



Coalition for the
International
Criminal Court

Budget and Finance Team
Coalition for the International Criminal Court

**Submission to the International Criminal Court
on the preparation of its draft 2006 budget**

PREFACE

While the work of the Budget and Finance Team reflects the positions of those Coalition members most active on particular issues and this paper has been prepared in consultation with other Coalition teams, this paper cannot be construed to represent the views of all organizations/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.

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1. INTRODUCTION

Every budgetary year in the establishment of the ICC marks important milestones towards the full functioning court with its anticipated constant workload. The 2006 budget is particularly important because it establishes how the Court will work with three investigations that will likely develop into cases, including pre-trial and trial activities in the year.

The need for adequate investment is essential if the Court is to operate effectively and efficiently as the eyes of the world focus on how it deals with its first cases. The budgetary problems of other international courts in their first years demonstrate the damaging long-term consequences that under-funding can bring about. It is important that the ICC does not experience the same financial problems in its start up phase.

It is therefore, most important that the ICC requests adequate resources in its draft budget. While recognizing that the Court needs to ensure efficiency, it is important that important functions, notably, victims services, outreach, legal representation and training of Court staff are not compromised. The Coalition's Budget and Finance Team raised serious concerns that these functions were not adequately funded in the 2005 budget.

This paper has been prepared by the Coalition's Budget and Finance Team, in close consultation with other Coalition Teams: the Assembly of States Parties Team, the Communication Team, the Legal Representation Team, the Premises Team and the Victims Trust Fund Team. It sets out recommendations in a number of areas of the Court's work.

The Budget and Finance Team hope these recommendations will be useful to the Court at this stage in the preparation of its budget. We would be pleased to receive your feedback and to discuss the recommendations in further detail.

2. COMMUNICATIONS

With the current investigative work of the ICC and the likelihood of the commencement of trials in the near future, the Court's communications role continues to grow in terms of workload as well as strategic importance. It is becoming increasingly apparent that there is a major need for the work and functions of the ICC to be more understood in the various situations currently before the ICC, in particular where the State authorities and civil society are less supportive of the ICC's presence.

The strategy and ability of the ICC to communicate with its different audiences and for different purposes - through public information, external relations and outreach¹ - is one of the core functions of the Court, which needs to be reflected in its budgetary allocations. This is particularly important in relation to outreach, which is an essential element of the Court's work, yet is in the greatest danger of being marginalised and given insufficient budgetary consideration.

The ICC's budget for 2005 demonstrated a serious underestimation of the responsibilities of the Court regarding outreach and communications, in particular to the communities in and around the states directly concerned with the Court's work. Moreover, the lack of an ICC communications strategy led to a 2005 Budget in which terms were used inconsistently.² During the Third Session of the Assembly of States Parties, various CICC Teams pointed out the need for increases in both staff and non-staff costs to meet the broad and diverse information needs worldwide and in particular for additional conditional resources for the ICC's work in the field.

In the absence of a comprehensive public report from the Court, it is difficult to comment on all the outreach conducted by the Court until now. Indeed, such a report would be highly useful in reviewing budgetary questions, as well as the communications strategy, which is currently being finalised and for the implementation of which sufficient resources will need to be allocated in the 2006 Budget.

Nevertheless, it is the feeling of many NGOs that outreach efforts, particularly in the field, have not proven sufficient to date. As a result, there seems to be a lack of understanding, engagement and support from many local communities affected by conflict.³ It appears there may be a number of reasons for this, including the lack of an integrated outreach strategy; the apparent confusion between who would be conducting

¹ For the purpose of this paper, "communications" or "public information" refers to information to governments, media and the public at large; "outreach" relates to targeted information for and interaction with victims and local communities impacted by the ICC's work; and "external relations" deals with improving relationships between the Court and other actors, such as States Parties, non-States Parties, NGOs and others.

² For example, the 2005 Budget para. 79 which describes 'outreach' by the Registry lacks any clarification on targets or strategies, and demonstrates a disproportionate focus on 'Hague-based activities'. In this regard, the Committee on Budget and Finance reiterated that a strategy should be in place and presented to the CBF at their next session. A communication strategy is referred to in the Budget (para. 468 and 473) and some NGOs have underlined the urgency for such a strategy to be finalised.

