

**Fourteenth session**

The Hague, 18-26 November 2015

Report on the progress of consideration of the financial impact of the Office of the Prosecutor's Strategic Plan 2016-2018 and of the cost implications for the Office of the Prosecutor and for the other organs of the International Criminal Court**Executive summary*

This report addresses the requests by the Committee on Budget and Finance (“the Committee”) and by the Assembly of States Parties (“the Assembly”) for information on the financial impact of the implementation of the Strategic Plan 2016-2018 of the Office of the Prosecutor (“the OTP” or “the Office”) on its own budget and on that of the other organs of the Court.

Since the Strategic Plan 2016-2018 will be ready by the end of June 2015, this document provides a progress report on the methodology that is being adopted to assess the *required activities and resources* that will allow the OTP to discharge its mandate in a manner that is effective and consistent with its Strategic Plan and the Rome Statute.

Two approaches have been identified to assess the right basic size of the OTP: (a) a *fully demand-driven approach*, which would allow the Office to respond to each demand put upon it immediately but has the downside of bringing with it financial uncertainty, and (b) an *estimated-demand-driven approach*, which would create a more stable budget but require further prioritization of cases in the coming three years.

Following the estimated–demand-driven approach, the expected number of the activities of the OTP and required resources will be derived by reviewing historical data on preliminary examinations, investigations and prosecutions in the light of the new strategy. These data will be combined with the available information on current and foreseeable situations and cases.

The resulting number of *basic-size* preliminary examinations, investigations, trials and appeals will be discussed with the Chambers and the Registry to assess their impact on the other organs of the Court. The final financial impact of such activities will be based on (1) the cost of the Court’s operations in the past two years, which are more representative of the impact of the implementation of the new strategy of the OTP, and (2) requirements arising from the new Strategic Plan.

A timeline for the next steps in this assessment is provided at the end of the report.

* Previously issued as CBF/24/8.

I. Introduction

1. In its final report after its twenty-third session in October 2014, the Committee recommended that the proposed OTP Strategic Plan 2016-2018 should be properly costed, utilizing the best available knowledge and experience (for example, results of the activity-based costing exercise and workload indicators) available in the Court.¹

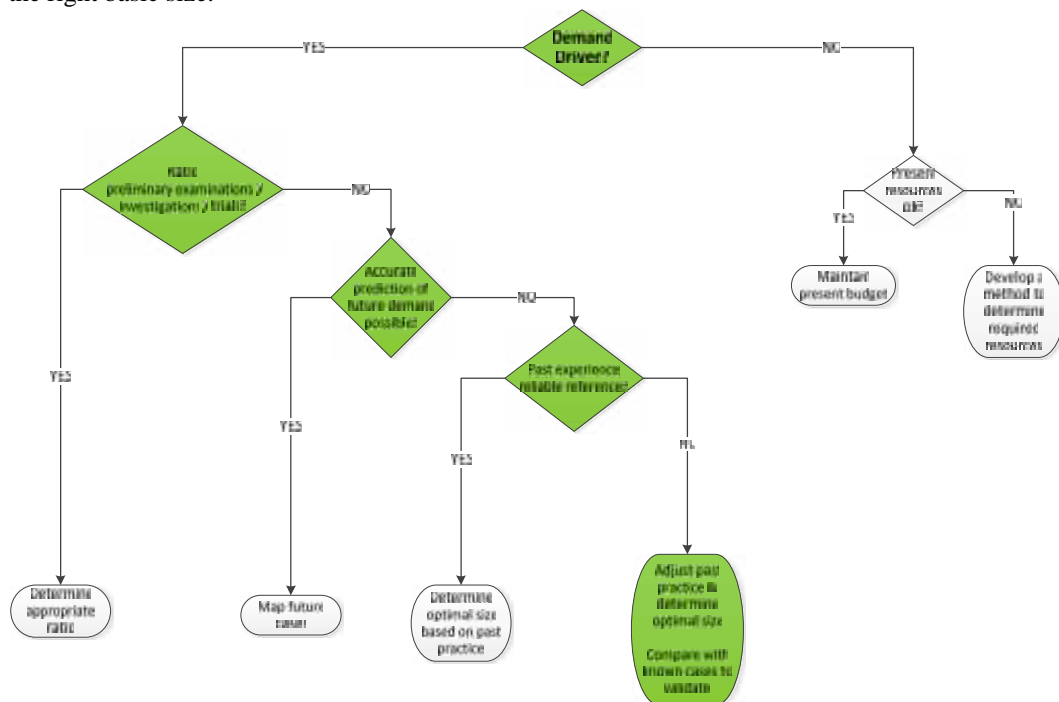
2. In conclusion of its thirteenth session, in New York in December 2014, the Assembly requested the Office of the Prosecutor to consider carefully the financial implications of its Strategic Plan 2016-2018, taking into account the cost implications not only for the Office of the Prosecutor but also for the other organs, as well as the relevant sections of the Committee's report on the work of its twenty-third session, and to report on the progress of this consideration to the Committee's twenty-fourth and twenty-fifth sessions as well as to the Assembly.²

