



BUDGET AND FINANCE TEAM¹

COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)

COMMENTS AND RECOMMENDATIONS ON THE 2013 BUDGET² TO THE 11th SESSION OF THE ASSEMBLY OF STATES PARTIES

14 -22 NOVEMBER 2012, THE HAGUE

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I. INTRODUCTION

In this paper, the Budget and Finance Team (Team) sets out, for the Assembly's consideration, comments and recommendations on the proposed Budget for 2013³ and the recommendations contained in the Report of the Committee on Budget and Finance on the work of its 19th session (Committee's Report).⁴

II. SUMMARY OF RECOMMENDATIONS

- States parties should re-commit to the effective functioning of the Court by supporting sufficient resources for the Court in 2013 and expressing their opposition to the 'zero-growth' approach in their statements to the general debate and in the Working Group on the Budget.
- States should insist that the Working Group on the Budget focuses on reviewing the recommendations of the Committee, which should be considered the floor for the budgetary discussions, and reject any efforts to go beyond the cuts recommended by the Committee.
- States should reject the "option" put forward by the Committee for the Court to absorb increases in staff costs.
- The Assembly should seek the input of the Court on the impact of the Committee's recommendations in deciding whether or not to adopt them.
- States parties should advocate that any costs of the interim premises, which are not paid by an agreement with the Host State, must be paid by the Assembly. Any proposal for the Court to absorb costs of interim premises must be rejected.
- States should insist that outreach and public information forms part of an interrelated set of functions that are essential for the implementation of the Rome Statute and should be funded accordingly through the Court's budget.

¹ The Team 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 2012.

² The present paper has been produced by those Coalition members most active on the issue of budget and finance and reviewed by the Coalition's wider membership, who are given the opportunity to comment and provide input. The present paper, however, should not be construed to represent the views of all members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organized themselves into thematic teams to follow issues addressed by the Assembly of States Parties or its subsidiary mechanisms and by the Court. Teams provide a forum within which interested members discuss issues and follow ASP discussions and with a view to developing advocacy. All Coalition members are welcome to join any team and apprise of the work of the teams.

³ Proposed Programme Budget for 2013 of the International Criminal Court, ICC-ASP/11/10.

⁴ ASP/11/15 (Advance version).

- Given the vital role that the Contingency Fund plays in allowing the Court to react to unforeseen situations and expenses, the Assembly should replenish the Fund to at least its €7 million threshold for 2013.
- The Assembly should review carefully the Committee’s recommendations to reduce General Temporary Assistance in the preparation stage of the Kenya trials, taking into account the views of all organs on their potential impact.
- A holistic review of the legal representation system should be conducted at an appropriate time, with appropriate consultation among stakeholders and be driven by a mandate to improve the implementation of the rights and obligations set out in the Rome Statute, not to cut costs.
- If the Assembly decides to implement the amendments to the legal aid system proposed by the Registry, it must establish effective monitoring and review mechanisms to ensure that, in practice, they do not undermine the statutory rights of the accused to a fair trial and the rights of victims to participate in proceedings. In addition, guidelines should be developed clarifying phases “when procedural activities are substantially reduced” which trigger suspension of monthly lump payments to teams.
- The Assembly must respect the independence of the judiciary in considering proposals to review legal representation for victims and focus on achieving the most effective and efficient system for victims, not just the cheapest.
- Any review of the role of the Office of Public Counsel for Defence must be conducted in full consultation with all stakeholders, should not duplicate reviews already undertaken and be driven primarily by the need for fair trial rights and the effective and meaningful representation of defendants.
- Given the important role of the Trust Fund and its current lack of resources, the Assembly should not implement the Committee’s recommendation to freeze its non-staff costs.

