



## INTERNAL AUDIT DIVISION

# REPORT 2014/142

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Audit of the transitional arrangements for the International Criminal Tribunal for the former Yugoslavia

Overall results relating to the effectiveness of the transitional arrangements were initially assessed as partially satisfactory. Implementation of two important recommendations remains in progress.

FINAL OVERALL RATING: PARTIALLY SATISFACTORY

17 December 2014  
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# **AUDIT REPORT**

## **Audit of the transitional arrangements for the International Criminal Tribunal for the former Yugoslavia**

### **I. BACKGROUND**

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the transitional arrangements for the International Criminal Tribunal for the former Yugoslavia (ICTY).
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 the Mechanism for International Criminal Tribunals (MICT or Mechanism) in 2010 to carry out a number of essential functions of the International Criminal Tribunal for Rwanda (ICTR) and ICTY, including the trial of fugitives who are among the most senior leaders suspected of being primarily responsible for crimes, after the closure of the two Tribunals. The Security Council emphasized that the Mechanism should be a small, temporary and efficient structure. The Security Council determined that the Mechanism shall operate for an initial period of four years, and subsequently for periods of two years, following reviews of its progress, unless the Security Council decides otherwise.
4. The Mechanism has a single set of Principals (the President, the Prosecutor and the Registrar) who have responsibility over the Arusha and The Hague branches. As mandated, the Mechanism commenced operations at its Arusha branch on 1 July 2012 covering functions inherited from ICTR. The Hague branch commenced operations on 1 July 2013, assuming functions derived from ICTY. Annex II of Security Council Resolution 1966 (2010) provided details on the transitional arrangements for ICTY.
5. The mandate of the Mechanism derives from the mandates of ICTY and ICTR. The Mechanism has responsibility for the activities of the Chambers, the Office of the Prosecutor and the Registrar. Annex II of Security Council Resolution 1966 (2010) provides guidance on the respective effective dates of the mandate of the Mechanism regarding (a) trial proceedings, (b) appeals proceedings, (c) review proceedings and (d) contempt of court and false testimony. The same Annex II provides guidance regarding protection of victims and witnesses and the four functions managed by the Registry namely: supervision of enforcement of sentences, assistance requests by national authorities, management of records and archives, and administrative support.
6. The Security Council introduced in Annex II of Security Council Resolution 1966 the concept of “double hatting” whereby the principals of the ICTY and ICTR may also simultaneously hold their respective offices in the Mechanism. Staff members performing functions for the Mechanism may be staff members of the ICTY or ICTR. Thus the President, Judge, Prosecutor and Registrar of the Mechanism may also hold the office of President, Judge, Prosecutor and Registrar, respectively of ICTY or ICTR, and the staff members supporting the functions of the Mechanism may also be staff members of ICTY or ICTR.

7. During the 2012-2013 biennium, administrative services were provided to the Mechanism by both Tribunals under the coordination of the Registry of the Mechanism. For the 2014-2015 biennium, the Tribunals' ability to provide this support is decreasing due to their progressive downsizing. As a result, the Tribunals and the Mechanism agreed on the basic requirements for a small self-standing Mechanism administration, and these requirements were included in the 2014-2015 budget approved by the General Assembly. The transfer of administrative functions to the Mechanism began on 1 January 2014 and will be implemented gradually over the coming biennium, in step with the downsizing of the Tribunals and keeping a focus on ensuring efficiency, accountability and consistency. During the current biennium, the Human Resources, Finance, Procurement Section and Travel Unit of the ICTY performed their functions on behalf of both the Tribunal and both branches of the Mechanism. With the recent arrival of the Administrative Officers for the Mechanism's Hague and Arusha branches, the Mechanism has gained additional capacity to prepare for an eventual self-standing Mechanism administration.

8. The budget for ICTY for the biennia 2012-2013 and 2014-2015 totaled \$290 million and \$201 million respectively. Over the same biennia the total budget for MICT was \$54.8 million and \$120 million.

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 governance, risk management and control processes in providing reasonable assurance regarding **the effectiveness of the transitional arrangements for ICTY**.

11. The audit was included in the 2014 internal audit work plan for ICTY based on assessed high operational and organizational risks, and management concerns on whether transitional risks were adequately mitigated.

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

(a) **Strategic planning and risk assessment** - controls that provide reasonable assurance that a strategic plan is in place to effectively manage the transitional arrangements for ICTY, and that the related risks are assessed and mitigated appropriately.

(b) **Coordinated management mechanisms** – controls that provide reasonable assurance that potential overlaps in the performance of a function or delivery of a programme are mitigated and that issues affecting or involving ICTY and MICT are identified and resolved appropriately in a timely manner.