3. This report is intended to provide the Committee with an update on the progress made. The following information will be presented:

- (a) Methodology used to estimate the number of OTP activities
- (b) Next steps

II. Determining basic size

4. The underlying decision-making tree illustrates the modus operandi in determining the right basic size.



5. The OTP has chosen the Court's demand-driven approach as a starting point. The Court deals with "the most serious crimes of concern to the international community". States Parties have also confirmed this as the appropriate starting point in the past. Any other approach than a demand-driven one would defeat the object and purpose of the Statute. Indeed, the OTP would be in dereliction of its statutory duties if it refused to

¹ *Official Records of the Assembly of States Parties to the Rome Statute, Thirteenth session, 8-17 December 2014, New York (ICC-ASP/13/20), vol. II, part B.2, para. 51.*

² *Official Records ... Thirteenth session ... 2014 (ICC-ASP/13/20), vol. I, part III, Resolution on the Programme budget for 2015, the Working Capital Fund for 2015, scale of assessments for the apportionment of expenses of the International Criminal Court, financing appropriations for 2015 and the Contingency Fund, ICC-ASP/13/Res.1.*

investigate crimes clearly within its jurisdiction referred by a State Party on the basis that the “quota” of situations that could be handled with the existing resources had been reached. It is thus imperative for the OTP to be endowed with a basic structure that is capable of adequately responding to additional demands while continuing to process existing workload.

6. If the OTP were able to use a ratio to calculate how many preliminary examinations lead to investigations and how many investigations result in prosecutions, determining the number of preliminary examinations would suffice to anticipate the precise number of investigations and prosecutions. However, the OTP has come to the conclusion that such a ratio is unreliable, as preliminary examinations do not lead to a uniform number of investigations in a situation.³ The same logic applies to a ratio of investigations to prosecutions. The number of indicted persons arising from investigations is also variable, and the moment of arrest or surrender cannot be predicted.⁴ Consequently, the required number needs to be estimated for each core activity separately.

7. As a ratio-based approach is not possible, the OTP has identified two possibilities for determining its future basic size:

- (a) A fully demand-driven approach, whereby the OTP would handle all cases as they arose.
- (b) An estimated-demand-driven approach, whereby the OTP would try to determine how many cases it should expect each year based on past experience.

8. In considering a fully demand-driven approach, the OTP needed to assess whether it was possible to obtain an accurate indication of our future demand on the basis of our present knowledge. However, predictions can only be provided with an insufficient degree of certainty and would be limited to situations already known to the Office. The OTP cannot, therefore, adequately predict in advance the number of new situations which will arise or the nature and number of crimes which will be identified in existing situations.

9. Applying a fully demand-driven approach would require an immediate, sharp increase in resources for the OTP to be able to handle all cases fully, without having to prioritize some at the expense of others. This approach would generate unpredictability regarding resources in the short and longer term. With preliminary examinations, investigations or trials commencing and ending, the budget can be expected to fluctuate from one year to the next.

