



INTERNAL AUDIT DIVISION

REPORT 2022/032

Audit of management of judicial records and court support activities at the International Residual Mechanism for Criminal Tribunals

Residual issues relating to management of judicial records needed to be resolved

18 July 2022

Assignment No. AA2020-261-02

Audit of management of judicial records and court support activities at the International Residual Mechanism for Criminal Tribunals

EXECUTIVE SUMMARY

The Office of Internal Oversight Services (OIOS) conducted an audit of management of judicial records and court support activities at the International Residual Mechanism for Criminal Tribunals (IRMCT). The objective of the audit was to assess the adequacy and effectiveness of internal controls in ensuring effective management of judicial records and court support activities at IRMCT. The audit covered the period from January 2020 to January 2022 and included a review of risk areas relating to the Registry's management of judicial records and court support activities at IRMCT.

Harmonized practices and identical electronic systems were implemented at both branches of the Mechanism. However, residual issues relating to management of judicial records needed to be resolved.

OIOS made four recommendations. To address issues identified in the audit, IRMCT needed to:

- Develop plans with timelines to implement the course of action agreed in January 2022 between the Offices of the President and the Registrar regarding the disposition of ICTR judicial records that were withdrawn from the public domain pending further review;
- Develop guidelines detailing the procedures and chain of custody for uploading the redacted transcripts and audio and video recordings of the former Tribunals in the Mechanism's Record Book;
- Complete the setting up of the application for management of audio and video recordings at the Judicial Records Unit in Arusha and provide appropriate user training to staff; and
- Formalize the procedures on requests for assistance from national authorities, which are processed by the Registry, through issuance of a Practice Direction or other policy guidance.

IRMCT accepted the recommendations. Actions required to close the recommendations are indicated in Annex I.

CONTENTS

I. BACKGROUND	1
II. AUDIT OBJECTIVE, SCOPE AND METHODOLOGY	1-2
III. AUDIT RESULTS	2-6
A. Harmonized practices and coordination	2-3
B. Regulatory framework	3-6
IV. ACKNOWLEDGEMENT	6
ANNEX I	Status of audit recommendations
APPENDIX I	Management response

Audit of management of judicial records and court support activities at the International Residual Mechanism for Criminal Tribunals

I. BACKGROUND

1. The Office of Internal Oversight Services (OIOS) conducted an audit of management of judicial records and court support activities at the International Residual Mechanism for Criminal Tribunals (IRMCT).
2. The Security Council established IRMCT in 2010 as an international court to take over the remaining functions of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) after completion of their mandates. The Mechanism consists of three organs: (a) Chambers; (b) Office of the Prosecutor (OTP); and (c) Registry. The organs are headed by Principals. The Mechanism has two branches: one located in Arusha, Tanzania and the other in The Hague, Netherlands.
3. The Registry is responsible for administrative, judicial and legal support to Chambers and OTP at both branches, which includes court support services during judicial proceedings, and management and preservation of judicial records. It is required to keep and preserve full and accurate record of all proceedings and evidence (“judicial records”) that include filings, transcripts, and audio and video (AV) recordings. The Registry is also responsible for responding to requests for assistance (RFA) from national authorities or parties to national proceedings in connection with national proceedings related to the genocide in Rwanda or the conflicts in the former Yugoslavia.
4. The Registry’s Judicial Records Units (JRUs) at the two branches: (i) coordinate and provide court support services for all court proceedings; (ii) review, process, file, distribute and provide access to judicial records; (iii) manage and refer the judicial records for archiving; and (iv) respond to RFAs from national authorities that are submitted to the Registry. The Registry’s Mechanism Archives and Records Section (MARS) at both branches are responsible for managing and preserving the AV recordings of in-court judicial proceedings.
5. For the years 2020 and 2021, the Mechanism had an approved budget of \$33.8 million and \$40.3 million, respectively, for judicial support. As of 1 April 2022, JRU had four staff at each branch (Arusha and The Hague). The Chief, JRU-The Hague (P-3) headed both JRU branches since January 2021 and reported to the Registry’s Legal Officers (P-4) who were assigned to supervise JRU activities in their respective branches.
6. Comments provided by IRMCT are incorporated in italics.

