OIOS

Office of Internal Oversight Services

INTERNAL AUDIT DIVISION

REPORT 2015/137

Audit of the provision of assistance to national jurisdictions by the International Criminal Tribunal for the former Yugoslavia and the Mechanism for International Criminal Tribunals

Overall results relating to effective provision of assistance to national jurisdictions were initially assessed as partially satisfactory. Implementation of two important recommendations remains in progress.

FINAL OVERALL RATING: PARTIALLY SATISFACTORY

10 November 2015
Assignment No. AA2015/270/01

CONTENTS

AUDIT REPORT

Audit of the provision of assistance to national jurisdictions by the International Criminal Tribunal for the former Yugoslavia and the Mechanism for International Criminal Tribunals

I. BACKGROUND

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the provision of assistance to national jurisdictions by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Mechanism for International Criminal Tribunals (MICT).

2. In accordance with its mandate, OIOS provides assurance and advice on the adequacy and effectiveness of the United Nations internal control system, the primary objectives of which are to ensure (a) efficient and effective operations; (b) accurate financial and operational reporting; (c) safeguarding of assets; and (d) compliance with mandates, regulations and rules.

3. ICTY was established in 1993 as a temporary institution with a mandate of investigating crimes committed during the wars in the former Yugoslavia and prosecuting those responsible. The Security Council, by its resolution 1966 (2010), established MICT to carry out a number of essential functions of the International Criminal Tribunal for Rwanda (ICTR) and ICTY, including assistance to national jurisdictions.

4. Article 28 of the MICT statute stipulates that the Mechanism shall respond to requests for assistance 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, including, where appropriate, providing assistance in tracking fugitives whose cases have been referred to national authorities by ICTY, ICTR or the Mechanism.

5. MICT responds to requests for assistance (RFA) from national authorities (not restricted to Rwanda and the former Yugoslavia) in relation to national investigations, prosecutions and trials. This primary function comprised the provision of assistance to national courts conducting related proceedings, which included RFA for transferring dossiers, responding to requests for evidence, variation or rescission of protective measures for witnesses, and responding to requests to question detainees or take statements or testimonies of individuals associated with ICTR or MICT.

6. Within ICTY and MICT, the parties involved in the management of RFA from national jurisdictions were: (i) the Office of the Prosecutor (OTP); (ii) the Office of the President and Chambers; and (iii) the Registry.

7. RFA from national authorities received by ICTY and MICT were of four main categories:

   a. Requests for certification of judicial documents or Court records. This category of requests did not require any judicial decision.

   b. Requests involving a judicial decision under the Rule of Procedures and Evidence. These requests related to: (i) variations of protective measures under Article 75 H (ICTY) or 86 H (MICT); and (ii) requests for statement or testimony of detainees under Article 75 (ICTY) or 87 (MICT) relating to violation of international humanitarian law.

c.   Requests made to OTP relating to an investigation or judicial proceeding of local authorities.

d.   Other types of requests from national authorities. These requests were very limited in number. They included waiver of immunity of former or current staff members made to the United Nations Secretary-General through the ICTY or MICT Registrar; requests made to the Registrar for taking statements or testimony of detainees not relating to violation of international humanitarian law; and requests made to the Registrar for testimony of an accused person on provisional release or serving his/her sentence in an enforcement State.

8.   Table 1 below shows the number and trend of RFA received by ICTY and MICT as at 31 March 2015.

Table 1: Incoming requests for assistance by organ and by organization

Organ/organization	*January to December 2013*	*January to December 2014*	*January to March 2015 (3 months)*	*Total*
ICTY OTP	69	11	3	83
MICT OTP Arusha	54	57	9	120
MICT OTP The Hague	110	296	84	490
Total OTP	**233**	**364**	**96**	**693**
Registry ICTY and MICT The Hague	662	398	88	1148
Registry MICT Arusha	7	24	2	33
Total Registry	**669**	**422**	**90**	**1181**
Total	**902**	**786**	**186**	**1874**

Source: Figures related to OTP were communicated by OTP, MICT; figures related to the Registry were extracted from various Registry RFA databases

9.   Comments provided by ICTY and MICT are incorporated in *italics*.

II.   OBJECTIVE AND SCOPE

10.   The audit was conducted to assess the adequacy and effectiveness of ICTY and MICT governance, risk management and control processes in providing reasonable assurance regarding the **effective provision of assistance to national jurisdictions by ICTY and MICT**.

