



INTERNAL AUDIT DIVISION

REPORT 2017/143

**Audit of the Mechanism for
International Criminal Tribunals
readiness for management of trial
and appeal proceedings**

**Except for completion of the courtroom in
Arusha which is covered in a separate audit,
the Mechanism was adequately prepared to
conduct trial and appeal proceedings**

**15 December 2017
Assignment No. AA2017/261/03**

Audit of the Mechanism for International Criminal Tribunals readiness for management of trial and appeal proceedings

EXECUTIVE SUMMARY

The Office of Internal Oversight Services (OIOS) conducted an audit of the Mechanism for International Criminal Tribunals (MICT) readiness for management of trial and appeal proceedings. The objective of the audit was to assess the adequacy and effectiveness of governance, risk management and control processes over the readiness of MICT for conducting trial and appeal proceedings. The audit covered the period from 1 January 2016 to 15 October 2017 and included a review of budget planning, readiness and availability of personnel and premises, and policies and procedures relating to trial and appeal proceedings.

Except for completion of the courtroom in Arusha which is covered in a separate OIOS audit (Assignment No. AA2017/261/07), MICT was adequately prepared to conduct trial and appeal proceedings. Resources required were included in the budget for the 2018-2019 biennium, rosters of qualified candidates had been established to enable quick recruitment of staff, and arrangements were in place to deploy judges at short notice in case of arrest of a fugitive. MICT had also prepared and updated its policies and procedures concerning trial and appeal proceedings.

At the Arusha Branch, there were issues relating to readiness of the courtroom in the new office facility which were being addressed by MICT and the contractor. These issues will be covered in a separate OIOS report upon conclusion of that audit.

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Audit of the Mechanism for International Criminal Tribunals readiness for management of trial and appeal proceedings

I. BACKGROUND

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the Mechanism for International Criminal Tribunals (MICT) readiness for management of trial and appeal proceedings.
2. According to the Security Council resolution 1966 of 22 December 2010, MICT is responsible for continuing the jurisdiction, rights and obligations, and essential functions of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). MICT commenced operations on 1 July 2012 at its Arusha, Tanzania office and on 1 July 2013 at The Hague in the Netherlands.
3. Pursuant to the Mechanism's statute (annexed to Security Council resolution 1966 of 2010) and the Rules of Procedure and Evidence, MICT shall continue the functions of ICTY and of ICTR including trial, appeal and retrial proceedings. The Mechanism shall have competence to conduct and complete all trials of indicted fugitives when arrested, and all appellate proceedings for which the notice of appeal against the judgment or sentence is filed on or after the commencement date of the respective branch of MICT. Similarly, it shall have competence to conduct and complete all review proceedings for which the application for review of judgment is filed on or after the commencement date of the respective branch of the Mechanism.
4. According to the progress report dated 17 May 2017 from the President of MICT to the President of the Security Council for the period 16 November 2016 to 15 May 2017, the Mechanism's judges continued their work on trials, appeals and requests for review related to the core crimes enumerated in the statute. In that context, arising out of cases transferred from ICTY, MICT continued to work on one retrial (Stanišić and Simatović case), two appeals proceedings (Karadžić case and Šešelj case) and is prepared to handle an additional appeal proceeding, if any, in the Mladić case following the Tribunal's anticipated trial judgment in November 2017. In addition, MICT may be engaged in contempt and false testimony proceedings which may lead to trials. Additionally, the MICT Appeals Chamber granted a request for review of the appeal judgment on 19 June 2017 in the Ngirabatware case.
5. According to the progress report of the Prosecutor of MICT for the period 16 November 2016 to 15 May 2017, eight fugitives indicted by ICTR remain at large. The Office of the Prosecutor continued its efforts to locate and arrest the three fugitives whose cases will be tried by the Mechanism.
6. In this overall context, the MICT Registry continues to provide support to the Chambers, the Office of the President and the Office of the Prosecutor to ensure that the Mechanism is ready for hosting and managing trial and appeals proceedings timely and effectively.
7. MICT stated that it did not have any comments on the report.

II. AUDIT OBJECTIVE, SCOPE AND METHODOLOGY

8. The objective of the audit was to assess the adequacy and effectiveness of governance, risk management and control processes over the readiness of MICT for conducting trial and appeal proceedings.

9. This audit was included in the OIOS 2017 risk-based work plan due to the risk that lack of preparedness may adversely affect MICT's ability to conduct trials and appeals timely and effectively.

10. OIOS conducted this audit in September and October 2017. The audit covered the period from 1 January 2016 to 15 October 2017. Based on an activity-level risk assessment, the audit covered higher and medium risk areas in the trial and appeal preparedness, which included budget planning, readiness and availability of personnel and premises, and policies and procedures relating to trial and appeal proceedings.

11. The audit methodology included: (a) interviews with key personnel; (b) reviews of relevant documentation; (c) analytical reviews of data; and (d) physical observation.

