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Amnesty International notes that in previous sessions of the Assembly, the Assembly’s Working Group has spent a significant amount of time dealing with disagreements between the Court and the Committee on its recommendations. To enable the Working Group to deal effectively and efficiently with such disagreements in the future, it would be useful if the Chair of the Working Group could identify such contentious issues in their discussions with the Court, the Committee and states parties and, if appropriate, request the Court and or the Committee to provide further information as required. For example, it may be useful to the forthcoming discussions to obtain from the Committee a further explanation of a recommendation that is not entirely clear to states parties or to

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International Criminal Court

Recommendations for developing an effective budget process

Introduction

Amnesty International is a human rights organization which has campaigned for over 14 years for the establishment and operation of a just, fair and effective International Criminal Court (Court). This work has included making detailed submissions during the process of drafting the Rome Statute of the International Criminal Court (Rome Statute) and its supplementary documents (including, the Rules of Procedure and Evidence, the Elements of Crimes and the Financial Rules and Regulations of the Court); campaigning in countries around the world for all governments to ratify the Rome Statute and to enact national implementing legislation providing for complementarity and full cooperation; and making submissions to the Court to develop effective policies (such as prosecution strategy) and systems for victims, outreach, defence and a broad range of other matters.

As part of this work, in 2000, Amnesty International started monitoring the Preparatory Commission of the International Criminal Court's (Preparatory Commission) process to develop the Financial Rules and Regulations of the Court and developing recommendations concerning budget and financial issues. The organization recognized that the effective budgetary and financial functioning of the Court was essential for the Court's success. As an active member of the Coalition for the International Criminal Court's (CICC) Budget and Finance Team¹, Amnesty International made a number of recommendations to the Preparatory Commission to ensure that the Court operated under clear and effective financial rules and regulations to ensure the transparency, efficiency and proper financial functioning of the Court.

¹ The Budget and Finance Team (Team) of the Coalition for the International Criminal Court (CICC) was established at the sixth session of the Preparatory Commission and its members have followed and contributed to the drafting of the Financial Regulations, Financial Rules, the Remuneration of Judges, the Budget for the First Financial Period and the Programme Budgets for 2004, 2005, 2006 and 2007. In organizing themselves for the Preparatory Commission, and now the Assembly, CICC members from civil society organizations, with a broad range of specialization in international justice issues form teams focusing on specific issues including the annual programme budget. Teams provide a forum within which interested members discuss issues, follow developments, and consider relevant research and positions in response to these developments. The Team aims to assist the Committee and the Assembly in considering the budget and other financial matters by submitting detailed commentaries and recommendations incorporating member groups' expertise and practical knowledge on international justice issues.

In 2002, following the entry into force of the Rome Statute, Amnesty International, together with other organizations, provided input to the Preparatory Commission's preparation of the budget for the first financial period, focussing on ensuring that sufficient resources were provided to the Court for it to effectively implement its mandate set out in the Rome Statute. The organization has continued its work on the budget in each year since the Court was established by lobbying the Court, the Committee on Budget and Finance (Committee) and the Assembly of States Parties (Assembly). In those years, the organization has supported investment in a range of areas of the Court's work, including investigation and prosecution activities, victims and witnesses, outreach, legal representation and the Secretariat of the Trust Fund for Victims.

Amnesty International notes that, overall, the budget process in the first five years has been successful in providing the Court with the resources it has needed to establish itself. This has contributed to the significant progress made by the Court in conducting preliminary analysis in a number of situations, conducting investigations in three situations and preparing for its first trial which is expected to commence in 2007. The budgets requested by the Court have been overwhelmingly supported by states parties and the Committee, with relatively small percentage of cuts being made each year by the Assembly to the Court's budget request. Nevertheless, Amnesty International notes that some problems have arisen in the budget process during these first years, including criticism of some aspects of the Court's budget preparation, concerns about some aspects of the Committee's reports and different approaches taken by the Assembly in making the final decisions on the budget of the Court.