III. GENERAL COMMENTS ON THE PROPOSED BUDGET AND ISSUES ARISING IN THE COMMITTEE’S REPORT

The Court’s proposed Budget for 2013 requests €118.4 million, an increase of €9.6 million on the approved Budget for 2012. This includes the transfer of interim premises costs from the Host State to the Assembly, two new trials in the Kenya situation and increases in legal aid and staff costs. After conducting a technical examination of the proposed Budget at its 19th session, held on 24 September to 3 October 2012, the Committee issued a report recommending that the 2013 Budget should be reduced to €115.12 million.

The Team welcomes the Committee’s detailed examination of the proposed Budget for 2013, which it states was conducted “on the basis of the general principle of budgetary integrity”.⁵ The Team acknowledges that the independent review by the Committee, which is made up of members of recognized standing in financial matters, is vital to ensure that adequate funds are allocated for the effective and efficient functioning of the Court. In the current context of some states promoting arbitrary cuts and ‘zero-growth’ for the Court’s budget, the Committee should play an essential role in ensuring the integrity of the budget process.

⁵ Committee’s Report, para. 1.

1. Rejection of the 'zero-growth' approach.

In recent years, the Assembly's consideration of the Court's budget has been dominated by demands by a small number of states for 'zero-growth'. This has taken the focus away from reviewing the Committee's recommendations and resulted in the Assembly imposing cuts to the Court's budget beyond those recommended by the Committee. The Team has repeatedly raised concerns about this approach and its impact on the work of the Court. The Team notes with utmost concern the consequences of the 2012 cuts highlighted by the Court, including termination of a number of contracts of GTA staff, delays in recruitments, delays in special projects, operational delays for support sections and likely delays to judicial proceedings resulting from staff shortages and reduced courtroom capacity.⁶ The Team is also concerned that pressure on the Court to deliver 'zero-growth' budgets is reflected in the proposed Budget for 2013, which does not appear to reflect the actual needs of each section. For example, the Registry states "each Registry section was instructed by the Registrar to prepare a budget lower than the level of the 2012 appropriations".⁷

This year, the Committee has made two specific recommendations which clearly reject the 'zero-growth' approach. Firstly, the Committee took the view that new costs for the rental and maintenance of the interim premises were justified "when comparing the level of the 2013 proposed programme budget against the level of the 2012 approved budget" and should be funded by the Assembly.⁸

Secondly, the Committee recommended that the Assembly should pay an increase in staff costs (€3.88 million), rejecting the recent trend of the Assembly instructing the Court to absorb these increases. The Court has in practice had to pay these costs as it is contractually obliged to grant increases to staff who perform their duties satisfactorily under the United Nations Common Costs System. The absorption of these increases has, therefore, resulted in staff costs eating into the operational costs of the Court. The Team welcomes that the Committee has recommended against repeating it again in 2013, recognizing that the need to "stabilize the situation and prevent a subsequent multiplier, which would make the preparation of future budgets still more problematic." Regrettably, despite its strong recommendation, the Committee does however list absorbing the increase in staff costs as an "option" which the Assembly may wish to consider in deciding on the proposed Budget for 2013.⁹

However, in essence, the Committee appears to accept that the Court should no longer be expected to absorb major cost increases and the Assembly should pay those cost increases when they arise. The Team notes that some of these costs will arise annually (such as staff cost increases); some may result when the Court's activities increase (such as new investigations or trials); and some may arise on a unique basis (such as some costs related to the new permanent premises). The expectation of a minority of states that these increases can be absorbed without seriously undermining the Court's work is unrealistic. Furthermore, the use of the 'zero-growth' approach to demand greater cuts than those recommended by the Committee is unsustainable.

Recommendations:

- States parties should re-commit to the effective functioning of the Court by supporting sufficient resources for the Court in 2013 and expressing their opposition to the 'zero-growth' approach in their statements to the general debate and in the Working Group on the Budget.

⁶ Impact of measures to bring the level of the International Criminal Court's budget for 2013 in line with the level of the approved budget for 2012, Committee's Report, Annex III, paras. 5-12.

⁷ Proposed 2013 Budget, para 196.

⁸ Committee's Report, para. 113.

⁹ Committee's Report, Annex V, Options recommended by the Committee on Budget and Finance.

