



OIOS

Office of Internal Oversight Services

INTERNAL AUDIT DIVISION

AUDIT REPORT

The Victims and Witnesses Section of ICTY

**Gaps in psychological support and counseling
and post testimony follow up should be
addressed to ensure the effectiveness of support
provided to witnesses**

26 December 2008

Assignment No. AA2008/270/03

United Nations  Nations Unies

INTEROFFICE MEMORANDUM

MEMORANDUM INTERIEUR

OFFICE OF INTERNAL OVERSIGHT SERVICES - BUREAU DES SERVICES DE CONTRÔLE INTERNE
INTERNAL AUDIT DIVISION - DIVISION DE L'AUDIT INTERNE

TO: Mr. Hans Holthuis, Registrar
A: International Criminal Tribunal for the former Yugoslavia

DATE: 26 December 2008

REFERENCE: IAD: 08- 02068

FROM: Dagfinn Knutsen, Director
DE: Internal Audit Division, OIOS



SUBJECT: **Assignment No. AA2008/270/03 - Audit of the Victims and Witnesses Section of ICTY**
OBJET:

1. I am pleased to present the report on the above-mentioned audit.
2. Based on your comments, we are pleased to inform you that we will close recommendations 6 and 10 in the OIOS recommendations database as indicated in Annex 1. In order for us to close the remaining recommendations, we request that you provide us with the additional information as discussed in the text of the report and also summarized in Annex 1.
3. Your response indicated that you did not accept recommendations 5 and 8. In OIOS' opinion however, these recommendations seek to address significant risk areas. We are therefore reiterating them and requesting that you reconsider your initial response based on the additional information provided in the report.
4. Please note that OIOS will report on the progress made to implement its recommendations, particularly those designated as high risk (i.e., recommendations 4 and 5), in its annual report to the General Assembly and semi-annual report to the Secretary-General.

cc: Mr. John Hocking, Deputy Registrar, ICTY
Mr. Swatantra Goolsarran, Executive Secretary, UN Board of Auditors
Ms. Maria Gomez Troncoso, Officer-in-Charge, Joint Inspection Unit Secretariat
Mr. Moses Bamuwanye, Chief, Oversight Support Unit, Department of Management
Mr. Byung-Kun Min, Programme Officer, OIOS
Mr. Normand Ouellet, Chief, Nairobi Audit Service, OIOS

INTERNAL AUDIT DIVISION

FUNCTION

“The Office shall, in accordance with the relevant provisions of the Financial Regulations and Rules of the United Nations examine, review and appraise the use of financial resources of the United Nations in order to guarantee the implementation of programmes and legislative mandates, ascertain compliance of programme managers with the financial and administrative regulations and rules, as well as with the approved recommendations of external oversight bodies, undertake management audits, reviews and surveys to improve the structure of the Organization and its responsiveness to the requirements of programmes and legislative mandates, and monitor the effectiveness of the systems of internal control of the Organization” (General Assembly Resolution 48/218 B).

CONTACT INFORMATION

DIRECTOR:

Dagfinn Knutsen, Tel: +1.212.963.5650, Fax: +1.212.963.2185,
e-mail: knutsen2@un.org

DEPUTY DIRECTOR:

Fatoumata Ndiaye: Tel: +1.212.963.5648, Fax: +1.212.963.3388,
e-mail: ndiaye@un.org

CHIEF, NAIROBI AUDIT SERVICE:

Normand Ouellet: Tel: +254.20.762.5391, Fax: +254.20.762.4125,
e-mail: normand.ouellet@unon.org

EXECUTIVE SUMMARY

Audit of the Victims and Witnesses Section of ICTY

OIOS conducted an audit of the Victims and Witnesses Section (VWS) of the International Criminal Tribunal for the former Yugoslavia (ICTY). The overall objective of the audit was to assess the adequacy of VWS arrangements for providing support to the witnesses, Office of the Prosecutor, Defence and Chambers. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

The overall conclusion is that adequate arrangements were in place for the provision of support to witnesses, and the Office of the Prosecutor, Defence and Chambers expressed general satisfaction with the quality of services received. However, there were gaps in service provision particularly in psychological support and counseling and in post testimony follow-up. The primary risk was that management and witness administration responsibilities could eclipse the crucial support functions stipulated in the Rules of Procedure and Evidence. Some of the specific areas for concern, where there is scope for improving the current arrangements and client satisfaction, are discussed below.

