



**BUDGET AND FINANCE TEAM
COALITION FOR THE INTERNATIONAL CRIMINAL COURT
SUBMISSION TO THE COMMITTEE ON BUDGET AND FINANCE AT ITS
TWENTY-FIRST SESSION ON 9 TO 19 SEPTEMBER 2013**

**Comments on the Proposed Programme Budget for 2014 of the
International Criminal Court and other matters**

5 September 2013

I. INTRODUCTION

The Budget and Finance Team (Team) of the Coalition for the International Criminal Court (CICC) is pleased to present this submission to the Committee on Budget and Finance (Committee) in advance of its twenty-first session.¹

As an independent subsidiary expert body of the Assembly of States Parties (Assembly), the Committee plays a vital role in reviewing the International Criminal Court's (ICC) annual budget, as well as providing advice to the Court and the Assembly on other financial matters. The Team therefore welcomes the Committee's continuing dialogue with non-governmental organizations that follow the work of the ICC closely. The Team seeks to provide the Committee with civil society's perspectives on a range of financial and budgetary matters that affect the functioning of the ICC. Through submissions such as this and regular meetings with the Committee, the Team aims to provide constructive and relevant input on a range of issues where its members have knowledge and expertise, for the Committee's background and consideration. 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 the Committee is often required to review key policy issues without the support and input of other expert subsidiary bodies, leaving it in the difficult position of making recommendations on issues that require substantive consideration in addition to an assessment of financial implications.

This paper sets out the Team's comments and recommendations on the Proposed Programme Budget for 2014 of the International Criminal Court (proposed Budget)² for the Committee's consideration. It also makes recommendations to improve further the transparency of the Committee's work.

The Team looks forward to discussing these and other issues with the Committee when it meets with non-governmental organizations on 10 September. In advance of the Committee's session, the Team can be contacted via the CICC's The Hague Office (cannock@coalitionfortheicc.org, Bezuidenhoutseweg 99a, 2594 AC The Hague, Tel: + 31(0)70 311 10 83).

II. THE PROPOSED BUDGET FOR 2014

The ICC's proposed Budget requests €126.07 million for 2014. This includes an increase of €10.95 million on the approved Budget for 2013 to fund a rise in staff costs, costs related to the Mali situation (which started in January 2013 and has so far been funded by the contingency fund), the Banda/Jerbo trial (which is scheduled to start in May 2014) and expected increases in victims and witness

¹ The Team was established at the sixth session of the Preparatory Commission. 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 2013. 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 the 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.

² *Proposed Programme Budget for 2014 of the International Criminal Court* (Proposed Budget 2014), ICC-ASP/12/10, 29 July 2013.

protection. A significant increase has also been requested by the Office of the Prosecutor (OTP) to strengthen its work on preliminary examinations, investigations and prosecutions.

In general, the Team supports many aspects of the requested increase. However, it notes that most increases relate to the OTP. The Team remains concerned that other areas of work performed by other organs (identified below) remain seriously under-funded, which undermines the ability of the ICC to implement its mandate set out in the Rome Statute fully and effectively. Indeed, the ICC's budget request for 2014 demonstrates that some organs of the Court remain under significant pressure to present zero-growth budgets, regardless of their resource needs.³ In that regard, the Team would strongly oppose any attempts to offset the proposed increase in funding of OTP's work by cutting resources required for other areas of its work.

The Team also notes that the proposed budget for 2014 reflects a number of important reviews that are being conducted into the work and structure of the ICC, which are likely to have an impact on future budgets of the Court, in terms of identifying both efficiencies and areas where greater investment is required. The Team considers that these reviews should be completed promptly with the aim of ensuring the long-term effectiveness, efficiency and stability of the ICC, recognizing that efforts to learn further lessons should also continue indefinitely. The Team will call on the ICC to consider and implement any significant changes to its work or structure transparently, including to ensure adequate management of its activities and resources, and to consult with civil society throughout the process.

