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### **Final audit report on the budget process of the International Criminal Court**

#### *Contents*

	<i>Page</i>
I. List of recommendations.....	2
II. Observations and recommendations .....	3
A. Budgetary framework .....	4
1. The “Programme budget” structure .....	4
2. The Court-wide budgetary coordination.....	6
3. Monitoring by States Parties .....	8
4. The “Basic Size” reference.....	10
5. Office of the Prosecutor’s assumptions and parameters .....	12
B. Proposed budget for non-staff expenses .....	15
1. Service requests .....	15
2. Savings and efficiencies .....	17
C. Proposed budget for staff expenses .....	22
1. Budgeted staff.....	22
2. Preparation of the proposed staff budget.....	24
D. Budget approval.....	27
1. The budget document .....	27
2. The approval process.....	28
E. Budget implementation.....	29
1. Budgeted and actual staff .....	29
2. Transfers.....	32
3. Multi-year investments funding .....	33
4. Liquidity shortfall.....	36
F. Reporting .....	38
1. Frequency and form.....	38
2. Performance indicators .....	39
III. Conclusion .....	43
IV. follow up of previous recommendations.....	43
V. Acknowledgements.....	44
Annexes.....	45
Annex I: Terms of reference .....	45
Annex II: List of interviewees.....	47

## I. List of recommendations

1. The recommendations are classified according to their priority level:
  - (a) *Priority 1*, fundamental issue, requiring immediate action by management;
  - (b) *Priority 2*, less urgent control issue to be dealt with by management;
  - (c) *Priority 3*, issue on which possible improvement of controls could be made and which is brought to the attention of management.

**Recommendation n°1 (priority 1):** The External Auditor recommends the ASP to put on its agenda, in the context of an upcoming evaluation of the Court or through any other forum, the interpretation of article 42(2) of the Rome Statute, in order to clarify to what extent it forbids the Prosecutor to transfer to the Registry, acting as provider of shared services, accountability for common administrative tasks.

**Recommendation n°2 (priority 1):** The External Auditor recommends that, when preparing yearly budget submissions, the Court 1) should continue to take into account not only incremental adjustments, of current appropriations levels through the service requests process in relation to the preceding year, 2) but also, in a comprehensive “zero-based budget” approach, should question the nature of those appropriations in and of themselves, in order to avoid a gradual drift in budget appropriations.

**Recommendation n°3 (priority 2):** Concerning savings and efficiencies, the External Auditor recommends that:

- (a) The launching of the annual workshop on savings and efficiencies be chaired personally by the Registrar;
- (b) Standard templates be more widely used to support proposed and approved savings and efficiencies, disclosing the baseline level, the proposed and the approved amounts saved and the precise origin/nature of the saving (cut of existing cost or potential cost avoided);
- (c) The annex to the proposed budget document dedicated to savings and efficiencies should refer to those which result from genuine managerial initiatives and have an impact on the baseline; and
- (d) A symmetric “top-down” approach, initiated every year at Principals level, and giving rise to an organized challenge with lower levels (i.e. Divisions and Sections) should be designed and implemented for staff limitations.

**Recommendation n°4 (priority 1):** The External Auditor recommends the ICC to adapt Staff Rules so that, in cases where the workload evolution should lead to staff decreases in some sectors, as an alternative to separation, a strong priority for recruitment on other open internal positions be offered to the incumbents, if and when their profiles are clearly adequate for the new assignments.

**Recommendation n°5 (priority 2):** The External Auditor recommends the Budget Working Group (BWG) to study and submit for clearance to the Committee on Budget and Finance (CBF) and to the Hague Working Group (HWG) a proposal for a renewed, simplified and shorter budget document, strictly focused on budget-relevant issues, and based on the acquired ICC experience. If and when endorsed by the Committee on Budget and Finance (CBF) and the Hague Working Group (HWG), the new document structure could be approved by the Assembly of States Parties (ASP).

**Recommendation n°6 (priority 3):** The External Auditor recommends that the final budget document for year n be published no later than by end-January of the same year.

**Recommendation n°7 (priority 3):** The External Auditor recommends to adapt the Financial Rules, which currently prohibit transfers between Major Programmes, in order to allow such transfers and thus bring an adequate management flexibility to smaller Major Programmes, such as the Independent Oversight Mechanism (IOM) or the Office of Internal Audit.

**Recommendation n° 8 (priority 2):** To ensure a streamlined coherence between approval of multi-year investment projects and related annual budgetary decisions by the ASP, the External Auditor recommends the Court to submit to the ASP a proposal to extend its current IT strategy multi-year special account so that:

(a) It could be used as a multi-year multi-purpose mechanism allowing a carry-over of unspent regular budget resources for a list of other multi-year significant investment projects approved by the ASP; and

(b) Adequate rules be designed, guaranteeing a robust separation of the appropriations dedicated to each approved project and a yearly reporting to the ASP.

**Recommendation n°9 (priority 1):** so as to avoid adverse financial and reputational consequences in case of a liquidity shortfall, the Auditor recommends the ASP to delegate some responsibility to the Bureau, in order:

(a) To announce, in due time (i.e. leaving a reasonable period, such as two/three weeks – needing to be more precisely defined – before the forecasted available cash only represents less than one standard month of payments), that the Court will be exceptionally authorized to use the Contingency Fund, and/or, in case there is no sufficient cash available in the fund, to pre-negotiate a credit line;

(b) To allow the Court to effectively use either or both facilities only if and when the liquidity crisis becomes obviously unavoidable (for instance, when only one or two days of cash are left), this delay also needing to be very precisely defined in advance); and

(c) To provide for an immediate reporting of the situation to the States Parties for both previous decisions.

**Recommendation n°10 (priority 2):** Concerning the key performance indicators disclosed in the Budget Performance Report annexes, the External Auditor recommends that:

(a) In order to offer a more coherent and budget-focused annual budget performance report, the ICC no longer publishes the annexes currently devoted to Major Programmes' key performance indicators, most of which are not measurable and have no link with the budget performance, i.e. do not even offer appropriate cost/results measurable indications;

(b) In order to avoid letting external stakeholders disclose simple, but misleading budgetary indicators based on public information (for instance by dividing the actual ICC budgetary expenses by the number of guilty verdicts, of judgments, of involved individuals, of situations, etc.) the ICC takes the opportunity of its present works on the Court's Strategic Plan 2019-2021 to select, if and when possible, some specific KPIs presenting a clear correlation with the use of budgetary resources to replace the present useless KPIs disclosed in the Budget Performance Reports, which are generally not directly related to the budget; and

(c) Once this task has been completed, each body selects a very limited number of the most significant measurable indicators related to the budget (between two and four, if any), in order to annex them to the budget performance report.

The removal of the publication of current indicators should not take place until new relevant indicators are actually available.

## II. Observations and recommendations

2. The terms of reference of this audit on the International Criminal Court (ICC) budget process are presented in annex I. The list of persons interviewed by the External Auditor is provided in annex II.

3. Presently, neither the Financial Rules nor any comprehensive document describe in detail any of the phases of the ICC budget process (proposal/approval, implementation and reporting): some indications on the preparation of the budget proposal can be found, for the recent years, in the "Guidelines for the proposed budget", distributed by the Division of Management Service (DMS). These rules vary from one year to the next, although the fundamental principles on which they rely are the same.

4. The External Auditor could not have a complete and detailed list of these rules, which is not available: this would imply referring to numerous decisions or recommendations scattered between many CBF/ASP<sup>1</sup> reports issued since 2003, with no guarantee of completeness. This does not mean that the current budgetary process is not transparent, but rather that it is both very complex and unclear, which is an obvious source of risk.

**Finding:** The compilation of various documents, rules, decisions and recommendations that the External Auditor had to carry out for his audit is obviously incomplete, and leaves inconsistencies and gaps. Every year, incremental modifications are brought to the budget process, as either requested from the Court by the ASP/CBF or introduced by the Court itself, which are often difficult, if not impossible, to trace precisely due to the resulting complexity. This could raise concerns on the current budget process transparency. An updated Court-wide comprehensive detailed budget process digital manual, constantly updated, would be necessary, at least for audit purposes. The Court and the CBF/ASP have obviously never expressed a need for such a tool. That is why the External Auditor does not make any specific recommendation in this respect, and leaves this question open to the discretion of the CBF and of the Hague Working Group (HWG-budget).

5. On the basis and within the limits of the available documentation, and of information collected through interviews (see annex II for the list of interviews), the External Auditor considered the following aspects of the ICC budgetary process:

- (a) ICC budgetary framework;
- (b) Preparation of non-staff budget;
- (c) Preparation of staff budget;
- (d) Budget approval;
- (e) Budget implementation; and
- (f) Budget performance reporting.

## A. Budgetary framework

### 1. The “Programme budget” structure

6. The ICC budget structure is tightly connected with the legal organizational structure of the Court. The three major organs (Judiciary, Office of the Prosecutor (OTP) and Registry), which correspond to the first three “Major Programmes” (MP), represent in 2019 almost 94 percent of the Court-wide budget (8 percent for Judiciary, 32 percent for OTP and 54 percent for Registry). Within each Major Programme and Programme, appropriations are presented by budget commitment items.

7. This “Programme budget” structure has no link with ICC’s activity structure. Every year, in the Programme budget introduction, a “macro-analysis” of the budget is provided, with a chart presenting a breakdown of the budget by activity. According to that chart, in 2019, “judicial, Prosecutorial and investigative activities” are said to represent 80.6 percent of the total budget (47.8 percent for judicial and Prosecutorial activities, 30.1 percent for investigations, and 2.7 percent for the Secretariat of the Trust Fund for Victims). The other expenditures (19.4 percent of the total budget) are considered as “administrative, governance and (building) maintenance” costs.

8. The main difference between a budget structure per activity and the ICC budget per programme/commitment items is that, if one was organizing the ICC budget per activity, the three main organs would disappear as stand-alone budgetary structures: in such a perspective, the budgets would have to be financially approved by States Parties by activities (and not per organs and commitment items) so that appropriations for OTP,

<sup>1</sup> Committee on Budget and Finance/ Assembly of States Parties.

Judiciary and Registry could not be separated.<sup>2</sup> This would raise a major problem, in particular for judicial proceedings, the issue being that OTP, Judges (Chambers) and Defense (funded by the Registry) do not have the same goal for this “activity”. OTP’s aim is to get a conviction; Judges’ aim is to have fair trials and establish the truth; Defense’s goal is to get their clients acquitted. Which of these goals should be taken as the primary goal of the “activity” being funded by the Sates and used to justify how well the funds were used?

9. Although the above-mentioned breakdown by activity is only given as a budgetary information, not based on a genuine cost-accounting system, so that its accuracy can neither be confirmed nor challenged by the External Auditor, the data give a clear indication that the ICC Programme budget structure, built on the principle of the independence of the Prosecutor, does not meet the basic conditions for establishing Results Based Budgeting (RBB).

10. However, **Results Based Budgeting** (RBB) has been recommended in the UN system since 2006-2007, because it is generally considered as the most efficient budgetary approach. It clearly segregates the functions between:

(a) On the one hand, the stakeholders, usually those who provide financing, whose role is to take high-level decisions on the activities, the objectives, the priorities, and the corresponding budget envelopes approved per activities (i.e. not per organs and commitment items); and

(b) On the other hand, the executive managers, whose duty is to prepare budget proposals according to stakeholders’ high-level decisions, and to make the most efficient use of the approved budget to fulfil the defined activities and priorities and reach the stakeholders objectives. The main expected advantages of this clear segregation of duties through RBB are, in principle:

(i) To increase the managers’ accountability and efficiency, and

(ii) To prevent inefficient involvement of the stakeholders in micro-management issues.

11. Yet in the case of ICC, according to the Rome Statute, it is the Prosecutor’s duty (based on referrals or *proprio motu*), not the States Parties’ role, to take decisions on most of the current activities and priorities of the Organization.<sup>3</sup> The Rome Statute partly reverses the usual roles, defining the Prosecutor as a major stakeholder, in particular for deciding priorities, so that the States Parties’ budgetary function is legally limited to accepting (or not) the needed financing.

12. An Internal Auditor report on ICC budget process dated 21 September 2016 recommended the Registry to “conduct a comprehensive assessment of the Court’s budget process in comparison to the elements required for effective Results Based Budgeting, benchmark with similar organizations, and identify future steps to take and determine resources required (both time and finance) to fully implement RBB”.

13. For the above mentioned reasons, the recommendation has not been accepted by the management of the Court. The following answer was given: “*the Court does not feel that RBB is suitable for it*”. The External Auditor shares the Court conclusion.

**Finding:** As a practical consequence of the legal principle of the independence of the Prosecutor, at the ICC, the States Parties budgetary resolution approves, for each Major programme, a bottom line resulting from the addition of the various categories of expenses grouped for each organ by commitment item (such as staffing, non-staff costs, travel, training, etc.), i.e. not grouped by activity, as would be the case in the United Nations system generally recommended Results Based Budgeting (RBB) approach.

<sup>2</sup> Of course, with the present programme structure, the Court could report on activities – nevertheless, this would have no effect on the budget process itself, which would continue to rely on financial appropriations proposed and approved by programmes/commitment items, not by activities.

<sup>3</sup> The Court notes that “*while the OTP is the engine of the Court, there are other mandatory activities with impact on the budget which can be determined by other stakeholders of the Court.*”

This budgetary structure has two practical negative consequences:

- (a) The “commitment items” approach does not allow for a direct and transparent reconciliation between budget appropriations and activities; and
- (b) Presenting the budget at the commitment item level implies an involvement of the CBF/ASP in micro-management issues.

## 2. The Court-wide budgetary coordination

### (a) *Respective roles of the Prosecutor and the Registrar*

14. Rule 101.1 of the Court's Financial Regulations states that compliance with the Court's financial rules is the responsibility of the Registrar in his capacity as the Court's administrative officer, including any arrangements that he may have to make with the Office of the Prosecutor pursuant to article 42(2) of the Rome Statute. Article 42(2), in its turn, states that “the Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof”.

15. In theory, rule 101.1 states that the Registrar is accountable for the presentation, implementation and reporting of the Court-wide budget. But the apparent contradiction with article 42(2) of the Rome Statute implies a very different reality: on the basis of the present literal interpretation of that article, the Registrar does not have any authority on OTP's budget preparation and management (Major Programme II), which represents currently one third of the Court-wide budget, and whose activity determines that of the other organs.

16. The Registrar has no real authority on the Principals or Heads in charge of the other Major Programmes. In budget matters, he can monitor his own budget proposals, and only try to exert an advisory role towards other Principals.

### (b) *An increased role of the Coordination Council (CoCo)*

17. In line with this remark, the above mentioned Internal Audit report on ICC budget process noted that “the main weakness which has been identified in the budget process relates to the lack of coordination and cooperation between stakeholders during the preparation of past budget proposals. Conflicting strategies by the different organs seem to be the main cause of evolving budget issues”.

18. The same Internal Auditor's report confirmed that the budgetary role of the Registry, in the budget preparation phase, was limited to a technical consolidation – “*all Major Programmes prepare and submit the budget data and narratives. The Budget Section consolidates the draft budget submissions for review by the Coordination Council (CoCo).<sup>4</sup> The CoCo agrees on the final data of the proposed budget and the Budget Section produces the final edition by making the approved corrections and changes. The Budget Working Group (BWG)<sup>5</sup> prepares the introduction for inclusion in the budget document and the Court's narratives. The Division of Management Services submits the final budget proposal to the Secretariat of the Assembly of States Parties*”.

19. The Internal Auditor concluded that “the CoCo is the body which ultimately agrees on the budget assumptions and on the overall budget proposal before it is finalized and submitted to the CBF and ASP for its consideration”.

<sup>4</sup> CoCo: Coordination Council, which brings together the Heads (often referred to as the “Principals”) of the three main organs (Judiciary, Office of the Prosecutor and Registry).

<sup>5</sup> The BWG is composed of the following members: Registrar (Chair), Director of DMS (Deputy Chair), *Chef de Cabinet* of Presidency, Senior OTP Manager and Chief of Budget Section. The BWG's primary role is to provide strategic leadership in the development of the Court's Proposed Programme Budgets. It assists in the promotion of a One-Court principle for the budget process. During that process, the BWG monitors identified and emerging risks and advises the Coordination Council (CoCo) on their prevention, mitigation and management, in particular, but not limited to issues of messaging to States and budget presentation to external stakeholders (“Budget Diplomacy”).

Following a recommendation of the 2016 Internal Audit report, the ToR for the BWG were formalized and presented by BS to OIA. The OIA confirmed implementation of its recommendation.

