



**BUDGET AND FINANCE TEAM<sup>1</sup>**  
**COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)**  
**SUBMISSION TO THE COMMITTEE ON BUDGET AND FINANCE AT ITS**  
**SEVENTEENTH SESSION ON 22 TO 30 AUGUST 2011**

**Comments on the Proposed Programme Budget for 2012 of the**  
**International Criminal Court and other matters**

17 August 2011

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## I. INTRODUCTION

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 NGO 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 2011.<sup>2</sup>

The Team aims to assist the Committee on Budget and Finance (Committee) and the Assembly of States Parties (Assembly) in its consideration of the ICC budget and other financial matters by submitting detailed commentaries and recommendations which incorporate member groups' expertise and practical knowledge on international justice issues. In doing so, the Team notes that, in most years, a number of key policy issues arise during the budget process. The Team continues to be concerned that, as the only subsidiary body of the Assembly, the Committee is often required to review key policy issues without the support and input of other expert subsidiary bodies.

In this paper, the Team provides comments and makes recommendations on the Proposed Programme Budget for 2012 of the International Criminal Court (proposed Budget).<sup>3</sup> The proposed Budget will be considered by the Committee at its seventeenth session on 22 to 31 August 2011.

The Team is available to discuss any of these issues with the Committee or States Parties in advance of and following the Committee's session and can be contacted via the CICC's The Hague Office ([pal@coalitionfortheicc.org](mailto:pal@coalitionfortheicc.org), Bezuidenhoutseweg 99a, 2594 AC The Hague, Tel: + 31(0)70 311 10 87).

## II. SUMMARY OF RECOMMENDATIONS CONTAINED IN THIS PAPER

1. The Team recommends that the Assembly approve an overall increase in the Court's budget sufficient to fully implement its additional investigative and trial activities.
2. The Team recommends that the Assembly reject efforts to impose a zero-growth policy for the Court. Responsible growth in the coming years is essential to ensure that the Court proceeds towards achieving its full capacity in order to ensure efficiency and maximum impact in implementing its mandate set out in the Rome Statute.
3. In reviewing the proposed Budget and developing its recommendations to the Assembly, the Team recommends that the Committee should take into account the current level of inadequate funding of areas of the Court's work highlighted in section III.3.
4. The Team recommends the Committee consult with the Court to identify the reasons for its underfunding in the areas identified in section III.3 and that the Committee make recommendations on how the Court should resolve these issues.

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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 Teams are composed of CICC members with a broad range of specialization in international justice issues. Teams focus on specific issues such as the annual programme budget. The Teams follow developments at ICC and the Assembly and engage in relevant research and advocacy. All CICC members are welcome to join any teams and all CICC members are regularly apprised of the work of the teams.

<sup>3</sup> Proposed Programme Budget for 2012 of the International Criminal Court (Budget Proposal 2012), ICC-ASP/10/10, 21 July 2011.

5. The Team recommends that the Committee consider and provide necessary recommendations to the Assembly and the Court on:
  - a) the risks associated with inadequate funding of the VPRS and the OPCD, in particular the potential impact on the rights of the accused and victims and on the efficiency of judicial proceedings;
  - b) the risks associated with conducting a restricted outreach program to victims and affected communities, both in ongoing and in new situations, including those under preliminary examination;<sup>4</sup>
  - c) the Court's ability to provide proper support and presence in the field, including through supporting the revision of the Court's field office manager functions; and
  - d) the risks to the Court arising from the inadequate funding of the Office of Internal Audit;
6. The Team recommends that the Committee request the Court to provide it and the Assembly in future proposals with an estimate of the budgetary implications for activity that is possible, but dependent on an imminent judicial decision, such as a new investigation pending authorisation and *inter alia* the preparation of trial proceedings should charges be confirmed in a case. In this regard the Committee may also consider it prudent to have an estimation of the budgetary implications (including whether the assumption of consecutive trials will suffice for the whole of 2012) if a new investigation in Côte d'Ivoire and trial preparation and possibly trial hearings take place in the *Ruto et al.* and the *Muthaura et al.* cases as well as the *Callixte Mbarushimana* case;
7. Given that increases in legal aid arise from judicial activity and from the application of the legal aid system adopted by the Assembly, the Team urges the Committee to recommend that the Assembly approve the increase in legal aid in 2012.
8. The Team urges the Committee to revisit its decision to freeze the creation of permanent posts for 2012 and mandate the Court to indicate in a report which of the General Temporary Assistance posts requested in 2012 will likely be the subject of a future request for conversion to permanent posts;
9. The Team suggests the Committee work with the Court to develop a clear and realistic schedule to complete process for the re-justification of permanent posts.
10. In particular, the Team urges the Committee to recommend that the Assembly approve the Legal Adviser post in the Trust Fund for Victims and the *Psychologist / Psychological Trauma Expert in the Victims and Witnesses Unit*.

