

**Eighth session**

The Hague  
18-26 November 2009

**Report of the Committee on Budget and Finance  
on the work of its thirteenth session**

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## **Introduction**

### **A. Opening of the session and adoption of the agenda**

1. The thirteenth session of the Committee on Budget and Finance (the “Committee”) was convened in accordance with the decision of the Assembly of States Parties (the “Assembly”) taken at the 7th plenary meeting of its seventh session, on 21 November 2008, and the further decision of the Committee on its dates, on 24 April 2009. The session, comprising 15 meetings, was held from 24 August to 1 September 2009. The President of the International Criminal Court (the “Court”), Mr. Sang-Hyun Song, delivered welcoming remarks at the opening of the session.

2. The Secretariat of the Assembly of States Parties (the “Secretariat”) provided the substantive servicing for the Committee, and its Director, Mr. Renan Villacis, acted as Secretary of the Committee.

3. The following members attended the thirteenth session of the Committee:

1. David Banyanka (Burundi)
2. Carolina María Fernández Opazo (Mexico)
3. Gilles Finkelstein (France)
4. Fawzi A. Gharaibeh (Jordan)
5. Masud Husain (Canada)
6. Shinichi Iida (Japan)
7. Juhani Lemmik (Estonia)
8. Rosette Nyirinkindi Katungye (Uganda)
9. Gerd Saupe (Germany)
10. Ugo Sessi (Italy)
11. Elena Sopková (Slovakia)
12. Santiago Wins (Uruguay)

4. At its 1st meeting, the Committee adopted the following agenda (ICC-ASP/8/CBF.2/L.1):

1. Opening of the session.
2. Adoption of the agenda.
3. Participation of observers.
4. Organization of work.
5. States in arrears.
6. Financial performance data of the 2009 budget.
7. Consideration of the proposed programme budget for 2010.

8. Audit matters:
  - (a) Audit reports
    - (i) Financial statements of the International Criminal Court for the period 1 January to 31 December 2008;
    - (ii) Financial statements of the Trust Fund for Victims for the period 1 January to 31 December 2008;
    - (iii) Report of the Office of Internal Audit.
    - (iv) Report of the Audit Committee.
  - (b) Governance arrangements.
9. Premises of the Court.
10. Independent oversight mechanism.
11. Legal aid.
12. Family visits.
13. Contingency Fund.
14. Investment of the Court's liquid funds.
15. Other matters.

5. The following organs of the Court were invited to participate in the meetings of the Committee to introduce the reports: the Presidency, the Office of the Prosecutor and the Registry.

## **B. Participation of observers**

6. The Committee decided to accept the request of the Coalition for the International Criminal Court to make a presentation to the Committee. The Committee expressed its appreciation for the presentation.

## **II. Consideration of issues on the agenda of the Committee at its thirteenth session**

### **A. Review of financial issues**

#### **1. Status of contributions**

7. The Committee reviewed the status of contributions as at 20 August 2009 (annex II). It noted that a total of €94,175,008 had been received for the 2009 financial period while €2,401,507 was outstanding from previous financial periods. It noted that 61 States were fully paid up for all their contributions as at 20 August 2009. Since 97.9 per cent of the 2009 assessed contributions had been paid, the overall situation represented an improvement since the Committee's previous session. The level of outstanding contributions from previous financial periods had also been further reduced.

## **2. States in arrears**

8. The Committee noted that on 1 June 2009 the Secretariat had communicated with States in arrears, informing them of their outstanding contributions and advising them of the minimum payment required to avoid the application of article 112, paragraph 8, of the Rome Statute. The Secretariat advised the Committee that five States were ineligible to vote as at 20 August 2009.<sup>1</sup> The Committee recalled that the matter was being addressed by the New York Working Group of the Bureau, which had been entrusted with the issue by the Assembly.

9. **The Committee requested the Secretariat to again advise States in arrears of the minimum payment required before the eighth session of the Assembly.**

## **3. Surpluses**

10. In accordance with regulation 4.6 of the Financial Regulations and Rules of the Court, the estimated cash surplus that is to be returned to States Parties on 1 January 2010 amounts to €13.1 million, and comprises the provisional cash surplus for 2008 and assessed contributions in respect of prior periods that were received from States Parties in 2009.

## **B. Audit matters**

### **(a) Audit reports**

1. **Financial statements of the Court for the period 1 January to 31 December 2008**

2. **Financial statements of the Trust Fund for Victims for the period 1 January to 31 December 2008**

11. Introducing his reports on the financial statements of the Court<sup>2</sup> and of the Trust Fund for Victims,<sup>3</sup> the External Auditor informed the Committee that the statements were free of material misstatement and presented fairly the financial position of the Court and of the Trust Fund and that he was able to offer an unqualified audit opinion. The Committee noted that total expenditure in 2008 amounted to €84,854,000<sup>4</sup> compared to the approved budget of €90,382,100, representing a budget implementation rate of 93.3 per cent.<sup>5</sup>

12. The Committee welcomed the presentation of the External Auditor, in particular recommendation 1 that the Court should ensure adequate forecasting procedures for cash flow, particularly for the medium and long term, as the Court approaches a 100 per cent implementation rate of its budget. The Committee also highlighted recommendation 4<sup>6</sup> as meriting particularly careful consideration with respect to improving risk assessment and risk management arrangements.

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<sup>1</sup> Burundi, the Central African Republic, Guinea, Niger and Sierra Leone.

<sup>2</sup> ICC-ASP/8/14.

<sup>3</sup> ICC-ASP/8/16.

<sup>4</sup> ICC-ASP/8/14.

<sup>5</sup> ICC-ASP/8/7.

<sup>6</sup> ICC-ASP/8/14, External Auditor's Report 2008. Pursuant to recommendation 4, the External Auditor recommended that "improved risk assessment and risk management arrangements be taken forward as a matter of priority, to ensure that the Court maintains momentum on this important aspect of governance and is able to actively manage significant risks, ensuring that both external and internal risks are recognized and prioritized. This should lead to the production of a risk register with prioritized risks, the identification of risk owners, and actions to mitigate key risks; reviewed and updated regularly by senior management and submitted to the Audit Committee for review and further action as necessary."

13. With respect to recommendation 8 on the adoption of International Public Sector Accounting Standards (IPSAS), the External Auditor noted that IPSAS would ultimately become the standard of accounting practices for international organizations and was being adopted over time by the United Nations. The Committee noted that the Court had proposed a budget of €409,400 for 2010 as part of the overall budget of €1,968,302 over the next five years for IPSAS implementation.<sup>7</sup> The Committee recalled its prior advice that “the Court should work towards implementation of IPSAS in the medium term”.<sup>8</sup> The Committee was of the view that the Court could safely defer implementation at this point for at least one year in order to assess the outcome of the system’s implementation in other organizations and requested the Court to provide an updated report on its assessment. **The Committee therefore recommended that the Assembly not provide €409,400 for 2010 and that it further consider the experience of other international organizations before making a final decision on a schedule for IPSAS implementation.**

14. With respect to the Trust Fund for Victims, the Committee endorsed the view of the External Auditor that more careful consideration should be given to donations under €5,000 to reduce the risk of irregular donations.<sup>9</sup>

15. With respect to recommendation 3 on the possibility of shifting the costs of administering funds from the core budget to the use of donations, the Committee noted that this issue was ultimately for the Assembly to decide. In this regard, **the Committee endorsed the view of the External Auditor that an evaluation of the level of activity of the Trust Fund be undertaken in relation to the Assembly’s original resolutions<sup>10</sup>**, so that the Assembly can determine whether and/or when it would be appropriate and viable for the expenses of the Fund to be paid by voluntary contributions.

16. The Committee read with great interest the External Auditor’s report as well as the opinion expressed therein. The Committee **recommended that the prescriptions mentioned are implemented and that the Court should report to the Committee on its implementation.**

### **3. Report of the Office of Internal Audit**

17. Pursuant to Rule 110.1 of the Financial Regulations and Rules, the Office of Internal Audit submitted its annual activity report to the Committee on Budget and Finance, outlining the activities of the Office for the second half of 2008 and the first half of 2009.

18. The Committee considered the report of the Office of Internal Audit. It discussed the specific findings and recommendations with the Director of the Office and Court officials.

19. Pursuant to its mandate under Rule 110.1 the Committee would like to highlight to the Assembly that certain weaknesses of coherency were found to exist in the current procurement process for specialized services such as translators and interpreters between the different organs of the Court. In this regard the Committee **recommended that the Court review its procurement practices for such services and that the Office of Internal Audit continue to include procurement in its work plan. The Committee also recommended that, to further enhance the transparency of its procurement practices, the Court should post its procurement procedures on its website.**

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<sup>7</sup> ICC-ASP/8/26, para. 20, Table 2: Budget estimate for IPSAS implementation.