Amnesty International believes that, with five years experience to draw from, that a review should be taken by all actors in the budget process to address problems which have arisen and to continue to improve an effective budget process tailored to the new and unique institution. The organization notes that to some extent this process has already begun. At the fifth session of the Assembly, the Working Group on the Programme Budget discussed the presentation of the budget and the budget process and reported on the exchange of views in the Official Records of the session.² In addition, the Court and the Committee are reportedly

² Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November-1 December 2006, Official Records, Part II (External audit, internal audit, programme budget for 2007 and related documents (2006 Assembly budget discussion), p.12-13 at paras. 4-9:

4. The Assembly discussed matters relating to the presentation and preparation of the budget.

5. While there was agreement that the presentation of the budget had improved considerably in the past years, the Assembly was of the view that further improvements were still possible.

6. There was general satisfaction with the amount of detail contained in the draft programme budget, which was considered fundamental for the Committee on Budget

conducting their own reviews of the process. The issue should also be considered by the Bureau's Working Group on the Budget which has been created to provide an intersessional forum for states to discuss budgetary issues.

This paper is aimed at contributing to the review the budgetary process by providing the views and recommendations of a non-governmental organization which has been actively involved in the budget process throughout the Court's existence. It should be noted that, although Amnesty International examines technical budget and finance issues, the organization does not seek to present its views as expert financial and budgetary opinion. Instead, the organization aims to identify issues that should be addressed to ensure that the Court can seek the resources it needs to implement its mandate through and clear and effective budgetary process. Although, in some cases, the organization recommends some general solutions, it recognizes that the experts within the Court, the Committee and the Assembly will be best placed to decide the most appropriate technical solutions.

I. The role of the Court in developing and promoting its budget request

The Court has the key role of preparing a proposed budget document and presenting it to states parties and the Committee in August each year. The proposed budget is considered by the Committee in October and prepares a report containing recommendations on the budget

and Finance and the Assembly to be able to effectively exercise their role. The wish was expressed, however, that budget proposals with regard to specific activities adequately reflect how they stand up to their merits and that an overview summarising the Court's policies in specific activities should be included in the document.

7. The Assembly encouraged the Court to address the issue of defining the most appropriate baseline to allow for a sound comparison between financial years. The Assembly also invited the Court to strive to adopt, as far as possible, a multiannual approach in the presentation of the budget.

8. The Assembly also considered the question of possibly granting flexibility not only within each Major Programme but also between the Major Programmes. It found the idea worthy of further consideration by the Committee on Budget and Finance, provided it did not jeopardize the effectiveness of the Assembly's decisions.

9. The Assembly stressed the central role of dialogue in the budgetary process. A particularly crucial function was performed by the Committee on Budget and Finance, the expert body of the Assembly, whose reports and recommendations should guide the Assembly in its deliberation on the budget. At the same time, it was acknowledged that States Parties could endeavour to organize in a more structured manner the activities whereby they exercise their responsibility to contribute to a constructive interchange.

request which is submitted to the Assembly. The Assembly now meets in November and December each year to consider the Committee's report and adopt the budget. Amnesty International notes that the Court has made important efforts to prepare a clear and effective budget document in its first years. The establishment of an internal working group on the budget within the Court representing all major programmes has been an important step to ensure that the budget document is consistent with the 'one-court' principle. The Court has also made significant improvements to the style of the budget under the guidance of the Committee. Nevertheless, challenges have arisen in two key areas. Firstly, the Court has faced inevitable problems in setting accurate timelines for its work in the budget period due to events largely outside its control, such as the willingness and ability of states and peacekeeping operations to make arrests, which has resulted in under-spending each year so far. Secondly, although the budget document has improved significantly in the first five years, it is still considered that further improvements can be made so that states can fully understand the basis for their investment. In this section, Amnesty International provides observations on these challenges facing the Court and makes recommendations to address them.

