



BUDGET AND FINANCE TEAM
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)
COMMENTS AND RECOMMENDATIONS ON THE 2010 BUDGET¹
TO THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES
18 - 26 NOVEMBER 2009, THE HAGUE

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 this paper, the Team sets out - for the Assembly's consideration - comments and recommendations on the Proposed Budget for 2010² and the Report of the Committee on Budget and Finance (Committee) on its thirteenth session³ which examines the Proposed Budget and makes a series of recommendations to the Assembly.

General comments

The Team welcomes generally the manner in which the 2010 budget process has been conducted to date. The Team acknowledges the Court's Proposed Budget and the detailed review of the document conducted by the Committee, as reflected in its report. In particular, the Team welcomes the fact that, to our knowledge, thus far there have been no proposals to return to the flawed budgetary approach adopted last year and go beyond the Committee's report by making additional arbitrary cuts. Should such proposals be made, we remind the Assembly of its commitment last year that the decision was made exceptionally and urge states parties to ensure that it is not repeated.

The Team however remains concerned that last year's decision has placed the Court under significant pressure not to increase costs, even though it is expected to conduct at least two additional trials next year. We were particularly concerned that the Court has proposed only consecutive trials for 2010, despite the fact that the budget document recognizes that "the likelihood of parallel trials during 2010... is increasing significantly."⁴ The approach could result in trial delays and ultimately go against the advice of the Committee that "the Court should aim to complete the trials expeditiously, and this would result in savings for the budget."⁵ Although the Court indicates that it will use the Contingency Fund if necessary, the Team is not convinced that the need for parallel trials is not foreseeable and the costs cannot be estimate at this time.

¹ *While the work of the Budget and Finance Team reflects the positions of those Coalition members most active on particular issues, this paper cannot be construed to represent the views of all organizational members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organized themselves into teams, one to follow each working group or theme of the intergovernmental process. Coalition teams now follow issues addressed by the Assembly of States Parties or its subsidiary mechanisms and by the International Criminal Court. Teams provide a forum within which interested members discuss issues, follow developments, elaborate relevant research and positions in response to developments, and elaborate and implement advocacy strategies in relation to those positions. All Coalition members are welcome to join any teams and all Coalition members are regularly apprised of the work of the teams.*

² Proposed Programme Budget for 2010 of the International Criminal Court, ICC-ASP/8/10.

³ Report of the Committee on Budget and Finance on the work of its thirteenth session, ASP/8/15.

⁴ Proposed Programme Budget for 2010 of the International Criminal Court, ICC-ASP/8/10, para.61.

⁵ Report of the Committee on Budget and Finance on the work of its eleventh session, ICC-ASP/7/15, 25 September 2008, para. 47.

The Team acknowledges the efforts made by the Committee this year and is grateful for the time it allocated to consult with civil society. The Team however remains concerned that the workload of the Committee - which currently meets twice a year for a total of 13 days - is extremely high. In addition to reviewing the annual budget, the Committee is increasingly being asked to review other matters. For example at its 13th session some twenty-eight reports, including the budget proposal itself were presented to the Committee for consideration. The Team is particularly concerned that the excessive workload makes it difficult for the Committee to spend the time necessary to review the Budget and to engage with the Court throughout its session to fully understand all aspects of its proposal. Below, the Team identifies a number of recommendations this year, which it is concerned would undermine key areas of the Court's work if implemented. The Team urges the Assembly to consider the Committee's workload in its decision making this year and urges the Committee and the Court to explore ways to ensure adequate communication through future budgetary reviews.

Comments and Recommendations on the Committee's Report

The Team has reviewed the Committee's Report on the 2010 Proposed Programme Budget and agrees with many of its findings and recommendations, notably the recommendation that legal aid for both defence and victims representation be identified as distinct budget lines in their respective sub-programs. However, the Team has serious concerns that regarding the Committee's recommendations:

- to cut legal aid for both defence and victims representation;
- not to approve a new associate legal officer for the Victims Participation and Representation Section (VPRS) in Central African Republic;
- not to approve the conversion of two key positions in the Victims and Witnesses Unit and Public Information and Documentation Section from General Temporary Assistance to new, permanent posts.