### III. THE PROPOSED BUDGET FOR 2012

On 21 July 2011, the International Criminal Court (Court) issued a proposed Budget for 2012 setting out its request for €117.73 million.

#### 1. *The need for budget growth*

The proposed Budget increase for 2012 is €14.12 million on the approved Budget for 2011. The Team considers that such an overall budget increase appears justified in light of the critical increases in activities assumed for 2012. In particular, additional resources are essential to conduct an effective investigation into crimes committed in Libya and to fund a significant increase in judicial activities (including legal aid). In fact, as set out in section 3 below, the Team is concerned that the Court continues to underfund its activities in a number of areas.

#### **Recommendation:**

- The Team recommends that the Assembly approve an overall increase in the Court's budget sufficient to fully implement its additional investigative and trial activities.

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<sup>4</sup> The ASP at its 9 session has specifically encouraged "the Court to further develop and implement the Strategic Plan for Outreach in affected countries, including, where appropriate, by early outreach from the outset of the Court's involvement, including during the preliminary examination stage". ICC-ASP/9/Res.3, "Strengthening the International Criminal Court and the Assembly of States Parties", para. 38.

## 2. Unrealistic calls for “zero-growth”

The Team remains concerned that, despite the compelling reasons for a significant increase in the proposed Budget for 2012, some States Parties are again calling for zero growth in the Court’s budget this year. The Team has written to Ministers of Foreign Affairs of all States Parties urging them to oppose such efforts.<sup>5</sup>

Zero growth is clearly unrealistic in the context of projected increased activities for 2012. In fact, more increases will likely be required in the next years as trials advance in other cases and other investigations are opened. Although, the Court has moved beyond its establishment phase, it has yet to reach full capacity in its judicial proceedings. Furthermore, the Court’s activities continue to increase in response to new situations where crimes are committed and the demands from the international community for it to act, as clearly demonstrated by the referral of the situation in Libya to the Prosecutor in February this year. As the Team has emphasized in the past, while the Court has responsibility for ensuring its activities are conducted in an efficient, cost-effective manner and for communicating to States Parties a clear, coherent vision for responsible growth and development of the institution, its judicial mandate requires that its budget be determined with regard to the resources necessary to carry out its activities. Zero-growth or significant arbitrary cuts would undermine the effectiveness of the Court’s work and would curtail its ability to respond promptly to situations where crimes are committed.

### Recommendation:

- The Team recommends that the Assembly reject efforts to impose a zero-growth policy for the Court. Responsible growth in the coming years is essential to ensure that the Court proceeds towards achieving its full capacity in order to ensure efficiency and maximum impact in implementing its mandate set out in the Rome Statute.

## 3. Evidence of under-funding in the proposed Budget

Despite the increase proposed in the 2012 Budget, the Team is concerned that there is evidence of under-funding in key areas of the Court’s work as illustrated in different parts of the proposal.

### Victims Participation and Reparations Section (VPRS)

Table 99 sets out a current shortfall of ten Associate Legal Officers in the Victims Participation and Reparation Section to implement the workload of the VPRS. Furthermore, the proposed Budget states that there has been “no increase in VPRS staff at headquarters since 2006, in spite of the workload increasing many times over.”<sup>6</sup> The Team notes that the impact of this under-funding has recently resulted in at least 470 victims being denied the opportunity to participate in the confirmation of charges hearing against *Callixte Mbarushimana* because their applications could not be processed in time.<sup>7</sup> Resource limitations were also cited by the Registry to explain its failure to undertake proper consultations with victim communities, as instructed by the Pre-Trial Chamber in accordance with Rule 90 of the Rules of Procedure and Evidence, in the appointment of common legal representation in the *Ruto et al.* and *Banda and Jerbo* cases. Despite the obvious lack of resources, the proposed Budget only requests two of the ten required additional Associate Legal Officers - one to assist with processing applications and one other proposed for the Libya situation.<sup>8</sup>

