



Human Rights Watch Briefing Note for the Twenty-Second Session of the International Criminal Court Assembly of States Parties

November 2023

The states parties of the International Criminal Court (ICC) will meet from December 4-14, 2023, in New York for the annual session of the Assembly of States Parties (ASP).¹

This year marks the 25th anniversary of the 1998 adoption of the Rome Statute. Currently, the ICC can act and is needed to act as armed conflicts and other crises rage across its docket, including in Afghanistan, Darfur, Democratic Republic of Congo, Israel/Palestine, and Ukraine. Twenty-five years on from Rome, the ICC's mandate, and day-to-day work to deliver impartial and independent justice is all too relevant.

Many of the challenges the court faces in delivering on that mandate are long-standing and familiar, including centering victims and survivors and addressing gaps in the resources and state cooperation needed to support work across its ever-expanding docket. But new challenges are emerging, or at least, emerging more sharply. In September, the court faced an unprecedented cyber-attack, with the aim of espionage. And while welcome, the unprecedented support by some countries, primarily in the "global north," for the court's work in Ukraine since 2022 threw into sharp relief double standards in state party support for the ICC's investigations. This created legitimacy challenges that are now in the spotlight as many of these same states stay silent on the critical role of the ICC's ongoing Palestine investigation.

Human Rights Watch calls on states parties to use the upcoming Assembly session to uphold their responsibility to ensure that the court they created 25 years ago has what it needs to deliver on its mandate. This includes stepping up their political, financial, and concrete support to the court and

¹ The Assembly of States Parties (ASP) is the management oversight and legislative body of the International Criminal Court (ICC) and it is composed of representatives of the countries that have ratified the Rome Statute, the court's founding treaty. See ASP website, <https://asp.icc-cpi.int/> (accessed November 17, 2023).

to do so in a consistent manner across all situations in order to avoid unacceptable double standards in victims' access to justice.

This briefing note sets out recommendations to states parties for the Assembly session in the following priority areas: 1) ensuring support for the ICC's global mandate by combating double standards including by providing the court with adequate and sustainable resources, and addressing threats and attacks to the court's delivery of justice; 2) continuing efforts to strengthen the court's performance through follow-up on the Independent Expert Review process; and 3) the establishment of a permanent vetting process for all ICC elections.

I. Realizing the court's global mandate

A. Combating double standards in the delivery of justice

Recent weeks have seen thousands of civilians killed in the ongoing hostilities between Israel and Hamas and other Palestinian armed groups, following years of impunity for serious abuses. These include the deliberate killings of hundreds of Israeli civilians and taking of more than 200 hostages by Hamas and other Palestinian armed groups; the Israeli military's heavy bombardment of Gaza, which has killed thousands of civilians, repeatedly hit civilian buildings, turning large parts of neighborhoods to rubble, and involved unlawful strikes on hospitals and the use of white phosphorus in civilian populated areas; and the Israeli government's cutting of electricity, food, fuel and water to the civilian population in Gaza, which amounts to collective punishment.² In an important statement on October 29 from the Rafah crossing into Gaza, the ICC prosecutor, Karim Khan, confirmed that his office has "active investigations ongoing in relation to the crimes allegedly committed in Israel on the 7th of October. And also, in relation to Gaza and the West Bank and [that the court's] jurisdiction go[es] back to 2014."³ He reiterated the court's mandate

² See, for example, "Questions and Answers: October 2023 Hostilities between Israel and Palestinian Armed Groups," Human Rights Watch question-and-answer document, October 9, 2023, <https://www.hrw.org/news/2023/10/09/questions-and-answers-october-2023-hostilities-between-israel-and-palestinian-armed>; Sari Bashi, "Hamas-Led Attack in Southern Israel Kills Hundreds" Human Rights Watch Dispatch, October 10, 2023, <https://www.hrw.org/news/2023/10/10/hamas-led-attack-southern-israel-kills-hundreds>; Akshaya Kumar, "With Gaza Sealed Off, Palestinians Face Aid Freezes Too," Human Rights Watch Dispatch, October 11, <https://www.hrw.org/news/2023/10/11/gaza-sealed-palestinians-face-aid-freezes-too>; "Israel: White Phosphorus Used in Gaza, Lebanon," Human Rights Watch news release, October 12, 2023, <https://www.hrw.org/news/2023/10/12/israel-white-phosphorus-used-gaza-lebanon>; "Israel: Unlawful Gaza Blockade Deadly for Children," Human Rights Watch news release, October 18, 2023, <https://www.hrw.org/news/2023/10/18/israel-unlawful-gaza-blockade-deadly-children>; "Hamas, Islamic Jihad: Holding Hostages is a War Crime," Human Rights Watch news release, October 19, 2023, <https://www.hrw.org/news/2023/10/19/hamas-islamic-jihad-holding-hostages-war-crime>; Sari Bashi, "Israel Still Blocking Aid to Civilians in Gaza," Human Rights Watch Dispatch, October 23, 2023, <https://www.hrw.org/news/2023/10/23/israel-still-blocking-aid-civilians-gaza>; Sari Bashi, "Gaza's Blocked Relief," Human Rights Watch Dispatch, October 30, 2023, <https://www.hrw.org/news/2023/10/30/gazas-blocked-relief>; "Gaza: Israeli Ambulance Strike Apparently Unlawful," Human Rights Watch news release, November 7, 2023, <https://www.hrw.org/news/2023/11/07/gaza-israeli-ambulance-strike-apparently-unlawful>; "Gaza: Unlawful Israeli Hospital Strikes Worsen Health Crisis," November 14, 2023, <https://www.hrw.org/news/2023/11/14/gaza-unlawful-israeli-hospital-strikes-worsen-health-crisis>.

³ ICC, X formerly Twitter, @IntlCrimCourt, October 29, 2023,

<https://x.com/intlcrimcourt/status/1718661091155161172?s=46&t=bZu5nJeiRUuojpOH1KVB5Q> (accessed November 17, 2023).

and ongoing investigation in this situation in a separate statement from Cairo.⁴ On November 17, five states parties referred the situation of Palestine to the ICC prosecutor.⁵

The responses of many governments to date, however, have not matched the gravity of the situation, often failing to stress the importance of accountability to deter and redress violations. In public statements and debates on the crisis before UN bodies, most ICC states parties, with a few exceptions, have been nearly silent about the role of court, which is the one international entity already tasked with delivering impartial and independent justice.⁶

This stands in stark contrast to their responses to other crises, including Ukraine. There, following Russia's full-scale invasion in February 2022, the prosecutor immediately spoke out about the ICC's critical role.⁷ An unprecedented number of mostly European states parties referred the situation of Ukraine to the prosecutor, and many of them later topped up their commitment to justice with practical and financial support to the ICC.⁸

⁴ "Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel," ICC news release, October 30, 2023, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel> (accessed November 17, 2023).