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

13. The key controls were assessed for the control objectives shown in Table 1.

14. OIOS conducted the audit from 1 July to 30 September 2014. The audit covered the period from 1 January 2013 to 30 September 2014.

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 governance, risk management and control processes examined were assessed as **partially satisfactory**<sup>1</sup> in providing reasonable assurance regarding **effectiveness of the transitional arrangements for ICTY**. OIOS made two recommendations to address issues identified in the audit. Strategic planning and risk assessment to support the transitional arrangements for ICTY were assessed as partially satisfactory. Management had prepared detailed action plans to transition the functions of ICTY. However, there was a need for a consolidated risk assessment document for the preparation of records and archives for transfer from ICTY to MICT. Coordinated management mechanisms were assessed as satisfactory because effective coordination was taking place, particularly due to the systematic implementation of the “double hatting” principle introduced by Security Council Resolution 1966, that supported effective coordination between the two entities. Regulatory framework was assessed as partially satisfactory because there was a need to accurately account for and report common costs between ICTY and the Mechanism.

17. The initial overall rating was based on the assessment of key controls presented in Table 1 below. The final overall rating is **partially satisfactory** as implementation of two important recommendations remains in progress.

**Table 1: 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
<b>Effectiveness of the transitional arrangements for ICTY</b>	(a) Strategic planning and risk assessment	Partially satisfactory	Partially satisfactory	Partially satisfactory	Partially satisfactory
	(b) Coordinated management mechanisms	Satisfactory	Satisfactory	Satisfactory	Satisfactory
	(c) Regulatory framework	Partially satisfactory	Partially satisfactory	Partially satisfactory	Partially satisfactory
<b>FINAL OVERALL RATING: PARTIALLY SATISFACTORY</b>					

<sup>1</sup> 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. Strategic planning and risk assessment

### Strategic planning and risk assessment needed to be further strengthened

18. The Security Council, by its resolution 1966 (2010), established MICT and gave strategic direction to the Tribunals' Principals to achieve the transition from ICTY to the Mechanism. Accordingly, ICTY put in place several mechanisms to facilitate effective transition. Prior to the creation of the Mechanism branch in The Hague on 1 July 2013, ICTY developed a detailed transition action plan comprising clear success indicators which were periodically reviewed and monitored. The Security Council was kept informed regularly of the progress made.

19. Security Council Resolution 1966 calls for coordinated transition of functions, including management of records and archives, to the Mechanism. This was also reflected in ICTY and MICT Registry strategic priorities for 2014-2015. The Mechanism Archives and Records Section (MARS) was created on 1 July 2012 and is responsible for developing and implementing strategies, policies and procedures to ensure the preservation of and access to archives. MARS had offices at both branches of the Mechanism to support the two Tribunals by providing guidance and advice on the preparation and transfer of their archives. To ensure effective coordination, the MICT Chief Archivist participated in the meetings of Chiefs at the Registry, maintained direct contact with both the Office of the Prosecutor and the Chambers at ICTY and the Mechanism, and had built a network of focal points within the various offices of ICTY and the Mechanism. MARS has led the coordinated development of plans for transfer of records (named Records Disposition Plans) and had planned to conduct a comprehensive inventory of actual records and archives pending transfer in early 2015 to update the plans for transfer of records.

20. While MARS demonstrated knowledge of the nature and location of records to be transferred as well as the related risks, it lacked a consolidated risk assessment document to identify, assess and mitigate the risks. The lack of a consolidated risk assessment could result in inadvertent destruction or loss of records, inability to appropriately prepare and manage the transfer of high volumes of documents, and inadequate facilities for storage of records which could lead to breach of confidentiality and potential reputational damage to the Organization.

**(1) ICTY and MICT should jointly develop, in liaison with the responsible officers and archive focal points, a consolidated risk assessment document that identifies, assesses and addresses risks pertaining to the preparation of records and archives for transfer from the Tribunals to the Mechanism.**

*ICTY accepted recommendation 1 and stated that MICT Chief Archivist will brief the Records and Archives Working Group on this recommendation at the Group's first meeting on 12 December 2014, with a view to produce the final version of this risk assessment document by 31 May 2015. Recommendation 1 remains open pending receipt of a consolidated risk assessment document that identifies, assesses and addresses risks pertaining to the preparation of records and archives for transfer from the Tribunals to the Mechanism.*

## B. Coordinated management mechanisms

### Coordination mechanisms were in place to ensure effective transitional arrangements

21. Security Council Resolution 1966 states that ICTY shall make the necessary arrangements to ensure as soon as possible a coordinated transition of its functions to the Mechanism. Security Council

Resolution 1966 also introduced the “double hatting” principle where the Tribunals’ staff members concurrently perform functions for the Mechanism.