1. *Increases requested by the Office of the Prosecutor*

The Team supports the ICC's initiative to seek greater investment in the work of the OTP so that it can conduct high-quality preliminary examinations, investigations and prosecutions. The Team has on several occasions raised concern about the lack of resources being allocated to OTP's investigations.⁴ It also sees merit in investing more in the Office's work during preliminary examinations given that several preliminary examinations have remained pending for a number of years and recognizing that, at this stage, there are significant opportunities to promote complementarity and reduce the need for the ICC to step in and open investigations. The Team also welcomes OTP's initiative to re-invest in the its Public Information Unit, noting that many NGOs are calling for the Office to enhance transparency and support for its work through greater public advocacy and dialogue with affected communities, in coordination with outreach activities being conducted by the Registry.

As part of OTP's plan to develop its work in these areas, as well as requesting new resources, it has also decided to reduce the number of active investigations from seven to five. Active investigations for 2014 are confined to Côte d'Ivoire, Democratic Republic of Congo and Mali. Investigations in other situations - including into Central African Republic, Darfur, Kenya, Libya and Uganda - are now described as residual which indicates that they will only focus on preserving evidence in existing cases, and not investigating possible addition cases, at least in 2014. Recognizing that OTP's 2014 budget request states that phased increases will be requested over four years,⁵ the Team will urge the OTP to explain its approach further, including its impact on all situations in the short and medium term.

Lastly, the Team notes that the Budget proposal for 2014 highlights that significant resources are being allocated to maintaining evidence in cases where arrest warrants are outstanding. This is essential to ensure that the Office is able to proceed promptly with cases when suspects are surrendered to the ICC. The situation confirms that non-cooperation is a cost driver and has an impact

³ See for example the statement by the Registry at para. 270 of the Proposed Budget 2014: "Notwithstanding all these factors, which directly impact and drive the workload and operations of the vast majority of Registry functions, the Registrar has made strenuous efforts to prepare a budget proposal for 2014 which remains as far as possible at the same level as the approved budget for 2013."

⁴ See for example *Comments on the Proposed Programme Budget for 2011 of the International Criminal Court and other matters*, 17 August 2010, http://www.iccnw.org/documents/Commentary_on_2011_Budget_17-08-10_3_.pdf

⁵ Proposed Budget, para. 122.

on the budget requests and efficiency of the ICC. More should be done to draw the attention of states to these costs, which are beyond the control of the ICC.

The Team recommends that the Committee:

- Support increases requested by the OTP to conduct high-quality preliminary examinations, investigations and prosecutions.
- Request the ICC to inform the Committee and the Assembly annually of the costs incurred in maintaining evidence and other continuing costs, while awaiting the arrest and surrender of suspects.

2. *Increases requested by the Victims and Witnesses Unit*

The Team continues to attach the highest importance to the work of the Victims and Witnesses Unit (VWU), noting that failure to adequately resource protection and support could undermine both the rights of victims and witnesses in the Rome Statute and the ICC's ability to conduct criminal proceedings. The Team notes that the VWU has requested a 35.1% increase this year, which reflects a significant increase in the number of estimated new witness referrals for protection, relocation and assisted moves as requested by the Office of the Prosecutor for 2014.⁶ It is not clear whether any of the increases relate to a review currently being conducted by the Registrar of the work of the VWU and this should be clarified. The Team believes it is essential that increases in the demands of the OTP on the VWU are adequately resourced, as well as efforts by the Registrar to improve the effectiveness of the Unit.

In addition, the Team notes with concern that the VWU reports that it is responsible for the unexpected temporary relocation of 40 individuals until they can be relocated to another country.⁷ With only a small number of relocation agreements in place, it appears that the ICC's inability to relocate people at serious risk promptly also entails significant costs for the VWU, in addition to destabilizing the lives of those under protection.

The Team recommends that the Committee:

- Support increases requested by the VWU to respond to expected increases in its workload, as well as other measures to improve the work of the Unit identified by the Registrar's review.
- Request the ICC to inform the Committee and the Assembly annually of the costs incurred in relation to the temporary relocations of people at risk, resulting from delays in relocating them to other countries.

3. *Continued under-funding in other key areas of the ICC's work*

While supporting greater investment in the OTP and VWU, the Team is concerned that the ICC continues to request insufficient resources in a number of other essential areas.