20. Taking into account the Internal Auditor's remarks on the lack of budgetary coordination, the CoCo's role in the budget preparation process has been strengthened since 2017. The improvements brought to the preparation process are described in detail in the 2017 Proposed Programme Budget (PPB) (ICC-ASP/15/10). Their general objective is, through the implementation of new "key steps" and more frequent internal consultations between the CoCo and the BWG, to promote, as much as possible, a common vision of the Principals on Court-wide budgetary proposals.

21. For the 2019 budget, document "2019 – Proposed Programme Budget - key dates detailed" identified a total of 31 preparation stages, which show that the major decisions (approval or coordination) are taken:

- (a) By the Registrar in 14 cases;
- (b) By the BWG (chaired by the Registrar) in 13 cases; and
- (c) By the CoCo in four cases.

22. The same document also shows that the four cases submitted for CoCo approval are those concerning the major budget elements which will be presented in the proposed budget document dispatched 45 days before the CBF summer session.<sup>6</sup>

23. Nevertheless, as far as the administrative teams are concerned, some interviews conducted by the External Auditor showed that a new approach was beginning to emerge, whereby two different interpretations of article 42(2) of the Rome Statute could be considered in order to reconcile the independence of the OTP with the Court-wide administrative responsibility of the Registry:

(a) Either, as is presently the case, OTP has its own support services, replicating on a smaller scale those of the Registry. During the clearance process of the present report, OTP strongly supported this view, reminding that "*Article 42(2) of the Rome Statute has a clear formulation: 'The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office' [...] The second sentence contains the verb 'shall have'. This is an imperative form, which leaves no discretion, other than that of the Prosecutor him/her-self, with respect to the authority over the management and administration of the Office [...]*"; or

(b) If a different interpretation of article 42(2) were to be retained, by a Prosecutor elected by States Parties<sup>7</sup> on the basis of a new legal analysis (which was mentioned by some interlocutors, but which is not within the competence of the External Auditor), OTP could be, independently from its Prosecutorial activities, and like Judiciary, TFV, Secretariat of ASP (SASP), etc., a "client" expressing its requirements to the support services managed by the Registry. In that case, like in most Courts over the world, the Registry would provide ICC's common services for all administrative tasks (including, in particular, Human Resources and budget management).

24. The first interpretation, which has prevailed until now, extends the principle of the independence of the Prosecutor to non-Prosecutorial administrative matters, and has three disadvantages:

- (a) This limits, in a relatively small Organization, the economies of scale that States Parties could legitimately expect from management;
- (b) This increases the risk of divergent interpretations between organs when implementing financial and staff rules to human resources<sup>8</sup> and budget policies. In that sense, it is obviously contrary to the "One Court" principle; and

<sup>6</sup> The key dates document is not a planning document listing exhaustively all decisions/actions. It is an information document used for calendar planning purposes. In fact, the CoCo meets more often than in the four cases listed in that document.

<sup>7</sup> It is interesting to note that in the above-mentioned response of the Office of the Prosecutor, it is stated that article 42(2) "leaves no discretion, other than that of the Prosecutor him/her-self, with respect to the authority over the management and administration of the Office". There exists therefore a discretionary power to interpret s. 42(2).

<sup>8</sup> This was already noted in last year External Auditor's report on Human Resources.

(c) This implies, by comparison with more integrated Organizations which were controlled by the External Auditor, a waste of time and resources devoted to coordination, regardless of the goodwill of the partners concerned.<sup>9</sup>

25. Several interlocutors mentioned to the External Auditor the possibility of an external evaluation of the Court in the coming months. In that case, the External Auditor considers that the evaluator should examine whether, while respecting the principle of OTP independence, article 42(2) of the Rome Statute effectively forbids the Prosecutor to accept the application of the principles of good management to the Court. In other words, does article 42(2) really forbid the Prosecutor to transfer to the Registry the responsibility for the Court's common administrative services, in particular with regard to Human Resources and budget management?

26. If the answer was no, it should be clearly expressed, and it would mean that the so-called "One Court" principle would remain a fiction.

**Finding:** In the budget preparation phase, the Registrar's responsibility, as the Court's administrative officer, is limited to the technical consolidation of all organs' proposals. Only the CoCo has the power to agree on the overall budget proposed to the ASP. Although the CoCo does not have legal power to impose a full convergence of the strategies of the different organs of the Court, its increased involvement in the budget preparation process since 2017 is, in the present interpretation of article 42(2) of the Rome Statute, an appropriate (and probably the only) way to improve Court-wide coordination compliant with the principle of the independence of the OTP.

The External Auditor is of the opinion that this matter cannot be dealt with internally (i.e. by the CoCo). This is why, exceptionally, its recommendation is directly addressed to the ASP.

**Recommendation n°1 (priority 1):** The External Auditor recommends the ASP to put on its agenda, in the context of an upcoming evaluation of the Court or through any other forum, the interpretation of article 42(2) of the Rome Statute, in order to clarify to what extent it forbids the Prosecutor to transfer to the Registry, acting as provider of shared services, accountability for common administrative tasks.

### 3. Monitoring by States Parties

27. According to article 112(1)(d) of the Rome Statute, the Assembly of States Parties shall "consider and decide the budget for the Court".

28. Approval of the budget is a basic role of Member States in all international organizations. But in the case of the ICC, as mentioned above, the ASP cannot take decisions on the Court's activities, objectives and priorities themselves, which are left to the independent Prosecutor. In other words, article 112(1)(d) only gives to the ASP, through budget approval, the legal right to approve or reject the budget proposals.

29. Nevertheless, this right gives to States Parties, like in any other organization, a real power to influence *de facto* the activities of the Court (or the level of such activities): this means that, through article 112(1)(d), the Rome Statute introduces a budgetary limit to the principle of the independence of the Prosecutor.

30. To exercise fully and in an appropriate way its budgetary responsibilities, the ASP:

(a) Created a Committee on Budget and Finance (CBF) (resolution ICC-ASP/1/Res.4 of 3 September 2002). Committees on Budget and Finance are common in most other international organizations. Their members are in most cases a limited number of delegations of member States, so that their recommendations do not need any additional facilitation process to be accepted by consensus. But in the case of the ICC, it is a 12 member Committee of "experts" independent from States Parties, elected for a three year renewable period by the ASP; and

<sup>9</sup> But OTP underlines that "the current structure properly reflects the legal framework and was designed having in mind previous experience in other international tribunals", and considers that "there are no duplications in the provision of support activities in the different organs".



(b) Commissioned the Hague Working Group<sup>10</sup> to oversee/facilitate the budget process, with a specific sub-group on budget issues (“HWG-Budget”). ICC’s HWG-budget is more similar to the Committees on Budget of most other organizations, insofar as its members are delegates of States Parties. The fact that ICC’s CBF, elected by the ASP, does not represent the States Parties as such, explains the uncommon fact that the HWG continues discussing the budget and making recommendations after the CBF has issued its own recommendations.

31. Furthermore, a practice has developed whereby a Hague-based Ambassador is appointed by the Bureau as the facilitator for the budget, on the recommendation of The Hague Working Group. The facilitator convenes informal consultations during the year with the aim of negotiating with all States Parties, and in coordination with the Court when adjustments of the budget proposal are needed, a draft resolution on the budget for the consideration of the Assembly. The ultimate objective is to come to a consensus, so that the ASP does not formally have to organize a vote on the budget. Another Ambassador has been appointed as “budget management oversight facilitator”. Both functions do not exist in most other international organizations.

32. A recent flowchart (document “2018 Budget Process”), designed to give to external parties a high level illustration of the ICC budget process, indicates the key dates of the budget preparation, with three milestones clearly linked with the date of the CBF summer session. These milestones are:

(a) “High level priorities and assumptions”, which must be provided by mid-March (and can be provided for information to the spring CBF);

(b) “Drivers and numbers”, provided by end of June; and

(c) A Court’s budget proposal with an executive summary provided by mid-July.<sup>11</sup> Each document to be distributed at these key dates is discussed and approved by the CoCo.

33. The last document (“proposed programme budget for year n+1 for the ICC”), based on the data provided at the previous stages, is reviewed by the CBF 45 days later, at the end of August/beginning of September. The CBF issues its recommendations in a report to the ASP, and the same proposal is further discussed by States Parties, at “HWG-budget” meetings chaired by the budget facilitator. In line with CBF’s and HWG’s recommendations, some of the figures in the tables annexed to the proposal are adjusted, so that a final resolution approving the budget bottom line for each Major Programme can be formally approved by the ASP at its annual session (end of November/beginning of December). Once the resolution is approved, some last adjustments are brought to the detailed tables showing the budget by organ/commitment item so that their total coincides exactly with the bottom lines approved by Major Programme. All the detailed appropriations are available in the Enterprise Resource Planning system (SAP) by the end of the year.

34. Through its recommendations, the CBF appears to be *de facto* the ultimate technical “coordinator” of the Court-wide budget: this aspect has been recently underlined in a document “common messages from the Court to the HWG” dated 11 October 2018<sup>12</sup> which notes that “*with its ultra-detailed line-by-line recommendations the CBF eliminates the possibility of actual flexibility in the implementation of the cuts and de facto interferes with the independence of the Prosecutor*”.<sup>13</sup>

<sup>10</sup> HWG: the Assembly of States Parties has a Bureau of 21 members which assists the Assembly in the discharge of its mandate mentioned in art.112, paragraph 3 of the Rome Statute. The Bureau established two working groups, The Hague Working Group and the New York Working Group, to assist the Bureau with matters referred to them.

<sup>11</sup> These key dates apply only since 2015, the involvement of CBF and HWG-budget in the budget preparation process increasing every year. Before 2015, there was no specific “executive summary” milestone. From 2010 to 2015, the “high level priorities and assumptions” were discussed by end of January until 2012. “Drivers and numbers” were discussed in March or April until 2013, and by mid-May since 2014. The budget preparation of the proposed programme budget now covers almost a full semester each year.

<sup>12</sup> This is an internal document, created for coordination purposes and not for official submission.

<sup>13</sup> This statement supposes that the HWG/ASP systematically follow the CBF recommendations.

**Finding:** In most UN organizations, budgetary discussions between the Secretary-General and a CBF composed of member States mainly focus on the objectives and appropriations per activities, and on the level of corresponding financial “envelopes” for each activity and sub-activity. Micro-management issues are rarely discussed, and the technical and political issues are both addressed in the recommendations issued by the CBF to the Council/Assembly, so that there is no need for a separate facilitation process.

In the case of the ICC, due to the “Major Programme/commitment item” budget structure, there is no direct coincidence between budget proposals and activities, so that:

(a) Detailed technical discussions and negotiations between the Court and a CBF composed of experts mainly focus on a line by line analysis of commitment items, often involving technical micro-management issues; and

(b) Once purely technical recommendations have been issued by the CBF, a facilitation process involving the HWG and further adjustments are necessary to submit to the ASP’s approval a consensual resolution.

#### 4. The “Basic Size” reference

35. In 2015, a report of the Court on the “Basic Size” of the Office of the Prosecutor (ICC-ASP/14/21) was presented to the ASP. According to the OTP, the definition of a Basic Size of the Office of the Prosecutor had two objectives:

(a) “To ensure that the OTP has the requisite resources to fully meet its mandate under the Rome Statute”; and

(b) “To offer States Parties a reasonably stable basis for budgetary planning”.

36. The principle was to present a stable size of the OTP for the foreseeable future, i.e. a size offering sufficient staffing to absorb new demands without having to postpone new investigations or to strip on-going activities so that staff could be assigned to the highest prioritized activities to the detriment of other operations.

37. This demand-based approach relied on the extrapolation of past experience and adjusted averages per activity per year, measured through seven activity parameters: number of preliminary examinations (nine per year), of new situations (one), of active investigations (six), of investigations pending arrest (nine), of pre-trials (five), of trials (five) and of final appeals (two).

38. For each activity, the model derived an estimate of the funds necessary to achieve the adequate OTP size to operate. The estimates included provisions for investments in technology, training and quality measures, as well as considerations for efficiency gains that would be sought in the process of achieving the Basic Size.

39. As far as budget funding is concerned, the end point of the Basic Size, excluding the effect of the UN Common System increases, was € 60.8 million for OTP (Major Programme II). The comparison between the Approved Programme II Budget and the Basic Size estimate from 2015 to 2019 is shown in the table below:

**Table 1: OTP Basic Size versus approved budgets (in € million)**

	2015	2016	2017	2018	2019
Approved Budget	39.61	43.23	44.97	45.99	46.80
Basic Size	42(2)0	46.09	53.10	60.60	60.80
<b>Difference</b>	<b>-2.59</b>	<b>-2.86</b>	<b>-8.13</b>	<b>-14.61</b>	<b>-14.00</b>

Source: ICC.

40. Provided the initial Basic Size model (i.e. its methodology and calculations) could be considered reliable,<sup>14</sup> and since, according to OTP, the objective was “to offer States

<sup>14</sup> Not being part of the budget process itself, the Basic Size model and calculations are not covered by the present audit.

*Parties a reasonably stable basis for budgetary planning*”, the difference between the Basic Size and the approved budgets could have been considered as a synthetic indicator of the efficiency of the monitoring of the OTP budget preparation/approval process by States Parties (the Basic Size being considered, in that case, as the “spontaneous” independent OTP budget proposal, before CBF recommendations and HWG negotiations).

41. But it is not the case: the table above shows that the gap between the Basic Size and the resources made available to the OTP through the approved budget stands at about €14 million in 2019, i.e. almost one third of the OTP’s approved budget. Such a large difference could in itself raise a doubt as to the relevance of a reference to OTP’s Basic Size for practical budgeting planning.

42. Moreover, subsequently, the CBF requested a Court-wide Basic Size document. A “final report of the Court on the Court-wide impact of the OTP Basic Size” was issued in 2016 (document CBF/27/10), with updated figures for OTP, and derived figures for the Registry. The following table can be drawn from this new report on Basic Size, which covers OTP and Registry, i.e. 85 percent of the Court-wide budget.

**Table 2: OTP and Registry Basic Size versus approved budgets (in € million)**

	2017	2018	2019
OTP Approved budget	45.0	46.0	46.8
OTP Basic Size	51.8	53.7	56.3
<i>Difference</i>	-6.8	-7.7	-9.5
Registry Approved budget	76.6	77.1	76.7
Registry Basic Size	82.4	89.6	91.1
<i>Difference</i>	-5.8	-12.5	-14.4
OTP + Registry Approved budget	121.6	123.1	123.5
OTP + Registry Basic Size	134.2	143.3	147.4
<b>Total Difference</b>	<b>-12.6</b>	<b>-20.2</b>	<b>-23.9</b>

Source: ICC.

43. According to the written comments given to the External Auditor with document CBF/27/19, the aim of the new Basic Size document was:

- (a) To explain “*the impact of the OTP-driven model on the Court as a whole*”; and
- (b) To offer “*useful for modelling but not for budgeting purposes*” tools – i.e. implicitly, the aim could no longer be “*to offer States Parties a reasonably stable basis for budgetary planning*”.

44. The third chapter of this report (budget approval) shows that the actual ICC budgeting process and its monitoring by States Parties rely indeed on a largely different approach.

**Finding:** Any attempt to compare the figures resulting from the “Basic Size model” and the approved budgets makes no sense. With a €24 million gap between the two approaches in 2019 (representing 20 percent of the OTP and Registry approved budget), the External Auditor considers that the Basic Size “OTP-driven model” gives a very detailed and useful description of the link between OTP’s activities and the activities of the rest of the Court (in particular, of the Registry), but appears to be, as far as derived costs are concerned, objectively not realistic as a financial model, and useless for budget planning purposes.

## 5. Office of the Prosecutor's assumptions and parameters

45. As said above, the process to prepare the budget proposal is based on three successive steps: defining "high level priorities", setting "drivers and numbers", and establishing an "executive summary" (this third step is a formal endorsement of decisions taken at previous steps), so that a "proposed programme budget" can be published by mid-July.

46. In recent years, the budget facilitator conveys to the Court Principals, before the internal budget process for the following year starts, some informal indications on the States Parties' budgetary expectations. Such informal preliminary targets (generally based on a Zero Nominal or Real Growth approach – ZNG or ZRG) are common to most UN organizations.

47. The first formal internal step takes place at the beginning of March – the BWG prepares a document defining "high-level priorities" of the Court for the following year. The document is discussed and finalized by the CoCo by the end of March.