(a) Reducing the under-spend

Each year, the Court prepares a budget based on assumptions prepared by the Office of the Prosecutor of how situations, investigations and cases will proceed in the following year.³ The Committee has noted that the assumptions prepared by the Court have been "ambitious and reasonable." Indeed, states, non-governmental organizations and other actors have overwhelmingly welcomed the tremendous progress made by the Court in its first five years to be at a point when it has approximately eight situations in preliminary analysis, full investigations taking place in three situations (with a fourth expected to be launched soon) and the first trial expected to begin in 2007. However, the Court has faced almost impossible challenges to set accurate timelines for when assumptions would be realised. As the Committee has noted there exist "significant uncertainties in the timetable of each situation".⁴

³ For example, for 2007 the Court developed the following assumptions:

The Office of the Prosecutor will continue to monitor at least five situations and intends to open an investigation into a fourth situation during 2006. There are no plans to open investigations into new situations in 2007. Within the four situations, the Office of the Prosecutor will investigate a total of at least six cases, including the two cases in which arrest warrants have been unsealed. At least one trial is envisaged for 2007. Additional trials will depend on the arrest and surrender of the individuals named in the arrest warrants. Until the trials begin, investigation and pre-trial activities will continue and appeals may arise.

⁴ Report of the Committee on Budget and Finance (2004 CBF Report), ICC-ASP/3/18, 13 August 2004, para.35. Furthermore, in its 2005 Report, ICC/ASP/4/27, at para23, the Committee stated:

The result has been that in each year so far, timelines have not been realised and therefore the budget had been significantly under-spent.⁵ Despite the fact that adjustments are made to refund unspent monies to states parties,⁶ the regular annual shortfall has resulted in budgetary uncertainty which in turn has had a number of negative consequences. In particular, states parties have experienced problems justifying increases each year to their finance ministries and as a result some states have called for zero growth budgets despite the fact that the Court has not yet reached a full workload.

It is important to note that some important measures have been taken to address the under-spending, which Amnesty International has supported. Firstly, at its second session, the Assembly decided to move its annual session from September to November to enable more accurate assumption setting by the Court. Secondly, in submitting its 2007 budget, the Court scaled back its assumptions on the previous year to request funds “only where funds are clearly needed.”⁷ Recognizing that it was impossible to foresee when persons charged by the Court would be arrested and surrendered to it, the Court only budgeted for one case for the person who was already in the Court’s custody at the time the budget was prepared. Although other arrest warrants exist, there are no resources allocated for other trials in the 2007 budget and if persons are surrendered to the Court, it will use the €10 million contingency fund to pay for work on the cases during the year. Thirdly, Amnesty International is informed that an on-going internal review process is taking place in the Office of the Prosecutor to draw lessons, where, possible from the assumption setting process.

While welcoming these measures to reduce under-spending, Amnesty International notes that, given the level of uncertainty in the timing of the Court’s work, a complete solution to the problem does not exist at present. For example, as experienced in the first case, even when a person has been surrendered to the Court, it will be impossible for the Court to accurately predict at this early stage in its history when the pre-trial proceedings will end and

“As in its review of the 2005 programme budget, the Committee concluded that the assumptions, although reasonable, were still contingent upon the Court receiving adequate cooperation on the part of national and international authorities, upon conditions on the ground and upon whether indictees were arrested and transferred to the custody of the Court.”

⁵ The Court has under-spent as follows: 2002-2003: €9,415,500; 2004: €9,652,300; 2005: €3,061,500.

⁶ It is, however, recognized that states have not received the full amount of their refund owing to the failure of a significant number of states parties that have failed to pay their assessed contributions on time.

⁷ Proposed Programme Budget for 2007 of the International Criminal Court (ICC/ASP/5/9), 22 August 2006, para. 14.

the trial begin, particularly since the prosecution strategy and procedure of the Court are significantly different from those of other international court. That is not to say that other mechanisms cannot be developed to increase accuracy and further minimize the under-spending, but it will take time and experience to put these in place and for them to take effect. Ensuring that states parties provide prompt, full and effective cooperation with the Court is also a key factor outside the control of the Court that prevents the Court from defining more accurate timelines. This issue should be addressed by the Assembly as a priority. Amnesty International intends to propose a number of concrete, practical steps before the Assembly's next session that the Assembly could take to assist states parties, other states and intergovernmental organizations to improve the effectiveness of searches for and arrest of persons subject to Court arrest warrants and their cooperation in investigations.

