



INTERNAL AUDIT DIVISION

REPORT 2017/019

Audit of the construction of a new office facility for the Mechanism for International Criminal Tribunals in Arusha

Overall management of the construction project was generally adequate but there was need to seek legal advice on recovery of delay damages from the construction contractor

10 April 2017

Assignment No. AA2016/261/03

Audit of a new office facility for the Mechanism for International Criminal Tribunals in Arusha

EXECUTIVE SUMMARY

The objective of the audit was to assess the adequacy and effectiveness of governance, risk management and control processes over the project closure stage of the construction of a new office facility for the Mechanism for International Criminal Tribunals (MICT) in Arusha. The audit covered the period from 1 December 2015 to 30 November 2016 and it included project management processes such as testing and commissioning procedures, substantial completion, site hand-over, occupancy planning, defects liability period management and management of administrative processes such as procurement management, project financial monitoring and payment processing.

Overall management of the construction of the new office facility in Arusha was generally adequate. Administrative processes and procedures were in place to support project implementation. The facility was inaugurated on 25 November 2016 and declared substantially complete on 1 December 2016.

OIOS made two recommendations. To address issues identified in the audit, MICT needed to:

- Consult with the Procurement Division and the Office of Legal Affairs on the recovery of damages of up to \$661,400 from the construction contractor for the delay in completion beyond the agreed date of 16 May 2016; and
- Pursue the claims relating to value added tax with the local revenue authorities until they are fully reimbursed.

MICT accepted the recommendations and initiated necessary action to implement them.

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Audit of the construction of a new office facility for the Mechanism for International Criminal Tribunals in Arusha

I. BACKGROUND

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the construction of a new office facility for the Mechanism for International Criminal Tribunals (MICT) in Arusha.
2. MICT was established by Security Council resolution 1966 (2010) to continue the functions of: (a) the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991; and (b) the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.
3. Pursuant to Security Council resolution 1966 (2010), MICT was established with two branches which started operating on 1 July 2012 for the Arusha branch (International Criminal Tribunal for Rwanda or ICTR), and 1 July 2013 for The Hague branch (International Tribunal for the former Yugoslavia or ICTY). According to the statute of MICT, the branch for ICTY shall have its seat in The Hague and the branch for ICTR shall have its seat in Arusha. Furthermore, in accordance with article 27 of the statute, MICT shall be responsible for the management, including preservation and access, of the archives of the Tribunals. The archives of both Tribunals shall be co-located with the respective branches of MICT.
4. At the last four sessions of the General Assembly, the Secretary-General presented specific reports on the construction of the new facility in Arusha. The report A/66/754 dated 28 March 2012 provided the rationale for such a facility in Arusha, the project outline summary as well as the functional and programmatic requirements for the 5,000 square metre-building, including specific building, site and technical requirements. The Advisory Committee on Administrative and Budgetary Questions (ACABQ) discussed two other reports of the Secretary-General (A/67/696 and A/68/724) and issued its own reports A/67/768, A/68/777 and A/69/734.
5. General Assembly resolution 67/244/B authorized the activities related to all phases of the construction of the facility and also authorized the Secretary-General to establish a multi-year special account to record the income and expenditure for the construction of the facility. The General Assembly decided on the financing of the construction at a level of \$8.8 million. MICT was initially granted \$3 million and by its resolution 68/257, the General Assembly appropriated an additional amount of \$5.8 million, bringing the total appropriation for the project to \$8.8 million including contingency, or \$7.7 million excluding contingency.
6. In 2016, MICT initiated five change orders which changed the scope of work of the construction by adding office partitioning work in the office building and additional work related to information technology cabling. The overall net amount of these change orders since the beginning of the project was \$389,348. MICT charged the cost of these change orders to its regular budget.
7. Table 1 shows the actual expenditures (excluding the contingency amount and total cost of change orders) as at 31 December 2016 and projected expenditures up to the completion date (source: Secretary-General's report A/71/753).