- States should insist that the Working Group on the Budget focuses on reviewing the recommendations of the Committee, which should be considered the floor for the budgetary discussions, and reject any efforts to go beyond the cuts recommended by the Committee.
- States should reject the “option” put forward by the Committee for the Court to absorb increases in staff costs.

2. Reviewing the Committee’s recommendations

The Committee has recommended €3.28 million in cuts to the Court’s proposed Budget for 2013, which is close to the approved budget for 2012, excluding the additional €6.02 million requested for the interim premises costs. The Team is concerned that, taking into account the significant cuts imposed on the Court in 2012 and the impact of those cuts (cited above), a further 3% cut in the requested resources for 2013 could have further negative consequences for the Court’s work. Given that a number of the Committee’s recommendations are at the macro level (e.g. reductions of General Temporary Assistance), and taking into account the Team’s concerns about specific recommendations set out in section IV below, it is vital that the Assembly review the recommendations in detail, taking into account the views of the Court on their potential impact to its work, if they are implemented.

Recommendation:

- The Assembly should seek the input of the Court on the impact of the Committee’s recommendations in deciding whether or not to adopt them.

3. Funding interim premises costs

The Team notes that discussions are currently taking place with the Host State on whether it will continue to pay some of the €6.02 million interim premises costs beyond its assessed contributions to the overall budget. The Team considers that this is an issue for states parties to resolve and takes no position on whether or how much the Host State should contribute to these costs. However, the Team does stress that any shortfall of the interim premises costs arising from any agreement reached with the Host State must be paid by the Assembly in accordance with the Committee’s recommendation. As the Court’s paper *Impact of measures to bring the level of the International Criminal Court’s budget for 2013 in line with the level of approved budget for 2012* reflects, the Court does not have the capacity to absorb these additional costs, without it impacting on the effectiveness of its work.

Recommendation:

- Any costs of the interim premises, which are not paid by an agreement with the Host State, must be paid by the Assembly. Any proposal for the Court to absorb costs of interim premises must be rejected.

4. The integrated nature of the Court’s activities

The Team welcomes that, contrary to its recommendation last year to explore mixed assessed and voluntary funding for outreach and public information,¹⁰ the Committee recognized in its current Report that “public outreach, of course, was essential to raising awareness and promoting understanding of the Court’s mandate and work, primarily among the affected communities”.¹¹ This is welcome recognition that the effective implementation of the Court’s mandate depends on public outreach. Indeed, the Court’s investigations, prosecutions and trials cannot be conducted effectively unless they are supported by a range of interrelated functions, including field engagement and presence, witness protection, legal

¹⁰ Report of the Committee on Budget and Finance on the work of its 17th session, ICC-ASP/10/15, para. 25.

¹¹ Committee’s Report, para. 36.

aid, and outreach and victim participation activities to ensure victims can access their rights under the Rome Statute. The experience of other international criminal courts and the ICC to date, demonstrates that investment in these areas is essential to the meaningful delivery of fair and credible justice. All such activities are “core” to the Court’s mandate and should be budgeted through the annual budget.¹²

Recommendation:

- States should insist that outreach and public information forms part of an interrelated set of functions that are essential for the implementation of the Rome Statute and should be funded accordingly through the Court’s budget.

5. Replenishment of the Contingency Fund

The Committee reports that at the time of its 19th session, the Court had made seven notifications in 2012 for accessing the Contingency Fund amounting to €3.69 million. The Court had subsequently indicated to the Committee that its actual access to the Fund would be approximately €2.1 million, although this could change by the time the Assembly meets before the end of the financial year.¹³ It is, therefore, likely that the level of the Contingency Fund will fall below the €7 million replenishment threshold.

Recommendation:

- Given the vital role that the Contingency Fund plays in allowing the Court to react to unforeseen situations and expenses, the Assembly should replenish the Fund to at least its €7 million threshold for 2013.

