

**The Budget and Finance Team of the  
Coalition for the International Criminal Court (CICC)**

**Submission to the Ninth Session of the Committee on Budget and  
Finance on 10-18 September 2007**

**Comments on the Proposed Programme Budget for 2008 of the  
International Criminal Court  
7 September 2007**

**PREFACE**

*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. Since the Rome Diplomatic Conference, CICC members have organized themselves into teams, one to follow each working group or theme of the intergovernmental process. CICC 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 CICC members are welcome to join any teams and all CICC members are regularly apprised of the work of the teams.*

## **I. General comments**

1. On 25 July 2007, the International Criminal Court (Court) issued its Proposed Programme Budget for 2008 of the International Criminal Court (proposed Budget).<sup>1</sup> As in previous years, the Budget and Finance Team of the CICC (Team) has analysed the proposed Budget and this paper sets out the Teams views on a number of aspects, which it is hoped will be useful to the Committee on Budget and Finance (Committee) and states parties.

2. Following an initial exchange of views at the fifth session of the Assembly of States Parties (Assembly),<sup>2</sup> a process of reviewing the preparation and presentation of the budget document has taken place. In the report of its eighth session, the Committee reported that agreement had been reached with the Court to implement a number of changes to improve the budget document for 2008.<sup>3</sup> These measures are largely incorporated into the proposed Budget document. In particular, the extended introduction provides useful contextual information about the work of the Court and its plans for the following year. The introduction of workload indicators gives important indications of how the Court anticipates its work will increase in the next year. The development of more focused performance indicators is another important development, although in many cases these could be further developed, in particular, in numerous places where the Court states it is unable to develop targets to assess performance.

3. Despite these improvements, the Team believes that the proposed Budget document can be improved further. In particular, the proposed Budget document in some sections remains primarily “new resource” focused. In order to explain more clearly to states parties why new resources are required, it is important that succinct information is provided justifying the full budget request, including how new resources will further enhance the future work of the Court.

4. The Team takes no position on the overall budget of the Court. It does, however, recognize the challenge faced by the Court in its first years to provide an accurate baseline for its budget for the next year as underspending has occurred each year. Importantly, as set out in the Committee’s last report, the Court has agreed to “present an addendum to the proposed Budget comparing the proposed budget for 2008 with a forecast for current year (2007) actuals, based on expenditure up to the end of August.”<sup>4</sup> The addendum will no doubt be a very useful document that will greatly facilitate the work of the Committee in reviewing the baseline reflected in the 2008 proposed Budget document. The Team urges the Court to ensure that this important document is made public as soon as possible in advance of the Committee’s meeting on 10 to 18 September.

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<sup>1</sup> Proposed Programme Budget for 2008 of the International Criminal Court, ICC-ASP/6/8, 25 July 2007.

<sup>2</sup> See: Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November-1 December 2006, Official Records, Part II (External audit, internal audit, programme budget for 2007 and related documents (2006 Assembly budget discussion), p.12-13 at paras. 4-9.

<sup>3</sup> See: Report of the Committee on Budget and Finance in the work of its eighth session, ICC-ASP/6/2, 29 May 2007, para. 26.

<sup>4</sup> Id.

## II. Specific comments

5. The following comments relate to specific aspects of the proposed Budget document.

### *Victims and Witnesses Unit.*

6. The level of resources available to the Victims and Witnesses Unit remains a serious concern for the Team. While the introduction of the proposed Budget document highlights that the function “is becoming continuously more complex” and that there has been a “dramatic increase in the number of witnesses requiring protection”<sup>5</sup> the Team is concerned that the only additional staff resources requested relate to the new investigation in the Central African Republic and the first trial. The Team notes the importance of these new staff and other resources, including additional operational travel and travel to negotiate relocation agreements. However, the Team reiterates its concern about the on-going provision of minimal resources to perform “one of the Court’s first priorities.”<sup>6</sup>

7. The Team, therefore, urges the Committee:

- to support the increased resources for the Victims and Witnesses Unit.

