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**Report of the Court on the establishment of an office for the
International Criminal Court at the
African Union Headquarters in Addis Ababa*****I. Introduction**

1. This report is submitted by the Registrar, after consultations with the President and the Prosecutor, pursuant to paragraph 21 of resolution ICC-ASP/7/Res.3 of the Assembly of States Parties (“the Assembly”) dated 21 November 2008,¹ which requested that “the Court consider the desirability and feasibility of establishing, at African Union Headquarters in Addis Ababa, a small representation common to all parts of the Court, and requests the Registrar to report to the Assembly of States Parties on this question, including its budgetary implications, drawing upon experiences and lessons learned from existing offices of the Court in New York and in the field”.

2. The report has been prepared following consultations in Addis Ababa by an inter-organ mission of the Court. The mission met with staff of the Commission of the African Union (AU), embassies of African, European and Asian States Parties, the Special Representative of the European Union to the AU, the United Nations Economic Commission for Africa (ECA), the International Committee of the Red Cross and civil society organizations. Consultations were also held with The Hague and New York Working Groups.

II. Desirability of an Addis Ababa office

3. Africa played a leading role in the establishment of the Court, and it constitutes the largest regional block of States Parties to the Rome Statute. The role Africa played in the negotiations on the Rome Statute, the number of ratifications by Africa, the cooperation offered by African States Parties, the self-referral of situations by African States and the complementary nature of the Court as a court of last resort needs to be a regular part of the dialogue in the AU. The Court is best placed to bring this information to the AU debates, but the geographical distance between Addis Ababa and The Hague poses a challenge.

* Previously issued as ICC-ASP/8/CBF.2/12.

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III.

4. Similarly, it is crucially important to enhance understanding that the Constitutive Act of the AU – which provides that the Union shall function in accordance with the principle of the condemnation and rejection of impunity – is consistent with the Rome Statute. It is clear that an enhanced dialogue between the Court and the AU needs to take place.

5. In addition to being the seat of the AU, Addis Ababa is a major regional political capital and the hub of African international relations. African States are all represented there, and the majority of other States Parties have also established embassies in Addis Ababa. Further, there are numerous civil society, non-governmental and intergovernmental organizations based in Addis Ababa. Building sustainable strategic partnerships with all of these actors in Addis Ababa would clearly strengthen the relationship between the Court and the AU.

Consultations

6. Amongst those consulted in Addis Ababa, there was unanimous support for the establishment of a Court office in Addis Ababa (the “Office”). The Court was strongly urged to arrange for representation as part of a proactive advocacy approach aimed at fostering dialogue and understanding of the Court within the AU and amongst African States individually and collectively in Addis Ababa.

7. The Court was encouraged to establish a presence in Addis Ababa not only to keep the Court on the AU agenda, but also to reinforce the role of the Rome Statute as an essential, dynamic and developing element of international justice.

8. Since good dialogue is a two-way process, it was emphasized that the Office would also serve to keep the Court informed of developments within the AU, and help it develop a better understanding of matters before the AU. At present, the Court is limited in its ability to keep directly informed of developments which concern it. The Court needs to be informed of developments relating in particular to the Peace and Security Council (PSC). Items which rise to the level of the PSC are likely to be of relevance to the Court. A permanent and active interface between the Court and the PSC is thus necessary.

The experience of field offices and the New York Liaison Office

9. Unlike the Court’s field offices in situation countries, the Office will not be involved in operational activities of the Court; neither will it be required to provide any administrative and logistical support for such activities, except making logistical arrangements for visiting officials from The Hague. The experience of the field offices will thus not be directly relevant for the Office.

10. Like the New York Liaison Office, the Office will mainly perform liaison, representation and public information functions aimed at raising the profile of the Court, developing and maintaining a close working relationship between the Court and the AU. Interaction with high-ranking AU and government officials, including Permanent Representatives to the AU, will be essential for the success of the work of the Office.

11. Just as the New York Liaison Office represents the Court before United Nations bodies and the Secretariat, the Addis Ababa Office will fulfil a similar function in relation to the AU. Likewise, the function of reporting back to the Court on United Nations developments will also be carried out by the new Office in respect of AU developments.

