

Full text of the secret Human Rights Watch letter to the ICC OTP, dated 15 September 2008

Confidential

Executive Committee
Office of the Prosecutor
International Criminal Court

September 15, 2008

Dear Executive Committee:

We are writing to request a meeting to discuss management practices within the Office of the Prosecutor (OTP).

As you know, our organizations are deeply invested in the mission of the International Criminal Court (ICC) and were instrumental in its creation. Through dialogue with court officials on matters of policy, and intense advocacy with states parties and the broader international community to foster support for international justice, we have sought ever since to ensure the court's success. This should be evident in our current efforts to defend the independence of the OTP and the court from those who would seek to undermine your important efforts to bring justice in Darfur.

In this regard, we note that some recent media articles have raised criticisms about the management of the office with an apparent intention to weaken the court and its authority. We wish to disassociate ourselves clearly from any such agenda.

At the same time, however, we are very concerned that your increased attention to management practices within the office is needed, and seek this opportunity to discuss these concerns directly with you.

As you know, the court's strategic plan identifies establishing the ICC as a model of public administration as one of its three central goals.^[1] The separate strategic plan for your office "fully subscribes" to this goal, and commits to "nurtur[ing] a working environment with minimal bureaucracy, where diversity and initiative are celebrated, and in which staff feel responsible and valued."^[2]

Meeting these goals is challenging, but nonetheless essential to the success of the court and of your office. Expectations of the world's first permanent criminal tribunal run high. So too do those placed on its staff who confront inordinate difficulties in bringing to justice those accused of the world's worst crimes. Support and incentives for initiative are necessary if staff members are to perform at the very high levels the court's important work demands. And as a permanent institution, every effort should be made to ensure that good policies and practices are in place to carry forward a supportive environment in successive years.

We would like to discuss with you whether more could be done to meet the management goals you have set for yourself. Our concerns are underscored by at least two recent developments.

First, we are aware that many experienced investigators have left the OTP since 2005. One reason commonly provided for these departures is that many investigators experienced "burn out" because there were simply not enough of them to handle the rigorous demands for conducting investigations. But another reason commonly provided is the perception that the input of investigators is not sufficiently valued within the OTP, leading to dissatisfaction.

The departure of senior staff—and the loss of their experience, knowledge of the country situation under investigation, and overall institutional memory—has a direct impact on the efficiency of investigations, and is particularly regrettable where due at least in part to the failure to develop a sufficiently supportive work environment. We note as well that the position of deputy prosecutor for investigations—who could help to share some of the burdens of providing good management and supervision of investigators—has remained vacant since 2007.

Second, we were concerned by findings in a recent decision of the administrative tribunal of the International Labour Organization of due process violations in the prosecutor's summary dismissal of an OTP staff member. The tribunal ordered the ICC to pay compensation.^[3]

Sound management, of course, may require taking disciplinary measures. In this case, however, we were disturbed by findings that the prosecutor had ignored the recommendation of the court's Disciplinary Advisory Board and involved himself directly even though the individual's alleged misconduct meriting dismissal concerned the prosecutor personally. The poor management practices we see in this case not only incur economic costs to the court—already under strain to account responsibly for its budget to states parties—but, more importantly, costs to the morale of staff, who are entitled to have their due process rights respected in an employment dispute.

In our meeting with you, we would like to put forward for discussion the following recommendations addressed to these concerns.

First, the OTP's strategic plan, dating to September 2006, highlights that performance indicators and evaluation processes were to be developed to measure the office's performance against the goals identified in that plan. We would like to discuss whether your office has undertaken a comprehensive assessment of its activities to date, particularly with regard to establishing sound management practices. To the extent it has not, we would urge you to consider undertaking such an assessment, and implementing changes in management policy and practice it may indicate.

Second, we would ask you to consider whether the management responsibilities of the office's Executive Committee could be bolstered to provide additional support for cultivating the working environment envisioned in the strategic plans. Expanding the role and input of the Executive Committee could also ground concern for sound management in the structure of the office itself, helping to ensure that good practices established now are carried forward into the future. We would also like to encourage you to consider further augmenting the management resources within your office by raising plans for recruiting a deputy prosecutor for investigations with states parties in advance of the Assembly of States Parties' upcoming seventh session.

We would very much welcome the opportunity to discuss our concerns and recommendations at a meeting between the Executive Committee and representatives of our organizations. It is our firm belief that urgent attention to enhancing management practices within your office will increase its capacity to carry out its important work.

We look forward to hearing from you at your earliest convenience.

Sincerely,

Human Rights Watch

^[1] Assembly of States Parties, Strategic Plan of the International Criminal Court, ICC-ASP/5/6, August 4, 2006, http://www.icc-cpi.int/library/asp/ICC-ASP-5-12_English.pdf (accessed August 25, 2008), pp. 9-12.

[2] Office of the Prosecutor, ICC, “Report on Prosecutorial Strategy,” September 14, 2006, http://www.icc-cpi.int/library/organs/otp/OTP_Prosecutorial-Strategy-20060914_English.pdf (accessed August 25, 2008), paras. 9, 12.

[3] *Palme v. ICC*, International Labour Organisation Administrative Tribunal, Judgement No. 2757, July 9, 2008.