



BUDGET AND FINANCE TEAM¹
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)

**SUBMISSION TO THE COMMITTEE ON BUDGET AND FINANCE AT ITS NINETEENTH SESSION
ON 24 SEPTEMBER TO 3 OCTOBER 2012**

**Comments on the Proposed Programme Budget for 2013 of the International Criminal
Court and other matters**

20 September 2012

I. INTRODUCTION

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 NGO 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 to 2012.²

The Team aims to assist the Committee on Budget and Finance (Committee) and the Assembly of States Parties (Assembly) in its consideration of the International Criminal Court (Court) budget and other financial matters by submitting detailed commentaries and recommendations which incorporate member groups' expertise and practical knowledge on international justice issues. In doing so, the Team notes that, in most years, a number of key policy issues arise during the budget process. The Team continues to be concerned that the Committee is often required to review key policy issues without the support and input of other expert subsidiary bodies, leaving it in the difficult position of making recommendations on issues that require substantive consideration in addition to an assessment of financial implications.

In this paper, the Team provides comments and makes recommendations on the Proposed Programme Budget for 2013 of the International Criminal Court (proposed Budget).³

The Team is available to discuss any of these issues with the Committee or States Parties in advance of and following the Committee's session and can be contacted via the CICC's The Hague Office (pal@coalitionfortheicc.org, Bezuidenhoutseweg 99a, 2594 AC The Hague, Tel: + 31(0)70 311 10 87).

II. SUMMARY OF RECOMMENDATIONS CONTAINED IN THIS PAPER

On the role of the Committee:

1. The Committee is encouraged to express any concerns it has about the Assembly's current practice of adopting its recommendations on the annual budget as a ceiling for budget negotiations and the Assembly's failure to fully consider its recommendations.
2. The Committee is urged to consult with the Court on the impact of the 2012 Budget on its work and efficiency, especially in situation countries, and to report to the Assembly any concerns it has about the consequences of the 2012 Budget.

¹ While the work of the Budget and Finance Team reflects the positions of those CICC members most active on particular issues and this paper has been prepared in consultation with other CICC teams, this paper cannot be construed to represent the views of all organizations/members of the CICC.

² CICC Teams are composed of CICC members with a broad range of specialization in international justice issues. Teams focus on specific issues such as the annual programme budget. The Teams follow developments at the ICC and the Assembly and engage in relevant research and advocacy. All CICC members are welcome to join any teams and all CICC members are regularly apprised of the work of the teams.

³ Proposed Programme Budget for 2013 of the International Criminal Court (Budget Proposal 2013), ICC-ASP/11/10, 13 August 2012.

3. The Committee is urged to recommend that the Assembly reject the 'zero-growth' approach because it is inconsistent with the Rome Statute and the effective functioning of the Court.
4. The Committee should clarify that it will continue to review the annual Budget requests on their merits to ensure that the Court can achieve its mandate set out in the Rome Statute efficiently and effectively.
5. The Committee is encouraged to continue its work with the Court to improve the presentation of the budget. In particular, it is important that the Committee's long-standing recommendations for the Court to justify the whole budget of the Court, as opposed to requested increases, should be achieved.
6. The Committee is encouraged to continue working with the Court to identify further efficiencies in the next years, drawing on comprehensive lessons learned processes.

On the proposed Budget:

7. The Committee should conclude that the increases in interim premises, the Kenya trials, staff costs and legal aid are reasonable and should be funded for 2013.
8. The Committee is encouraged to consider, in consultation with the Court and the Study Group on Governance, how the Court can best submit information to the Committee and the Assembly on possible other costs that may arise during the financial year that are not included in the assumptions.
9. The Committee should recognize that the ability of the Court to absorb major costs is no longer possible and refrain from making such recommendations.
10. In reviewing the proposed Victims Participation and Reparation Section budget request, the Committee should take into account the current level of inadequate resources and consult with the Court to identify the reasons for this. The Committee should consider and provide necessary recommendations to the Assembly and the Court on the risks associated with inadequate funding of the VPRS, in particular the potential impact on the rights of the accused and victims and on the efficiency of judicial proceedings.
11. The Committee should recommend that the Assembly approve the requested psychological support posts in Victims and Witnesses Unit and the reclassification of the Psychologist Trauma Expert as permanent.
12. The Committee should approve the budget request of the Trust Fund for Victims in relation to ongoing assistance activities as well as to strengthen the ability of the Fund to be financially sustainable and accountable.

III. THE ROLE OF THE COMMITTEE

Before providing comments on the proposed Budget, the Team would like to address the role of the Committee in the current budgetary process. The Team is extremely concerned that the Assembly's recent practice of imposing major budgetary cuts on the ICC threatens the work of the Court. It believes the Committee this year has a vital role to play in the discourse to ensure adequate funding for the Court.

