



**BUDGET AND FINANCE TEAM<sup>1</sup>**  
**COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)**

**SUBMISSION TO THE COMMITTEE ON BUDGET AND FINANCE AT ITS  
TWELFTH SESSION ON 20 TO 24 APRIL 2009**

15 APRIL 2008

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**I. Welcome to new Committee members and recognition of outgoing members**

The Coalition for the International Criminal Court's Budget and Finance Team (Team) notes that the election of six members of the Committee on Budget and Finance (Committee) took place at the resumed seventh session of the Assembly of States Parties (Assembly). During that election six members (including two new members) of the Committee were elected. The Team congratulates Mr. Fawzi Gharaibeh, Ms. Rossette Nyirinkindi Katungye, Ms. Elena Sopková and Mr. Santiago Wins on their re-election and welcomes the new members Mr. Masud Husain and Mr. Shinichi Iida.

The Team would also like to recognize the important contributions made to the Committee's work in its first years by the two outgoing members:

- Mr. Lambert Dah Kindji
- Mr. David Dutton
- Mr. Myung-jae Hahn

The Team recognizes the important work undertaken by the Committee to advise the Assembly and the International Criminal Court (Court) on budgetary and financial issues and welcomes the commitment of its members to ensuring the success of the new system of international justice.

**II. Overall budgetary issues**

At its last session, the Assembly approved a budget for 2009 of €101,229.9 million, but decided to base the scale of assessments of states parties' contributions on €96,229.9 million of the budget and authorized the Court to draw up to €5 million from the Working Capital Fund.

Despite the Committee's expert recommendations, the Assembly decided to set the assessments for the Court's budget €5 million below the total budget recommended by the Committee. The Team expressed its disappointment at the decision by the Assembly to adopt the Committee recommendations on overall costs but to arbitrarily reduce assessments. The Team argued that such an approach undermines the Committee's expertise and independent technical advice and risks setting a disturbing precedent that future budgetary discussions within the Assembly will focus on political considerations rather than the resource requirements for the Court to conduct its activities<sup>2</sup>. Such concerns were subsequently echoed by states such as Mexico, Germany, Belgium, Denmark, South Africa and Estonia during the adoption of the report of the Assembly's working group on budget.

Furthermore, the Team acknowledges States Parties' concerns about the increase in the Court's budget. In this regard, the Team wishes to emphasise that the Court shares responsibility for ensuring its activities are conducted in an efficient, cost-effective manner. At the same time, the judicial mandate of the Court requires that its budget will necessarily depend on its workload. In addition, at

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<sup>1</sup>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.

<sup>2</sup> CICC Budget and Finance Team, [Comments on the Draft Report of the Assembly of States Parties Working Group on Budget](#), 20 November 2008.

this point in the Court's development, without having seen a full cycle of proceedings, it is unrealistic to expect full predictability of the budget from year to year. The Court is unlike national judicial institutions and other intergovernmental organisations where budgets lend themselves to more stability and predictability.

While the Team does not suggest that the level of increase to date should continue at the same pace, the Team is concerned that continuing last year's "exceptional practice" of reducing the Court's budget based solely on political considerations or external factors dissociated to the Court's workload -such as the global financial situation- could not only set an inappropriate precedent but, importantly, it could also seriously affect the capacity of the Court's activities.

The Team notes with concern that the Committee has included on its agenda the global financial crisis. While the Committee should of course consider the work of the Court within this global situation, the Team urges the Committee not make any recommendations that could result in or be used to justify a reduction of the €101,229.9 million budget approved in 2009 solely on this basis. To do so could have a devastating impact on the ability of the Court to meet its increasing workload.

**In light of the aforementioned reasons,** the Team urges the Committee:

- To review the Assembly's decision to set the assessments for the Court's budget €5 million below the approved budget; and,
- To strongly advise the Assembly to take all decisions regarding the Court's budget solely on the basis of a thorough process of assessment of the Court's needs and in full awareness of the real implications of any reductions.

Similarly, the Team believes that it would be important for the Committee to fully understand the financial implications of the non-compliance or the slow compliance of States with cooperation requests from the Court. The Team understands that delayed or non-cooperation from States Parties can be quite onerous for the Court. For example, resistance to take interim measures for protection of witnesses or victims -such as issuing emergency visas- will add costs to the Court's protection system. Also, lack of support for the activities of the Office of the Prosecutor or lack of compliance with cooperation requests in support of the defence teams might result in lengthy proceedings.