⁵ "Statement of the Prosecutor of the International Criminal Court, Karim A.A. Khan KC, on the Situation in the State of Palestine: receipt of a referral from five States Parties," ICC news release, November 17, 2023, <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-aa-khan-kc-situation-state-palestine> (accessed November 17, 2023),

⁶ See, for example, Permanent Mission of Liechtenstein to the UN, X formerly Twitter, @LiechtensteinUN, October 13, 2023, <https://twitter.com/LiechtensteinUN/status/1712863194480300324> (accessed November 17, 2023); Permanent Mission of Liechtenstein to the UN, X formerly Twitter, @LiechtensteinUN, October 27, 2023, <https://x.com/LiechtensteinUN/status/1717945543597433291?s=20> (accessed November 17, 2023); "World 'at Brink of Abyss That Could Change Trajectory of Israeli-Palestinian Conflict', Middle East Coordinator Warns Security Council," UN press release n. 9443, SC/15451, October 18, 2023, <https://press.un.org/en/2023/sc15451.doc.htm> (accessed November 17, 2023), note the statements by Switzerland and South Africa; Belgian Minister of Foreign Affairs, European Affairs, Foreign Trade and the Federal Cultural Institutions, X formerly Twitter, @hadjalahbib, <https://x.com/hadjalahbib/status/1722619453018701872?s=20> (accessed November 17, 2023); Tánaiste, Minister for Foreign Affairs and Minister for Defence, X formerly Twitter, @MichealMartinTD, November 12, 2023, <https://x.com/MichealMartinTD/status/1723654318836924579?s=20> (accessed November 17, 2023).

⁷ "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I have been closely following recent developments in and around Ukraine with increasing concern," ICC news release, February 25, 2022, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-been-closely-following> (accessed November 17, 2023).

⁸ "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation," ICC news release, March 2, 2022, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states> (accessed November 17, 2023); "Statement of ICC Prosecutor, Karim A.A. Khan QC: Contributions and support from States Parties will accelerate action across our investigations," March 28, 2022, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-contributions-and-support-states-parties-will> (accessed November 17, 2023); Human Rights Watch's open-source monitoring suggests that, in addition to the European Union, the following states have made contributions: Australia, Belgium, Canada, Denmark, France, Germany, Ireland, Latvia, Lithuania, Luxembourg, The Netherlands, Romania, Sweden, Switzerland, and United Kingdom. On March 17, 2023, ICC judges issued arrest warrants for Russian President Vladimir Putin and his children's rights commissioner, Maria Lvova-Belova. The government of South Africa confirmed its obligation to cooperate with the court's arrest warrant against Putin, in the face of strong political pressure from Russia to allow Putin to attend a critical summit in Johannesburg in August 2023. See "Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova," ICC news release, March 17, 2023, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> (accessed November 17, 2023); "South Africa finalises 15th BRICS Summit format," news release of the presidency of the Republic of South Africa, July 19, 2023, <https://www.thepresidency.gov.za/press-statements/south-africa-finalises-15th-brics-summit-format> (accessed November 17, 2023).

The strong support by other governments for a justice response to crimes committed in Ukraine—including not only the ICC but also a UN Commission of Inquiry, support to Ukrainian national proceedings, and the opening of investigations in their own jurisdictions—showed what governments are capable of in the face of mass atrocities. It set a standard that should be followed in all other situations where grave crimes are being committed, regardless of where and by whom.

To capture the momentum around justice in Ukraine and to ensure that the international justice system overcame these double standards, we recommended that governments build out the courts, laws, and resources needed to support impartial justice wherever it is needed.⁹

There have been positive developments in that regard, including Armenia’s ratification of the Rome Statute.¹⁰ But ignoring or marginalizing the ICC’s critical role in its ongoing Palestine investigation will only confirm, in the eyes of many communities around the world, that the court does not have the support of its states parties to pursue justice impartially, irrespective of the perpetrator. A lack of support for the court’s Palestine investigation, in turn, will severely impede victims’ access to justice in that situation. It would also call into question the genuineness of the commitment of states parties to the norms of international humanitarian law that the Rome Statute strives to advance, which, in turn, could have devastating consequences for civilians now and far into the future.

The ICC’s legitimacy and the global rule of law it represents is at risk. States parties should use their annual gathering—this year, at the headquarters of the United Nations—as a key platform to demonstrate that they will not tolerate double standards in the application of international law or in the delivery of justice. They should do so by providing the court with a budget that will allow it to address more adequately all the many situations on its docket, as discussed further below.

Recommendations to ICC states parties

- In General Debate statements, the cooperation plenary, and all other relevant opportunities:
 - Speak directly and forthrightly about the critical role of the ICC in the context of the ongoing hostilities between Israel and Palestinian armed groups;

⁹ “Support Justice for Serious Crimes Globally,” Human Rights Watch news release, July 15, 2022, <https://www.hrw.org/news/2022/07/15/support-justice-serious-crimes-globally>; Maria Elena Vignoli (Human Rights Watch), “The Long – Yet Still Uneven – Arc of International Justice,” commentary, *Opinio Juris*, January 27, 2023, <https://www.hrw.org/news/2023/01/27/long-yet-still-uneven-arc-international-justice>.

¹⁰ “Armenia’s Instrument of Ratification of the ICC Rome Statute Deposited at the UN,” news release of the Permanent Mission of Armenia to the United Nations, November 14, 2023, <https://un.mfa.am/en/news/2023/11/14/armenia%E2%80%99s-instrument-of-ratification-of-the-icc-rome-statute-deposited-at-the-un/12260> (accessed November 17, 2023).

- Express support for the prosecutor’s ongoing investigation in this situation, as well as all other situations under the court’s jurisdiction and pledge the necessary practical and political support as well as cooperation to that end; and
- Reject and commit to addressing double standards in victims’ access to justice.
- Use all available public information tools, including press comments and social media posts, to publicize support for the prosecutor’s impartial and independent work across all situations; and
- Consider establishing a core group around implementation of the #JusticeMatters checklist.

Related Human Rights Watch Materials

- “Support Justice for Serious Crimes Globally,” Human Rights Watch news release, July 15, 2022, <https://www.hrw.org/news/2022/07/15/support-justice-serious-crimes-globally>
- Maria Elena Vignoli, “The Long – Yet Still Uneven – Arc of International Justice,” commentary, January 27, 2023, <https://www.hrw.org/news/2023/01/27/long-yet-still-uneven-arc-international-justice>
- Elizabeth Evenson, “Strengthening Global Justice,” commentary, July 17, 2023, <https://www.hrw.org/news/2023/07/17/strengthening-global-justice>
- Balkees Jarrah, “Countries Should Back ICC Investigation on Israel-Palestine,” Human Rights Watch dispatch, October 25, 2023, <https://www.hrw.org/news/2023/10/25/countries-should-back-icc-investigation-israel-palestine>

B. Ensuring the court’s resources are adequate to its global mandate

Setting the 2024 budget

ICC states parties will decide the court’s budget for the coming year during this Assembly session. For 2024, excluding payment on the host state loan, the ICC has requested €196.82 million or an increase of 16 percent above its €169.64 million budget approved for 2023.¹¹ The Committee on Budget and Finance (CBF), a technical body charged with reviewing the court’s proposed annual budget and making relevant recommendations to the Assembly, has recommended a number of cuts to the court’s proposal. If adopted, these would leave the court’s budget at €184.8 million, or an increase of 8.7 percent from last year.¹²

¹¹ ASP, “Proposed Programme Budget for 2024 of the International Criminal Court,” July 31, 2023, https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-22-10-ENG-PPB-2024-31jul23-1500.pdf (accessed November 17, 2023), para. 8; ASP, “Report of the Committee on Budget and Finance on the work of its forty-second session,” Doc n. CBF/42/5, Advance Version, October 13, 2023, unpublished document on file with Human Rights Watch, p. 5, paras. 3 and 4.