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

III. AUDIT RESULTS

A. Budget planning

Budget for the 2018-2019 biennium considered the requirements for trial and appeal proceedings

13. The three main organs of MICT (Chambers, Office of the Prosecutor and Registry) had prepared the budget for the 2018-2019 biennium after considering the trials and appeals that may take place during this period. The budget clearly delineated the resources required for the continuing functions of MICT, the ad hoc resources needed for trial and appeal proceedings, and the resources needed in case of arrest of fugitives. MICT had identified the post and non-post resources required for its trial and appeal proceedings. OIOS therefore concluded that the 2018-2019 budget of MICT was prepared with due consideration of its anticipated needs.

B. Readiness and availability of personnel and premises

Rosters of candidates were reviewed and updated

14. To mitigate the risks arising from staff attrition and difficulties in hiring and retaining competent staff, MICT had established specific arrangements with the support of the Department of Management at United Nations Headquarters. These arrangements included: (i) delegation of authority to the MICT Registrar on staffing matters; (ii) inclusion of MICT in the talent management system (Inspira); (iii) creation of rosters of candidates in Inspira; (iv) establishment of a joint ICTY/MICT central review body; and (v) a facilitated internal reassignment process between ICTY and MICT under certain conditions.

15. OIOS review of a sample of rosters shared by the Human Resources Section of ICTY and MICT showed that there was a process to periodically review and update the rosters to ensure that candidates could be quickly recruited when needed. Rosters were available for several categories of staff members such as associate legal officers, legal officers, senior legal officers or investigators. Contact information of former ICTY, ICTR and MICT staff members were also available in case they needed to be contacted at any time. OIOS therefore concluded that MICT had taken necessary steps to ensure the availability of human resources for its trial and appeal proceedings.

Arrangements were in place to ensure the availability of judges at short notice

16. Judges should be available for pre-trial and first presentation of the accused. Rule 64 (A) of the rules of procedure and evidence states that “The accused shall be brought before a Judge of the Trial Chamber or the Single Judge as appropriate and without delay”. MICT had established a roster of 25 judges designated in accordance with its statute. These judges were supported by Chambers and Registry to ensure that they have access to information in a timely manner. A system of duty judges was in place at the Arusha branch to ensure that a judge could be assigned by the President at the earliest possible moment following the arrest of a fugitive. The physical presence of judges in the respective host countries (United Republic of Tanzania and The Kingdom of Netherlands) assured that they could be deployed at short notice.

Court building in Arusha needed to be completed and fully operational

17. The provision of a fair and transparent trial requires duly equipped court rooms and related facilities. To prevent any delay in a trial or appeal proceeding, the court room should be ready with all requisite facilities including the necessary recording and interpretation systems as well as appropriate safety and security for the public, judges, accused persons and MICT staff.

18. MICT aimed to provide similar court services at the same international standards in its two branches. Whilst The Hague Branch had no interruption and was continuously using its court rooms, the Arusha branch had moved to its new premises where a new court room is to be established at the same standard as the court rooms in The Hague. The first hearing of two to three days was initially planned in Arusha for mid-November 2017.

19. A separate, ongoing OIOS audit of post construction of the new premises in Arusha (Assignment No. AA2017/261/07) indicated that the Court Building was not yet ready for use. Some essential installations such as cross-talk attenuators and fire/sound sealants to openings were not yet completed. Also, the noise produced by equipment installed adjacent to the courtroom was beyond acceptable limits and could affect the court’s proceedings. There were issues concerning cold air supply to the courtroom that needed to be resolved. Even as MICT and the contractor were addressing these issues to have the courtroom ready before the mid-November hearing, a pipe burst in early October damaged electrical installations, setting back the works considerably.

20. By the end of October 2017, some litigation issues led MICT to postpone the mid-November hearing to February 2018. This situation had provided MICT with additional time to address the impediments concerning the courtroom’s readiness. MICT stated that as of 30 November 2017, the required installations were in place and were undergoing testing. Since this issue is covered in the separate OIOS audit of post construction and occupancy of the new office facility in Arusha, no additional recommendation is made in the present report.

C. Policies and procedures

Policies and procedures were in place for trial and appeal proceedings

21. Policies and procedures should be in place and up to date to guide MICT personnel in conducting trial and appeal proceedings as intended.

22. OIOS reviewed the existing policies and procedures currently in place at MICT relating to trial and appeal proceedings. In addition to the common rules of procedure and evidence which had been revised in September 2016, the three organs (Chambers, Registry and Office of the Prosecutor) had developed a

large number of policies and procedures ranging from court management and operational guidelines to interpretation policies and guidelines concerning the management of legal aid which were monitored by the MICT immediate office of the Registrar in The Hague. At the Arusha branch where the trial activities were discontinued after the closure of ICTR, the Office of the Registrar prepared necessary documentation to ensure that ICTR's institutional knowledge was preserved. In July 2017, the Chambers' Legal Support Section issued a memorandum on preparation of cases for trial in the event of an arrest or order of retrial. The memorandum detailed all the major operational steps and processes to follow in the event of a trial. OIOS therefore concluded that the policies and procedures relating to trial and appeal proceedings in MICT were in place and up to date.

IV. ACKNOWLEDGEMENT

23. 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
Director, Internal Audit Division
Office of Internal Oversight Services