1. The Committee's role in the budget process

The Team is dismayed that, amid calls by a small number of states for 'zero-growth' in the budget,⁴ the Assembly is now repeatedly going beyond the Committee's recommendations and cutting the Court's budget requests in a manner that is undermining its work and progress and that threatens to violate the Rome Statute. The Team is particularly disappointed that the Assembly appears to have departed in recent years from the process of reviewing the Committee's recommendations and their potential impact on the Court, in favour of adopting them automatically as a ceiling for budgetary negotiations. This undermines the integrity of the budget process by failing to give adequate attention to the issues identified by the Committee and threatens to turn the Committee from a body of experts of recognized standing in financial matters advising the Assembly, into primarily a cost-

⁴ Although some states use the term 'zero nominal growth', the Team uses 'zero-growth' which has been defined by the Committee to mean "where the numerical value of the item or budget remained constant" (see Report of the Committee on Budget and Finance on the work of its ninth session (ICC-ASP/6/12), para. 39. This definition is consistent with the advocacy of these states that call for the budget to remain the same as the amount approved in the previous year, regardless of inflationary or in-built costs or increases in workload.

cutting mechanism.⁵ This year, the Team will again be calling for the Assembly to re-instate its practice of fully considering the recommendations presented by the Committee, in accordance with its oversight responsibilities.

Recommendation:

- The Committee is encouraged to express any concerns it has about the Assembly's current practice of adopting its recommendations on the annual budget as a ceiling for budget negotiations and the Assembly's failure to fully consider its recommendations.

2. The Committee's role in reviewing the impact of the 2012 budget

The 2012 Budget adopted by the Assembly was €8 million below the resources recommended by the Committee. This has had major implications for the Court's work. The proposed Budget for 2013 sets out numerous measures that have been taken to scale back on work and projects to meet the cost limitations. It also highlights a number of problems that arise from resource limitations. The Team is particularly concerned by the Court's statement that "budget constraints have put serious strain on the [Field Operations] section's ability to deliver and meet the operational needs of its clients and thus the ability of the Court to implement its mandate in situation countries."⁶ Additionally, the proposed Budget for 2013 contains no information about a field presence in Libya and only "a small administrative field presence has been established in Côte d'Ivoire, financed mainly from existing resources."⁷ It further proposes substantial reductions in its existing field presence and redeploying resources either to other field offices or to headquarters.

It is vital that the impact of the 2012 Budget is monitored independently by the Committee and that the Assembly's attention is drawn to negative impacts on the Court's work, including any inefficiencies that they might produce.

Recommendation:

- The Committee is urged to consult with the Court on the impact of the 2012 Budget on its work and efficiency, especially in situation countries and to report to the Assembly any concerns it has about the consequences of the 2012 Budget.

3. The Committee's role in the debate on 'zero-growth'

The Team's rejection of the 'zero-growth' or other approaches to arbitrarily limit growth in the Court's budget has been well documented in recent years. The underlying assertion that the Court should be resource-driven is inconsistent with the Rome Statute, in particular the independence of the Prosecutor. The Court was created to respond to impunity and therefore needs to be a dynamic and scalable institution. At times such as now, when impunity exists in many situations under its jurisdiction, the workload and therefore the budget of the Court will need to increase in accordance with the activities of the independent Prosecutor and consequent activities within the rest of the Court, including outreach and public information. 'Zero-growth' would curtail the independence of the Prosecutor, prevent the rest of the Court from fulfilling its mandate and render the Court irrelevant and ineffective in many situations. The Team notes that the pressure generated by this approach has already impacted the independent budgeting practice of the Registry, which has sought to "prepare a budget lower than the level of the 2012 appropriations," notwithstanding the clear needs for increased resources in some key areas (see section IV.4 below).⁸

This year the 'zero-growth' issue must be tackled, as the continued use of this approach as a bargaining tool to achieve additional cuts to the budget, beyond those recommended by the Committee, will cause serious damage. The Prosecutor has already indicated that her office has reached "absorptive capacity" and "further reductions

⁵ Establishment of the Committee on Budget and Finance (ICC-ASP/1/Res.4), sets out that the Assembly established the Committee "[d]esiring to provide an appropriate mechanism for the budgetary and financial review and monitoring of the resources of the International Criminal Court, including those of the Assembly."

⁶ Proposed Programme Budget for 2013 of the International Criminal Court, para. 248.

⁷ Budget Proposal 2013, para. 245.