22. Adequate coordination was in place at the senior level of ICTY and the Mechanism. The Principals (the President, the Registrar and the Prosecutors) held regular meetings to ensure coordination between the two organizations. The coordination was facilitated by the fact that two (the President and the Registrar) of the three Principals were double hatting for the Mechanism and ICTY. Further, the double hatting principle at the Hague branch, which commenced operations in July 2013, ensured that coordination happened by default. Under the umbrella of ICTY/Mechanism Registrar, a joint coordination meeting took place in Utrecht (Netherlands) in 2012 involving all staff members responsible for administrative functions at the Tribunals and the Mechanism. The meeting reviewed each key function and identified potential risks, challenges and solutions. OIOS therefore concluded that the coordination meeting held in 2012, regular meetings of the Principals, and implementation of the double hatting principle ensured that coordination during the transitional period took place satisfactorily.

### **C. Regulatory framework**

#### Procedures were in place at the commencement of the Mechanism

23. In Resolution 1966, the Security Council requested the Secretary-General to submit, at the earliest possible date, draft Rules of Procedure and Evidence for the Mechanism, for consideration and adoption by the judges of the Mechanism. Article 13 of the Mechanism statutes requested judges to adopt the Rules of Procedures. In compliance with the Security Council’s request, the Mechanism adopted and officially issued the Rules of Procedure and Evidence on 8 June 2012, before the Arusha branch of the Mechanism commenced operations. Subsequent practice directions, procedures and policies were developed and issued to ensure that the Mechanism possessed the required regulatory framework to achieve its mandate. OIOS therefore concluded that the judicial regulatory framework was in place and functioning satisfactorily.

#### Transitional arrangements for trial support functions of the Registry were adequate

24. Annex 2 of Security Council Resolution 1966 states that ICTY shall make the necessary arrangements to ensure, as soon as possible, a coordinated transition of the victims and witness protection function to the Mechanism in relation to all completed cases of the Tribunals. The same Annex states that the same coordinated transition should be in place for all the other functions of the Tribunals to the Mechanism, including the supervision of enforcement of sentences, the assistance provided to the requests by national authorities and the management of the United Nations detention facilities.

25. The immediate Office of the Registrar developed an action plan for the main functions of the Registry before commencement of operations of the Mechanism. The plan was monitored and followed-up until 1 July 2013. OIOS reviewed the status of pending key actions and observed that: (i) ICTY put in place the controls needed to ensure a proper transition of the victims and witness protection function to the Mechanism; (ii) ICTY addressed the key issues related to supervision of the enforcement of sentence function; (iii) policies and procedures related to the requests for assistance from national jurisdictions made to the Mechanism were in place; and (iv) arrangements for transferring functions of the United Nations Detention Unit from ICTY to the Mechanism were in place. OIOS concluded that Management had put in place adequate control processes to ensure that the Mechanism took over the trial support functions of ICTY.

A mechanism is needed to ensure accurate accounting and reporting of common costs

26. On 16 July 2012, the Director, Accounts Division, Office of Programme Planning, Budget and Accounts (OPPBA) issued an interoffice memorandum related to the Accounting Guidelines for the Mechanism noting that the Mechanism was distinctive from the two Tribunals and that its activity shall be reflected in a separate set of accounts and financial statements. In this regard, the Mechanism shall maintain a separate accounting database in the SUN accounting system and submit monthly financial reports. In compliance with OPPBA instructions, the Mechanism maintained a separate and distinct accounting database in SUN accounting system, and had its own budget document, financial reports and set of allotments.

27. A review of shared costs between ICTY and the Mechanism (such as rental of premises, maintenance of premises and cleaning services) showed that the costs were charged in their entirety to ICTY. The budget allotment for the Mechanism provided for these costs but no expenditures were charged to the corresponding budget lines or object class. As a result, the corresponding ICTY object classes for these expenditures were overspent. At the end of August 2014, the over-expenditure on ICTY budget was \$901,272 for rental of premises, \$84,903 for cleaning services and costs, and \$64,779 for maintenance of premises. Overall the anomaly led to inaccurate accounting and financial reporting for both ICTY and the Mechanism.

28. ICTY and the Mechanism management identified several underlying causes leading to this situation including the following:

- (a) Limitations of the financial management and procurement systems where splitting of purchase orders or other obligation documents between ICTY and the Mechanism was not feasible until a recent up-grade of the systems;
- (b) Constraints of a “single bank account” for the two entities which did not allow banking transactions by the Mechanism, and between ICTY and the Mechanism, except through a notional bank account; and
- (c) Management of the traditional inter-office billing and corresponding account receivable and payable (reciprocal accounts) and respective settlement for the two accounting systems were seen as a duplication of work taking into consideration staffing constraints and the double hatting arrangement in place. This arrangement allowed for direct posting of transactions in both systems (ICTY and MICT) without having to issue a debit advice from ICTY to MICT. This solution however, also brought about challenges in the recording of shared account related transactions indicated in (a) and (b).

