

**Part II**

**External audit, internal audit, programme budget for 2009 and related documents**

## A. External audit

1. The Assembly noted with appreciation the reports of the External Auditor and the related comments of the Committee contained in its report on the work of its eleventh session.<sup>1</sup> The Assembly noted that the Committee had endorsed the External Auditor's recommendations.

2. The Assembly approved the recommendation of the External Auditor, endorsed by the Committee, that the Court should work towards implementing the International Public Sector Accounting Standards (IPSAS) in the medium term and approved the funding (€20,000) for a project plan in 2009 as a first step.<sup>2</sup> The Assembly endorsed the recommendation of the Committee that the Court report to the Assembly at its eighth session on the project plan and next steps toward implementation.<sup>3</sup>

## B. Internal audit

3. The Assembly took note of the views of the Committee that the report of the Registrar to the Assembly that would contain conclusions, guidance and recommendations could diminish confidence within the Court in the internal audit function. The Assembly also took note of the views of the Committee that this reporting requirement could create a lack of clarity in the reporting lines from the Office of the Internal Auditor to the Assembly.

4. In light of these concerns, the Assembly decided to amend the reporting recommendation that the Registrar submit annually to the Assembly of States Parties a report summarizing the major activities undertaken by the Office of the Internal Auditor, so that such a report would not include the conclusions, guidance or recommendations. In order to emphasize the primary role of the Internal Audit as a source of guidance to the management of the Court and to clarify that the reporting lines of the Internal Auditor are directly to the management of the Court, the Assembly decided to amend rule 110.1 of the Financial Regulations and Rules to read, "The Committee on Budget and Finance shall receive the reports of the Internal Auditor annually, and on an ad hoc basis where appropriate, through the Chair of the Audit Committee. The Committee on Budget and Finance shall refer any matters to the Assembly of States Parties which require the attention of the Assembly."

## C. Other audit matters

### Governance

5. The Assembly took note of the considerations of the Committee in relation to the establishment of an Audit Committee and the differences between the model that the Committee had recommended and the terms of reference for the Audit Committee that had been developed by the Court, in particular with respect to the number of external members and voting rules. The Assembly was also made aware of the considerations of the Court, in particular the difficulty in attracting external members willing to sit on the Audit Committee and the view that an incremental approach would be most effective.

6. The Assembly reiterated the critical importance it attaches to the overall proper management of the Court, including the establishment and proper functioning of effective audit mechanisms. The Assembly strongly supported the establishment of an Audit Committee to strengthen the overall effectiveness of the audit function in the Court. The Assembly invited the

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<sup>1</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. 13-19.

<sup>2</sup> *Ibid.*, para. 18.

<sup>3</sup> *Ibid.*

Court to revisit the terms of reference of the Audit Committee, with a view to aligning the composition of the Audit Committee more closely with the model recommended by the Committee and the External Auditor. The Assembly also expressed concern with the delay in identifying external members. The Assembly strongly urged the Court to redouble its efforts to designate external members and commence the functioning of the Audit Committee. The Assembly also concurred with the views of the Committee that the Audit Committee should not be a decision-making body and hence did not require vetoes for any member or members of the Audit Committee.<sup>4</sup> Nonetheless, the Assembly fully expected the Audit Committee to take due consideration of judicial and prosecutorial independence in its functioning. The Assembly requested the Court to inform the Committee of the progress and results achieved at the latter's twelfth session.

#### **D. Exchange of views on general matters relating to the budget**

7. The Assembly recognized the value of the report of the Committee on Budget and Finance and consequently believed that the Committee's recommendations could be adopted as a whole, except where indicated.

##### **(a) Administrative efficiencies**

8. The Assembly agreed with the Committee that the establishment phase of the Court was coming to an end and expressed the expectation that the large annual increases in the regular budget of the Court should start to level off, while taking into account a possibility of any significant increase in the judicial or investigative activities of the Court.

9. The Assembly strongly concurred with the Committee that the moment was opportune to take stock of the progress made in the establishment of the Court with a view to identifying areas for efficiencies, increasing productivity of administrative procedures and addressing potential cost drivers.<sup>5</sup>

10. In this regard, the Assembly reiterated the importance which it attached to proper human resource management practices within the Court. The Assembly welcomed the improvement in the recruitment rate and encouraged the Court to continue to improve and streamline its efforts on the recruitment and retention of qualified staff. The Assembly strongly welcomed the review of human resources that would be undertaken by the Committee at its twelfth session, including the use of General Temporary Assistance (GTA) staff within the Court.