⁸ Budget Proposal 2013, para. 196.

would either result in an investigation being terminated, or further slow down all investigations to levels that would potentially increase costs in other related areas”.⁹

Although the Team recognizes the concern expressed by the Committee in the report of its seventeenth session that “the Court is reaching the point when the expectations on the type and level of activities and on the level of resources may be diverging”, it is disappointing that the Committee appeared to accept rather than challenge the situation. ‘Zero-growth’ is not a widely accepted approach. On the contrary, it has only been supported by a small minority of states parties and is opposed by many others.

Furthermore, the Team was dismayed that the Committee went on to highlight a number of major cost-cutting measures that could be employed which, if implemented, would seriously undermine the work of the Court. In particular, the Team strongly opposes the suggestion that outreach and public information, which are core to the Court’s work, should be partly funded from voluntary contributions,¹⁰ particularly without any analysis of the risks involved or reflection on the experiences of other institutions who can attest to the impact of voluntary funding. Outreach is vital for involving the populations in situation countries by engaging them, facilitating their understanding of the international justice process and managing their expectations, which is particularly important in respect of participation and representation of victims in proceedings. It is also crucial to conducting investigations effectively in the field and carrying out trials successfully by promoting understanding and support for the Court’s mandate and creating an environment conducive to cooperation with it. Outreach and public information are central to the Court’s mandate as they are essential to making judicial proceedings public and crucial for the meaningful delivery of fair and credible justice. As such, they must be funded through the Court’s regular annual budget.¹¹

The Team also notes with serious concern that in the report of its eighteenth session, the Committee appeared to advocate for ‘zero-based’ budgeting.¹² Any perception that the Committee is adopting the disputed ‘zero-growth’ approach in its work risk undermining its independence, the integrity of the budget process and the Court’s ability to obtain the resources it requires.

Recommendations:

- The Committee is urged to recommend that the Assembly reject the ‘zero-growth’ approach because it is inconsistent with the Rome Statute and the effective functioning of the Court.
- The Committee should clarify that it will continue to review the annual Budget requests on their merits to ensure that the Court can achieve its mandate set out in the Rome Statute efficiently and effectively.

4. The Committee’s role in promoting transparency and efficiency

The Team welcomes the positive role the Committee is playing in working with the Court both to improve the budget presentation and to find efficiencies. We consider that both elements are essential to improving the budget process and attitudes towards funding the Court. The presentation of the proposed Budget for 2013 reflects a number of improvements, many of which have been prompted by the Committee. In particular, the Team notes the Court’s efforts to include in the proposed Budget for 2013 forecasting for “multi-year cost drivers,” as requested by the Committee.

The Team also welcomes the fact that savings of €2.89 million described in the *Seventh Status Report on the Court’s progress regarding efficiency measures* have been reflected in the 2013 Budget proposal. Furthermore, we acknowledge the importance of the lessons learned process currently being conducted by the Court and its potential to identify further efficiency.

⁹ Budget Proposal 2013, para. 114.

¹⁰ Report of the Committee on Budget and Finance on the work of its seventeenth session, para. 25.

¹¹ See also Coalition for the ICC, Letter to states parties on ICC Communications for International Justice Day, 20 July 2012, <http://www.iccnw.org/documents/CICC_Letter_on_ICC_Communication_and_outreach-20.07.12.pdf>, 24 August 2012.

¹² Report of the Committee on Budget and Finance on the work of its eighteenth session (ICC-ASP/11/5), paras. 32-33.

However, the Team is concerned that some efforts are being taken by the Court to cut costs without conducting a comprehensive lessons learned analysis. In particular, the Coalition's Legal Representation Team will present a separate paper to the Committee highlighting problems it sees with the current piecemeal approach being taken by the Registry to review the legal aid system and its latest proposals to scale back on legal aid.

Recommendations:

- The Committee is encouraged to continue its work with the Court to improve the presentation of the budget. In particular, it is important that the Committee's long-standing recommendations for the Court to justify the whole budget of the Court, as opposed to requested increases, should be achieved.
- The Committee is encouraged to continue working with the Court to identify further efficiencies in the next years, drawing on comprehensive lessons learned processes.

IV. THE PROPOSED BUDGET FOR 2013

The Court's proposed Budget for 2013 requests €118.75 million for 2013, an increase of €9.95 million on the approved Budget for 2012, which arises from the transfer of interim premises costs from the host state to the Assembly, two new trials in the Kenya situation, increases in legal aid and staff costs.

1. The need for growth

In the context of last year's budget process, such an increase will likely prove controversial to some states. Nevertheless, the request must be assessed on its merits.

