to the Assembly at its fourteenth session in The Hague, 18-26 November 2015

Saturday , 21 November 2015

Good morning.

1. Your Excellency Mr. Sidiki Kaba, President of the Assembly of States Parties,

2. I would like to take this opportunity to thank my fellow colleagues from the Committee for their devotion and hard work in the course of the last three sessions, and for the presence of the Vice chair of the Committee, Mr. Richard Veneau. I would like to thank the outgoing member of the Committee: Mr. Juhani Lemmik (Estonia), and would like to welcome the new member of the Committee: Mr. Urmet Lee (Estonia), I would like also to thank the Secretariat's staff for their usual support.

Your Excellencies; Ladies and gentlemen,

3. It is an honour to present the reports of the twenty-fourth, resumed twenty-fourth and twenty-fifth sessions of the Committee on Budget and Finance. The Committee has again had a very busy year with the two ordinary sessions in April, and September, and an extraordinary session in July. The Committee's workload has considerably increased, and thus we are constantly looking for ways to improve our working methods in order to continue to fulfil our mandate but also to streamline the budgetary process itself in order to be in better position to play our role.

4. In our April session we devoted most of our time to human resources and administrative issues. Taking into account the significant developments regarding the Court's administrative and budgetary management that would take place during the second part of 2015, notably as a result of the implementation of the ReVision project and the presentation of the Strategic Plan 2016-2018 of the OTP, the Committee decided that, in accordance with Rule 1, Section I, of its Rules of Procedure, it would hold a resumed twenty-fourth session in The Hague on 14 and 15 July 2015. As you know the main session of September was devoted to the 2016 proposed programme budget,

which was as always, the most important and time-consuming subject of the Committee's consideration.

5. In this regard, the Committee would like to reiterate that its role is to examine the budgetary, financial and administrative matters of the Court and to make recommendations to States Parties. To this end, the Committee requires reliable, consistent and clear information from the Court.

6. Without this information, the Committee is unable to contribute to a constructive dialogue between States Parties and the Court and is at risk to limiting its role to validating assumptions or relaying concerns expressed by States Parties, without adding technical value.

7. That said, the process for consideration of the 2016 proposed programme budget from the Court was unprecedented. We examined it very closely and deliberated at length on many aspects. Not only was a large budgetary increase proposed (17.3 per cent), but it also contained a number of complex issues concerning the move to, and financing of, the new permanent premises, the outcome of the ReVision project, the new Strategic Plan for the OTP (2016-2018) and the "Basic Size" concept. This was set against a challenging political context and a difficult budgetary process analysis that sought for a reduction in the proposed increase.

8. I would like to once more acknowledge the Court for its cooperation during the complex weeks, during and after the consideration of the budget. In additional, I would like to stress that at this stage in time we have no technical basis that would allow us to identify further reductions without jeopardizing the Court's ability to deliver on its core activities and fulfill State Parties expectations.

Mr. President,

9. The information provided by the Court to the Committee was not always clear, including the budget proposal itself, which resulted in the Committee receiving a particularly high volume of additional information to the budget document. Recommendations have only been included where the implications of any reduction were understood and considered to be manageable by the Court, insofar as they would not disrupt its core activities. Following consultation with the Court and consideration of the additional information provided by it, the Committee recommended the adjusted 2016 proposed programme budget amount would thus be €139.96 million, which represents €9.29 million (7.1 per cent) increase with interest for the host State loan, or €8.16 million (6.3 per cent) increase without interest for the host State

loan compared to the 2015 approved budget. In reviewing the Committee's recommendations, it is important that States Parties be aware that, in order to limit this increase, a number of the reductions proposed represent postponed spending, and are therefore likely reappear in the proposed budget for 2017.

10. Looking forward, the Committee wishes to continue with its very positive working relationship between itself, the Assembly of State Parties and the Court by focusing its attention in two areas:

(a) The first concerning improvements in the budgetary process by:

i. A better and more efficient use of the Coordination Council (CoCo) of the Court to lower the risk of presenting overlapping proposals and create a better process to ensure consistency of message and policy of spend across the Court. It would also allow for better identification and execution of efficiencies and synergies due to identification of duplication¹ and streamlining of activities;

ii. In principle, for documents to be considered they should be submitted 45 days before the Committee's session begins, in both English and French; and

iii. The budget should present the costs for the following year by firstly highlighting the cost of maintaining current activities; then setting out proposals for any changes to those activities, and then fully costing those activities and the consequences of changing them, including what efficiencies have been identified, or what can be stopped to offset any additional costs; and

(b) Explicit context-setting by the Assembly before the budget is prepared – for example, through establishing an “envelope” or framework for future budget years.²

Mr. President,

I would like to highlight the following points regarding human resources management.

