



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

**Statement to the Committee on Budget and Finance at its Eighteenth
Session**

23 – 27 April 2012, The Hague

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Let me start by congratulating those of you recently elected - (and re-elected) to serve on the Committee on Budget and Finance. The Coalition has developed a strong consultative relationship with the Committee, as evidenced by the presence today of my colleague from Human Rights Watch and myself and the standing invitation extended to the Coalition's Budget and Finance Team. It is our intention in this respect to continue to provide independent and objective expertise on ICC activities and as stakeholders in the Rome Statute process who have monitored its implementation and the development of the Court since its establishment. It is in this regard that I deliver the following presentation and on behalf of the Coalition's Budget and Finance Team, composed of a cross-spectrum of different NGOs.

1) Lack of access to Court Reports

As you are well aware, it has become customary for the Team to submit a Position Paper to the CBF for each of its twice-yearly sessions. You will recall however that we broke with that protocol at the CBF's last spring session in 2011. At this session we have again opted not to issue a report, but rather to present this joint statement. This is due in part to a lack of access to the numerous reports that the CBF considers at its sessions, which has made it extremely difficult for the NGO community to comment on the issues that you will consider at this session with any real authority. The lack of access to documentation was an issue we raised at previous sessions and I hope is one that we can revisit again. While we understand that some information provided by the ICC to the CBF may need to be kept confidential, this may not be the case in all instances and we urge the CBF to consider in advance of each session - in consultation with the ICC - which documents can be provided to NGOs, applying a presumption of transparency rather than confidentiality.

That being said, there are issues that the CBF will be considering this year that the Team would like to provide some commentary on in the hope that you will take note in formulating your recommendations.

2) Fiscal Difficulties and the Push for Zero Nominal-Growth

The Team takes note of the difficult budget negotiations on the 2012 budget and that the allocated budget of some 109m Euros for 2012 represents a decrease from the court's proposed budget of some 122m Euros and the CBF's recommended budget of some 112m Euros, notwithstanding the demonstrated increase in the Court's workload.¹ Although the court may have access to the contingency fund, it is far from clear that this will be adequate to meet the court's resource needs over the coming year. Indeed, the Team notes that the impact of the allocated budget, which falls far below what the CBF had recommended, has already been felt in the first quarter of 2012.

(i) Expedited Legal Aid Review

One notable example – and one that stemmed from last year's budget discussions - was an expedited legal aid review to identify substantial cuts. In the Team's view, the expedited nature of the review did not sufficiently take into account current practice including how defence and victims representation teams are composed or the resources currently allocated and relied upon and therefore, the real costs of legal aid or the implications of those cuts. There was also limited consultation with stakeholders, and a piecemeal approach, rather than the thorough review initially agreed to at the completion of the first full cycle of judicial proceedings.

In discussions on the review, the Coalition's Legal Representation Team sought to emphasise the right to a fair trial and the right to secure that through *inter alia* the provision of legal aid for indigent persons as afforded by Articles 55 and 67 of the Rome Statute. Similarly legal aid for victims is essential to achieving their right to meaningful and effective participation in proceedings as per Articles 68 and 75 of the Rome Statute. There was real concern that the proposals, were they adopted, would have limited the resources allocated to representation teams without an adequate examination of how this would impact the rights of the accused and victims. This concern is not dissimilar to that that the Team expressed at the suggestion of the CBF to cap legal aid as proposed following its 17th session. Arbitrary reductions or capping of legal aid without any real assessment of its impact could lead to the erosion of fundamental principles of fair trial and the rights of victims guaranteed in the Rome Statute. Contrary to achieving savings and efficiencies, it would have led to greater costs and inefficiencies in the long run.

It is noteworthy that the Bureau of the ASP, in deferring many aspects of the original proposed changes to the legal aid system, was unwilling to endorse a number of them without first undertaking a holistic review. With the second phase of the legal aid review having just

¹ Figures for proposed budget include July 2011 proposed budget + Dec 2011 supplementary budget. CBF recommendations include total both its recommendations on the proposed July 2011 budget and supplementary budget. Allocated budget excludes replenishment of the contingency fund.

commenced, we turn to the CBF to ensure that in the coming months when you consider the outcome of discussions that precede the 19th Session you have before you all the relevant facts and figures in formulating your recommendations to the ASP and that the views of stakeholders are adequately reflected so that those recommendations and the eventual consideration by the ASP are fully informed.