### Office of Public Counsel for Defence (OPCD)

The proposed Budget for OPCD sets out significant shortfalls in responding to requests for assistance from defence teams. The proposal expressly states “[g]iven the current resources of

<sup>5</sup> CICC letter on the 2012 Budget, 6 July 2011, available at:

[http://www.iccnw.org/documents/CICC\\_Letter\\_on\\_the\\_2012\\_ICC\\_Budget\\_-\\_6\\_July\\_2011.pdf](http://www.iccnw.org/documents/CICC_Letter_on_the_2012_ICC_Budget_-_6_July_2011.pdf)

<sup>6</sup> Budget Proposal 2012, para. 420.

<sup>7</sup> See: Redress, Press Release, *Hundreds of victims prevented from participating in crucial court hearings due to lack of resources at the ICC*, 15 July 2011. Available at:

<http://www.redress.org/downloads/StatementVictimParticipation15July2011.pdf>

<sup>8</sup> Budget Proposal 2012, paras. 424-425.

the Office, it has been initially estimated that in 2012 the OPCD may be unable to respond to as many as 345 of the requests it received for legal advice, which may in turn result in the defence requesting adjournments in the proceedings.”<sup>9</sup>

#### Public Information and Documentation Section

The proposed Budget admits: “...with limited resources the Court has been unable to comply fully with the request of the Assembly ‘...to further develop and implement the Strategic Plan for Outreach in affected countries, including where appropriate, by early outreach from the outset of the Court’s involvement, including during the preliminary examination stage.’ The section has narrowed the scope of its work to reaching out primarily to victims and affected communities...”<sup>10</sup> It goes on to announce that “[r]estrictions on the human resources available to the audio-visual team mean that PIDS will in future be unable to follow hearings on a daily basis, and therefore will not be able to continue producing weekly summaries of ongoing trials, as in 2010 and 2011.”<sup>11</sup> This is also reflected in proposed reductions of outreach activities in existing situations, particularly in respect of Uganda and Sudan, and in new situations. This is particularly troubling as information needs have not diminished and there remains an ongoing need for outreach and public information in order to manage the expectations of victims and affected communities.

#### Victim and Witnesses Unit (VWU)

The Budget Proposal indicates that the VWU has attempted to reduce costs by limiting the geographic availability of its Immediate Response System (IRS), reducing the number of witness relocations for the Kenya situation, and reducing the cost of local protective measures.<sup>12</sup> This is concerning given the inadequacy of national protection mechanisms and in light of the fact that any perceived inability on the part of the Court to protect witnesses may negatively affect the its credibility.

#### Field Operations Section<sup>13</sup>

While the proposed Budget indicates that “capacity and life cycle of field offices and presences will continue to be dictated by the rhythm of judicial developments in each situation”, it contains no information about field presence in either Libya or Côte d’Ivoire (should an investigation be opened).<sup>14</sup> It further proposes substantial reductions in its existing field presence and redeploying resources either to other field offices or to headquarters.

#### Office of Internal Audit

The Court acknowledges that the proposed Budget for the Office of Internal Audit - which conducts vital work to ensure the administrative and financial integrity of the Court - is almost half that required by “standards”.<sup>15</sup> The budget of the Office represents 0.52 per cent of the total proposed budget. The Court states “[t]his ratio is not in accordance with standards, which require the internal audit’s budget should be around 1 per cent of the overall budget of an organization.”<sup>16</sup>

### **Recommendations:**

In light of the foregoing the Team urges that:

- In reviewing the proposed Budget and developing its recommendations to the Assembly, the Team recommends that the Committee should take into account the current level of inadequate funding of each of these areas of the Court’s work.

<sup>9</sup> Budget Proposal 2012, para. 251.

<sup>10</sup> Budget Proposal 2012, para. 438.

<sup>11</sup> Budget Proposal 2012, para. 442.

<sup>12</sup> Budget Proposal 2012, para. 398.

<sup>13</sup> The Team reiterates its support for increased field coordination. See CICC Budget and Finance Team, Submission to the Committee on Budget and Finance at its Fifteenth Session (17 Aug 2010), p. 4. The Team recommends that the CBF support the revision of the Court’s field office manager functions.

<sup>14</sup> Budget Proposal 2012, para. 218.

<sup>15</sup> Budget Proposal 2012, para.178.