<sup>8</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. II, part B.2, para. 18.

<sup>9</sup> ICC-ASP/8/16, paras. 16-17.

<sup>10</sup> *Ibid.*, paras. 11-15.

20. The Committee also noted that there was no specific mechanism to review the follow-up to the recommendations of the internal auditor. The Committee therefore **recommended that the Office of the Internal Audit include as part of its annual report a section on follow-up actions to previous recommendations.**

21. The Committee expressed its concern regarding the substantial delays in fully staffing the office which would seem to have delayed the full implementation of the audit plan. In this connection, the Committee recalled its past observations<sup>11</sup> and **invited the Court to expedite the recruitment process for the post** which had been vacant for over one year.

#### **4. Report of the Audit Committee**

22. The Court informed the Committee that revised terms of reference<sup>12</sup> had entered into force on 11 August 2009 which provided for a majority of external members and a governance structure as proposed by the External Auditor and endorsed by the Committee.<sup>13</sup> One external member has been recruited and the Audit Committee would meet on 4 September 2009. The Court advised the Committee that it was making serious efforts to identify the remaining external members.

23. As regards the revised terms of reference previously mentioned, the Committee noted that no specific amount had been included concerning remuneration and travel expenses of the external members. The Committee **requested the Court to review those terms anew** so that they include specific figures within the maximum budget envelope of €90,000. **As regards the proposed budget of the Audit Committee for 2010, the Committee recommended it be transferred from major programme IV to major programme I and that the total costs for the Audit Committee be distinctly reflected in future budget proposals.**

24. The Committee welcomed the decision by the Court and looked forward to receiving the first annual report of the Audit Committee under its revised terms of reference.

#### **(b) Governance arrangements**

25. The Committee considered a report prepared by an external consultant on risk management in the Court. The Committee noted that the report had identified divisions among the organs and a lack of clarity of roles as the main risk that could lead to inefficiencies. The Committee noted that risk management had been similarly highlighted by the External Auditor in the recommendations of his report.<sup>14</sup>

26. The Committee considered that this issue was of high priority. In this regard, the Committee **requested that the Presidency of the Court submit a report for consideration at its fourteenth session on the measures that the Court is taking to increase clarity on the responsibilities of the different organs** and a common understanding throughout the Court of such responsibilities.

27. **In light of the 2010 Review Conference, the Committee suggested that the Assembly may wish to consider ways to improve and enhance the governance structures of the Court, and the Assembly's role.**

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<sup>11</sup> Ibid., para. 21.

<sup>12</sup> Presidential Directive ICC/PRES/D/G/2009/1, dated 11 August 2009.

<sup>13</sup> ICC-ASP/8/14, External Auditor's Report 2008, paras. 26-28.

<sup>14</sup> ICC-ASP/8/14, External Auditor's Report 2008, paras. 29-31.



## C. Budgetary matters

### 1. Financial performance data of the 2009 budget as at 30 June 2009

28. The Committee had before it the report of the Court on budget performance as at 30 June 2009.<sup>15</sup> It noted that the implementation rate for 2009 as at 30 June was 51.9 per cent, representing an expenditure of €52.5 million. The implementation was 5.1 per cent higher than for the corresponding period in 2008. The projected implementation rate to 31 December 2009 was 97.7 per cent based on a projected expenditure of €98.875 million. This would represent under-expenditure of €2.4 million of the approved budget, but €4.7 million over the amount received from assessed contributions for 2009, which amount to €94,175,008 as at 20 August.

29. The Committee in particular noted that the Court had overspent its budget for consultancy services and equipment across the various programmes and **recommended that the Court identify ways to improve consolidation of its budgetary discipline.**

30. With regard to staffing, the Committee noted that the overall recruitment position of the Court had improved markedly over the same point in 2008. Of the 739 posts approved for 2009<sup>16</sup>, 669 were occupied as at 30 June, a difference of 70 posts. Of the vacant posts, 49 were under recruitment, while a further 10 had been advertised, and 11 posts had not been advertised. The Court forecast that a total of 702 posts would be filled as at 31 December 2009.

31. In light of this implementation rate, as well as the issuance of a summons to appear and the subsequent appearance of Mr. Abu Garda (see section I: Contingency Fund), the Registrar informed the Committee by letter dated 12 August 2009, that the Court foresaw accessing the Working Capital Fund to cover the expected gap between assessed contributions and actual expenditure as provided for in resolution ICC-ASP/7/Res.4.

32. The Committee had before it the Second status report on the Court's investigations into efficiency measures<sup>17</sup> and was also informed orally about a number of efficiency measures and processes, as well as cost savings that had been implemented in 2009 with a view to reducing costs.

33. The Committee noted with appreciation the real and sincere efforts made by the Court to find efficiency and other savings. However the Committee pointed out that the report and briefings in question were more descriptive of efficiency processes and did not provide quantifiable details on actual savings attained in 2009. In this regard, the Committee **recommended that the Court provide more details on actual savings in 2009.** It further **recommended that the Court ensure that it keep its expenditures for 2009 under constant review in order to prioritize activities** with a view to finding increased savings that would allow the gap between the assessed contributions and expenditures to be as small as possible. The Committee also noted that with the postponement to 2010 of the third trial, the Court should be able to identify a number of areas where savings could be realized in the 2009 budget, thereby resulting in a decreased need to access the Working Capital Fund in order to cover the assessment gap.

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<sup>15</sup> ICC-ASP/8/17.

<sup>16</sup> The number of approved posts indicated is based on table 4 of the Report of the Court on budget performance as at 30 June 2009 (ICC-ASP/8/17), however, it provides no clarity as to the difference between elected (by the Assembly or by Chambers) and non-elected officials.

<sup>17</sup> ICC-ASP/8/30.

(a) **Working Capital Fund**

34. The Committee recalled its advice at its eleventh session that the Working Capital Fund was an essential mechanism for ensuring the Court could meet cash flow needs where the regular contributions of States Parties might be late and that, in principle, it would be reasonable to set the fund at one-twelfth of the annual budget.<sup>18</sup> However, given the improvement in the level of contributions received and the resulting strong cash position of the Court, the Committee **recommended that the Working Capital Fund should be maintained at its current level of €7,405,983 and that any draw down of the fund for the purpose of filling the gap between assessed contributions and the approved budget in 2009 be replenished through assessed contributions in 2010.** In addition, the Committee **recommended that the Court make every effort to bring expenditures in line with the assessment level of €6 million.**

2. **Consideration of the proposed programme budget for 2010**

(a) **Presentation**

35. The Committee welcomed the overall presentation of the budget document, including the Court's adjustments that provide greater transparency in the sections and sub-programmes.

36. However the Committee noted several areas for improvement. The Committee **recommended that legal aid for the defence and legal aid for victims be identified as discrete items in their respective sub-programmes** rather than being contained in the category of "contractual services including training". This would allow for greater transparency and comparability from year to year.

37. The Committee also **recommended that training be identified as a discrete item in the different programmes and sub-programmes.**

38. The Committee further **recommended that, in some programmes, a better justification for resource proposals be provided.**

39. With respect to the non-inclusion in the proposed budget of the costs for the Review Conference, the proposed liaison office at the African Union Headquarters and the proposed independent oversight mechanism, the Committee **recommended that, as a general rule, items that have not received the policy approval of the Assembly should not be included in the budget. Nonetheless items, such as the Review Conference, that are the result of a statutory requirement of the Rome Statute should be contained in the proposed budget,** although provision should be made to ensure that periodic events are not understood or counted as part of the core budget for the Court in any way. The costs of the Review Conference should therefore not serve as a basis for calculating the proposed budget for 2011. With respect to the budgets of items that have been prepared for consideration by the Assembly, such as the proposed liaison office, the proposed independent oversight mechanism and family visits for indigent detainees, the Committee **recommended that such budgets appear as annexes to the budget document to ensure full transparency as to their impact on the overall budget.**

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<sup>18</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. II, part B.2, para. 70.