- Interim premises costs.* The delay in the establishment of the permanent premises has inevitably generated additional costs for interim premises that are beyond the control of the Court. This year, the period during which the host state has agreed to pay for the interim premises and its maintenance is expected to come to an end. The Court has therefore incorporated these costs (€6.02 million) into its 2013 budget request. The Team considers this decision was reasonable and notes that in the budget request it has scaled down on some maintenance to minimize costs.¹³ It also recognizes that the host state's offer of free premises was always time-bound and foreseeable that at some point the Assembly would need to take on these costs, but notes in particular that the time limit of meeting these costs for ten years was originally considered sufficient for the Court to move into the permanent premises.
- Kenya trials.* The Trial Chamber has scheduled the two Kenya trials to commence in April 2013. The inclusion of these scheduled trials and related costs in the 2013 assumptions is not only reasonable but goes to the core of ensuring accused persons are tried without undue delays.
- Staff costs.* The budget provides for an additional €3.88 million to cover increases in staff costs, in accordance with the UN Common Costs System. As indicated in the Official Records of the Assembly's Tenth Session, the Assembly has been advised that if the Court were to depart from the UN Common Cost System it could give rise to legal challenges.¹⁴

¹³ Budget Proposal 2013, para. 114 "[t]he result of these cuts will be downgrading of the appearance both in the interior and in its limited outside areas. It will also cause an extension in the lead times for unscheduled maintenance and repairs."

¹⁴ Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Tenth session, New York, 12 - 21 December 2011, Part II, External audit, programme budget for 2012 and related documents, Section H.

(d) *Legal aid.* The budget requests an increase of approximately €1.16 million for legal aid for the defence. The Court states the amount has been calculated by applying the revised legal aid system approved in 2012.¹⁵

Recommendation:

- The Committee should conclude that these increases in interim premises, the Kenya trials, staff costs and legal aid are reasonable and should be funded for 2013.

2. Other possible increases in 2013

The proposed Budget for 2013 does not include resources for the trial of Abdallah Banda Abakaer and Saleh Mohammed Jerbo Jamus trial since the Trial Chamber has not yet set a trial date.¹⁶ Resources have also not been included for continued proceedings against Laurent Gbagbo as the confirmation of charges proceedings are still pending.¹⁷ The Team acknowledges that developing assumptions in cases where proceedings or decisions are pending that will determine if cases proceed or establish their timelines is a complex issue and welcomes the attention being given by the Court and the Study Group on Governance to develop both reasonable and accurate assumptions for each budget year.

The Team considers that in cases when further proceedings are possible in the budget year, estimated costs should be annexed to the budget so that the Assembly is fully aware of additional costs that could arise either in the lead up to the Assembly, which may be addressed through a supplementary budget request, or in the course of the budgetary year, which may be addressed through accessing the contingency fund. The Team also considers that such cost estimates should include costs that are related to proceedings and incurred outside of the courtroom, such as supplementary investigations, outreach, victims' participation and public information. Developing such general estimates for potential proceedings should be achieved whilst respecting the presumption of innocence and without prejudicing any decisions being made by the Court.

Furthermore, other costs which may arise but are not incorporated in the Budget should be reflected, where possible in annexes to the budget request. For example, the proposed Budget states that it only provides for consecutive trials in 2013 and that the need for parallel trials may arise in the course of the year.¹⁸ The Court should be able to inform the Committee and the Assembly of the increased costs per month of parallel trials, if they are required.

Recommendation:

- The Committee is encouraged to consider, in consultation with the Court and the Study Group on Governance, how the Court can best submit information to the Committee and the Assembly on possible other costs that may arise during the financial year that are not included in the assumptions.

3. Absorption is no longer an option

In recent years, the Committee and the Assembly have recommended on numerous occasions that the Court absorb new costs, taking into account the Court's consistent practice of under-spending between 2002 and 2011. However, as the Committee recently noted "absorption of new activity within existing resources, even with re-engineering, can only go so far".¹⁹ With significant reductions imposed on the Court's request in 2012 and the Court's first over-spend in its history, it is likely that the Court may have already reached its absorptive capacity. The Team is particularly aware that the Office of the Prosecutor has indicated that further cuts to its budget

¹⁵ Budget Proposal 2013, para. 265.

¹⁶ Budget Proposal 2013, para. 17.

¹⁷ Budget Proposal 2013, para. 16.

¹⁸ Budget Proposal 2013, para. 50.