³ As a result of the very few outreach activities carried out by the Court in the areas where the ICC is investigating, it appears that victims and witnesses have a limited knowledge of the role of the ICC and their rights under the Rome Statute. In Uganda, for example, there is a broad lack of understanding about the ICC, which has almost certainly contributed to public statements expressing reservations regarding the ICC's jurisdiction in that country. In the DRC, not enough outreach has been undertaken to enable the population to understand fully what the ICC is and why it is there, nor to engage the population in the work of the ICC, especially in Eastern Congo where no outreach activities have been carried out.

outreach, whether it should be the Registry or the OTP; and concerns over timing, with the OTP preferring to keep a “low profile” for security and other reasons. In addition, insufficient resources and staff, as well as the late establishment of field offices has no doubt contributed to the lack of outreach having been done in countries where the OTP is currently undertaking investigations.

Public information and outreach is an area that requires significant work to be done by the Registry, which retains primary responsibility for ensuring communities affected by the conflict understand the nature and operations of the Court and are able to participate in its work. While the OTP has some communications functions, including providing specific information about investigations and prosecutorial strategy, outreach and public information is about engaging affected populations in the work of the Court and providing more general information, which is best done by a “neutral” organ of the Court, namely the Registry. In addition, although the Registry should identify and work with local actors and others, so as to maximise local community involvement and minimise potential cultural and language barriers, it should be remembered that the Registry bears primary responsibility for implementing their outreach strategy, also because NGOs or other possible partners may not share the Court’s views or there may be security or independence concerns.

Some communications efforts are not necessarily expensive (although it does take time and effort to craft the appropriate messages for various target groups in the right languages). For example, radio broadcasts and local theatre productions can have limited budgetary implications with major impact. Nevertheless, such efforts must be sustained within a broader, diverse communications strategy encompassing a range of approaches suited to different target groups and for different purposes.

The 2006 budget should benefit from the lessons learnt to date, in particular by reflecting the core nature of the ICC’s communications work and by providing sufficient budgetary resources to enable that work to be carried out effectively.

The Communications Team recommends that:

- The Public Information and Documentation Section should be headed by staff at the same level as other heads of divisions, to reflect the fact that outreach and communications are a crucial aspect of the Court’s work.
- In light of the anticipated high demand for accurate and targeted information from the Court in 2006, when there will be at least 3 situations requiring sustained field-based outreach efforts, the budget should reflect the appropriate increase in both staff (particularly field staff) and non-staff costs.
- To address the increased workload in public information and outreach related to situations and cases before the Court there should be a sufficient number of communications staff, particularly field-based and local personnel, to carry out these essential services, including experts in audio-visual communications, press and public relations personnel, trainers and others.
- There needs to be sufficient budgetary allocations for the preparation of materials for outreach, especially in local languages, such as: Simplified Rome Statute,

Manual on proceedings, Rights of the accused, Information for victims, Summaries of trials (audio and video) and Tour of the ICC (video).

- Adequate resources should be provided for training, particularly of members of civil society who lead public opinion, including journalists, religious and traditional leaders, human rights activists and others.
- Considering the limited staff resources allocated to the Library and Documentation Centre, resources should be made available to enable the library to continue building a sufficiently well equipped resource centre that can also provide sufficient assistance to legal staff when cases have started. Providing sufficient library services will be cost-efficient as it will save expensive time of the legal staff of the Judiciary, the OTP and counsel.
- The work undertaken in relation to the website should be acknowledged and support should be provided for the continued improvement of web resources, in particular to produce an Arabic version of the website, considering the need for clear, easily-accessible and timely web-based information for the general public and journalists.

3. INVESTIGATIONS

With three ongoing investigations and a growing number of situations referred to the Court, there is a need to increase substantially the resources of the Office of the Prosecutor in general, and, particularly at this stage, of the Investigations division.

We acknowledge the importance of Office of The Prosecutor's efforts to collect as much information as possible from external resources and to enhance cooperation with the office as a means to increase efficiency. However, the large scale commission of crimes in all three situations, is reason to review the current size of the investigations teams which should be able to investigate the broad range of crimes in each situation in order to demonstrate that, even if the Court issued focused indictments, it has looked at the situation comprehensively with a view to bringing those who bear the greatest responsibility to justice. This is necessary to ensure the real and perceived independence of the Office of the Prosecutor and the credibility of the investigations.