40. In relation to the travel budget of the Court to the Review Conference, the Committee noted that there was a lack of consistency across the major programmes. Some programmes included travel costs to attend the Review Conference within their major programme budget while others placed their travel costs in the proposed budget for the Review Conference.<sup>19</sup> In this connection, **the Committee recommended that all travel related to the Review Conference be removed from the regular budget and listed in an addendum to the budget document. The amounts approved by the Assembly would then be incorporated into each of the major programmes for 2010 but in accordance with the one-time expenditure approach (see paragraph 39 above) by which such costs would be excluded from the calculation of the baseline for the preparation of the proposed programme budget for 2011.**

**(b) Assumptions and activities for 2010**

41. The Court informed the Committee that the proposed programme budget for 2010 was based on the assumption of up to three consecutive trials throughout the year, involving a total of four accused.

42. The Committee recalled its comments on the 2008 and 2009 budgets urging the Court to maximize the efficiency of proceedings and to schedule trials so as to avoid additional costs wherever possible.<sup>20</sup>

43. The Committee was informed that the Prosecutor did not intend to commence any investigations in a new situation in 2010, unless a need to open such a new situation arose or the Security Council or a State referred a situation to the Court. The Prosecutor was conducting five active investigations in three of the situations before the Court, was maintaining five further residual investigations and would continue to analyze up to eight other potential situations.<sup>21</sup>

**(c) Macro-analysis**

44. The Court informed the Committee that it proposed a budget of €102.98 million for 2010, representing an increase of €1.75 million or 1.7 per cent over the approved budget level for 2009.

45. The Committee noted that States Parties could be assessed an additional €2.4 million for the following activities, increasing the proposed budget by 2.3 per cent depending on decisions to be taken by the Assembly.

Review Conference:	€1.4 million
Liaison office at the African Union Headquarters:	€0.5 million
Independent oversight mechanism:	€0.5 million

<sup>19</sup> ICC-ASP/8/17, annex XI.

<sup>20</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November-14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. II, part B.2, para. 35 and *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. II, part B.2, para. 47.

<sup>21</sup> ICC-ASP/8/10, paras. 9-10 and annex III.

46. As the Court is acquiring greater experience in costing its activities, and as its budget is starting to stabilize in light of the current level of activity, the Committee was of the view that the **Court should commence forecasting and quantifying known and potential cost drivers** in order to allow the Assembly to have a reasonable understanding of the potential budgetary stresses over the next five years.

47. The Committee welcomed this budget as an indication that the Court was indeed completing its establishment stage, the budget was starting to stabilize and that the Court had made serious efforts to review its activities and seek efficiencies.

48. In that regard, the Committee welcomed the Second status report on the Court's investigations into efficiency measures<sup>22</sup>, which provided information on the current measure undertaken or planned to increase efficiencies in the Court's activities. The Committee was informed that, as much of the Court's budget (86 per cent) covers staff and other medium term contractual costs, the scope for immediate savings is limited. The Committee **requested the Court to submit, for consideration at its fourteenth session, a third report on efficiency measures**, which would include an indication of the monetary savings achieved thus far.

(i) *Medium term budgeting forecast*

49. The Committee welcomed the Report of the Court on capital investment replacements<sup>23</sup> as a commencement on the identification of known and potential cost pressures. The Committee noted that the report provided information on the potential costs of renewing the vehicle fleet, electronic and information and communication technologies (ICT) equipment, the implementation of IPSAS and rent associated with interim premises. These items alone would add over €5 million a year to the Court's budget over the next four years.

50. The Committee was of the view that this report constituted an excellent start but was incomplete. For example, the External Auditor had noted that the Court was able to provide costs by situation rather than by specific trial. The Committee **recommended that the Court implement analytic accountability for each trial in order to foresee its costs**.

51. The Committee also noted the possibility that, in a given year, there may be more than 18 judges on active duty as outgoing judges in the trial and appeals chambers are required under article 36, paragraph 10, of the Rome Statute to stay in office to complete any trial or appeal the hearing of which had already commenced. Depending on the status of the various trials and appeals, as well as new cases, the potential exists to have several newly elected judges coming into active service for new cases while several outgoing judges are still in office to complete trials or appeals as the case may be. The Committee **recommended that the Assembly, in consultation with the Court, consider whether any clarifications or any other deliberations are required in order to mitigate the potential costs**.

52. The Committee **recommended that the Court continue to refine the report on capital investment replacement and include therein other potential medium-term cost drivers** such as parallel trials, the continuation in office of outgoing judges and costs associated with interim rent and permanent premises.

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<sup>22</sup> ICC-ASP/8/30.

<sup>23</sup> ICC-ASP/8/27.

53. The Committee further **recommended that the Court use these forecasts to prepare procurement, amortization, cash management and financial plans to address these cost drivers** and provide enough advance notification to the Assembly. The procurement plan should allow the Court to forecast its needs with a view to pooling procurement with other international organizations as much as possible.

54. In the longer term, noting that the staffing costs comprised of 71 per cent of the total proposed budget, **the Committee also recommended that the Court commence an analysis of the proper ratio of staff to other costs for an institution of its nature.**

**(d) Common staff costs / inflation**

55. The Committee took note of the Report of the Court on its salary framework<sup>24</sup> and observed that the decision to adopt the United Nations common system standards had been taken by the Assembly and that this decision has a certain financial impact upon the Court's budget. While the Court is not part of the United Nations system, the United Nations common system is applied via a selective approach. This selective application of the common system has an additional financial impact on the Court's salary framework.

**(e) Recruitment delays and vacancy rates**

56. The Committee **recommended the application in 2010 of the vacancy rates proposed by the Court<sup>25</sup> of 10 per cent or 8 per cent for all major programmes, including major programme VI.** If the Committee's recommendations on posts are adopted, the application of these vacancy rates would result in programme budget implications of €1.3 million.

**(f) Reclassifications**

57. The Committee had before it the Report of the Court on the job evaluation study of established posts.<sup>26</sup> The Committee also had the proposed list of reclassifications for 2010.

58. The Court explained its reclassification policy, noting that reclassification is not used as a promotion tool and should only be required when substantive changes take place in the nature of the work.

59. While advising that its recommendations on the reclassification will be contained under each major programme and sub-programme where the reclassification is requested (following past practice, the **Committee will only provide recommendations against a reclassification, silence implying a positive recommendation**), the Committee made some remarks of a general nature.

60. The Committee noted that since 2007 the Assembly has approved 35 reclassifications of generic posts applicable to 64 staff members. The financial implications of such recommendations amount to €783,900. The Committee noted that the present proposed reclassifications, amounting to an additional 14 requests for reclassifications would have an additional financial impact of approximately €300,000 in the 2010 budget.

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<sup>24</sup> ICC-ASP/8/32.

<sup>25</sup> ICC-ASP/8/10, para. 49 and annex VII.

<sup>26</sup> ICC-ASP/8/36.

61. The Committee expressed some concern with the reclassification process, noting that last year, the Committee had not been able to review the request for reclassifications during its regular session due to time constraints and the workload in reviewing the budget. The Committee was also concerned with the level of detail provided in support of reclassification proposals. For that reason, the **Committee recommended that it review with the Court at its next session the process by which reclassification proposals are prepared and reviewed, including the selection of external consultants.**

**(g) General temporary assistance and established posts**

62. The Court informed the Committee that it had made further progress in regularizing its use of General Temporary Assistance (GTA) resulting in a decrease of unapproved GTAs in 2009. The Committee welcomed this development. While noting that the use of GTAs is acceptable and provides needed flexibility to deal with contingencies and short term requirements, the Court should apply discipline in its creation and filling of GTA positions and that further improvement could be made in terms of identifying and reporting on the budgeting of GTAs.

63. The Committee noted that the Court was considering new modalities for the hiring of young professionals.<sup>27</sup> The Committee noted that such practices can result in an unfair advantage for the young professionals who may be fast tracked in recruitment exercises, thereby affecting the regional balance within the institution. Furthermore, the Committee **recalled that the Assembly had adopted clear Guidelines for the selection and engagement of gratis personnel.**<sup>28</sup> Accordingly, the Committee **requested the Court to submit a report on gratis personnel to its fourteenth session. In the case the Court insists on proposing new modalities for hiring personnel, a report thereon should also be submitted for the Committee's consideration** at its next session.

**(h) Travel**

64. The Committee reviewed the proposed travel for each major programme in detail. As a general matter, the Committee was of the view that many of the travel budgets contained elements that could be characterized as important, even desirable, but not essential. **In this regard, the Committee recommended that the travel budgets of major programmes I, II, IV, VI and VII be reduced by 10 per cent with each of these programme having the discretion to prioritize its respective travel.** For major programme III, in light of the already serious reductions made in some sub-programmes, the same 10 per cent reduction applies, unless otherwise indicated.

