



**Human Rights Watch's Statement to the Assembly of States Parties to the Rome Statute
Committee on Budget and Finance
39th session**

September 14, 2022

Human Rights Watch is grateful for the opportunity to address the Committee on Budget and Finance of the Assembly of States Parties to the Rome Statute and appreciates the Committee's openness to take onboard civil society's views.

Human Rights Watch is not an auditor of the court's finances, and we do not engage the Committee and the Assembly to simply endorse the court's proposed budget. Rather we pursue two main goals:

1. To call states parties to account for the financial investment needed to make their commitment to this court a more effective reality; and
2. Where we have expertise, to offer our observations to contribute to a budget process that achieves the resources necessary to support the full delivery of the court's mandate.

These two goals are closely related.

Human Rights Watch has observed the court since its inception and over the past several years we have shared our concerns about the growing mismatch between the court's workload and its resources. We have repeatedly called on the court to ask for what it needs and on states parties to ensure the court has the funding necessary to fulfil its crucial mandate. However, states parties have repeatedly pursued a close-to-zero nominal growth approach, which has deprived the court of any financial flexibility and has severely distorted discussion about the real resources needed to support access to justice.

We are long past a breaking point. With operations expected in 16 situations in 2023 and several cases in different stages of the proceedings (from pre-trial to reparations), the court simply cannot do what it is tasked with without a drastic change in discussions around its resources.

The prosecutor's request for voluntary contributions earlier this year was a manifestation of this untenable situation. In addition to issues of sustainability and independence, concerns also highlighted in the Committee's report of its 38th resumed session, we have observed significant lack of clarity among states parties regarding the relationship between these voluntary contributions

and the court's proposed budget. In particular, there appears to be a lack of understanding as to the extrabudgetary nature of the Trust Fund and the personnel seconded in response to the prosecutor's request. That is, how these voluntarily committed resources – both financial contributions and gratis personnel – relate to the requests made in the regular budget proposal by the Office of the Prosecutor as well as other organs of the court, the specific gaps they are supposed to fill and what they cannot be used for, and how they are being deployed to date.

In its last report, the Committee provided an overview of the focus of the Trust Fund and requested the court to report on its governance and spending plan for the fund, as well as on seconded personnel. We believe this information should be made public, together with a further clarification of the focus and limited scope of the voluntary contributions, to increase transparency and support the budget negotiations.

Another important development for the upcoming negotiations is the recent raise in the revised post adjustment multiplier for professional staff and higher categories required by the International Civil Service Commission. In our view, this increase should not be addressed at the expense of other reasonable budgetary requests the court has made to align with the reality of its workload.

Critically, we believe that this year's budget proposal offers the opportunity to change the narrative around the court's resources, away from a race to the bottom, with a view to longer-term planning and sustainability.

In this regard, we were glad to see the court finally asking for such a substantial increase, in recognition of the significant uptick in its workload across organs. In particular, we were pleased to see more resources requested for key areas such as victim and witness protection, outreach, and country presence, as well as for the implementation of a number of Independent Expert Review (IER) recommendations, including additional personnel in the prosecutor's Public Information Unit, and the further institutionalization of the positions of Focal Point for Gender Equality and ombudsperson.

However, despite these positive trends, the budget proposal also reveals ongoing resource constraints that could severely affect the court's delivery of justice:

- The preliminary examination in Nigeria, which was concluded by the previous prosecutor who decided not to proceed with a request to open an investigation including due to the limited resources at her disposal, risks remaining in limbo; the current budget proposal doesn't signal any further developments in this situation.
- The deprioritization of the investigation of crimes allegedly committed by US forces and the former Afghan government in the context of the situation in Afghanistan, which was driven

last year by insufficient resources, among other factors, still persists according to the budget proposal, significantly impacting victim's access to justice.

- In addition, while the court is planning to open new country offices in Ukraine, Sudan, Bangladesh, and Venezuela, the reduction in the court's presence in other countries, (Georgia and Cote d'Ivoire) raises concerns in terms of the already limited outreach to affected communities; there are pending arrest warrants in Georgia and the prosecutor expects to make a decision in relation to potential further prosecutions in Cote d'Ivoire.

We acknowledge that moving towards a genuine and comprehensive assessment of the resources the court needs to effectively fulfil its mandate will require a type of dialogue among all stakeholders that the current budget process cannot provide. In our view, IER recommendation 363, which was positively assessed, could be an excellent vehicle for this through a discussion between the court, states parties and civil society on a strategic vision for the court for the next 10-years and what is needed to get there.

In the meantime, we believe that there are concrete steps states parties can take to put the court on more stable (and sustainable) footing. 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, and in light of the lessons learned from the unexpected increase in workload this year, states parties should consider raising the contingency fund. While we were glad to see the Committee's recommendation to replenish the funds' notional level of €7 million, we believe the notional level itself should be increased to put the court in a position to respond to major developments and sustain its activities across all situations without the need for voluntary contributions. This would also be in line with recommendation 141 of the IER.