(a) Defence - Office of Public Counsel for Defence

The Team is dismayed that, despite requesting resources to strengthen the work of the OTP, the ICC makes no corresponding requests to address areas of current under-funding for the defence. The Team is particularly concerned that the budget request for the Office of Public Counsel for Defence explains that, with its limited resources, it is unable to provide timely legal assistance and advice to all defence counsel next year and will need to reduce services to counsel involved in appeals.⁸ This will no doubt impact on defence teams which rely on the Office to assist their work. At a time when the ICC is requesting significant additional resources for the OTP, the failure to invest in strengthening the defence this year raises serious questions about the ICC's commitment to ensuring equality of arms and ensuring the rights of the accused to adequate time and facilities for the preparation of the

⁶ *Ibid.*, paras 510-511.

⁷ *Ibid.*, para. 511.

⁸ *Ibid.*, para. 584.

defence.⁹ This situation may also impact the expeditiousness of proceedings, if the lack of support to the defence requires that they need additional time to engage effectively in the proceedings.

(b) Legal representation and participation of victims

The Office of Public Counsel for Victims, which in addition to supporting legal teams also represents victims in some proceedings, has requested an increase of €125,000 for 2014. However, the workload indicators set out that, even if these are approved, it would only be able to represent 4500 of an anticipated 8000 victims in 2014, leaving a shortfall of potentially 3500 victims requiring representation.¹⁰ In addition, the Team is concerned that adequate resources are not being provided for legal representatives to consult with their clients through the legal aid budget. More transparency on the resources being made available to legal representatives to consult with their clients is required. The Team is also concerned that units dealing with victim participation-related activities may be unable to adequately estimate the resources needed given the disparate approaches adopted by the chambers to the modalities of application and representation, and therefore there may be a need to retain flexibility in the allocation of resources.

(c) Field presence and outreach

The ICC has decided that in 2014, the field office in Côte d'Ivoire will service the Mali situation despite Abidjan being almost 1000km from Bamako and much further from areas in the north of Mali where many allegations of crimes have been reported.¹¹ This situation will likely pose significant challenges to organizing and supporting the ICC's work in Mali. It may also entail additional costs which have not been clearly explained in the ICC's Budget proposal or compared to the cost of opening a separate field office in Mali.

The Team is also dismayed that there does not appear to be any resources requested to conduct outreach in Mali, despite the opening of the investigation in January 2013. This goes directly against the important lessons which have emerged in recent years that, to prevent misperceptions and counter biased information about the ICC and its work before it takes hold, outreach must be started as early as possible.¹²

In addition, the Team is concerned that, despite widespread misinformation and politicization of the discourse on the work of the ICC in Kenya, only limited additional resources appear to have been requested to expand outreach to victims and affected communities. This is all the more important as civil society actors which assist the ICC with outreach or otherwise support the work of the Court in Kenya may see their ability to assist the Court in relation to outreach decrease as a result of ongoing campaigns to discredit them in Kenya and increased tensions on the ground.

Outreach in other situations like Libya has also lagged behind.

(d) Implementing the Revised Strategy in relation to victims

The proposed Budget does not appear to include additional resources to implement fully the Revised Strategy in relation to victims issued by the ICC in November 2012.¹³ In particular, improved trainings for staff, intermediaries, counsel and other persons who interact with victims on behalf of the ICC are not expressly included.¹⁴ Training for intermediaries who assist victims in completing application forms

⁹ Article 67(1)(b).

¹⁰ Proposed Budget 2014, table 98.

¹¹ *Ibid.*, para. 320.

¹² See ICC-ASP/11/Res.8, '*Strengthening the International Criminal Court and the Assembly of States Parties*' at para.

46

¹³ ICC-ASP/11/38.

¹⁴ See *Report of the Court on the Revised Strategy in relation to victims: Past, present and future*, ICC-ASP/11/40, para. 30.

is urgently required to address the current problem of incomplete forms that is causing delays and to ensure the security of information being transmitted to the ICC.