¹² *Ibid.*, para. 2 and Annex V.

In 2022, the court made a request for a substantial increase to its budget considering the significant uptick in both judicial and prosecutorial activities, as well as rising inflation.¹³ Individual states parties across all regional groups acknowledged the court’s need for adequate and sustainable resources in their General Debate statements.¹⁴ In addition, some states parties who had previously supported a zero nominal growth approach to the ICC’s budget, including France, the United Kingdom, and Canada, moved away from that position in 2022. While strict budgetary discipline is required, zero nominal growth was never appropriate for this still-evolving institution and should not resurface. However, despite these positive signals, and following difficult negotiations, the Assembly agreed on only a nominal increase in the court’s budget for 2023, which barely covered costs associated with inflation.¹⁵ It was far below what the court had requested and what the CBF had recommended. After the adoption of the budget, some states parties regretted that the approved budget did not meet the court’s needs and expressed concern about the likely impact of this shortcoming in the future.¹⁶

The court’s proposed budget for 2024 is affected by some of the same drivers of increase as last year including ongoing inflationary pressure, as well as new ones, such as mounting security concerns addressed in more detail in the section below. And while the proposed budget calls for much-needed investments in key areas—from security, to field presence, to witness and victim protection, to arrests—it also reveals ongoing resource constraints that its budget proposal, even if fully funded, will still not address and that affect the court’s delivery of justice. These include, for example, ongoing severe underfunding in the Public Information and Outreach Section where, even with the additional staffing requested in the budget, the Section will still comprise less than

¹³ ASP, “Proposed Programme Budget for 2023 of the International Criminal Court,” August 19, 2022, <https://asp.icc-cpi.int/sites/asp/files/2022-08/ICC-ASP-21-10-ENG.pdf> (accessed November 17, 2023), para. 6; ASP, “Addendum to the Proposed Programme Budget of the International Criminal Court for 2023,” ICC-ASP/21/10/Add.1/AV, September 9, 2022, <https://asp.icc-cpi.int/sites/asp/files/2022-09/ICC-ASP-21-10-Add1-ENG.pdf> (accessed November 17, 2023).

¹⁴ ASP, 21st session, General Debate, https://asp.icc-cpi.int/sessions/general-debate/GeneralDebate_21st_session December 28, 2022 (accessed November 17, 2023). See in particular statements by Czech Republic, Palestine, Botswana, Norway, Luxembourg, Finland, New Zealand, Estonia, Sweden, Cyprus, Slovenia, Uganda, Costa Rica, Latvia, Mexico, Bulgaria, Ireland, Denmark, Switzerland, Germany, Uruguay, Bangladesh, Australia, and Canada.

¹⁵ ASP, “Resolution of the Assembly of States Parties on the proposed programme budget for 2023, the Working Capital Fund for 2023, the scale of assessment for the apportionment of expenses of the International Criminal Court, financing appropriations for 2023 and the Contingency Fund,” ICC-ASP/21/Res.1, December 9, 2022, <https://asp.icc-cpi.int/sites/asp/files/2022-12/ICC-ASP-21-Res1-AV-ENG.pdf> (accessed November 17, 2023). Note that of the 12.2 percent increase adopted by the Assembly, 8.9 percent covered inflation and other unavoidable costs.

¹⁶ ASP21 Official Record, Annex IV, Statements concerning the adoption of the budget resolution at the 9th plenary meeting of the twenty-first session of the Assembly, 9 December 2022, <https://asp.icc-cpi.int/sites/default/files/2022-12/ICC-ASP-21-20-VOL-I-ENG.pdf> (accessed November 17, 2023), Statement delivered by the Netherlands on behalf of Austria, Belgium, Denmark, Estonia, Finland, Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, New Zealand, Norway, Slovakia, Slovenia, South Africa, State of Palestine, Sweden, and Switzerland, p. 88, paras. 8 and 9, and Statement by the State of Palestine, p. 95, para. 1.

five people tasked with conducting outreach activities across all the situations where the court does not have a country presence¹⁷

Chronic underfunding of the court has forced a too-selective approach in investigations and has contributed to perceptions of double standards in the international justice system. Implicitly addressing this reality, in the Omnibus resolution adopted at the last session, the Assembly “[r]eaffirm[ed] its support for the consistent implementation of the Court’s mandate across the situations and cases under its jurisdiction in the interests of justice and the victims’ right of access to justice, and *stress[ed] the need for sustainable resources for all situations and cases as well as cooperation with the Court to that end*” (emphasis added).¹⁸

Ensuring that the court has the resources it needs in its regular budget to effectively work across its docket is an investment in its independence and legitimacy, as well as an active rejection of double standards. It is a show of political commitment to equality before the law.

Finally, in addition to adopting an annual budget that will ensure that all organs of the court have sufficient resources to execute their respective roles across situations, states parties should consider increasing the contingency fund. This fund is meant to cover any unexpected expenditure, such as those deriving from the execution of an arrest warrant or the opening of a new investigation, and therefore is not included in the court’s proposed annual budget.¹⁹

The contingency fund currently has a cash balance of €2.2 million and, on September 1, the CBF received a notification of the court’s intention to use €2.3 million for the situation in Ukraine. The CBF warned that the fund, an “essential component of the budgetary system for the Court,” will be depleted in the event that these expenses cannot be absorbed by the regular budget at the end of the year.²⁰ And while it is positive that the CBF reiterated its recommendation to replenish the fund’s notional level of €7 million, the notional level itself should be increased to put the court in

¹⁷ The Public Information and Outreach Section has requested for 2024 one Associate Public Information Officer to conduct public information activities in Latin America in relation to the situation in Venezuela, to conduct public information activities in Latin America in relation to the situation in Venezuela; ASP, “Proposed Programme Budget for 2023 of the International Criminal Court,” August 19, 2022, <https://asp.icc-cpi.int/sites/asp/files/2022-08/ICC-ASP-21-10-ENG.pdf> (accessed November 17, 2023), paras. 852 and 826. See also, Annex XVII (c) “Organigramme for Major Programme III: Registry,” however, this includes positions based in country offices following the decision by the registrar to reallocation of the resources for outreach, victim participation and reparations, and security in the field from the budgets of individual country offices to the respective sections at headquarters to ensure greater flexibility, paras. 36 and 559.

¹⁸ ASP, “Strengthening the International Criminal Court and the Assembly of States Parties,” ICC-ASP/21/Res.2, December 9, 2022, <https://asp.icc-cpi.int/sites/default/files/2022-12/ICC-ASP-21-Res2-ENG.pdf> (accessed November 17, 2023), OP2.

¹⁹ ICC, “Financial Regulations and Rules,” <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D4B6E16A-BD66-46AF-BB43-8D4C3F069786/281202/FRRENG0705.pdf> (accessed November 18, 2022), Regulation 6.6.