48. High level priorities are largely based on the Office of the Prosecutor's (OTP) own "assumptions and parameters" for the following year, which are generally considered as the basic "driver" for the Court-wide budget.

### (a) Method

49. The assumptions and parameters are a description of OTP's expected activities during the next fiscal year, resulting from the provisional "judicial timeline". A distinction is made between "pending cases" and "on-going judicial activities". The corresponding data are presented through "narratives", i.e. a mix of figures and comments, which do not lead to any synthetic financial presentation by cases and/or Prosecutorial activities. Nevertheless, an analysis of the narratives provided with the budget proposals for the recent years shows that:

(a) Pending cases are mainly measured through a set of seven items, i.e. the number of preliminary examinations, of open situations, of investigations, of field presence, of persons under protection, of victims and of working languages; and

(b) On-going judicial activities are mainly measured through another set of seven items, i.e. the number of appeals, of detainees, of hearings of persons under investigation, of courtrooms in use, of hearing days, of witnesses and of working languages.

### (b) Reliability

50. Although the lists of items for evaluating the workload of pending cases and of on-going jurisdictional activities have varied through time, the External Auditor tried to follow their evolution (in terms of assumptions and actual data).

51. The recording of actuals versus budgeted assumptions was not collected in a structured manner prior to 2012, as the Court was in the early stages of its operations and did not have the infrastructure, systems or resources in place to capture such analytical information. As a consequence, the input in the tables below related to assumptions/actuals is limited to 2012 onwards, i.e. when the Court began reporting to the CBF. First figures are the assumptions and second figures are the actual data (except for 2019, actuals not being known at the time of the audit).

52. Assumptions on pending cases:

**Table 3: Pending cases – assumptions versus actual**

<i>Year</i>	<i>Preliminary examinations</i>	<i>Open Situations</i>	<i>Investigations</i>	<i>Presence in the field</i>	<i>Persons under protection</i>	<i>(including witnesses)</i>	<i>Victims</i>	<i>Languages</i>
2012	-	-	-	5(+1*)	- /427	82	14,400/2,400	-
2013	8/8	7/8	7/8	6(+1*)	- /574	83	14,250/4,288	36/30
2014	8/11	8/8	5/6	6(+1*)	- /650	- /110	4,800/2,455	28/30
2015	8/9	8/8	6/4.5	7(+1*)	- /616	- /112	2,800/3,391	13/14
2016	9/10	8/9	5/6	7(+1*)	660/428	- /75	3,500/4,845	21/24
2017	10/10	11/11	6/6	8(+1*)	575/518	110/86	7,100/4,109	22/26
2018	8-10/11	10/11	6/7	7(+1*)	500/548	100/130	7,400/5,624	29/32
2019	9/?	11/?	8/?	7(+1*)	450/548 (to date)	90/130 (to date)	7500/?	29/?

\* Bunia in DRC.

Source: ICC.

53. This table shows that during the 2013-2019 period, there is only a very slight increase in terms of the number of preliminary examinations and open situations, and that for preliminary examinations, open situations and investigations, the assumptions proved to be quite reliable even if they were sometimes slightly under-estimated.

54. The number of victims is linked not only (or primarily) to the OTP activity. More importantly, OTP considers it could be misleading to draw generalized conclusions stemming from these figures as each situation, each investigation, each case, each field office and so forth entail a different nature and level of activity and therefore a different set of costs, depending on the exact stage and specific requirements particular to that situation/investigation/case/field office etc. The only generalized conclusions that can be made are 1) on the trends of these numbers themselves; 2) on whether these figures have materialized or not, assumptions versus actuals.

55. Assumptions on on-going jurisdictional activities:

**Table 4: On-going judicial activities – assumptions versus actual**

<i>Year</i>	<i>Appeals</i>	<i>Use of Courtrooms</i>					
		<i>Detentions (Number of cells)</i>	<i>Accused auditioned</i>	<i>Number of rooms</i>	<i>Hearing days</i>	<i>Number of witnesses auditioned</i>	<i>Number of languages (Courtroom)</i>
2012	-	6/12	5/5	1/2	123	59/20	-
2013	2/2	6/12	5/8	1/2	152	29/42	30/36
2014	4/2	6/6,12,20	11/14	1/2	215/148	50/25	5/4
2015	1/2	12/12	12/15	1/2	200/110	43/37	6/10
2016	1/1	6/6	11/12	3/3	465/276	100/97	9/10
2017	2/6	6/6	9/9	2/2	440/298	81/134	10/10
2018	9/8	6/6	9/9	2/2	400/93	132/39	9/9
2019	5/-	6/-	8/-	2/-	294/-	103/-	10/-

Source: ICC.

56. This second table shows:

(a) Significant variations during the 2012-2018 period – from which no clear trend can be deduced, which is in line with similar findings above;

(b) From 2014 to 2018, the assumptions on the number of hearing days each year were largely overstated due to the circumstances that were unforeseen at the time of the budget submission;

(c) The assumptions on the number of witnesses auditioned has been often significantly over or under-stated; and

(d) The other assumptions have been reliable.

57. The difference between budgeted assumptions and actual figures is also reflected in the actual expenditure of the Court and in the Contingency Fund notifications issued by the Court. For example, in 2018, the Court under-implemented € 4 million (€1.7 million in general operating expenditures and €2.3 million in General Temporary Assistance (GTA)) as a result of the decrease in the number of actual hearing days and witnesses appearing before the Court. At the same time, this underspend allowed the Court to absorb the unforeseen expenditures stemming from Contingency Fund notifications (€2,355.0 m). In 2015 and 2017, the Court faced additional unforeseen activities, which were included in CF notifications submitted to the CBF for a total value of €5.36 million and €1.53 million respectively. For those two years, the Court was not able to fully absorb all CF expenditure, it implemented in full the regular budget and accessed the Contingency Fund. The Court regularly reports on these matters to the CBF.

58. In 2016, the Internal Auditor attempted to assess in a more analytical way the reliability of OTP's forecasts: according to its report, *"an assessment of the assumptions and parameters was part of the audit work. A review was conducted of the actual assumptions included in the narratives of the budget proposals for the years 2012-2016 and the tables in the budget performance reports comparing the assumptions to actual data"*.

59. This work led the Internal Auditor to identify various shortcomings (changes in parameters over time, non-exhaustive assumptions, inconsistencies between texts and tables, incorrect calculation of the number of sitting days of the chambers, presentation of "provisional" forecasts in the final budget document, etc.).

60. The Internal Auditor concluded in 2016 that "the Budget Section, in its more strategic role, should dedicate sufficient resources to test the assumptions and parameters for accuracy and clarity, and ensure that they are sufficiently measurable. Furthermore the Budget Section should oversee the consistent application of the assumptions and parameters across the Court and provide advice accordingly".

61. The External Auditor doubts that, given the principle of independence of the Prosecutor, the Budget Section, which is a small team within Registry/DMS, could have sufficient authority and jurisdictional skills to check and challenge OTP's assumptions. That is why he does not endorse the Internal Auditor's recommendation.

(c) *Relevance*

62. Concerning OTP's assumptions and parameters, the External Auditor considers that their quantitative relevance in the budget preparation process is a more important issue than their accuracy.

63. In this respect, in its 2016 report, the Internal Auditor also raised some doubts, considering that "the spending cycles of the OTP and Registry are much different. The impact on Registry's resources is significant once cases are actually in front of the Court (such as an increase in resources for victims, witnesses, legal aid, Field Offices and outreach) and this effect continues for years". According to this analysis, although over time, Prosecutorial activities are always at the origin of all Court-wide activities, OTP's specific assumptions for the following year do not necessarily "drive" the evolution of the following year's Court-wide budget.

64. In an internal document "common messages of the Court to the Working Group on the Budget" dated 11 October 2018, OTP itself questioned the existence of a direct budgetary link between its own assumptions and the evolution of the Court's financial needs. Disagreeing with the CBF's perception that the Court's activities were decreasing, OTP put forward the following argument: *"there are cases when even if the OTP reduces activities (like Georgia or Mali) where additional support is requested"*. OTP also noted that *"courtroom activities are not a good measure of the level of Court-wide activities. There is an increase of activities in the field (in particular with TFV reparations and also assistance)"*, etc.

**Finding:** The External Auditor considers that the narratives on OTP's assumptions and parameters, while remaining paramount political information for States Parties, because they represent the basic purpose of the ICC as an organization, cannot obviously be considered, technically, as a reliable financial driver for Court-wide budget appropriations: the real budgetary function of these assumptions is not to derive the budget appropriations, but to check, where possible, the consistency of the various expenditures, provided by each organ through the "drivers and numbers" analysis, with the evolving activities of the Court.

## B. Proposed budget for non-staff expenses

65. The "drivers and numbers", provided by the BWG around mid-March (2<sup>nd</sup> milestone of the budget process), are discussed by the CoCo in April in order to prepare the budget proposal of the Court to be finalized by mid-July and discussed by the CBF at its autumn session.<sup>15</sup>

66. For non-staff expenses, the "drivers and numbers" are based on a very classical budget preparation process, which consists in updating previous year's appropriations for each commitment item.

67. To update the budget numbers for non-staff appropriation proposals, after the CoCo has approved the Court-wide "high level priorities":

(a) The Budget Section centralizes the *service requests* sent to the Registry by the sections and divisions of the organs for each Major Programme: it is assumed that these service requests will reflect the expected increase or decrease of activity for each section of each organ, so that previous year's levels of appropriations can be adjusted accordingly; and

(b) Based on these requests (as provider or recipient) and on previous year's appropriations, every section adjusts its own proposals, taking into account since 2018, through a process initiated by the CBF in 2016, "*approved savings and efficiencies*."

### 1. Service requests

68. For the service requests process, the description made in the 2016 Internal Audit report remains valid: "all Major Programmes prepare Service Requests, specifying the level and type of assistance required from the various Registry offices [...] The cost drivers derive from the OTP and Chambers and indirectly from the Registry (established through the service requests) and include the number of investigations and trials and other activities, with the priority on trials. This discussion results in a so-called "basic package" which is the foundation for the budget assumptions. The basic package discussions start off with the previous year's budget to which changes are incorporated depending on trial activity expectations."

69. Service requests are distributed among – service requests "other Major Programmes to Registry", and requests "Registry to Registry". The External Auditor reviewed, for each type, a copy of a recent request.

70. The template issued by an organ external to the Registry, was a request for service from OTP to the GSS (General Services Section). The services requested are expressed in physical quantities and not in amounts (such as: 850 car trips within The Hague with driver for the Prosecutor, 25 changes of premises for section staff, 300 acts of purchase, etc.), with an indication of the standard level of satisfaction expected (e.g. 97 percent for the Prosecutor's trips). The External Auditor asked on what basis the calculation of the budgetary cost of such a request was made. The answer is: "*the numbers given in the request serve to provide indicators for the levels of requests expected from OTP and other parts of the Court. Rather than using the service requests to make a zero based calculation for the budget proposal, they are used to identify, in advance, any major increase or decrease in expected services from the previous year. Thus, proposals can be adjusted or maintained at the same rate*".

<sup>15</sup> The first CBF session, which takes place in April, is given information on OTP's assumptions and parameters, but does not discuss matters linked with the following year's budget.

71. The Registry's internal template was a budget request addressed by the Division of External Operations (DEO) to the General Services Section. The boxes corresponding to the services required are ticked, but do not give any indication on volumes. The usefulness of this form did not seem obvious to the External Auditor, who asked how GSS or Budget Section could evaluate a budget in the face of an unquantified physical request. The answer is: *"while it is true that quantities are not always included in the various requests for services, the requests do provide the information that the services will be required. This enables GSS to calculate the level of services required based on previous experience"*.

72. Two more general indications were given to the External Auditor's questions concerning the accuracy and effective impact of the service requests procedure:

(a) On technical accuracy: "there is no direct formula linking services requirement and input in the budget requests templates. The information is used to estimate the variable workload and determine if services can be delivered within existing capacity or if additional resources are needed"; and

(b) On effective financial impact on budget proposal: "while the completion of the service requests represents only a small part of the overall workload of the budget exercise, it is nonetheless an important tool that provides the receiving sections with information for them to assess whether or not they have existing capacity to meet the requirements or will need to request additional resources. As the service requests are used primarily for non-staff costs resources, their overall portion of the budget is relatively small in comparison to the proportion for staff resources."

73. The External Auditor considers that the present process of basing non-staff budget proposals on an update budget proposals through service requests is purely incremental, and might, over time, lead to undetected deviation.

74. During the clearance process, the Registry made the following remark: "The Court's budget process already includes zero-based budgeting elements for many of its resource requirements. For example, in relation to staff costs, all temporary staff positions are approved on a yearly basis and are required to be fully justified in every budget proposal, even if a position was approved in a preceding year. The same goes for non-staff costs, such as travel, contractual services or equipment, which are reviewed by the Committee on a yearly basis and must be justified by the Court based on the needs identified for the following year, and not using the previously approved budget level as a basis."

75. During the clearance process, the OTP made the following remarks:

(a) "During the interview, the OTP Senior Manager explained how the Service Requests are created and discussed, both internally to the OTP and with the Registry's counterparts. He considers that, while it can be said that – in the past – communication between the organs was far from optimal, in recent budgets' preparation the service requests process has been greatly improved;

(b) The BWG agreed to make available previous years' actual figures for the implementation of the different requests to adjust the next submission, extrapolate trends and review the demand in each area of service. The BWG considers that adjustments are not incremental. For instance, the number of potential witnesses coming to testify at the Court during trials has been revised in different occasions, based on previous experience as well as on the developments of the trials involved. The same is true for protection measures requested in each situation; and

(c) Similarly, the requests for support in the field (e.g.: office space and work stations, vehicles and drivers availability, and type of OTP staff to be accommodated) are calculated each year based on the specific needs foreseen for the operations to be conducted in the next budget period. For the 2020 PPB, a blank template was circulated to the investigation teams to complete with their assessed requests. The Head of ID Planning and Operations Section, together with the Senior Manager reviewed and amended the results before submitting the requests to the Registry".

76. While taking due note of the additional explanations provided by the Registry and the Prosecutor, the External Auditor notes that each new annual budget proposal is mainly the result of an adjustment of the previous year's appropriations based on elements that are



rarely quantified, which is a much more additive than subtractive method, and which results in an overall increase of proposed appropriations, regardless of the Court's actual workload.

**Finding:** The service requests process allows a pragmatic adjustment of previous years' appropriations in order to build the budget proposal. But its accuracy and scope are limited. This approach should be combined with the examination of the appropriations themselves, and not just the increments.

**Recommendation n°2 (priority 1):** The External Auditor recommends that, when preparing yearly budget submissions, the Court 1) should continue to take into account incremental adjustments of current appropriations levels through the service requests process in relation to the preceding year, 2) but also, in a comprehensive "zero-based budget" approach, should question the nature of those appropriations in and of themselves, in order to avoid a gradual drift in budget appropriations.

## 2. Savings and efficiencies

### (a) Method

77. At its fifteenth session, in November 2016, the Assembly of States Parties requested that budgetary increases be proposed only after all possible steps have been taken to finance them through "savings and efficiencies", i.e. direct or indirect cost reductions. Savings and efficiencies have become in the recent years an important part of the discussions between the Court and the CBF during budget preparation.

78. At first sight, such an approach could be interpreted as equivalent to the Zero Real Growth (ZRG) budgetary target commonly pursued by other UN organizations: supposing all budget increases were financed by efficiencies and/or savings, the only budgetary variables from one year to the next would be the inflation rate and the correlated UN Common System salary increases.

79. But it is not the case at the ICC, for three reasons:

- (a) New requests are not always financed by "savings and efficiencies";
- (b) In some cases, savings and efficiencies are not effective cost reductions, but simply virtual expenses presented as avoided, and they have no material impact on the current budget baseline; and
- (c) The "savings and efficiencies" approach is not directly applicable to staff costs (except in the exceptional case of staff reductions), which represent about three quarters of the Court-wide budget.

80. The savings and efficiencies approach to financing budget increases has been applied for the first time to the 2018 Programme budget. In the 2018 budget, a distinction was made between four sources of savings: process improvements, technology, staff time and training resources.

81. Based on that distinction, annex X to the 2018 approved budget discloses the savings and efficiencies realized in 2017 and expected in 2018, from which the following table can be drawn.

**Table 5: Savings and efficiencies in 2017 and 2018 (in thousand euros)**

	<i>Achieved in 2017</i>	<i>Expected in 2018</i>
Process improvements	1,646.7	1,985.6
Technology	82.4	98.2
Staff time	312.1	372.2
Training resources	84.4	134.4
<b>Total</b>	<b>2,125.6</b>	<b>2,590.4</b>

Source: ICC.