**For these reasons, the Team recommends the Committee** request information from the Court on the financial implications of the inadequate compliance of States with cooperation requests from the Court.

### **III. Legal Representation of Victims**

The Team welcomes the Court's Interim Report on "Legal and Financial aspects for funding victims' legal representation before the Court" (ICC-ASP/8/CBF.1/2). We believe the Court in its interim report addresses the relevant issues and thus prepares the ground for further, more in-depth considerations over the coming months.

At this stage, the Team wishes to submit its views only on some selected issues, given the short amount of time it had to consult on the report and the complexity of some of the areas addressed. The Team hopes to make additional submissions to the Committee at a later stage with more detailed positions and comments.

#### **a. Number of teams per case**

With respect to the Committee's suggestion at its last session to have only one team of victims per case, the Team believes that significant weight needs to be given to the argument of 'conflict of interest'. In our view, two teams per case are the minimum for allowing the Registry and the Chambers to ensure that actual or potential conflicts of interest are avoided or can be redressed

among victims who are grouped together. Conflicts of interest can be caused by numerous factors (for instance, different types of victimization or geographical and cultural considerations) and can occur at any stages of the proceedings (pre-trial, trial and reparation stage). In addition, it could be possible in certain cases that a very large number of victims cannot be represented by a single team. Therefore, the legal aid scheme should be adapted to this reality, and allow for the Registry and the Chambers to assess on a case-by-case basis whether more than one team is needed.

The Team supports the approach taken by the Registry on this issue in the report (para.17).

#### b. Determination of indigence

The Team learned with great interest that the Registry intends to include in its final report recommendations about the possibility of developing presumptions of indigence for certain categories of victims (para 14).

As raised with the Committee on previous occasions, the Team strongly believes that further thinking should be given to the establishment of a system of ‘presumptions of indigence’ in combination with effective procedures in place for retrospective verification. Taking into account the humanitarian context of victims in the different situation countries of the Court, it becomes clear that applying presumptions of indigence for at least certain categories of victims, rather than conducting cost-intensive individual investigations into each applicant’s financial situation, will ultimately enhance cost-effectiveness.

The Registry has already recognized minors as a category of victim applicants where indigence can be presumed. We believe other categories should follow, like for example “persons living in IDP camps” or “people living in certain underdeveloped areas of a particular region”. Prior financial investigations should be undertaken only when the circumstances of victim applicants suggest that they may have access to other resources (for example victims in Diaspora communities).

#### c. Other issues

Under this heading, we would like to address three issues: flexibility of the legal aid scheme, extent of legal aid for victims and the role of the OPCV.

First, the Team has noted, both through its monitoring activities as well as through the remarks made in the Registry’s report, that flexibility of the legal aid scheme has been key over the last few years. Victims’ legal representation is very different from the one afforded to accused. In addition, there is little experience in this area. For these reasons, the Team wishes to stress that a certain level of flexibility is essential to be able to adapt the scheme to new and unforeseen ways of organising victims’ legal representation.

Second, the Team believes that the extent of legal aid for victims must be kept under review. We note that the rights of victims and the role of victims in proceedings are under development. It is essential that the Registry holds regular discussions with legal representatives in order to evaluate the functioning of the system and, eventually, re-assess the extent of resources allocated to legal teams at different stages of the proceedings, in close dialogue with the Committee.

The Team welcomes the Registry’s plan to further look into the role of the OPCV in relation to the legal aid scheme. A careful analysis will be needed to properly assess the advantages and disadvantages of a combined system of internal and external legal representation, taking into account the given legal and judicial framework.

## IV. Family Visits

The Team has previously stressed the importance of funding family visits for indigent ICC detainees given the special circumstances and nature of the Court’s proceedings.

At the seventh session of the Assembly of States Parties, ICC states parties deferred taking a policy decision on the issue of funding of family visits. Instead, states parties agreed to authorize funding for family visits—within certain limits—in the Court’s 2009 programme budget on an exceptional basis and to revisit the issue at the eighth Assembly session with a view toward taking a final policy decision. The Team welcomes the efforts of The Hague Working Group to facilitate discussion on this issue.

A recent 10 March 2009 decision of the Presidency of the Court, however, recognized a positive obligation on the part of the Court to fund family visits and instructed the Registrar to ensure provision of funding for family visits to indigent detained persons in the regular budget of the Court. In its decision, the Presidency was attentive to the need to balance implementing this positive obligation with safeguarding the Court’s resources.

