



BUDGET AND FINANCE TEAM¹
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)
SUBMISSION TO THE COMMITTEE ON BUDGET AND FINANCE AT ITS
THIRTEENTH SESSION ON 24 AUGUST TO 1 SEPTEMBER 2009

**Comments on the Proposed Programme Budget for 2010 of the
International Criminal Court and other matters**

17 August 2009

I. INTRODUCTION

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 to 2009. In organizing themselves for the Preparatory Commission and now the Assembly of States Parties (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. All CICC members are welcome to join any teams and all CICC members are regularly apprised of the work of the teams.

2. The Team aims to assist the Committee on Budget and Finance (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.

3. In this paper, the Team provides comments and makes recommendations on the Proposed Programme Budget for 2010 of the International Criminal Court² and other issues that will be considered by the Committee at its thirteenth session.

4. The Team will be available to discuss any of these issues with the Committee or states parties in advance of the Committee's session and can be contacted via the CICC's Hague Office (pal@iccnow.org, Bezuidenhoutseweg 99a, 2594 AC The Hague, Tel: +31(0)70-311 1087).

II. THE PROPOSED BUDGET FOR 2010

5. On 17 July 2009, the International Criminal Court (Court) issued its Proposed Programme Budget for 2010 of the International Criminal Court (proposed Budget). The document sets out the Court's request for €102.98 million for the year. The Team has analysed the document and sets out below a number of comments and concerns on specific issues covered in the proposed Budget.

(A) Pressure by states parties for zero growth in the Court's budget

The Team is concerned that, despite an anticipated increase in the Court's trials in 2010, pressure from states parties for the Court to minimize increases in its budget has led to the presentation of a budget proposal which limits the Court's work and may result in the Court seeking to access the contingency fund to conduct activities which are clearly foreseeable. There is concern that with all three organs of the court relying on recourse to the contingency fund for activities that are potentially

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 Proposed Programme Budget for 2010 of the International Criminal Court, ICC-ASP/8/10, 17 July 2009.

foreseeable, said fund is relegated to making up for shortfalls in the budget and not for what was originally intended.

A decision by the Assembly during its seventh session to arbitrarily cut appropriations for the 2009 budget by €5 million - going further than the recommendations of the Committee on Budget and Finance - has cast serious doubt about the willingness of states parties to meet their commitment to fund the effective functioning of the International Criminal Court. In addition, repeated calls by some states parties for the Court to adopt a budget of zero growth, despite its growing workload, have no doubt placed the Court in a difficult position this year.

The current situation is disappointing given the attention that the Committee on Budget and Finance has taken in the first years of the Court to ensure the efficiencies of the institution and the preparation of a budget tied closely to the Court's Strategic Plan. Indeed, last year's cuts to the budget were taken in spite of the Committee's overall determination that the resources requested were "generally reasonable."³

The Team accepts that projecting the Court's budgetary requirements is a difficult task; a change in trial dates, the opening of an investigation into a situation or a new arrest, for example, may not be foreseeable at the time of developing the budget proposal. However, most aspects of the Court's immediate work are foreseeable. The Team is concerned that pressures to limit the Court's budget may mean that not all of these activities are fully integrated in the Proposed Budget and threaten to hold back the Court, at a time when it is endeavouring to respond to the massive commission of crimes committed since 1 July 2002 which fall under its jurisdiction.

In its review of the budget proposal, the Committee on Budget and Finance should carefully assess the budgetary assumptions provided by the Court. Where the Court's foreseeable activities seem likely to exceed these assumptions, the Committee should either call on the Court to present additional budgetary requests or instruct the Court to access the Contingency Fund.

The Court is also urged not to restrict its Budget Proposal and to submit supplementary budgetary requests to the Committee and the Assembly if required before the Assembly's 8th session.