- The efficiency and effectiveness of VWS operations could be improved by the introduction of workload norms and performance parameters. This should include a comprehensive evaluation of VWS' functioning to assess delivery of witness support and assistance and to gauge client expectations and satisfaction levels.
- The near absence of systematic post-trial follow up could reinforce the feeling of abandonment perceived by some witnesses according to studies on the subject. ICTY commented that they plan to formulate a witness follow up policy.
- More attention needs to be paid to counseling and support functions mandated in Rule 34 of the Rules of Procedure and Evidence.
- Monitoring of vehicle usage and maintenance of trip records was not satisfactory. Some 9,600 kilometers of vehicle usage was unaccounted in respect of four VWS vehicles.
- Barring a few exceptions, the resources of the Tribunal were generally spent with due regard to economy and safeguarded against loss, misuse and mismanagement. OIOS however came across instances of prolonged stay of witnesses in The Hague, which were well beyond the 7-day limit stipulated in the Tribunal's policy. ICTY needs to take appropriate steps to improve its compliance with this policy.

TABLE OF CONTENTS

Chapter	Paragraphs
I. INTRODUCTION	1 - 4
II. AUDIT OBJECTIVES	5
III. AUDIT SCOPE AND METHODOLOGY	6 - 7
IV. AUDIT FINDINGS AND RECOMMENDATIONS	
A. Efficiency and effectiveness of VWS operations	8 - 20
B. Compliance with mandates, United Nations regulations and internal VWS guidance	21 - 32
C. Safeguarding of resources	33 - 42
V. ACKNOWLEDGEMENT	43
ANNEX 1 – Status of Audit Recommendations	

I. INTRODUCTION

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the Victims and Witnesses Section (VWS) of the International Criminal Tribunal for the former Yugoslavia (ICTY). The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

2. In recognition of the importance of witnesses in the Tribunal's proceedings, the Rules of Procedure and Evidence provided for the creation of a VWS, which is responsible for the support and coordination of witnesses appearing before the Tribunal, whether called by the Chambers, Prosecution or Defence. VWS develops its principles, policies and procedures to ensure that all witnesses can testify in safety and security and the experience of testifying does not result in further harm, suffering or trauma to the witness. The Section strives to operate with the highest levels of integrity, impartiality and confidentiality, and ensures that all witnesses have equitable access to its services.

3. VWS comprises three units: the Protection Unit, the Support Unit and the Operations Unit. In October 2007, the Support and Operations Units were merged and two teams created on the basis of allocation of ongoing cases. In September 2008 the Section reverted to its previous organizational structure of having three distinct units. The Protection Unit coordinates responses to the security requirements and recommends protective measures for witnesses. The Support Unit provides assistance to witnesses and social and psychological counseling where required while the Operations Unit is responsible for logistical operations and witness administration. In terms of the Rules of Procedure and Evidence and the detailed instructions issued by the Registry, witnesses are entitled to various payments to cover travel, meal allowance, loss of earnings, and child care. A snapshot of the expenditures and witness numbers over the last five years is shown in Table 1.

Table 1: Expenditures and witness numbers for the period 2004 to 2007

	2004	2005	2006	2007	2008	Total
Expenditures in \$	2,058,861	2,148,100	1,920,741	2,620,458	961,999	9,710,159
No. of fact witnesses	399	320	400	598	148	1865
No. of expert witnesses	35	16	25	43	30	149
Total no. of witnesses	434	336	425	641	178	2014
Average expenditure per witness \$	4,744	6,393	4,519	4,088	5,404	4,821

4. Comments made by ICTY are shown in *italics*.

II. AUDIT OBJECTIVES

5. The overall objective was to assess the adequacy of VWS arrangements for providing support to the witnesses, Office of the Prosecutor (OTP), Defence and Chambers. This included assessing:

-
- (a) the efficiency and effectiveness of VWS operations;
 - (b) compliance with mandates, United Nations regulations and internal ICTY rules and procedures;
 - (c) the safeguarding of financial resources against loss, misuse and damage due to waste, mismanagement, errors, fraud and irregularities; and
 - (d) the adequacy of arrangements for ensuring that residual issues are properly dealt with after the closure of the Tribunal.

III. AUDIT SCOPE AND METHODOLOGY

6. The audit methodology comprised review of statistics on VWS performance over the previous five years, observation and verification of processes, review of documents and interviews with responsible personnel. The audit did not cover witness relocation agreements, and the audit of the Protection Unit was restricted to determining whether measures were in place to ensure confidentiality. As such, expenditures incurred on witnesses staying in The Hague awaiting relocation to third countries were not reviewed.