The Team also comments on the Committee's recommendations on the issue of field offices, the Independent Oversight Mechanism; the African Union Liaison Office and the replenishing of the Contingency Fund.

Concern relating to cuts in legal aid

The Committee has recommended that the budget for legal aid for the defence should be reduced by 7% and that the budget for legal representation of victims should be reduced by 15%. The Committee justifies its recommendation on "the current trends in expenditure."⁶ The Team is concerned that recommendations made by the Committee to reduce the legal aid budget for both defence and victims' representatives, could undermine the vital work of both types of counsel.

In relation to legal aid for defence, the Team has been informed that the Court expects an actual overspend in its 2009 legal aid budget. This is contrary to the trend relied upon by the Committee. The Team is therefore concerned that a cut to a budget which may already be insufficient could undermine the resources available for the defence.

In relation to legal aid for victims' representation, the Team is informed there has been a significant underspend in the legal aid budget for victims' representatives in 2009. Given the amount of activity by victims' representatives this year on situations and cases, the reason for the underspend is unclear. The Team is concerned that the existing legal aid scheme at the Court does not allow for the allocation of resources to victims legal representatives in a manner that best reflects their needs. The Team recalls that the scheme for legal aid for victims was created at a

⁶ Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15, paras. 95 and 96.

time when the Court had little experience with respect to the role of victims in proceedings, the understanding of which is gradually evolving as the Court's activity level increases. The Team therefore calls on the Court to conduct an urgent review to determine the reasons for the low level of implementation of the 2009 budget and to address any problems that are identified. More generally, the Teams calls on the Court to continue to review the structure of victims' legal aid and adjust it as necessary to allow legal representation teams to perform their duties, in accordance with the modalities for victim participation established by the relevant Chambers.

Moreover, while there has to date been an underspend in relation to victims' legal representation so far in 2009, given the expected increase in trial activities next year, this is likely to change in 2010. In particular, if the Court convicts Thomas Lubanga, the reparations proceedings - the most active phase for victims - could commence next year. The Team further notes that, in the proposed 2010 budget, the Court had already implemented a reduction of approximately 20% in legal aid for victims' representatives from the 2009 level. The Team is therefore concerned that sufficient resources will not be available to meet the amount of activity that will be required of victims' representatives.

Recommendation: In relation to both cuts the Team urges the Assembly to review the Committee's recommendations together with information supplied by the Court to ensure that, if implemented, the cuts would not undermine the ability of the Court to fund the defence or victims representatives in 2010. If the Assembly determines that the cut would risk underfunding either form of counsel, it should decide either not to implement the Committee's recommendations or to reduce the percentage to a more appropriate level.

Redeployment of Victim Participation and Reparations Section (VPRS) Associate Field Officer

The Team is concerned that the Committee has recommended that the Assembly not approve an additional P-2 associate field officer for the VPRS in the Central African Republic (CAR) situation on the basis that the P-2 field officer currently based in Kampala, Uganda could be redeployed to the CAR situation. The recommendation does not appear to take into consideration that the Kampala-based P-2 field officer is responsible for both the Uganda and Darfur situations. In the Team's view, stretching this position to cover three of the four ICC situation countries is not practicable given the geographic and linguistic scope such a position would require. The recommendation may have underestimated the ongoing work with victim participants and intermediaries in the Uganda situation and the increase in judicial activities in both the CAR and Darfur situations.

Recommendation: The Assembly should review the Committee's recommendation, and seek further information from the Court as to the implications of redeployment of an existing position rather than the creation of a new post. If the Assembly determines that the re-deployment would undermine the VPRS's work, the Team urges the Assembly to approve the addition of a new position.

Non-Conversion of Victims and Witness Unit (VWU) and Public Information and Documentation Section (PIDS) Posts

The Team notes that the Committee has decided not to recommend conversion of two critical positions in the Registry from GTA to established posts: the psychologist/psychological trauma expert in the VWU and the audiovisual producer in the PIDS.

The Team is concerned that the Committee's recommendation as the VWU post may not have taken into account that the Rome Statute requires the VWU to have staff with expertise in trauma, as well as the increasing frequency with which psychological services have been

requested to facilitate witness testimony. The Team considers that given the projected increased number of trials before the Court, the need for permanent specialized expertise will increase.

