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Committee on Budget and Finance
Secretariat of the Assembly of States Parties
International Criminal Court
Po Box 19519
2500 CM, The Hague
The Netherlands



September 15, 2015

HRW.org

Dear Committee on Budget and Finance member,

We are writing with regard to the upcoming 25th session of the Committee on Budget and Finance. Specifically, we seek to underscore the importance we attach to the Registrar's decision to establish new, high-level "chiefs of field offices," following the completion of the Registry's *ReVision* project. In our view, the establishment of these positions is a critical next step in broader reforms needed to better enable the International Criminal Court (ICC) to carry out its mandate, while maximizing its positive impact for victims and affected communities.

Importance of field offices to the ICC's impact

The ICC's presence in or near situation countries plays a central role in carrying out a wide range of court activities. These activities include conducting investigations, providing protection and support to victims and witnesses, and facilitating the cooperation of national authorities and international partners. These activities often require developing and sustaining close relationships on the ground.

But the court's presence takes on added importance when it comes to enhancing the positive impact of ICC proceedings in situation countries. Victims and affected communities lie at the heart of the court's work. For these communities, the delivery of justice matters, but so does the quality of that justice and ensuring that justice is also seen to be done. As set out further in our August 2015 report, *Making Justice Count: Lessons from the ICC's Work in Côte d'Ivoire*, to aim at achieving impact, court officials need to take steps to see that the ICC's proceedings are meaningful, accessible, and perceived as legitimate in situation countries.

Court officials have a number of different responsibilities relevant to the court's local impact, each of which require sustained engagement in ICC situation countries. These include outreach to affected communities, assisting victims to participate in court proceedings, engaging victims and civil society in consultations, and the

possibility of *in situ* proceedings. They also include implementation of the Trust Fund for Victims dual-mandate to provide assistance to victims and carry out court-ordered reparations. And they include “positive complementarity” initiatives to encourage additional national investigations and prosecutions, amplifying the effect of the cases pursued by the ICC and increasing its long-term legacy.¹

Although the court’s presence to support these activities may take a number of different forms, formal field offices managed by the court’s Registry and with staff based permanently in the field offer a number of advantages.

Staff members based in the field are likely to have a more nuanced understanding of the environment in each country, which could help the court to tailor its activities and bring this perspective to broader ICC policy debates. They can also conduct activities on a far more consistent and regular schedule than if Hague-based staff are solely responsible for the work. Where security conditions permit, ICC field offices with a public profile can also serve as a much needed “face of the ICC,” a place where affected communities, the media, national authorities, and the international community can look to for basic information about the ICC. They serve to make the court less abstract.

Establishing formal field offices can present a number of logistical, security, and resource challenges. But given their central importance to supporting the court’s mandate, particularly when it comes to engagement with affected communities, Human Rights Watch has consistently advocated for the early establishment of field offices in ICC situation countries.

Need to further evolve the Registry’s field presence

The ICC, however, has been slow to develop its field presence. As discussed more fully in *Making Justice Count*, after some progress in transforming field offices from what were initially logistical hubs to presences able to support outreach, facilitate victim participation, and, in some countries, the activities of the Trust Fund for Victims, the Registry has struggled to fully implement a more strategic vision for field operations.

In particular, Registry decisions about opening, scaling up or down, and the staffing of field offices (with important consequences for the depth and scope of Registry activities like outreach and facilitating victim participation) appear to have been largely driven by judicial developments. This Committee has also appeared to push the court in the direction of tying field presence to judicial developments in an effort to find cost savings.²

¹ In addition to these activities, the Office of the Prosecutor’s selection and prioritization of cases will influence to a significant degree the court’s impact in affected communities. These decisions provide the earliest and most visible measure of whether and how the court will address the suffering victims have endured and they create the framework in which the court’s other actors implement their own responsibilities. See Human Rights Watch, *Making Justice Count: Lessons from the ICC’s Work in Côte d’Ivoire*, August 2015, <https://www.hrw.org/report/2015/08/04/making-justice-count/lessons-iccs-work-cote-divoire>, pp. 15-16, 35-43. While there are elements of these selection decisions that can be better supported through increased field presence, including consultations with victims and investigations rooted in deep, country knowledge, these decisions differ from the other activities discussed here, which ideally will be carried out primarily through the court’s field presence.