11. Furthermore, the Assembly endorsed the recommendation of the Committee<sup>6</sup> that the Court should seek to regularize the use of GTAs. The Assembly welcomed the review of GTAs that the Committee would undertake at its twelfth session and endorsed the recommendation of the Committee that any unapproved GTAs created in 2009 should require the authorization of the Registrar (or Prosecutor for GTAs within the Office of the Prosecutor).

##### **(b) Timeliness of documentation**

12. The Assembly endorsed the recommendations of the Committee on the timely and orderly submission of the Court's reports and other documents to the Secretariat of the Assembly<sup>7</sup> contained in the report on the work of its eleventh session.

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<sup>4</sup> Ibid., para. 26.

<sup>5</sup> Ibid., para. 51.

<sup>6</sup> Ibid., para. 45.

<sup>7</sup> Ibid., paras. 142-143.

(c) **Financial implications of judicial decisions**

13. The Assembly concurred with the view of the Committee that greater transparency would be beneficial for both the Court and the Assembly in relation to the short- and long-term cost implications of judicial decisions.<sup>8</sup> While reiterating its respect for the independence of the judiciary, the Assembly strongly encouraged the Court to adopt procedures to ensure that the financial implications of judicial decisions are identified to Chambers, preferably prior to decisions being taken, and that the Registrar report to the Committee and the Assembly on all judicial decisions which have significant impacts on the budget (with due regard to confidentiality).

**E. Consideration of the proposed programme budget of the Court for 2009**

**1. Recommendations of the Committee on Budget and Finance of a general nature**

(a) **Contingency Fund**

14. The Assembly noted that the Court had informed the Committee that it had foreseen drawing funds from the Contingency Fund in 2008 only if costs could not be offset from savings to the regular budget of the respective major programmes. The Assembly endorsed the recommendation of the Committee<sup>9</sup> and decided to authorize the Registrar to transfer funds between major programmes at the end of fiscal year 2008 if the costs of unforeseen activities could not be absorbed by one major programme while surpluses existed in other major programmes.

(b) **Family visits**

15. The Assembly recalled that the Court's practice of financing family visits for indigent detainees since 2006, without having undertaken prior consultation with States Parties, had raised particular concerns at the sixth session, leading to a request to the Court to present to the seventh session an updated report on family visits. In light thereof, the Assembly took note of the report of the Bureau on family visits for detainees<sup>10</sup> and the recommendations of the Committee,<sup>11</sup> together with the conclusions of the Court's report entitled "Family visits to indigent detained persons",<sup>12</sup> which recognized that, according to existing law and standards, the right to family visits does not comprise a co-relative legal right to have such visits paid for by the detaining authority. The Assembly noted that further discussions were still necessary on the issue of financial assistance for family visits to indigent persons detained on remand by the Court, including, but not limited to, consideration of the substantial and long-term financial implications of this question with the result that a policy decision could not be taken on the issue by the Assembly until its eighth session. In view of the need for further deliberation pending a policy decision on the issue, the Assembly agreed, on an exceptional basis and limited to 2009 only, to allow the Court to fund family visits up to the amount of €40,500 in accordance with the 2009 programme budget, subject to the following caveats:

- a) The funding of family visits by the Court in 2009 should be implemented solely in accordance with the priority needs of the current indigent detainees; and

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<sup>8</sup> Ibid., paras. 52-54.

<sup>9</sup> Ibid., para. 133.

<sup>10</sup> ICC-ASP/7/30.

<sup>11</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. 68.

<sup>12</sup> ICC-ASP/7/24.

- b) The decision to fund family visits in 2009 has been taken on an exceptional basis and does not in anyway create or maintain a status quo; nor establish any legal precedent in respect of those States that have already or will enter into sentence enforcement agreements with the Court; nor does it create any legal precedent in respect of current or future detainees at a national or international level; nor does the Assembly's decision prejudice or preclude in any way the future outcome of discussions on the issue of funding family visits for indigent detainees.

16. Finally, in the spirit of facilitating discussion on the issue and in the interests of transparency, but without prejudice to further discussions, the Assembly invited the Court to prepare a separate document identifying any potential budgetary implications for 2010 regarding proposed family visits.

**(c) Reclassifications**

17. The Assembly took note of the report of the sub-group of the Committee on reclassifications<sup>13</sup> and endorsed the recommendations contained therein.

**2. Specific recommendations of the Committee on Budget and Finance on major programmes**

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

**Legal aid**

18. The Assembly took note of the Committee's recommendation that the legal aid budget should be reduced by €700,000, which would still provide an adequate level of resources for 2009 within an acceptable level of risk.<sup>14</sup> The Assembly noted the importance of providing an adequate level of legal aid commensurate with the level of activity at each stage of proceedings. Therefore, while endorsing this recommendation, the Assembly noted that the Court could use existing flexibility should additional resources for legal aid be required, as well as, in accordance with the Financial Regulations and Rules, the Contingency Fund. The Assembly noted that the issue of legal aid would be further reviewed in 2009.