Recognizing the challenges faced by the Court in preparing accurate timelines, it is important that states parties are patient and cooperative with the Court in addressing this issue and that they do not resort to arbitrary measures, such as demanding zero growth budgets, which would undermine the whole budget process and deny the flexibility that is essential for at least the next years. Instead, in addition to implementation of the practical recommendations outlined below, the Court and states parties should redouble their efforts to press states and intergovernmental organizations to arrest and surrender persons subject to Court arrest warrants and to cooperate with investigations.

Amnesty International's Recommendations:

The Office of the Prosecutor should continue its regular internal review of the assumption setting process.

The internal process conducted by the Office of the Prosecutor to draw lessons from its experiences of working to implement the assumptions is vital and should be continued. For example, this year, Amnesty International believes it is important for the Office of the Prosecutor to review the delay in starting the fourth investigation to determine whether it is possible to draw any lessons to provide more accurate timeline setting for the commencement of further investigations.⁸ Amnesty International believes that, as far as possible, lessons should be drawn from the Courts experience, including the internal and external factors that affect it timelines. Where the Office of the Prosecutor deems it appropriate, it should consider communicating its conclusions to other major programmes of the Court and states parties to

⁸ The Proposed Programme Budget for 2006 stated that the Office of the Prosecutor "expects to begin a fourth investigation during the latter half of 2006" [Proposed Programme Budget for 2006, ICC-ASP/4/5, para.10]. This aim was restated in the Proposed Programme Budget for 2007 [Proposed Programme Budget for 2007, ICC-ASP/5/9, para. 3] and resources requested for the whole of 2007 to conduct the investigation. As of April 2007, the investigation has not been launched.

enhance their understanding of the assumption setting process.⁹ It should, however, be accepted that in many cases the Office of the Prosecutor will not be able to draw lessons from a failure to fulfil the timeline for an assumption, especially when the delay occurs for reasons that are completely outside the control of the Court, such as delays arising from non-cooperation from states.

A mechanism should be established whereby the Court can amend its assumptions leading up to the Assembly of States Parties.

Assumptions may change significantly between August when the budget is made public and presented to the Committee and states parties for their consideration and November/December when it is adopted. Amnesty International recommends that a mechanism be established whereby leading up to the Assembly, there is the opportunity for the Court to revise its assumptions and to accordingly submit a reduced budget.¹⁰ The Court should review its assumptions and endorse them at the October meeting of the Committee and at the November/December session of the Assembly.

(b) Improving the style of the budget

The budget document is reviewed closely by the Committee, by states parties and by observers, including non-governmental organizations. Although the budget document will be supplemented by presentations of the Court, the budget document is the primary basis of scrutiny. As such, it is important that it sets out clearly the basis for the proposed annual budget and fully justifies it. Amnesty International agrees with the views expressed by the Assembly at its fifth session that “the presentation of the budget has improved considerably in the past years” with the Court’s work to implement improvements recommended by the Committee. Amnesty International also agrees with the Assembly that “further improvements were still possible.” In particular, Amnesty International believes that the Court, in the preparation of the budgetary document should seek to inform the Committee and the Assembly, in an accessible format, of the baseline for its budget request – being the status of implementation of its budget at the end of the current year (the year in which the budget is drafted) - and to fully justify the budget for the year ahead, linking the requested investment as much as possible to the Strategic Plan of the Court.¹¹

Amnesty International’s recommendations

The budget document should seek to involve all states parties in the budget process.

⁹ In many cases, due to reasons of confidentiality and the sensitive work of the Office of the Prosecutor, such communication may not be possible.