²⁰ ASP, “Report of the Committee on Budget and Finance on the work of its forty-second session,” Doc n. CBF/42/5, Advance Version, October 13, 2023, unpublished document on file with Human Rights Watch, para. 235.

a position to respond to major developments and sustain its activities across all situations without the need for voluntary contributions.²¹

Rejecting voluntary contributions as a funding model

The use of voluntary contributions for activities that should be covered by the court's regular budget remains a concern.²² Last year, soon after his decision to open an investigation in the situation in Ukraine, the prosecutor called on states parties to provide his office with additional resources to support its work across all situations through voluntary contributions and gratis personnel. To this end, the court established a dedicated Trust Fund to bolster the work of the OTP in three specific areas: the use of advanced technological tools and equipment in the collection, analysis, and processing of evidence; the provision of psychosocial support to witnesses and survivors; and the investigation of crimes involving sexual and gender-based violence and crimes against children.²³ The CBF reported that the total amount of contributions received or pledged to the OTP Trust Fund as of September 2023 amounts to €22 million from 27 states parties.²⁴ In addition, the OTP had "60 national experts on secondment from 19 States Parties, including 20 investigators, six lawyers, five prosecutors, ten analysts and other specialists."²⁵ Of these, 25 are likely to be either extended or replaced in 2024, while there is no confirmation of extensions beyond 2024.²⁶

Unfortunately, the making of the majority of the contributions to date in close proximity to the opening of the investigation in Ukraine, and some states' messaging around them, raised perceptions of politicization in the court's work as it appeared that they were directed to support

²¹ Ibid., para. 237.

²² See "Human Rights Watch Briefing Note for the Twenty-First Session of the International Criminal Court Assembly of States Parties," November 2022, <https://www.hrw.org/news/2022/11/22/human-rights-watch-briefing-note-twenty-first-session-international-criminal-court> pp. 9 and 10; "Voluntary Contributions – Solution to the ICC's Funding Crisis or Threat to its Independence and Effectiveness?," Amnesty International commentary, October 12, 2022, <https://hrij.amnesty.nl/voluntary-contributions-solution-to-the-iccs-funding-crisis-or-threat-to-its-independence-and-effectiveness> (accessed November 17, 2023).

²³ "Statement of ICC Prosecutor, Karim A.A. Khan QC: Contributions and support from States Parties will accelerate action across our investigations," ICC news release, March 28, 2022, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-contributions-and-support-states-parties-will> (accessed November 17, 2023). The Trust Fund was established under article 116 of the Rome Statute and Regulations 7.2 to 7.4 of the ICC's Financial Regulations and Rules. See Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, <https://www.icc-cpi.int/sites/default/files/Publications/Rome-Statute.pdf> (accessed November 17, 2023) and "Financial Regulations and Rules," <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D4B6E16A-BD66-46AF-BB43-8D4C3F069786/281202/FRRENG0705.pdf> (accessed November 17, 2023).

²⁴ This includes the contribution of €7.2 million from the European Commission for enhancements to the technological tools used by the OTP for the collection, processing and storage of evidence. ASP, "Report of the Committee on Budget and Finance on the work of its forty-second session," Doc n. CBF/42/5, Advance Version, October 13, 2023, unpublished document on file with Human Rights Watch, para. 259, Table 7 and Annex IV "OTP Trust Fund cost plan by priority area."

²⁵ Ibid. para. 261 and Annex VI "Seconded Personnel to OTP Overview- September 2023."

²⁶ Ibid.

the work of the OTP solely in that situation.²⁷ These perceptions were deepened by a de facto pledging conference organized in March 2023 by the United Kingdom and the Netherlands to garner support for the court's work in Ukraine.²⁸ In addition to concerns around perceptions of selectivity and politicization, voluntary contributions are unlikely to provide the necessary financial sustainability. This has already been a concern with respect to the Trust Fund for family visits of indigent detainees.²⁹ The predictability and sustainability provided through the ICC's regular budget is essential to fully support the independent exercise of the court's mandate.

The ongoing lack of clarity among states parties regarding the relationship between the voluntary contributions received since 2022 and the court's proposed budget for 2024 remains a challenge in this year's budget negotiations, as it was last year. Indeed, far from offsetting the regular budget, the court's proposed budget for 2024 lists the impact of these voluntary contributions as being a driver of the requested increase. In particular, the Registry is requesting €8 million to cover the costs of managing the OTP Trust Fund as well as increased on-board procedures, medical clearances, and training for secondees.³⁰ While it is important for states parties to better understand the concrete effect that these financial and personnel contributions have on the

²⁷ See, for example, Australian Government, Department of Foreign Affairs and Trade, "Invasion of Ukraine by Russia," see in particular the section on Australia's response to Russia's invasion, where it is states that Australia "Committed AUD 1 million and three staff to support the International Criminal Court investigation into reported Russian war crimes," <https://www.dfat.gov.au/crisis-hub/russias-invasion-ukraine> (accessed November 17, 2023); "Canada provides funding to International Criminal Court to strengthen accountability for conflict-related sexual violence," news release of the Government of Canada, May 26, 2022, <https://www.canada.ca/en/global-affairs/news/2022/05/canada-provides-funding-to-international-criminal-court-to-strengthen-accountability-for-conflict-related-sexual-violence.html> (accessed November 17, 2023); "Enquête de la CPI sur les crimes commis en Ukraine," news release of the French Ministry of Justice, March 23, 2022, <https://www.justice.gouv.fr/actualites/espace-presse/enquete-cpi-crimes-commis-ukraine> (accessed November 17, 2023); "EU Foreign Affairs Council in Luxembourg: The Russian war of aggression in Ukraine and its global impact," news release of the Germany Federal Foreign Affairs Office, April 11, 2022, <https://www.auswaertiges-amt.de/en/aussenpolitik/europe/baerbock-eu-luxembourg/2522226> (accessed November 17, 2023); Martin Wall, "Simon Coveney cites 'war crimes' in UN speech following Ukraine visit," Irish Times, April 19, 2022, <https://www.irishtimes.com/news/ireland/irish-news/simon-coveney-cites-war-crimes-in-un-speech-following-ukraine-visit-1.4856853> (accessed November 17, 2023); "International coalition to support ICC Russian war crimes investigation," press release of the Government of the United Kingdom, March 24, 2022, <https://www.gov.uk/government/news/international-coalition-to-support-icc-russian-war-crimes-investigation> (accessed November 17, 2023). See also open letter from the Coalition for the International Criminal Court (CICC) to the ICC and the ASP, March 30, 2022, https://coalitionfortheicc.org/news/20220330/OpenLetter_ICCresources (accessed November 17, 2023).

²⁸ "London hosts major international war crimes meeting as UK boosts support for International Criminal Court," press release of the Government of the United Kingdom, March 20, 2023, <https://www.gov.uk/government/news/london-hosts-major-international-war-crimes-meeting-as-uk-boosts-support-for-international-criminal-court> (accessed November 17, 2023); "Human Rights Watch Letter to the Justice Secretary of the United Kingdom," March 6, 2023, <https://www.hrw.org/news/2023/03/06/human-rights-watch-letter-justice-secretary-united-kingdom>; "Human Rights Watch Letter to the Minister of Justice of the Netherlands," March 6, 2023, <https://www.hrw.org/news/2023/03/06/human-rights-watch-letter-minister-justice-netherlands>; Maria Elena Vignoli, "Support Builds for ICC Ukraine Investigation," Human Rights Watch Dispatch, March 20, 2023, <https://www.hrw.org/news/2023/03/20/support-builds-icc-ukraine-investigation>.