(B) No new investigations

The Team notes that for the third year in a row, the Office of the Prosecutor (OTP) has indicated in the assumptions for 2010 that it will not launch an investigation into a new situation, despite the fact that 6 situations involving crimes under the jurisdiction of the Court are in the analysis stage. Although, the Office of the Prosecutor has not given any indication that this decision was budget related and has reiterated that the opening of a new situation is strictly based on legal requirements the Team is concerned that financial pressures being exerted upon the Court are sending a clear message that significant increases, which would clearly be required if the Court expands its work beyond its current workload, would not be supported. The Team is mindful of the fact that the Prosecutor cannot be swayed by external pressures in determining whether to proceed with an investigation or not. States Parties therefore need to advocate responsibly on budgetary issues to avoid conveying a negative and inequitable perception that financial resources will only be allocated for some situations and not for others. The Team firmly believes that if an investigation is reasonably foreseen or likely then the Court should request the sufficient resources associated rather than rely on the Contingency Fund.

(C) Consecutive trials

The Team is concerned that paragraph 61 of the Budget proposal clearly links its decision to calculate its budget on the assumption of consecutive trials in 2010 to cost pressures from the Assembly:

³ Report of the Committee on Budget and Finance on the work of its eleventh session, ICC-ASP/7/15, 25 September 2008, para. 50.

"[m]indful of the concerns expressed by the Assembly during its seventh session about the size of the Court's budget, and of the recommendations made, the Court, as last year, has assumed consecutive trials only."

If, as assumed, the Court holds three consecutive trials in 2010, the Team is concerned that the limitation of consecutive trials could impact on the efficiency and effectiveness of the trials and potentially undermine the rights of the accused to a trial within a reasonable time. As the Charles Taylor Case will not be in session for much of 2010, there is no practical reason why the Court cannot use its other functioning court room as required during the year.

The Team is particular concerned that the Court estimates that the trial of Jean-Pierre Bemba Gombo will not start until December 2010, despite the fact that a decision on Confirmation of Charges was made on 15 June 2009 and leave to appeal is pending and the Prosecutor has expressed its readiness to start the trial. Under Article 67(c) of the Rome Statute, Jean-Pierre Bemba Gombo has a right to be tried without undue delay.

The Team also questions whether the decisions to hold consecutive trials would save costs in the long-term, noting that the Committee's stated in the Report of its Eleventh session: "the Court should aim to complete the trials expeditiously, and this would result in savings for the budget."⁴

The solution proposed by the Court to use the Contingency Fund if parallel trials are required is in the Team's opinion unsatisfactory given that in paragraph 61 the Court indicates that parallel trials are foreseeable: "[t]aking into consideration the on-going pre-trial and trial activities, the likelihood of parallel trials during 2010, and consequently the Court's potential need to access the Contingency Fund, is increasing significantly."

In the Team's view, the Committee should request the Court to submit to the Committee and the Assembly detailed additional budgetary information about the potential costs of conducting parallel trials in 2010, so that the Assembly can decide - given the information available to it in November - whether to fund parallel trials in 2010 or to instruct the Court to use the Contingency Fund if required.

(D) Reduction in Victims and Witnesses Unit

The Team notes that the Court has reduced significantly its budget for victim and witness protection taking into account the expected reduction in planned witnesses for trials in 2010. The Team is concerned that this reduction takes place at a time when the Court continues to fail to establish effective systems to implement the Pre-Trial Chamber's decision of 18 January 2008 which clarified that the Court's protection obligations extend beyond witnesses to include victims participating in trials and victims applying for participation as well as the Appeals chamber decision of July 2008 which clarified that intermediaries and other persons at risk on account of court activities should also be granted protection. Given that costs have been cited previously by Court staff as one reason for not implementing the Pre-Trial Chamber's decision, it is disappointing that the Court did not seek to use this opportunity to put in place additional systems for protection of victims making use of these savings.