¹⁰ The provision would only need to apply to a decrease in the assumptions, as the contingency fund exists to respond to situations where the assumptions increase.

¹¹ The current version is: Strategic Plan of the International Criminal Court (ICC-ASP/5/6), 4 August 2006.

Amnesty International is concerned that in recent financial processes, with the exception of a few high profile issues (such as the budget for outreach), only a small proportion of states parties (generally represented by financial experts from the highest contributing states) have taken part actively in the budget process. Although there are no doubt a range of reasons for this, Amnesty International believes that the Court should take measures to make the budgetary document as accessible to all states parties to encourage the broadest participation by states parties in the process and support for the budget of the Court.

Firstly, Amnesty International recommends that the document be reviewed to determine whether the approximately 200-page document can be shortened so that more states have the opportunity to read the document among the large amount of other materials submitted to them in advance of the Assembly. Amnesty International is not advocating for removal from the document of essential information, indeed, as set out below the organization recommends more contextual information be provided. Instead, it is recommended that creative formatting and stylistic solutions should be considered to provide information in a succinct way.¹²

Secondly, the Court should review the style and structure of the budget to ensure that it can be reviewed by those delegations that are unable to send a financial expert to participate in the Assembly.

Thirdly, as recommended below, the budget document should not focus primarily on justifying new resources as this style of budget is difficult to understand for delegates who have not been involved in the process in previous years. Instead, each budget document should aim to justify the full resources requested.

Fourthly, the Court should issue a summary of the key points of its proposed budget. Such a document would be useful so that all states parties, even if they do not have the capacity to analyse the document fully, can understand the main elements of the budget request.

The budget document should set the budget baseline as the estimated status of the Court's work at the beginning of the financial year.

At present, the budgetary document focuses on what new resources are required for the following financial year without providing the reader with a clear indication of expected status of the work of the Court at the start of the financial year. This issue has been raised by both the Committee and the Assembly who have requested that an accurate baseline be

¹² Amnesty International notes that the budget documents issued in the first five years have largely followed the format adopted by the United Nations. While this is a useful format which states are accustomed to, there is nothing to prevent the Court from tailoring elements of the format to the unique and independent Court.

adopted.¹³ This issue will likely be addressed in the 2008 budget. Amnesty International believes that the baseline for the 2008 budget should be set as the projected situation at the Court on 1 January 2008.

The budget document should include contextual information about the status of the implementation of the current budget for each programme and sub-programme.

In developing a more accurate baseline, it is important that the budgetary document explains how much progress it has made in the implementation of the budget for the current financial year (up until the proposed budget for the following year is issued in August) and as accurate as possible a projection of what will be implemented between August and the end of the current financial year. In addition, the Court should provide reasons for projected under-spending and over-spending in relevant areas for the programme or sub-programme. The contextual information will be a useful basis for states parties, the Committee and other observers to understand the implementation of the current year budget and how it relates to the budget request for the next year.

Each programme and sub-programme should develop objectives, expected results and performance indicators directly related to the implementation of the Strategic Plan.

Amnesty International is concerned that the 2007 budget document failed to explain adequately the importance of the work of the specific programmes and sub-programmes in relation to the Strategic Plan. Although the organization welcomes the inclusion of an “objectives” section for each programme and sub-programme, in many cases the objectives listed in the 2007 budget document either quoted or paraphrased the objectives set out in the Strategic Plan. This was only of minimal use to the reader. In future budgetary periods, Amnesty International encourages the Court to develop this section further by developing programme or sub-programme specific objectives which emphasise the relevance of the work to implementing the strategic plan and cross reference them to Strategic Plan.

¹³ See: CBF Report on the Work of its Seventh Session, ICC-ASP/5/23, para. 48-49.

In each of the programmes and sub-programmes, the budget proposals for 2007 were compared with the 2006 budget, which had been developed to meet workload assumptions as they appeared in the summer of 2005, that had only partially materialised. As a result, the 2006 budget had been significantly underspent and could not therefore be considered a sound baseline for consideration of the 2007 budget... “[a] preferable approach would have been to compare the 2007 budget with the projected implementation for 2006, linking the increases to workload assumptions.”