A. Human resources management

¹No evidence is provided that efforts have been made by the Court to achieve economies of scale; conversely budget duplication has been identified, such as separate budgets for the creation of databases for the Presidency, the Office of the Prosecutor and the Registry; (ref. ICC-ASP/10/14, paras. 68(b), 142 and 455).

²*Official Records of the Assembly of States Parties, Thirteenth session, New York 2014*,(ICC-ASP/13/20), vol. II, part B.2, para. 44.

1. Mandatory age of separation (“Retirement age”)

11. The Committee noted the section of the Court’s report³ on the mandatory age of separation (“retirement age”), and United Nations General Assembly resolution 69/251 of 29 December 2014 to raise the mandatory age of separation to 65 years, with the date of implementation of this decision to be fixed later. The Committee concurred with the Court’s recommendation that the mandatory age of separation be increased at the Court from 62 to 65 years, effective 1 January 2016, on the understanding that the decision will have no effect on the acquired rights of current staff.

12. The Committee therefore recommended that the Assembly approve the increase in the mandatory age of separation from 62 to 65 years, and approve the necessary changes to the Staff Regulations to achieve this effect.

2. Geographical representation

13. The Committee recalled its earlier concern with geographical representation in the Court. The Committee noted that the Court has offered to work with States Parties from underrepresented regions to facilitate and encourage more applications from those regions. The Committee also noted the Court’s intention to apply the geographical representation principle to all fixed term appointments.

14. The Committee strongly recommended that the Court take steps to ensure a wider distribution of vacancy notices, and to ensure that such notices are always distributed in both of the working languages (English and French) of the Court.

15. The Committee also noted that the proposed conversion of a number of GTA posts to established positions could potentially have an impact on geographical representation and gender balance.

16. The Committee therefore recommended that the Court take geographical representation and gender balance into account as it develops its recommendations for the proposed conversion of GTA posts.

3. Conversion of long-standing GTA-funded positions to established posts

17. The Committee noted that the Court had submitted a number of positions currently funded through GTA that had been covering long-term core functions of the Court. Taking into consideration the development of judicial

³CBF/24/17, paras. 76-79 (Report of the Court on Human Resources Management).

activities and the need to create a more secure and efficient work environment, the Committee recommended that the Assembly approve the conversion of GTA positions to established posts for Major Programme I and II submitted for its consideration.

4. **Contract modalities for short term (or temporary) appointments**

18. The Committee noted that the Court was considering the introduction of new type of short-term appointments at the Court. The short-term appointments would accommodate defined, short-term needs of the Court of less than one year (exceptionally renewable for up to a maximum total period of service of two years).

19. The Committee took note of the Court's proposal and was generally supportive of it and agreed that it could be provisionally implemented, pending final approval by the Assembly. Furthermore, the Committee also reiterated the importance of ensuring that geographical representation and gender balance are taken into account when considering short term appointments.

5. **Reclassification of posts**

20. The Committee had stated in the past that reclassifications were intended to be exceptional and could be both upwards and downwards, and that, under normal circumstances, only a limited number would be foreseen in the yearly budget submission and should not be used as a promotion tool or to justify increased workloads.

21. The Committee welcomed the Court's intention to create a Classification Review Board, and also agreed that, in view of the budgetary and financial consequences of reclassifications, the Assembly should continue to hold final approval authority for reclassifications, pending further experience with the Court's new approach.

22. The Committee noted that the functions and responsibilities of some posts had changed in Major Programmes I and II, and thus the Committee recommended that the Assembly approve the reclassification of the requested posts.

Mr. President,

I will move now to the financial matters.

A. Status of contributions:

23. The Committee reviewed the status of contributions and noted with concern that the total outstanding contributions, including the regular budget, the Contingency Fund and interest on the host State loan, thus stood at €38,174,961⁴ as of 15 September 2015. The Committee stressed the importance of contributions being paid in full and in a timely manner. Otherwise this may seriously jeopardize the financial funds necessary for the daily operation of the Court. If these contributions remain unpaid at the end of the year, it may result in the Court needing to access to the Working Capital Fund.