Table 1: Disbursements and obligations for the period 2013-2017 (excluding contingency)
(in United States dollars)

Description	Approved ^a		Expenditures				Projected expenditure from January 2017 until completion of the project ^e	Total expenditure	Deficit to be covered by contingency	Redeployment	Revised deficit to be covered by contingency
	2013	2014 actual disbursements as per 2014 Financial Statements	2015 actual disbursements as per 2015 Financial Statements	2016 interim disbursements as of 31 December 2016	2016 obligations to be disbursed in 2017						
	a	b	c	d	e	f	g	h=(b to g)	i=(a-h)	j	K=(i+j)
I. Construction^a	6,365,887	-	2,912	1,104,044	4,416,024	261,113	833,218	6,617,311	(251,424)	-	(251,424)
II. Architect and project management											
Architect fees ^b	636,589	-	399,222	77,470	174,308	135,572	189,200	975,772	(339,183)	-	(339,183)
Project supervision and management ^c	635,800	155,919	143,172	154,582	159,200	-	-	612,873	22,927	(22,927)	-
Travel ^d	99,086	12,396	54,475	59,092	-	-	-	125,963	(26,877)	22,927	(3,950)
Subtotal, II	1,371,475	168,315	596,869	291,144	333,508	135,572	189,200	1,714,608	(343,133)	-	(343,133)
Total project cost (excluding contingency)	7,737,362	168,315	599,781	1,395,188	4,749,532	396,685	1,022,418	8,331,919	(594,557)	-	(594,557)

^a Approved budget as presented in A/67/696, annex II.

^b Reflects the cost of hiring an external architectural consultant firm to produce detailed construction documents, perform construction administration duties and assume the responsibility of the architect of record.

^c Reflects the cost of hiring a project manager for the day-to-day management and coordination of project activities.

^d Reflects the cost of the travel of staff between New York, The Hague and Arusha to provide technical assistance to the project.

^e Projected expenditure in 2017 corresponds to the portion of the contract not obligated against 2015-2016 budget to be obligated in 2017.

8. Table 2 shows the breakdown of contingency provisions and expenditure for the period 2013-2017 excluding the total cost of change orders (source: Secretary-General's report A/71/753).

Table 2: Breakdown of contingency provisions and expenditure for the period 2013-2017
(in United States dollars)

Description	Approved contingency ^a	Expenditure against contingency				Total remaining contingency
		2015	2016	2017	Total	
	a	b	c	d	e = (b+c+d)	f = (a-e)
I. Construction^b	954,883		251,424		251,424	703,459
II. Architect and project management^c						
Architect fees	95,488	64,272	85,711	189,200	339,183	(243,695)
Project supervision and management	-	-	-	-	-	-
Travel	-	-	-	3,950	\$3,950	(3,950)
Sub-total, II	95,488	64,272	85,711	193,150	343,133	(247,645)
Total	1,050,371	64,272	337,135	193,150	594,557	455,814

^a Approved contingency provision as presented in A/67/696, Annex II

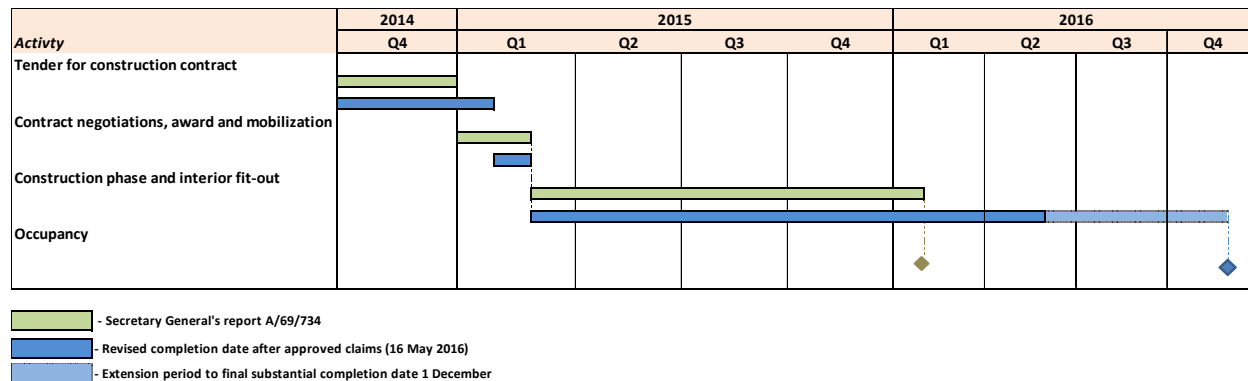
^b Calculated at 15 per cent of the construction costs and architect fees

