



OIOS

Office of Internal Oversight Services

INTERNAL AUDIT DIVISION

AUDIT REPORT

ICTR Completion Strategy

Insufficient attention was given to monitoring the measures introduced for improving trial management and staff retention

22 December 2008

Assignment No. AA2008/260/02

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 Judge Dennis Byron, President
A International Criminal Tribunal for Rwanda (ICTR)

DATE 22 December 2008

REFERENCE IAD: 08- 02056

FROM Dagfinn Knutsen, Director
DE Internal Audit Division, OIOS



SUBJECT **Assignment No. AA2008/260/02 – Audit of the ICTR Completion Strategy**
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 recommendation 2 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. Please note that OIOS will report on the progress made to implement its recommendations, particularly those designated as high risk (i.e., recommendation 1), in its annual report to the General Assembly and semi-annual report to the Secretary-General.

cc: Mr. Hassan Jallow, Prosecutor, ICTR
Mr. Adama Dieng, Registrar, ICTR
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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).

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EXECUTIVE SUMMARY

Audit of the ICTR Completion Strategy

OIOS conducted an audit of the International Criminal Tribunal for Rwanda (ICTR) Completion Strategy. The overall objective of the audit was to assess the adequacy and effectiveness of arrangements in place for the achievement of the ICTR completion strategy targets. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

The overall conclusion is that there were adequate mechanisms in place to facilitate coordination of the activities of the three organs in achievement of the completion strategy targets. Adequate oversight mechanisms were in place and arrangements for communicating progress inside and outside the Tribunal were satisfactory. Although a number of initiatives had been put in place for improving trial management, insufficient attention had been paid to monitoring their effectiveness and identifying changes that might be required to improve efficiency, or otherwise confirm the benefits of the initiatives put in place. The same was true of initiatives for staff retention. Failure to take timely action to assess whether measures taken are achieving the desired outcome and to take timely corrective action, in the areas of trial management and staff retention, could affect the accuracy of estimates made for achievement of the completion strategy. This is especially important, as the Tribunal has informed the Security Council that the completion target dates need to be revised, and the Tribunal should be in a position to be able to defend the revised dates.

To address these matters, OIOS made the following recommendations that have been accepted by ICTR and implementation is underway in most areas:

- Assessing the adequacy and impact of the efficiency measures introduced to expedite trials to ascertain whether these have had the desired impact;
- Reviewing the current completion strategy targets for staff reductions in Chambers to ensure that reductions are matched to changes in workload;
- Conducting a staff survey to assess the impact of retention incentives on staff, evaluate their adequacy and address concerns; and
- Developing a mechanism to address the issue of the availability of staff members who are to be retained.

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I. INTRODUCTION

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the International Criminal Tribunal for Rwanda (ICTR) Completion Strategy. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

2. The Security Council created ICTR by resolution 955 of 8 November 1994. The purpose was to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region. ICTR is governed by the Statute annexed to the resolution. The Rules of Procedure and Evidence adopted by the judges in accordance with the Statute establishes the framework for the functioning of the judicial system. ICTR (also referred to as the Tribunal) consists of three organs: the Chambers (three trial chambers and the appeals chamber), the Office of the Prosecutor (OTP) and the Registry responsible for providing overall judicial and administrative support to all the operations of the Tribunal. The President of the Tribunal is the highest judicial authority and acts as the institutional head.

3. The idea of planning and setting a time frame for the end of ICTR activities was initially discussed in October 2001 at a joint retreat for judges from ICTR and the International Criminal Tribunal for the Former Yugoslavia (ICTY). In reviewing ICTR's proposed budget for the biennium 2002-2003, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) expressed concern in 2001 that a target date had not been set for the conclusion of trials at the ICTR. In a resolution adopted on 12 February 2003, the General Assembly requested that the proposed budget of the ICTR for 2004-2005 include detailed information on how the resources requested would support the development of a sound and realistic completion strategy.

4. In August 2003, the Security Council expressly urged ICTR to formalize a detailed strategy, modeled on the ICTY completion strategy, in order to allow ICTR to achieve its objective of completing investigations by the end of 2004, all trial activities at first instance by the end of 2008 and all of its work in 2010. ICTR produced its first version of a completion strategy in 6 October 2003 based on the Security Council target dates. ICTR now believes that these timelines need to be adjusted. This was reflected in the address by ICTR's President to the Security Council on 4 June 2008. In light of the recent arrest of three high-level accused and the transfer of two of these accused to the Tribunal, the Security Council has extended the tenure of the judges to December 2009. Consequently the Tribunal has requested for additional resources to cover the increased workload and is awaiting a decision by the General Assembly.