7. At the time of the audit, an ICTY/ICTR Residual Functions paper had been submitted to the Security Council. The paper details a number of issues relevant to witness related matters and recognizes that there will be a continuing need to provide assistance and support to witnesses especially protected witnesses after the closure of the Tribunals. Since this paper was still under consideration by the Security Council, no substantive comments are offered, although it was evident that ICTY was fully aware of the importance of the issue and had accorded the matter due priority.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Efficiency and effectiveness of VWS operations

Absence of workload norms and performance parameters

8. VWS had not established formal workload norms or performance parameters. The need to strengthen current arrangements was recognized by VWS who commented that they would introduce workload norms and performance parameters. The existing workload norms were *ad hoc* in nature and not based upon agreed criteria such as numbers of witnesses, complexity of cases or number of cases. As such, there was a risk that staff strength, deployments and allocations could be inaccurate and unsuited to requirements.

9. Though some statistics relating to witnesses were reported upon in the Management Information Report (MIR), formal performance indices did not exist. The absence of performance indices affects VWS's capacity to provide

reports about current performance and to set relevant, identifiable goals (targets) for future improvement. This affects the ability of VWS to identify problems prior to occurrence and before the problems could adversely influence outputs and outcomes.

Recommendation 1

(1) The ICTY Administration should ensure that the Victims and Witnesses Section evolves workload norms and suitable performance parameters to assist with provision and allocation of staff and an assessment of its performance.

10. *The ICTY Administration accepted recommendation 1 and stated that VWS is a service provider to the trial process which in turn is controlled by the Judges and parties to the proceedings. These proceedings are by nature unpredictable and as such any workload norms or performance parameters that are established must be sensitive to this unpredictability. VWS is committed to evolve workload norms and suitable parameters but suggested that such indices are focused more on areas that are within the control of the Section and not focused around aspects that are influenced by the unpredictable nature of trial proceedings. Workload norms and suitable parameters derived from and guided by indices involving witnesses' feedback on its services, frequency and types of complaints from witnesses or from the Parties (if any) would be more realistic for VWS to establish. VWS also solicited the assistance of OIOS in identifying such norms and parameters that are acceptable for performance improvement/monitoring purposes. OIOS considers that the responsibility for developing workload norms and suitable performance parameters vests with ICTY. However, OIOS is willing to assist ICTY in identifying such parameters, as far as practicable. Recommendation 1 remains open pending the development of workload norms and performance parameters by ICTY.*

VWS needs to undertake a formal evaluation of whether its services match client needs and expectations

11. In OIOS' interviews with OTP and Defence Counsel, who comprise the main client base of VWS, it emerged that except for the lack of services provided outside office hours, they were generally satisfied with the service levels provided by VWS over the last four years (period covered by audit). However, VWS had not undertaken any formal evaluation to request feedback from clients and thus was not in a position to demonstrate that their services did match client expectations. Among the issues that the evaluation should consider are the witnesses' own evaluation of their experience of testifying at The Hague. The Special Court for Sierra Leone undertook a similar evaluation in 2007 which resulted in a set of best practices.

Recommendation 2

(2) The ICTY Administration should ensure that the Victims and Witnesses Section (VWS) undertakes an evaluation of the experience of witnesses who have testified

at the ICTY, effectiveness of VWS services and possible improvements in systems and procedures.

12. *The ICTY Administration accepted recommendation 2 and stated that in order to retain a record of witnesses' experiences who have testified at the ICTY, VWS will implement a witness survey.* Recommendation 2 remains open pending the conduct of a witness survey in the ICTY.

Monthly average length of witness stay is under-reported

13. When the statistics are updated each month, the average length of stay is based on the length of stay within the reporting month. For example, Witness A arrives on 30 January and departs 3 February; the average for January is reported as two days and the average for February is reported as three days. Witness B arrives on 28 January and departs on 2 February resulting in average stays of four and two for January and February, respectively. The cumulative average is then calculated based on the average of the months. In this example, the average would be 2.75 days which is reported in the MIR, whereas the actual average stay of the witnesses is 5.5 days. By averaging stays within a month, the witnesses that are in The Hague during two different months are accounted for separately under the relevant month, thus lowering the overall reported average for the actual witness stays.

Recommendation 3

(3) The ICTY Administration should ensure that the Victims and Witnesses Section calculates cumulative averages based on total witness stays.

14. *The ICTY Administration accepted recommendation 3 and stated that VWS is currently working on this with the Information Technology Services Section (ITSS) Development Unit.* Recommendation 3 remains open pending corrections to ensure that the average length of stay of witnesses is correctly calculated.

Lack of systematic follow up of witnesses after testimony

15. VWS does not ensure systematic follow up of witnesses, through phone calls, direct contact or other modes, once they have returned to the region. The attendant risk is that satisfaction levels among witnesses are likely to be low during the post testimony phase. An independent study¹ carried out in 2003 determined that witnesses felt a sense of abandonment after testifying due to the lack of follow up. The majority of respondents of the study stated that no one from ICTY telephoned or visited them after they returned home. Nor had they had any contact with ICTY after verdicts or appellate rulings had been rendered in the cases in which they testified. While some respondents had no desire to remain in contact with the ICTY, most expressed a desire to remain in contact.