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

19. The Assembly took note of the recommendations of the Committee in respect of translation costs,<sup>15</sup> and decided that documentation would be published in the official languages of the United Nations which are also official languages of at least one State Party to the Rome Statute, unless otherwise decided by the President of the Assembly or by the Chair of the Committee on Budget and Finance, respectively, and decided to amend the Rules of Procedure of the Assembly of States Parties and the Rules of Procedure of the Committee on Budget and Finance accordingly. The Assembly noted that the rule would not apply to official records containing the resolutions of the Assembly, as well as documents relating to the Special Working Group on the Crime of Aggression and the Review Conference.

<sup>13</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, annex IV.

<sup>14</sup> *Ibid.*, para. 93.

<sup>15</sup> *Ibid.*, para. 96.

20. The Assembly decided to limit the length of reports submitted for its consideration by the Court, along the lines of the limit set for reports of the United Nations Secretariat to the General Assembly.<sup>16</sup>

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

21. The Assembly took note of the issues raised by the Committee with respect to the administrative costs of the Secretariat relative to the amount of funds currently available in the Trust Fund,<sup>17</sup> as well as the administrative relationship of the Secretariat to the Registrar.<sup>18</sup>

22. The Assembly reiterated the importance it attaches to sound management practices and proper controls. In this regard, the Assembly welcomed the internal administrative audit being conducted that would help clarify arrangements within the Court.

23. The Assembly endorsed the recommendation of the Committee to redeploy one P-5 financial post from programme 3240.<sup>19</sup> The Assembly raised some concerns with the redeployment, as this could potentially create a proliferation of senior positions within the Secretariat. However, the Assembly noted that the position would be assigned to the Secretariat of the Trust Fund for Victims for one year for the specific purpose of creating a permanent system for grants management and donor reporting. The Assembly recommended that the Bureau enter into an enhanced dialogue with the Secretariat of the Trust Fund for Victims on issues relating to reparations policy, including reserves, and administrative and financial structures.

### **3. Resolution**

24. The Assembly considered the proposed programme budget for the Court for 2009<sup>20</sup> and the report of the Committee on Budget and Finance on the work of its eleventh session.<sup>21</sup>

25. The Assembly welcomed the work of the Committee. There was broad consensus that the Committee on Budget and Finance was an extremely important source of technical, expert advice for the Assembly. As such, there was agreement to adopt the budget with the amendments recommended by the Committee, amounting to €101, 229,900.

26. However, it was noted that there were exceptional and extraordinary circumstances that made financing the budget for 2009 in its entirety particularly difficult for a number of States Parties. These circumstances included an unprecedented world financial crisis, coupled with a larger than anticipated increase of 12 per cent to the 2009 budget. It was also noted that the Court had not yet reached a 100 per cent implementation rate for its budget execution and that there was a significant level of funds within the Working Capital Fund.

27. In light of these serious concerns and extraordinary conditions, the Assembly agreed, on a one-time, exceptional basis, to adopt resolution ICC-ASP/7/Res.4 to fund €96,229,900 of the programme budget through assessed contributions and allow the Court to access up to €5 million from the Working Capital Fund following notification from the Registrar to the President of the Bureau and the Chair of the Committee on Budget and Finance. This notification would include a detailed report on the efforts the Court had made to find efficiency and other savings. For example,

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<sup>16</sup> United Nations doc. A/RES/52/214, section B, paragraph 4, sets a limit of 16 pages.

<sup>17</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. 100.

<sup>18</sup> *Ibid.*, para. 102.

<sup>19</sup> *Ibid.*, paras. 83 and 103.

<sup>20</sup> ICC-ASP/7/9, Corr.1, Corr.2 (English only) and Corr.3.

<sup>21</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.

the Assembly noted that the Committee on Budget and Finance had recommended that the Court undertake a review of administrative procedures with a view to limiting red tape, which could yield significant savings. The Assembly invited all organs and major programmes to work cooperatively with the Registrar in this regard.

28. The Assembly noted that this formula does not constitute a precedent for financing the budget of the International Criminal Court or any other international organization, and many States Parties emphasized that this method of budgetary consideration, in particular making exceptions to the Financial Regulations and Rules, should not be pursued in the future.

29. The Assembly also requested the Court to make efforts to produce a budget for 2010 which would fund new investments entirely from savings to administrative processes, to the extent possible, while taking into account a possibility of any significant increase in judicial or investigative activity.