10. An alternative to the fully demand-driven approach would be to aim to calculate an “estimated demand”. Using this method, the OTP would calculate the basic size on the basis of past experience so as to generate a forecast that was as realistic as possible. The following caveats have to be applied when adopting this approach:

- (a) Since 2004, the Court’s functioning has changed significantly. Moreover, the environment in which it operates has evolved fundamentally over the years since the time of the Court’s inception. This caveat has been resolved by adjusting our past experience in the light of the current strategy and practice;
- (b) The number of preliminary examinations, investigations and prosecutions is fairly low. This restricts the reliability of the use of averages;
- (c) The estimated number does not take account of exceptional circumstances, for which the Contingency Fund remains in place;
- (d) No cap has been placed on the estimated number of trials. Given the need to ensure that suspects receive appropriate, expeditious treatment once they are in detention, it may be necessary to exceed the estimated basic size;

³ A recent example is the situation in the Central African Republic. After conducting a preliminary examination, the Prosecutor decided to open two investigations to investigate the alleged crimes committed since 2010 by (a) Séléka and (b) anti-Balaka militias.

⁴ The surrender of Dominic Ongwen has led to a change in the case for the crimes allegedly perpetrated by the Lord’s Resistance Army (“LRA”) in Uganda. Pre-Trial Chamber II decided to sever the case against Mr Ongwen from that of the other indicted LRA commanders (*Kony et al.*) so as not to delay the pre-trial proceedings against Mr Ongwen. Thus, there may be more than one trial in what was initially a single case if and when the other commanders are finally brought before the Court.

- (e) The number of activities is based on the assumption of optimal circumstances:
- (i) adequate security to operate
 - (ii) sufficient cooperation
 - (iii) provision of required resources

11. The OTP has concluded that its basic size – and hence the volume of its activities – can be determined using either a fully demand-driven or an estimated-demand-driven approach. If an estimated-demand-driven approach is chosen, then the forecasts will be revised every three years, when a new strategic plan is issued.

12. Establishing a stable basic size for the OTP brings with it important additional benefits: first, the current model of spasmodic growth and expansive use of GTA contracts can be replaced with a predictable model of linear growth towards a pre-determined ceiling, after which any subsequent growth is both exceptional and temporary in nature (and, as such, is properly covered by GTA funds). Accordingly, the vast majority of the posts foreseen in the basic structure would be established posts, with the exception of those posts which, by their very nature, should be viewed as transient, such as language support for specific situation languages. This returns the use of GTA contracts to its proper place: these contracts would no longer be resorted to in order to cover basic OTP functions but would instead be used only to top up or supplement the established structure (“basic size”) where input exceeds the OTP’s processing and output capacity. In this scenario, the GTA-funded module is a severable one, linked to the immediate situation or case, and is detached from the Office as soon as the situation or case is adequately dealt with⁵ or the positions are no longer required for that situation or case (for example, if warrants of arrest are issued, but after a period of time it becomes clear that there is no immediate prospect of arrest, the additional positions can be abolished after the proper hibernation procedure has been followed).

III. Conclusions

13. Provisional calculations have been made for the required number of core activities. They will remain provisional pending completion of the current discussions within the OTP to assess their accuracy and impact.

14. A sustainable basic size can be calculated in either of two ways:

- (a) *A fully demand-driven approach*, which allows the Office to respond to each demand immediately but has the downside of bringing with it financial uncertainty.
- (b) *An estimated-demand-driven approach*, which would create a more stable budget but require further prioritization of cases in the coming three years.

15. The following timeline will be adopted in determining the basic sustainable size of the OTP and its impact on the other organs of the Court:

Feedback on model	March-April 2015
Calculation of required resources for the basic size in coordination with the other organs so that the impact on them can also be determined	March-April 2015
Final decision on proposed optimal size by the Prosecutor	April 2015
Integration into OTP strategic plan and 2016 budget proposal	April-May 2015
Report on impact on other organs	30 June 2015

⁵ The OTP is preparing documents on situation and case selection and exit strategies.