### *Outreach.*

8. Last year, following the Assembly’s recommendations for the Court to intensify its outreach activities and the Committee’s call for it to improve strategic planning, the Court produced its first Strategic Plan for Outreach at the International Criminal Court (Strategic Plan for Outreach).<sup>7</sup> The important process of preparing the Strategic Plan for Outreach enabled the Court to conceptualise its outreach and communications policies and to elaborate specific activities adapted to the needs in each of the situations under investigation.

9. In order to implement the Strategic Plan for Outreach, the Court requested significantly increased resources in the proposed Budget for 2007. Recognizing the urgent need for the Court to become more visible in the situations under investigation, the Team advocated strongly for the Assembly to support the investment and adopt the full budget requested by the Court. The Team welcomed the important discussion at the fifth session of the Assembly on this issue and the Assembly’s decision to provide all the funds requested by the Court for 2007.

### *Progress in 2007*

10. The Assembly’s investment has led to important progress in the outreach work of the Court during 2007, particularly in Uganda and the Democratic Republic of Congo. Acknowledging the importance of reaching out directly to the affected communities, the Court’s Public Information and Documentation Section (PIDS) has been developing and implementing outreach campaigns in consultation with local partners. In addition, PIDS

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<sup>5</sup> Proposed Programme Budget for 2008 of the International Criminal Court, ICC-ASP/6/8, 25 July 2007, para. 41-42.

<sup>6</sup> Id.

<sup>7</sup> [http://www.icc-cpi.int/library/cases/ICC-PIDS-WB-OR-03-07-070402\\_IS\\_En.pdf](http://www.icc-cpi.int/library/cases/ICC-PIDS-WB-OR-03-07-070402_IS_En.pdf)

has increased its efforts to provide public information on its outreach activities, through a new page on the Court's website,<sup>8</sup> press releases,<sup>9</sup> inclusion of information in the Court's newsletter,<sup>10</sup> and briefings to the diplomatic community.

#### *2008 proposed Budget and recommendations*

11. For 2008, the Court has requested a net increase of €152,300 for the Public Information and Documentation Section,<sup>11</sup> which includes the cost for creating two P2 Field Outreach Coordinators to work on the Darfur and Central African Republic situations.<sup>12</sup> The Team notes that, as demonstrated through the experience in other situations, the positions of Field Outreach Coordinators are very important for the effective conception, planning and implementation of outreach activities in the field.

12. Last year, the security situation in Darfur meant that the level of outreach which could be organised was unclear and smaller resources were requested for that situation. The Team welcomes indications in the proposed Budget that the Court believes more can be done to communicate its work to communities affected by the crimes in Darfur and encourages the Committee and the Assembly to support this increased budget request. Furthermore, it is essential that resources are allocated to the new investigation in Central African Republic so that activities are commenced as soon as possible, to avoid repeating problems which arose from delayed outreach activities in other situations.

13. The Team notes that states parties indicated at the fifth session of the Assembly that they want to keep the development of the Court's outreach work and its impact under regular review. In this regard, the Team believes that the section on outreach in the proposed Budget document could have been clearer and provided more contextual information. Recognizing that maintaining a constructive dialogue between the Committee, the Court and the Assembly on the need to make the Court's work meaningful to affected communities is crucial to the Court's success, the Team encourages the Court to supplement its budget request with additional information and presentations detailing its work, achievements and plans to the Assembly at its upcoming session.

14. The Team, therefore, urges the Committee:

- To support the Court's request for increased resources to cover the cost of Field Outreach Coordinator's position in Darfur and the Central African Republic.
- To provide guidance, as appropriate, on the kind of information the Court could usefully provide to the Assembly, so that that states parties receive adequate information to ensure their continued support and investment in outreach. The Team also encourages further dialogue on the performance indicators.

#### ***Legal Aid.***

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<sup>8</sup> <http://www.icc-cpi.int/outreach.html>

<sup>9</sup> For example, for Uganda: [http://www.icc-cpi.int/outreach/o\\_uganda/ou\\_pr.html](http://www.icc-cpi.int/outreach/o_uganda/ou_pr.html)

<sup>10</sup> <http://www.icc-cpi.int/library/about/newsletter/index.html>

<sup>11</sup> ICC budget proposal 2008, p. 109, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-8\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-8_English.pdf).

