



BUDGET AND FINANCE TEAM¹
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)
SUBMISSION TO THE COMMITTEE ON BUDGET AND FINANCE AT ITS
FIFTEENTH SESSION ON 23 TO 31 AUGUST 2010

**Comments on the Proposed Programme Budget for 2011 of the
International Criminal Court and other matters**

17 August 2010

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 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 2010.²

The Team aims to assist the Committee on Budget and Finance (Committee) and the 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 from the proposed budget. The Team continues to be concerned that, as the only subsidiary body of the Assembly of States Parties (Assembly), the Committee is often required to review key policy issues without the support and input of other expert subsidiary bodies. A review of the Assembly's oversight mechanisms is urgently required.

In this paper, the Team provides comments and makes recommendations on the Proposed Programme Budget for 2011 of the International Criminal Court³ and other issues that will be considered by the Committee at its fifteenth session.

The Team is 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@coalitionfortheicc.org, Bezuidenhoutseweg 99a, 2594 AC The Hague, Tel: +31(0)70-311 1087).

II. THE PROPOSED BUDGET FOR 2011

On 16 July 2010, the International Criminal Court (Court) issued its Proposed Programme Budget for 2011 of the International Criminal Court (proposed Budget). The document sets out the Court's request for €107.02 million for the year. Following careful analysis of the document, the Team sets out below a number of comments and concerns on specific issues.

1. The need for budget growth

The proposed budget for 2011 requests a €4.77 million increase for 2011. The Team considers an overall budget increase appears justified in light of changes to the assumptions for 2011 compared to 2010. For instance, the commencement of a new investigation in Kenya and the inevitable transition

¹While 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.

²CICC 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.

³ Proposed Programme Budget for 2011 of the International Criminal Court (Budget Proposal 2011), ICC-ASP/9/10, Advanced version (16 July 2010).

to holding parallel trials will require additional resources (see below). In light of the required budget growth for the Court, the Team remains concerned that some States Parties are continuing to call for zero growth in the Court's budget. 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, its judicial mandate requires that its budget be determined with regard to the resources necessary to carry out its activities. The Court is only eight years old and has yet to reach full capacity in its judicial proceedings. The Court's activities are increasing. We urge the Committee to stress to States Parties in its report that continued responsible growth in the next years is essential to ensure that the Court proceeds towards achieving its full capacity that will guarantee efficiency and maximum impact in implementing the mandate set out in the Rome Statute.

2. Resources for the Kenya situation

The Team notes that despite a new investigation into the Kenya situation, the Court has only requested an additional €500,000 for witness protection in 2011. According to the Office of the Prosecutor, it has been able to meet the costs of the Kenya investigation in 2010 with its allocated resources and these will continue in 2011. Although efficiency is of course welcome, this raises concerns as to whether the Office will have the necessary resources going forward to carry out its investigations across the situations. We note the decision of the OTP to redistribute members of the CAR investigation team to the Kenya and DRC teams. Similarly, the Registry has indicated that (with the exception of some witness protection costs) it has sought to absorb the costs of the Kenya situation. In some cases, however, this may come at a cost to activities in existing situations (see "Further reduction of outreach in Uganda" below).

We appreciate the Court's candid recognition in the budget proposal that "notwithstanding the use of existing resources to cover the Registry's work in the Kenya situation, thus keeping budgetary increases to a minimum, it cannot be excluded that future situations, or increased activity in existing situations, may result in the need for further funds."⁴ We think it is imperative that the Committee recognizes this in its report so that states are prepared for additional costs that may arise from new situations in the future.

In relation to the additional request for witness protection, the Team notes that there are concerning reports of threats and intimidation of victims and witnesses of the post-election violence being investigated by the Court in Kenya, including against individuals who provided information to national commissions of inquiry which preceded the Court's investigation. The Team therefore, strongly supports additional resources for the Court to provide as effective protection as possible in relation to the investigation and any subsequent prosecutions. We urge the Committee to approve this request and recommend that the Court access the Contingency Fund if additional unforeseen resources are required in 2011.

3. Reduction in investigations

The Team is seriously concerned by the decision of the Office of the Prosecutor set out in the proposed Budget to reduce the total number of days of field investigations by almost half.⁵ In recent years, the Team has consistently raised concerns about the small size of investigation teams and its potential negative impact on investigators, the scope of investigations and the efficiency of the Office of the Prosecutor. A decision to reduce the number of mission days as drastically as it is being proposed will inevitably intensify pressure on investigators, further reduce the very limited scope of investigations, extend the time it takes to complete investigations and delay the commencement of investigations in other situations. Time spent in situation countries is also an essential aspect of developing the contextual expertise necessary to inform sound decision-making about investigative strategy and operations. The Team urges the Committee to consider the inefficiencies and longer term costs that this reduction would ultimately inflict on the work of the Court.

