

Joint Civil Society Statement on the Adoption of the ICC's 2022 budget and the Situation in Ukraine

To the Assembly of State Parties, prior to the 20th session to be held on 6-11 December 2021

23 NOVEMBER 2021

The undersigned civil society organisations respectfully call on the Assembly of State Parties (ASP) to adopt a budget that ensures the effective implementation of the International Criminal Court (ICC)'s mandate in 2022 and which accommodates the Office of The Prosecutor (OTP) with the necessary resources to progress to the investigative stage in relation to the situation in Ukraine.

On 11 December 2020, former Prosecutor Fatou Bensouda announced the conclusion of the preliminary examination of the situation in Ukraine. She stated that *"there is a reasonable basis at this time to believe that a broad range of conduct constituting war crimes and crimes against humanity within the jurisdiction of the Court have been committed"* from 20 February 2014 onwards. The crimes committed (i) in the context of the conduct of hostilities, (ii) during detention, and (iii) in Crimea are *"sufficiently grave to warrant investigation by the OTP, both in quantitative and qualitative terms"*. It is Ms Bensouda's assessment that *"potential cases that would likely arise from an investigation into the situation in Ukraine would be admissible"*.^[1]

Although there is a clear mismatch between the resources afforded to the OTP and the ever-increasing demand for accountability, the Committee on Budget and Finance noted that the Court's budget has seen near-zero growth in the most recent five years (2017-2021).^[2] The International Expert Review (IER), commissioned by the ASP, also took note of the significant resource gap, noting understaffing across the OTP, as well as a *"liquidity crisis"* due to the absence and the delayed payment of assessed contributions.^[3]

The IER recommended that a discussion among the Court, State Parties, and civil society should be convened on the strategic vision of the Court, to enable the Court and the ASP to focus their efforts towards implementing the Rome Statute in the same direction.^[4] Furthermore, during her statement on the conclusion of the preliminary examination of the situation in Ukraine, former Prosecutor Bensouda stressed that the predicament which the ICC is confronted with due to capacity constraints requires *"open and frank discussions with the Assembly of States Parties, and other stakeholders of the Rome Statute system, on the real resource needs of my Office in order to effectively execute its statutory mandate."*

State Parties, through the Assembly, can play a significant role in strengthening the Court's performance, efficiency, and effectiveness. Almost a year after the announcement of the conclusion of the preliminary examination of the situation in Ukraine, the undersigned civil society organisations:

- Reiterate that the ICC plays an essential role in delivering justice to victims of and communities affected by the most horrific crimes.
- Encourage the ASP to adopt a budget for the calendar year 2022 that accommodates the OTP with the resources required to open and ensure effective investigations into the situation in Ukraine, as well as respond to the legitimate expectations of victims and communities affected by the committed crimes.
- Respectfully call on the Prosecutor Mr Karim A.A. Khan QC to request authorisation from the Judges of the Pre-Trial Chamber of the Court to open investigations.

SIGNATORIES:

International Partnership for Human Rights (Belgium)

Center for Civil Liberties (Ukraine)

Truth Hounds (Ukraine)

Luhansk oblast Human Rights Centre "Alternative"

Ukrainian Helsinki Human Rights Union

Kharkiv Human Rights Protection Group

ENDNOTES

- [1] ICC, "Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination in the situation in Ukraine" 11 December 2020, <https://www.icc-cpi.int/Pages/item.aspx?name=201211-otp-statement-ukraine>.
- [2] ASP, "Report of the Committee on Budget and Finance on the work of its thirty-fifth session," ICC-ASP/19/15/AV, para. 11 page 8.
- [3] Independent Expert Review of the ICC and the Rome Statute System, "Final Report," 30 September 2020, para. 350.
- [4] Independent Expert Review of the ICC and the Rome Statute System, "Final Report," 30 September 2020, R363.