**(i) Training**

65. The Committee noted that, as the budgets for training are contained in each major programme under the heading of "contractual services including training", it was difficult in the budget document to understand the full extent and costs of training activities across the Court and that the Committee was provided with different numbers for the overall training budget. The Committee reviewed proposed training in each section and was informed that the overall budget for training amounts up to over €1 million. The Committee noted that some of this training is to allow officials to maintain or acquire essential qualifications and certifications while other training is of a less prescriptive nature.

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<sup>27</sup> ICC-ASP/8/10, para. 38.

<sup>28</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November-3 December 2005* (International Criminal Court publication, ICC-ASP/4/32), part III, resolution ICC-ASP/4/Res.4, annex II.

66. While recognizing the importance of training for maintaining a well functioning work force and as an important element of good human resource management, the Committee was of the view that the training in the major programmes should be better prioritized. Therefore, the Committee **recommended that the Court prepare a strategic training plan linked to the risk management that would identify training required for core functions** (e.g. maintenance of permits and licenses) and other types of training with a plan for prioritization. The report should include a plan to enhance “training the trainer” opportunities.

67. The Committee **recommended that the training budget for 2010 be reduced by 10 per cent across every major programme with the discretion being given to each major programme to prioritize its training needs and allocate its training resources accordingly.**

**(j) Major programme I: Judiciary**

68. The Committee had before it a Report of the Presidency on the revised staffing structure of Chambers<sup>29</sup> and a Report of the Court on the new composition of the Appeals Division and the excusal of judges.<sup>30</sup>

69. The Committee welcomed the emphasis on ensuring continuity and flexibility, noting the offer of judges not currently working in the Appeals Chamber to assist on a temporary basis, where a judge was unable to take part in an appeal due to prior involvement. The Committee also welcomed the confirmation that legal officers who worked with a recused judge will not themselves be excused from the case but will continue working for the substitute judge. The Committee **recommended that Chambers continue to work toward pooling its staff to allow maximum efficiency.**

70. In programme 1100, in light of the current staff levels, the Committee considered that the requirements for the P-3 Legal Officer appear to be of a temporary nature which can be met through general temporary assistance. The Committee noted that it would review this recommendation in light of further justification in the review of the 2011 budget.

71. In programme 1300, the Committee recalled the decision of the Assembly when it created the Liaison office to keep the structure limited. The Committee was not convinced that increasing resources in the New York office was justified on a cost- benefit analysis. The Committee therefore **recommended that the additional P-3 officer not be approved.**

72. With respect to increasing the budget to allow rental of a conference room, the Committee also **recommended that this not be approved** and that the office continue to look for cost effective ways through partnerships with the United Nations and others to meet its needs in this regard.

**(k) Major programme II: Office of the Prosecutor**

73. The Committee welcomed the initiative by the Prosecutor to redistribute resources and responsibilities among staff and review its current structure. The decision to re-allocate a P-5 position to the Prosecution Division by redistributing the responsibilities of the Chef de Cabinet to other positions was welcomed as a good example of flexibility and pooling of resources.

74. With respect to travel, the Committee was concerned with repeated travel to New York for budget presentations.<sup>31</sup>

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<sup>29</sup> ICC-ASP/8/29.

<sup>30</sup> ICC-ASP/8/31.

(I) **Major programme III: Registry**

75. The Committee acknowledged the important effort undertaken by the Registry to bring in a zero growth budget in major programme III.

76. In sub-programme 3110 (Office of the Registrar) the Committee **recommended that the post of a GS-OL Staff Council Assistant not be approved.**

77. In sub-programme 3120 (Office of Internal Audit) the Committee was not convinced that an established post of ICT auditor had been fully justified as funds existed for consultants to assist the auditor. As a result, the Committee **recommended that this post not be approved.**

78. In sub-programme 3140 (Security and Safety Section), the Committee was of the view that the staffing structure in the Kampala field office should be reviewed (see paragraphs 83 to 85 on field offices). In light of this consideration, the Committee **recommended that the reclassification of one P-2 to P-3 Field Security Coordination Officer not be approved.**

79. In sub-programme 3160 (Registry Permanent Premises Office), the Committee was concerned with the lack of details provided in the budget document and encouraged the Court to ensure a sufficient amount of description is provided, including the activities of the office.

80. In sub-programme 3280 (Field Operations Section), the Committee had before it the Report of the Court on the enhancement of the Registry's field operations for 2010<sup>32</sup> as well as copies of the memoranda of understanding between the Court and the various situation countries (the Republic of Chad in the case of the Darfur situation). The Committee took careful note of the risk assessment undertaken by the Court in relation to its field operations. The Committee also took note of the evaluation of the Court of its current lack of strategic and coordination capacity at headquarters.

81. The Committee welcomed the report as an important step in developing a strategic vision for the Court's field office presence and standardizing its field operations. However, the Committee also felt that a number of issues remained unanswered in the report including a vision for actual scale up and down of a field office, an identification of real savings that would result from enhanced representation of the Registry in the field, duration of field offices and the treatment of residual issues, alternative mechanisms for service delivery for the different users and revision of the memoranda of understanding to ensure that they respond to the Court's needs.

82. From this perspective, the Committee **recommended that the position of Chief of Section be reclassified from a P-4 to a P-5, that the head of Field Operations be reclassified from a P-3 to a P-4, that the position P-4 Head of Field strategic Coordination and Planning be approved and that the position P-2 Strategic Planning Officer be converted from a GTA to an established post.** These positions should provide the Registry with the resources required to undertake the strategic policy and planning and coordination required. However, the Committee **recommended that the reclassification from P-3 to P-4 of the four Field Office managers not be approved** in the 2010 budget. The Committee **recommended that the Court complete its strategic planning and that the Committee review the issue at its fourteenth session.** This report should include the total staff number and the units for whom they work in each of the field offices.

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<sup>31</sup> ICC-ASP/8/10, para. 137.

<sup>32</sup> ICC-ASP/8/33.



83. The Committee also reviewed the current staffing of the Kampala Field office. The Committee was surprised that this office continued to maintain the highest number of staff in any field office<sup>33</sup> given the current level of judicial and prosecutorial activity in the Uganda situation. The Committee therefore **recommended that the strategic review of the field offices focus special attention on this issue.** The Committee was of the view that immediate savings could be obtained in the Kampala Office by decreasing the number of drivers from 5 to 2 and re-deploying the positions to areas of greater priority, by not reclassifying the field security officer from P-2 to P-3 (see sub-programme 3140 above) and by re-deploying the position of P-2 Associate Field Officer of the Victims Participation and Reparations Section from Kampala to the Central African Republic (see comments under sub-programme 3530). Therefore, the Committee **recommended that the request for new 3 GS-OL drivers not be approved but that three positions of GS-OL drivers be re-deployed from the Kampala Field Office to areas of greater need.** The Committee **recommended that each section of the Court that has a field presence in the Kampala Office review the amount of resources that are currently stationed there in light of the current level of activity.** The Committee **requested that a report on this issue be provided to the Committee at its fourteenth session.**

84. In sub-programme 3210 (Office of the Director (CASD)), the Committee questioned the need for some of the proposed travel and **recommended that the travel budget be reduced by 15 per cent.**

85. In sub-programme 3220 (Human Resources Section), the Committee did not believe that the reclassification from P-2 to P-3 of the Staffing specialist was justified and **recommended that this reclassification not be approved.** With respect to the conversion of the Human Resources Assistant from a GTA post to a GS-OL, the Committee noted that insufficient justification had been provided and therefore **recommended that this conversion not be approved.**

86. In sub-programme 3250 (General Services Section), the Committee recalled its comments in paragraphs 51 to 55 above about the importance of developing a procurement, amortization and financing plan for capital investment renewal.

87. In sub-programme 3260 (Information and Communication Technologies Section), the Committee observed that the current staffing levels were already high. The Committee **recommended that the positions of Service Desk Technician and e-Court Technical Assistant not be converted from GTA to established posts, as the continuous need for the positions was not sufficiently justified.**

88. In sub-programme 3310 (Office of the Director (DCS)), the Committee **recommended that the post of P-2 Associate Legal Officer not be converted from GTA to an established post.** The Committee observed, in this regard, that it was not certain whether the Court would be faced with three consecutive trials in 2010. The Committee further **recommended that the travel budget be reduced by 5 per cent.**

89. In sub-programme 3320 (Court Management Section), the Committee **recommended that the conversion of two P-2 Court Reporters from GTA to established posts not be approved.**

90. In sub-programme 3330 (Detention Section), the Committee **requested the Court to provide, to its fourteenth session, a written report on the policy relating to medical care and insurance for detainees, exploring alternative options and providing an overview of the budgetary implications.**

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<sup>33</sup> 27 posts out of 104.