⁴ Budget Proposal 2011, para. 207 .

⁵ Budget Proposal 2011, para.180

4. Parallel trials

Last year, the Team expressed its disappointment that, despite a significant increase in trial activities in 2010 and the likelihood of parallel proceedings, the Court only requested resources for consecutive trials. The failure to incorporate these foreseeable costs resulted in the Court making requests to access the contingency fund in 2010. The Team, therefore, welcomes the decision of the Court to request resources to provide parallel trials for up to six months during 2011. The move to parallel trials is necessary at this time given the increasing judicial workload. This decision will allow for the full use of the Court's available facilities thereby maximizing efficiency and ensuring the rights of defendants to fair and expeditious proceedings. The Team urges the Committee to support this increase and recommends that the Court should use the Contingency Fund if more than six months of parallel trials are required.

5. Victims and Witnesses Unit - Psychologist post

Last year, the Team expressed concern about the recommendation of the Committee not to convert a P-3 Psychologist GTA post to a permanent post within the Victims and Witnesses Unit for 2010. Although the Assembly approved the Committee's recommendation, it asked the Committee to examine the justifications for the post at its fourteenth session. In its report of the fourteenth session, the Committee, having considered the Court's justification, requested additional information examining "the advantages and disadvantages of other options, such as establishing a roster of experts, and to report on its findings in advance of its next session in the context of its budget submission."⁶ The report of the Court to the Committee is not public and therefore not available to the Team (see documentation section below). Nevertheless, the Team would like to emphasise two points.

Firstly, although the Committee's questions about overall efficiencies of the strategy to provide psychological support to victims and witnesses are pertinent, we are concerned that the issue should not be addressed in a discussion around one specific post. To do so would amount to micromanagement.

Secondly, we would strongly oppose a roster of experts to fulfil this specific role in the Victims and Witnesses Unit. The justification by the Office of the Prosecutor that a roster of experts is the most appropriate mechanism to oversee interviews with vulnerable victims and witnesses during some missions, cannot be applied to the fully functioning Victims and Witnesses Unit. Victims and witnesses of crimes under international law will in most cases experience psychological harm. The Victims and Witnesses Unit, which deals with large number of victims on a day to day basis, must have the capacity to conduct on-going psychological assessment and provide psychological support. Often this support is conducted at the direction of the relevant chambers. The Team therefore urges the Committee to approve the conversion of this important post at this session.

6. Further reduction of outreach in Uganda

Last year, the Team expressed concern about the Court's decision to reduce outreach activities in Uganda, in favour of other situations. The Team is, therefore, further disappointed at the Court's proposal this year to go even further and transfer the key outreach post in Uganda to the Kenya situation. Although we strongly support the need for strong and immediate outreach in Kenya, we are concerned that the transfer of the post - rather than the creation of a new dedicated post for Kenya to meet the clear needs identified there - will mark the end of effective outreach efforts 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 increase is a sound approach in principle, the prolonged absence of judicial activities can create its own profound challenges - primarily, the growing belief among the affected populations

⁶ Report of the Committee on Budget and Finance on the work of its fourteenth session, ICC/ASP/ 9/5, 6 July 2010, para 65-66.

that the ICC has given up on the Uganda situation. The reduction of outreach capacity in Uganda also raises wider questions about the ICC's broader impact and legacy in situation countries, especially in a situation where no suspects have been brought to trial.

As noted below when addressing the ICC's field engagement, we encourage the Committee to again urge the Court and States Parties to give more sustained, strategic consideration to the legacy issue.

7. Trust Fund for Victims

The Trust Fund for Victims has requested a €40,000 increase this year, mostly focussed on increased travel for Board members, fundraising activities and meetings with donors and partners. The Team supports this increase to allow greater activities by the new Board to promote the Trust Fund. We also recognize the need for resources for effective fundraising and donor engagement. Performance indicators and targets for fundraising are currently not provided and would be a useful guide to States Parties to ensuring the impact of their investment. We therefore support the approval of these funds but suggest that in future years performance indicators and targets on fundraising are provided.

Despite generous contributions by a number of States Parties during the Review Conference, the Trust Fund has yet to establish a secure enough footing to review the funding of its administration.