Concerning the audiovisual producer, the Committee indicated that it “questioned the need to create permanent in-house capacity at this point”. This may have underestimated the importance of audiovisual materials to the Court’s outreach and public information activities, including screening and broadcasting information about proceedings to remote, affected communities.

Recommendation: The Assembly is urged to approve the Court’s request to convert the posts of psychologist/psychological trauma expert and audiovisual producer from GTA to permanent posts.

Field Offices

At the seventh ASP session, the Assembly called on the Court to “continue to optimize its field presence and contacts with affected communities.”⁷ The Team welcomes the attention given by the Committee to the issue of Field Offices and its review of the Court’s report on enhancement of the Registry’s field operations.⁸ The Team notes that the Committee has approved many of the structural changes proposed by the Court for Field Offices and has identified a number of areas in the Court’s report where further strategic thinking is required, including with regard to the reclassification of four field office managers from P-3 to P-4. The Court had requested these reclassifications to enhance its capacity for strategic planning, coordination, and representation of the Registry in the field. The Committee has requested the court to complete its strategic planning and indicated that it will review the issue again at its fourteenth session.

Recommendation: Given the importance of the Court’s field offices to supporting and implementing a range of court activities, as well as to bridging the geographical gap between the seat of the court in The Hague and affected communities, the Team urges the Assembly to continue to engage in this important discussion and to recognize the continued positive development of the court’s field presence. Alongside the Committee’s reconsideration of the issue at its fourteenth session, states parties should seek to inform themselves about the Registry’s strategic review of field operations and the justifications for seeking additional investment in the court’s field presence.

Independent Oversight Mechanism

As explained in more detail in a separate paper by the Coalitions Independent Oversight Mechanism Team, the Team is concerned that the Committee’s recommendation in relation to the new mechanism calls for the “Court to reduce the costs of servicing the new mechanism by pooling resources, such as support and infrastructure for securing documents and evidence, with other units, in particular the Office for Internal Audit.”⁹ Given the importance of the independence of this mechanism and its need to protect the confidentiality of many aspects of its investigations, the Team urges the Assembly to ensure that any efficiency measures relating to its subsidiary body do not undermine its work.

Recommendation: The Team urges the Assembly to affirm that while efficiency is encouraged, measures taken to enhance efficiency must not undermine the independence and confidentiality of the mechanism.

⁷ “Strengthening the International Criminal Court and the Assembly of States Parties,” Resolution ICC-ASP/7/Res. 3, November 21, 2008, para. 13.

⁸ Report of the Court on the Enhancement of the Registry’s Field Operations for 2010, ICC-ASP/8/33

⁹ Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15, para. 121.

African Union Liaison Office

The Team notes that the Committee has recommended that should the African Union ('AU') Liaison Office be approved by the Assembly the resources dedicated should not exceed those of the New York (UN) Liaison Office.¹⁰ The Team however is not convinced that simply applying the New York model to the AU liaison is an effective approach. Four of the current situations presently before the Court relate to crimes committed in continental Africa with a further three situations under preliminary examination. The need to develop effective working relations with the African Union is imperative. To do so the Court must be able to appoint a representative with sufficient seniority to perform their functions at the AU and to appoint with support staff for the office to operate effectively.

Recommendation: The Team urges the Assembly to approve the creation of an AU Liaison Office and with sufficient resources that will enable the creation of constructive multilateral and bilateral dialogue with the AU and States in the region.

Replenishing the Contingency Fund

The Team notes the Committee's recommendation to consider replenishment of the Contingency Fund if it decreased below €7 million.¹¹ The Team does not believe that this reduction of the level of the fund from €10 million is problematic. However, the Team is concerned that the Committee's recommendation does not provide for the automatic replenishment of the fund each year. The consequences of this decision could result in protracted (not to mention costly) discussions on whether to replenish each time it falls below the €7 million threshold. Furthermore, it could result in undesirable decisions where the resources of the Fund are reduced to offset annual increases in the budget. With consensus on the need for the contingency fund, a separate process to replenish it when it is used is unnecessary - although the level should be reviewed periodically, taking into account its use.

Recommendation: The Team urges the Assembly to ensure that the Financial Regulations and Rules are amended to provide for the automatic replenishment of the Fund each year.

¹⁰ Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15, para. 130.

¹¹ Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15, paras. 135-138.