II. AUDIT OBJECTIVE, SCOPE AND METHODOLOGY

7. The objective of the audit was to assess the adequacy and effectiveness of internal controls in ensuring effective management of judicial records and court support activities at IRMCT.
8. This audit was included in the 2020 risk-based work plan of OIOS due to the risk that potential weaknesses in management of judicial records and court support activities could have an adverse impact on the Mechanism’s operations.

9. OIOS conducted this audit from November 2021 to March 2022. The audit covered the period from January 2020 to January 2022. Based on an activity-level risk assessment, the audit focused on risk areas relating to the Registry’s management of judicial records and court support activities at IRMCT.

10. The audit methodology included: (a) interviews with key personnel; (b) review of relevant documentation; (c) analytical review of data; and (d) review of the use of electronic systems in managing judicial records, court support activities and RFAs from national jurisdictions.

11. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

III. AUDIT RESULTS

A. Harmonized practices and coordination

Harmonized practices and identical electronic systems were implemented at both branches

12. IRMCT is mandated to complete the essential residual functions of ICTY and ICTR. As a single institution with two branches, the Mechanism has endeavoured to harmonize the policies and practices of both branches.

13. In late 2019, the Registry started developing guidelines and procedures for harmonizing cross-branch practices and procedures in managing judicial records, court support activities and RFAs from national authorities or parties to national proceedings in connection with cases tried by the Mechanism or the former Tribunals. These guidelines included: (i) standard operating procedures (SOPs) on judicial records, public redacted versions of confidential filings and transcript coordination; (ii) Judicial Records and Court Operations Unit (now JRU) guidelines on proceedings in court; and (iii) Registry guidelines on processing RFAs.

14. The Mechanism also implemented identical electronic systems to fully automate procedures at both branches in managing their respective judicial records and court operations, as well as processing RFAs from national authorities. Currently, judicial records at both branches are managed through the unified judicial database (UJDB) – the Mechanism’s official judicial records database – and related systems such as the Electronic Court Management System (E-Court); notification of electronic filing (NEF) and the New Electronic Minutes System (NEMS). The Mechanism’s E-Court system is used to manage judicial activities during court proceedings. Exhibits are also received and processed within the Mechanism’s E-Court system. The general public has access to judicial records that are classified as public. RFAs received from national jurisdictions are processed and monitored through the RFA database. OIOS therefore concluded that harmonized practices and use of identical electronic systems facilitated the management of judicial records at the Mechanism.

A lean JRU structure was maintained at both branches

15. In carrying out the residual functions of the former Tribunals, the Mechanism is envisaged to be a small, temporary, and efficient entity whose functions and size will diminish over time. IRMCT is expected to operate with a small number of staff commensurate with its reduced functions.

16. During the audit period, the Mechanism maintained a lean JRU structure at both its branches to manage judicial records and court support activities. The JRU-The Hague branch had five staff (two Legal Officers and three Judicial Records Assistants) until 31 March 2022, when a post was abolished, effective

1 April 2022. JRU-Arusha, which was established in late 2019 when a review hearing took place in Arusha, Tanzania, had two Legal Officers and two Judicial Records Assistants. The Chief, JRU-The Hague had been heading both JRU branches since January 2021.

17. Between January 2020 and December 2021, the JRUs organized 93 hearing days (42 at Arusha and 51 at The Hague), processed and disseminated 4,174 filings (2,387 at Arusha and 1,787 at The Hague) and provided 57 documents in relation to RFAs (2 at Arusha and 55 at The Hague).

18. By performing these activities satisfactorily, the JRUs at both branches contributed to the Registry's support to the Mechanism's ad hoc judicial proceedings and residual activities.

Arrangements for coordination of activities were adequate

19. As mentioned above, the Mechanism developed policies, SOPs and guidelines to assist Registry offices involved in judicial records and court support activities. In-built notifications in the interconnected electronic systems alerted staff as necessary to take the required actions.