12. Even though there are similarities, one important difference was unanimously highlighted by the Court's interlocutors in Addis Ababa. The main interlocutors for the Court in Addis Ababa will be ambassadors and AU Commissioners. Our interlocutors stressed that access to such persons will only be granted to a senior-level person.

13. Another difference compared with the New York Liaison Office is that the Office will not have any secretariat functions for the Assembly.

14. A further difference which needs to be highlighted is that the New York Liaison Office operates within the framework of a relationship agreement and of extensive cooperation between the Court and the United Nations. A significant amount of activity of the New York Liaison Office is thus devoted to operational cooperation between the Court and the United Nations. The conclusion of a memorandum of understanding between the Court and the AU is pending. The Office could contribute to its conclusion.

Proposed role of the Office

15. Generally, the Office would be tasked with providing analysis and briefings to the Court on relevant AU developments, organizing visits of officials of the Court, developing and maintaining a close working relationship between the Court and the AU, and disseminating information on the Court.

16. The Office will need to maintain active and regular communication with the Court and to report on liaison and representation efforts and to seek instructions. When representational functions need to be performed by officials of the Court, the Office will provide logistical and substantive assistance with organizing and promoting visits by Court officials to Addis Ababa.

17. The following are amongst the functions that can be envisaged:

- a) Liaison and representation with the AU:
 - Act as a point of contact with the AU Commission and AU bodies;
 - Liaise with relevant AU Commission departments and bodies to monitor developments and facilitate cooperation between the AU and the Court; and
 - Participate in relevant meetings of the AU.
- b) Liaison and representation with the ECA:
 - Act as the contact point between the Court and the United Nations in Addis Ababa;
 - Maintain close contact with ECA officials, and report on significant ECA developments; and
 - Participate in meetings of the Governance and Public Administration Division (GPAD) of the ECA (see paragraph 24 below).
- c) Liaison and representation with States Parties:
 - Maintain close liaison with States Parties; and
 - Promote implementation of the Rome Statute, the Agreement on Privileges and Immunities of the Court and support for the Court.
- d) Liaison and representation with international and regional organizations:
 - Maintain strong relationships with such organizations.

- e) Liaison and representation with non-governmental organizations (NGOs):
 - Maintain contact with NGOs based in Addis Ababa;
 - Attend relevant meetings of NGOs; and
 - Facilitate communication between NGOs and the Court.

18. While no extensive public information activities are envisaged for the Office, part of the duties of the Office would include awareness-raising and the dissemination of information in order to raise the visibility of the Court, using products and materials produced in The Hague.

19. The Office would also develop working relationships with African and international media based in Addis Ababa, in particular journalists covering the AU. The Office would relay information about the Court in general.

III. Feasibility of an Addis Ababa office

20. In order to assess the feasibility of setting up an office, the Court explored the possible legal and institutional frameworks.

Legal framework

21. In order for the Office to have legal standing in Ethiopia, the Court will have to negotiate and sign a headquarters agreement with the Ethiopian Government. Such an agreement will need to safeguard the privileges and immunities of the Court with respect to its staff and assets.

22. The Court was informed that such an agreement would be greatly facilitated if the Court was accredited to one or more of the multilateral organizations headquartered in Addis Ababa. The most relevant ones in this respect are the AU in the first instance, and the ECA.

23. In respect of the AU, the Court is in the final stages of negotiating a memorandum of understanding with the AU Commission, which provides for the Court to have observer status with this organization. During the Court's visit, the Legal Counsel of the Commission agreed to work swiftly on its finalization. It is thus hoped that accreditation with the AU will be achieved very shortly.

24. In respect of the ECA, the Court has an existing Relationship Agreement with the United Nations, which could be used as a basis for accreditation with this organization. The ECA also has a forum on governance in Africa (meetings of the GPAD), which deals with issues relating to strengthening the rule of law in Africa. In view of the complementarity framework, it would be useful for the Court to attend these meetings. In addition, the Court has explored the possibility of taking advantage of ECA facilities and infrastructure (against reimbursement), an issue which is explained further below. In view of the scope of the relationship with the ECA, accreditation with this organization is also recommended.

25. Two more possibilities were explored but rejected. First, the possibility was explored of accrediting the Office to Ethiopia itself, rather than to a multilateral institution. Given that Ethiopia is not a State Party, there might be difficulties in negotiating a headquarters agreement on this basis. The possibility of the Office being hosted by a State Party was also considered as not feasible, as it would not provide an adequate legal basis for the Office.