82. In April 2018, the CBF decided to change its approach. A new distinction replaced the previous one, with four types of savings and efficiencies: savings, efficiencies, non-recurrent cost reductions and additional cost reductions, and a new column was added to the annex, showing their effect (or absence of effect) on the budget baseline. Annex XI of the 2019 approved budget provides the following figures.

**Table 6: Savings and efficiencies in 2018 and 2019 (in thousand euros)**

	2018	2019 impact to baseline	2019 costs avoided (baseline maintained)
Savings	516.2	726.5	162.0
Efficiencies	111.6	-	243.9
Non-recurrent costs	-	407.7	-
Additional cost reductions	-	2243.7	-
<b>Total</b>	<b>627.8</b>	<b>3377.9</b>	<b>405.9</b>

Source: ICC.

83. In order to have a more precise estimate of the impact of this recent savings and efficiencies policy, the External Auditor asked DMS to provide figures for the following table:

**Table 7: Impact of the savings and efficiencies policy in 2017-2019 (in thousand euros)**

Year	Organ	Budget	New resources	Non recurrent costs	Additional Cost Reductions	Total savings and efficiencies
2017	Judiciary	12,536.0	105.4	n/a	n/a	28.6
	OTP	43,974.2	1,740.5	n/a	n/a	367.7
	Registry	76,632.6	3,873.4	n/a	n/a	1,724.7
	<b>Total</b>	<b>134,142.8</b>	<b>5,719.3</b>	<b>n/a</b>	<b>n/a</b>	<b>2,121.0</b>
2018	Judiciary	12,712.0	176.0	n/a	n/a	18.0
	OTP	45,991.8	1,017.6	n/a	n/a	426.2
	Registry	77,142.5	509.9	n/a	n/a	2,091.6
	<b>Total</b>	<b>135,846.3</b>	<b>1,703.5</b>	<b>n/a</b>	<b>n/a</b>	<b>2,535.8</b>
2019	Judiciary	12,107.6	(604.4)	369.4	-	369.4
	OTP	46,802.5	810.7	-	-	300.5
	Registry	76,651.2	(491.3)	18.3	2,243.7	2,686.0
	<b>Total</b>	<b>135,561.3</b>	<b>(285.0)</b>	<b>387.7</b>	<b>2,243.7</b>	<b>3,355.9</b>

Source: ICC.

84. In the above table, “new resources” are defined as the variation between two years’ approved budgets. “Non-recurrent costs” are used primarily as an indicator to determine the comparison baseline between two years.<sup>16</sup>

85. Globally, the ratio of efficiencies and savings compared to the approved budgets has been increasing in time (1.65 percent in 2017, 1.87 percent in 2018 and 2.19 percent in 2019). One could have expected the reverse situation: answering to a question of the External Auditor on the CBF request for Court-wide efficiency targets, the Court pointed

<sup>16</sup> Although some recurrent costs can be fixed costs, the notions of “recurrent” and “fixed” costs are not identical. The only domain where a fixed/semi-fixed/variable cost is applied at ICC is for IT costs (where they are named respectively running, growing and transforming costs). Apart from that specific case, ICC does not refer to fixed/variable costs for budget planning, and has no tool to evaluate them Court-wide.

out that “efficiencies are subject to the law of decreasing returns. In time, there will be no room for further efficiency gains”. So that increasing figures during the past three years can either mean that the first attempts to find efficiencies/savings were incomplete<sup>17</sup> and left much room for more efficiencies/savings, or that a part of the reported savings/efficiencies are artificial, formal or virtual, and can be created at any time. Since the Court states, in the same answer, that there is no room even for a suggested Court-wide 1 percent efficiency target “except for sections with large non-staff budgets”, the last explanation appears to be more credible.

86. Savings and efficiencies can exceed budget increases: for the three organs, the efficiencies/savings represent 37 percent of the budget increase in 2017, nearly 150 percent in 2018, and in 2019, although the “new resources” (i.e. budget increases) are presented as slightly negative, almost €3 million were said to be financed by efficiencies/savings.

(b) *The “savings and efficiencies” process*

87. Each section identifies its savings and efficiencies and submits them to its Director for approval. The budget section checks the amount of each approved saving or efficiency.

88. Identification of savings and efficiencies by the sections is a permanent process. The cross-organs facilitators organize each year a workshop to invite all sections to identify new savings and efficiencies. The last workshop took place in February 2019.

89. The budget proposals entered by each section in the BPS application during the preparation of the annual budget do not refer to the approved savings and efficiencies: when they impact the baseline, the budget proposal is directly reduced accordingly.

90. Even when savings have been identified, new needs can lead to net budget increases.

(c) *Detailed tests on a sample of 10 savings and efficiencies (2019 budget)*

91. Following a review by the Budget Section, Directors sometimes amend the savings identified by their sections. For instance, the reduction of travel costs due to the audition of witnesses in Field Offices instead of Headquarters has been approved for €85.3 thousand in 2018 and in 2019, whereas the initial proposals achieved the savings at €12.5 thousand in 2018 and at €215.2 thousand in 2019. One of the “2019 costs avoided”, resulting from a re-negotiation of the licenses for SAP, was approved for an avoided cost of only €102 thousand for maintenance, whereas the section had proposed “avoided cost of €692.3 thousand” for licenses for the duration of the contract, which covered more years than just 2019.

92. Inversely, the risk of an overstatement of the approved savings and efficiencies, when they have an impact on the baseline, is low. This might also explain, for the past three years, the fact that the law of diminishing returns is not observed.

93. In some cases, the supporting documents for the approved savings and efficiencies are neither clear nor complete. For instance, the efficiencies of €14.8 thousand in 2018 and in 2019, due to an additional functionality added to the Financial Planning and Control (FPC) Portal-Online Request System, or the efficiency of €126 thousand in 2019, due to a new Management Information System (MIS), are not supported by precise arguments. There are standard templates as mentioned by OTP in comment on the draft report, but they are not used by all in a standard manner, and “this can lead to grey areas and could be improved”.

94. The outputs and figures mentioned in the annex to the proposed budget document dedicated to savings and efficiencies are of very different natures:

(a) The “2019 impact to baseline savings” (€ 726.5 thousand) are the only “genuine” savings;

(b) The savings “2019 costs avoided (baseline maintained)” (€162 thousand) report “normal” management decisions (a renegotiation of contracts with SAP, the

<sup>17</sup> The External Auditor noted that, in some cases, the savings impacting the baseline proposed by the sections were not approved by the Directors, to avoid significant reductions of their Division’s appropriations.

implementation of a new storage system of the archives, the transfer of staff trainings from Headquarters to Field Offices, etc., are usual management issues). Reporting such initiatives to the directors may be a way to highlight internally the effort to implement good practices, but it does not make much sense to present common management acts as “savings” in a budget proposal to States Parties;

(c) The same can be said about efficiencies “2019 Costs avoided (baseline maintained)”, which amount to €243.9 thousand, and correspond in nearly all cases to the development of computer applications allowing a reduction of the working hours dedicated to some tasks. In that domain, the only efficiencies worth mentioning should provide for effective staff reductions;

(d) Non-recurrent costs reductions (€407.7 thousand) correspond to previous year’s appropriations which are no longer needed in the 2019 proposed budget for contingent reasons. For instance, new Judges were elected in 2018, implying non-recurrent costs amounting to €310 thousand, which have no longer to be incurred in 2019. This information is not a genuine cost reduction resulting from an effort of any kind;

(e) Most of the “additional cost reductions” (€2,243.7 thousand) correspond to the consequences of an expected decrease of activities. In 2019, for instance, the Victims and Witnesses Section (VWS) foresees a reduction of the number of witnesses under protection, decreasing the baseline for €109.4 thousand, and the Language Services Section notes that funds needed to pay the interpreters for hearings at Headquarters or in the Field Offices will decrease by €185.8 thousand in 2019. These statements do not correspond to genuine savings; and

(f) One could consider that the highest cost reduction shown in annex XI, concerning a decrease by €1,717.4 thousand of the Victims and Witnesses Section (VWS) general operating expenses is an efficiency rather than a saving. According to the supporting documents, the main origin for this reduction is the *ReVision* project, which resulted in an increased grade for the Heads of Field Offices offset by an improved cooperation between Headquarters and Field Offices, allowing a decrease in the number of missions.

95. The External Auditors findings and recommendation on savings and efficiencies (see below) have given rise to the following comment from the OTP, which we reproduce in full:

(a) *“The presence of a Principal to the launch of an inter-organ workshop is always welcome and does underline the importance that the exercise has for the Court. The substance of the exercise is, however, important as well. The Court has established an inter-organ working group with a Committee that is in charge of the actual implementation of the process each year;*

(b) *Standard templates have been developed and are used across the Court. In the intranet site managers and staff can find the list of efficiencies and savings measures already implemented and the guidelines concerning what can be considered a saving as opposed to efficiency;*

(c) *The definition of the different types of savings and efficiencies has been discussed and agreed with the CBF during the workshops held in occasion of the CBF sessions. Managers at the Court have identified savings and efficiencies along the agreed guidelines and definitions;*

(d) *The Principals have already embraced the continuous improvement approach. And this approach has been adopted and implemented through the inter-organ Working Group on Savings and Efficiencies. The “top down” approach mentioned by the Cour des Comptes sounds like the “target” alluded to by some States;*

(e) *As discussed in several occasions with the CBF and the HWG, the level of savings and efficiencies achievable depends greatly on the activities performed by each organ as per their respective mandates. Where staff are involved, processes are under review. Efficiencies rather than savings can be achieved. All organs work in this direction;*

(f) *Savings tend to be easier to identify in procurement of goods and service. This area is under the responsibility of the Registry, and as such included in its budget. As*

*the Registrar said in his presentation of the Registry's Strategic Plan, the review of the processes will show the degree to which the affected areas can be improved. Setting any target before the exercise is completed would be premature;*

*(g) Last but not least, staff reduction contingency plans have been recently discussed in many UN agencies as a consequence of consolidation and/or reduction in activities. International ad hoc tribunals such as the ICTY and the ICTR have undergone a downsizing process that led to the creation of the residual mechanism (MICT). The reason for that is that the mandate of those tribunals is completed;*

*(h) The International Criminal Court is a permanent tribunal. It is at the beginning of its life, not at the end of its cycle. The situations and cases demanding the intervention of the ICC are numerous and not declining in number. In the budget process, in compliance with the resolutions of the ASP, the organs of the Court always look at measures to absorb emerging needs within the existing resources before asking for new additional funds;*

*(i) When activities are completed, the resources are redeployed to other tasks. In some instances, they are discontinued. For example, when the DRC case reached the trial phase, the contracts for the GTA language team for the DRC situation were terminated. Similar cases can be found in the Registry; and*

*(j) In conclusion, when discussing the assumptions for the next budget, if the net effect of the activities related to new situations and cases vs. the activities related to situations and cases that are completed leads to a lower resource level, the Principals can look into measures to reduce the staffing levels. This has not been the case so far. However, through its Staff Regulations and Rules and its broader regulatory framework, the ICC has the instruments to address a situation where a reduction in staff may be needed. In light of the current reality of the Court staff reduction is not – and should not be the primary goal of the saving exercise.”*

#### **Findings:**

*(a) The savings and efficiencies process is a “bottom-up” approach limited to non-staff expenses, whereby the sections are invited to look permanently for savings and efficiencies. An annual workshop is organized by the budget section to revive the process;*

*(b) Supporting documentation for approved savings and efficiencies is not always clear and complete;*

*(c) Annex XI to the 2019 budget was based on an improved classification of the savings and efficiencies compared with the previous budget. Nevertheless, only savings impacting the baseline appear to have real budgetary informative value; and*

*(d) As a rule, savings and efficiencies do not result in staff reductions.*

#### **Recommendation n°3 (priority 2): Concerning savings and efficiencies:**

*(a) the launching of the annual workshop on savings and efficiencies should be chaired personally by the Registrar;*

*(b) standard templates should be more widely used to support proposed and approved savings and efficiencies, disclosing the baseline level, the proposed and the approved amounts saved and the precise origin and nature of the saving (cut of existing cost or potential cost avoided);*

*(c) the annex to the proposed budget document dedicated to savings and efficiencies should only refer to those which result from genuine managerial initiatives and have an impact on the baseline; and*

*(d) a symmetric “top-down” approach, initiated every year at Principals level, and giving rise to an organized challenge with lower levels (i.e. Divisions and Sections) should be designed and implemented for staff limitations.*

## C. Proposed budget for staff expenses

96. In terms of proposed budget appropriations for the following year, the savings/efficiency policy and the service requests process have a common characteristic: they have little or no impact on the volume of the ICC's workforce.

97. The preparation of the proposed budget for staff expenses is based on a very different process.

### 1. Budgeted staff

98. Irrespective of not being part of the UN system, the ICC decided from its inception to participate in the United Nations Joint Staff Pension fund (decision ICC-ASP/1/Dec.3, 9 September 2002). One of the conditions that make an organization eligible for membership to that fund is to apply the UN Common System of salaries, allowances and benefits.

99. In the UN Common System, staff budget calculations are not based on actual staff and payroll, but on budgetary Headcounts (i.e. a definite number of positions associated with corresponding functions and grades), to which standard UN costs are applied.

100. According to these common rules, budgeted staff is, in all UN organizations, based on two headcounts – one for “established” posts, and one for “general temporary assistance” (GTAs).<sup>18</sup>

101. By the end of April/beginning of May, each section is invited to enter in the BPS software its headcount proposals for both categories, and to prepare, using templates available through a specific SharePoint site, the narratives justifying the evolution or the renewal of the proposed staff budget. These proposals and narratives are checked/modified by the Directors and by the Principals of each organ, so that the BWG and the CoCo can have a full picture of the “drivers and numbers” by the end of June.

102. Concerning the established posts, a standard UN budgetary tool is applied to prevent over-budgeting, when it can be expected that a number of posts will remain vacant during the year. Instead of looking at each post individually, a total cut is applied to all posts, relying on the total number of vacant posts that can be expected next year, based on past trends. All established posts are discounted based on the estimated vacancy rate (“VR”) set for each Major Programme at the start of the budget exercise.

103. As the global Vacancy Rate (VR) budget reduction relies on global staffing tables, the financial impact of each actual individual vacancy during the year will always be different from the budgeted vacancy: if senior professional posts are filled and the proportion of vacant GSOL<sup>19</sup> posts is higher than the budgeted proportion of GSOL posts, then the actual costs savings from these vacancies will automatically be less than the budgeted VR figure (leading to under-budgeting). The VR is a high level budgetary tool and not a precise forecast, which brings a certain level of risk for either over or under-budgeting.

104. While this tool is a good budgetary practice to prevent what would automatically lead to over-budgeting of established posts, it can be conceptually difficult to understand for external stakeholders: lowering a high VR of a previous year in order to reflect a lower number of vacant posts as a result of increased recruitment efforts, leads to significant budget increases, but the CBF and the ASP are more easily convinced of the necessity to use the tool when it leads to a reduction of the budget than when it leads to an increase.

105. 2018 is the most recent year for which a comparison between budgeted and actual VRs was available at the time of the audit. The following table indicates the budgetary impact of the under- or over-estimations for each Programme for that year. It shows that globally, the VR over-estimations exceeded under-estimations, leading to a global under-estimation of the approved budget of about €28 thousand, i.e. 1.07 percent of the Court-

<sup>18</sup> The budget for staff costs also covers overtime and temporary assistance for meetings (TAM) – the total cost for 2019 (€1,2 million) is ignored in the following development.

<sup>19</sup> General Service - Other Level.

wide approved staffing budget. The largest discrepancies occur in small organs (SASP, STFV and IOM<sup>20</sup>), for which a limited number of unexpected vacancies can have an important impact on the VR, and hence, on the Programme budget itself.

**Table 8: Impact of differences between budgeted and actual Vacancy Rates in 2018 (in thousand euros )**

<i>MP</i>		<i>Budgeted VR</i>	<i>Actual VR</i>	<i>Budgetary Impact</i>	<i>Approved Staffing Budget</i>
MP-I	Judiciary	5.0	5.7	(41.2)	5,594.9
MP-II	OTP	8.0	6.3	589.4	31,897.1
MP-III	Registry	10.0	8.4	826.1	46,465.9
MP-IV	SASP	10.0	0.0	104.8	943.2
MP-VI	STFV	10.0	44.4	(429.6)	1,124.0
MP-VII-5	IOM	0.0	25.0	(121.4)	485.4
MP-VII-6	OIA	0.0	0.0	-	531.5
				<b>928.1</b>	<b>87,042.0</b>

Source: ICC.