In relation to the existing investigations, we also consider that the complexity of the situations under investigations require larger teams of investigators and an increased field presence. This would ensure more comprehensive and efficient investigations, especially in situations where the local authorities are unwilling to cooperate with the Court. Indeed, the small team approach may have produced good results in Uganda because the authorities were willing to fully cooperate with the Court, but this will probably not be the case in Sudan, for example.

Finally, larger teams would provide a safeguard against the potential for investigators to get "burnt out" by having a frantic rotational system between their time in the field and their time at headquarters.

The organization of the teams is also an issue that should be reviewed. The 2005 draft budget included only one field interpreter per team of investigator. This seems to derive

from an assumption that the team will always operate together in the field, which can be far from reality. It seems essential that investigators, where needed, be assigned more field interpreters each while in the field, so that if necessary they can function in smaller teams. Moreover, to ensure the highest quality of investigation, the teams should include more experienced senior P-3 investigators.

Training of all members of investigation teams is essential, in particular, in dealing with victims. While some training has taken place with the first investigation teams, it is important that a comprehensive program is established that is mandatory for all team members to attend before they have any contact with victims.

Finally, we also fear that the “needs base” recruitment policy of the Court might hinder the OTP in responding rapidly to new situations, as experience shows that it takes the Court a few months at a minimum to recruit qualified investigators and analysts.

The Team recommends that:

- The Court request resources to increase the size of each investigation team so that the number of investigators is at least doubled and support staff be added as appropriate;
- The Court include in its budget more experienced senior investigators for each of the teams;
- The Court includes greater resources for interpretation for investigation teams,;
- The budget provides for comprehensive training of investigators, in particular on dealing with victims, including, traumatized victims, victims of sexual violence and child victims. Other training should include measures to ensure the security of the local population and investigators, confidentiality and identifying and responding to trauma experienced by investigators.
- The Court includes resources for establishing a register of qualified investigators, including their particular expertise, who the Office of the Prosecutor can, subject to their availability, hire on short-term contracts pending full recruitment of the investigation posts;
- The Court include in its budget field based posts of investigators;
- The Court includes resources to increase the staffing of the three units forming the Investigations Planning and Support Section, particularly the Gender and Children’s Unit to cover all investigations, in close cooperation with the Victims and Witnesses Unit.

4. VICTIMS PARTICIPATION AND REPARATIONS

The Rome Statute constitutes a major advance for victims, as it enables them to participate in ICC proceedings and to apply for reparations. It is crucial that these rights are capable of being enforced in practice, and that the Victims Participation and Reparations Section be granted the means to achieve its mandate under the Rome Statute.

Legal Representation

The Court will have to deal, in each of the situations coming before the Court with a potentially large number of victims or groups of victims wishing to exercise their right to participate in the proceedings. It is therefore advisable that adequate resources are allocated to the organization of efficient and effective participation, in particular, to ensure that victims and their interlocutors are well informed of the process and that the VPRS has the capacity to process applications from a diversity of victims. The failure to set aside adequate resources for this purpose may ultimately lead to higher overall costs for the Court in that more time may need to be spent to follow up faulty or incomplete applications. It may also be in contradiction with the mandate of the ICC and generate more frustrations among the victims and create divisions in parts of the society.

Additionally, teams of counsel representing victims would need to include persons who are familiar with the local context and able to speak the languages of the victims. Consequently, it is important that the provisions regarding counsel teams allow for the involvement of local counterparts and that sufficient funding is set aside for this purpose.

We are concerned by the lack of clarity regarding funding for legal representatives for victims, and the fact that the 2005 draft budget does not set out clearly what expenses victims' legal representatives may incur under the legal aid regime. It would seem that the budget should set out in more detail these provisions, and allow more clearly for the Registry to cover, *inter alia*, the expenses of legal representatives, irrespective of whether fees are covered by the Court. Although the cost of conducting investigative missions was taken into account in the 2005 draft budget, it is not clear whether the Court would cover other expenses that may become necessary in the pursuit of efficient legal representation.

Whichever way the responsibilities are divided within the Registry for ensuring adequate legal representation for victims, and irrespective of whether the mandate of the Office of Public Counsel for Victims is envisaged to include full legal representation, there are budgetary items that would need to be included in 2006.