Institutional framework

26. Similar to the New York Liaison Office, the Court must ensure a structural solution in which the Office would fall within the Rome Statute framework, and which would allow it to serve all organs in a fair and transparent manner, respecting the existing lines of authority and structures of independence.

27. The head of the Office will represent the Court in Addis Ababa. It will be essential to ensure that he or she represents the Court in accordance with the one-Court principle while respecting the independence of the Office of the Prosecutor. The New York Liaison Office model provides for such a careful balance and should be replicated.

28. Administratively, the head of the Office will report to the President. On organ-specific matters, the head of the Office will report to the specific organ in question.

29. The official title of the head of the Office will be Head of Office.

30. The administrative, financial and other general services provided by the Registry would be available to the Office, as far as possible and practicable.

31. The budget and finances for the Office can be integrated within one of the Major Programmes of the Court, following the example of the New York Liaison Office. The Office is envisaged to be small but effective, but must be sufficiently resourced to perform its prescribed functions. The resources required are set out in more detail below. A draft budget is appended.

IV. Resource requirements of the Liaison Office

32. The following basic requirements stand out as central to a long-term and constructive Addis Ababa presence:

Personnel structure

33. It is envisaged that the Office workload will vary depending on the activities of the AU and its organs. The workload will be at peak inter alia during preparatory meetings for the Heads of State summits, during the summits, during debates of the PSC, and during visits of Court officials. Representational functions will remain constant throughout, as the Head of Office has to cultivate and maintain relations at all times.

34. Given the need for an adequate level of representation, the Head of Office should be a post at D-1 level. The Head of Office would be the Court's representative in Addis Ababa. He would be responsible for the management of the Office and would have overall responsibility for ensuring that it functioned effectively.

35. A P-3 Liaison Officer would assist the Head of Office by carrying out substantive functions such as preparing background documentation, taking notes and preparing reports of meetings, enabling the Head of Office to focus on representational functions. The Liaison Officer would also fill in for the Head of Office during periods of leave or sickness or absence on mission. Given the diversity of working languages within the AU, the Court would benefit from having a Liaison Officer with language skills complementary to those of the Head of Office.

36. The Office will also need to retain the services of an Administrative and Technical Assistant at GS-7 level. The incumbent would provide administrative and logistical support to the Office and to visiting officials from The Hague, organize information resources, assist with general support to the Office, arrange appointments and facilitate meetings.

37. Finally, the Office will also need a driver at GS-2 level. This is a minimal expense and was regarded as necessary by the interlocutors interviewed in Addis Ababa because of local traffic conditions, and the Office's representational functions. The driver could also be used to deliver correspondence and to do other ad hoc tasks.

Other resource requirements

i) Premises, furniture and equipment

38. There will be a need to lease office space. The Court asked the AU Commission whether it would be possible to rent office space within AU Headquarters, and was informed that no office space was available. The AU is currently building new premises to accommodate its growing staff numbers and conferencing needs, and the issue may be revisited in the future.

39. The Court also explored the possibility of renting space within the ECA compound. Although there are difficulties with space at present, the ECA thought it would be possible to accommodate the Office, at least in the short term. Twelve square metres of office space are available at a cost of USD 10.12 per square meter per month for 2009. Thus, the monthly rental charge for such an office would be USD 121.44 per month. The Office would need two such spaces.

40. The Court explored the possibility of renting premises in the vicinity of the AU. A small house (villa) that would accommodate three offices would be ideal. The estimated cost of such a facility is USD 2,500 per month.

ii) General operating expenses

41. General operating expenses, such as cleaning and security services, will be required for the Office. Depending on whether the option of using ECA premises is taken up, the ECA can provide such services on a cost-recovery basis. If the stand-alone option is taken up, these services will have to be contracted out on a commercial basis. The budget appended hereto details such costs.

iii) Networks and technical solutions

42. The Head of Office will need to be able to access the online networks and technical infrastructure of the Court according to the rules of confidentiality and access that apply to corresponding staff in The Hague.

