

Twenty-second Session of the Assembly of States Parties

New York, 8 December 2023

Briefing by

Mr. Yangchan Cho, Director of Division of Audit on
International Organizations of BAI

Presentation of the Reports of the External Auditor

Madam President,

In accordance with Article 12 of the Court's Financial Regulations and Rules, the External Auditor conducted independent audit for financial year 2022 during 2023.

The External Auditor Mr. Jaehae Choe, Chair of the Board of Audit and Inspection (BAI) of Korea, expresses his deep regret for not being able to make this presentation himself.

I would like to give you a brief overview of the three audit reports which were issued in 2023 by the External Auditor: (a) financial statements of the ICC for the year ended 31 December 2022; (b) financial statements of the TFV for the year ended 31 December 2022; and (c) performance audit on Legal Aid.

Based on the financial audit, the External Auditor believes that the accompanying financial statements present fairly, in all material respects for the 2022, and audit evidence that has been obtained is sufficient and appropriate. **Therefore, the External Auditor provided unmodified audit opinion on the 2022 financial statements for both the ICC and the TFV.**

a. Financial statements of the ICC for the year 2022

Now, I would like to address the audit report on the financial

statements of the International Criminal Court for the financial year 2022.

Regarding the financial performance, the total revenues increased mainly due to increase in assessed contributions and voluntary contributions from establishment of OTP Trust Fund. The total expenses increased mainly due to employee benefit expenses, related to increase in staff payroll from application of revised UN salary table and Post Adjustment. Overall, the deficit was reduced to 3.9 million euro in 2022.

Regarding the financial position, it was found that the total assets decreased by 2.3%. The decrease was mainly from annual depreciation of Property, Plant and Equipment and reimbursement right of discontinued judge pension plan.

On the other hand, the total liabilities decreased by 11%. The decrease was mostly from reduced employee benefit liabilities by changes in actuarial assumptions such as increase in discount rate used. Meanwhile, deferred revenue and accrued expenses increased, most of which is due to voluntary contribution of OTP trust fund deferred to 2023.

Especially, this year's audit on ICC payroll was conducted in light of the following circumstances:

First, the Proposed Programme Budget amount for 2023 increased sharply compared to 2022, and this huge increase was exceptionally approved by the ASP. Second, the staff costs represented 72% of the increased amount due to factors such as revised salary scale and increase in Post Adjustment during 2022. Third, the outlook for the Court's liquidity had significantly worsened due to outstanding contribution payments.

The External Auditor recommended that the Court comprehensively review its Staff Regulations and Rules, Administrative Instructions and Guidelines considering the purpose of ICC Regulation 3.1 to be in conformity with UN Staff Regulations and Rules in order to strengthen the efficiency of staff costs budget.

The External Auditor made this recommendation because he believed that the ASP judgement is necessary to determine whether differences in UN and ICC rules are reasonable due to the unique organizational needs, and whether the benefits brought to the ICC from these differences off-set the higher staff costs.

Also, it was recommended that the Court review its Guidelines in order to strengthen the transparency and integrity of determination of step on initial recruitment, and establish procedures to enhance management of education grant advances, such as specific deadlines and limitation of subsequent advances without previous unsettlement.

b. Financial statements of the TFV for the year 2022

Now I would like to present the audit report on the financial statements of the Trust Fund for Victims including TFV's financial position and financial performance for its 2022 financial statements.

Regarding the financial performance, TFV maintained the same deficit as in 2021, with the deficit falling slightly. The main reason was that the 2022 voluntary contribution income did not exceed the program cost. The total revenue increased by 7.3% due to the increase in voluntary donations.

Regarding the financial position, TFV's total assets decreased due to a decline in cash and cash equivalents. TFV has no financial liabilities, and the provisions related to reparation programs amount to 3.7 million euros, which is about 60% of the total liabilities while the net assets/capital decreased.

The External Auditor recommended implementing measures to strengthen cash internal controls to mitigate the risk of excessive cash holdings and to ensure compliance with MOD regulations.

It was also recommended that, given the higher inherent risk associated with cash, TFV should establish a method to directly pay compensation to the victims whenever possible. In unavoidable

situations where indirect payment is necessary, written consent needs to be obtained. Additionally, since indirect cash compensation increases the related risks, the auditor advised implementing additional verification procedures.

In addition, the External Auditor recommended establishing a monitoring control at TFV headquarters to retain physical evidence for verification procedures concerning implementing partners. Additionally, the External Auditor suggested performing cross-check by having both the Program Manager and the Field Officer sign the verification report during the actual verification process.

c. Performance audit on Legal Aid

With respect to the performance audit on Legal Aid conducted by the External Auditor during 2023, the audit covered administrative processes of legal aid system of the Court: indigence assessment, counsel appointment, and budget payment of the legal aid. There have been 10 findings and 10 recommendations mostly with the perspective of transparency, internal control, effectiveness and cost-efficiency.

Regarding the indigence assessment, the External Auditor reviewed whether legal aid has been provided in accordance with the ICC's regulations. It was found that contrary to the regulations, the Court was providing legal aid regardless of whether the accused was

indigent or not.

Furthermore, the Court has not made sufficient efforts to recover overpaid legal aid funds, while about 2 million euros (81% of the total) is still remaining unrecovered. Also, indigent assessments to determine the provision of legal aid were found to be prolonged, with an average of 293 days and a maximum of 1,073 days to reach a conclusion, despite the fact that Regulation of the Court requires the results of such assessments to be available within 30 days from commencement of assessment, mainly due to non-cooperation from States Parties in providing information.

Accordingly, the External Auditor recommended the Court prepare measures to ensure the principle and establish clear administrative procedures and for the indigence assessment. It was also recommended for the Court to actively pursue measures to recover overpaid legal aid funds, and find ways to further induce cooperation from States Parties in the indigence assessment process.

The next area that was looked into was transparency and fairness of the counsel appointment process. It was found that there was insufficient internal control over the process for inclusion in the List of Counsel and for monitoring the availability confirmation of the candidates.

Accordingly, the External Auditor recommended the Court amend

related work procedure and implement monitoring process to ensure transparency and internal control throughout the counsel appointment process.

Lastly, the External Auditor looked into whether legal aid payment was transparently managed or not. Although the legal aid budget is allocated to two commitment items, referred to as “Counsel for defence” and “Counsel for victims”, it was found that the Court has used some of the victims’ budget allotment without transfer procedure to cover defence team costs over the past five years (2018-2022).

In particular, in relation to the Contingency Fund for 2020, the Court misreported the actual expenditures per commitment item to the CBF and ASP, missing €163,923 of victims’ legal aid budget which was actually spent in a way that benefited the defendants.

Therefore, the External Auditor recommended the Court use the due internal process when transferring legal aid budget and to ensure accurate reporting on the actual expenditures of the legal aid budget for defence or victims respectively in the annual report which is to be submitted to the ASP, for legal aid budget transparency.

I would like to conclude by my mentioning that it is a great pleasure to present the audit reports. The External Auditor hopes that these efforts contribute to improving the performance of the Court.

I thank you for your attention.