(E) Reduction of outreach in Uganda

Although the Team welcomes the proposal by the Public Information and Documentation Section in paragraph 335 to increase outreach activities in the Democratic Republic of the Congo and Central African Republic, the Team is concerned by the decision to decrease activities in Uganda. Although, trials of crimes committed in Uganda are not possible until those charged have been arrested and surrendered to the Court, there is a continued need for engagement with the affected population about the work of the Court and dialogue about its efforts to bring those it has charged with crimes against humanity and war crimes to trial. While scaling up outreach activities as judicial activities

⁴ Report of the Committee on Budget and Finance on the work of its eleventh session, ICC-ASP/7/15, 25 September 2008, para. 47.

increase is a sound approach in principle, the prolonged absence of judicial activities can create its own profound outreach challenges. Outreach and public information efforts will also be necessary to make the most of the Review Conference's location in Uganda. The Team urges the Committee to recommend that resources for these functions are set out in the separate Review Conference budget.

(F) Legal Aid

With respect to the provision of legal aid, the Team considers that the expected increase in activity at the Court will place significant strains on the resources for legal aid. The Team notes that there are presently three accused persons and one suspect who have been assessed as indigent and eligible for legal aid, and that each of these persons will likely require continued assistance in 2010, be it at the Pre-Trial, Trial, or Appeal stage of proceedings. While there has only been a slight reduction in the budget for contractual services within the Defence Support Section responsible for the allocation of defence legal aid, the demands on such resources are likely to be higher in 2010 due to the higher case load.

Furthermore, the Team notes with concern the dramatic reduction in funds for the Victims Participation and Reparations Section (VPRS) which is responsible for assigning legal aid to victims. The budget for contractual services within the VPRS has been cut by 20.1 per cent from 2009 levels, without any explanation in the Proposal. Whilst the Team supports greater efficiencies and recognises that the Court's budgeting evolves with experience, it is concerned that such cuts might negatively impact the availability of legal aid to victims.

(G) Field Operations

The Team welcomes the efforts reflected in the proposed budget to review and invest in the Court's field offices. Sustained, consistent engagement in situation countries is critical to the effective implementation of the Court's mandate; field offices are an essential component of this engagement. A wide-range of Court activities are conducted in situation countries, including investigations by both the prosecution and the defense, outreach, victim and witness protection, and the facilitation of victim participation. Adequate support for these activities is critical. In addition, Court policy and practice informed by the interaction between field-based staff and those in The Hague can ensure tailored approaches and meaningful interaction between the Court and affected communities.

As the budget proposal notes, and as the Committee itself indicated in the report of its 11th session, the establishment and development of the Court's field offices has lacked strategic thinking. The Court's budget request for improvements to the management and coordination of field operations thus demonstrates an important commitment to deepening its engagement in the field. The Team understands that a separate report on field operations will be submitted by the Court to the Committee, but the report has not been made publicly available. While the Team looks forward to reviewing the Court's report, resources requested by the Court would appear to be important steps in improving the strategic direction and effectiveness of the Court's field offices. In particular, field office managers with increased responsibility would provide for coordination across Registry units and efficient use of resources in support of field activities, as well as a consistent and sustained point of contact for local actors cooperating in field activities. The newly created post of head of field strategic coordination and planning unit working alongside these field office managers would ensure consistency between field offices, a channel of communication between field offices and The Hague, and overall strategic planning. The Team urges the Committee to carefully review the Court's plans for its field operations and to support the resources necessary for their implementation.

(H) Trust Fund for Victims

The Team has noted that the Trust Fund for Victims (Major Programme VI) requests further resources this year. In this regard, the Team attaches particular importance to the requested position for the Central African Republic (CAR). Indeed, it must be recalled that the Trust Fund has field officers in Uganda and the Democratic Republic of Congo but not yet in the CAR. With projects to be launched in that country as of 2010, the appointment of a field officer who will be charged with overseeing implementation of such projects is essential. Further, the Team notes that the Trust Fund requests that Major Programme VI be exempt from the application of the vacancy rate. The Team believes that exemption or a very low vacancy rate makes sense in this case given the small size of the Major

Programme concerned. Finally, the Team would like to advise against recommendations that the Trust Fund overhead cost should be funded through voluntary contributions at this time. The Trust Fund has been implementing projects for less than one year and it is yet unclear what will be the overall operations and average annual contributions in years to come. It must also be recalled that with the completion of the first trial, the Trust Fund will face a new era as it will most likely become involved in implementing reparations. This makes operations in the next couple of years unpredictable at this stage.