^c Architect's Amendment 2 in the amount of US\$65,000 and Amendment 3 in the amount of US\$124,200

9. The project duration was initially estimated at five years and three months. In response to the request of Member States, the Project Management Team (PMT) chaired by the Registrar of MICT and composed of representatives of MICT and Office of Central Support Services (OCSS) reduced the project schedule by a total of 15 months (i.e., to four years).

10. A summary of the project schedule is shown in Chart 1. An opening ceremony took place on 25 November 2016 and the substantial completion date was formally granted on 1 December 2016.

Chart 1
Summary project schedule



11. Comments provided by MICT are incorporated in italics.

II. AUDIT OBJECTIVE, SCOPE AND METHODOLOGY

12. The objective of the audit was to assess the adequacy and effectiveness of governance, risk management and control processes over the project closure stage of the construction of a new office facility for MICT in Arusha.

13. This audit was included in the 2016 risk-based work plan of OIOS due to the risks associated with completion of construction projects and timely occupancy of the new facility. In addition, General Assembly resolution 67/244 B requested the Secretary-General to entrust OIOS with ensuring effective oversight of the construction of the new office facility and submit key findings to the General Assembly in the context of OIOS annual reports.

14. OIOS conducted this audit from September to December 2016. The audit covered the period from 1 December 2015 to November 2016. Based on an activity-level risk assessment, the audit covered higher and medium risk areas in the project management, which included: project management processes such as testing and commissioning procedures, substantial completion, site hand-over, occupancy planning, defects liability period management and management of administrative processes such as procurement management, project financial monitoring and payment processing.

15. The audit methodology included: (a) interviews of key personnel and other stakeholders; (b) review of relevant documentation; (c) analytical review of data; (d) physical observation on the construction site; and (e) review of project and administrative processes.

III. OVERALL CONCLUSION

16. Overall management of the construction of the new office facility in Arusha was generally adequate. Administrative processes and procedures were in place to support project implementation. The facility was inaugurated on 25 November 2016 and declared substantially complete on 1 December 2016. However, MICT needed to: (i) seek advice from the Procurement Division and the Office of Legal Affairs (OLA) on the recovery of delay damages of up to \$661,400 from the construction contractor; and (ii) pursue the claims relating to value added tax with the local revenue authorities until they are fully reimbursed.

IV. AUDIT RESULTS

A. Project management

MICT adequately managed the construction of its new office facility in Arusha

17. The site handover took place on 27 February 2015 and since then, MICT established administrative processes and procedures to support the project and move its staff and assets to the new premises, which were completed within the approved budget of \$8.8 million. The 5,000 square meter compound comprises a court building, an office building and an archive building.

18. During the project, MICT implemented some good practices such as developing and maintaining a risk register, effective communication with major stakeholders, and working closely with the various departments/offices of the United Nations Secretariat departments as well as local authorities in Tanzania. The new office facility was officially inaugurated on 25 November 2016.

Delay damages were yet to be claimed from the contractor

19. The construction contract included a provision for delay damages (i.e., penalty for delay in completion attributable to the contractor) as follows: "If the Contractor fails to comply with the Time for Completion and complete the Works or a Section within the Time for Completion, the Contractor shall pay delay damages to the United Nations for this default" and "the Contractor shall also reimburse the United Nations for any additional fees payable by the United Nations to any consultants engaged by the United Nations arising out of or in connection with the Contract which are payable as a result of the Contractor's failure to complete the whole of the Works within the Time for Completion". The delay damages were to be calculated at 0.2 per cent of the total contract value of \$6,614,000 for each day's delay (or \$13,228 per day), with a cap of 10 per cent of the contract value (or \$661,400). In addition, the construction contract specified that the total amount of delay damages due shall not exceed the aggregate maximum amount of delay damages stated in the schedule of details, which is 10 per cent of the contract value.