<sup>12</sup> The two P2 Field outreach coordinators amount to €155,000

15. The Legal Representation Team submitted to the Committee at its last session in April 2007 a paper setting out comments and concerns on the Court's proposed revision of the Legal Aid Scheme. The Team appreciated the Committee's interest in this paper during the presentation at its session. However, the Team was disappointed that the Committee did not take into account a number of its recommendations and that it endorsed the Court's proposed changes as they were.

16. The Team remains concerned about a number of aspects of the legal aid system, which it will continue to raise with the Court and the Committee. In particular:

17. Adjustments regarding the Defence:

- The Team considers that a P4 Counsel should be part of the core Team from the very initial stages of the pre-trial proceedings on and not only when a decision had been taken relating to the confirmation of charges.
- A more detailed analysis of the proposed new system of "modular resources" should be provided by the Court.
- The Legal Aid Commission should be consulted on the Court's proposal, in particular on the new system of "modular resources".

18. Adjustments regarding victims:

- The establishment of a more complete system for legal aid at the *pre-trial stage* is required.
- Clearer guidelines should be developed on the criteria that will be relied upon to grant legal aid and to decide to decrease or increase the funds allocated at the *trial stage*.
- Funds requested by the Court for legal aid at the reparation stage should be allocated (as endorsed by the Committee at its last session).
- Funds requested by the Court for the purpose of investigations should be allocated (as endorsed by the Committee at its last session).

19. For further details, the Team has annexed the paper it submitted to the Committee in April 2007 to this paper.

*The role of the judiciary in ensuring adequate legal aid*

20. The Team was concerned by a statement contained in the Committee's report of its eighth session endorsing the changes emphasizing

“the importance of the Registrar maintaining a consistent, transparent and economical system of legal assistance, and noted that ad hoc judicial decisions could prejudice the overall integrity of the legal aid system as administered by the Registrar.”<sup>13</sup>

The Team agrees that a large number of judicial ad hoc decisions could potentially unsettle the legal aid system. However, the team wants to point out that the principle of fair trial and the independence of judges need to be adequately taken into account by the

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<sup>13</sup> (paragraph 82)

Committee. Reviewing Registry's decisions on legal aid matters is part of the natural role of judges. The legal aid system, as conceived by the Registry, cannot foresee all the situations that might arise. Judicial decisions allow for flexibility to address specific needs in particular cases. In addition, judicial decisions allow the system to develop further since the Chambers might identify areas that are not properly addressed by the Registry's system, thus leading to a violation of the right to a fair trial or the right to access to justice.

#### *Proposed 2008 budget*

21. In its proposed Budget for 2008, the Court requests additional resources in the amount of 360.000 EUR in order to support the proposed amendments to the Legal Aid Scheme. The Team recognizes the need for increased resources to provide indigent victims and defendants with legal aid. However, the Team is concerned that the proposed Budget does not present in a sufficiently clear and transparent manner how the proposed changes of the Legal Aid Scheme had been transformed into the budgetary requests for 2008.<sup>14</sup>

22. The Team, therefore, recommends that the Committee:

- Request additional information from the Court on how the changes to the Legal Aid Scheme have been incorporated into the proposed Budget for 2008.

#### ***Trust Fund for Victims.***

23. The success of the Trust Fund is paramount for the success of the Court as a whole. Since the appointment of its Secretariat's Executive Director in early 2007, the Trust Fund has made significant progress at various levels of its work. In a very short period of time the Trust Fund's Secretariat (Secretariat) has developed a programmatic and financial framework that provides guidance to the Fund's overall work. Programme guidelines and forms have also been drafted, networks have been created and consultations have been held on a broad scale. The Secretariat has already conducted field missions in order to assess victims' needs and consult with local partners.