² The Committee cited the absence of judicial developments in the northern Uganda situation as the basis for a review of staffing and potential downsizing of the Kampala field office. See Assembly of States Parties (ASP), “Report of the Committee on Budget and

While the court's field presence will always need to be guided by judicial proceedings, the current approach overemphasizes this link. This risks the court missing out on opportunities to deepen engagement, inform perceptions and expectations, and address information needs that are not exclusively the product of courtroom developments. Instead, the court's field engagement should be equally driven by a concern to situate courtroom developments within the overall context of efforts aimed at increasing the court's impact on the ground. This requires ensuring that the court's field offices and activities in situation countries are responsive to the specific context of each country.

In addition, there has been a more fundamental problem of ensuring that ICC field offices have adequate staffing to support key activities on the ground. In Côte d'Ivoire, for example, the Registry's Outreach Unit lacked the resources to deploy a staff member on a permanent basis to the country for nearly three years after investigations were first opened. This has contributed to too-limited approaches to outreach, narrowing the court's engagement and the accessibility of its proceedings.³

A lack of coordination between different Registry units in the field has been a further challenge.⁴

In light both of the central role that could be played by ICC field offices and staff in increasing the court's impact, as well as the need to further evolve the court's existing approach given the gaps identified above, Human Rights Watch welcomes the spotlight put by the Registry's *ReVision* project on strengthening these offices. A stronger ICC field presence will, we believe, help to bring back into increased focus the importance of ensuring the ICC's local impact and, over time, improve that impact.

Role of chief of field office

The creation of the post of chief of field office is a critical and overdue next step.

First, the chief of field office will supervise all staff based in a given office. In addition to an administrative and operations officer and a field security officer, field offices will have "staff working in a multidisciplinary team focusing on outreach and victim issues." Unlike the outreach and Victims Participation and Reparations Section (VPRS) staff currently based in field offices, staff of this multidisciplinary team will no longer report directly to the Outreach Unit or VPRS in The Hague, but rather to the chief of field office.⁵

Finance on the work of its thirteenth session," ICC-ASP/8/15, November 16, 2009, http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-15-ENG.pdf (accessed September 11, 2015), paras. 78, 83-85.

³ See Human Rights Watch, *Making Justice Count*, part V ("Outreach").

⁴ Although the court's main field offices have had a field office manager, this is a mid-level post, focused on logistical and operational support. He or she does not have authority over staff from other Registry units based in the office. As a result, channels of communication for field-based staff have been "vertical," that is, staff members in the field communicate almost exclusively with their department colleagues and supervisors in The Hague, even where it concerns coordination within the same field office. See Human Rights Watch, *Courting History: The Landmark International Criminal Court's First Years*, July 2008, <http://www.hrw.org/sites/default/files/reports/1icco708webwcover.pdf>, pp. 109-112.

⁵ See ASP, "Report on the review of the organizational structure of the Registry: Outcomes of Phase 4 of the *ReVision* Project - Decisions on the structure of the Registry," ICC-ASP/14/18, May 4, 2015, http://www.icc-cpi.int/iccdocs/asp_docs/ASP14/ICC-ASP-14-18-ENG.pdf (accessed September 11, 2015), paras. 26-31. An exception to this will be made for Victims and Witnesses Section staff, who will continue to report to the head of that section in The Hague.