The Team recommends that:

- Adequate and effective legal aid, as provided to defense counsel, should also be made available for counsel for victims
- The Court request resources to hire a sufficient number of staff to process victims' applications for participation and reparation.
- Sufficient financial resources to cover travel and other logistical expenses to facilitate contact between the counsel team and diverse groups of victims should be set out more clearly in the budget.
- The Court includes, in the budget, posts for the Office of Public Counsel for Victims to be based in field offices to ensure that the Registry fulfills its obligation to ensure a veritable representation of victims.
- The Court includes, in the budget, funds to take into account the critical role of local liaisons, trusted by the local community, who would be indispensable in realizing in practice the obligations under the Statute of outreach and notification

to victims, inter alia, to liaise directly with victim groups to keep them informed of the process and consult them on strategies, as well as seek further evidential information from victims and comply with confidentiality requirements.

- The Court includes, in the budget, funds to take into account the role of local partners in helping victims to understand, fill and send back to the ICC the application forms for participation and reparation, by reimbursing some of their expenses, as this assistance should normally be provided by the Court.
- Adequate resources are set aside in the budget to provide outreach and training to lawyers in the areas of situations dealt with by the Court.

Outreach to victims

The Team is concerned that there was little allocation in the 2005 budget for outreach to victims on participation and reparations and to assist them in the application process. While the ICC should try to engage national NGOs and civil society in these tasks, it still retains the primary responsibility to undertake these tasks and consequently its entire strategy cannot be dependent upon such cooperation. It is important to further note that procedures to participate to the Court's proceedings and the forms to that effect contain complex legal issues that must be sufficiently well explained in order not create unrealistic expectations. Thus, the ICC should assume responsibility in the field for engaging with victims and informing them of their right to participate.

The Team recommends that:

- The Court add field based professional staff to the VPRS to accomplish the Section's core tasks and to carry out relevant outreach activities on a full time basis. The permanent presence of key personnel cannot be substituted by periodic visits from The Hague.

Trust Fund for Victims

The draft budget takes into account the recommendations of the Working Group on the Programme Budget 2005 of the ASP. Indeed, the budget for the Secretariat of the Board of Directors of the Victims Trust Fund does not exceed 470 000 euros. Accordingly, the staff has been reduced in comparison to the budget proposed by the Board. Moreover, the provisions for travel have been reduced from 97 200 euros to 70 000 euros as some States Parties had expressed concerns on the issue of field travel.

We strongly support the establishment of an effective Trust Fund secretariat. At least until the resources of the Trust Fund are significant, the administration of the Trust Fund Secretariat (currently within the Registry) and the work of the Board of Directors should be specifically provided for in the budget of the Court. We believe that to allow the Trust Fund to start working effectively and to start collecting funds to fulfil its mandate, there is an urgent need for more resources to be allocated to its secretariat

Moreover, although ASP Resolution 6 on the Establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and the families of such victims provides that the Assembly may consider appointing an Executive Director for the fund

"as the workload of the Trust Fund increases," it is important that the post is established in 2006 to ensure that the Trust Fund is managed effectively on a day to day basis in accordance with the decisions of the Board of Directors.

In particular, as a result of the decision that the Trust Fund Secretariat is independent of the Court, the Court will not be in position to provide this level of management to the fund. The Board of Directors will not be able to provide the day-to-day management necessary for the effective operation of the Trust Fund Secretariat. It is important the independent Trust Fund Secretariat has its own Executive Director in 2006 to ensure that from the beginning there is a clear strategy on fundraising, on implementing the regulations of the Trust Fund when they are adopted and other to work with and report of the Board of Directors on all aspects of the Trust Fund's work.

The Team recommends that:

- An Executive Director for the Trust Fund Secretariat is included in the 2006 budget.
- The Court include at a bare minimum in its budget the resources for the following: one fundraiser (to build on relationships with donors, and develop the necessary programs and campaigns to optimize revenues and allocated resources indispensable to fulfil the TFV mandate), one legal officer (to facilitate the activities and programmes of the Trust Fund for Victims, produce material, including research and report for the Board, providing also the necessary support for contact between the Board and victims and/or legal representation of victims) and one administrative assistant (to provide administrative and secretarial support functions to the Secretariat).
- The Court also budgets for additional staff members (such as one financial management specialist, one computer information system specialist as required by the Board of Directors), whose competence and knowledge will support the day-to-day operations of the Board of Directors and would enable the Trust Fund to increase and effectively achieve its mandate for victims and their families.
- The Court include in its budget adequate resources to cover the travel costs for the Board of Directors and for the Fundraiser, attached to their functions. As requested by the Board of Directors to the ASP, funds should be set aside to facilitate the annual meeting in The Hague of the Board of Directors, but also visits in the field to facilitate communications with victims groups in affected communities. Special provision should be made for travel to facilitate fundraising activities.
- The Court should include adequate resources for contractual services that may be required hiring for specific purposes. The Trust fund needs adequate resources to implement its mandate including, translation and interpretation, security and auditing, in a transparent manner.