See also: 2006 Assembly budget discussion, *supra* note 1, para.7 “The Assembly encouraged the Court to address the issue of defining the most appropriate baseline to allow for a sound comparison between financial years.”

Similarly, Amnesty International believes the content of the “expected results” and “performance indicators” tables included for each programme and sub-programme should focus directly on the implementation of the objectives established. Amnesty International is concerned that the information provided by the Court in these tables in previous budgetary documents has been too detailed and focussed on very specific operational aspects of the work of the programme or sub-programme, which were not clearly related to the implementation of the objective. Clearly defined benchmarks to implement the objectives will ensure greater understanding of the work of the programme or sub-programme and allow for clear reporting on the Court’s achievements.

The budget document should focus on justifying the resources of each programme and sub-programme on an annual basis, rather than focussing on justifying new resources.

Budget documents in previous years have focussed largely on explaining the need for new resources in the year ahead. As a result, a significant part of the budget document has focussed on explaining the need for new staff and resources to achieve its work, without adequately explaining the overall resources needs of the programme or sub-programme or their basis. This approach has had a number of adverse effects on the process. Firstly, as mentioned above, it makes the budgetary document difficult to understand for those who have not followed previous budget processes. Secondly, it has led to a lack of clarity about how the budget document relates to previous budgets. For example, while budgetary increases have been explained in detail, reductions in some areas of the budget have not been explained adequately. It would be particularly useful for the Court to indicate in all circumstances where the budget is reduced the reasons for its decision, including, whether the resources have been re-apportioned to other programmes or sub-programmes, whether the resources previously requested were too much or whether the Court has decided not to conduct the activities of previous years. Thirdly, the focus on increases in programmes and sub-programmes focuses attention primarily on increases of a small number of posts or resources in a particular programme or sub-programme, which promotes a micro-management approach by both the Committee and the Assembly. Although Amnesty International believes it is important for increases to be explained in the budgetary document, it is important that the increases are not explained in isolation and recommends that they be presented in the context of the overall resource requirements of the programme or sub-programme so that the resources can be considered as a whole.

II. The role of the Committee on Budget and Finances in the budget process

Amnesty International supported the establishment of the expert Committee and welcomes the important work which the Committee has undertaken in the first five years. In this time, the Committee has put a great deal of effort into supporting the establishment of the financial systems within the Court. It has examined the budget proposals of the Court and has provided detailed reports and made recommendations to the Assembly each year. In some cases, the Committee’s recommendations have been contested by the Court and by the Assembly, which on occasion has decided not to implement them. Amnesty International has lobbied for the

Assembly not to adopt Committee's recommendations only in situations where it believed the cut would undermine the ability of the Court to undertake essential tasks. The organization believes that there are a number of measures which the Committee could take to strengthen its work of reviewing the budget, while fully and effectively implementing its mandate.

Amnesty International recommends:

The Committee should provide for more dialogue with the Court in conducting its review of the proposed budget.

Amnesty International understands that at the beginning of the Committee's session, a significant amount of time is allocated for the Court to present its budget proposal and discussions between the Committee and the Court. The Committee then closes its meeting with the Court and proceeds to discuss the budget document and decide its recommendations taking into account the views of its members. Having decided its recommendations, the Committee prepares its report. Amnesty International is concerned that, apart from the initial presentations by the Court, there is currently little time allocated when the Committee can communicate the outcome of its internal discussions to the Court including its concerns and its recommendations and to discuss these issues with the Court. That is not to suggest that there be a process of negotiation between the Court and the Committee, but instead, to allow for more dialogue between the bodies and to provide the opportunity for the Committee and the Court to find effective solutions, if possible. The organization understands that time is a major obstacle for the Committee in this regard and would encourage the Committee, if it is unable to find alternative solutions to extend its October meeting to allow for this important dialogue with the Court.