¹⁹ Report of the Committee on Budget and Finance on the work of its seventeenth session, para. 18.

would affect its investigations.²⁰ Such a situation would undermine the independence of the Prosecutor guaranteed in Article 42 (1) of the Rome Statute and have a devastating impact on the ability of the Court to fulfil its mandate and respond to impunity. The Court has also indicated that “it has become increasingly difficult for the Court to achieve efficiency gains as a result of the current budgetary constraints. It needs to be borne in mind that excessive reductions in resources can themselves create inefficiencies and impair performance.”²¹

Similarly, the Team is concerned that, if the Assembly continues to require the Court to absorb increases in staff costs, it will result in staff salaries, allowances and benefits consuming the resources allocated to its activities. This would not only affect its work, but would also generate significant reputational risks for the Court.

States Parties and the Committee must recognize that the Court as a small, single-purpose organization has very little ability to achieve efficiencies or counteract cuts by shifting funds from one account to another. This is even truer when, as described elsewhere in this report and the proposed Budget, the Court is in a period of inevitable growth, inherent and unavoidable in its development and maturation as an institution. Continuing to require the Court to absorb major costs in response to some calls for ‘zero-growth’ would restrict its workload and destroy its credibility.

Recommendation:

- The Committee should recognize that the ability of the Court to absorb major costs is no longer possible and refrain from making such recommendations

4. Evidence of under-funding of the Victims Participation and Reparations Section (VPRS) Budget

Despite the apparent increase proposed in the 2013 Budget, the Team is concerned that there is continuing evidence of under-funding the work of the VPRS, in particular for the processing of victims’ applications for participation and reparation, which in turn impacts on other aspects of its work. Table 85 sets out that to meet the projected processing requirements for 2013, VPRS requires 14.20 data processing staff and 15.30 legal processing staff. Even if the request for two additional Data Processing Assistants and two Associate Legal Officers is approved, VPRS currently has a total of 16 staff. A significant shortfall therefore exists. The practice of under-funding VPRS has so far resulted in hundreds of victims being denied the opportunity to participate in proceedings.

The Team is aware that discussions are underway to consider how to make the application process more efficient and considers that part of the solution to achieve further efficiencies in the victim application process rest in increasing VPRS’s presence in situation countries. By ensuring from the earliest stages that victims’ applications for participation are submitted with the required information, VPRS staff in the field can play a key role in avoiding further delays and costs associated with seeking additional information later in the process. Adequate support to intermediaries is also a cost efficient way to avoid unnecessary delays or risks further down the line as they are often the ones who will be assisting victims with their applications.

Recommendation:

- In reviewing the proposed VPRS Budget, the Committee should take into account the current level of inadequate resources and consult with the Court to identify the reasons for this. The Committee should consider and provide necessary recommendations to the Assembly and the Court on the risks associated with inadequate funding of the VPRS, in particular the potential impact on the rights of the accused and victims and on the efficiency of judicial proceedings.

²⁰ Budget Proposal 2013, para. 114.

²¹ Budget Proposal 2013, para. 41.

5. Increased requirement for psychological support in the Victims and Witnesses Unit

The Team supports the approval of the recurrent Psychologist Trauma Expert and a new Associate Psychologist taking into account the vital importance of the VWU providing psychological services to victims and witnesses appearing before the Court.²² Indeed, as noted, the post is specifically mandated under article 43 (6) of the Rome Statute. The Team is concerned that the Psychologist Trauma Expert post continues to be funded as general temporary assistance despite the Assembly's request for the Committee to consider reclassifying the post as permanent in 2010. It is disappointing that the permanent need for this specific post has not been resolved.

Recommendation:

- The Committee should recommend that the Assembly approve the requested psychological support posts in VWU and the reclassification of the Psychologist Trauma Expert as permanent.

6. Increased support to the Trust Fund for Victims Secretariat

The Team notes with concern that the Trust Fund for Victims (TFV) is currently only partially equipped to implement its goals and that the ability for the TFV to manage the implementation of both mandates "is already straining the existing capacity of the Secretariat, which continues to feel the lack of capacity to address financial/administrative processes."²³ The Team also stresses the imperative need to ensure the TFV has adequate financial and administrative management capacity as well as the ability to encourage further contributions to the Fund through fundraising and visibility activities.

The Team emphasizes that the ability for the TFV to deliver on both its assistance and reparation mandates is likely to have a dramatic impact on the credibility and perception of the Court as an institution capable of providing restorative justice, including redress to victims. Now more than ever, the TFV must to be given the resources it needs if the Court is to have the lasting reparative impact States Parties envisaged when they created it.

Recommendation:

- The Committee should approve the budget request of the TFV in relation to ongoing assistance activities as well as to strengthen the ability of the Fund to be financially sustainable and accountable.

²² Budget Proposal 2013, paras. 410 and 415.

²³ Budget Proposal 2013, para 535.