91. In sub-programme 3340 (Court Interpretation and Translation Service), the Committee **recommended that the travel budget be accepted as presented.**

92. In sub-programme 3350 (Victims and Witnesses Unit), the Committee **recommended that the post of P-3 Psychologist/Psychological Trauma Expert not be converted from GTA to an established post.** The Committee further **recommended that, in light of the existing staffing level, the post of Administrative Operations Assistant not be approved.** **The Committee recommended that the travel budget be accepted as presented.**

93. In sub-programme 3400 (Public Information and Documentation Section), the Committee **recommended that the post of P-2 Audiovisual Producer not be converted from GTA to an established post.** The Committee questioned the need to create permanent in-house capacity at this point.

94. In sub-programme 3510 (Office of the Head (DVC)), the Committee **recommended that the travel budget be reduced by 50 per cent** as much of the travel seemed to be associated with meetings outside of the core business of the office. In addition, the Committee **recommended that the provision for consultancy services not be approved.** The Committee observed in this regard that it was the task of the Financial Investigator to analyze legal aid applications.

95. In sub-programme 3520 (Defence Support Section), the Committee **recommended that the travel budget remain as presented.** In light of current trends in expenditure for legal aid for the defence, the Committee **recommended that the budget be reduced by 7 per cent.**

96. In sub-programme 3530 (Victims Participation and Reparations Section), the Committee had concerns with the proposed 64 per cent increase in the travel budget. The Committee **recommended that the travel budget be reduced by 15 per cent.** As regards the request of the Court for a P-2 Associate Field Officer, the Committee **recommended that this position be re-deployed from the Kampala Office.** The Committee further **recommended that the reclassification from GS-OL to P-1 Case Manager<sup>34</sup> not be approved** as the Committee was not convinced with the justification provided. In light of current trends in expenditure for legal aid for victims, the Committee **recommended that the budget be reduced by 15 per cent.**

97. In sub-programme 3550 (Office of Public Counsel for Victims), the Committee noted the large increase in the travel budget (35.7 per cent). The Committee was not provided with adequate information to justify such an increase. Accordingly, the Committee **recommended that the travel budget be frozen at its 2009 level.**

**(m) Major programme IV: Secretariat of the Assembly of States Parties**

98. The Committee noted that the use of GTAs in this programme was reasonable given the periodic increase in workload for the Secretariat in relation to sessions of the Assembly and its subsidiary bodies.

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<sup>34</sup> ICC-ASP/8/10, para. 356. The Court clarified therein that the post of P-1 Case Manager had been renamed as “Documentation and Database Administrator”.

99. The Committee recalled resolutions ICC-ASP/7/Res.6 and ICC-ASP/7/Res.7 with respect to translations of decisions, official documents of the Assembly and recommendations and other documents of the Committee.<sup>35</sup> The Committee noted that it would monitor implementation of these resolutions.

100. The Committee was informed that the vacant P-4 position of Conference Services and Protocol Officer was under recruitment.

101. With regard to holding future conferences in venues outside The Hague or New York, the Committee recommended **that the Assembly consider adopting terms and modalities for holding such conferences along the lines of the United Nations General Assembly resolution 47/202 of 22 December 1992.** The terms and modalities should specify the costs to be incurred by the States interested in hosting such events.

**(n) Major programme VI: Secretariat of the Trust Fund for Victims**

102. The Committee welcomed the substantial reduction in expenditures of the Trust Fund in 2008 against its approved budget for that year. However, the Committee also considered that despite this reduction, the budget submission for 2010 still amounted to a resource growth of 10 per cent.

103. Regarding the scope of donations to the Trust Fund, the Committee noted that the current database was mainly restricted to one geographical area. In this regard, the Committee was informed of the development of fundraising strategies for the Trust Fund, the selection criteria for projects tendered, the monitoring measures for the implementation of the various projects, and the mechanisms to provide accountability to donors.

104. The Committee considered the efforts the Secretariat had undertaken in complying with the strategic planning process of the Court, which included the development of a global strategic plan for a period of three years, together with evaluation mechanisms based on general performance indicators.

105. The Committee emphasized the importance of the recommendation made by the External Auditor with regard to the overhead charges<sup>36</sup> and welcomed the decision of the Secretariat to formulate a mid-term resources mobilization plan in order to allow for an adequate management of the Fund. In this light, the Committee encouraged the Secretariat to continue developing a strategy consisting of clearly defined targets, introducing safeguards for the expenditure of funds, and reference to a completion strategy.

106. The Committee considered the necessity of the transfer of the P-5 Senior Administration/Liaison Officer and **recommended that the post be no longer required once the Executive Director would take office.** The Committee also recommended that one GS-OL Communications Support Assistant not be approved and the two GS-OL Field Assistants not be converted from GTA to established posts.

107. With respect to the travel budget, the Committee **recommended that the budget be reduced by 10 per cent.**

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<sup>35</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III.

<sup>36</sup> ICC-ASP/8/16, recommendation 3, paras. 14-15.

(o) **Major programme VII: Project Office for the Permanent Premises**

108. In major programme VII, the Committee observed that the payment of interest over the host State loan had been included under “General operating expenses”.<sup>37</sup> The Committee recalled that, at its seventh session, the Assembly decided to establish, within the ambit of the annual proposed programme budget, a permanent premises budget for the purpose of payment of the accrued interest and repayment of the host State loan.<sup>38</sup>

109. The Committee **recommended that the Court consider including the payment of interest and the repayment of the loan in an annex to the annual proposed programme budget.** Such approach would allow for States Parties to be assessed differently, depending on whether or not they have opted for the one-time payment scheme.

110. The Committee also **recommended that the Project Office more clearly delineate costs of the office that would be in the budget of major programme VII and costs that would be borne by the host State loan and one-time contributions.**

(p) **Estimated income for 2010**

111. The Committee noted that the Court had projected income in 2010 of €8,870 from the Special Court for Sierra Leone<sup>39</sup> and €1 million income from interest.<sup>40</sup>

**D. Premises of the Court**

(a) **Permanent premises**

112. The Committee had before it the “Second report on the activities of the Oversight Committee”<sup>41</sup> and welcomed the presentation by the Chairperson of the Committee, H.E. Mr. Lyn Parker (United Kingdom of Great Britain and Northern Ireland), in which he provided an update on issues before the Oversight Committee, including the status of negotiations to select an architect.

113. The Chairperson informed the Committee that the project was approximately six months behind schedule, mainly caused by the need to have further clarifications of the cost estimates. However, since the project would benefit from the more thorough cost analysis, the delay was considered defensible. The Project Director indicated that, although the main aim would be to accelerate the project, the costs incurred by the delay so far could be absorbed by the existing budget.

114. The Committee pointed out that the Court was preparing forecasts for the replacement of its capital investment over the medium term, some items of which, such as some ICT and other technical equipment would be purchased close to the date of the completion of the project. The Committee **recommended that the Court commence work on identifying and quantifying the others costs related to the project but not directly related to the construction,** as specified in resolution ICC-ASP/6/Res.1, to ensure that any new capital purchases would be fully compatible with the requirements and technical specifications of the new premises.

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<sup>37</sup> ICC-ASP/8/10, para. 403.

<sup>38</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.1.

<sup>39</sup> ICC-ASP/8/10, annex X(a).

<sup>40</sup> *Ibid.*, annex IX.

<sup>41</sup> ICC-ASP/8/34 and Add.1.

115. The Committee expressed concern with the delays that the project was facing and welcomed the intention of the Oversight Committee to examine the financial risks of the project, such as the rent of interim premises over a longer period of time, an additional inflation cost factor and additional consultancy services.

116. The Committee noted that the Oversight Committee had not sought any specific advice from the Committee at this session. Noting the governance structure and the level of oversight that currently exists for the project, the Committee **invited the Oversight Committee to consider what technical, advisory assistance and supervisory role it might require specifically from the Committee as the project advances so that the Committee can ensure that it is well prepared and obtains the necessary documentation.**

**(b) Interim premises**

*(i) Secretariat of the Assembly translation teams*

117. As regards the Committee's recommendation from April 2009,<sup>42</sup> the Court indicated that the translation teams of the Secretariat of the Assembly were provided office space at the Haagse Veste 1 building in 2009 and that such an arrangement would continue in 2010. The Committee **expressed its expectation that such arrangement continue until the Secretariat moved to the permanent premises**, so as to avoid budgetary implications for the rental of office space under major programme IV.