20. For in-court judicial proceedings, the Chief, JRU and court officers at each branch organized preparatory meetings with the Registry offices participating in court operations and remained in close contact with relevant support staff to ensure that all necessary arrangements were made. Issues concerning arrangements for remote participation of Judges, Defence Counsel and witnesses, privileged communication between Defence Counsel and the accused, and travel requirements were discussed during each preparatory meeting and appropriate measures were taken. Meeting reports with action points for the participants were thereafter circulated. JRUs also conducted in-court testing with the participating Registry offices before the hearing, to ensure that all the arrangements were working effectively.

21. For management of judicial records and response to RFAs from national jurisdictions, coordination between JRU branches and other Registry offices took place through meetings and correspondence.

22. Based on the above, OIOS concluded that the arrangements for coordination in the management of judicial records, court support activities and response to RFAs were adequate.

B. Regulatory framework

Remaining issues on management of ICTR judicial records were still to be resolved

23. The Mechanism's Rules of Procedure and Evidence require the Registrar to: (i) make and preserve a full and accurate record of all proceedings, including transcripts and AV recordings; and (ii) keep a Record Book which shall list, subject to the Rule on non-disclosure, all the public particulars of each case brought before the Mechanism and make the Record Book open to the public. The Mechanism is also responsible to preserve the judicial records of the former Tribunals and provide public access to those judicial records which are not confidential. The Access Policy for the Records held by IRMCT (MICT/17/Rev.1) provides guidelines on public access to both non-judicial records and judicial records.

24. The Secretary-General's Bulletin ST/SGB/2012/3 on "International Criminal Tribunals: Information sensitivity, classification, handling and access" provides relevant policy guidance on judicial records, such as: (i) providing the Chambers or the President with the authority to determine the classification levels of judicial records; (ii) providing public access to unclassified or public judicial records; and (iii) requiring that changes to the classification level of judicial records be made only after judicial authorization.

25. By September 2020, IRMCT implemented UJDB and its public interface to serve as the Record Book at both branches. The Mechanism’s public judicial records (including those of the former Tribunals), are accessible to the public. Although the use of identical databases had contributed to efficiency in providing support to the ongoing judicial cases and responses to RFAs, the Registry still needed to resolve the remaining issues relating to the management of judicial records of the former Tribunals. Challenges remained because the records were created over a long period of time, based on different technical frameworks and management procedures that were adopted by the former Tribunals. For example, ICTR records were transferred from a database with a scope of data description (metadata) that was different from the database used by the former ICTY which had an enriched scope of data description. The following remaining issues were yet to be resolved.

(a) In 2013, the Registry discovered confidential information in ICTR judicial documents which were published on the ICTR website. The Registry found that most of these records which were published in the ICTR legacy websites did not bear markings of their classification. It was a practice at ICTR that records which did not bear a classification stamp were considered public records. Following a review of these records in 2018, the Registry decided to remove ICTR judicial records from the public domain which did not bear markings of their classification. In January 2022, after protracted discussions, the President and the Registrar agreed that ICTR judicial records which originated from ICTR Chambers will be returned to the public domain, while the remaining judicial records which originated from other sources such as OTP, Defence and Registry will be reviewed to ensure that they do not contain confidential information. At the time of audit, the Registry had not yet developed plans and guidelines for this proposed review.

(b) During the calendar years 2020-2021, the Registry’s monitoring of the internet for any breach of confidentiality of the Mechanism’s documents indicated that ICTR judicial records in legacy websites of the former Tribunal needed to be reviewed. The monitoring teams continue to discover confidential information which was published on those websites.

(c) Judicial records which were previously managed by MARS-Arusha in Hewlett Packard Records Manager (HPRM) needed to be assessed and reconciled with those records which were migrated to UJDB as of August 2020, to ensure completeness and accuracy of judicial records for each ICTR case. But due to competing priorities, the review of these judicial records was yet to be conducted. At the time of audit, IRMCT was still resolving issues to organize all its judicial records in the most unified manner.

(d) Uploading of redacted ICTR transcripts and AV records into UJDB was halted due to the need to: (i) provide clear procedural guidance and chain of custody of the documents to efficiently transfer the documents in UJDB; and (ii) ensure the integrity of the Mechanism’s judicial records.

26. The Registry needed to resolve these issues to ensure that the Mechanism’s judicial records are complete in a unified manner.