5. VICTIMS AND WITNESSES UNIT

Protection of victims and witnesses is a crucial and indispensable task of the Court and must therefore be one of the Court's highest priorities. The Court has the duty to minimize as much as possible further harm and trauma for victims and witnesses who will be involved with the work of the ICC. Failure to ensure effective protection and support to victims, as well as training to the Court staff, as required by the Statute and Rules of Procedure and Evidence could seriously undermine the credibility of the ICC and threaten its ability to function, particularly if victims are too fearful to cooperate with ICC investigations and prosecutions. It is important to recognize not only the importance of the functions of the VWU, but also that the protection and support that it must provide to victims and witnesses cannot be limited to office hours. It will require resources to provide its services 24 hours a day, 7 days a week.

The system proposed in the 2005 budget for providing protection and support to victims and witnesses was not adequate on the basis that it proposed remote coordination and supervision of field activities of locally recruited staff by professional staff located in The Hague. During this process, the Budget and Finance Team called for professional staff to be located both in The Hague and in the field conducting their activities from the ICC field office.

Our local contacts in situations under investigation have expressed concerns over the apparent lack of concrete measures being taken to protect people in contact with the Court and have reported that threats have been made against certain people already.

The Budget and Finance Team believes that the VWU needs to have fully operational teams in the field for each situation, who can provide on-going services to victims and witnesses and be ready to take protection and support measures promptly and effectively if required. Given the difference in the required expertise for protection and support functions, and the extremel unlikelyhood that one person could perform both functions, it is essentially that for each situation there is at least one international professional protection officer and one international professional support officer located in the field to work with locally recruited staff. Furthermore, an international presence will enhance the public's perception of independence of the Court and will "secure" the work of the protection team, which will deal with very sensitive issues.

In addition, it is of equal importance that further protection and support officers are located in The Hague to provide protection and assistance to victims who travel to the Hague to appear before the Court (as will likely be the case in 2006), to organize and monitor the relocation of victims when required and to provide support services to them (this cannot be done from the field office), to assist the work of field staff where required (it is important in the context of the current situations under investigation that the VWU staff in The Hague have the capacity to provide full support to field staff and to be able to react immediately to situations where a number of victims are at risk. As similar system has been adopted by the ICTY.

It is also of crucial importance that structures be established to provide adequate protection to victims and witnesses. To be able to achieve its mandate, the VWU needs to be granted the resources to, if need be, relocate nationally or internationally witnesses who are at risk. Similarly, safe houses need to be set up in the field and The Hague to ensure that victims are witnesses at risk can receive immediate protection.

Finally, Rule 17 (2)(iv), provides that the VWU will make available to the Court and the parties “training in issues of trauma, sexual violence, security and confidentiality.” However, in 2005, only €30,000 was provided for this task which has restricted its ability to perform these tasks. At a time when new staff are joining the Court on a regular basis and when field offices are being established, it is essential that more resources are made available to VWU in 2006 to provide a comprehensive training program to all persons who may come into contact with victims and witnesses.

The Team recommends that:

- For each situation, at least two professional international staff (one protection officer and one support officer) are located in the field full-time to oversee field operations and supervise and support at least eight protection and support assistants who may be locally recruited staff;
- For each situation, at least two professional staff (one protection officer and one support officer) and an adequate number of protection and support assistants are located in the Hague to provide protection and assistance to victims who travel to the Hague to appear before the Court, to organize and monitor the relocation of victims when required and provide support services to them and to assist the work of field staff where required;
- The Court include in its budget sufficient resources to be able to provide all necessary support and protection services, including national and international relocation, to witnesses and victims at risk;
- The Court include in its budget resources to establish and run safe houses in each of the situations under investigations and in the Hague;
- The Court request sufficient resources to ensure adequate medical and psychological support to victims and witnesses before, during and after the trial;
- The Court include in its budget sufficient resources for training of staff, as required by the Rules of Procedure and Evidence, so they can reach and maintain the highest professional standards in the field of victims and witnesses protection.