11.   The audit was included in the 2015 OIOS work plan for ICTY and MICT due to the high risks associated with the large volume and sensitivity of information involved in the provision of assistance to national jurisdictions, and the potential implications of the failure to provide the necessary assistance.

12.   The key controls tested for the audit were: (a) coordinated management mechanisms; and (b) regulatory framework. For the purpose of this audit, OIOS defined these key controls as follows:

(a)   **Coordinated management mechanisms** - controls that provide reasonable assurance that potential overlaps in the provision of assistance to national jurisdictions are mitigated, and that issues affecting or involving ICTY and MICT and other actors are identified and resolved appropriately in a timely manner; and

(b)   **Regulatory framework** - controls that provide reasonable assurance that policies and procedures: (i) exist to guide the operations of the RFA activity; (ii) are implemented consistently; and (iii) ensure the reliability and integrity of financial and operational information.

13.   The key controls were assessed for the control objectives shown in Table 2.

14.   OIOS conducted this audit from April to July 2015. The audit covered the period from 1 January 2013 to 31 March 2015.

15.   OIOS conducted an activity-level risk assessment to identify and assess specific risk exposures, and to confirm the relevance of the selected key controls in mitigating associated risks. Through interviews, analytical reviews and tests of controls, OIOS assessed the existence and adequacy of internal controls and conducted necessary tests to determine their effectiveness.

III.   AUDIT RESULTS

16.   The ICTY and MICT governance, risk management and control processes examined were initially assessed as **partially satisfactory[1]** in providing reasonable assurance regarding the **effective provision of assistance to national jurisdictions by ICTY and MICT**. OIOS made two recommendations to address issues identified in the audit. Coordinated management mechanisms were assessed as satisfactory in contributing to the effective provision of assistance to national jurisdictions. Regulatory framework was assessed as partially satisfactory because ICTY and MICT needed to: (a) consolidate the multiple OTP RFA databases to prevent duplication of records; and (b) strengthen the security of materials transmitted electronically to national authorities by encrypting such communications.

17.   The initial overall rating was based on the assessment of key controls presented in Table 2 below. The final overall rating is **partially satisfactory** as implementation of two important recommendations remains in progress.

Table 2: Assessment of key controls

Business objective	Key controls	Control objectives			
		Efficient and effective operations	**Accurate financial and operational reporting**	**Safeguarding of assets**	**Compliance with mandates, regulations and rules**
Effective provision of assistance to national jurisdictions by ICTY and MICT	(a) Coordinated management mechanisms	Satisfactory	Satisfactory	Satisfactory	Satisfactory
	(b) Regulatory framework	Partially satisfactory	Partially satisfactory	Partially satisfactory	Partially satisfactory
FINAL OVERALL RATING: PARTIALLY SATISFACTORY					

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[1] A rating of **"partially satisfactory"** means that important (but not critical or pervasive) deficiencies exist 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.

A.   Coordinated management mechanisms

<u>Coordination mechanisms were in place and operating satisfactorily</u>

18.   Coordination mechanisms are needed to ensure that all parties involved in the provision of assistance to national jurisdictions collaborate efficiently and effectively. The three main parties involved in the RFA process were ICTY, MICT and national jurisdictions. Coordination between ICTY and MICT was achieved through regular meetings between: (a) the Registry and OTP of ICTY; (b) the ICTY Registry and MICT Registry; and (c) OTP MICT The Hague Branch and OTP MICT Arusha Branch.