20. The construction was to be completed by the revised date of 16 May 2016. This revised date was agreed to by the Procurement Division following two claims by the contractor asking for 81 days' delay as follows: (a) the first claim for 41 days on the basis of a ground level disparity issue; and (b) the second for 40 days on the basis of the time taken for additional checks conducted by MICT and temporary closure of a supplier's plant at the end of 2015.

21. At the time of the audit, despite extension of the time for completion to 16 May 2016, the contractor delivered the buildings only on 1 December 2016 (formal date of the substantial completion), which represented a delay of 199 days beyond the agreed revised date. Therefore, this attracted the provisions of the delay damages clause in the contract (i.e., a maximum penalty of 10 per cent of the contract value, or \$661,400. Additionally, MICT had to extend the contract with the Architectural and Consulting firm due to this delay attributed to the construction contractor, thereby leading to additional fees amounting to \$124,200. This amount was also compensable by the construction contractor. However, the overall limit for delay damages as stipulated in the contract was \$661,400.

22. In preparation for any required action for breach of contract, on 29 June 2016 and 1 November 2016, MICT issued formal notices to the contractor regarding the expiry of the completion date. MICT stated that PMT had compiled documents and supporting evidence of the contractor's failure to meet the

last revised completion date. However, at the time of the audit, MICT had not yet invoked the delay damages clause.

23. MICT stated that following consultation with the Procurement Division and OLA, it was decided that MICT would not invoke the delay damages clause until the project is substantially completed, which was on 1 December 2016. MICT also indicated that based on discussions with Headquarters, it was considered premature to exercise any such remedies at this stage because future claims from the contractor may still be raised and potentially lead to an extension of the time for completion.

24. OIOS is of the opinion that MICT needs to obtain the advice of the Procurement Division and OLA on the recovery of damages aggregating up to \$661,400.

(1) MICT should consult with the Procurement Division and the Office of Legal Affairs on the recovery of damages of up to \$661,400 from the construction contractor for the delay in completion beyond the agreed date of 16 May 2016.

MICT accepted recommendation 1 and stated that it undertook further consultations with OLA and OCSS. The substantial completion certificate was issued to the contractor, indicating that substantial completion was achieved on 1 December 2016. MICT remains in consultation with OLA and OCSS regarding delay damages, and expect that this issue will be entirely resolved in the post construction phase. Recommendation 1 remains open pending the final decision arising from consultations with the OCSS and OLA on recovery of delay damages.

B. Administrative management

Reimbursement for value added tax needed to be pursued

25. According to the tax exemption agreement with the government of Tanzania, MICT is authorized to claim reimbursement of the value added tax (VAT) included in the invoices paid to the contractor. A VAT reimbursement claim process had been established between MICT and the Tax Revenue Authority (TRA) in Tanzania.

26. MICT submitted various VAT reimbursement claims to the TRA and received acknowledgement of receipt of all documents. At the time of audit, six claims had already been submitted and a seventh one was being prepared. However, none of the VAT claims had been reimbursed at the time of the audit. According to MICT, the Ministry of Foreign Affairs and TRA had meetings at the end of October 2016 to speed up the reimbursement process with no concrete outcome. Based on the current VAT rate (18 per cent) and the amount of the construction contract (\$6.64 million), the expected VAT claim was estimated at \$1.19 million. MICT was following up with the local authorities but the claims need to be pursued until they are fully reimbursed.

(2) MICT should pursue the claims relating to value added tax with the local revenue authorities until they are fully reimbursed.

MICT accepted recommendation 2 and stated that as of early March 2017, MICT continued its correspondence with TRA, reiterating its request for VAT refunds. Recommendation 2 remains open pending receipt of evidence that MICT has received reimbursement of VAT claimed.

Additional works had been awarded outside the scope of the construction contract

27. The construction contractor carried out a number of additional works which were requested by MICT through 12 change orders totaling \$389,348. The ICTY Chief Administrative Officer approved the change orders in accordance with the specific delegation of authority granted by the Assistant Secretary-General of OCSS (\$400,000 instead of \$200,000) for issuing change orders relating to the construction contract. Even though the change order procedure was used to award these additional works to the construction contractor, the related works (such as office partitions and information technology cabling) had not been included in the budget for the construction project. Additionally, the 2016 annual report of the Secretary-General (A/70/753) did not disclose the existence of change orders totaling \$389,348.