6. DEFENSE ISSUES

The International Criminal Court has been more successful than could reasonably have been anticipated in attracting referrals. Three State Parties, Uganda, the Democratic Republic of the Congo and the Central African Republic have referred their own situations to the Court. The United Nations Security Council has referred the situation in Darfur, the Sudan, to the Court. Finally, a non-State Party, the Ivory Coast, has submitted to the jurisdiction of the Court. Three of these situations, Uganda, the DRC, and the Sudan, have already resulted in the opening of investigations by the Prosecutor. In at least one situation, the DRC, the Pre-Trial Chamber has already ordered the appointment of Counsel to protect the interests of the Defense under ICC Statute article 56.

For this reason alone, it is very likely that the Assembly of States Parties will need to appropriate a significantly greater amount for indigent defense services than would have been foreseen several months ago.

Additionally, it appears that the proposed legal aid system will provide for funding for legal teams at a level of 60% of the level at which legal teams are funded in the ad hoc Tribunals. This is simply unacceptable if a credible defense system is to be created in a court that will operate worldwide. Indeed, the level of funding in the ad hoc Tribunals has proven insufficient in the most complex cases, because of the flat maximum limitations, which should not be imposed in the ICC.

The services to be funded for defense in the Court do not include merely the fees and expenses for Defense Counsel, as important as they are. In addition to Defense Counsel's fees and expenses, a certain number of expenses will need to be funded.

The structures through which direct representation of clients is funded through legal aid by the ASP must provide for defense independence. In discussing the role of counsel in the ICC system—and, indeed, national systems—“independence” has at least two meanings. The first meaning is the professional independence of counsel to represent a client to the best of his or her ability, in strict confidence and free of influence, except for the lawful goals and desires of the client. That is the “assistance of counsel” to which all clients are entitled—and represents the ultimate goal of the legal aid system. The second meaning is the independence of legal aid institutions and the Bar in providing competent and independent counsel to those entitled to it.

The way to ensure independence is to place governance of the legal aid system in the hands of an independent Legal Aid Commission or similar system, as described by participants from Australia at the 23-24 May 2005 Seminar on Counsel Issues organized by the ICC Registrar. This structure, while it may be formally placed within the Registry, must be guaranteed independence similar to that guaranteed to the Offices of Public Counsel through Regulations of the Court 77 and 81. Staff who operates the legal aid system under the authority of the Commissioners would be protected in their independence by a similar regulation.

This can be done while at the same time providing for fiscal responsibility and oversight. The finances of the legal aid system must be subject to the audit procedures required by the ICC Statute, with appropriate protections for the confidentiality of defense information. The Legal Aid Commissioners, drawn from those with the greatest experience in defending complex cases and managing legal aid systems, will be in the best position to establish a specific payment system to avoid the problems created by maximum flat fee systems. It is recommended that they be given the flexibility to do so, subject of course to the budgetary limits imposed by the ASP appropriations and to the fiscal oversight rules.

The Team on Legal Representation recommends that:

- The Court include in its budget the resources needed to fund investigative services, using both international-standard investigators and local investigators with special knowledge of situations and localities involved;

- The Court include in its budget the resources needed to set up a continuing defence presence in the field, perhaps through the Office of Public Counsel for the Defence, to support the work of the counsel and of the investigators to enable efficiencies for joint servicing of common needs;
- The Court include in its budget the resources needed for counsel to hire experts to do field examination, testing in or out of the field, review of prosecution materials requiring expert evaluation, and to testify at trial or pre-trial proceedings.
- The Court request adequate funding for the Office of Public Counsel (which, by providing research and other materials to defence counsel representing a client for the first time in the ICC, may make the overall cost of the defence much less). Because of the importance of this office, it should be headed by a D-level director, with a P-5 assistant director, who can share both the administrative burden and the most difficult substantive legal work with the director.
- The Court request that the funding of the direct representation of clients through legal aid be done in a manner that insures the independence and confidentiality of the client-counsel relationship, through a mechanism such as the Legal Aid Commissioner system described above, and whose commissioners and staff are guaranteed independence similar to that guaranteed to the Offices of Public Counsel through Regulations of the Court 77 and 81.
- The Court include in its budget the resources needed to ensure adequate pre-accusation representation as allowed in the ICC Statute, arts. 55 & 56 (some of which may be provided through the Office of Public Counsel for the Defence).