<sup>16</sup> Ibid.

- The Team recommends that the Committee consult with the Court to identify the reasons for its underfunding in these areas, and that the Committee make recommendations on how the Court should resolve these issues.
- The Team recommends that the Committee consider and provide necessary recommendations to the Assembly and the Court on:
  - a. the risks associated with inadequate funding of the VPRS and the OPCD, in particular the potential impact on the rights of the accused and victims and on the efficiency of judicial proceedings;
  - b. the risks associated with conducting a restricted outreach program to victims and affected communities, both in ongoing and in new situations, including those under preliminary examination;<sup>17</sup>
  - c. the Court's ability to provide proper support and presence in the field, including through supporting the revision of the Court's field office manager functions; and
  - d. the risks to the Court arising from the inadequate funding of the Office of Internal Audit.

#### **4. Omission of some foreseeable activities that are contingent on judicial decisions**

The Team notes that this year there are a number of activities which are generally foreseeable but are dependent on judicial decisions which must be finally determined before these activities can proceed to the next stage. This includes the confirmation of charges and authorisation for the Office of the Prosecutor (OTP) to open an investigation. There is insufficient information in the proposed Budget or its annexes of the cost implications should these activities proceed.

##### Côte d'Ivoire investigation

The proposed Budget does not appear to include any resources to conduct an investigation in Côte d'Ivoire. The investigation is not mentioned in the assumptions for 2012, indicating that it may have been excluded from the proposed Budget on the grounds that the authorisation to open the investigation was pending at the time of drafting the proposed Budget. However, the proposed Budget does indicate that, if the investigation is approved, the OTP would absorb the additional costs of this investigation within the resources it has requested for 2012.<sup>18</sup> There is no indication, however, of whether other costs related to the situation could be absorbed by other organs. Given the overstretch of resources noted in a number of court functions, the Team is sceptical that such costs could be absorbed without negatively impacting activities in existing situations. Although there may be reasonable grounds to argue against including the costs for the investigation into the budget given that the investigation has not yet been authorised, it is disappointing - given the real possibility of authorisation being granted - that more information about the cost implications of a potential new investigation has not been included. A breakdown of costs across organs associated with a potential investigation annexed to the budget proposal could have provided a useful indication of the costs associated with opening an investigation and may have amounted to a helpful planning tool.

##### Estimates of trial activities

The Budget does not appear to contemplate judicial resources beyond pre-trial activities in the *Ruto et al* and the *Muthaura et al* cases as well as the *Callixte Mbarushimana* case, and notes that future activity in these cases would be among the factors affecting the number of new judges to be called to full-time service in 2012.<sup>19</sup> While the budget's assumptions were set in March 2011, decisions regarding the confirmation of charges in each of these three cases could now be completed before the end of 2011. This will mark the end of pre-trial proceedings, and if the cases are sent to trial, the start of at least trial preparations in 2012, if not the

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<sup>17</sup> The ASP at its 9 session has specifically encouraged "the Court to further develop and implement the Strategic Plan for Outreach in affected countries, including, where appropriate, by early outreach from the outset of the Court's involvement, including during the preliminary examination stage". ICC-ASP/9/Res.3, "Strengthening the International Criminal Court and the Assembly of States Parties", para. 38.

<sup>18</sup> Budget Proposal 2012, para. 86(c).

<sup>19</sup> Budget Proposal 2012, para. 72.

commencement of the trials themselves. While the Court may be reluctant to assume any particular outcome of the confirmation of charges proceedings in these cases, it may nevertheless be appropriate to provide some additional information of the budgetary consequences for judicial and other resources should charges be confirmed.

#### **Recommendations:**

- The Team recommends that the Committee request the Court to provide it and the Assembly in future proposals with an estimate of the budgetary implications for activity that is possible, but dependent on an imminent judicial decision, such as a new investigation pending authorisation and *inter alia* the preparation of trial proceedings should charges be confirmed in a case. In this regard the Committee may also consider it prudent to have an estimation of the budgetary implications (including whether the assumption of consecutive trials will suffice for the whole of 2012) if a new investigation in Côte d'Ivoire and trial preparation and possibly trial hearings take place in the *Ruto et al.* and the *Muthaura et al.* cases as well as the *Callixte Mbarushimana* case.