*(ii) Possible additional office space needs of the Court*

118. In addition, the host State's representative recalled that in accordance with its bid the host State would provide office space to the Court free of rental charge until June 2012. He further explained that, should the Court require any additional office space after June 2012, the costs would be borne by the Court. In this connection, he pointed out that the lead time for the provision of additional office space is between one and one and a half years.

*(iii) Return of interim premises to owners*

119. As regards the capital investment, the Court indicated that the agreement with the host State provides that it is the responsibility of the host State to bring back the two buildings into the "original state" once the Court moves into the permanent premises. The representative of the host State confirmed that the costs would be borne by the host State and indicated in this regard that "original state" referred to the condition of the building at the time that it was made available for usage by the Court. In the case of the Haagseveste 1 building, any additional changes introduced thereafter would have to be reversed by the Court.

**E. Independent oversight mechanism**

120. The Committee considered the Report of the Bureau on the establishment of an independent oversight mechanism.<sup>43</sup>

121. Bearing in mind that the decision to establish the mechanism was under consideration by the Assembly, the Committee was of the view that the option of relying on the assistance from the United Nations Office of Internal Oversight (OIOS)<sup>44</sup> was the most convenient as it would allow the Court to benefit from the experience of that office and progressively build-up its own capacity. Although in its set-up phase, the mechanism foreseen in the Bureau's report

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<sup>42</sup> ICC-ASP/8/5, para. 106.

<sup>43</sup> ICC-ASP/8/2, Add. 1 and 2.

<sup>44</sup> Ibid., Add.2, para. 11.

envisages the secondment of a P-5 staff member from OIOS, subsequently the staff would be composed by a P-4 and a P-2, with the P-2 to be recruited in the course of 2010.<sup>45</sup> The Committee **requested the Court to submit to the eighth session of the Assembly the draft amendments to the Rules of Procedure and Evidence and to the Regulations of the Court, as well as report on the draft memorandum of understanding to be negotiated with the United Nations, and an updated costing in euros, so that the mechanism could, once approved by the Assembly, be set up in 2010.**<sup>46</sup> The Committee encouraged the Court to reduce the costs of servicing the new mechanism by pooling resources, such as support staff and infrastructure for securing documents or evidence, with other units, in particular the Office of Internal Audit.

## **F. Legal aid**

### **(a) Legal aid (defence)**

122. The Committee had before it the document entitled “Report of the Court on legal aid: alternative models for assessment of indigence”<sup>47</sup> and heard a presentation by the facilitator of The Hague Working Group for the issue of legal aid in relation to the defence, Ms. Marie-Charlotte McKenna (Australia).

123. While welcoming the information provided by the Court and the facilitator, the Committee observed that consultations within The Hague Working Group on the report, in particular on the recommendations contained therein, were continuing and that the Report of the Bureau on the issue would be finalized in the coming weeks.

124. Reiterating its advice from paragraph 53 of the report of its eleventh session<sup>48</sup>, the Committee noted that legal aid is one of several areas “where there were significant pressures on the budget”. The Committee **recommended that the Court provide an update on legal aid at its fourteenth session, including any reports that may be requested by the Assembly.**

### **(b) Legal aid (victims)**

125. The Committee had before it the document entitled “Report of the Court on legal aid: Legal and financial aspects for funding victims’ representation before the Court”<sup>49</sup> and heard a presentation by the facilitator of The Hague Working Group for the issue of legal aid for victims, Ms. Yolande Dwarika (South Africa). The facilitator indicated that the Working Group was continuing its consideration of the issue, inter alia, on the basis of the recommendations made by the Committee at its twelfth session in April 2009. While noting that the Court had not yet gone through a full cycle of proceedings, including the reparations stage where victims would play a leading role, the facilitator observed that the information provided thus far did not allow for a full comparison between the Office of Public Counsel for Victims (OPCV) and external counsel costings.

126. While welcoming the report, the Committee noted several concerns. Specifically, the Committee observed that the scenarios showing the possible budgetary impact of victims’ representatives for a full cycle of a case did not specify the number of months against which the costs were calculated for each scenario. The Committee was informed that the cost of

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<sup>45</sup> Ibid., Add.2, paras. 6-7 and 12.

<sup>46</sup> Ibid., Add.2, paras. 12-13, annexes II and III.

<sup>47</sup> ICC-ASP/8/24.

<sup>48</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. II, part B.2, para. 53.

<sup>49</sup> ICC-ASP/8/25.

using the OPCV exclusively was based on a 12 month period while the costs for using external counsel were based on a 26 month cycle. It was also noted that the administrative costs of the OPCV as contained in the budget document did not figure as part of the costs in the table. The Committee observed that, in the absence of a common baseline for the calculation, the figures provided in annex II were highly unreliable and could lead an unwary reader to conclude that choosing the OPCV was automatically the most economical option without proper justification. The Committee **recommended that the Court revise the annex and the report once it will have established common parameters for comparison and that it report back to Committee at its fourteenth session.**

### **G. Family visits**

127. The Committee recalled the comments made on the item at its twelfth session<sup>50</sup> and noted that the matter was the subject of consideration by the Bureau via The Hague Working Group. Furthermore, it noted that the Registrar had indicated that the funds approved for family visits in the 2009 budget were sufficient for her to meet the expected trips authorized by the Assembly. The level of funds requested for the same purpose in the proposed 2010 budget, amounted to €81,500.<sup>51</sup>

### **H. Liaison office at the African Union Headquarters**

128. The Committee had before it the Report of the Court on the establishment of an office for the International Criminal Court at the African Union Headquarters in Addis Ababa<sup>52</sup> and an informal summary of the meeting of the New York Working Group held on 7 May 2009. Following the request of the Assembly that “the Court consider the desirability and feasibility of establishing, at African Union Headquarters in Addis Ababa, a small representation common to all parts of the Court, and requests the Registrar to report to the Assembly of States Parties on this question, including its budgetary implications, drawing upon experiences and lessons learned from existing offices of the Court in New York and in the field”<sup>53</sup>, the Court had undertaken a mission to Addis Ababa. On the basis of the mission, the report of the Court concluded that establishing a liaison office would be desirable and feasible.

129. While welcoming the report, the Committee noted that a number of other questions could also be addressed to allow the Assembly to take as informed decision as possible. For example, the Committee noted that the report did not address the issue of likely duration of the office, alternate mechanisms for achieving the same goals, a cost/benefit analysis of the different options (such as more timely visits of senior officials of the Court or the Assembly), the timing for opening such an office and its accreditation, and the general strategy for the Court to engage regional organizations.

130. With respect to the proposed budget, the Committee **recommended that, in case the Assembly decides to establish the liaison office, the resources should not exceed those of the New York Liaison Office** and hence should be staffed at a P-5 level and not contain an additional P-3.

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<sup>50</sup> ICC-ASP/8/5, paras. 86-97.

<sup>51</sup> ICC-ASP/8/9, para. 9.

<sup>52</sup> ICC-ASP/8/35.

<sup>53</sup> Ibid, para. 1.

## I. Contingency Fund

### 1. Use of the Contingency Fund in 2009

131. The Committee was informed by letters from the Registrar dated 6 May 2009 and 6 July 2009 that the Court would access the Contingency Fund in the amount of €610,000 to finance supplemental activity following the surrender of Mr. Abu Garda. The Committee concurred that the surrender of Mr. Abu Garda was an unforeseen event within the meaning of the Financial Regulations and Rules. The Court advised the Committee that it would make every effort to absorb the extra costs in the regular budget before accessing the Contingency Fund.

132. The Court noted that, given the current forecast of expenditure for the regular budget it foresaw accessing the Working Capital Fund to cover the expected gap between assessed contributions and actual expenditure as provided for in resolution ICC-ASP/7/Res.4. In light of this, the Court enquired whether it should access the Contingency Fund directly.

133. As a first step, the Committee was of the view that the Court should make all efforts to reduce spending and find savings in order to decrease the gap between assessed contributions (of €96 million) and the approved budget (of €101,229,900). Only after having made such efforts, the Committee **recommended that the Court absorb the additional costs within the approved budget level**. This would imply that the Court should use the funds from the Working Capital Fund up to the authorized amount and only then access the Contingency Fund.

134. The Committee recalled that the existence of a Contingency Fund did not relieve the Court of its responsibility to properly plan its activities.