(1) IRMCT should develop plans with timelines to implement the course of action agreed in January 2022 between the Offices of the President and the Registrar regarding the disposition of ICTR judicial records that were withdrawn from the public domain pending further review.

IRMCT accepted recommendation 1 and stated that the Registry intends to engage a consultant to assist with the development of the plan and aims to implement the recommendation by 31 December 2022, subject to availability of relevant resources.

Redacted AV recordings of former Tribunals were yet to be uploaded for public access

27. IRMCT is mandated to preserve the judicial records of the former Tribunals and provide public access to those judicial records which are not confidential.

28. The Mechanism had undertaken redaction projects of AV recordings of the former Tribunals to preserve these records and create copies that could be accessible by the public. Due to downsizing, the Mechanism's AV redaction projects at both branches were stopped as of January 2022. Approximately 58 per cent of ICTR's AV recordings, 85 per cent of ICTY's digital AV recordings and 18 per cent of IRMCT-The Hague's AV recordings were yet to be completed as of December 2021. IRMCT explained that due to limited capacity, it will continue to undertake redaction of AV recordings at both branches based on demand.

29. At the time of audit, the JRUs at both branches had not yet uploaded the redacted versions of AV recordings into UJDB which MARS at both branches had completed as of December 2021. This was due to: (i) lack of relevant chain of custody procedures in handling and uploading the AV recordings at both branches; (ii) the need to complete the setting up of the application used for AV recordings at JRU-Arusha; and (iii) the need for JRU-Arusha staff to be trained in using the application.

30. The Mechanism still needed to resolve the above-mentioned residual issues to ensure that all its judicial records are organized in the most unified way and managed effectively.

(2) IRMCT should develop guidelines detailing the procedures and chain of custody for uploading the redacted transcripts and audio and video recordings of the former Tribunals in the Mechanism's Record Book.

IRMCT accepted recommendation 2 and stated that the Registry plans to develop guidelines in full by 31 December 2022, subject to availability of relevant resources. The guidelines will include relevant SOPs on AV recordings which are scheduled to be issued in August 2022.

(3) IRMCT should complete the setting up of the application for management of audio and video recordings at JRU-Arusha and provide appropriate user training to staff.

IRMCT accepted recommendation 3 and stated that appropriate user training for staff can be initiated once the SOPs on Audio-Visual recordings are issued. The Registry aims to implement the recommendation by 31 December 2022, subject to availability of relevant resources.

Revised Practice Direction on the procedure on filings before the Mechanism was yet to be finalized

31. From late 2019, the Registry developed several procedural guidelines to manage judicial records and court support activities at both branches, such as the guidelines on RFAs from national jurisdictions and SOPs on judicial records, transcript coordination, and public redacted versions of confidential filings and AV recordings.

32. The "Practice Direction on the procedure on filings made before the Mechanism" which governs the opening of cases and the submission, receipt, registration and service of judicial records filed in all cases before the Mechanism was last updated in January 2019. The Practice Direction needed to be amended to: (i) update filing procedures that will reflect recent decisions and practice, clarify certain aspects and ensure harmonization of procedures between the two branches; (ii) incorporate the interim procedures on restricted access filings and remove the transitional arrangements because UJDB is now used at both branches; and

(iii) include other forms of judicial records (transcripts, exhibits, AV recordings) which were previously regulated by the former Tribunals.

33. At the time of audit, the Registry had not finalized the revised Practice Direction which had been pending due to staff turnover, not meeting the required levels of review, and competing priorities in the Office of the Registrar. Registry explained that it was working with the Office of the President to finalize the Practice Direction to provide a comprehensive governance framework on filings and other forms of judicial records. In view of the action being taken, OIOS did not make a recommendation on this matter.

Practice Direction was needed to formalize guidance on RFAs processed by Registry

34. The Mechanism is mandated to respond to RFAs from national authorities in relation to the investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of the former Yugoslavia and Rwanda. The Registry processes RFAs that include: (i) response to national authorities' requests for certified public judicial records; (ii) response to national authorities' requests for information such as statistics related to cases of the Mechanism and former Tribunals; (iii) case management (gathering and organizing necessary judicial records, historical information, legal advice) that will support the President or the Chambers in relation to requests for access to confidential materials and/or witness information pursuant to the Rules of Procedure and Evidence of the Mechanism; and (iv) case management and arrangements on provision of testimony in relation to RFAs to obtain testimony of a person under the authority of the Mechanism with regard to cases under national jurisdictions which are related to crimes under the jurisdiction of the Mechanism.