¹ "The Witnesses: War Crimes and the Promise of Justice in The Hague", by Eric Stover (May 2003).

Another report by a former ICTY employee² reiterated the same feelings of the witnesses, the sense of abandonment. *ICTY stated that the cited reports are not current any more and there have been noticeable improvement in following up with witnesses since then.* OIOS wishes to point out that Professor Eric Stover's report, which is now termed as not being current and outdated, was on the ICTY Website for several years until mid-2008. This seminal and award-winning study was the first attempt at looking at issues from the perspective of the witnesses and deserves consideration.

16. Besides the aforementioned reports, OIOS also discussed witness follow-up issues with OTP and Defence Counsel and it emerged that those interviewed were unaware of any policy of keeping or maintaining contacts with witnesses once the trial was completed. One respondent stated that the ICTY have a moral responsibility to undertake follow-up with witnesses. In some cases, OTP does follow up with witnesses approximately a week after providing testimony, but this is not systematic. A proper follow up is essential to ensure that witnesses do not feel abandoned once their testimony is completed.

Recommendation 4

(4) The ICTY Administration should ensure that a systematic and comprehensive witness follow up policy is formulated and implemented which includes provisions mandating that witnesses are kept informed of the disposition of their cases and that witnesses do not feel abandoned once their testimony has been completed.

17. *The ICTY Administration partially accepted recommendation 4 and stated that VWS recognizes that a systematic follow up policy is desirable as opposed to mandated or compulsory. VWS will continue to develop its long-term follow up policy within its structural and resource limitations. As a witness support function within an ad hoc international court, the delimitation between where the legal obligation to support ends and the initiative to follow up such support begins, is not set out in any of the basic texts of the ICTY". The role of witness evidence/testimony is now memorialized and utilizable for the ICTY. Therefore, the risk to the institution that now has the evidence of the witness is minimal. The low satisfaction levels of some witnesses, post their testimony, is an issue that impacts the individual witness, not the institution.*

18. *OTP or the Defence teams who have identified the witnesses and called them to testify are usually much closer to these individuals, through years of contacts before testimony and should also be playing a role in providing after-testimony care as well as information on the outcome of cases where they testified. In its follow up policy, VWS will thus be recommending that OTP/Defence should inform their witnesses about the cases' outcome as they are the parties working directly with the witnesses on these cases.*

² "The Forgotten Victim and the Scales of International Criminal Justice", by Kamala Janakiram.

19. *Finally, the long-term follow up project, currently being undertaken by a working group within VWS aims to gather all the current follow up practices and add some new practices, keeping in mind the completion strategy of ICTY. VWS is already providing follow-up to the witnesses, even if this is not always systematic. The new activities envisaged by the working group may have to be financed by a donor country (i.e. an additional staff member only assigned to make follow-up phone calls to all the witnesses who have testified, as this is not currently possible to assign a full-time staff member for this purpose). It is therefore evident that whilst desirable and certainly enhancing VWS' capacity to support witnesses, due regard must be given to the fact that a follow up policy is financially and logistically dependent on third parties (outside VWS) for its success and effectiveness.*

20. OIOS is of the view that if there is a preponderance of opinion among witnesses that they are being abandoned after providing testimony, it could engender negative perceptions about ICTY. Although ICTY has drawn a distinction between the 'institution' and the 'individual' witness, OIOS is of the opinion that both the institution and the individual witnesses are partners in the judicial process. Without witnesses, the Tribunal may find it difficult to prosecute its cases. Circumstances affecting victims/witnesses could influence their willingness to give testimony. Therefore, there is a reputational risk to ICTY and the United Nations, if no action is taken in this area. In that respect, OIOS agrees that that a follow up policy should be framed to involve not only VWS but also OTP and Defence. Recommendation 4 remains pending the formulation and implementation of an ICTY-wide witness follow up policy.

B. Compliance with mandates, United Nations regulations and internal VWS guidance

Inadequate attention to mandated support³ functions

21. Rule 34 of the Rules of Procedure and Evidence (RPE) require that VWS should consist of qualified staff to provide counseling and support to witnesses, particularly in cases of rape and sexual assault. The Victims and Witnesses Guidelines and Policies (30 March 2004), state that the support functions undertaken by the Support Officers are mandated by Rule 34. Specifically, VWS's own guidelines on the Support Officer's functions inter-alia require that the Support Officer will: (a) oversee the support services, manage and supervise the Associate Support Officers; (b) provide for training and consultation needs of Associate Support Officers and Witness Assistants; (c) contribute a support perspective to VWS policies and programmes; (d) use their particular knowledge and expertise in the psycho-social impact of torture, trauma and its effect on testimony; and (e) actively lead the ongoing review and re-orientation of the witness support programme.