²⁹ "Human Rights Watch Briefing Note for the Twenty-First Session of the International Criminal Court Assembly of States Parties," November 2022, <https://www.hrw.org/news/2022/11/22/human-rights-watch-briefing-note-twenty-first-session-international-criminal-court>, pp. 12-13.

³⁰ See ASP, "Report of the Committee on Budget and Finance on the work of its forty-second session," Doc n. CBF/42/5, Advance Version, October 13, 2023, unpublished document on file with Human Rights Watch, paras. 262 and 263.

budget, they should not conflate the two. They should distinguish between the different purposes they serve and avoid using the voluntary contributions received to date by the Office of the Prosecutor as a reason to reject increases in the OTP’s budget for 2024. This may fuel a vicious cycle in which voluntary contributions continue to be used to fill gaps in the court’s regular budget, rather than to cover extra-budgetary activities.

Against this background, further clarity is also needed from the court on its newly established or proposed trust funds: the OTP Trust Fund on Geographic Diversity, OTP Trust Fund on Complementarity and Cooperation, and the court’s Trust Fund on Security.³¹ The issue of secondments also needs further attention because there are still a number of aspects of the OTP’s experience with the current secondments that remain unclear, including how this model has worked so far, how the Office is managing the knowledge transfer between secondees and OTP staff, how it will build on that to ensure sustainable expertise within the Office, and how the use of secondees will affect the OTP’s staff needs in the next few years.³² The Office of the Prosecutor announced its intention “to transition its requests for secondments to more specialized, technical fields in particular in support of its analytical activities,” and it plans to issue a renewed note verbale along these lines.³³

Recommendations to the Assembly and ICC states parties

- In statements during the General Debate, during budget negotiations, and at other relevant moments during the Assembly session:
 - Acknowledge the current mismatch between the court’s workload and its resources;
 - Firmly reject arbitrary approaches to setting the ICC’s budget, including by committing to crystallize the Assembly’s departure from a strict zero nominal growth approach; and
 - Reject the use of voluntary contributions as an ongoing funding model in favor of open dialogue between the court and states parties as to what adequate investment looks like to permit the court to fulfill its mandate robustly and consistently across situations.
- Scrutinize the CBF’s recommendations and adopt a 2024 budget for the court adequate to ensure the effective implementation of its mandate;

³¹ The CBF requested the OTP to update the Committee on all its trust fund and secondees at its 44th session and recommended the court to mitigate related to the administration of the OTP Trust Fund. ASP, “Report of the Committee on Budget and Finance on the work of its forty-second session,” Doc n. CBF/42/5, Advance Version, October 13, 2023, unpublished document on file with Human Rights Watch, paras. 264-268.

³² Some of these questions were also asked by the CBF. See ASP, “Report of the Committee on Budget and Finance on the work of its forty-second session,” Doc n. CBF/42/5, Advance Version, October 13, 2023, unpublished document on file with Human Rights Watch, para. 265.

³³ ASP, “Proposed Programme Budget for 2024 of the International Criminal Court,” July 31, 2023, https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-22-10-ENG-PPB-2024-31jul23-1500.pdf (accessed November 17, 2023), para. 256.

- Raise the notional level of the contingency fund, or at a minimum, replenish it; and
- In General Debate statements, and other appropriate moments during the session, welcome the discussions initiated during the commemorative events for the 25th anniversary of the adoption of the Rome Statute organized by the Assembly president, and commit to continuing this dialogue with the court and civil society with a view to achieving a shared strategic vision to maximize the court’s impact in delivering meaningful justice over the next 10 years.

Related Human Rights Watch Materials

- “Human Rights Watch Letter to the Justice Secretary of the United Kingdom,” March 6, 2023, <https://www.hrw.org/news/2023/03/06/human-rights-watch-letter-justice-secretary-united-kingdom>
- “Human Rights Watch Letter to the Minister of Justice of the Netherlands,” March 6, 2023, <https://www.hrw.org/news/2023/03/06/human-rights-watch-letter-minister-justice-netherlands>
- Maria Elena Vignoli, “Support Builds for ICC Ukraine Investigation,” Human Rights Watch dispatch, March 20, 2023, <https://www.hrw.org/news/2023/03/20/support-builds-icc-ukraine-investigation>
- “Human Rights Watch recommendations ahead of the commemoration of the 25th anniversary of the Rome Statute of the International Criminal Court on July 17, 2023,” https://www.hrw.org/sites/default/files/media_2023/07/HRW%20Recommendations%20for%2025th%20Anniversary%20of%20the%20Rome%20Statute.pdf

C. Addressing threats and obstruction of justice before the ICC

Over the last year, there have been a number of efforts aimed at hampering the court’s impartial and independent delivery of justice:

- Russian authorities opened criminal cases and issued arrest warrants against the ICC prosecutor and several of the court’s judges³⁴;
- Russia adopted a law on April 28 criminalizing cooperation with international bodies, “to which Russia is not a party,” such as the ICC, or any ad hoc international tribunals that may be established to prosecute Russian officials and military personnel, as well as foreign courts. Such cooperation is punishable by up to five years in prison³⁵; and

³⁴ Ketrin Johecová, “Russia blasts back at ICC over Putin arrest warrant,” Politico, March 20, 2023, <https://www.politico.eu/article/putin-russia-icc-criminal-case-moscow-ukraine-war> (accessed November 17, 2023); Claudia Chiappa, “Russia puts international court’s top leadership on wanted list,” Politico, September 25, 2023, <https://www.politico.eu/article/russia-international-criminal-court-icc-president-piotr-hofmanski-wanted-list> (accessed November 17, 2023); Lidia Kelly, “Russia places another ICC official on its wanted list -TASS,” Reuters, November 7, 2023, <https://www.reuters.com/world/europe/russia-places-another-icc-official-its-wanted-list-tass-2023-11-07/> (accessed November 17, 2023).

³⁵ “Russia: Law Targets International Criminal Court,” Human Rights Watch news release, May 5, 2023, <https://www.hrw.org/news/2023/05/05/russia-law-targets-international-criminal-court>.

- The court was the target of a serious cyber-attack in September with the objective of espionage. The court has not yet been able to confirm who was responsible for the attack.³⁶

Following the adoption at the last Assembly session of a strategy to respond to attacks against the court by non-states parties in line with the Independent Expert Review (IER) recommendation 169, the Assembly presidency, individual states parties, and the court itself have been vocal in condemning these efforts to undermine the ICC’s mandate.³⁷ This show of support for the court and its officials is positive but it should also be extended to civil society organizations and human rights defenders around the globe who are targeted for their work advancing justice before the ICC. The Assembly strategy specifically refers to threats or attacks against “the Court, its officials and *those cooperating with it*” (emphasis added). Given that threats to civil society organizations and human rights defenders for their advocacy on behalf of justice may be aimed at derailing the court’s mandate, the Assembly and states parties should integrate responses to attacks against them into their broader strategies for confronting obstruction of the ICC’s work.