B. Financial and budgetary matters

Budget performance

24. The Committee noted that the mid-year implementation rate was 56.4 per cent, or €73.66 million, against the 2015 approved budget of €130.76 million. This represents an increase of 4.5 per cent compared to last year's implementation rate of 51.9 per cent as at 30 June 2014. The Court forecasts an implementation rate of 98.0 per cent, or €128.02 million, against the approved budget of €130.67 million, which represents an increase of 1.3 per cent compared to last year's implementation of 96.7 per cent as at 31 December 2014.

Contingency Fund

25. As at 1 January 2015, the opening balance of the Contingency Fund stood at €7.46 million.

26. As at 15 September 2015, as shown in annex V of the Committee's report for its twenty-fifth session, the total amount of the four notifications was €6,263,800⁵ with a total implementation of €3,328,200 (53.1 per cent).

27. The Committee stressed once again that use of the Contingency Fund must only be considered when the event giving rise to the request could not have been foreseen or could not be accurately estimated when the budget was drawn up. Such events would include the opening of a new situation or unforeseeable developments in a current case. The Committee urged the Court to continue to maintain very strict budgetary discipline when making requests to access the Contingency Fund. The Committee also encouraged the Court to continue to make every effort to absorb all unforeseen expenditures in the regular budget.

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| ⁴ Outstanding assessed contributions including interest (€103,503) | €30,017,155 |
| Total outstanding contributions including interest (prior years) | €8,151,645 |
| Outstanding contributions-Contingency Fund | €6,161 |
| Total outstanding contributions | €38,174,961 |

⁵ICC-ASP/14/15, annex V.

2016 proposed programme budget

28. The Committee noted that the 2016 proposed programme budget submitted by the Court, of a total amount of €153.27 million, represented an increase of €22.61 million (17.3 per cent) over the 2015 approved budget. The total amount of €153.27 million included interest payment for the permanent premises of €2.2 million. The Committee considered the budget requests by each major programme. After careful consideration of the actual needs, the Committee recommended reductions in each of the major programmes with a total amount of €13.31 million.

Supplementary Budget

29. On 12 November 2015, the Court has submitted a supplementary budget proposal with a total amount of €198,300 setting out the budgetary consequences of new developments of the issuance of an arrest warrant and transfer to the Court of Ahmad Al Faqi Al Mahdi.

30. Regardless of the limited time to review the request, the Committee considered this submission and thus recommended the Assembly to approve the requested amount.

Mr. President,

I will move now to the legal aid.

C. Legal aid

31. The Committee noted that the original budget request for Legal Aid for the defence had more than doubled from the previous year, an increase of 107 per cent or €2,525,900. The Counsel for Victims was also seeking a double-digit increase of 17 per cent, or €316,400.

32. The Committee also noted with concern that the amount originally estimated for defence teams in the four article 70 cases was €1,680,400, or more than one-third of the amount to be allocated to the entire legal aid budget.

33. The Committee expressed its concern with the renewed trend towards sizeable increases in Legal Aid costs, particularly in light of the anticipated growth in activity of the Office of the Prosecutor in the coming years, as well as increased victim participation requirements. The Committee noted the Registrar's intention to undertake a review of the legal aid system at the Court and looks forward to examining the results of that review.

34. After discussion with the Committee, the Registrar indicated that reductions in the proposed increases, in the amount of €666,200 for the defence and for victims could be realized in light of foreseeable changes in some of the on-going proceedings. The Committee recommended the Assembly that these proposals be accepted.

Mr. President,

I will move now to the audit matters.

D. Audit matters

Financial statements of the Court for the period 1 January to 31 December 2014, and financial statements of the Trust Fund for Victims for the period 1 January to 31 December 2014

35. The Committee welcomed the presentation by the External Auditor and expressed its appreciation for the quality of the work produced by him.

36. Introducing his reports on the financial statements of the Court and the Trust Fund for Victims, and a report on the permanent premises, the External Auditor informed the Committee that the statements were free of material misstatement and presented fairly the financial position of the Court and of the TFV and that he was able to offer an unqualified audit opinion.