### **5. Increases in legal aid for defence and victims**

The Team notes that there is an increase of approximately €4.9 million in legal aid requested for both the defence and victims as a result of increased judicial activities in 2012. The Team recognizes that legal aid has significant cost implications for the Court - an institution committed to implementing the rights of the accused to a fair trial and the rights of victims enshrined in the Rome Statute. Additional costs are inevitable when judicial activity - the main cost driver of the Court - increases.<sup>20</sup> Just as the budget of the Office of the Prosecutor will grow where there is increased judicial activity so too will the budget for legal aid in order to ensure adequate representation for the other parties to proceedings. Indeed, the Court correctly recalls in the proposed Budget that the increases are based on the application of the legal aid system for the defence and victims previously approved by the Committee and the Assembly.<sup>21</sup>

The Team notes that any concerns about the legal aid system may be examined as part of a review planned for the completion of the first judicial cycle. The Team also notes that the Registry has on its own motion initiated a review of the current system "in light of the experience gathered by the Court thus far" which it expects to achieve "the most cost-efficient system through the adoption of efficiency measures."<sup>22</sup> The Team will monitor this review closely to make sure that in this revision the rights of the defence and victims are upheld.

#### **Recommendation:**

- Given that increases in legal aid arise from judicial activity and from the application of the legal aid system adopted by the Assembly, the Team urges the Committee to recommend that the Assembly approve the increase in legal aid in 2012.

### **6. Over-reliance on temporary posts**

The Team notes that there is a significant increase of €4.56 million in General Temporary Assistance requests in 2012. In particular, the OTP requests that almost all new posts - including those relating to the Libya situation - be funded as 12 month contracts. The decision to do so is likely connected to the Committee's recommendation at its fifteenth session: "that the Court freeze the number of permanent posts at its approved 2010 level until a comprehensive re-justification of all posts had been conducted...the Court should provide a renewed justification for the positions to the Committee as part of its annual budget submission."<sup>23</sup>

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<sup>20</sup> Budget Proposal 2012, para. 24.

<sup>21</sup> Budget Proposal 2012, para. 166.

<sup>22</sup> Budget Proposal 2012, para. 166.

<sup>23</sup> Report of the Committee on Budget and Finance on the work of its fifteenth session, ICC-ASP/9/15, 24 November 2010, para.81.

The Team is concerned that a significant increase in the number of temporary posts in 2012 may have short-term implications in ensuring its ability to recruit and retain highly qualified persons to fulfil the Court's functions, especially in the Libya situation. It may also have long-term implications for establishing unacceptably high levels of General Temporary Assistance within the Court and create the need to transfer a large number of temporary posts into permanent positions at a later stage.

The Team notes that no timelines were previously set by the Committee for the completion of the 'comprehensive re-justification of all posts'. While such a review is important for the Court's overall efficiency, given the amount of time and resources required to conduct a thorough review, it appears infeasible to do so during the regular annual budget process.

**Recommendation:**

- The Team urges the Committee to revisit its decision to freeze the creation of permanent posts for 2012 and mandate the Court to indicate in a report which of the General Temporary Assistance posts requested in 2012 will likely be the subject of a future request for conversion to permanent posts;
- The Team suggests the Committee work with the Court to develop a clear and realistic schedule to complete the re-justification process.

## **7. Approval of specific posts**

There are two specific posts this year that the Team urges the Committee to recommend that the Assembly approve:

### Legal Adviser - Trust Fund for Victims<sup>24</sup>

The Team notes that the current funding of this post by the German government will end at the end of 2011. This is the only legal advisory position in the Secretariat of the Trust Fund and should therefore be continued. This is especially important given the expectation that the Court will conduct its first reparation process in 2012, which could result in the Court ordering that reparations be made through the Trust Fund.

### Psychologist / Psychological Trauma Expert<sup>25</sup>

The Team supports the approval of this post taking into account the vital importance of the VWU providing psychological services to victims and witnesses appearing before the Court. Indeed, as noted, the post is specifically mandated under article 43(6) of the Rome Statute. It is not clear whether this is the same post that the Committee, at the Assembly's request, considered reclassifying as a permanent post in 2010. If so, it is disappointing that the permanent need for this specific post has not been resolved and it is still not incorporated as a permanent post.

**Recommendation:**

- The Team urges the Committee to recommend that the Assembly approve these posts.

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<sup>24</sup> Budget Proposal 2012, para. 482.

<sup>25</sup> Budget Proposal 2012, paras. 399-401.