106. The External Auditor asked for a complete series of the planned/actual VRs since 2003, with their budgetary impact but DMS could only provide the data from 2009 onwards.

107. The provided numbers show that during the 2009-2018 period, the impact of the difference between expected and actual VRs globally represented between -11.32 percent (in 2016) and +1.27 percent (in 2009) of the Court-wide approved staffing budgets.

108. In years 2015 and 2016 (implementation of the *Revision* initiative), the Registry's forecasted VRs were largely under-estimated (-13.9 percent in 2016 and -12.0 percent in 2016), which was the main factor for the global impact of -10.01 percent in 2015 and -11.32 percent in 2016 on the Court-wide approved staffing budget. As a result, approved budget for established posts was over-estimated, with an excess of budgetary appropriations for staffing of respectively €6.6 million and €8.4 million, i.e. 5.2 percent and 6.2 percent of the Court-wide actual expenditures for those same years.

109. For all other years, the global difference between estimated and actual VRs comprised between -1.14 percent (2013) and +1.27 percent (2009) of the approved staffing budgets, representing in absolute terms respectively only 0.06 and 0.07 percent of the Court-wide actual expenditures.

110. In the *ReVision* case, the effect was a significant over-budgeting of established positions for two consecutive years. This had no effect on the implementation rate of approved budgets: the implementation rate was 96.7 percent in 2014, 97.1 percent in 2015, 97.3 percent in 2016 and 99.4 percent in 2017. This shows that a significant over-budgeting of Established posts does not necessarily have an effect on the global budget implementation rate because in the given case, appropriations "saved" on established post were expensed on GTAs/STAs.<sup>21</sup>

**Finding:** The staff budget proposal relies on the addition of a number of Established positions (adjusted through a Vacancy Rate) and "approved GTA" positions. Each position is linked with a function and a grade, so that, in both cases, UN standard costs can be applied.

<sup>20</sup> Secretariat of the Assembly of States Parties; Secretariat of the Trust Fund for Victims; Independent Oversight Mechanism.

<sup>21</sup> Short-term appointment.

The approved staffing budgets, within each Major Programme, do not imply that the actual staffing will coincide with the budgetary authorized positions (“headcount”): it just implies that staff costs must remain within the limits of the staff appropriations, and that the maximum number of agents benefiting from an established contract will not exceed the headcount for established positions.

Within those two limits, the Court has full flexibility to manage, in accordance with staff rules, the actual levels and number of employees. In particular, when part of the established posts and/or of the approved GTA positions remain vacant, this system allows the recruitment of “unapproved” GTAs and STAs with lower grades and/or shorter contracts, both not apparent in the budget.

## 2. Preparation of the proposed staff budget

111. The ICC approved budgeted positions have gradually increased since 2003. There were periods of no growth, particularly of established posts. For five years, between 2010 and 2014, the number of established posts was virtually unchanged. Also, there was no significant increase in the number of established posts over the last three years. But if one takes into account GTA staff, the picture is quite different. Fully comparable figures (expressed in full time equivalent – “FTE” – for part-time contracts) are only available since 2009. The following table is expressed in FTE (established posts are always full time, so this notion applies only to GTAs):

**Table 9: Budgeted staff 2009-2019**

<i>Year</i>	<i>Established posts</i>	<i>GTA (FTE)</i>	<i>Total</i>
2009	744	112	856
2010	768	101	869
2011	766	127	893
2012	766	140	906
2013	766	131	897
2014	768	192	960
2015	790	237	1,027
2016	900	202	1,102
2017	970	163	1,133
2018	972	152	1,124
2019	973	186	1,159

Source: ICC.

112. Based on tables 3 and 4 above, one could think the ICC workload has reached a relatively stable level around 2012, after a continuous increase since 2003. However, table 9 above shows that the total budgeted workforce continued growing at a significant pace (+20.0 percent from 2009 to 2015, and +12.8 percent from 2014 to 2019).

113. Nevertheless, the Court considers it would be incorrect to state that the Court achieved a “stable level” around 2012, and indicates that “*at that time, a number of significant changes were yet to take place. The Court still did not go through the full judicial cycle, including reparations. This would take place only several years later. Nor did the Court yet move to the new (permanent) premises, which require higher costs (as in the previous premises the costs were lower and were also shared with Eurojust). Nor did the Court really start addressing its key long-term deficiencies, such as the IT 5-year strategy that entailed significant costs and that would come several years later.*”

114. The External Auditor notes that this remark concerns mainly non-staff costs: new premises and IT investment imply cost increases, not staff increases. So that his remark remains valid.



115. During that last period (2015-2019), the main increase was for OTP (+15.9 percent), while the Judiciary budget for staff decreased by 4.7 percent, and the Registry's increased by 13.1 percent.

116. To prepare the staffing budget proposal, the process includes the following steps:

(a) Each section starts from its present staffing level, which is adjusted in case of a forecasted workload increase. In the case of forecasted workload decrease, the External Auditor noted, through interviews at the section/direction level, that there was a great reluctance to reduce staffing, "in case" some un-forecasted needs would reverse the trend;

(b) The sections' proposals have to be endorsed/modified by the Directors. This clearance process is included in the BPS software and in the SharePoint narrative templates. The system automatically calculates the costs, on the basis of the UN standard costs, which cover both salaries and "common staff costs" (i.e. education grants, repatriation grants, etc.);

(c) The Budget Working Group, chaired by the Registrar, can challenge and adjust directly the proposals coming from the Registry sections. For proposals coming from other Major Programmes, the BWG can only suggest, but not impose substantial changes; and

(d) The consolidation of the proposals is carried out by the Budget Section and, when approved by the CoCo, it is the basis of the proposed Programme Budget to be finalized by mid-July to be submitted to the CBF and the HWG, who will issue recommendations to the ASP.

117. At the final stage of the budget process, the approved budget resolution specifies in particular the total amount of appropriations per Major Programme, and ratifies a Court-wide table of the headcounts (established and approved GTA positions).

118. Since the Court inception, the headcounts for approved posts (established + GTAs), and the total staff budget, have increased every year, whatever the workload variations, as shown in the above figure, although there has been a significant slowdown in the increase over the recent years.

119. Several factors can explain such a trend:

(a) The already mentioned internal document "common messages of the Court to the HWG", dated 11 October 2018, reacting to a recommendation by the CBF to reduce the 2019 GTA budget by €913.7 thousand for OTP, stated that "*all specific positions are justified in details*" and that the Court proposal does not offer any flexibility to implement the CBF's recommendation;

(b) Although the Court is supposed to be a "non-career" organization, the External Auditor noted in his previous report on Human Resources (ICC-ASP/17/7), that statistical data show that "*job stability is, in fact if not in law, virtually guaranteed for the holders of established positions*"; and

(c) The External Auditor also noted that, as a result of the major attempt to get out of this logic in order to reduce staff, i.e. during the *ReVision* process, the ICC lost all the first disputes that were brought to the ILOAT.<sup>22</sup>

120. In addition to these elements, the interviews conducted during the present audit showed that, for a large part of the managers, the Court staff cannot be reduced, even if the workload declines. Two arguments are usually put forward:

(a) There is a minimum size to cope with the Court mission and the Court is not above that size. This argument is obviously a revival of the "Basic Size" approach (see Chapter A). But the External Auditor has not been given evidence to support the fact that ICC was not, today, above its "optimal" size, in terms of cost/efficiency. Nor is there evidence to the contrary; and

(b) The Court considers that, even if the workload has slightly declined in the recent years, sleeping situations might revive or new situations might arise. In both cases, the Court wants to maintain its memory and keep its experienced staff, if this is of a short-term nature and if these staff can in the meantime be utilized to perform other important

<sup>22</sup> Administrative Tribunal of the International Labour Organization.

and necessary functions. In any event, considering the evolution of the average ICC staff age,<sup>23</sup> many of its “experienced staff” will have to retire within the next decade, so that ICC will anyway, in the coming years, have to cope with a significant renewal of its staff, and nevertheless constantly keep processing cases, regardless of their seniority. This means the ICC, as any other court, should constantly be able to adapt both ways its workforce to its fluctuating workload.

**Finding:** Concerning the staffing budget:

- (a) Good management implies that the ICC always seek an “optimal size”; and
- (b) A “minimum size” for the Court to maintain its competencies and ability to adapt to a surge in demand certainly exists. Even if, in recent times, the number of employees has continued to grow while the workload tends to stagnate, no auditable evidence has been brought to support the idea that the present size was above or under this minimum. This observation should lead the Court and the Member States to consider the development of a model for deciding on this central issue of “minimum size”.

121. Should nevertheless the need to adapt to any lower workload be raised, the question of an increased internal flexibility is a major challenge:

(a) Taking into account the difficulty to separate from staff, the best option is to take advantage of retirements or voluntary leaves to adapt the workforce to a declining workload without new recruitments. For example, the STA staff of the second chamber, which will not be needed in 2020, have not been replaced. Nevertheless, when trying to avoid recruitments by optimizing internal mobility, conflicts of interest may arise. The case of interpreters or translators having worked with defence and not being possibly reassigned in OTP has been mentioned to the External Auditor;<sup>24</sup>

(b) Presently, some internal moves may be professionally desirable, but have to be managed through the recruitment process as defined in the Staff Rules. This process is long and does not guarantee that the expected internal candidate will be granted the post against an external candidate, or even against another internal candidate that would not help solve the specific internal mobility problem; and

(c) Other options can be explored, as mentioned by the Registry such as encouraging temporary leaves or part time work. If needed, the Court could support voluntary departures, which usually imply accepting severance costs and helping to find new jobs outside the Court.

122. During the clearance process, the OTP made the following remark: “The recent AI on Classification and Reclassification<sup>25</sup> contains provisions to safeguard the incumbents who should fail the competitive recruitment process for their reclassified posts. This addresses the issue that this recommendation covers. This issue was discussed with the CBF in April. My understanding is that Human Resources Section is already looking into ways to incorporate such provisions in the Court’s Staff Regulations.”

**Finding:** The audit on the budget process shows that if the ICC decided a staff decrease, its implementation would remain problematic.

**Recommendation n°4 (priority 1):** The External Auditor recommends the ICC to adapt Staff Rules so that, in cases where the workload evolution should lead to staff decreases in some sectors, as an alternative to separation, a strong priority for recruitment on other open internal positions be offered to the incumbents, if and when their profiles are clearly adequate for the new assignments.

<sup>23</sup> The ICC currently has 259 staff members that are above 50 year old and 106 above 55. Staff have the right to retire up to the age of 65.

<sup>24</sup> OTP indicates that “in general it is the other way around. The OTP uses language experts first, during the investigative activities. As they come in contact with sensitive information, they cannot later be used by defense”. But the Registry did not mention having encountered any such case.

<sup>25</sup> ICC/AI/2018/002: Section 5 – Implementation of Reclassification Decisions – paragraph 5.5.

## D. Budget approval

### 1. The budget document

123. The proposed budget document and the approved budget document have the same structure.

#### (a) *An evolutive budget document structure*

124. Financial Rule 103.1 specifies that it is up to the ASP to define the form that the budget should take, so that the Financial Regulation does not specify the form in which the budget document submitted for the approval of States Parties should be presented.

125. Rule 103.3 of the Financial Regulation only provides minimal requirements concerning the "content of the proposed budget", namely, a financial framework describing the resources by sections and programmes, expected income, budget proposals with a narrative and relevant tables and figures on budget estimates and posts.

126. That is why, as noted by the Internal Auditor in 2016, "the ASP prescribes in what form the Court should submit the budget proposal and considers and decides on the budget for the Court. The existing budget format was shaped by the reviews and analysis carried out by the Court and the multiple requests of the CBF along the years, including for instance the tables on the assumptions and the actual figures and a list of potential developments with budgetary impacts to improve the presentation and macro-analysis of the budget".

#### (b) *Structure of the most recent Programme budget documents*

127. According to the "Guidelines for the proposed budget" issued by DMS for 2018, the budget document for that year had to be presented in four parts, preceded by an executive summary. These four parts were

- (a) Overview of proposed budget – priorities and judicial assumptions;
- (b) OTP's expected workload (preliminary examinations, situations and cases before the Court);
- (c) Proposed budgets by Major Programme; and
- (d) Tables and annexes (for which no precise indication was given).

128. For 2019, the second part dedicated to OTP's "expected workload" (10 pages in 2018) disappeared. This change shows that OTP's expected workload, expressed in the form of a narrative on situations under preliminary examinations or under investigation and cases before the Court, is no longer considered by CBF/ASP as an essential element for budget adoption. Only an annex (annex II in 2019) continues to disclose the list of OTP's assumptions and parameters.

129. The number and content of annexes vary from one year to the other (11 annexes in the approved budget document for 2018, 14 in the proposed budget for 2019 – the approved budget document for 2019 was available only in May 2019).

130. Going back further in time, one can see that in 2006, three years after the Court's inception, the budget proposal was already a 163 page document with six annexes. In 2019, after 16 years, it is a 206 page document with 14 annexes, and its structure is not yet stabilized.

**Finding:** As a result of incremental modifications being brought, year after year, the major issues and the overall coherence of the budget document tend to be overshadowed by more and more detailed information relating to micro-management or minor issues.

**Recommendation n°5 (priority 2):** The External Auditor recommends the Budget Working Group (BWG) to study and submit for clearance to the Committee on Budget and Finance (CBF) and to the Hague Working Group (HWG) a proposal for a renewed, simplified and shorter budget document, strictly focused on budget-relevant issues, and based on the acquired ICC experience. If and when endorsed by the Committee on Budget and Finance (CBF) and the Hague Working Group (HWG), the new document structure could be approved by the Assembly of States Parties (ASP).

## 2. The approval process

131. Once the proposal preparation phase ends (by mid-July, 45 days before the CBF summer session), the approval process starts. The objective is to submit to the annual ASP session (late November-beginning of December) a budget resolution that can be adopted by consensus between the States Parties.

132. The 2016 Internal Audit report summarized the budget approval process as follows: “the CBF considers the proposed budget and makes recommendations to the ASP. After the CBF has issued its recommendations, the Bureau Working Group in The Hague engages with the Court in a detailed facilitation process in advance of the discussions at the ASP. The process is completed at the end of the year with the adoption of the proposed programme budget by the ASP”.

133. The process starts with the autumn CBF session and ends with the annual ASP session. It is divided between three successive phases:

- (a) CBF initial technical review of the budget with the Court;
- (b) Facilitation process by the budget facilitator and the HWG; and
- (c) Final approval of the budget resolution by the ASP.

### (a) CBF initial technical review and recommendations

134. The 12 expert members of the CBF elected by the ASP receive the proposed budget by mid-July, and come to The Hague for a 10 day session 45 days later, at the end of August, or beginning of September.

135. Some days after its autumn session, the CBF issues a summary of its comments and recommendations. Most often, after having analyzed the narratives and the numbers and discussed with the Court, its recommendation is to make several “cuts” in the proposed budget, when the CBF considers that proposals are not technically justified.

136. A full report on the CBF’s autumn session with detailed comments and recommendations is issued by the end of October.

### (b) Facilitation process

137. The HWG-Budget and the budget facilitator exchange views with the CBF in a preliminary meeting which takes place at the beginning of the autumn CBF session.

138. The HWG meets again at the end of September to review the summary of the CBF findings and again in late October/beginning of November to review the CBF’s full report on the proposed budget. During that period, the facilitator convenes informal consultations with the Court, with the aim to negotiate adjustments based on the CBF recommendations and the expectations of States Parties.

139. The facilitator’s main challenge is to negotiate adjustments suitable for all States Parties, i.e. to find a balance point between several groups of States with more or less divergent budgetary, or even political, expectations.<sup>26</sup>

<sup>26</sup> Divergent views have usually to be reconciled between major contributors and “like-minded” States Parties. Geographical affinities can also lead to different positions of certain groups, such as WEOG (Western European and Other countries), GRULAC (Latin America), and EEG (Eastern European Group). Although the HWG is open to all States Parties, as average, only about 40 delegations (mainly those who have an embassy in The Hague) participate effectively in the HWG-budget discussions.

(c) *Final approval by the ASP*

140. During the annual ASP session, which takes place at the end of November/beginning of December, a preliminary sub-group finalizes the draft resolution presented by the budget facilitator – the final resolution on budget is approved by the plenary ASP by consensus.