In 2021, the government of Israel designated six prominent Palestinian civil society organizations as “terrorist organizations” under Israeli law and as “unlawful associations” under military law, which is applicable in the occupied West Bank. Last year, Israeli authorities raided their offices and issued closure orders against them in a bid to shut down their human rights work.³⁸ Several of those organizations have been submitting information to the OTP about alleged crimes committed by Israeli forces and have campaigned for an ICC investigation in Palestine. The designations have been internationally condemned by European and other states parties, UN experts including the

³⁶ Toby Sterling and Stephanie van den Berg, “War crimes tribunal ICC says it has been hacked,” Reuters, September 19, 2023, <https://www.reuters.com/world/international-criminal-court-reports-cybersecurity-incident-2023-09-19/> (accessed November 17, 2023); “Measures taken following the unprecedented cyber-attack on the ICC,” ICC news release, October 20, 2023, <https://www.icc-cpi.int/news/measures-taken-following-unprecedented-cyber-attack-icc> (accessed November 17, 2023).

³⁷ Bureau of the ASP, “Implementation of IER recommendation 169” (adopted by the Bureau on 29 July 2022), August 12, 2022, <https://asp.icc-cpi.int/sites/asp/files/2022-08/Bureau-Proposal-Rec-169-ENG.pdf> (accessed November 17, 2023); “The Presidency of the Assembly of States Parties stands firmly by the International Criminal Court, its elected officials, and its personnel,” ICC news release, May 20, 2023, <https://www.icc-cpi.int/news/presidency-assembly-states-parties-stands-firmly-international-criminal-court-its-elected> (accessed November 17, 2023); “ICC Statement on reports of coercive measures against officials,” ICC news release, October 20, 2023, <https://www.icc-cpi.int/news/icc-statement-reports-coercive-measures-against-officials> (accessed November 17, 2023); “The Presidency of the Assembly of States Parties reiterates its unwavering support for the International Criminal Court, its elected officials, and its personnel,” ICC news release, August 1, 2023, <https://www.icc-cpi.int/news/presidency-assembly-states-parties-reiterates-its-unwavering-support-international-criminal> (accessed November 17, 2023); Government of the United Kingdom, “Joint statement on States Parties to the Rome Statute of the International Criminal Court,” August 7, 2023, <https://www.gov.uk/government/news/joint-statement-on-states-parties-to-the-rome-statute-of-the-international-criminal-court> (accessed November 17, 2023); “Intimidation, Cyberattacks, Challenges Will Not Stop International Criminal Court from Fulfilling Its Mandate, Says President, as General Assembly Takes Up Report,” n. GA/12549, UN press release, October 30, 2023, <https://press.un.org/en/2023/ga12549.doc.htm> (accessed November 17, 2023).

³⁸ See Human Rights Watch, “Joint Statement: States Should Act to Protect Human Rights in Palestine, and Dismantle Israel’s Apartheid,” Sept. 28, 2022, <https://www.hrw.org/news/2022/09/28/joint-statement-states-should-act-protect-human-rights-palestine-and-dismantle>.

UN special rapporteur on counter terrorism, and the UN high commissioner on human rights, among others.³⁹ This is exactly the type of situation the strategy was intended to address. The Assembly (through the president) should join in rejecting and condemning Israel's designations and attacks, and states parties should consider making individual or joint statements, including in the General Debate at the upcoming Assembly session.

At the closing of last year's session, the Assembly president underlined the centrality of this issue and committed to take steps to ensure the safety of civil society representatives participating in Assembly sessions. Following up on that, in October, the Bureau adopted a set of "Guidelines and recommendations for enhancing the security of participants in the work of the Assembly."⁴⁰ The document encourages the Bureau to continue developing measures on this topic in consultation with states parties, the court and civil society and to report back to the Assembly at its session in 2024.⁴¹

Recommendations to ICC states parties

- In General Debate statements and other relevant moments during the Assembly session, call for enhanced protection of civil society organizations and human rights defenders at risk due to their advocacy for justice on behalf of victims; and
- Call, in bilateral discussions, in General Debate statements and other relevant moments during the Assembly session, for an official response by the Assembly (through the president) rejecting and condemning the Israeli authorities' designations and attacks on six Palestinian civil society organizations.

³⁹ "Israel/Palestine: Statement by High Representative Josep Borrell on the Israeli raids on six Palestinian civil society organisations," EEAS press release, August 22, 2022, https://www.eeas.europa.eu/eeas/israelpalestine-statement-high-representative-josep-borrell-israeli-raids-six-palestinian_en?s=65 (accessed November 17, 2023); "Joint Statement by the Spokespersons of the Foreign Ministries of Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Spain and Sweden on the Israeli designation of six Palestinian civil society organisations as terrorist organisations," July 12, 2022, <https://www.government.nl/documents/diplomatic-statements/2022/07/12/joint-statement-on-the-israeli-designation-of-palestinian-civil-society-organisations-as-terrorist-organisations> (accessed November 17, 2023); "UN experts call on governments to resume funding for six Palestinian CSOs designated by Israel as 'terrorist organisations'," Office of the United Nations High Commissioner for Human Rights news release, April 25, 2022, <https://www.ohchr.org/en/press-releases/2022/04/israelpalestine-un-experts-call-governments-resume-funding-six-palestinian> (accessed November 17, 2023); Al-Haq, webinar, "Protecting Palestinian human rights defenders and civil society organizations," March 15, 2022, <https://www.facebook.com/alhaqorganization/videos/656603365576423> (accessed November 17, 2023); United Nations, "Outraged over Israel's Designation of Six Civil Society Groups as Terrorists, Speakers Tell Palestinian Rights Committee Harassment against Human Rights Defenders Must End," United Nations press release, December 7, 2021, <https://press.un.org/en/2021/gapal1443.doc.htm> (accessed November 17, 2023); Al-Haq, "Statements of Support: Stand with the Six," <https://www.alhaq.org/news/19129.html> (accessed November 17, 2023).

⁴⁰ ASP Bureau, "Proposal by the Presidency: Guidelines and recommendations for enhancing the security of participants in the work of the Assembly", September 29, 2023, unpublished document on file with Human Rights Watch.

⁴¹ Ibid.

Recommendation to the incoming Assembly presidency

- Commit to identifying, in coordination with the court, concrete steps to oppose threats and attacks against civil society organizations and human rights defenders, including in contexts that go beyond their participation in the work of the Assembly, such as their support to the work of the Office of the Prosecutor.

Related Human Rights Watch Material

- “Human Rights Watch recommendations ahead of the commemoration of the 25th anniversary of the Rome Statute of the International Criminal Court on July 17, 2023,” https://www.hrw.org/sites/default/files/media_2023/07/HRW%20Recommendations%20ofor%2025th%20Anniversary%20of%20the%20Rome%20Statute.pdf

II. Review of the International Criminal Court and the Rome Statute system

A. Progress to date

In December 2019, the Assembly commissioned a group of nine independent experts (the IER) with assessing the work of the court to make “concrete, achievable, actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court and the Rome Statute system as a whole.”⁴² This stemmed from a shared concern among the court, states parties, and civil society that the court was not fully delivering on its mandate, and that it wasn’t meeting the legitimate expectations of victims and affected communities.