7. PREMISES OF THE ICC AND THE ASSEMBLY OF STATES PARTIES

The Team on ICC Premises notes that the process of developing the plans and expectations for the permanent premises of the Court is fundamental to the future functioning and credibility of the International Criminal Court. The Team also notes that the Host Country as well as the Committee on Budget and Finance (subject to a detailed cost analysis) have indicated their agreement with the Court that the construction of new, purpose-built permanent headquarters at the Alexanderkazerne would be the best housing option of the three that has been made available by the Host Country, to meet the needs of the Court in a long term perspective.

The Team hopes that any decision by the Assembly of the State Parties (during the fourth ASP session in November-December, 2005) with regards to the location and financing of the future permanent premises of the Court, will allow for completion of a new purpose built ICC headquarters by 2012. To achieve that, the important, but limited, consultation process on premises during the 2003-5 period needs to be significantly expanded, to include broader expertise and to achieve greater transparency and inclusiveness.

The Team recognises that the work load of the Court is already substantial with several ongoing, highly complex, investigations and preliminary examinations and that this heavy work load on the Court is expected to increase shortly. Given the high level of work for the Court to handle, and the forecasted increase of this work volume, the

Court needs to make sure that the estimated basic assumptions for maximum scalability and the number of staff members, as well as work stations, are realistic. The Team will continue to underline that maximum scalability is essential to ensure that the Court is able to fulfil its permanent mandate effectively and flexibly. Moreover, the Team recognises that these numbers needs to reflect the amount of permanent as well as temporary staff members, working in headquarters and in field, and should be re-evaluated on a regular basis to assure the highest possible level of accuracy.

The ICC headquarters represent a tangible symbol of the human aspiration to put an end to the impunity for the perpetrators of genocide, crimes against humanity and war crimes and to prevent such crimes from being committed. The permanent premises of the ICC must fulfil this unique mandate with which the Court has been entrusted by the Rome Statute and its Member States in order to meet this aspiration. Thus, the CICC Premises Team will remind the delegations attending the Assembly of the States Parties, 2005, and all concerned parties that there is a profound added value in the planning and financing of the permanent premises of the Court.

The CICC Premises Team recommends:

- That resources for, both interim and permanent, premises are considered to ensure a satisfactory working environment for all participants in the ICC proceedings (including victims and their legal representatives as well as states), and observers (including representatives of NGOs, the media, experts and the public), closely monitoring developments at the Court. This includes easy access to the Court premises and the Court rooms as well as working space (especially media and NGOs) and necessary equipment within the Court headquarters.
- That the design of the premises, counting the Court-rooms, be aimed at enabling all participants in the ICC proceedings (including victims and their legal representatives) to perform their functions in full independence and to exercise their rights without being unduly constrained by limitations of space and facilities/resources.
- That budgetary and strategic decision takes into account the possibility of Court activities, including hearings, in premises outside of the ICC headquarters, in accordance with article 3 of the Rome Statute. Such proceedings will require a rapid deployment of ICC personnel and infrastructures in the field and a secure methodology of communication and support from headquarters to the field-location⁴.
- The specifications for housing of the Secretariat of the Assembly will be included in the planning of the requirements of the permanent premises.

⁴ It must be noted that proceedings in loco are provided for in the Ugandan ICC Implementation Bill, currently under consideration by the Parliament of Uganda, which approved it in first reading in October 2004.

- That the Court includes the needs of the Assembly of States Parties, the Bureau, the Committee on Budget and Finance, and other subsidiary bodies of the Court, in terms of meeting space, etc., in the specifications of the permanent premises.

The ASP subsidiary Working Group in The Hague is assisting the Bureau on issues related to the permanent premises among other important issues. While the Team welcomes the establishment of this Working Group and recognise its importance, the Team notes that the Group has no resources at its disposal. The work on the premises will be a long-term project involving highly technical and financial issues, the decisions on which will have long-term financial impacts.

The CICC Premises Team recommends:

- That the Secretariat of the Assembly seeks the necessary resources to contract resource persons to support the Assembly, the Bureau, and the Hague Working Group, with regards to Host Country and Court Premises issues.
- That the ASP considers establishing an expert subsidiary committee of the Assembly on Host Country and Premises issues and that this committee will be provided with necessary resources for its operation.