141. The document annexed to the ASP annual session report is the original “proposed programme budget for n+1”, as already published in mid-July: the official document “approved programme budget for n+1”, containing the last adjustments, is only published in March or April of n+1.

142. The reason why the approved programme budget official document cannot be published before year’s end, although all detailed approved appropriations are already available in SAP, is that the narratives also have to be re-adjusted, so that they refer precisely to the final approved figures. Although this explanation is acceptable for a reasonable delay (some weeks), it cannot justify a three month delay, even if, at that stage of the budget process, the availability of the final document is probably not a priority issue.

143. However, for internal purposes, in January of every year, and following the ASP session, the Court does distribute the finalized approved budgets to the different parts of the Court.

**Finding:** The approval process implies two separate lines of discussions: an initial “technical” line, led by the CBF, leading to purely financial budgetary recommendations (most of which advocate for cuts in the proposed budget), and a subsequent “political” line, led by the budget facilitator and the HWG-budget, which results, during the ASP annual session, in a final resolution fit for approval by consensus.

**Recommendation n°6 (priority 3):** The final budget document for year n should be published no later than by end-January of the same year.

## E. Budget implementation

### 1. Budgeted and actual staff

144. For the Court, the only two constraints resulting from the proposal preparation process are, on the one hand, the overall budget envelopes by Major Programme and, on the other hand, the headcount for established posts and GTA approved positions. For the rest, the Financial Rules give the Court full authority to utilize staff funds provided by the ASP in a flexible way. For instance, to illustrate the flexibility granted to the Court, one vacant established P-3 post could be used to temporarily fund two GSOL posts of varying work-months. By looking at the utilization of each Major Programme’s resources, one sees that a limited number of “unapproved” GTAs and STAs, which are not budgeted as such, can be funded through this flexibility.

145. As indicated in Chapter C (proposed budget for staff expenses), the United Nations Common rules are based on a purely conventional system of budgetary headcounts, so that the actual staff structure at 31 December can be significantly different from the budgeted staff: it can include unapproved GTAs, and, since 2016, STAs, financed by vacant positions on budgetary headcount, as shown in the table below:

**Table 10: Actual staff as at 31 December 2009-2015**

<i>Year</i>	<i>Established posts</i>	<i>GTA*</i>	<i>STA</i>	<i>Total</i>
2009	689	128	N/A	817
2010	696	169	N/A	865
2011	702	138	N/A	840
2012	686	136	N/A	822
2013	688	133	N/A	821
2014	682	221	N/A	903
2015	651	225	N/A	876
2016	776	180	88	1,044
2017	887	135	96	1,118
2018	898	144	77	1,119
2019	896	158	52	1,106

Source: ICC.

146. The actual staff kept increasing during the 2009-2015 period. However, there is obviously an inflexion towards stability since 2018. The total actual staff positions decreased from 1,119 to 1,106.

147. The number of established posts has increased both for budgeted established headcount and for actual established contracts as at 31 December.

**Table 11: Budgeted versus actuals for established positions 2009-2019**

<i>Year</i>	<i>Budgeted Established positions</i>	<i>Actual established contracts at 31 December</i>
2009	744	689
2015	790	651
2019	973	896

Source: ICC

148. The budgeted GTAs reached a maximum in 2015 (with 237 full time equivalent budgeted posts), then decreased to a level of 186 in 2019. Since the creation of STAs in 2016, all budgeted GTAs are full time.

149. The actual GTA positions followed the same move, with 260 actuals in 2015 decreasing to 165 in 2019.

150. The STAs, created in 2016, have mainly been a substitute for very short term GTAs, although in some cases they have replaced full time GTAs. They reached a peak in 2017, with 114 actuals, and decreased to 55 in 2019.

151. The budget for staff costs reached 72.3 percent of the total costs of the Court in 2019. In the 2019 budget, staff costs represent €104.5 million, mainly in the Registry (€51.1 million) and in OTP (€41.7 million).

**Table 12: Staff budget increase since 2009 (in millions euros)**

<i>Year</i>	<i>Court</i>	<i>OTP</i>	<i>Registry</i>	<i>Judiciary</i>
2009	65.6	22.6	35.7	4.1
2014	82.1	30.3	42.1	5.9
2019	104.5	41.7	51.1	6.3

Source: ICC.

152. Between 2009 and 2014, staff budget increased by 25.1 percent. Between 2014 and 2019, it increased by 27.2 percent, i.e. by some 4.9 percent per year. This shows that in the past ten years, the growth rate has not slowed down over time, as could have been expected, once workload had stabilized.

153. The staff budget growth has been declining since 2017, and became almost flat in 2018 and 2019:

**Table 13: Staff budget 2017-2019 (in millions euros)**

<i>Year</i>	<i>Court</i>	<i>OTP</i>	<i>Registry</i>	<i>Judiciary</i>
2017	101.7	40.5	50.1	6.9
2018	104.2	41.3	51.2	6.9
2019	104.5	41.7	51.1	6.3

Source: ICC.

154. In the recent period (2017-2019), the only organ with an increasing staff budget is OTP, but its growth rate has declined, while staff budgets of the Registry and of the Judiciary slightly decreased in 2019.

**Finding:** The staff budget and the headcounts of the Court increased quickly until 2017. Since 2018, the growth rate has slowed down.

Apart from the “Basic Size” studies, which explain analytically the mechanical links between the basic judicial/Prosecutorial activities and the Court-wide workload, no clear rationale has been proposed to the auditors to set the “right level” for staff expenses at the Court. This level cannot be explored through an audit approach, but it could be a major topic of interest for an external evaluation of the Court.

155. The standard UN and average actual ICC costs per post are the following.

**Table 14: Standard UN and average actual ICC costs per posts (2009-2014) (in thousand euros)**

<i>Year</i>	<i>ICC average cost for Established*</i>	<i>UN Standard cost for Established*</i>	<i>Equivalent “average” grade for established</i>	<i>ICC average cost for GTA</i>	<i>UN standard cost for GTA</i>	<i>Equivalent “average” grade for GTAs</i>
2009	74,181	76,300	P1/P2	N/A	N/A	N/A
2014	83,172	83,300	P1/P2	N/A	N/A	N/A
2019	88,498	88,700	P1/P2	88,181	88,800	GSOL

\*Calculation is made including an average 10 percent vacancy rate.

Source: ICC.

156. This tables shows that:

(a) During the period, the actual costs of established posts and GTAs seem different. But this direct comparison is misleading because the established ICC actual average and the UN standard costs are calculated with a discount reflecting the Vacancy Rate, i.e. minus 10 percent for the Registry, minus eight percent for OTP and minus five percent for the Judiciary. There are no equivalent discounts for GTA posts, because it is assumed that there are no structural GTA vacancies;

(b) The United Nations Standard Costs have always been higher than the actual costs of the ICC. As the table shows, in 2019 the average difference is €200 euro per staff member. If one multiplies this by the number of staff (avg. 1,000), this means that there is about €200,000 available for the Court from the UN-ICC difference. Using the average cost from the same table, this translates into funds for 2.25 staff; and

(c) The average equivalent grade for the established posts remains unchanged in time: meaning that, on the 2009-2019 period, there has been no significant changes in the average level of qualification of ICC staff.

**Finding:** The UN standard costs have always been higher than the actual costs for ICC staff, the approved budget leaves a margin to the Court to hire STAs or unapproved GTAs. However that margin could decrease in time, due to the ageing of the staff.<sup>27</sup>

## 2. Transfers

157. Regulation 4.8 of the Financial Regulations lays down the principle that transfers of appropriations can only occur between sections within the same Major Programme, and must be submitted to the ASP. It provides that it is for the latter to set exception criteria. A similar rule exists in all other UN system organizations.

158. On that basis, it was decided that for any single transfer of funds exceeding the amount of €200,000, the Court must disclose them in the following Budget Performance Report which the Court is required to prepare three times a year (as at March 30<sup>th</sup>, June 30<sup>th</sup> and December 31<sup>st</sup>). Similar thresholds for transfer authorization also exist in all UN international organizations

159. The following table reflects the amounts which were transferred between sections by Major Programme since 2005:

**Table 15: Transfers between sections per MP 2005-2018 (in thousand euros and in millions euros)**

				(k€)	(M€)	(%)
<i>Year</i>	<i>OTP</i>	<i>Registry</i>	<i>Other MPs</i>	<i>Total</i>	<i>Approved budgets</i>	<i>Transfers/Budget (%)</i>
2005	473.0	268,5	128,0	869,5	66,9	1,30%
2006	240.3	1 822,1	180,5	2 242,9	80,4	2,79%
2007	1,235.,0	3 190,3	564,0	4 989,3	88,9	5,61%
2008	2,271.4	1 926,7	34,4	4 232,5	90,4	4,68%
2009	1,995.7	2 255,6	299,2	4 550,5	101,2	4,50%
2010	847.0	5 339,9	1 492,8	7 679,7	103,6	7,41%
2011	1,626.1	4 234,6	494,9	6 355,6	103,6	6,13%
2012	1,761.8	6 433,1	349,5	8 544,4	108,8	7,85%
2013	1,463.9	2 203,0	248,3	3 915,2	115,1	3,40%
2014	3,185.9	6 318,7	208,4	9 713,0	121,7	7,98%
2015	10,285.8*	2 317,7	582,4	13 185,9	130,7	10,09%
2016	887.8	6 256,3	616,0	7 760,1	139,6	5,56%
2017	1,648.5	7 518,6**	182,8	9 349,9	144,6	6,47%
2018	965.8	5 235,3	275,9	6 477,0	147,4	4,39%

\*For 2015, the OTP transfers include €7,726.0 thousand following the merger of three sections under the Investigation Division.

\*\* The transfers under Registry include transfer for staff costs which are centrally administered. In light of the Registry's vacancy rate, alignments are necessary to ensure that there are sufficient resources for payroll under all sections. Following a review of the last 3 years, 2016 to 2018, the transfers related to staff costs for the Registry total €3,136.3, €4,617.9 and €2,820.3 thousand respectively.

Source: ICC.

160. The average Court-wide ratio of transfers/approved budgets, even when “neutralizing” a €7.7 million transfer due to the merger of three sections in OTP in 2015, is 5.32 percent, which is a high rate of transfers – this shows that, by approving proposed transfers, the ASP offers to the Court a significant flexibility, thus improving the overall implementation rate performance.

<sup>27</sup> This confirms the fact that, as pointed out in the External Auditor's previous report on HR, ICC is clearly a “career organization”.



161. But this flexibility remains internal to each Programme – for instance, the TFV Secretariat has been under-implementing its budget for the past years. In 2018, the implementation rate was 79.9 percent, the underspending €510 thousand, representing more than 10 percent of the overall Court-wide underspending, while the TFV Secretariat budget represented only 1.7 percent of the overall approved budget.

162. The limitation of transfers within Major Programmes may raise difficulties particularly for small programmes. It was for instance the case in 2019 for the Independent Oversight Mechanism which needed an extra staff member to deal with investigations but did not have the funds to recruit, as this was not budgeted for.

163. To solve that difficulty, an STA position was funded by the Major Programme IV and assigned to IOM – the transfer was applied not to the funds, but directly to the staff. Although this might be considered as an adequate management solution and was formally compliant with the Financial Rules, it was obviously overriding, in substance, these same Financial Rules.

**Finding:** Because of financial rules prohibiting transfers between Major Programmes, small Major Programmes have little flexibility to deal with urgent additional needs.

**Recommendation n°7 (priority 3):** The External Auditor recommends to adapt financial rules prohibiting transfers between Major Programmes in order to bring an adequate management flexibility to smaller Major Programmes, such as the Independent Oversight Mechanism (IOM) or the Office of Internal Audit.

### 3. Multi-year investments funding

164. The Financial Regulations, regulation 3.7, states that “the Registrar may enter into commitments for future financial periods, provided that such commitments are for activities which have been approved by the Assembly of States Parties”.

#### (a) *ICC multi-year expenses*

165. The Court currently has multi-year commitments which cover a wide range of activities. These commitments vary in cost, duration and purpose. They include but are not limited to the following:

- (a) Contracts for the implementation of the Five-Year IT/IM Strategy; and
- (b) Maintenance contracts for the premises, utilities, heating/cooling, garbage disposal, landscaping, etc.

166. Multi-year commitments are approved within the overall structure of the proposed programme budgets and are not approved on an individual basis by the ASP. The approved appropriations for these commitments, when unused at the end of the fiscal year, cannot be carried-over, and increase the budget surplus. For current multi-year expenses (such as maintenance contracts), this is a generally accepted approach which does not raise difficulties – the corresponding yearly commitments are quite stable and can be correctly forecasted to avoid under- or over-spending of the approved appropriations.

167. Yet in the case of significant multi-year investments, this approach may not be adequate, and can have a negative effect on the budget implementation rate. If the forecasted annual distribution of payments happens to be inaccurate (investment projects often face unexpected delays), unspent appropriations are not carried-over. Instead, they are added to the budget surplus, and the corresponding postponed expenses have to be re-budgeted, so that the annual implementation rate is artificially lowered, even if at the end of the multi-year period, the forecasted budget proves to have been 100 percent implemented (or even more in many cases).

168. In addition, the launching of a multi-year project can also imply unexpected delays to finalize procurement through a call for tenders. If such delays exceed year's end, the corresponding appropriations may also have been added to the budget surplus and not be renewed. They may therefore not be available when the call for tenders is closed.

169. At ICC, this could be the case:

(a) For the current Five-Year IT/IM Strategy, while the estimated overall cost of the project was presented to the CBF in 2017, only the annual forecasted costs used to be included in the approved budget until 2019. The amounts had to be updated each year to show the actual expenditure rate, and the amount forecasted had to be adjusted for the remaining years;

(b) To a smaller extent, for the Capital replacement plan: a first plan was presented in September 2017 (2017-2022 - €2.2 million, extended to 2023 for a total amount of €2.9 million). It concerns audio-visual equipment integrated into the buildings. The same annual forecast adjustments have been applied until now; and

(c) The External Auditor was informed that the General Services Section was currently also considering a five-year investment concerning the purchase of a float of cars (some of which would be armored).

170. At the request of the CBF, the Court issued a report,<sup>28</sup> in July 2018, on the solutions used by some other international organizations for the funding of the long-term capital replacements. The CBF considered in its thirty-first session<sup>29</sup> that the need for a multi-year fund was not demonstrated, and asked for a report on the development of medium-term and long-term projections for capital replacements. This report was issued in March 2019.<sup>30</sup> It proposes an investment plan for 2020-2024 which amounts to €3.7M.

(b) *The need for a specific multi-year budgetary funding structure for investments*

171. Regulation 2.1 of the Financial Regulations states that the Court's budget is annual, unless otherwise decided by the ASP, and it specifies that "*the Assembly of States Parties shall keep under review the financial period*".

172. One way some organizations have tried to solve the problem of multi-year funding is to implement biennial or triennial budgetary periods (ICAO, OECD, CTBTO,<sup>31</sup> etc.).

173. The Secretariat of the Assembly of States Parties has indicated to the External Auditor that the principle of an annual budget has not been discussed by States Parties in recent years, and that there would likely be a divergence of views amongst them on this point. The issue was discussed previously, at a time when the Permanent Premises were under construction, it was difficult to estimate the running costs of the new building, including maintenance costs, so that the discussion was put aside. The issue has not been discussed at the Court lately. The External Auditor does not consider re-opening the discussion useful.

174. Another way to secure multi-year projects funding could be the implementation of multi-year funds or multi-year special accounts.

175. In 2014, the Court proposed to the Assembly<sup>32</sup> either to introduce a permanent mechanism to fund multi-year projects, or to establish a special account<sup>33</sup> to segregate the IT/IM (Information Technology/Information Management) Strategy-related funding, allowing to carry over the unspent portion of IT/IM Strategy-related appropriations at the end of each year, starting from the 2019 budget year, until the end of the IT/IM Strategy. The Court advocated for this second option. According to this proposal:

<sup>28</sup> See the document CBF/31/2, dated 9 July 2018, "Report of the Court on solutions for the funding of long-term capital replacements at its Headquarters in The Hague".

<sup>29</sup> See document ICC-ASP/17/15, dated 29 October 2018, "Report of the Committee on Budget and Finance on the work of its thirty-first session".

<sup>30</sup> See document CBF/32/10, dated 14 March 2019, "Report of the Court on the development of medium-term and long-term cost projections for capital replacements and the inclusion of performance indicators in the new maintenance contract".

<sup>31</sup> International Civil Aviation Organization; Organization for Economic Co-operation and Development; Comprehensive Nuclear-Test-Ban Treaty Organization.