35. IRMCT had established a policy for the general public's access to non-judicial records and public judicial records held by the Mechanism. Comprehensive information and guidance on the submission of RFAs was provided on the Mechanism's website that is maintained by the JRU. However, there is a risk that the webpage detailing the guidance on submission of RFAs may not be updated as required, due to competing priorities or possible staff-turnover at the respective JRUs. This could have an impact on the effectiveness of providing assistance to national authorities. Therefore, the Mechanism needed to issue a practice direction or policy that would formalize the guidance on RFAs from national authorities, with focus on requests relating to national proceedings undertaken by the requesting authorities.

(4) IRMCT should formalize the procedures on requests for assistance from national authorities, which are processed by the Registry, through issuance of a Practice Direction or other policy guidance.

IRMCT accepted recommendation 4 and stated that the Registry aims to implement the recommendation by 31 December 2022, subject to availability of resources. The policy on RFAs from national authorities will be in line with several related Practice Directions including the Practice Direction on Judicial Records which is currently being developed.

IV. ACKNOWLEDGEMENT

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

(Signed) Fatoumata Ndiaye
Under-Secretary-General
Office of Internal Oversight Services

STATUS OF AUDIT RECOMMENDATIONS

Audit of management of judicial records and court support activities at the International Residual Mechanism for Criminal Tribunals

Rec. no.	Recommendation	Critical ¹ / Important ²	C/ O ³	Actions needed to close recommendation	Implementation date ⁴
1	IRMCT should develop plans with timelines to implement the course of action agreed in January 2022 between the Offices of the President and the Registrar regarding the disposition of ICTR judicial records that were withdrawn from the public domain pending further review.	Important	O	Receipt of plans with timelines to implement the course of action agreed between the Offices of the President and the Registrar regarding the disposition of ICTR judicial records	31 December 2022
2	IRMCT should develop guidelines detailing the procedures and chain of custody for uploading the redacted transcripts and audio and video recordings of the former Tribunals in the Mechanism's Record Book.	Important	O	Receipt of guidelines detailing the procedures and chain of custody for uploading the redacted transcripts and AV recordings of the former Tribunals in the Mechanism's Record Book.	31 December 2022
3	IRMCT should complete the setting up of the application for management of audio and video recordings at JRU-Arusha and provide appropriate user training to staff.	Important	O	Receipt of evidence that the application for management of AV recordings has been set up at JRU-Arusha and appropriate user training has been provided to staff.	31 December 2022
4	IRMCT should formalize the procedures on requests for assistance from national authorities, which are processed by the Registry, through issuance of a Practice Direction or other policy guidance.	Important	O	Receipt of formalized procedures and guidance on RFAs from national authorities which are processed by the Registry.	31 December 2022

¹ Critical recommendations address those risk issues that require immediate management attention. Failure to take action could have a critical or significant adverse impact on the Organization.

² Important recommendations address those risk issues that require timely management attention. Failure to take action could have a high or moderate adverse impact on the Organization.

³ Please note the value C denotes closed recommendations whereas O refers to open recommendations.

⁴ Date provided by IRMCT in response to recommendations.

APPENDIX I

Management Response



INTERNAL MEMORANDUM - MÉMORANDUM INTÉRIEUR

Date: 1 July 2022

Ref.:

To: Ms. Eleanor T. Burns, Director, Internal Audit Division, OIOS
À:

Copy: Ms. Maya Fridman, OIOS
Copie: Mr. David Nyskohus, OIOS
Mr. David Falces, Chief Administrative Officer
Mr. Samuel Algozin, Officer-in-Charge, Registry, Hague branch
Ms. Wambui Mwangi, Officer-in-Charge, Registry, Arusha branch
Ms. Mirella Spritzer, Audit Focal Point, Mechanism

From: Abubacarr M. Tambaou, Registrar
De:

A handwritten signature in blue ink, appearing to read 'Abubacarr M. Tambaou', written over the printed name.