### 2. Replenishment of the Contingency Fund

135. In its eleventh report, the Committee had recommended that the Assembly consider three options to replenish the Contingency Fund. Under the first option, the Assembly could replenish the Fund from time to time as was necessary. Under the second option, the Fund would be replenished automatically by an amendment to the last sentence of regulation 6.6 of the Financial Regulations and Rules. Under the third option, the Assembly could decide to no longer hold funds in a Contingency Fund and instead continue to provide the commitment authority provided for in regulation 6.7 of the Financial Regulations and Rules with a new provision to charge the costs to States Parties at the end of the financial period.<sup>54</sup>

136. By letter dated 18 August 2009, the facilitator of The Hague Working Group, H.E. Mr. Călin Fabian (Romania) requested that the Committee also consider the option of merging the Working Capital Fund with the Contingency Fund.

137. The Committee observed that the Contingency Fund was currently well capitalized and had not yet been accessed by the Court. The Committee was of the view that further experience would be required on the functioning of the Working Capital Fund and the Contingency Fund, including their capacity to address the risks for which they were created, before a decision on merger could be considered.

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<sup>54</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. II, part B.2, paras. 137-141.



138. In reviewing options 1 and 2, the Committee did not believe that the Contingency Fund should necessarily be replenished to its current level automatically as there was no clear experience that suggested that the actual amount (€10 million) was the absolute minimum required for prudent risk management. However the Committee was also of the view that a reasonable level of the Fund could be fixed at €7 million, taking into account the estimates about the possible impact of events to be covered by the Fund (opening of new situations, parallel trials, extra session of the Assembly). Bearing this in mind, the Committee felt that replenishment of the Fund would not be needed as long as the Contingency Fund did not decrease below €7 million by the end of each year. The Committee **requested the Court to prepare draft amendments to the Financial Regulations and Rules which may be necessary.**

139. Therefore the Committee **recommended that if the Contingency Fund should decrease below €7 million by the end of the year, then the Assembly should decide on its replenishment, including using the interest generated by the Contingency Fund each year.**

140. The Committee also **recommended that the Assembly keep the proposed threshold under review in light of further experience.**

## **J. Investment of the Court's liquid funds**

141. The Court updated the Committee on the status of its liquid funds. As of July 2009, cash holding amounted to €78 million of which €73 million, or 93 per cent, were placed with a single bank. To spread the risk, the Court was currently developing relationships with further suitable banks.

142. The Committee noted with concern the continuing level of risk concentration. Recalling its observations made at the twelfth session,<sup>55</sup> the Committee **recommended that the Court now move towards effective risk diversification** and noted that it would review progress as its fourteenth session.

## **K. Other matters**

### **1. Future meetings**

143. The Committee decided, tentatively, to hold its fourteenth session in The Hague, from 19 to 23 April 2010, and its fifteenth session from 23 to 31 August 2010 in The Hague.

### **2. Timeliness of documentation**

144. The Committee welcomed the significant improvement in the preparation of the documentation submitted for its consideration at the thirteenth session and requested the Secretariat and the Court's organs to continue to consult on how to further enhance the submission, translation and issuance of documentation so that the Committee receives the working language versions at least three weeks prior to the beginning of its sessions.

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<sup>55</sup> ICC-ASP/8/5, paras. 32-36.

## **Annex I**

### **List of documents**

#### **Committee on Budget and Finance**

ICC-ASP/8/CBF.2/L.1	Provisional agenda
ICC-ASP/8/CBF.2/L.2/Rev.1	Annotated list of items included in the provisional agenda
ICC-ASP/8/CBF.2/1	Report of the Court on the implications of implementation of the International Public Sector Accounting Standards
ICC-ASP/8/CBF.2/2	Report of the Court on capital investment replacements
ICC-ASP/8/CBF.2/3	Report of the Office of Internal Audit
ICC-ASP/8/CBF.2/4	Report of the Court on the options for replenishment of the Contingency Fund
ICC-ASP/8/CBF.2/5	Report of the Presidency on the revised staffing structure of Chambers
ICC-ASP/8/CBF.2/6	Second status report on the Court's investigations into efficiency measures
ICC-ASP/8/CBF.2/7	Report of the Court on the new composition of the Appeals Division and the excusal of judges
ICC-ASP/8/CBF.2/8	Report of the Court on legal aid: Alternative models for assessment of indigence
ICC-ASP/8/CBF.2/9	Report of the Court on its salary framework
ICC-ASP/8/CBF.2/10	Report of the Court on the enhancement of the Registry's field operations for 2010
ICC-ASP/8/CBF.2/11	Second report on the activities of the Oversight Committee
ICC-ASP/8/CBF.2/11/Add.1	Second report on the activities of the Oversight Committee - Addendum
ICC-ASP/8/CBF.2/11/Corr.1	Second report on the activities of the Oversight Committee - Corrigendum
ICC-ASP/8/CBF.2/12	Report of the Court on the establishment of an office for the International Criminal Court at the African Union Headquarters in Addis Ababa
ICC-ASP/8/CBF.2/13	Report of the Court on legal aid: Legal and financial aspects of funding victims' legal representation before the Court

ICC-ASP/8/CBF.2/14	Report of the Court on the job evaluation study of established posts - review of previously classified positions at the Professional level
ICC-ASP/8/2	Report of the Bureau on the establishment of an independent oversight mechanism
ICC-ASP/8/2/Add.1	Report of the Bureau on the establishment of an independent oversight mechanism - Addendum
ICC-ASP/8/2/Add.2	Report of the Bureau on the establishment of an independent oversight mechanism - Addendum
ICC-ASP/8/3	Interim report of the Court on legal aid: Legal and financial aspects for funding victims' legal representation before the Court
ICC-ASP/8/4	Interim report of the Court on legal aid: Alternative models for assessment of indigence
ICC-ASP/8/5	Report of the Committee on Budget and Finance on the work of its twelfth session
ICC-ASP/8/9	Report of the Court on the financial aspects of enforcing the Court's obligation to fund family visits to indigent detained persons
ICC-ASP/8/10	Proposed Programme Budget for 2010 of the International Criminal Court
ICC-ASP/8/14	Financial statements for the period 1 January to 31 December 2008
ICC-ASP/8/16	Trust Fund for Victims financial statements for the period 1 January to 31 December 2008
ICC-ASP/8/17	Report on budget performance of the International Criminal Court as at 30 June 2009
ICC-ASP/8/18	Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2008 to 30 June 2009
ICC-ASP/8/18/Add.1	Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2008 to 30 June 2009 – Addendum

## Annex II

### Status of contributions as at 20 August 2009

	States Parties	Prior Year Assessed Contributions	Prior Year Receipts	Prior Year Outstanding Contributions	2009 Assessed Contributions	2009 Contributions Received	2009 Outstanding Contributions	Total Outstanding Contributions
1	Afghanistan	11,413	10,217	1,196	1,433	-	1,433	2,629
2	Albania	39,123	39,123	-	8,595	9,057	(462)	(462)
3	Andorra	46,458	46,458	-	11,460	12,084	(624)	(624)
4	Antigua and Barbuda	19,372	19,372	-	2,865	3,021	(156)	(156)
5	Argentina	5,487,118	5,487,118	-	465,575	640,668	(175,093)	(175,093)
6	Australia	12,770,962	12,770,962	-	2,559,947	2,699,235	(139,288)	(139,288)
7	Austria	6,705,888	6,705,888	-	1,270,662	1,339,798	(69,136)	(69,136)
8	Barbados	70,777	70,777	-	12,893	13,594	(701)	(701)
9	Belgium	8,309,292	8,309,292	-	1,578,658	1,664,552	(85,894)	(85,894)
10	Belize	7,645	7,645	-	1,433	808	625	625
11	Benin	12,343	12,343	-	1,433	6,647	(5,214)	(5,214)
12	Bolivia	59,350	53,354	5,996	8,595	-	8,595	14,591
13	Bosnia & Herzegovina	32,402	32,402	-	8,595	9,063	(467)	(467)
14	Botswana	96,413	96,413	-	20,056	21,146	(1,090)	(1,090)
15	Brazil	10,225,653	10,225,653	0	1,254,904	1,252,110	2,794	2,795
16	Bulgaria	136,354	136,354	-	28,651	30,209	(1,558)	(1,558)
17	Burkina Faso	12,958	12,958	-	2,865	1,766	1,099	1,099
18	Burundi	6,022	1,835	4,187	1,433	-	1,433	5,620
19	Cambodia	12,343	12,343	-	1,433	1,511	(78)	(78)
20	Canada	21,837,322	21,837,322	-	4,264,669	4,496,713	(232,044)	(232,044)
21	Central African Republic	7,645	2,670	4,975	1,433	-	1,433	6,408
22	Chad	2,949	236	2,713	1,433	-	1,433	4,146
23	Colombia	1,047,810	1,047,810	-	150,417	108,589	41,828	41,828
24	Comoros	3,215	312	2,903	1,433	-	1,433	4,336
25	Congo	6,388	5,850	538	1,433	-	1,433	1,971
26	Cook Islands	336	-	336	1,433	-	1,433	1,769
27	Costa Rica	229,096	229,096	-	45,841	33,357	12,484	12,484
28	Croatia	322,465	322,465	-	71,627	75,522	(3,895)	(3,895)
29	Cyprus	312,315	312,315	-	63,032	66,463	(3,431)	(3,431)
30	Democratic Republic of the Congo	23,556	23,556	-	4,298	2,729	1,569	1,569
31	Denmark	5,571,797	5,571,797	-	1,058,646	1,116,250	(57,604)	(57,604)
32	Djibouti	7,449	4,952	2,497	1,433	-	1,433	3,930
33	Dominica	7,645	5,480	2,165	1,433	-	1,433	3,598