<sup>32</sup> See document CBF/32/4, dated 5 March 2019.

<sup>33</sup> "Special accounts" may have various sources of funding and can be opened for various purposes, including unspent regular budget resources for multi-year projects. According to Financial Regulations 6.5, 7.3 and Rule 106.1, the terms and conditions of each special account must be defined by the appropriate authority approving establishment of the special account.

(a) The cumulative budget implementation result would have been determined at the end of the project, upon which any resulting cash surplus would be returned to the States Parties; and

(b) Reports on the project would have been provided annually to the Assembly through the Committee.

176. The ASP, in its resolution ICC-ASP/17/Res 4 (Section P) adopted on 12 December 2018, requested the Court to provide more elements to the CBF at its 32<sup>nd</sup> session to clarify the services proposal. According to this last session resolution, the Court implemented a multi-year special account for the IT/IM Strategy.

177. As a conclusion, the External Auditor considers that:

(a) The possibility of extending the ICC budget period to two or three years, although left open in the Financial Regulations, would not bring adequate flexibility for multi-year projects overlapping two successive budget periods, whatever their length. The UN General Secretariat, after having recommended this approach, finally advised against it. In the specific case of the ICC, given that the level of activity mainly depends on factors that are unpredictable even on the short period of one single year, such a move would increase budgetary uncertainty without offering an obvious advantage in terms of budget flexibility for multi-year investments;

(b) Specific multi-year budgetary tools can be implemented, as allowed by the Financial Regulations, in order to streamline budgetary multi-year funding, such as multi-year funds or special accounts. This answer has been adopted, by several other organizations (CBCTO, ICAO, UNESCO, WTO, OECD, WIPO<sup>34</sup>), to secure funding for significant medium-long term investments. It could help:

(i) Improving the budgetary implementation rate, unspent appropriations being automatically carried-over, and not increasing the yearly budget surplus;

(ii) Securing sufficient time to face usual calls for offers for multi-year investments; and

(iii) While offering to States Parties a close reporting on the related expenditures and forecasts; and

(c) The solution recently approved for the IT/IM Strategy could be extended to other multi-year investments (such as the capital replacements plan, or the multi-year contract to invest in a float of cars currently envisaged by the General Services Section), by adopting a multipurpose permanent mechanism to fund multi-year projects. This could be obtained by extending the present special account for IT strategy to a series of other investment projects potentially approved by the ASP. Such a solution has been implemented by the CBTBO, which launched a multipurpose multi-year Plan, after having created several multi-year tools for specific needs. The regulations of such a mechanism should be specified so as to guarantee a separate management of the appropriations dedicated to each project.

**Finding:** The External Auditor notes that the ASP recently authorized the Court to implement a specific special account to fund its multi-year IT/IM Strategic Plan. Such tools have been successfully implemented in other UN and non UN international organizations.

**Recommendation n° 8 (priority 2):** To ensure a streamlined coherence between approval of multi-year investment projects and related annual budgetary decisions by the ASP, the External Auditor recommends the Court to submit to the ASP a proposal to extend its current IT strategy multi-year special account so that:

<sup>34</sup> The CTBTO has implemented a Capital Investment Fund and a multipurpose Multi Year Plan; WTO has implemented trusts funds such as the “Trust Fund of Doha”, which finances multi-year training plans for the Member States; UNESCO authorises trust funds such as the “Special Trust Fund Overhead Cost Account”, funded by a percentage of the support costs of extra budgetary programs, which finances a part of the costs generated for the Headquarters and the Field Offices by the management of extra budgetary programs. OECD and WIPO have implemented multi-year funds to finance the maintenance and replacement of their buildings, as reported by the Court in the above-mentioned document CBF/31/2, dated 9 July 2018.

(a) It could be used as a multi-year multi-purpose mechanism allowing a carry-over of unspent regular budget resources for a list of other multi-year significant investment projects approved by the ASP; and

(b) Adequate rules be designed, guaranteeing a robust separation of the appropriations dedicated to each approved project and a yearly reporting to the ASP.

#### 4. Liquidity shortfall

178. The following table shows the cash and cash equivalents available to face the regular budget commitments, which can be mobilized through an authorized use of budgetary appropriations of the General Fund – “GF”, of the Working Capital Fund – “WCF” and of the Contingency Fund – “CF” as at December 31<sup>st</sup> of each year since 2003.

**Table 16: Available cash as at Dec. 31<sup>st</sup> (in thousand euros and in € million)**

Year				€k	€ million	Days
	GF	WCF	CF	Total	Approved Budget	
2003	15,461	1,766	0	17,227	n/a	n/a
2004	16,297	4,207	9,169	29,673	n/a	n/a
2005	26,419	5,277	9,169	40,865	67	223,0
2006	40,490	6,606	9,169	56,265	80	255,4
2007	60,680	7,387	9,169	77,236	89	317,1
2008	50,403	7,405	9,169	66,977	90	270,4
2009	33,330	7,405	9,169	49,904	101	180,0
2010	22,271	7,386	8,757	38,414	104	135,3
2011	33,697	7,397	4,438	45,532	104	160,4
2012	38,953	7,398	6,983	53,334	109	178,9
2013	42,216	7,285	7,463	56,964	115	180,6
2014	40,645	7,286	7,468	55,399	122	166,2
2015	13,473	1,615	5,785	20,873	131	58,3
2016	8,640	3,635	5,785	18,060	140	47,2
2017	479	0	3,759	4,238	145	10,7
2018	490	9,057	5,243	14,790	147	36,6

Source: ICC.

179. The column “total” does not indicate the remaining unused budgetary appropriation for these three funds, but only the total cash available per fund to honor the budgetary commitments made by the Court. The last column indicates the equivalent payment capacity expressed in number of standard disbursement days, on the basis of the division of the approved budget for the same year by a standard 365 day per year. In case of significant arrears for assessed contributions, the fact that unused appropriations are still available on these three funds does not necessarily mean that the corresponding cash remains available, when the total of unpaid commitments exceeds the existing cash.

180. This table shows that, since 2015, the cash available to settle ICC payables has reached very low levels, mainly due to arrears in assessed contributions.

181. In the more recent periods (such as in the 2018 last quarter), the ICC had to face a real risk of liquidity shortfall: document ICC-ASP/17/5 indicates that *“the Committee noted that the Assembly at its sixteenth session did not authorize the Court to temporarily utilize the CF and/or establish external funding (credit line) to address its temporary liquidity shortfall in 2018, and that there is currently no mechanism in place to address this*

*situation, which may result in the Court may not being able to discharge its essential obligations (e.g. pay salaries to staff and invoices to suppliers)."*

182. Data provided to the External Auditor during his final mission on the 2017 financial statements lead him to share the concerns expressed by the CBF regarding the risk of a liquidity crisis. The External Auditor considered in its report on 2017 financial statements that *"this is not a conjuncture crisis, but the manifestation of a problem that has become structural, the resolution of which requires further analysis. The External Auditor will review this liquidity issue triggered by arrears as part of his performance audit on the Court's budget management."*

183. In document ICC-ASP-17-15, the CBF notes that "in relation to the cash-flow situation, the Committee shared the External Auditor's concern about the risk of a liquidity crisis arising from States Parties' arrears, which could seriously endanger the operations of the Court [...]. The Committee noted that the External Auditor would also review the liquidity issue triggered by arrears as part of the planned performance audit. The Committee looked forward to the External Auditor's analysis and recommendations".

184. In his report on financial statements for the year 2018, the External Auditor confirms that such a shortfall still exists.<sup>35</sup>

185. The External Auditor asked the Court to provide the CBF's, the SASP's, and the Court's updated positions on this issue. They are the following.

(a) *Position of the CBF*

186. At its thirtieth session in April 2018 and at its thirty-first session in September 2018, the Committee on Budget and Finance made and renewed in similar terms the following recommendation: *"in light of the significant risk of a liquidity shortfall for the operations and reputation of the Court, the Committee recommended that:*

(a) *The Court closely monitor its cash-flow projections and strengthen its efforts in different directions to avoid a liquidity shortfall at year-end;*

(b) *The Assembly, at its seventeenth session, consider establishing a mechanism, to deal with liquidity issues, such as through the exceptional and temporary use of the CF and/or the establishment of external funding upon recommendation of the Committee, as a risk mitigating measure; and*

(c) *For the case that a liquidity shortfall arise before the session of the Assembly in December, the Bureau, in discharge of the responsibilities of the Assembly and upon recommendation of the Committee, consider all possible options to deal with the situation."*

(b) *Position of the SASP:*

187. According to the Court's answer, the SASP indicated that "there is a divergence of views amongst States Parties on the issue of a permanent mechanism to solve the Court's liquidity problems."

(c) *Position of the Court:*

188. The Registrar answered to the External Auditor that he "has been working with States Parties directly, but history has shown that the issue of liquidity is a recurrent problem. The Court has submitted a request to increase the level of the WCF to the Committee for consideration. In the absence of a larger WCF, the only existing mechanism is for the Court to go to the Assembly at the end of the year and seek emergency assistance, through use of the Contingency Fund or creation of a credit line. However, timing makes

<sup>35</sup> Based on most recent information, the External Auditor's report on 2018 accounts notes, for 2019, that "the Court has no grasp on the date of payment, which is totally under the contributing States Parties control. [...] There could be a risk of liquidity shortage and inability of the Court to face its commitments around [2019] year's end, even after using all available [appropriations] provided by the Working Capital Fund and the Contingency Fund. At the time of this report, the External Auditors have no additional visibility on the commitments of relevant contributors to deliver payments in time and amounts as forecasted."

this very difficult. The Court has asked States to consider whether it was possible to delegate some responsibilities to the Bureau in urgent circumstances. The Bureau would be better able to deal with the volatility of the issue.”

**Finding:** The risk of a liquidity shortfall remains relatively high, as underlined in the External Auditor’s report on the 2018 financial statements. A major crisis requiring an urgent solution would inevitably place the Court in a weak, and therefore costly, negotiating position with banks in case a credit line would be the only option left, not to mention the "reputational" risk involved. The CBF’s and the Court’s recent proposals would certainly limit such consequences. The External Auditor is aware that their approval by the ASP could have adverse side effects, by reducing the pressure on States Parties in arrears. Nevertheless, he considers that the balance of the pros and cons advocates for approving these proposals.

**Recommendation n°9 (priority 1):** So as to avoid adverse financial and reputational consequences in case of a liquidity shortfall, the Auditor recommends the ASP to delegate some responsibility to the Bureau, in order:

(a) To announce, in due time (i.e. leaving a reasonable period, such as two/three weeks – needing to be more precisely defined – before the forecasted available cash only represents less than one standard month of payments), that the Court will be exceptionally authorized to use the Contingency Fund, and/or, in case there is no sufficient cash available in the fund, to pre-negotiate a credit line;

(b) To allow the Court to effectively use either or both facilities only if and when the liquidity crisis becomes obviously unavoidable (for instance, when only one or two days of cash are left), this delay also needing to be very precisely defined in advance); and

(c) To provide for an immediate reporting of the situation to the States Parties for both previous decisions.

## F. Reporting

### 1. Frequency and form

189. The Court is required to prepare Budget Performance Reports to CBF and to ASP three times a year: as at the first quarter, as at the second quarter and as at year-end.

190. The corresponding documents submitted to the External Auditor show that, every year, two different types of budget reporting are issued:

(a) Two interim quarterly reports, designed to keep the CBF members and the States Parties’ delegates informed on the current state of budget implementation and to present possible modifications needing new decisions. In 2018, the first report (budget as at 31<sup>st</sup> March) was dispatched on April 11<sup>th</sup> and discussed one week later at the CBF 30<sup>th</sup> session; the second report (budget as at June 30<sup>th</sup>) was dispatched on August 3<sup>rd</sup>, and discussed one month later at the CBF 31<sup>st</sup> session; and

(b) One final annual report, designed to provide information to discharge the Registrar as the Court’s administrative officer for his budgetary management. The report is usually dispatched at the end of March of year n+1, reviewed by the CBF late April n+1, and submitted to ASP at its December n+1 session.

#### (a) Quarterly reports

191. The quarterly budget performance interim documents, produced in accordance with an ASP decision of December 2005 (ICC-ASP/4/32) following a recommendation of the CBF, provide an update on the current budget implementation at the end of March and June quarters.

192. On the basis of both quarterly reports provided in 2018, the External Auditor notes that these documents, first of all, provide information on the implementation rate of budgetary appropriations for the current year. It is generally observed that the

implementation of staff costs is almost linear, while that of non-staff appropriations can be more erratic (overall, as at 31 March 2018, 51.3% of the year's non-staff allocations were already consumed). The notes comment on the implementation rates for each programme, as well as for each category of commitment items. This section of the reports identifies some changes to budgetary assumptions: for example, as of 30 June 2018, the nine-month extension of the Ntaganda procedure and the nine months of the Al Hassan pre-trial, both of which were not anticipated by OTP, or the cost of the Al Hassan transfer to The Hague, which was not included in the Registry's initial budget submission, are modifications due to the fact that such events could not be anticipated.

193. The quarterly reports also inform States Parties on unforeseen expenses – for example, at the end of the first quarter of 2018, the extension of the contract of two Judges in the Jean-Pierre Bemba Gombo case and the launch of a new investigation into the situation in Burundi, authorized by a pre-trial Chamber on 9 November 2018 and therefore not budgeted for. Such unforeseen expenses must give rise to Contingency Fund notifications before the end of the year.

194. The quarterly reports also provide an update on recruitment decisions, including the number of positions held compared to the number of established posts, and on ongoing recruitments.

195. Finally, the quarterly reports review the cash flow situation and display arrears in the payment of assessed contributions (as well as the resulting suspensions of voting rights).

(b) *The annual report*

196. The External Auditor analyzed the most recent final report available at the time of the audit (document CBF/32/14). This document (61 pages and 16 annexes), distributed on 22 March 2019 and discussed by the CBF at its 32nd session from 29 April to 4 May 2019, is a report on budget implementation ("activities and programme performance") for the 2018 financial year.

197. The document consists of three blocks with very different informative content:

(a) The first block (39 pages) describes, in a narrative, the activities of the 2018 financial year by Major Programmes;

(b) The second block is shorter (20 pages). It deals with:

(i) On the one hand, cross-cutting issues (that do not fall within the scope of a single Programme or organ, such as budget transfers, strategic plan/risk management and efficiency measures); and

(ii) On the other hand, with "budgetary performance" in 2018, mainly based on the implementation of budgetary appropriations, with and without the impact of notifications on the contingency fund, by Major Programmes and Programmes, and by commitment items, with a development concerning field activities in countries in situations. This second block is also a succession of scattered pieces of information; and

(c) The third block, consisting of 16 annexes, is the most important (66 pages).

## 2. Performance indicators

(a) *Implementation rate*

198. The following table shows the 2005-2018 evolution of ICC's budgets implementation rate:

**Table 17: 2005-2018 evolution of approved budgets and implementation rates (in millions euros)**

<i>Year</i>	<i>Approved budget</i>	<i>Increase (%)</i>	<i>Implementation rate (%)</i>
2005	66,9	-	92,9%
2006	80,4	20,18%	80,4%
2007	88,9	10,57%	87,2%
2008	90,4	1,69%	92,6%
2009	101,2	11,95%	92,7%
2010	103,6	2,37%	97,2%
2011	103,6	0,00%	99,2%
2012	108,8	5,02%	96,6%
2013	115,1	5,79%	95,8%
2014	121,7	5,73%	96,7%
2015	130,7	7,40%	97,1%
2016	139,6	6,81%	96,1%
2017	144,6	3,58%	99,6%
2018	147,4	2,00%	96,8%

Source: ICC.

199. This table shows that, almost every year, in the past, the approved budget has steadily increased faster than inflation, and the actual expenditure has been inferior to the approved budget.

200. The combination of these two elements is sometimes considered as an indication that the ICC budget offers significant flexibility. For instance:

(a) In its 2016 report, the Internal Auditor referred to a possible side-effect of the close monitoring of the budgetary preparation by CBF, considering that *"there is a general belief that the CBF will apply cuts in the budget proposal even though the presented budget is considered fair, realistic and based on the Court's mandate. This belief may cause budget owners to inflate their budget proposals"*; and

(b) More recently, in a "common messages from the Court to the HWG-Budget" dated 11 October 2018, the OTP noted that "the CBF keeps mentioning a flexibility that should be available in the budget level. This CBF view seems to mean there is a buffer of slack built in the budget proposal because the implementation is below 100 percent".