22. Until October 2007, the Deputy Chief VWS/Support Officer, three Associate Support Officers and subordinate staff, provided the support function

³ 'Support' in the ICTY Rules of Procedure and Evidence connotes the provision of social and psychological counseling to witnesses

as envisaged in the Rule. In October 2007, the Deputy Chief/Support Officer's post became vacant and the P-3 Liaison/Administrative Officer became the Officer-in-Charge. The post, which was still vacant at the time of issuing this report, was reclassified during the period to take on more of a supervisory and managerial role, doing away with the requirement of support skills. In addition, in October 2007, the Operations and Support Units merged and the Associate Support Officers became Team Leaders with responsibility for oversight of daily operations and 11 General Service (GS) staff. The added responsibilities meant that the Associate Support Officers time were not able to focus on providing social and psychological support and counseling as described in their job descriptions. Further, the job descriptions of the Associate Support Officer required them to be present on a regular basis in Court hearings to monitor the well-being of victims and witnesses during testimony. However, because of the management responsibilities undertaken, the Associate Support Officers were unable to attend Court sessions regularly or to provide the required counseling services.

23. As a result of these changes, there is an increased risk that counselling and support services as envisaged in Rule 34 may not be carried out as effectively and efficiently as under the previous set of arrangements. Given the critical importance of this function, ICTY needs to establish the impact of the changes to ensure that an adequate level of counselling and support is provided, to safeguard the interests of witnesses. It also needs to collect statistics on the assistance provided to witnesses at court hearings, waiting rooms and counseling sessions and report such information to senior management on a regular basis.

Recommendation 5

(5) The ICTY Administration should undertake an assessment to ensure that counseling and support services envisaged in Rule 34 are being provided by qualified Support Officers to witnesses requiring such assistance.

24. *The ICTY Administration did not accept recommendation 5. VWS stated that whilst the Deputy Chief/Support Officer function together with management duties formed the basis for the previous set of arrangements, the passage of time has seen significant development in policies and procedures established within the Support Unit and also in the other four main areas of service to witnesses appearing before the ICTY (i.e. Protection, Operations, Legal services and the VWS Sarajevo Field Office). This development has meant that the duties of the Deputy Chief need not necessarily require Support Officer based skills but rather the management experience of a "Witness Support, Administration and Protection Programme" within a judicial setting and preferably with experience in international ad hoc criminal tribunals. The current staffing complement of the Support Unit comprising three Associate Support Officers ("ASO") and eleven Witness Assistants is providing and continues to provide the counselling and support services as envisaged in Rule 34 of the RPE in an effective and efficient manner. The supervision required has evolved and is less substantive in nature whereas, supervision with regard to the management of Witness Assistants and effective interaction with Trial Chambers, Prosecution and Defence terms*

remains the constant element in the general supervision of ASOs. This supervisory skill is not specific to a P-4 Support Officer (as in the past) but is a skill that may be possessed by any individual who can demonstrate enough relevant work experience in a "Witness Support, Administration and Protection Programme within a judicial setting and preferably with experience in international ad hoc criminal tribunals". Whilst this person may not be qualified in psychology or social work, the experience could mean that the person understands the psycho/social aspects of support to such a level that s(he) can successfully manage/supervise ASOs who provide the actual service.

25. *VWS added that as was noted by OIOS in October 2007, the Operations and Support unit merged and the Associate Support Officers became Team Leaders with responsibility for oversight of daily operations and 11 General Service (GS) staff. The added responsibilities meant that the Associate Support Officers time were not able to focus on providing social and psychological support and counseling as defined in their job descriptions. However, an assessment was undertaken (in August 2008) within the Support and Operations Units of VWS concerning the impact of that organizational change. As a result a reorganization was undertaken in September 2008 and has seen "the P-3 Liaison/Administrative Officer once again absorbing the management of the operational staff i.e. administrative and field assistants, and witness support clerks (drivers) in accordance with P-3 Liaison Officer's job description. Reducing the responsibility of managing the operational staff has alleviated the administrative and logistical portion of the work on the two Associate Support Officers. This has allowed the Support Officers to focus on the witness waiting rooms, and given them autonomy in supporting and supervising the witness assistants and providing psychological support and counseling to witnesses when needed". This initiative ensures that counseling and support services envisaged in Rule 34 are being provided by qualified Associate Support Officers to witnesses requiring such assistance.*