III. OTHER ISSUES TO BE CONSIDERED BY THE COMMITTEE AT ITS THIRTEENTH SESSION

(I) Funding an independent oversight mechanism

The Team welcomes the work of the Bureau's facilitator and the Hague Working Group since the Assembly's seventh session to reach agreement on the establishment of an independent oversight mechanism. The system proposed in the Facilitator's report to the Bureau dated 14 April demonstrates the commitment of the Assembly to establish an effective mechanism to investigate misconduct and criminal conduct by Court staff. The Team supports a mechanism to conduct these functions which are essential to the reputation and success of the institution. The Team notes, as does the facilitator's report, that the Mechanism would also conduct evaluation and inspection functions, which will not be possible under the current structure. The Team urges the Assembly to return to these other functions at the 8th session of the Assembly.

Since its April report, the Hague Working Group continued to discuss the cost implications for the Mechanism which amount to approximately US\$500,000. A proposal set out in an addendum to the facilitator's April report, dated 2 July, proposes that for the first year the head of the unit be seconded from the United Nations Office of Internal Oversight Services. Although this proposal is not perfect, the Team can support it on the basis that (1) there is a process overseen by the Assembly to ensure that the seconded person has the skills and experience to establish and head the office in its first year; (2) the secondment is not extended for longer than one year; (3) that an open recruitment is conducted for the head of the mechanism at the end of the year; (4) that sufficient time for the seconded person to handover to the new head is provided for; and (5) that a review of the mechanism is conducted by the Committee and the Assembly to ensure that the procedures developed in the first year are tailored effectively to the International Criminal Court and does not adopt unsatisfactory UN systems and procedures.

(J) Funding legal representation for victims

The Team aligns itself with a separate submission to the Committee on Budget and Finance by the Coalition for the International Criminal Court's Legal Representation Team ('Legal Representation Team') which comments on the Court's draft report on *Legal and financial aspects for funding victims' legal representation before the Court*⁵, developed at the request of the Assembly pursuant to the Committee's recommendation in the report of its eleventh session. *At the time of producing its paper, the Legal Representation Team only had access to the Court's draft report version of June 2009. Although the Team understands that a final version of the Court's report has been submitted to the Committee, it is disappointing that this has not been made public before the Committee's session. However, the Team has learnt that significant parts of the report remain unchanged, particularly in those parts commented on and therefore the Team's arguments still hold. Unfortunately, the Team was unable to analyze the new information provided on the OPCV figures.*

The Legal Representation Team urges the Committee to proceed with the utmost care when considering all issues related to victims' rights and the associated budgetary needs, not least, because victims' participation and their legal representation are rights under the Statute which cannot be met if sufficient resources are not allocated.

⁵ Draft dated June 2009.

In the opinion of the Legal Representation Team, the Court's draft report provides valuable information indicating why it is strongly advisable that external counsel be afforded the possibility to represent the interest of victims and that victims be offered an opportunity to choose such counsel.

Moreover, there are a number of other significant advantages that follow from the involvement of external counsel, which the Legal Representation Team asks the Committee to consider. These include improved access to victims, avoiding conflicts of interest, a contextualised knowledge of the victim's experience, and the importance of providing victims with a sincere opportunity to choose who will represent the story of their trauma. Further, there are advantages that follow for the Rome Statute system as a whole from the contributions of external counsel, including the incorporation of a broad array of experiences into the interpretation of the Statute, and the development of the "international" stature of the Court—expanding the sense of ownership over ICC proceedings around the world and improving knowledge of the Statute among domestic professionals.