201. In fact, budget underspending is mainly due to budgetary rigidities which are not specific to the ICC.<sup>36</sup> The main reasons are that:

(a) For international organizations, budgetary deficit is in principle excluded, so that budget appropriations levels are approved on a sufficient basis to avoid the risk of overspending;

(b) The only accepted "buffer" is the possibility of a temporary funding through the Working Capital Fund or, in exceptional cases, through the implementation of a Contingency Fund (as is the case at ICC).

202. As a result of this generally accepted prudent approach, the optimal implementation rate on the budget fund (General Fund) cannot exceed 100% but, since forecasts are only approximations, it is usually slightly inferior.

<sup>36</sup> In most international organizations, budget implementation rates are below 100 percent.



(b) *Key Performance Indicators*

203. As at 31 December 2018, just over 16 years after the entry into force of the Rome Statute (1 July 2002), the ICC had opened eleven situations, initiated six proceedings,<sup>37</sup> while it had rendered six judgments,<sup>38</sup> resulting in four guilty verdicts<sup>39</sup> for sentences ranging from nine to fourteen years' imprisonment, and two acquittals. There were four dismissals.<sup>40</sup> In three cases, the Court adopted reparations orders.<sup>41</sup> On the same date, the Appeals Chamber had delivered seven judgments.<sup>42</sup> A total of 28 cases had been opened by the end of 2018, involving 39 individuals, 18 of whom were prosecuted before the Court, the others being fugitives or dead.<sup>43</sup>

204. During the same period (1 September 2003 to 31 December 2018), the ICC actually spent a current €1,562.5 million.

205. If an external observer was trying to establish "direct ratios" between these data, he would obtain very impressive, but probably misleading figures, such as €90 million per guilty verdict, €60 million per judgment, €40 million per involved individual, €42 million per situation, etc. That is the reason why, even if the ICC believes it cannot be considered as a "Result Based Organization", more refined financial performance indicators are desirable in order to account in a more elaborate way for the level of public financial resources used by the Organization.

206. Concerning budgetary performance indicators, the Financial Regulations, Rule 103.2, provide that "the budget narrative shall set out, wherever possible, concrete objectives, expected results and key performance indicators for the financial period".

207. But it was only from 2015 that the Court began to develop performance indicators for the whole Organization. The ASP had, at its thirteenth session in December 2014,<sup>44</sup> invited the Court "to intensify its efforts to develop quantitative and qualitative indicators that would enable the Court to better demonstrate its achievements and needs, and that would also enable States Parties to assess the Court's performance in a more strategic manner".

208. Three years later, in 2017, the third report on the development of performance indicators for the ICC<sup>45</sup> disclosed 102 KPIs organized around four performance areas.<sup>46</sup>

209. Meanwhile, in 2016, the Internal Auditor had noted that the task force had defined and implemented about 100 KPIs, but after having analysed them, the recommendation n°7 proposed that "the CoCo should ensure that sufficient resources and skills are available in the Task Force to conduct a critical analysis of the existing performance indicators used by the Court. Such test would include a SMART<sup>47</sup> test. Based on the outcome, the CoCo should

<sup>37</sup> They concerned, as at Dec.31<sup>st</sup> 2018, Mr. Omar Al-Bashir (fugitive) - President of Sudan, Mr. Muammar Gaddafi (deceased) - President of Libya, Mr. Uhuru Kenyatta (withdrawal of charges) - President of Kenya, Mr. William Ruro (dismissed) - Vice-President of Kenya, Mr. Jean-Pierre Bemba (convicted in 2016, then acquitted on appeal in June 2018) - former Vice-President of Congo, Mr. Laurent Gbagbo (ongoing trial) - former President of the Ivory Coast.

<sup>38</sup> The duration of the actions undertaken since the creation of the Court must be taken into account, as shown by all the Court's actions, which all concern the same case (Lubanga):

- (a) First investigation opened in 2004;
- (b) First arrest warrant issued in 2006;
- (c) First trial started in 2009;
- (d) First verdict rendered on March 14, 2012;
- (e) First appeal judgment delivered on 1 December 2014; and
- (f) First reparations order issued on October 21, 2016.

<sup>39</sup> Thomas Lubanga, Germain Katanga, Ahmad Al Mahdi and again Germain Katanga.

<sup>40</sup> MM. Rujo, Kenyatta, Mharushimana and Abu Garda.

<sup>41</sup> Lubanga, Katanga and Al Mahdi cases.

<sup>42</sup> Including an acquittal for Mr. Matthieu Ngudjol for lack of evidence in 2014, and in 2018, a cancellation of all charges against Jean-Pierre Bemba. At the time of the audit (1st half of 2019), on 15 January 2019, an eighth appeal judgment was rendered, Mr. Laurent Gbagbo also being acquitted.

<sup>43</sup> In the case of Sudan, none of the suspects have been arrested in 10 years.

<sup>44</sup> Document ICC-ASP/13/20.

<sup>45</sup> Document 115/11/2017 dated 15 Nov. 2017.

<sup>46</sup> Area 1: Procedures are prompt, fair and transparent at all stages; Area 2: The Court's direction and management is effective; Area 3: The Court ensures adequate security of its work, including the protection of persons at risk as a result of their collaboration with the Court; Area 4: Victims have access to the Court.

<sup>47</sup> *Specific, Measurable, Acceptable, Realistic, Time-bound.*

*agree on a limited number of performance indicators which are measurable and could be linked to operations”.*

210. This recommendation was not accepted by the management of the Court, who gave the following answer: “the performance indicators that the Court is currently developing are not linked to the budget. One of the main purposes of developing performance indicators is to have fair and efficient judicial processes.”

211. After examining these facts, the External Auditor notes that:

(a) There is no correspondence between the KPIs established at ICC level and the KPIs by organ of the Court, as disclosed in the annexes to the Annual Budget Performance Report (i.e., for the 2017 financial year, in annexes nos. 1, 2, 4, 6, 7 and 8);

(b) Most of the KPIs disclosed in these annexes, are not related to the budget implementation, are generally a simple description of some selected activities, and do not allow the measurement of an outcome in relation to a quantified objective;

(c) Most of the performance indicators have non-measurable targets such as “provide legal research and advice as requested” or “enhance client satisfaction”;

(d) The high number of achievements rated 100% is very often not the result of the comparison of two numbers or of the checking that a definite action has been implemented, but a mere narrative of activities related to the selected goal;

(e) Many of those KPI could be more considered as tools to help each organ to clarify its main tasks than as real instruments providing useful information to the States Parties. No prioritization is made among those indicators. It makes it very difficult for the States Parties to draw any conclusions on the efficiency and the performance of the Court; and

(f) The high number of non-prioritised performance indicators limits the possibility for any reader to understand where the real “key” results are and to have a global overview of the Court’s performance.

212. As a result, the ICC cannot offer, in the face of possibly misleading “direct ratios” which could be drawn by an external observer, as presented in the above introduction to KPIs, any satisfying and more refined financial measurable budget performance indicators showing to all stakeholders (including public opinion) the link between costs incurred and results obtained.

**Finding:** As confirmed by the Court’s answer to the 2016 Internal Audit report, the ICC’s key performance indicators *“are not linked with the budget”*.

The high number of KPIs presented in the annexes to the Programme Budget Performance report, and the lack of prioritization, makes the reading uneasy and a global appraisal of the Court’s real performance impossible.

**Recommendation n°10 (priority 2):** Concerning the key performance indicators disclosed in the Budget Performance Report annexes, the External Auditor recommends that:

(a) In order to offer a more coherent and budget-focused annual budget performance report, the ICC no longer publishes the annexes currently devoted to Major Programmes’ key performance indicators, most of which are not measurable and have no link with the budget performance, i.e. do not even offer appropriate cost/results measurable indications;

(b) In order to avoid letting external stakeholders disclose simple, but misleading budgetary indicators based on public information (for instance by dividing the actual ICC budgetary expenses by the number of guilty verdicts, of judgments, of involved individuals, of situations, etc.) the ICC takes the opportunity of its present works on the Court’s Strategic Plan 2019-2021 to select, if and when possible, some specific KPIs presenting a clear correlation with the use of budgetary resources to replace the present useless KPIs disclosed in the Budget Performance Reports, which are generally not directly related to the budget; and

(c) Once this task has been completed, each body selects a very limited number of the most significant measurable indicators related to the budget (between two and four, if any), in order to annex them to the budget performance report.

The removal of the publication of current indicators should not take place until new relevant indicators are actually available.

### III. Conclusion

213. All States have to make financial trade-offs between their sovereign functions. Their available financial resources are not unlimited, so that they must impose financial ceilings on each of these functions. Resources allocated to national judicial systems are not an exception to this rule, without it raising doubts on the independence of their judiciary systems.

214. However, since the ICC's inception, this universal rule has not been observed for the ICC, for three main reasons:

(a) The dominant interpretation of the Rome Statute concerning the principle of the independence of the Prosecutor's Office has been that no financial limits could be placed on it;

(b) The necessity, according to current practice, to reach a consensus on budget approval resolutions makes it difficult to define any commonly accepted budgetary ceiling; and

(c) The cases referred to the Prosecutor and confirmed by the Judges have resulted in a continuously increasing workload during the first decade of the Court's activity. This could only reinforce the two previous elements.

215. Nevertheless, over the past decade, the situation has evolved, ICC's actual, if not forecastable, workload has stabilized, and there are, in the recent years, more and more factors indicating that the Court may have reached its cruising speed, although it is of course not possible to exclude peak workloads in an indefinite future.

216. Most of the External Auditor's recommendations rated "priority 1" presented in this report aim at optimizing the ICC's budget. Unfortunately, for reasons explained in Chapter A, the Rome Statute and the resulting ICC's budget structure do not allow any value for money approach. This situation sets a clear limit to the improvements one could expect from implementing the External Auditor's recommendations presented above.

217. Nevertheless, beyond these recommendations, the External Auditor notes that a Study Group on Governance submitted to the ASP a report dated 16 November 2016, discussing the possibility to implement a budget "envelope" (or several envelopes) for the Court budget. It would be an effective way to freeze future increases, while offering, in exceptional unforeseen circumstances, the possibility for the ASP to approve additional budgets. Considering there was a risk that such a move could lead to a so-called "resource driven" Court, the ASP did not follow that path.

218. Nevertheless, after having audited all aspects of the ICC's budget process, it is the External Auditor's opinion that, as suggested by the Group, an envelope approach, similar to that applied to all national Courts, would be the only effective way to put ICC's budget under control of States Parties.

### IV. Follow up of previous recommendations

219. The follow-up of the recommendations resulting from all previous audits is presented by the External Auditor in his report on the financial statements for the 2018 financial year, in order to list in a single table all the recommendations implemented or still pending.

## V. Acknowledgements

220. The External Auditor wishes to express deep appreciation to the Directors and staff members of the ICC for their reception and the accuracy of the information that they provided.

*End of audit observations.*

External Auditor  
First President of the  
Cour des Comptes (France)  
13 rue Cambon  
75001 Paris, France

## Annexes

### Annex I

#### Terms of reference

1. In accordance with a notification letter sent to the Registrar on 10 January 2018, three members of the external audit team conducted a performance audit on the budgetary procedure of the International Criminal Court (ICC) from 20 to 31 May 2019.

2. The terms of reference for this audit were agreed after consultation with the managers concerned, and were communicated to them on 11 January 2019, followed by two questionnaires, the first sent on 21 March 2019 and the second on 06 May 2019. The terms of reference are as follows:

#### A. Scope

3. The audit is dedicated to the ICC Budget process.

4. It covers the process of preparation, adoption (scrutiny, negotiation and approval) and implementation of the annual budget of the Organization.

#### B. Objectives

5. The purpose of the audit is to measure the effectiveness and efficiency of the budget process and, where appropriate, to propose ways to improve them.

6. In particular, the audit will focus on the extent to which the budget is adaptable to ICC's workload, and to which extent the budget process is most optimal at all three main stages, including:

(a) coordination among the Court organs and offices during the preparation of the budget in order to ensure: a) common understanding of the Court's priorities and budget assumptions; b) a coherent Court-wide budget proposal that also takes into consideration ASP/CBF requests/recommendations;

(b) interaction of the Court with the ASP and its subsidiary bodies, including the CBF, in the adoption of the budget in ensuring oversight by States Parties;

(c) the ability of the Court to address any changes in the assumptions or changes in the workload during the implementation of the budget.

7. For these three stages (preparation, adoption, implementation), the review will focus on the way the budget can adapt, both downward and upward, to the workload and the financial resources made available by the States, in order to make an assessment on its flexibility and sustainability.

#### C. Method

8. The team includes three auditors – Michel Camoin, Gilles Levy and Christian Cardon. The audit work were organized and distributed as follows:

(a) Common core, covering five areas:

(i) Review of past financial achievements of the Court's activity since 2002, in order to draw, at the outset, an overall view of the evolution of the cost of actions initiated by the Court, and to evaluate, as far as possible, the relevant synthetic ratios between resources committed and results obtained, irrespective of the division of the budget into programs;

(ii) Inventory and analysis of the rules applicable in budgetary matters within the ICC;

(iii) Analysis of the evolution of the ICC budget over the past five years: for expenditure, by major program and by nature of expenditure; for receipts, breakdown between assessed and voluntary contributions. On this occasion, a point will be made on the link between the result of budget execution and the level of cash available to the Organization;

(iv) Review of the methods for assessing revenue and expenditure during the preparation of each budget (including existence and reliability of the information available to the Registry in consultation with the other organs, on new situations to be dealt with by the ICC and on those that could be closed or set aside during the following budgetary period); and

(v) Review of the advantages and disadvantages of adopting a budget established according to the IPSAS standard (to answer a specific question raised by the budget Committee during last year Auditor's report presentation); and

(b) Analytical approach by major programs:

(i) In practice, the programs will be grouped into three groups: (1) Registry (Christian Cardon), (2) Office of the Prosecutor (Michel Camoin), (3) Presidency / Chambers and other programs (Gilles Levy); and

(ii) The analysis will focus on the identification of recurrent / non-recurrent costs and the means (if any) available and implemented to enable the States Parties to control their evolution.

## **D. Schedule**

9. Following a video conference held on 12 November 2018, basic documentation was provided to the External Auditor on 11 January 2019. A first supplementary questionnaire was sent to the services on 21 March 2019 with replies expected by the end of February 2019, a second on 04 May 2019 and a third on 05 May 2019, with replies expected by the May 15th 2019.

10. The on-site mission took place from 20 to 31 May 2019. The schedule of meetings with the relevant officials of the Registry, the Office of the Prosecutor and the Presidency, etc. was agreed before the mission began (based on a maximum of four meetings per day per auditor). An inaugural and a closing meeting were also scheduled.

## **E. Preparation and delivery of the audit report**

11. Two phases were planned:

(a) Phase 1 (draft report): at the end of his on-site audit, the Auditor sent a provisional report on 4 June 2019 for clearance;

(b) Phase 2 (final report): the final report, taking into account the responses to the interim report, is to be transmitted to the Court beginning of July for presentation to the Assembly of States Parties, after consideration by the ad hoc committees (Audit Committee, Committee on Budget and Finance), in accordance with the ICC's standard procedures and timetable.

## Annex II

### List of interviewees

#### Office of the President

- Hirad Abtahi, Legal Adviser and Unit Head
- Sean Cornell

#### Chambers

- Marc Perrin de Brichambaut, Judge, Vice-President

#### Hague Working Group

- Ambassador Marlene Bonnici, budget facilitator
- Ambassador Annika Markovic, budget management oversight facilitator

#### Office of the Prosecutor

- James Stewart, Deputy Prosecutor
- Marco Blasi, Head of Service Management Section
- Jennifer Urrutia, Service Management Section

#### Trust Fund

- Pieter de Baan, Executive Director of the Trust Fund for Victims
- Ivan Dragano, TFV

#### Independent Oversight Mechanism

- Saklaine Hedaraly, Head of the Independent Oversight Mechanism

#### Internal Audit

- Florence Bole, Director

#### Registry

- Peter Lewis, Registrar
- Ivan Alippi, Director, Division of Management Services
- Marc Dubuisson, Director, Division of Judicial Services
- Juan Escudero, Head of the Office of the Registrar
- Michael Chin, Head of the Budget Section
- Pierre Ronzière, Budget Section
- Étienne Gouws, Head of the Operations Unit of the Human Resources Section
- Lassi Kuusinen, Head of the Security Section
- Kelly Mannix, IMSS
- Pieter Vanaverbeke, Legal Aid Unit
- Natacha Schauder, Victims and Witness Section
- Chi Wang, Division of External Operations