8. Investing in the ICC's field engagement

The Team has previously emphasized the central role of the Court's field offices in the effective implementation of its mandate. We, therefore, welcome the Committee's continued attention to the Court's efforts to deepen its field engagement, including the willingness of Committee members to visit the court's field offices in connection with the Review Conference in Kampala. Reports provided at the Committee's request following its past sessions have helped to bring much needed attention and clarity to the critical work the court's field-based staff carry out to support investigations and prosecutions, and to facilitate access to justice through outreach and victim participation, witness protection, and the activities of the Trust Fund for Victims. Stocktaking discussions during the Review Conference highlighted the importance of reinforcing field operations as a key component of increasing the impact of the Rome Statute system on affected communities.⁷

We note the Committee's recognition in the report of its fourteenth session of both progress made in increasing the strategic direction of the Court's field operations and a number of areas in which further policy development is required, such as the question of scaling up and scaling down of field offices, the option for a field office to serve as a regional hub, and the relationship of field offices to the host country. We encourage the Committee to continue to urge the Court to engage in a process of strategic planning in dialogue with States Parties in relation to the nature and purpose of ICC field offices, particularly in relation to the question of the ICC's long-term legacy in situation countries.

In the short-term, as a measure to strengthen the effectiveness of field offices, the Team urges the Committee to support the establishment of field coordinators through the reclassification of the existing field office manager posts. As set out in the "Report on the review of field operations" (ICC-ASP/9/CBF.1/15), through their overview of all Registry field-based activities and acquired expertise in the management of field operations, these coordinators are an essential component of furthering a strategic approach to the Court's field presence, both within and across situations.

9. Presentation of the budget

The Team generally welcomes the overall presentation and clarity of the budget document. However, we have a number of specific comments:

⁷ Stocktaking on international criminal justice; Impact of the Rome Statute system on affected communities: Draft informal summary by the focal points, June 10, 2010, RC/ST/V/1, p.8, http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/RC-ST-V-1-ENG.pdf.

- (a) The growth analysis provided in the introduction of the proposed Budget identifies five main cost drivers: common systems costs; Kenya, simultaneous trials, capital investment, and miscellaneous.⁸ However, when examining the sections on the major programs, it is often difficult to identify which cost increases fall under which cost driver. Furthermore, it is not clear how numerous decreases in budget relate to the growth analysis. We would encourage the Committee to make recommendations to the Court on how they could better make the links between the dominant cost drivers and specific increases and decreases.
- (b) The Team notes that the Committee's recommendation in the report of its thirteenth session that "legal aid for the defence and legal aid for victims be identified as discrete items in their respective sub-programmes" has not been implemented.⁹ The Team urges the Court to implement this recommendation without further delay.
- (c) The term "recurrent" is often used in the budget document as a justification for expenditure. However, it is not always clear what the Court means when it uses the term. It would be useful for the Court to clarify the term and its use in the Glossary.
- (d) The proposed Budget contains inadequate information on how the Contingency Fund has been used and how this impacts on the proposed Budget. The Team encourages the Committee to advise the Court on ensuring greater transparency on this issue in future proposals.

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

10. Committee on Budget and Finance documentation

The Team appreciates the Committee's consideration of its request at its fourteenth session to make reports submitted to it by the Court publicly available. The request was made to promote further effective communication with the Committee and transparency and understanding of its work. In making the request, the Team also recognized that there may be specific reports which require confidentiality on certain grounds (such as security and protection issues), and that a procedure would need to be put in place to identify and protect those documents.

The Team is disappointed that the Committee, citing the practice of the Advisory Committee on Administrative and Budgetary Questions of the United Nations General Assembly, has decided not to make these documents available to non-members (including States Parties and non-governmental organizations) prior to the Committee's session.¹⁰ The decision does not mention whether the Committee will make reports available following their sessions. The Team believes this would be essential to guarantee both the transparency of the Committee and retrospective understanding of its recommendations, both in relation to the Budget and other financial and administrative issues.

We, therefore, request that the Committee during its session review all documentation that has been submitted to it by the Court and request the Court to make these reports publicly available and posted on the Court's website as soon as possible following their session, unless all Committee members agree that there are well-founded reasons that require documents to be kept confidential.

⁸ Budget Proposal 2011, para. 51-52.

⁹ Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC/ASP/8/15, 16 November 2009, para. 36.

¹⁰ Report of the Committee on Budget and Finance on the work of its fourteenth session, ICC/ASP/9/5, 6 July 2010, para. 92-93.