IV. COMMENTS ON SPECIFIC RECOMMENDATIONS IN THE COMMITTEE’S REPORT

1. Reductions of General Temporary Assistance posts for trial preparation

In its report, the Committee recommends cuts to General Temporary Assistance (GTA) posts of both the judiciary and the Office of the Prosecutor “taking into account that additional judicial procedures [Kenya trials] are not expected to start before April 2013”.¹⁴ The Team is concerned that this recommendation may not fully take into account the workload and resource needs of both major programs in the months leading up to the start of the trials and could amount to micromanagement.

Recommendation:

- The Assembly should review carefully the Committee’s recommendations to reduce GTA in the preparation stage of the Kenya trials, taking into account the views of all organs on their potential impact.

2. Reductions to Legal Aid

Despite repeated concerns expressed by the Team throughout 2012 regarding the piecemeal review of the legal aid system conducted primarily on budgetary grounds,¹⁵ the Committee recommends that the

¹² Coalition for the ICC, Letter to states parties on the 2012 budget, 6 July 2012, available at: http://www.iccnw.org/documents/CICC_Letter_on_the_2012_ICC_Budget_-_6_July_2011.pdf.

¹³ Committee’s Report, para. 25.

¹⁴ Committee’s Report, Para 126.

¹⁵ For further information of concerns, see: CICC Legal Representation Team, Recommendations and Comments to the CBF 19th session - Comments on the ‘Supplementary Report of the Registry on four aspects of the Court’s legal aid system,’ 20 September 2012, available at: http://www.iccnw.org/documents/CICC_Legal_Representation_Team-

Assembly implement three amendments, proposed by the Registry,¹⁶ to the legal aid system, thereby reducing the Court's 2013 legal aid budget by €1.1 million.¹⁷

The Team stresses that legal aid goes to the heart of ensuring a fair trial for indigent suspects and effective and meaningful representation for victims at the Court, which are guaranteed by Articles 67 and 68 of the Rome Statute respectively. The Team fears that, if changes to the legal aid system continue to be implemented without a prior holistic review aimed at improving legal representation at the Court, the Court's statutory obligations may be undermined and this may lead to larger costs in the long run. The Team also strongly urges states parties to ensure that a monitoring mechanism to assess the implementation of the legal aid amendments is established, as proposed by the Bureau in its report on legal aid.¹⁸ Prior to the establishment of such a mechanism and any evaluation by the Court, the Team has strong reservations regarding the Committee's statement that "the changes will in no way affect the ability of teams to represent their clients before the Court"¹⁹. Furthermore, the Team is particularly concerned that some aspects of the proposals have yet to be defined, including the periods "when procedural activities are substantially reduced" that can result in suspending monthly lump-sum payments to counsel.

The Committee highlights that "obstacles" remain to the implementation of changes to the "enhanced role" of the Office of Public Counsel for Victims and has requested the Registry to provide a supplementary report on "progress achieved."²⁰ However, the representation and mode of victims' representation at the Court remains solely a judicial determination. Furthermore, any decision on the modalities for victims' representation should be driven by effective and meaningful representation for victims. The Team remains concerned that the Committee is putting undue pressure on the Registry to implement and formalise a "proposal", which in fact cannot be uniformly implemented by the Registry and which is based on budgetary considerations.

Finally, the Committee recommends "further review" of the role of the Office of Public Counsel for Defence (OPCD),²¹ without setting out how such a review would relate to the legal aid system or advance other reviews of OPCD's role. The Team remains concerned by any proposal to review the role of the OPCD motivated by a search for cost savings. The OPCD plays an important role in ensuring fair trial and equality of arms for defendants. The statement by the Committee that the OPCD carries out "work for which each team is already paid for"²² overlooks that the OPCD's undertakes tasks for defence teams which claim they lack of sufficient resources, and their work is often crucially necessary to ensure fair and expedient trial proceedings.

Recommendations:

- A holistic review of the legal representation system should be conducted at an appropriate time and with appropriate consultation among stakeholders and be driven by a mandate to improve the implementation of the rights and obligations set out in the Rome Statute, not to cut costs.