	States Parties	Prior Year Assessed Contributions	Prior Year Receipts	Prior Year Outstanding Contributions	2009 Assessed Contributions	2009 Contributions Received	2009 Outstanding Contributions	Total Outstanding Contributions
34	Dominican Republic	146,903	84,709	62,194	34,381	-	34,381	96,575
35	Ecuador	154,877	154,877	-	30,083	7,271	22,812	22,812
36	Estonia	102,311	102,311	-	22,921	24,167	(1,246)	(1,246)
37	Fiji	27,636	22,372	5,264	4,298	-	4,298	9,562
38	Finland	4,160,519	4,160,519	-	807,952	851,914	(43,962)	(43,962)
39	France	47,181,285	47,181,285	-	9,026,429	7,559,682	1,466,747	1,466,747
40	Gabon	68,953	48,972	19,981	11,460	-	11,460	31,441
41	Gambia	7,645	7,645	-	1,433	354	1,079	1,079
42	Georgia	21,275	21,275	-	4,298	4,532	(234)	(234)
43	Germany	66,674,377	66,674,377	-	12,286,888	12,955,434	(668,546)	(668,546)
44	Ghana	31,201	31,201	-	5,730	8,521	(2,790)	(2,790)
45	Greece	4,253,138	4,253,138	-	853,793	900,249	(46,455)	(46,455)
46	Guinea	16,335	4,104	12,231	1,433	-	1,433	13,664
47	Guyana	6,022	6,022	-	1,433	3,300	(1,867)	(1,867)
48	Honduras	38,072	30,938	7,134	7,163	-	7,163	14,297
49	Hungary	1,307,766	1,307,766	-	349,540	142,665	206,875	206,875
50	Iceland	268,189	268,189	-	53,004	28,510	24,494	24,494
51	Ireland	2,922,060	2,922,060	-	637,480	672,165	(34,685)	(34,685)
52	Italy	38,039,636	38,039,636	-	7,275,866	7,671,754	(395,888)	(395,888)
53	Japan	24,772,011	24,772,011	-	21,170,578	21,234,502	(63,924)	(63,924)
54	Jordan	85,201	85,201	-	17,190	18,127	(937)	(937)
55	Kenya	51,137	51,137	-	14,325	17,787	(3,462)	(3,462)
56	Latvia	120,446	120,446	-	25,786	27,189	(1,403)	(1,403)
57	Lesotho	7,645	7,373	272	1,433	-	1,433	1,704
58	Liberia	6,022	5,484	538	1,433	-	1,433	1,971
59	Liechtenstein	53,591	53,591	-	14,325	15,104	(779)	(779)
60	Lithuania	192,568	192,568	-	44,409	46,825	(2,416)	(2,416)
61	Luxembourg	614,178	614,178	-	121,766	128,392	(6,626)	(6,626)
62	Madagascar	1,570	1,527	43	2,865	-	2,865	2,908
63	Malawi	8,026	8,026	-	1,433	1,127	306	306
64	Mali	12,343	12,343	-	1,433	8,019	(6,586)	(6,586)
65	Malta	113,556	113,556	-	24,353	25,679	(1,326)	(1,326)
66	Marshall Islands	7,645	5,101	2,544	1,433	-	1,433	3,977
67	Mauritius	84,105	84,105	-	15,758	16,616	(858)	(858)
68	Mexico	9,666,196	9,666,196	-	3,233,241	1,650,934	1,582,307	1,582,307
69	Mongolia	7,645	7,645	-	1,433	808	625	625
70	Montenegro	3,881	3,881	-	1,433	1,511	(78)	(78)
71	Namibia	46,493	46,493	-	8,595	9,064	(469)	(469)
72	Nauru	7,645	5,062	2,583	1,433	-	1,433	4,016
73	Netherlands	13,492,911	13,492,911	-	2,683,146	2,829,139	(145,993)	(145,993)

States Parties	Prior Year Assessed Contributions	Prior Year Receipts	Prior Year Outstanding Contributions	2009 Assessed Contributions	2009 Contributions Received	2009 Outstanding Contributions	Total Outstanding Contributions
74 New Zealand	1,805,622	1,805,622	-	366,730	386,682	(19,952)	(19,952)
75 Niger	7,645	4,003	3,642	1,433	-	1,433	5,075
76 Nigeria	352,983	352,983	-	68,762	8,102	60,660	60,660
77 Norway	5,475,843	5,475,843	-	1,120,246	1,181,199	(60,953)	(60,953)
78 Panama	156,449	156,449	-	32,948	8,881	24,067	24,067
79 Paraguay	73,583	73,583	-	7,163	1,313	5,850	5,850
80 Peru	678,368	481,448	196,920	111,738	-	111,738	308,658
81 Poland	3,582,082	3,582,082	-	717,702	756,752	(39,050)	(39,050)
82 Portugal	3,757,342	3,757,342	-	754,948	796,027	(41,079)	(41,079)
83 Republic of Korea	14,513,492	14,513,492	-	3,112,908	1,581,678	1,531,230	1,531,230
84 Romania	487,164	487,164	-	100,278	105,733	(5,455)	(5,455)
85 Saint Kitts and Nevis	3,215	3,215	-	1,433	1,511	(78)	(78)
86 Saint Vincent and the Grenadines	7,449	7,449	-	1,433	332	1,101	1,101
87 Samoa	7,527	7,527	-	1,433	1,509	(76)	(76)
88 San Marino	22,319	22,319	-	4,298	4,532	(234)	(234)
89 Senegal	35,281	34,183	1,098	5,730	-	5,730	6,828
90 Serbia	151,788	151,788	-	30,083	31,720	(1,637)	(1,637)
91 Sierra Leone	7,645	3,092	4,553	1,433	-	1,433	5,986
92 Slovakia	420,381	420,381	-	90,250	95,162	(4,912)	(4,912)
93 Slovenia	667,627	667,627	-	137,524	145,007	(7,483)	(7,483)
94 South Africa	2,298,860	2,298,860	-	415,436	438,039	(22,603)	(22,603)
95 Spain	20,591,112	20,591,112	-	4,251,776	4,483,121	(231,345)	(231,345)
96 Suriname	336	336	-	1,433	1,433	(0)	(0)
97 Sweden	7,864,946	7,864,946	-	1,534,249	1,617,729	(83,479)	(83,479)
98 Switzerland	9,255,768	9,255,768	-	1,741,968	1,836,750	(94,782)	(94,782)
99 Tajikistan	7,645	7,533	112	1,433	-	1,433	1,545
100 The Former Yugoslav Rep. of Macedonia	42,927	42,927	-	7,163	7,553	(390)	(390)
101 Timor-Leste	7,527	7,527	-	1,433	923	510	510
102 Trinidad and Tobago	179,246	179,246	-	38,679	40,783	(2,104)	(2,104)
103 Uganda	36,412	36,412	-	4,298	8,164	(3,867)	(3,867)
104 United Kingdom	48,006,742	48,006,742	-	9,514,925	10,032,646	(517,720)	(517,720)
105 United Republic of Tanzania	44,323	44,323	-	8,595	2,097	6,498	6,498
106 Uruguay	325,014	325,014	-	38,679	51,130	(12,451)	(12,451)
107 Venezuela	1,416,138	1,416,138	-	286,508	80,759	205,749	205,749
108 Zambia	11,949	11,949	-	1,433	1,511	(78)	(78)
<b>Total</b>	<b>410,527,646</b>	<b>410,181,031</b>	<b>346,615</b>	<b>96,229,900</b>	<b>94,175,008</b>	<b>2,054,892</b>	<b>2,401,507</b>

### **Annex III**

## **Budgetary implications of the implementation of the recommendations of the Committee on Budget and Finance**

[to be inserted]

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