#### *Requested staff resources*

24. Having started its activities only recently, the Secretariat is in the process of assessing its needs and has identified a number of positions that are required in order for it to implement its envisaged programmes and activities in the field. The Team believes that the positions requested in the proposed Budget for 2008 are reasonable and fit into the overall strategy of the Secretariat. The Team notes that the Secretariat adopted a prudent and conservative approach in preparing the proposed Budget.<sup>15</sup>

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<sup>14</sup> For example, paragraph 385 of the proposed Budget merely states:

“The additional amount for counsel is a direct result of the Court's legal aid scheme presented to the Committee at its April 2007 session. The increase of €325,800 for victims' legal representatives is due in particular to updated remuneration levels for members of legal teams and the addition of a budget for investigations, as well as to the assumption that the trial will last 12 months, including the provision for an expanded core team for the reparations phase (3 months).”

<sup>15</sup> (paragraph 440)

25. The Team would like to highlight, in particular, the strategic importance of the requested position of the Field Programme Officer (P3) to be based in Kampala. This position would ensure technical support and oversight on projects in the field. Such control and oversight are crucial for the good management of projects and would ensure that the resources of the Trust Fund are handled properly.

26. The Team notes that the Secretariat proposed to return the position of an Associate Legal Officer, which had been approved by the Committee and the Assembly in previous years. The Team believes that this position, which had not been filled in the past, is and will continue to be important for the work of the Trust Fund. The Trust Fund is in the process of creating and establishing a number of guidelines and procedures necessary for implementing its mandate for programme activities. Also, with a view to the Trust Fund's reparative mandate and future reparation proceedings a legal position within the Secretariat seems indispensable. Nevertheless, the Team respects the strategic decision made by the Secretariat and will continue to discuss with it the need for in-house legal expertise and the possibility of re-requesting this position in future budget cycles.

#### *Travel resources*

27. The Secretariat also requests a considerable increase of travel resources. Last year the Committee recommended to the Assembly not to approve the requested amount for travel in 2007. At the time, the Secretariat was not yet operational and it was difficult to foresee how those resources would be used. This year, however, the situation has changed dramatically as the Trust Fund has been developing at great pace. The Team believes that the travel resources are essential for the Trust Fund's ability to conduct missions to the field in order to assess the needs of victims, to evaluate the feasibility of project proposals and to monitor the sustainability of its projects.

28. The Team, therefore, urges the Committee:

- To support the increase in staff and travel requested for the Trust Fund in 2008.

#### *Translations.*

29. The Team is concerned that the Court has not budgeted sufficiently for translations. In particular, the workload indicators for the Court Interpretation and Translation Section sets out that the anticipated workload in 2008 for translations into French is 5,500,000 words. However, the indicators set out that even if the Court receives all the resources it has requested, it will still have an estimated shortfall of 2,050,000 words (approximately 37% of French translations). No indication is given on the impact of the shortfall in French translations on the work of the Court.

30. The Team urges the Committee and the Assembly to consult with the Court on this issue and to ensure that there is a process to review the impact of the lack of translations for 2008, including whether the practice is consistent with the provisions in Article 50 of the Rome Statute providing that French be an official and working language of the Court.

***In-built staff costs.***

31. Each year the staff costs of the Court increase, taking into account increases in salary and common staff costs. This increase will be required each year. For 2008, the Court has requested an additional €2.74 million. In the 2007 budget process, the Committee recommended that the additional costs for 2007 should not be approved by the Assembly on the basis that “[g]iven the consistent pattern of underspending and higher than projected vacancy rates, the Committee believed that increased salary rates could be accommodated within the 2006 levels for staff costs.”<sup>16</sup> The recommendation was approved by the Assembly.

32. The Team would urge the Committee and the Assembly to reconsider this approach for 2008. As an independent institution, which is facing challenges in recruiting the highest qualified candidates for staff positions, it is important that the Committee and the Assembly shows the strongest commitment to safeguarding staff expenses, as a central cost of the Court. Existing and potential new staff of the Court must feel valued and confident in the remuneration and support systems provided by the Court. If the Committee and the Assembly is concerned about the overall increase in the Court’s budget in the context of the current underspending, it would be preferable, especially with the additional information on the budget baseline available to it this year, to focus recommendations on areas where the increase of budget has not been clearly demonstrated.

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<sup>16</sup> Report of the Committee on Budget and Finance on the work of its Seventh Session, ICC-ASP/5/32, para. 51.