Given their oversight of Registry staff in the field, the chief of field office should be able to bring about coordination between Registry mandates needed to implement a comprehensive strategy in the field aimed at impact and to overcome past coordination challenges.⁶

Second, the chief of field office could play a central role in the design and implementation of country-specific, Registry-wide strategies for impact. Human Rights Watch has called on the ICC Registry to develop such strategies in order to define, from the earliest onset of Registry activities in a particular country, how the Registry's mandates can contribute to impact. These strategies will need to be developed through close coordination with the Office of the Prosecutor and guided by judicial developments. But they should aim at carrying out mandates in a manner that deepens engagement, recognizing that opportunities for impact, as well as information needs within affected communities, will not always be tied to judicial developments.

Where the ICC has field offices, the chiefs of these offices will be well-placed to provide high-level strategic advice, based on deep knowledge of the country situation, in developing these strategies. Indeed, in our view, the absence of a high-level position in the court's field offices—after previous requests by the court to support the creation of similar posts were not approved—has contributed to an overemphasis on judicial developments and a less than fully strategic approach in field operations.⁷

Third, the presence of a high-level Registry staff member on the ground could itself be a driver for more impact-sensitive approaches in the court's activities. It should strengthen the voice of field-based staff in court policy debates, an oversight in the past.⁸

Finally, the chief of field office, given his or her seniority, may be in position to engage authorities and international partners in ICC situation countries regarding cooperation with the court, and, critically, capacity building programs within the national justice sector. While the ICC is not a development agency, there are a number of ways in which court staff can contribute to capacity building efforts, including by sharing expertise on international criminal law, investigations, and witness protection with national professionals. Given that the ICC is likely to bring only a limited number of cases to trial in each situation country, its efforts in this regard to help spur national prosecutions could be an essential element of increasing the effect of the court and its long-term legacy.

* * *

⁶ The Registry should take steps, however, to ensure that by bringing together outreach and victim participation activities into one multidisciplinary team this does not lead to less, rather than more attention to each of these important and separate mandates. This could be the case, for example, where these teams do not have sufficient staffing to support both mandates.

⁷ Human Rights Watch previously called on this Committee and International Criminal Court (ICC) states parties to support the creation of "heads of registry" (as they were initially termed in the 2010 budget request) or "registry field coordinators" (as put forward in the 2011 budget request). See, for example, Letter from Human Rights Watch to Committee on Budget and Finance, ASP, April 15, 2010 (on file with Human Rights Watch). These positions were similar in many respects to the now-established "chief of field office" positions. States parties, on the advice of this Committee, however did not approve resources for these positions, and the court did not push for these positions across its field offices in subsequent budget requests. The ICC's Nairobi-based tasked force located with the UN Office at Nairobi, however, has had a P-4 Registry field coordinator since 2011.

⁸ See Human Rights Watch, *Courting History*, pp. 108-109.

Human Rights Watch will continue to engage the Registry regarding its planned changes for the court's field offices, as well as areas where other changes may be needed in order to strengthen prospects for the ICC's impact on the ground. There may be a need to consider further, for example, how to bring about strengthened ICC engagement and impact in countries where the court has not yet established a field office or where offices will not, at least initially, have a chief of field office. There may also be a need to consider further how best to arrive at decisions regarding opening new offices.⁹ Establishment of the chiefs of field office positions, however, represents a welcome and significant next step forward for the court's field presence.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Evenson". The signature is written in a cursive, flowing style.

Elizabeth M. Evenson
Senior Counsel
International Justice Program

⁹ In the court's proposed budget for 2016, chiefs of field office are envisioned for ICC offices or presences in, Central African Republic (Bangui), Côte d'Ivoire (Abidjan), Democratic Republic of Congo (Kinshasa), and Kenya (Nairobi), but not for its offices in Uganda (Kampala) or Mali (Bamako). The ICC does not presently have a field office for either the Libya situation or the Darfur, Sudan situation. The ICC additionally has a forward field presence in Bunia, Democratic Republic of Congo and the proposed budget indicates that it intends to establish a forward field presence in Gulu, northern Uganda.