[Comments to CBF 19th session.pdf](#). The Committee has repeated identified legal aid as a "major cost driver" even though legal aid itself does not drive costs. On the contrary, the Court's caseload drives the need for legal representation of both defence and victims.

¹⁶ Supplementary Report of the Registry on four aspects of the Court's legal aid system, CBF/19/6, 17 August 2012.

¹⁷ Committee's Report, para. 98.

¹⁸ ASP/11/2, Report of Bureau on legal aid, 22 October 2012, Annex para. 4

¹⁹ Committee's Report, para. 95.

²⁰ Committee's Report, para. 97.

²¹ Committee's Report, para. 99.

²² Committee's Report, para. 100.

- If the Assembly decides to implement the amendments to the legal aid system proposed by the Registry, it must establish effective monitoring and review mechanisms to ensure that, in practice, they do not undermine the statutory rights of the accused to a fair trial and the rights of victims to participate in proceedings. In addition, guidelines should be developed clarifying phases “when procedural activities are substantially reduced” which trigger suspension of monthly lump payments to teams.
- The Assembly must respect the independence of the judiciary in considering proposals to review legal representation for victims and focus on achieving the most effective and efficient system for victims, not just the cheapest.
- Any review of the role of the OPCD must be conducted in full consultation with all stakeholders, should not duplicate reviews already undertaken and be driven primarily by the need for fair trial rights and the effective and meaningful representation of defendants.

3. The Trust Fund for Victims

The Team is seriously concerned that the Committee has recommended a freeze on the non-staff costs of the Trust Fund for Victims (TFV) and is again promoting the possibility of the Trust Fund “using some percentage of its voluntary contributions to cover [administrative] costs.”²³

The Team notes that, in the Court’s paper *Impact of measures to bring the level of the International Criminal Court’s budget for 2013 in line with the level of approved budget for 2012*, the Trust Fund indicates that significant reductions in travel, consultancy and other non-staff costs would risk:

“crippling of the Fund’s operational flexibility and effectiveness, especially in regard of the implementation of reparations awards, but also in terms of fundraising capability.”²⁴

The Team is particularly concerned that, if implemented, the recommended freeze would undermine the work of the TFV as it is currently only partially equipped to implement its goals, and, to date, has only been able to implement its assistance mandate in two of the seven situations currently under investigation. The proposed Budget for 2013 notes 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.”²⁵ 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. This is all the more important considering that voluntary contributions are so far reduced this year and the current international financial situation is making fundraising highly competitive.

Furthermore, the Team is concerned that any effort to fund the administration of the TFV through voluntary contributions could have a devastating impact on the ability of the Fund to fundraise and perform its functions. At this time, the level of voluntary contributions is not sufficiently consistent or high enough to adopt such measures without undermining the support that the TFV can offer to victims. The Committee’s recommendation is especially concerning given that the Trust Fund could play a key role in developing and implementing the Court’s first reparation orders. On 7 August 2012, the first ever decision on the principles and process to be applied to reparations was issued in the *Lubanga case* and

²³ Committee’s Report, para. 156.

²⁴ Impact of measures to bring the level of the International Criminal Court’s budget for 2013 in line with the level of the approved budget for 2012, Committee’s Report, Annex III, Table 7.

²⁵ Proposed 2013 Budget, para. 537.

tasked the TFV with the implementation and the determination of appropriate reparations to be awarded to the victims. Aspects of that decision are currently being appealed.

The Team emphasizes that the ability for the TFV to deliver on its reparation and assistance mandates is likely to have a dramatic impact on the credibility of the Court as a whole, as a Court that can provide restorative justice, including redress to victims. Now more than ever, the TFV must to be given the resources it needs from the Assembly, if the Court is to have the lasting reparative impact states parties envisaged when they created it.

Recommendation:

- The Assembly should not implement the Committee's recommendation to freeze the Trust Fund's non-staff costs.