In September 2020, the IER issued its final report with nearly 400 recommendations addressing court-wide matters, organ-specific matters, and issues related to the role of states parties, the Assembly, and other oversight bodies in the governance of the court.⁴³ The IER report has provided a unique common framework for discussion amongst stakeholders about the changes needed to bolster the court’s performance. In the last three years, states parties and the court, in discussion with other relevant stakeholders, including civil society and the experts, have been assessing the IER recommendations with a view toward their implementation. These discussions were overseen by the Review Mechanism, a body tasked with planning, coordinating, keeping track of, and reporting on the assessment of the IER recommendations and any further action.⁴⁴

⁴² ASP, “Review of the International Criminal Court and the Rome Statute System,” Resolution ICC-ASP/18/Res.7, December 6, 2019, https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP18/ICC-ASP-18-Res7-ENG.pdf (accessed November 17, 2023), Annex I, “Terms of Reference for the Independent Expert Review of the International Criminal Court,” para. 1.

⁴³ ASP, Independent Expert Review of the International Criminal Court and the Rome Statute System, “Final Report,” Sept. 30, 2020, https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/IER-Final-Report-ENG.pdf (accessed November 17, 2023).

⁴⁴ ASP, “Review of the International Criminal Court and the Rome Statute system,” Resolution ICC-ASP/20/Res.3, Sept. 9, 2021, https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP20/ICC-ASP-20-Res3-AV-ENG.pdf (accessed November 17, 2023).

Since the last Assembly session, the Review Mechanism concluded the assessment of all the recommendations assigned to it in the Comprehensive Action Plan and held roundtables on the implementation of recommendations that were positively assessed.⁴⁵ Relevant mandates within the ASP's working groups, including the cooperation facilitation and the Budget Management Oversight facilitation, have continued assessing the recommendations assigned to them and aim to finalize their assessment by the upcoming Assembly session.⁴⁶ As of October, according to the Review Mechanism and the Matrix it created, 123 of the 384 IER recommendations have been implemented.⁴⁷

B. The future

Ongoing efforts to improve the court's performance and state cooperation

As the review process moves from an assessment to the implementation phase, the Assembly and court officials should remain committed to a structured process of follow-up. It will take time to assess whether the review process's key objective of strengthening the court's delivery of justice has been achieved, and what gaps remain for future work.

At this upcoming session, the Assembly will need to determine next steps. The Review Mechanism has proposed that its mandate should not be renewed; instead, it suggested that mandate holders in the ASP's working groups take up monitoring and discussion of the implementation of the IER recommendations already assigned to them in the assessment phase. For recommendations that are not currently matched with a mandate, the Review Mechanism recommended that states parties create new working group mandates or assign these recommendations to existing ones. Finally, the Review Mechanism recommended that the overall monitoring of the process be conducted by the Bureau, which can then decide to assign that role to the vice-presidents of the Assembly.⁴⁸

⁴⁵ The implementation roundtables focused on recommendations related to and related to relations with civil society, communication and outreach, unified governance, the Secretariat of the Assembly, tenure, and the Trust Fund for Victims. See Bureau of the ASP, "Decision of the Bureau: Comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action, as appropriate," July 28, 2021, https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/ICC-ASP20-BD-CPA-ENG.pdf (accessed November 17, 2023); Review Mechanism, "Report of the Review Mechanism on the overall progress of its work," June 30, 2023, unpublished document on file with Human Rights Watch, paras. 3-21; Review Mechanism, "Future of the Review Mechanism," October 6, 2023, unpublished document on file with Human Rights Watch, pp.1.

⁴⁶ Review Mechanism, "Report of the Review Mechanism on the overall progress of its work," June 30, 2023, unpublished document on file with Human Rights Watch, Annex I "Reports of Assembly mandate holders on the issues assigned to them as the platform for discussion Review Mechanism,"; "Future of the Review Mechanism," October 6, 2023, unpublished document on file with Human Rights Watch, pp.1.

⁴⁷ *Ibid.*; Review Mechanism, "Matrix - Progress in the assessment of the IER recommendations", July 28, 2023, unpublished document on file with Human Rights Watch.

⁴⁸ Review Mechanism, "Future of the Review Mechanism," October 6, 2023, unpublished document on file with Human Rights Watch, pp. 1 and 2.

Human Rights Watch agrees with the overall proposal of the Review Mechanism, and urges states parties to undertake future steps in the review process in line with the following considerations:

1. Ensure that follow-up includes continued dialogue within the Assembly working groups aimed at supporting the court to improve its performance and enhancing state party cooperation;
2. Maintain respect for the court’s judicial and prosecutorial independence;
3. Require annual reporting by the court and within the Assembly on the implementation of recommendations;
4. Ensure ongoing and meaningful civil society engagement in the review process; and
5. Respond flexibly in the future to the need for further review processes facilitated through independent experts aimed at addressing specific challenges.

Supporting a strategic vision for the court

IER recommendation 363 refers to convening a stakeholder discussion with the aim of enabling the court and the Assembly to “focus their efforts of implementing the Rome Statute in the same direction.” The recommendation also refers to a 10-year strategic vision for the court backed by a shared understanding of the resources, cooperation, and institutional development necessary to achieve that vision. While the IER report was presented as an almost resource-neutral set of recommendations, the reality is that ensuring that the court improves its performance to effectively deliver on its global mandate, takes adequate and sustainable resources.

The Assembly president used the framework of IER recommendation 363 for the commemoration process of the 25th anniversary of the adoption of the Rome Statute. This included two events—a high-level event held in New York on July 17, and a symposium held in Siracusa, Italy, on October 12-13—both organized around the theme, “Strategic vision for the next decade: how to ensure consistent and sustainable support for the ICC.”⁴⁹

While the discussions held during these commemoration events included important reflections on the main challenges and opportunities facing the court and the broader Rome Statute system, the court and the Assembly have so far fallen short of implementing IER recommendation 363. Through a declaration adopted at the end of the symposium in Siracusa, the participants to the symposium—which included a number of state representatives, court officials, as well as representatives of civil society organizations—“[c]ommit[ted] to further dialogue to achieve a shared vision that aligns all actors of the Rome Statute system with a view toward maximizing the Court’s impact in delivering meaningful justice for victims and survivors,” and “urge[d] the

⁴⁹ ASP, “Concept note for the commemoration process of the twenty-fifth anniversary of the adoption of the Rome Statute of the International Criminal Court,” May 12, 2023, https://asp.icc-cpi.int/sites/default/files/asp_docs/25A-CN-ENG-12May23.pdf (accessed November 17, 2023).

adoption of a strategic vision for the Court for the next decade.”⁵⁰ States parties and the court should work together to lay out a clear plan to achieve these goals and fully implement IER recommendation 363.

Recommendations to the Assembly and ICC states parties

- In General Debate statements, during the review plenary session, and other appropriate moments during the Assembly session, express support for the ongoing review process, and commit to the essential principles that should guide its next phase, including:
 - Maintaining respect for the court’s judicial and prosecutorial independence;
 - Calling on court actors to continue to make progress in their implementation of recommendations;
 - Indicating a shared commitment to continue the process of reflection on ongoing improvement in the court’s performance, including the role of states parties in providing financial, political, and practical support; and
 - Ensuring meaningful civil society engagement;
- Adopt a resolution outlining the next steps in the review process, in line with the recommendations made by the Review Mechanism; and
- Commit to supporting the court in the development of a 10-year strategic vision in furtherance of IER recommendation 363 by no later than the Assembly’s twenty-third session.