26. *At least one of the current ASOs is independently licenced (from the ASO's national system) to administer psychological counselling. In circumstances where the ASOs feel that they are not able to provide the necessary support/counselling, further professional support and guidance can be sought via relevant professionals from outside the Tribunal. The current ASOs in the Support Unit, located in The Hague, now devote and focus all their attention on the counselling and support services as envisaged in Rule 34.*

27. OIOS is still concerned about the lack of assurance that qualified support officers are now adequately providing the support services as envisaged in Rule 34. ICTY has acknowledged that the Deputy will no longer possess these skills, which implies that VWS has one support officer less, as compared to the past. The support capacity has been diminished and it is unclear whether its impact on the proper implementation of Rule 34 has been adequately addressed. OIOS therefore reiterates recommendation 5, which remains open pending receipt of documentation showing an assessment of the impact of the organizational changes on the delivery of services described in Rule 34.

Recommendation 6

(6) The ICTY Administration should collect statistics on assistance provided in court hearings, waiting rooms and number of counseling sessions, and report this information to senior management on a regular basis.

28. *The ICTY Administration accepted recommendation 6 and stated that the VWS Support Unit has already been collecting statistics on assistance provided in court hearings, waiting rooms and a number of counseling sessions, and reporting this information to senior management. Based on the compilation of statistics presented to OIOS, recommendation 6 has been closed.*

Entitlements of expert witnesses not regulated as per guidelines

29. In order to save costs, guidelines provide that when expert witnesses are required to stay more than four to five days in The Hague, VWS will cover the cost of the hotel from one of the contracted hotels, and in that event, only a portion of the Daily Subsistence Allowance (DSA) would be paid. However, in six cases (208-6-IT0573, 205-6-IT0741, 207-6-IT0452, 204-6-IT1456, 206-6-IT0104C and 204-6-IT0356), even though the stay ranged from 8 to 18 days, the Expert witness continued to receive full DSA for the duration of their stay. Also in one case 204-6-IT0357, even though the standard allowance paid to expert witnesses is \$200 per day, the witness received \$800 per day on an exceptional basis.

Recommendation 7

(7) The ICTY Administration should ensure that the Victims and Witnesses Section regulates entitlements of expert witnesses in accordance with the guidelines and where prolonged stays are envisaged, the expert should be provided with accommodation and paid the requisite meal and other allowances instead of Daily Subsistence Allowance.

30. *The ICTY Administration accepted recommendation 7 and stated that VWS continues to monitor expert witnesses who stay beyond the four days (maximum allowed for expert witnesses). In order to ensure that the current allocation for expert witness resources are not depleted, VWS will come up with a method to better regulate entitlements of expert witnesses. Recommendation 7 remains open pending receipt of details of the method developed to better regulate expert witness entitlements.*

Processing of cases of extraordinary losses

31. According to VWS guidelines, an extraordinary loss allowance is applicable when a witness suffers, will suffer, or has suffered an extraordinary loss because of testifying and in such circumstances may request compensation. The assessment is made by the Associate Support Officer with a recommendation for approval by the Chief of VWS. The guidelines are silent on the methodology

and criteria to use in determining the recommended amounts. This increases the risk of inconsistent application of rules. During review of VWS disbursement vouchers, OIOS noted inconsistencies regarding the awarding of extraordinary losses. In one instance, six witnesses received extraordinary loss payments when their stay in The Hague extended beyond seven days and payments for loss were made from the eighth day to the end of their stay. In other instances, extraordinary losses were paid from the first day. There was nothing in the records to explain this inconsistency.

Recommendation 8

(8) The ICTY Administration should ensure that the Victims and Witnesses Section reviews and amends its guidelines to ensure greater consistency when processing cases of extraordinary losses.

32. *The ICTY Administration accepted recommendation 8 and stated that the policy on extraordinary losses will be amended in order to provide specific criteria on the assessment of these claims and the requirement to improve the articulation of assessments. However, VWS would like to underline that each situation presented by a witness is very particular and will be assessed with regard to the particular circumstances (type of job held by the witness, country of origin, retaliation due to the testimony). An extraordinary loss may occur as soon as the witness leaves his home to travel to The Hague or may occur because of an extended stay away from home, not originally foreseen. Recommendation 8 remains open pending receipt of a copy of the amendments to the guidelines regarding extraordinary losses.*

C. Safeguarding of resources

Prolonged stay at The Hague

33. The standard length of stay of witnesses in The Hague is expected to be between five to seven days, though for some cases this is extendable up-to 10 days (for example, Seselj case). The Bureau⁴ had approved only a five-day limit in 2002, which was subsequently raised to seven days by the Deputy Registrar with the approval of the President. The number of days that witnesses can stay in The Hague is thus limited. This policy ensures that witnesses are not kept away from their home for too long and the experience of testifying does not cause undue stress or harm. In addition, when witnesses stay longer than envisaged, the risk is that this could affect the funding allocated to the Section as the stay entails considerable expenditure for the Tribunal on hotels, DSA, various allowances and in some cases loss of earnings. While the majority of witnesses were generally within this five to seven days norm, exceptions were noted in 37 cases between 2005-2007. In 19 cases the stay ranged from 10-15 days, in 11 cases the stay was between 16-20 days and in 7 cases it was 21 days or more. In one unusually long stay, the witness was in a hotel from 13 April 2005 until 9 June