The Committee should appoint focal points or sub groups to develop expertise on key issues.

In reviewing the budget of the Court, the Committee will consider and provide recommendations on many technical issues of the Courts work, which are unique to the institution. The size limitation of the budget document means that the Court will not be able to explain in the fullest detail all these elements of its work. While it is important that all members of the Committee learn as much as possible about these aspects of the Courts work to inform their discussions, Amnesty International believes that there are a number of issues where the Committee could appoint focal points or sub groups among its twelve members to develop expertise in key areas and to provide regular updates and advice to their Committee colleagues. Focal points and sub-groups could conduct detailed meetings with the Court and other actors, including states and non-governmental organizations and consult with relevant Bureau Working Groups (if they exist). If necessary, the budget of the Committee should be increased to allow for intersessional travel by focal points or sub-group members to conduct meetings with the Court, states parties, non-governmental organizations and other experts. Amnesty International believes the following areas should be among the first issues on which focal points or sub-groups are appointed: outreach; victims' issues, including: protection, support, participation and legal representation; defence and legal aid; and permanent premises.

The Committee should focus its considerations on macro issues.

The Committee's consideration of the budget in its first years has focussed to a large extent on very specific requests by the Court, for example, whether specific new posts requested by the Court are necessary. To a large degree, this practice has been dictated by the style of the budgets which focuses significantly on justifying new posts and other small amount of resources to sub-programmes. Much of the Assembly's consideration of the Committee's reports in the first years has focussed on whether the Committee should be micro-managing the Court to the extent of cutting specific posts and resources or whether the managers of the Court are better placed to perform this task. In some instances, Amnesty International has opposed such recommended cuts where it believed the cuts, if implemented, would undermine the work of the Court in key areas. The organization encourages the Committee to review its approach of focussing on specific posts and small amounts of resources allocated to specific sub-programmes and instead to focus on the macro efficiency of programmes. So, for example, instead of considering whether a specific post in a sub-programme not is funded, the Committee would look at the overall recruitment request of the program to consider such issues as whether it is feasible to recruit the number of staff taking into account vacancy rates etc.

III. The role of the Assembly of States Parties in the budget process

The role of the Assembly in considering the budget has undergone major changes in the first five years. Originally, the Assembly was criticized for providing too much scrutiny of the Report of the expert Committee. At its fourth session, it took a very different approach by adopting the Report of the Committee as a package. This approach was also criticized, including by Amnesty International, for failing to ensure the fullest oversight of the budget process. At its fifth session, the Assembly sought to find middle ground by focussing only on major issues arising in the Committee's Report. Amnesty International supports the approach taken by the Assembly at the fifth session, recognizing that the Assembly which relies on the advice of the expert Committee, is mandated by the Rome Statute to decide the budget and should therefore be in a position to consider important issues raised in the Committee's report in order to determine whether to accept the Committee's recommendations. Amnesty International hopes the Assembly will continue this approach in future years.

There are a number of issues where Amnesty International believes the Assembly can contribute to the effective budgetary functioning of the Court. In advance of the sixth session of the Assembly, the organization encourages the Bureau's Working Group on the Budget to consider these issues.

Amnesty International recommends:

Where appropriate, the Assembly should request information from the Court and the Committee in respect to contentious recommendations in the Committee's report.

Amnesty International notes that in previous sessions of the Assembly, the Assembly's Working Group has spent a significant amount of time dealing with disagreements between the Court and the Committee on its recommendations. To enable the Working Group to deal effectively and efficiently with such disagreements in the future, it would be useful if the Chair of the Working Group could identify such contentious issues in their discussions with the Court, the Committee and states parties and, if appropriate, request the Court and or the Committee to provide further information as required. For example, it may be useful to the forthcoming discussions to obtain from the Committee a further explanation of a recommendation that is not entirely clear to states parties or to obtain from the Court a report on what could be achieved in the relevant area if a recommended cut is implemented.

The Assembly should respond appropriately to the current under-spending.