19.   Likewise, ICTY and MICT ensured effective coordination with national authorities as well. For instance, with the support of the European Commission, OTP ICTY (which also double-hatted for the OTP MICT The Hague Branch) collaborated effectively with local authorities in the Balkans region by providing information, training and support in capacity building to three visiting national prosecutors from the region. Among other tasks, these national prosecutors were supporting their respective national authorities by channeling, clarifying and processing RFAs to ICTY and the MICT OTP, or sometimes to the MICT Registry. The national prosecutors commended this specific coordination mechanism for its effectiveness and efficiency. MICT Arusha was considering developing targeted training on RFA to certain States to further improve its response to such requests. Based on the controls in place, OIOS concluded that the coordination mechanisms in ICTY and MICT for appropriately responding to RFA were operating satisfactorily.

B.   Regulatory framework

<u>Comprehensive regulatory framework was in place to guide the provision of assistance to national jurisdictions</u>

20.   A comprehensive set of policy documents provided guidance to ICTY and the MICT in their response to RFAs from the national jurisdictions. The regulatory framework comprised the MICT statute, the ICTY and MICT rules of procedures and evidence, the ICTY and MICT practice directions on RFAs and variations of protective measures. The web sites of ICTY and MICT clearly explained the RFA regulatory framework. The teams of ICTY Registry (also double-hatting for MICT Registry The Hague Branch) and MICT Registry Arusha Branch, had both developed detailed guidelines and standard operating procedures setting out the processes and control steps that staff members needed to follow for processing RFAs from national jurisdictions. The MICT OTP had also developed clear and detailed set of guidelines on processing of RFAs. OIOS therefore concluded that adequate guidance was in place for provision of assistance to national jurisdictions.

<u>Multiple RFA databases needed to be consolidated to prevent duplication of records</u>

21.   Information systems should support the business needs of the organization and provide accurate and reliable information to management. OTP and Registry maintained separate information systems which were important for each entity to preserve their independence. However, MICT OTP had multiple RFA systems in place containing correspondence and reference to OTP metadata in MICT OTP The Hague Branch and the ICTY OTP, while MICT OTP Arusha Branch managed RFA by using an Excel spread sheet. These systems contained similar information to serve common objectives but the information was not comprehensively available in one system. The consolidation of these databases was one of the objectives set in the information and communications technology strategy approved in December 2014.

22.   MICT OTP The Hague Branch intended to migrate its document management, including management of RFA, to the MICT Electronic Document and Record Management System (EDRMS) and was discussing the implementation process with ICTY Information Technology Services Section (ITSS) and the MICT Archives and Records Section (MARS). The rationale to consolidate these databases into one system was to prevent duplication of records and improve information management.

> **(1) The MICT Office of the Prosecutor should liaise with the ICTY Information Technology Services Section and the MICT Archives and Records Section to develop a consolidated, comprehensive database for managing requests for assistance received from national jurisdictions.**
>
> *MICT accepted recommendation 1 and stated that MICT OTP has already defined its user requirements and they have already been discussed with MARS and ITSS and the MICT OTP. MARS has produced a suggestion for a TRIM/DocumentManager solution that the MICT OTP supports. MARS and ITSS are in the process of discussing the proposal. The MICT OTP continues to liaise with MARS and ITSS to move the project forward.* Recommendation 1 remains open pending receipt of evidence of the solution and implementation plan for the consolidated OTP RFA database.

ICTY and MICT addressed weaknesses in the Registry's RFA database

23.   Information systems and applications should provide accurate, complete and reliable information to support operations. OIOS reviewed the information systems supporting the management of RFA at ICTY and MICT. The Judicial Records Unit in the ICTY Registry (also double-hatting for MICT Registry, The Hague Branch) had its own RFA database developed internally by ICTY which it used for records management. This database contained correspondence and links to judicial documents and information stored on servers that was sent to the requesting authorities.