⁴ Group of judges comprising the President, Vice-President and Presiding Judges of Trial Chambers

2005 at a cost of Euro 9,538 (\$11,492). Numerous exceptions to the norm persisted in 2008 as well.

Recommendation 9

(9) The ICTY Administration should ensure that the Victims and Witnesses Section in compliance with policy and in conjunction with the Office of the Prosecutor and Defence Counsels, endeavors to reduce the incidence of extended witness stays by keeping these within approved limits.

34. *The ICTY Administration did not accept recommendation 9, stating that the trial process and scheduled court proceedings are unpredictable. VWS, as an impartial service provider to both OTP and Defence teams, is not in a position to persuade or dictate to trials teams how to schedule their potential witnesses. VWS is also mindful of the danger that an initiative to influence the timing and manner in which OTP or Defence arranges the production of their witnesses can potentially be construed as impacting or even interfering with their independence. VWS has a procedure whereby exceptions for longer stays may be approved upon receipt of documentation from the Prosecution/Defence teams outlining reasons as to why the length of stay must be extended beyond ten days. Given the overarching considerations of the unpredictable nature of the trial process and the respect for the independence of OTP and Defence teams in the conduct of their cases, VWS opines that it has implemented all controls and measures possible to ensure that extended stays of witnesses are monitored and where possible, minimized.*

35. *VWS added that the policy is meant only as a guideline. Its purpose is to provide a framework/reference for the key players in a trial (Judges, Prosecution and Defence) in order from them to assist /facilitate VWS operations. The policy cannot be binding on any of the key players and therefore, exceptions to it are not unusual. This however, does not mean that the policy is not working or has to be amended. It simply means that it is principally intended as a reminder to the key players that they should do as much as possible to ensure adherence for the sake of the witness and operational efficiency of VWS. However, the dictates of fair trial guarantees will mean that the key players can require the witness to stay longer than what the policy recommends.*

36. The point which OIOS is making is that there have been numerous exceptions to a policy approved by the Bureau and the President of the Tribunal. In such a situation, additional steps should be taken to improve compliance. Recommendation 9 therefore remains open pending clarification by ICTY as to the additional measures taken to improve compliance.

Need for improved controls over cash receipts

37. VWS guidelines state that every effort will be made to ensure that allowances are paid to the witness before they depart The Hague and receipt obtained. During its review of disbursement vouchers, OIOS noted eight instances of cash receipts for a total amount of Euro 5531.83 (\$7,278) that had

not been signed by witnesses to acknowledge receipt of allowances. This comprised of DVs 205D030810 (three receipts), 207D010382, 206D110424, 207D040125, 206D050580 and 206D030459. In addition, there were two cases where cash receipts were obtained five months after the disbursement was made (208D030459 and 208D020792).

Recommendation 10

(10) The ICTY Administration should ensure that cash receipts are signed by witnesses prior to their departure from The Hague in compliance with Victims and Witnesses Section guidelines.

38. *The ICTY Administration accepted and implemented recommendation 10 by instructing witness assistants to obtain signatures of witnesses when handing over money.* Based on the action taken by ICTY, recommendation 10 has been closed.

Unexplained mileage in VWS cars

39. OIOS reviewed four out of six VWS vehicle log books from 2006 to 2008 and observed that around 9,600 kilometers were not accounted for in the log books. Gaps in kilometers ranged from one kilometer to several hundreds. Neither VWS nor General Services Section (GSS) could demonstrate that they were monitoring the kilometers run and whether the trips were official; such large variances require explanation. VWS commented that many of the short trips to and from the hotels and movements between ICTY grounds and the hotels have not been logged. Only the long hauls to the airport and back had been logged. After a review of the log books it was found that the trip tickets from January and February 2007 were missing and had not been accounted for.

Recommendation 11

(11) The ICTY Administration should ensure that the Victims and Witnesses Section checks unaccounted mileage and fixes responsibility for the unexplained kilometers run, and for the future closely monitors vehicle trips and ensures that log books are properly maintained.

