I. Introduction

Like any organization, the International Criminal Court cannot function effectively and meet its obligations without an adequate budget. This is especially critical now as the Court’s workload has greatly expanded in recent years. However, the budget has received insufficient rigorous analysis and prioritization by members of both civil society and States Parties. In recent years, actions by the Committee on Budget and Finance, along with discussions and statements made by the Assembly of States Parties have led to increased public concern about the future viability of the scope of Court’s work because of the resulting limited human and financial resources. Moreover, American opponents of the ICC are likely to use the budget situation to attack the Court’s legitimacy. For example, the debate over “zero nominal growth” for the Court’s budget by some States Parties and the setting of a “financial envelope” have raised questions among skeptics of the Court about whether States Parties are really dedicated to the International Criminal Court.

II. Background on the ICC’s Budget

Documentation on the Court’s budget is publicly available for the years 2004 through 2019. The International Criminal Court’s budget has been increasing since 2004, although during this period the number of prosecutions and investigations undertaken by the Court has greatly expanded. Between 2004 and 2018, the ICC’s approved budget for major programs increased from €53,071,846 to €144,550,000. These numbers are not adjusted for inflation. The process for the annual budget approval is as follows. First, the Registry coordinates the Court’s preliminary budget proposal, by compiling each major program funding requests with justifications for each expenditure. Second, the Court’s proposal is submitted to the Committee on Budget and Finance, which analyzes the macroeconomic variables and fiscal feasibility of the proposal at its second annual meeting. Third, the Committee on Budget and Finance writes a recommendation report for the Assembly of States Parties Annual Session, which is usually held in late November or
early December. It is here that the ASP debates and approves total appropriations for the next fiscal year.

The current budget is not sufficient for the extensive new workload of the Court (see III. Office of the Prosecutor’s Funding,) as limited funds particularly affects the scope of activities and the efficiency of the Office of the Prosecutor and the Registry. This fundamentally restricts activities such as the number of prosecutions, trials, investigations and examinations that the OTP can carry out within a given year. Additionally, a limited budget for the Registry has a disproportionate impact on limiting support for victims through outreach efforts at the local level as well when they are at the Court.

![Comparison between Court and CBF Proposed Budgets with Final ASP Appropriations 2004 to 2019](image)

**Figure 1.**

As shown above in Figure 1, the Assembly of States Parties has consistently approved a lower budget than what the Committee on Budget and Finance had recommended. The CBF’s recommendations have also been significantly lower than what the ICC itself has proposed for its own budget.

III. **Committee on Budget and Finance**

The Committee on Budget and Finance (CBF) is the only standing committee within the Assembly of States Parties. The Committee was established in September 2002 to provide “an appropriate mechanism for the budgetary and financial review and monitoring of the resources of
the International Criminal Court, including those of the Assembly." Members of this committee are elected by the Assembly for terms of three years. The CBF is responsible for the technical examination and macro-analysis of any document which contains financial information. In particular, the CBF is responsible for reviewing the Court’s proposed budget and making recommendations for fiscal responsibility to the Assembly of States Parties.

With this mandate, the Committee on Budget and Finance has consistently recommended budgets which are significantly lower from the Court’s own proposals, across almost all major programs. This trend is exacerbated by the Assembly of States Parties, which in almost every fiscal year has decreased the Court’s approved budgets from the already diminished CBF recommendations. As such, it is necessary to induce States Parties to think critically about the CBF’s recommendations when considering the budget at the annual ASP.

IV. Office of the Prosecutor’s Funding

The Office of the Prosecutor is the office at the Court responsible for examining and investigating situations under the Court’s jurisdiction and prosecuting individuals for the crimes of genocide, crimes against humanity, war crimes, and the crime of aggression. The Prosecutor currently has ten situations under preliminary examination: Afghanistan, Colombia, Guinea, Iraq/United Kingdom, Nigeria, Palestine/Israel, The Philippines, Bangladesh/Myanmar, Ukraine, and Venezuela. She is currently investigating eleven unique situations: Uganda, The Democratic Republic of the Congo, Darfur/Sudan, Central African Republic (two concurrent investigations), The Republic of Kenya, Libya, Côte d'Ivoire, Mali, Georgia, and Burundi. Funding for the Office of the Prosecutor has remained fairly stable between 2004 and 2012, constituting about 25.66 percent of the total budget. Between 2013 and 2018, this percentage has increased to an average of 30.17 percent of the total annual ICC budget. Additionally, the budget for the OTP has also been increasing over time, especially in fiscal year 2015 when the budget increased by 6.932 million years, the greatest increase in funding for the Office. However, while this aggregate growth in the budget is important, the Prosecutor’s budget is still not sufficient for the

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2 The Pre-Trial Chamber II rejected the Prosecutor’s request for authorization to open an investigation into this situation on April 12, 2019. The Prosecutor is currently considering “all available legal remedies.”
number of preliminary examinations, investigations, prosecutions, and appeals that the Prosecutor is coordinating.