Related Human Rights Watch Materials

- “Human Rights Watch recommendations ahead of the commemoration of the 25th anniversary of the Rome Statute of the International Criminal Court on July 17, 2023,” https://www.hrw.org/sites/default/files/media_2023/07/HRW%20Recommendations%20for%2025th%20Anniversary%20of%20the%20Rome%20Statute.pdf

III. A permanent vetting process for ICC elections

At the upcoming Assembly session, states parties will elect six new judges, one-third of the court’s bench. States parties are also due to elect a new Bureau, along with the president and two vice presidents of the Assembly. The merit-based election of highly qualified court officials and Assembly leaders is among the most important elements of state party stewardship of the Rome Statute system.

⁵⁰ “Siracusa Declaration on Ensuring Consistent and Sustainable Support for the International Criminal Court,” October 13, 2023, unpublished document on file with Human Rights Watch, paras. 28-29.

An important innovation in this year’s judicial election is the due diligence process carried out by the Independent Oversight Mechanism (IOM) to assess the candidates’ “high moral character.” “High moral character” is a Rome Statute requirement for the positions of ICC judges, prosecutor and deputy prosecutors, and the registrar.⁵¹ The due diligence process was yet another critical steppingstone toward the establishment of a permanent vetting process for all ICC elections.

The move towards a permanent vetting process gained momentum following the 2020-2021 election of the ICC prosecutor. That election was marred by the absence of a comprehensive approach to vetting for high moral character. Since then, states parties have taken several steps to strengthen the ICC election processes and, in particular, to fill the “vetting gap”: three ad hoc procedures to assess the high moral character of candidates in the election of the deputy prosecutors in 2021, the election for the registrar in 2022, and the election of judges in 2023, as well as a lessons-learned exercise on the election of the third prosecutor, which included consideration of the vetting issue.⁵²

At its twentieth session, the Assembly mandated the Bureau to continue consultations for developing a vetting process for all ICC officials, with a view to adoption as soon as feasible and no later than its twenty-second session.⁵³ At the end of May, the Bureau appointed two co-facilitators to steer this process based on an initial draft proposal for a “Due diligence process for candidates for elected officials of the ICC” circulated by the Assembly presidency in April.⁵⁴

At the time of writing, the final draft has been approved by the dedicated facilitation. The draft includes many of the elements of the previous ad hoc processes, and it builds on the progressive advancements made over the past three years:

- A clear definition of misconduct as “human rights violations, incidents in the workplace or in connection with work of harassment, including sexual harassment, abuse of authority,

⁵¹ Rome Statute arts. 36(3)(a), 43(3), and 43(3), <https://www.icc-cpi.int/sites/default/files/Publications/Rome-Statute.pdf> (accessed November 17, 2022); Maria Elena Vignoli, “New ICC Vetting Process Begins for Judicial Candidates,” Human Rights Watch Dispatch, April 4, 2023, <https://www.hrw.org/news/2023/04/04/new-icc-vetting-process-begins-judicial-candidates>.

⁵² ASP, “Agreement by the Presidency of the Assembly and the Prosecutor on Due Diligence Process for Candidates for Deputy Prosecutor,” https://asp.icc-cpi.int/iccdocs/asp_docs/Elections/DPROS2021/DP-Due-Diligence.pdf (accessed November 17, 2023) (adopted by the Bureau of the ASP on July 6, 2021); Bureau of the ASP, “Agenda and decisions,” June 8, 2022, <https://asp.icc-cpi.int/sites/asp/files/2022-07/2022-Bureau5-agenda-decisions.pdf> (accessed November 17, 2023), Annex, “Proposal by the presidency on due diligence process for candidates for registrar agreed by the Bureau of the Assembly on 8 June 2022”; Bureau of the ASP, “Due diligence process for candidates for 2023 judicial elections,” February 28, 2023, https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-EJ2023-DueDiligence-ENG.pdf (accessed November 17, 2023); ASP, “Third Election of the Prosecutor of the ICC: Lessons Learnt,” October 13, 2022, unpublished document on file with Human Rights Watch.

⁵³ ASP, “Strengthening the International Criminal Court and the Assembly of States Parties,” ICC-ASP/20/Res.5, December 9, 2021, 62 https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP20/ICC-ASP-20-Res5-AV-ENG.pdf (accessed November 17, 2023), para. 81.

⁵⁴ Bureau of the ASP, “Agenda and decisions,” May 10, 2023, https://asp.icc-cpi.int/sites/default/files/asp_docs/Bureau5.agenda-and-decisions.pdf (accessed November 17, 2023), fn. 11.

discrimination and bullying, as well as other ethical or legal breaches of a serious nature such as fraud or corruption”⁵⁵;

- Background checks to be carried out by the IOM with the assistance of the relevant sections of the court’s Registry. These checks include “contacts with former employers and, where feasible, employees who may have worked with the candidates.”⁵⁶ These types of interviews can reveal relevant information about a candidate’s character or conduct that may not otherwise be uncovered;
- A confidential channel for the receipt of allegations of misconduct and provisions aimed at improving the dissemination of the channel⁵⁷;
- Efforts to protect complainants’ identity⁵⁸; and
- A warning to candidates not to retaliate against complainants.⁵⁹

The current draft also includes novel elements, such as:

- An extended timeline for the duration of the confidential channels (60 days, instead of the 45 granted in previous processes)⁶⁰;
- Steps to be taken to report a candidate’s retaliation against a complainant⁶¹; and
- The process to be followed in case the IOM’s report raises concerns about the moral character of any of the candidates.⁶²

Regrettably, the current draft only covers the election of ICC officials, and states parties should consider extending this process to ASP elections in the future and should also continue strengthening it.

Recommendations to the Assembly and ICC states parties

- In General Debate statements and during other appropriate moments before and during the Assembly session, support the establishment of a permanent vetting process for the election of ICC officials and commit to extending such process to Assembly elections in the future and to continue strengthening it; and
- Establish a permanent vetting process for the election of all ICC officials making sure that it embodies the lessons learned from and progress made by previous ad hoc procedures.

⁵⁵ Bureau of the ASP, “[Draft] Due diligence procedure for candidates for elected officials of the ICC,” November 14, 2023, unpublished document on file with Human Rights Watch, para. 11.

⁵⁶ *Ibid.*, para. 9.

⁵⁷ *Ibid.*, paras. 12-13.

⁵⁸ *Ibid.*, paras. 17-18.

⁵⁹ *Ibid.*, para. 21.

⁶⁰ *Ibid.*, para. 14.

⁶¹ *Ibid.*, para. 21bis.

⁶² *Ibid.*, para. 27.

Related Human Rights Watch Materials

- Maria Elena Vignoli (Human Rights Watch) and Danya Chaikel (International Federation for Human Rights), “Vetting in ICC Elections, Quo Vadis?” commentary, Coalition for the International Criminal Court, July 13, 2022, <https://www.hrw.org/news/2022/07/13/vetting-icc-elections-quo-vadis>
- Maria Elena Vignoli, “New ICC Vetting Process Begins for Judicial Candidates,” Human Rights Watch dispatch, April 4, 2023, <https://www.hrw.org/news/2023/04/04/new-icc-vetting-process-begins-judicial-candidates>