24.   OIOS review of the database identified the following weaknesses: (a) RFA records could be deleted without prior approval, from 1 January 2013 to 31 March 2015, 47 gaps in sequential RFA numbers were identified, indicating potential deletion of records without assurance as to whether these were duly authorized; (b) fields relating to important management information were not available in the RFA database, which reduced the usefulness of management reports; (c) search options were limited and there was no provision to search by document number; and (d) some RFA were not recorded in the dedicated RFA database because of gaps in the RFA communication workflow. The RFA database, which was initially developed for correspondence purposes, had evolved into an important tool for record management but presented weaknesses that affected the integrity, reliability and completeness of available information.

25.   In order to mitigate risks related to the observations above, a decision was made by ICTY Registry to retire the ICTY RFA database in The Hague and to replace it by a consolidated dataset in the MICT Electronic Document and Record Management System called TRIM for use by both branches of the Registry. Initial testing of the dataset took place in Arusha earlier in 2015 and in The Hague in August and September 2015. The Registrar requested staff members to begin using the TRIM dataset for all requests for assistance from 1 October 2015. Mechanism records dating back to the establishment of each branch will be migrated into the dataset as soon as possible. From 1 October 2015, the Judicial Records Unit logged all requests into the TRIM dataset as part of the initial document processing, to ensure that all requests were captured at their point of entry. A standard operating procedure guiding staff members was adopted in that regard. Based on the actions taken and the internal controls in place, OIOS concluded that ICTY and MICT had put adequate controls in place to satisfactorily operate the RFA database.

<u>Procedure for reviewing access to systems when staff members are transferred was updated</u>

26.   Access to information systems should be limited to duly authorized staff members who have a need to access them to perform their job functions. ITSS had established a procedure to ensure that all access to systems and networks were automatically revoked when staff members left the organization. In case of transfer of staff members, access rights were modified depending on where staff members were re-assigned, and based on managers' instructions. OIOS review of the access control lists of the four main RFA systems in ICTY and MICT showed that two staff members who transferred from ICTY Registry to a MICT project still had access rights in the Registry RFA system.

27.   In July 2015, the ICTY Registry conducted a comprehensive review of the access control list and ITSS amended access rights accordingly. ITSS procedure which did not specifically address the database access rights for staff members transferred from one organization to another or from one organ to another within the same organization was also amended to appropriately explain the regulation of access rights upon transfer of staff. Based on the actions taken by ICTY, OIOS concluded that appropriate measures were in place to ensure that only authorized persons had access to ICTY and MICT databases.

<u>Measures for handling confidential information were generally adequate but there was a need to strengthen the security of digital communications</u>

28.   ICTY and MICT had developed a comprehensive information disclosure policy framework and related procedures in order to mitigate risks related to unauthorized disclosure of privileged and confidential information. Besides a declaration signed by all ICTY and MICT staff members, the Rules of Procedures and Evidence contained provisions regarding confidentiality. Staff members interviewed were familiar with the general classification of records in accordance with the Secretary-General's bulletins on information sensitivity, classification and handling, and on International Criminal Tribunals information sensitivity, classification, and handling. Additional measures to prevent accidental disclosure of information included restricted access to physical and digital documents.

29.   In relation to RFAs, filings made before the Registrar for variation of protective measures were governed by practice direction MICT/8, which stipulated the limitation on use and protection of confidentiality conditions. Communication of confidential information by MICT or ICTY Registry to requesting authorities was made through hard copies, compact discs or by electronic mail. However, the Registry confirmed that digital communications were not encrypted. OIOS was informed that when confidential documents have been transmitted to the requesting authorities, the responsibility for preventing public disclosure lies with the recipients. ICTY and MICT Registry were exploring the possibility of improving the security of the materials transmitted to national authorities by encrypting digital documents to prevent the unauthorized disclosure of privileged and confidential information.

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(2) ICTY and MICT Registry should strengthen the security of materials transmitted electronically to national authorities by encrypting such communications.