40. *The ICTY Administration accepted recommendation 11 and stated that each driver has been reminded to complete trip tickets after daily usage of the vehicles. In order to have an audit trail on all log sheets, a procedure has been put in place stating that all mileage log sheets will be scanned and emailed to GSS weekly to ensure receipt by GSS. A weekly spot check will be undertaken by one of the drivers to ensure that mileage is being recorded properly and accounted for. In addition, GSS will undertake a review of VWS logs bi-annually. ICTY will also prepare a report on the unexplained mileage in consultation with GSS after receipt of explanations from staff using these vehicles.* Recommendation 11 remains open pending copy of the report explaining the

unexplained mileage and the action taken with respect to mileage that could not be accounted for.

Inconsistent processing and calculation of allowances

41. Generally, the calculations of allowances were correct and claims accurately processed, with the following exceptions. During review of disbursement vouchers, OIOS noted that the appropriate attendance allowances were not always applied. In three instances, witnesses (two from Serbia and one from Kosovo) were underpaid the appropriate daily attendance allowance, and in two instances, witnesses (one from Germany and one from Denmark) were given a higher attendance allowance than appropriate.

42. *VWS stated that all attendance rates have been updated in accordance with the UN Common System Salaries and Allowances website. As rates are updated twice a year, rates will be checked monthly to ensure that old rates are not being used.*

V. ACKNOWLEDGEMENT

43. We wish to express our appreciation to the Management and staff of ICTY for the assistance and cooperation extended to the auditors during this assignment.

STATUS OF AUDIT RECOMMENDATIONS

Recom. no.	Recommendation	Risk category	Risk rating	C/O ¹	Actions needed to close recommendation	Implementation date ²
1	The ICTY Administration should ensure that the Victims and Witnesses Section evolves workload norms and suitable performance parameters to assist with provision and allocation of staff and an assessment of its performance.	Governance	Medium	O	Development of workload norms and performance parameters.	Not provided
2	The ICTY Administration should ensure that the Victims and Witnesses Section (VWS) undertakes an evaluation of the experience of witnesses who have testified at the ICTY, effectiveness of VWS services and possible improvements in systems and procedures.	Governance	Medium	O	Implementation of witness survey	31 March 2009
3	The ICTY Administration should ensure that the Victims and Witnesses Section calculates cumulative averages based on total witness stays.	Operational	Medium	O	Correct calculation of witness stays	31 March 2009
4	The ICTY Administration should ensure that a systematic and comprehensive witness follow up policy is formulated and implemented which includes provisions mandating that witnesses are kept informed of the disposition of their cases and that witnesses do not feel abandoned once their testimony has been completed.	Strategy	High	O	Formulation and implementation of follow-up policy	Not provided
5	The ICTY Administration should undertake an assessment to ensure that counseling and support services envisaged in Rule 34 are being provided by qualified Support Officers to witnesses requiring such assistance.	Strategy	High	O	Undertaking an assessment to ensure the provision of adequate level of support services.	Not provided
6	The ICTY Administration should collect statistics on assistance provided in court hearings, waiting rooms and number of counseling sessions, and report this information to senior management on a regular basis.	Operational	Medium	C	Action completed.	Implemented

Recom. no.	Recommendation	Risk category	Risk rating	C/O ¹	Actions needed to close recommendation	Implementation date ²
7	The ICTY Administration should ensure that the Victims and Witnesses Section regulates entitlements of expert witnesses in accordance with the guidelines and where prolonged stays are envisaged, the expert should be provided with accommodation and paid the requisite meal and other allowances instead of Daily Subsistence Allowance.	Compliance	Medium	O	Development of method to regulate expert witness entitlements	31 January 2009
8	The ICTY Administration should ensure that the Victims and Witnesses Section reviews and amends its guidelines to ensure greater consistency when processing cases of extraordinary losses.	Operational	Medium	O	Amendment of the extraordinary loss policy	Not provided
9	The ICTY Administration should ensure that the Victims and Witnesses Section in compliance with policy and in conjunction with the Office of the Prosecutor and Defence Counsels, endeavors to reduce the incidence of extended witness stays by keeping these within approved limits.	Compliance	Medium	O	Action by the VWS to minimize extended witness stays by reiterating the orders on witness stays at The Hague.	Not provided
10	The ICTY Administration should ensure that cash receipts are signed by witnesses prior to their departure from The Hague in compliance with Victims and Witnesses Section guidelines.	Compliance	Medium	C	Action completed.	Implemented
11	The ICTY Administration should ensure that the Victims and Witnesses Section checks unaccounted mileage and fixes responsibility for the unexplained kilometers run, and for the future closely monitors vehicle trips and ensures that log books are properly maintained.	Operational	Medium	O	Preparation of report on the unexplained mileage and receipt of explanations from staff using these vehicles.	Not provided

1. C = closed, O = open
2. Date provided by ICTY in response to recommendations.