(ii) Inability of the Registry to implement its mandate fully

As raised last year, resource constraints have and continue to be cited on a regular basis in filings from the Registry to the Chambers of the Court to explain its failure to consult with victims, obtain information in relation to victim applications and process victims applications in a timely manner so as to facilitate the participation of victims in proceedings and ensure that it is meaningful. A striking example is the fact that some victims' applications in the Lubanga trial, despite being complete, were neither assessed nor filed prior to the end of the trial proceedings. While acknowledging budgetary constraints, Judges have repeatedly stressed that the Registry nevertheless, **must** be ready and prepared to assist the chamber in a timely and meaningful way. Meeting and improving on these critically important assistance needs, which have sadly faltered, cannot improve in the face of a limited budget, but will inevitably create a strain on the Court's resources for 2012, which will likely be stretched beyond the limit.

The consequences of States Parties dramatically cutting the budget for 2012 are likely to be felt throughout the year. This year is also likely to bring further difficult discussions on the 2013 budget. The Team reiterates in this context that imposing zero-financial growth on a Court whose activities are increasing is deeply unwise and damaging to the perception and ability of the ICC to meet its obligations under the Rome Statute. In this respect we would urge the CBF to consider and report on the impact and challenges of implementing the 2012 budget, which you may likely hear more about over the coming days from the Court - and how this may impact on its efficiency. It is important then that States Parties hear from the CBF that in a bid to identify efficiencies the Court should not be placed in a situation where it is unable to meet its obligations under the Rome Statute or mandated by the ASP in its resolutions.

We also note with concern the decision taken by the ASP in December to request the court to present various options where reductions would be made in order to achieve a zero growth budget for 2013 should an increase be envisaged. We recall the guidance offered by the CBF in its 17th report that it would be unrealistic for the court to identify large-scale savings and potentially stop activities mandated by the Rome Statute or the Assembly without strategic guidance from the

Assembly itself.² The Team recommends that the CBF consider whether the request of the ASP is achievable and whether the Court is best placed to determine which activities mandated by the Rome Statute and ASP Resolutions can be reduced or eliminated, which will inevitably be required in order to achieve a zero-growth budget.

3) Recommendations to improve budgetary process and promote and identify efficiencies

Although savings through efficiencies and streamlining may be possible, the ICC's current workload demands budget increases. That being said the Team is not blind to the importance of improving the budgetary process and, in particular, with a view to improving the transparency of the Court's budgetary allocation; developing greater understanding of the Court's resource needs and the circumstances in which these needs may fluctuate; and identifying and achieving greater efficiencies. On the contrary these were the very recommendations the Team made to the ASP at its 10th session.

With the conclusion of the Court's first trials fast approaching and the conclusion of its first case at first instance, the court is maturing to a stage in which it can learn from its past practice, which is essential to speeding up its trials and ultimately reducing their cost.

In this respect, I would recall some of the recommendations the Team made to the ASP at its tenth session.

The Team recommended that the ASP invite the Court to provide a comprehensive explanation of its current budget allocation including an explanation of the staff and non-staff resources for each unit; an analysis of the main cost drivers of the Court; and a projection on how these costs might fluctuate with the increase and decrease of the Court's workload. Although the ASP has not invited the court to prepare such a report, the Study Group on Governance will focus on increasing states parties understanding of the budget process. The CBF should consider inviting the court now to prepare such a report, in order for it to be considered by the CBF in coordination with the Study Group. This could incorporate—where relevant—the reports requested by the CBF for this session on the court's budget process and medium-term forecasting, as well as the ongoing dialogue between the ICC and the CBF to identify efficiencies.

Such a report would aim at increasing the transparency of the court's budget while also helping to produce an accurate estimate of the costs associated with effectively implementing the court's mandate in its cases and situations, including the costs of an investigation (for example, the size of a investigation team, frequency and cost of travel. interpretation and translation needs), field support

² See Report of the Committee on Budget and Finance on the work of its 17th Session (ICC-ASP/10/15), para 13.

to legal teams, victim and witness protection, securing cooperation through external relations, outreach and public information and in-court proceedings.

On the basis of this report, the CBF could conduct a thorough review using its financial expertise to identify administrative, managerial and operational processes where efficiencies could be realized and identify other areas where further research is required to determine whether further efficiency is possible. A holistic review such as this (rather than a piecemeal assessment as was the case with the legal aid review) would assist greatly in understanding the expenditure of the Court from which it would be possible to identify efficiencies and possible financial savings, if any. The CBF review could feed into the work of the Study Group on Governance, and could additionally produce recommendations on improving the budget process.