Subject: **Confidential: Audit of the management of judicial records and court support services at the**
Objet: **International Residual Mechanism for Criminal Tribunals**

1. I refer to your memorandum of 16 June 2022, submitting for the Mechanism's review the detailed results of an audit of the management of judicial records and court support services at the International Residual Mechanism for Criminal Tribunals ("Audit Report" and "Mechanism", respectively).
2. The attached annex contains the Mechanism's target dates for the implementation of the recommendations of the Audit Report as well as a brief description of related actions.
3. As regards the designation of individuals responsible for the implementation of the recommendations, as a downsizing institution, the Mechanism considers it preferable to indicate the responsible sections instead so as to retain ultimate flexibility in the assignment of resources.
4. I again thank OIOS for undertaking the audit and its continued cooperation.

Management Response

Audit of management of judicial records and court support activities at the International Residual Mechanism for Criminal Tribunals

Rec. no.	Recommendation	Critical ¹ / Important ²	Accepted? (Yes/No)	Title of responsible individual	Implementation date	Client comments
1	IRMCT should develop plans with timelines to implement the course of action agreed in January 2022 between the Offices of the President and the Registrar regarding the disposition of ICTR judicial records that were withdrawn from the public domain pending further review.	Important	Yes	JRU, Arusha branch	31 December 2022	The Registry aims to have this recommendation implemented by 31 December 2022, subject to the availability of relevant resources. The Registry intends to engage a consultant with the necessary expertise to assist with the development of the plan. The finalized plan will be submitted for approval to the Registrar and subsequently the President.
2	IRMCT should develop guidelines detailing the procedures and chain of custody for uploading the redacted transcripts and audio and video recordings of the former Tribunals in the Mechanism's Record Book.	Important	Yes	MARS, Arusha and Hague branch; JRU, Arusha and Hague branch; in consultation with ITSS	31 December 2022	The Registry aims to have this recommendation implemented in full by 31 December 2022, subject to the availability of relevant resources. This involves: <ul style="list-style-type: none"> 1) Development of a Standard Operating Procedure ("SOP") for ICTY AV recordings; 2) Development of an SOP for ICTR AV recordings; 3) Updating the SOP for Mechanism AV recordings; and 4) Development of an SOP for ICTR transcripts review The SOPs relating to AV recordings are scheduled to be issued already in August 2022.

¹ Critical recommendations address those risk issues that require immediate management attention. Failure to take action could have a critical or significant adverse impact on the Organization.

² Important recommendations address those risk issues that require timely management attention. Failure to take action could have a high or moderate adverse impact on the Organization.

Management Response

Audit of management of judicial records and court support activities at the International Residual Mechanism for Criminal Tribunals

3	IRMCT should complete the setting up of the application for management of audio and video recordings at JRU-Arusha and provide appropriate user training to staff.	Important	Yes	MARS, Arusha and Hague branch; ITSS	31 December 2022	The Registry aims to have this recommendation implemented by 31 December 2022, subject to the availability of relevant resources. Appropriate user training for staff can be initiated once the SOPs for the AV recordings are issued (see recommendation 2).
4	IRMCT should formalize the procedures on requests for assistance from national authorities, which are processed by the Registry, through issuance of a Practice Direction or other policy guidance.	Important	Yes	JRU, Arusha and Hague branch	31 December 2022	<p>The Registry aims to have this recommendation implemented by 31 December 2022, subject to the availability of relevant resources. The policy on requests for assistance (“RFAs”) would regulate and provide procedures for the processing of:</p> <ol style="list-style-type: none"> 1) Requests from national authorities for public information; 2) Requests from national authorities for access to confidential materials and/or witness information through variation of protective measures pursuant to the Rules of Procedure and Evidence (“RPE”) of the Mechanism; and 3) Requests from national authorities for obtaining the testimony of a person under the authority of the Mechanism pursuant to the RPE. <p>As regards the timeline for completion, it is important to note that the policy needs to be in line with several related Practice Directions (“PD”), including the PD on Judicial Records, which is currently being developed.</p>