8. THE ASP AND ASP SECRETARIAT

States Parties and the Assembly of States Parties (ASP) have tremendous responsibilities vis-à-vis the ICC, most notably in overseeing and supporting its establishment and functioning. It is important that they have adequate resources to fulfill these tasks in the most effective manner. In drafting the ASP budget for 2006, the ASP Secretariat should provide resources for the ASP President and Bureau, for ASP working groups and Bureau subsidiary working groups as well as for longer ASP sessions.

Resources for the ASP President and Bureau

Since its establishment, the ASP has been meeting once a year for a short one-week session, and has relied heavily on its leadership mechanism -the President and the Bureau of the ASP- to make decisions throughout the year. The President and the Bureau must be able to function effectively and must be supported in their crucial role.

The Team recommends that:

- The 2006 budget provides for additional staff support to the ASP President and the Bureau. The support staff could be part of the ICC Liaison office in New York (if the ASP decides to create it) or arranged otherwise (i.e., a staff person located in the mission of the ASP President, or resources to allow ASP Secretariat staff to travel to New York, etc).
- The 2006 budget provides for travel resources for the ASP President to go to The Hague at least once a year in between ASP sessions.

- The 2006 budget should also provide for travel resources for Bureau members to attend the ASP session, if their government cannot pay for them. It is important for the good functioning of the ASP that Bureau members who discuss ICC and ASP issues all year round also participate in ASP sessions. An option could be to facilitate access of Bureau members to the trust funds created to cover participation of some countries in ASP sessions. This budget provision would only concern a very limited number of people.

We understand that in the future, the ASP Bureau and President may be located in The Hague, which would eliminate the need for such budget provisions.

Providing for longer ASP sessions

ASP sessions must be longer than one week to allow for proper time for consideration of issues and decisions. Indeed, due to lack of time, a number of decisions had to be postponed at the third session of the ASP in 2004, with a negative impact on the work of the Court.

The Team recommends that:

- The 2006 budget provides costing options for 7 days and 10 days of meetings spread across 1 or 2 sessions (i.e. one 6 days session, or one 10 days session or 2 sessions of 5 days each)
- The 2006 budget provides costing options for holding the ASP session in The Hague and New York. This will allow delegates to make an informed decision when discussing the location of the 2006 ASP session.

Resources for working groups during the ASP

During ASP sessions, working groups are established to discuss a number of issues. For instance, during the 2004 ASP session, working groups discussed the ICC budget, the procedure for election of judges, the Crime of Aggression, the Trust Fund for Victims, etc.

As these working groups make important decisions, it is important that their meetings be as inclusive as possible.

The Team recommends that:

- The 2006 budget provides for interpretation for at least one additional room during the ASP session. Indeed, during the 2004 session, many concurrent informal meetings were taking place, all conducted in English, which hindered the participation of a number of delegations in the decision-making process.
- The 2006 budget provides for travel resources for delegates who may serve as working group coordinators during the session, if their government cannot pay for them. Indeed, last year, some governments did not have the financial resources to send their delegate based in New York to The Hague and decided that their delegation would 'only' include their capital-based and Hague-based delegates.

This situation could happen again in the future, with Hague-based or New York-based representatives not being able to attend the session (depending on where it takes place). It is important that delegates who could use their experience and expertise to coordinate a working group during the ASP session be able to attend. Again, this budget provision would concern only a very limited number of people.

Resources for the ASP subsidiary working groups

In 2004, the ASP decided to set up a number of subsidiary working groups to address several important functional and operational issues during the inter-sessional period leading up to November 2005. While the working groups are not oversight bodies, they provide a useful forum for governments to discuss these issues, as delegations do not have the time to consider them properly during the short ASP session. It can be expected that the mandate of some working groups will end in 2005 with a decision of the ASP on a particular issue (i.e. Draft Code of Conduct, Draft Regulations for the Trust Fund for Victims), while others will be needed for several years and multiple ASP sessions (i.e. Premises).

These working groups require support and must be as inclusive as possible.

The Team recommends that:

- The 2006 budget provides resources for the working groups to use independent experts, bring them to meetings, etc. This may be particularly necessary for the working group on premises.
- The 2006 budget provides resources for interpretation when discussions are particularly technical.

The 2004 ASP session was in a new location, which introduced a new dynamic. For the ASP to be smooth and efficient, it is important that all delegates, no matter where they are based, know about the work of others and be coordinated, preferably in advance of the ASP.

The Team recommends that:

- The 2006 budget provides travel resources for the coordinators and facilitators to travel between New York and The Hague in order to brief other delegates about the discussions of each working group.