28. MICT explained that this additional work was not expected to be funded by the construction budget but through the MICT regular budget. MICT further stated that these costs would have been incurred even if MICT had continued occupying its former premises and therefore were not included in the original construction contract even though they were included in the regular budget. MICT piggybacked on the existing construction contract because goods and services provided in the main construction contract suited MICT needs and addressed the urgency of the additional work.

29. OIOS is of the view that the additional works carried out by the construction contractor should have gone through a regular procurement process and not through the change order procedure if they were considered to be outside the scope of the construction contract. Financial Rule 105.16 (a) (iv) provides for exceptions to the use of formal methods of solicitation when offers for identical products and services have been obtained competitively within a reasonable period and the prices and conditions offered remain competitive. However, MICT did not apply this exception when awarding additional works to the construction contractor. *MICT stated that it will follow a separate procurement process and submit an ex post facto explanation for OCSS to review.* In view of the action being taken by MICT to address this matter on an ex post facto basis, OIOS did not make a recommendation.

V. ACKNOWLEDGEMENT

30. OIOS wishes to express its appreciation to the management and staff of MICT for the assistance and cooperation extended to the auditors during this assignment.

(Signed) Eleanor T. Burns
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Office of Internal Oversight Services

STATUS OF AUDIT RECOMMENDATIONS

Audit of the construction of the new office facility for the Mechanism for International Criminal Tribunals in Arusha

Rec. no.	Recommendation	Critical ¹ / Important ²	C/ O ³	Actions needed to close recommendation	Implementation date ⁴
1.	MICT should consult with the Procurement Division and the Office of Legal Affairs on the recovery of damages of up to \$661,400 from the construction contractor for the delay in completion beyond the agreed date of 16 May 2016.	Important	O	Final decision arising from consultations with the OCSS and OLA on recovery of delay damages.	1 December 2017
2	MICT should pursue the claims relating to value added tax with the local revenue authorities until they are fully reimbursed.	Important	O	Evidence that MICT has received reimbursement of the value added tax claimed.	1 July 2017

¹ Critical recommendations address critical and/or pervasive deficiencies in governance, risk management or control processes, such that reasonable assurance cannot be provided with regard to the achievement of control and/or business objectives under review.

² Important recommendations address important (but not critical or pervasive) deficiencies in governance, risk management or control processes, such that reasonable assurance may be at risk regarding the achievement of control and/or business objectives under review.

³ C = closed, O = open

⁴ Date provided by MICT in response to recommendations.

APPENDIX I

Management Response

Management Response

Audit of the construction of the new office facility for the Mechanism for International Criminal Tribunals in Arusha

Rec. no.	Recommendation	Critical ¹ / Important ²	Accepted? (Yes/No)	Title of responsible individual	Implementation date	Client comments
1.	MICT should consult with the Procurement Division and the Office of Legal Affairs on the recovery of damages of up to \$661,400 from the construction contractor for the delay in completion beyond the agreed date of 16 May 2016.	Important	Yes	Officer-In-Charge, Arusha Branch	1 December 2017	The Mechanism undertook further consultation with OLA and OCSS (FMS and PD). The Substantial Completion Certificate was issued to Jandu, indicating that substantial completion was achieved on 1 December 2016. We remain in consultation with OLA and OCSS regarding delay damages, and expect that this issue will be entirely resolved in the post construction phase.
2	MICT should pursue the claims relating to value added tax with the local revenue authorities until they are fully reimbursed.	Important	Yes	Officer-In-Charge, Arusha Branch	1 July 2017	As of early March, the MICT continued its correspondence with the Tanzanian Revenue Authority, reiterating its request for VAT refunds.

¹ Critical recommendations address critical and/or pervasive deficiencies in governance, risk management or control processes, such that reasonable assurance cannot be provided with regard to the achievement of control and/or business objectives under review.

² Important recommendations address important (but not critical or pervasive) deficiencies in governance, risk management or control processes, such that reasonable assurance may be at risk regarding the achievement of control and/or business objectives under review.