As already stated, Amnesty International believes that although under-spending can be reduced in the next years, it will be impossible to prevent it completely. It is important for states parties to support the Court through this period and for the Assembly to work with the Court in strengthening its mechanisms to ensure greater budgetary accuracy, where possible, and to oppose arbitrary measures such as imposing a zero growth budget on the Court, which would undermine the budgetary process. As noted above, Amnesty International intends to propose a number of steps that can be taken to address the problems of limited cooperation by states and intergovernmental organizations in investigations and in arrest and surrender of persons subject to Court arrest warrants.

The Assembly should ensure the effective operation of the contingency fund.

In its 2007 budget request, the Court decided that it would only request funds for those cases that it was certain would occur in 2007. As only one person was in the custody of the court it, therefore, requested the resources for only one trial, on the condition that if other persons charged by the Court were arrested and surrendered to it, that it would use the €10 million contingency fund. This approach was approved by the Assembly. Amnesty International supported this approach as an effective measure to address the current level of under-spending and to provide greater budgetary certainty in the process. However, if the new system is to succeed, it is vital that the contingency fund is extended and its regulations are revised to ensure that it is topped up each year. At present the €10 million fund, established at the Assembly's third session is expected to last until 2008, when it will be reviewed.¹⁴ It may be the case that the fund is not used by the Court before 2008, nevertheless, if the system

¹⁴ ICC-ASP/3/Res. 4 Programme budget for 2005, Contingency Fund, Working Capital Fund for 2005, scale of assessments for the apportionment of expenses of the International Criminal Court and financing of appropriations for the year 2005, para. B.6 states:

Decides that the Fund shall be limited to a period of 4 years and that the Assembly of States Parties shall decide at its session in 2008 on the extension or possible discontinuation of the Fund and on any other question related to the Fund that it deems necessary in the light of experience.

introduced by the Court to use the fund to minimise under-spending is to be effective, it is important that the fund is extended, either at its sixth session (which would be advantageous in endorsing the budgetary approach of the Court) or at the latest of its seventh session in 2008. At the same time, it will be vital to ensure that the fund has sufficient resources. Although it is unlikely that the fund will run out of resources in the short-term, it is important that an effective “top-up” mechanism is introduced to ensure that each year the fund is returned to its €10 million level or to another sum deemed appropriate by the Assembly, taking into account the views of the Court. If not, the contingency fund could run out of resources.

The Assembly should carefully consider whether it should provide greater budgetary flexibility for the Court to transfer funds between major programmes.

The report of the Assembly’s discussions on the budget process at its fifth session states:

The Assembly also considered the question of possibly granting flexibility not only within each Major Programme but also between the Major Programmes. It found the idea worthy of further consideration by the Committee on Budget and Finance, provided it did not jeopardize the effectiveness of the Assembly's decisions.

Amnesty International is not convinced that extending greater flexibility to the Court to transfer funds between programs would strengthen the budgetary process. The organization believes that a large degree of flexibility already exists to transfer money within the major programs. To date, this existing level of flexibility has been sufficient to allow the Court to establish itself. Amnesty International is not aware of any situations where greater flexibility has been required by the Court or of any request by the Court to allow it to transfer funds between major programmes. The organization believes that proper budgetary process should be to require that each major program has the necessary resources to perform their functions. If an unforeseen event occurs which means that one major program requires significant additional resources, the Court already has the mechanism of the contingency fund to respond. A further mechanism may therefore not be necessary.

The Assembly should not move to a multi-year budget at this time.

Amnesty International notes that in recent years a number of states have called for the Court to move to a multi-year budget process, such as the biennial process adopted by the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. However, the mandate of the Court is very different from those two institutions. The Court will respond to situations around the world and it is likely that it will need to adapt its assumptions on a regular basis. The current level of under-spending illustrates how difficult it is for the Court to develop timelines for its assumptions 16 months in the future. To extend that period further at this time would be onerous to the Court and would result in an unreliable budgetary basis for the extended period.