ICTY and MICT accepted recommendation 2 and stated that the Registry continues to consider the transmission of material to national authorities, and proposes to undertake a wider review of transmission methods. While encryption is one option to protect classified information, there are other options, both technological (such as provision of secure remote access to the Mechanism's records) and more traditional (such as transmission via diplomatic channels). The Registry will assess the benefits, risks and costs of the various options, and implement the optimum solution for fast and secure transmission. Recommendation 2 remains open pending receipt of evidence of the implementation of an appropriate solution for secure electronic transmission.

IV.   ACKNOWLEDGEMENT

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

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(*Signed*) David Kanja
Assistant Secretary-General, Acting Head
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STATUS OF AUDIT RECOMMENDATIONS

Audit of the provision of assistance to national jurisdictions by the International Criminal Tribunal for the former Yugoslavia and the Mechanism for International Criminal Tribunals

Recom. no.	Recommendation	Critical[2]/ Important[3]	C/ O[4]	Actions needed to close recommendation	Implementation date[5]
1	The MICT Office of the Prosecutor should liaise with the ICTY Information Technology Services Section and the MICT Archives and Records Section to develop a consolidated, comprehensive database for managing requests for assistance received from national jurisdictions	Important	O	Receipt of evidence of the solution and implementation plan for the consolidated OTP RFA database	30 March 2016
2	ICTY and MICT Registry should strengthen the security of materials transmitted electronically to national authorities by encrypting such communications.	Important	O	Receipt of evidence of the implementation of an appropriate solution for secure electronic transmission.	31 October 2016

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[2] 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.

[3] 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.

[4] C = closed, O = open

[5] Date provided by ICTY and MICT in response to recommendations.

APPENDIX I

Management Response

Management Response

Audit of the provision of assistance to national jurisdictions by the International Criminal Tribunal for the former Yugoslavia and the Mechanism for International Criminal Tribunals

Rec. no.	Recommendation	Critical[1]/ Important[2]	Accepted? (Yes/No)	Title of responsible individual	Implementation date	Client comments
1	The MICT Office of the Prosecutor should liaise with the ICTY Information Technology Services Section and the MICT Archives and Records Section to develop a consolidated, comprehensive database for managing requests for assistance received from national jurisdictions.	Important	Yes	Senior Legal Officer, Officer in Charge, MICT OTP	30 March 2016	MICT OTP has already defined its user requirements and they have already been discussed with MARS and ITSS and the MICT OTP. MARS has produced a suggestion for a TRIM/DocumentManager solution that the MICT OTP supports. MARS and ITSS are in the process of discussing the proposal. The MICT OTP continues to liaise with MARS and ITSS to move the project forward.
2	ICTY and MICT Registry should strengthen the security of materials transmitted electronically to national authorities by encrypting such communications.	Important	Yes	Chief, MARS and Chief, ITSS	31 October 2016	The Registry continues to consider the transmission of material to national authorities, and proposes to undertake a wider review of transmission methods. While encryption is one option to protect classified information, there are other options, both technological (such as provision of secure remote access to the Mechanism's records) and more traditional (such as transmission via diplomatic channels). The Registry

[1] Critical recommendations address significant and/or pervasive deficiencies or weaknesses in governance, risk management or internal control processes, such that reasonable assurance cannot be provided regarding the achievement of control and/or business objectives under review.

[2] Important recommendations address important deficiencies or weaknesses in governance, risk management or internal control processes, such that reasonable assurance may be at risk regarding the achievement of control and/or business objectives under review.

Management Response

Audit of the provision of assistance to national jurisdictions by the International Criminal Tribunal for the former Yugoslavia and the Mechanism for International Criminal Tribunals

Rec. no.	Recommendation	Critical[1]/ Important[2]	Accepted? (Yes/No)	Title of responsible individual	Implementation date	Client comments
						will assess the benefits, risks and costs of the various options, and implement the optimum solution for fast and secure transmission.