The Team is of the view that the Presidency’s decision sets clear parameters within which the Assembly’s further deliberations on the issue of family visits should proceed. The Assembly in consultation with the Court, and, as appropriate, with the assistance of the Committee on Budget and Finance, should now proceed to a discussion of how to implement the Presidency’s decision in the Court’s regular budget.

## **V. Independent Oversight Mechanism**

The Team welcomes the efforts of the Hague Working Group to advance discussions on the establishment of an independent oversight mechanism, including considering recommendations made by the Committee in the report of its eleventh session. We understand that the Hague Working Group will present recommendations to the Committee at its twelfth session to obtain its financial and administrative advice. The Team has the following comments regarding the current status of discussions of the Hague Working Group.

The Team has consistently called on the Assembly to ensure that the oversight mechanism is truly independent, which is vital for the new office to implement its mandate. The Team strongly opposed the proposal of the Court to locate the oversight mechanism in the Office of Internal Audit, which is not sufficiently independent. Instead, we support the location of the mechanism in the Secretariat of the Assembly of States Parties which is the appropriate location for a subsidiary body of the Assembly and would largely ensure its operational independence. A recommendation by the Hague Working Group that the independent oversight mechanism shall be “co-located (but not integrated or subordinated to) with the Office of Internal Audit,” is not preferred by the Team. However, if this structure is adopted, the Team calls for clarification that the oversight mechanism is entirely separate from the Office of Internal Audit. In particular, the D-1 manager of the Office of Internal Audit must have no authority or responsibility over the oversight mechanism, their office space must be separate and secure of each other, there must be no requirement to share staff or other resources (e.g. file storage) and that the oversight mechanism is not bound by the provisions of the Charter of the Office of Internal Audit.

The Team opposed the Committee’s recommendation in the report of its eleventh session to examine whether the functions of the mechanism could be outsourced to the United Nations Office of International Oversight Services or another body. It is vital that the mechanism be located at the seat of the Court in The Hague - with resources to access the Court’s operations in the field - so that it can receive complaints, conduct investigations and seek cooperation from the ICC, which would be very difficult to conduct remotely from other institutions in different locations. The Team therefore welcomes the Hague Working Group’s proposal to establish an oversight mechanism specifically for the Court, located in The Hague. We also note the recommendation by the Hague Working Group that the mechanism “could then be supported by OIOS services on a cost recovery basis through the conclusion of an MOU.” The Team would support such cooperation on the condition that it must neither undermine the independence of the mechanism nor undermine efforts to develop an effective mechanism tailored to the International Criminal Court. In particular, while information sharing in the

development of investigative procedures, protocol and rules will no doubt be useful, it is important that the mechanism develops the best system for the Court and does not merely adopt the UN system.

Finally, the Team welcomes the recommendation to establish two full time staff for the mechanism. However, the Team is concerned that the suggested level of P-4/5 for the most senior post could in practice be too low and obstruct the work of the mechanism. The mechanism will require a director at a sufficient grade who has the experience and seniority to run the office and to ensure the full cooperation of the Court, states parties and other actors on potentially sensitive cases. The appointment of a director at a D-1 level is particularly important noting that the mechanism is independent and that the Hague Working Group has indicated it may not recommend establishing an oversight committee to provide detailed oversight and support of the mechanism.

## VI. Independence of CBF Members

In a paper submitted to the seventh session of the Assembly<sup>3</sup>, the Team noted that work of the Committee is crucial in advising the Assembly and the Court on budget and finance issues and making sure that the Court receives the resources it needs to work effectively. Furthermore, the Team noted that at its sixth session the Assembly reaffirmed the independence of the members of the Committee.<sup>4</sup> Accordingly, the Team understands that **Committee members are required to provide their independent technical expertise and do not represent the position of the states party that nominates them or any state.**

Accordingly, States parties must not seek to instruct, through written submissions or other means, members of the Committee. Any state party that wishes to present its views to the Committee for their consideration should provide such submissions via the Secretariat of the Assembly so that they can be made public and posted on the documentation pages of the Assembly in advance of the Committee's next session.

**For these reasons**, the Team urges Committee members to inform the Chair of the Committee of any undue pressure exercised on them by states parties, in particular by the states that nominated them.

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<sup>3</sup> CICC Budget and Finance Team, [Comments and Recommendations on the Independence of CBF Members](#), 3 November 2008

<sup>4</sup> ICC-ASP/6/Res.2, Strengthening the International Criminal Court and the Assembly of States Parties, para. 59.