![Budget for the Office of the Prosecutor (OTP) and OTP Percentage of Total ICC Budget 2004 to 2018](image)

*Figure 2.*

**IV. 2018 Assembly of States Parties and Concerns with the Viability of Future Prosecutions**

Before the 2018 Assembly of States Parties, the Committee on Budget and Finance recommended only a 0.6 percent growth in funding, recommendations which were accepted almost in their entirety by the ASP. For fiscal year 2019, the ICC had originally requested a budget of €147,290,000 or an overall increase of 2.4 percent over the 2018 approved budget. The final change between the Court’s proposed budget and the budget adopted by the ASP was slighter less than a 0.6 percent increase over appropriations for 2018.

Even with this miniscule increase in the budget, several States Parties advocated for more drastic courses of action, including adopting policies of “zero nominal growth” and a “financial envelope.” Zero nominal growth (ZNG) is a policy which has been advocated for by various States Parties, including Ecuador, Japan, and Brazil. Here, nominal refers to the economic term, meaning that a number does not account for changes in real value over time. These States Parties argue that the International Criminal Court should adopt a cap or a “financial envelope” for the Court, meaning that the ASP could not approve appropriations which exceed that amount. The
result of a zero nominal growth policy would be a real decline in the Court’s spending resources over time, as average inflation in the euro would decrease the budget annually.

Beyond the limited budget, the Court must also contend with states either not paying their contributions or not paying timely. At the opening of the 2018 17th Assembly of States Parties, eleven states were in arrears and therefore ineligible to vote during proceedings. Additionally, the trend of States Parties not paying their annual contributions timely has led to a situation where funds are not readily available over the course of fiscal year.

V. Current Developments

This discussion regarding an insufficient Court budget is highly timely, considering the Pre-Trial Chamber II’s recent rejection of the Prosecutor’s request for authorization to investigate the situation in the Islamic Republic of Afghanistan. The Pre-Trial Chamber II found that the jurisdiction and admissibility requirements for this situation under the Rome Statute were satisfied. Namely, the Chamber found that the Prosecutor’s request “establishes a reasonable basis to consider that crimes within the ICC jurisdiction have been committed in Afghanistan and that potential cases would be admissible before the court.” However, the judges determined that the “interests of justice” would not be served by opening an investigation, because of the amount of time between the alleged crimes and the date of the Prosecutor’s request, concerns about cooperation, and the Court’s limited financial and human resources. The judges concluded that the Court needed to “use its resources prioritizing activities that would have better chances to succeed” and that “the current circumstances of the situation in Afghanistan are such as to make the prospects for a successful investigation and prosecution extremely limited.” This raises troubling questions about whether the Court and or judges are taking actions in the effort to maximize their already limited resources instead of emphasizing pursuing justice and accountability for all victims. Regarding questions, of slowness, clearly there is a relationship between limited financial resources and delayed internal proceedings. This is not an isolated incident. For example, in the case of Jean-Pierre Bema Gombo (“Bemba”) resulting from the situation in the Central African Republic, prioritization of Court resources was brought up by the Appeals Chamber judges.

VI. Civil Society in the Movement for an Appropriate Court Budget
Since the Court cannot effectively conduct the activities of international criminal justice without an appropriate budget, which includes support for localized research, witness protection, legal aid, outreach, and victim support.\(^3\) Insufficient funds limit the number of situations and cases which the Prosecutor can investigate and prosecute, the effectiveness of the Registry, and the efficiency with which cases proceed through the Court. Efficiency is an especially pressing issue, as it leads to challenging questions regarding accessibility of justice and accountability for victims and the feasibility of prosecutions (see the analysis of the Afghanistan situation, above).

Members of civil society must therefore act toward achieving an expanded and adequate budget for all major programs of the Court. They must prioritize their monitoring and rigorous analysis of the budget. Specifically, more research needs to be done on the correlation between ASP appropriations and the number of preliminary examinations, investigations, and prosecutions over time. These analyses could well support a domestic effort by non-governmental organizations to lobby States Parties for larger ICC budgets.

\(^3\) Coalition for the International Criminal Court, “A sufficient budget.” Accessed 4/17/2019
http://www.coalitionfortheicc.org/fight/state-support/sufficient-budget