29. As at October 2014, ICTY and the Mechanism were in the process of finding a solution to address the issue of shared costs and to establish procedures that will ensure these costs are billed systematically to both entities.

**(2) ICTY, in consultation with MICT, should put in place arrangements for ensuring the accurate sharing and reporting of common costs by the two entities.**

*ICTY accepted recommendation 2 and stated that the Chief Administrative Officer will coordinate with the responsible ICTY and MICT certifying officers to ensure compliance with this recommendation by 31 December 2014. Recommendation 2 remains open pending receipt of evidence of arrangements established to ensure accurate sharing and reporting of common costs by ICTY and MICT.*



Procedures for asset transfers between the two Tribunals and the Mechanism were initiated

30. OPPBA instructions stated that the Mechanism is distinct from the two Tribunals and that its activities shall be reflected in a separate set of accounts and financial statements. To achieve this, it was necessary to have in place an effective system for distinguishing, monitoring and reporting assets and serially tracked items of ICTY and the Mechanism.

31. Transitional arrangements regarding transfer, recording, tracking and reporting of assets from ICTY to the Mechanism had been initiated but were not formalized because of the double-hatting principle applying fully between ICTY and the Mechanism in The Hague. The two branches of the Mechanism were using two different tools for recording and managing assets. The Arusha branch used the Galileo system while The Hague branch used an Excel spreadsheet. Also, ICTY used a different asset management system called the Assets and Inventory Database. Using different systems to record assets may inhibit integration and centralization of asset data including serially tracked items. To address this situation, Management has decided to use the Assets and Inventory Database at MICT and its rollout is subject to the imminent rollout of the interconnecting system between locations called V-Block. Based on the actions initiated by ICTY and the Mechanism, OIOS concluded that appropriate measures were being put in place for recording and monitoring of assets.

#### **IV. ACKNOWLEDGEMENT**

32. 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.

*(Signed)* David Kanja  
Assistant Secretary-General for Internal Oversight Services

## STATUS OF AUDIT RECOMMENDATIONS

## Audit of the transitional arrangements for the International Criminal Tribunal for the former Yugoslavia

Recom. no.	Recommendation	Critical <sup>2</sup> / Important <sup>3</sup>	C/ O <sup>4</sup>	Actions needed to close recommendation	Implementation date <sup>5</sup>
1	ICTY and MICT should jointly develop, in liaison with the responsible officers and archive focal points, a consolidated risk assessment document that identifies, assesses and addresses risks pertaining to the preparation of records and archives for transfer from the Tribunals to the Mechanism.	Important	O	Receipt of a consolidated risk assessment document that identifies, assesses and addresses risks pertaining to the preparation of records and archives for transfer from the Tribunals to the Mechanism.	30 April 2015
2	ICTY, in consultation with MICT, should put in place arrangements for ensuring the accurate sharing and reporting of common costs by the two entities.	Important	O	OIOS receipt of evidence of arrangements established to ensure accurate sharing and reporting of common costs by ICTY and MICT.	31 December 2014

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> C = closed, O = open

<sup>5</sup> Date provided by ICTY and MICT in response to recommendations.

# **APPENDIX I**

## **Management Response**

## Management Response

## Audit of the transitional arrangements for the International Criminal Tribunal for the former Yugoslavia

Rec. no.	Recommendation	Critical <sup>1</sup> / Important <sup>2</sup>	Accepted? (Yes/No)	Title of responsible individual	Implementation date	Client comments
1	ICTY and MICT should jointly develop, in liaison with the responsible officers and archive focal points, a consolidated risk assessment document that identifies, assesses and addresses risks pertaining to the preparation of records and archives for transfer from the Tribunals to the Mechanism.	Important	Yes	MICT Chief Archivist	30 April 2015	The MICT Chief Archivist will brief the Records and Archives Working Group on this recommendation at the Group's first meeting on 12 December 2014, with a view to produce the final version of this risk assessment document by 31 May 2015.
2	ICTY, in consultation with MICT, should put in place arrangements for ensuring the accurate sharing and reporting of common costs by the two entities.	Important	Yes	ICTY Chief of Administration	31 December 2014	The CAO will coordinate the responsible ICTY and MICT Certifying Officers to ensure compliance with this recommendation by 31 December 2014.

<sup>1</sup> 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.

<sup>2</sup> 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.