(e) Trust Fund for Victims

The Trust Fund for Victims is conducting important projects of assistance in the Democratic Republic of Congo, Uganda and hopefully soon the Central African Republic. However, the Team is concerned that the Trust Fund Secretariat currently lacks resources to keep up with the pace of the ICC's work - including establishing projects of assistance in the five other situations under investigation - and to fundraise effectively from sources other than states to increase the resources of the fund significantly. This is only partly addressed in the 2014 budget which indicates that the Trust Fund will assess new projects of assistance in Kenya and possibly Côte d'Ivoire and seek consultancy services related to the resource development of the Fund.¹⁵ While the Team supports these requests, it believes that if the Trust Fund is to achieve its full potential, its Secretariat requires more resources. Furthermore, depending on the outcome of reparation orders in the first cases, it is also possible that additional resources will be required to develop and administer orders for reparation in 2014. If so, it will be essential that the Secretariat can access the contingency fund.

The Team recommends that the Committee:

- Consider, when reviewing the proposed Budget for 2014, the current level of inadequate funding in each of these areas of the ICC's work and communicate any risks to the Assembly; and
- Consult with the ICC to identify the reasons why these areas are being under-funded and determine the impact it is having on the ability of the Court to implement its mandate.

4. *Consecutive hearings*

The ICC has again this year only budgeted for consecutive hearings, despite, as the Registry notes: "double the number of confirmation of charges hearings, double the trial hearings and double the cases in final appeals."¹⁶ As in previous years, the Team questions whether this approach is realistic or efficient, in particular noting that the accused has a right to be tried without undue delay.¹⁷

The Team recommends that the Committee:

- Request the ICC to develop clear criteria that it will apply to determine when parallel trials are required, including setting limits for the level of judicial workload that can be conducted effectively in consecutive hearings.

5. *The rising use of GTA*

A freeze on recruiting established posts at the 2010 level, recommended by the Committee in the report of its fifteenth session, pending a comprehensive review of the ICC's structure including a re-justification of all posts,¹⁸ means that an increasing numbers of posts are now being requested as GTA. The Team is concerned that, as the freeze continues, a two-tiered staff system is emerging and the situation, whereby the ICC can only offer temporary contracts, undermines its ability to attract and retain the highest qualified candidates for positions.

The Team recommends that the Committee:

- Work with the ICC to complete the necessary reviews and re-justification processes promptly, to ensure that the freeze is lifted as soon as possible.

¹⁵ Proposed Budget 2014, paras 634 and 647.

¹⁶ *Ibid.*, para. 267.

¹⁷ Article 67(1)(c).

¹⁸ *Report of the Committee on Budget and Finance on the work of its fifteenth session*, ICC-ASP/9/15, para. 81.

III. ENSURING TRANSPARENCY IN THE BUDGET PROCESS

The Team strongly believes that transparency in the budget process is essential. In several places in this submission, the Team highlights areas where it is requesting the ICC to be more transparent in areas of its work and its budget presentations. We also consider that the work of the Committee must also be understood by all stakeholders, including states parties and civil society. There are two areas where we recommend transparency in the Committee's work could be improved.

Firstly, as the Team has stated in previous years, it remains concerned that many reports submitted by the ICC to the Committee in advance of its sessions are not made public and posted on the ICC's website. While the Team accepts that there may be situations where information in some reports requires confidentiality (in particular if it contains information about victim and witness protection), this will not be the case in most situations. The unavailability of this information undermines the ability of stakeholders following the budget process to understand the Committee's work and its recommendations.

Secondly, the Team notes that in the last year, the Study Group on Governance has committed to improve communication between states parties and the Committee. The Team believes this is important to ensure that states understand the work of the Committee and its recommendations. However, the Team is concerned that, as part of this initiative, the Committee met in a closed meeting with some states parties in advance of its twentieth session and a further closed meeting is being planned before the Committee starts considering the proposed Budget for 2014. In the Team's view, closed and non-transparent meetings with only a limited number of states parties who are represented in The Hague, in advance of the Committee's sessions is not appropriate and risks undermining the perception of the Committee's independence.

The Team recommends that the Committee:

- Makes public, as a general rule, all reports it considers in advance of its sessions. It should only make reports confidential when the information contained therein could present a risk to ICC staff, victims, witnesses or others as a result of being made public.
- Ensure that all meetings with states are open to observers and, at the very least, formal reports of the meetings should be made public.