Audit Committee

37. The Committee reviewed the Charter of the Audit Committee (AC) and noted that it covers all the elements required by the guidelines of the Institute of Internal Auditors. Therefore, the Committee recommended that the Assembly approve the Charter of the Audit Committee.

38. The Committee also noted that the Ad Hoc Audit Committee has managed to complete the selection process of three external members for the AC in due time, and selected suitable candidates. The Committee accordingly recommended that the Assembly approve the appointment of the following candidates and two CBF members to be part of the Audit Committee:

- (a) Mr. Samir Abu Lughod (Jordan);
- (b) Mr. David Banyanka (Burundi), CBF member;
- (c) Mr. Jorge Duhalt (Mexico);
- (d) Ms. Laure Esteveny (France); and
- (e) Ms. Elena Sopková (Slovakia), CBF member.

39. It was noted that the current term of the External Auditor will come to an end next year after auditing the financial statements of the Court and the TFV issued for the year 2015, and issuing the yearly overall audit report on the financial reporting and management of the permanent premises project. In order to ensure that the Court will have an external auditor continuously in place, the Committee recommended the Assembly that the current term of the External Auditor be extended by one year, without prejudice to the ability of the current External Auditor to seek an extension for a further full four-year term. The Committee recommended that the Audit Committee consider the issue of appointment of the External Auditor in 2016.

Mr. President,

I will now complete my statement with the permanent premises cost overrun.

Permanent premises cost overrun

40. At its resumed thirteenth session, the Assembly authorized another top-up of the project budget by €6 million up to €206 million, of which only €204 million are currently estimated to be required. The increase was to be financed only from the Employee Benefits Liability fund (EBL) and the Working Capital Fund (WCF).

41. At the same time, the Assembly a) asked the External Auditor to consider any risks attached to reducing the two funds, and requested the Committee to provide its recommendations thereon; and b) requested the External Auditor to review the project accounts, with an emphasis on the cost overruns, and asked the Committee to analyse those overruns.⁶

42. The Committee took note of the eight recommendations contained in the External Auditor's report submitted on 13 November 2015 regarding the cash reserves, and appreciated the work and analysis provided by the External Auditor on the subject matter.

43. The Committee on more than one occasion had reviewed and considered the issue of the cash reserves of the Court, and in particular the EBL and the WCF. The Committee has stressed that the Court's ability to meet its obligations to staff and to its core business must be assured at all times. Unfunded EBL should not be allowed to produce a financial burden with which the organization would struggle in the future, resulting in undue

⁶ For details, see *Official Records ... Resumed thirteenth session ... 2014*, (ICC-ASP/13/20/Add.1), part II, ICC-ASP/13/Res.6, paras. 2-11. It may be recalled that the Assembly, last December already, had approved a first top-up of the project budget from €195.7 million to €200 million without specifying the funding source.

pressure on its core business. At the same level, the WCF should not be used for other purposes than meeting short-term liquidity problems pending receipt of assessed contributions.

44. Nonetheless, as the Assembly decided to cover the cost overrun from the EBL and the WCF, and after consideration of the External Auditor's recommendations, the Committee recommended that:

- The EBL fund should retain resources to cover the judges and staff liabilities for the amount of €0.7 million for 2016. The remaining balance could be used to partially cover the permanent premises cost overrun, while further analysis by the Committee of the options for a slow build-up reserve to cover such liabilities should allow for it to eventually recommend the appropriate level of the EBL;
- The WCF should be approved at least at its 2015 level of €7.4 million. However, up to €3.3 million could be used to cover the remaining balance of the permanent premises cost overrun. In order to replenish the WCF to its approved level, the Committee recommended that surpluses as of 1 January 2016 and onwards be used for this purpose as a matter of priority;
- As an extraordinary measure, the Committee recommended that the Court to be authorized to obtain a line of credit through commercial banking for one year in order to cover the difference between the balance of the WCF and the approved level of €7.4 million. Upon opening the line of credit, the Contingency Fund could be released and utilized as prescribed in the Financial Regulations and Rules. The fees resulting from the line of credit should be absorbed by the Court. The Committee will review the situation and a possible need for further measures in the context of the 2017 proposed programme budget; and
- Forward looking, the Committee recommended the Assembly that in order to maintain budgetary discipline; funds should only be used for the purposes for which they were created.

Thank you.