43. If the solution of accessing ECA services, including technological services, is preferred, the Court will have access to the network and technical solutions offered by the United Nations system on a cost-recovery basis. If the stand-alone option is chosen, these services will have to be contracted out on a commercial basis.

iv) Travel

44. While most of the work will be carried out in Addis Ababa, it should be noted that some of the important policy formulation meetings of the various bodies of the AU take place in capitals of African States. Travel in Africa for such meetings and, when required, for

events co-sponsored by the Court in Africa should thus be envisaged. Travel is also envisaged for the Head of Office to The Hague twice a year.

V. Conclusion

45. As mandated, the Court has considered the desirability and feasibility of establishing, at AU Headquarters in Addis Ababa, a small representation common to all parts of the Court, drawing on its experiences with the New York Liaison Office.

46. As detailed above, the Court has found that an office in Addis Ababa is both desirable and feasible.

Annex

Table 1: Estimated budget for Court Office

<i>Addis Ababa Liaison Office</i>	<i>Proposed 2010 budget</i>			<i>Proposed 2010 budget</i>			Notes:
	<i>Staffing</i>			<i>(thousands of euro)</i>			
	<i>Basic</i>	<i>Situation-related</i>	<i>Total</i>	<i>Basic</i>	<i>Situation-related</i>	<i>Total</i>	
Professional staff	2		2	258.9		258.9	1 D-1 and 1 P-3 calculated at 10% vacancy rate
General Service staff	1		1	60.0		60.0	1 GS-OL calculated at 10% vacancy rate
<i>Subtotal staff</i>	<i>3</i>		<i>3</i>	<i>318.9</i>		<i>318.9</i>	
General temporary assistance				16.7		16.7	Calculated 3 months GS-OL at HQ rate, to include driver
Temporary assistance for meetings							
Overtime							
Consultants							
<i>Subtotal other staff</i>				<i>16.7</i>		<i>16.7</i>	
Travel				15.9		15.9	Assumed travel: 2 trips each D-1 and P-5 Addis-Amsterdam
Hospitality				1.0		1.0	Same amount as for NY Liaison Office
Contractual services incl. training				15.6		15.6	Cleaning services, security, etc.
General operating expenses				49.6		49.6	Includes rental, utilities, services, etc.
Supplies and materials				5.0		5.0	Same amount as for NY Liaison Office
Equipment incl. furniture				47.7		47.7	Includes computer equipment, hardware/software, office furniture
<i>Subtotal non-staff</i>				<i>134.8</i>		<i>134.8</i>	
Total				470.4		470.4	

Note: It may be necessary to consider dedicated Internet line/satellite for enhanced communications with HQ.

Table 2: Estimated budget for ICC - UNECA offices

<i>Addis Ababa Office Liaison Office</i>	<i>Proposed 2010 Budget</i>			<i>Proposed 2010 Budget</i>			Notes:
	<i>Staffing</i>			<i>(thousands of euro)</i>			
	<i>Basic</i>	<i>Situation-related</i>	<i>Total</i>	<i>Basic</i>	<i>Situation-related</i>	<i>Total</i>	
Professional staff	2		2	258.9		258.9	1 D-1 and 1 P-3 calculated at 10% vacancy rate
General Service staff	1		1	60.0		60.0	1 GS-OL calculated at 10% vacancy rate
<i>Subtotal staff</i>	<i>3</i>		<i>3</i>	<i>318.9</i>		<i>318.9</i>	
General temporary assistance				16.7		16.7	Calculated 3 months GS-OL at HQ rate, to include driver
Temporary assistance for meetings							
Overtime							
Consultants							
<i>Subtotal other staff</i>				<i>16.7</i>		<i>16.7</i>	
Travel				15.9		15.9	Assumed travel: 2 trips each D-1 and P-5 Addis-Amsterdam
Hospitality				1.0		1.0	Same amount as for NY Liaison Office
Contractual services incl. training				3.0		3.0	Guesstimate cleaning services – offices only
General operating expenses				15.0		15.0	UNECA: rental of offices (3) and equipment; guesstimate meeting room rental
Supplies and materials				5.0		5.0	Same amount as for NY Liaison Office
Equipment incl. furniture				30.0		30.0	Guesstimate: one-off cost for furnishing of 3 offices
<i>Subtotal non-staff</i>				<i>69.9</i>		<i>69.9</i>	
Total				405.5		405.5	

Notes: Included in rental of equipment: shared internet resources.

Not included in rental: e-mail services, shared drives.

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