5. From its inception in 1995 and up to the end of December 2007, ICTR incurred expenditures of \$1.12 billion on its mandated activities. ICTR has an approved appropriation of \$267 million for the biennium 2008-2009. Since 2003 the staff complement at ICTR ranged from 900 to 1000. The Tribunal has also used its General Temporary Assistance (GTA) funds to respond to the increased workload.

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6. Comments made by ICTR are shown in *italics*.

II. AUDIT OBJECTIVES

7. The main objectives of the audit were to:
- (a) Assess the adequacy of the arrangements for providing the three principal organs with requisite guidance and support for the formulation and execution of the completion strategy and also whether the three organs coordinated their actions for this purpose;
 - (b) Assess the adequacy of arrangements for ensuring that Chambers undertook effective and efficient deployment of resources and adopted suitable measures aimed at achieving the completion strategy milestones;
 - (c) Determine whether OTP had taken adequate measures for managing its structure, programme and deployment of resources for attaining the goals of the completion strategy; and
 - (d) Determine whether adequate arrangements had been put in place to ensure that the Registry efficiently and effectively supports trials and appeals to achieve the completion strategy goals.

III. AUDIT SCOPE AND METHODOLOGY

8. The audit focused on the arrangements put in place by ICTR for achieving the completion strategy milestones and covered the critical processes and activities undertaken by the three principal organs, namely Chambers, OTP and the Registry for completion of the ICTR mandate. The audit included a review of statistics on ICTR performance from its inception through June 2008, perusal of semi-annual and annual reports of the President and Prosecutor, observation and verification of processes and interviews with responsible personnel.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Governance, accountability and coordination

Adequate arrangements for governance and accountability by member states

9. Adequate governance and accountability mechanisms were in place for the completion strategy. The Security Council, which oversees the process, was provided with the information it needed to determine whether or not the completion strategy targets were being met. This was done in the form of annual

and six monthly reports, showing the level of attainment of the goals set in the ICTR completion strategy.

Adequate arrangements for high level coordination of the three organs to discuss progress on achieving the completion strategy

10. The Rules of Procedure and Evidence provide for the establishment of the Coordination Council comprising the President, the Prosecutor and the Registrar. The Council ensures the coordination of activities of the three organs of the Tribunal. Statistics show that this body convened regularly and during the period October 2003 to May 2008, the Council convened 27 times to discuss trial progress and the impact this would have on the achievement of completion strategy target dates. A summary of decisions taken at Council meetings is documented for follow up at subsequent meetings. To further strengthen the arrangements for follow up on decisions, an Advisory Committee to the Coordinating Council (ACCC) was established in April 2008. One of its responsibilities is to review and evaluate the strategic plan of action contained in the ICTR completion strategy. The role and responsibilities are set out in the terms of reference which have been approved by the heads of the three organs.

A risk management programme is being established

11. During 2008, OIOS conducted a risk assessment exercise of the Tribunal and based on the report produced, ICTR is in the process of developing a risk management programme. Responsibility for the management of risks is included in the terms of reference approved for the recently formed ACCC. As the work is ongoing, no recommendation is being made.

Adequate arrangements for the involvement of third parties in completion strategy progress

12. The External Relations and Strategic Planning Section (ERSPS) of ICTR ensured that external parties were involved in completion strategy activities through the implementation of its communication strategy. The ERSPS strategic plan, last reviewed in 2007, contained a number of elements dealing with capacity building, liaison with external stakeholders to address key matters such as trial chambers' decisions, instructions and judicial orders and ensuring better coverage of ICTR's activities by local and international media.

B. Chambers

Need to put in place a mechanism to review the effectiveness of measures taken to improve efficiency of trial management, including appeals

13. ICTR has taken several measures to expedite trials in pursuance of the completion strategy milestones, which include the following:

- the use of pre-trial and pre-defence status conferences to streamline proceedings and identify with the parties any issues to be resolved;

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- strong management of trial proceedings which includes decisions and orders on trial management;
 - the imposition of time standards for presentation of evidence;
 - where appropriate and in the interest of justice, trial chambers have ordered a reduction in the number of witnesses and their allotted time for testimony;
 - liaison and cooperation with the Registry's departments involved in trial management have been strengthened;
 - development of performance benchmarks including the time spent in each case versus the time projected, courtroom usage and the time elapsed between motions and their corresponding decisions;
 - the formation of a judges' working group to develop specific actions to expedite appeals;
 - ensuring that adequate staffing and translation capacity is available; and,
 - the use of written statements and transcripts of witnesses in lieu of oral testimony under Rule 92 bis.

14. To evaluate whether these measures are the right ones and are having the intended impact, OIOS expected to find a mechanism in place for regular assessment of these measures. Such a mechanism was missing, thereby increasing the risk that efficiency measures might not produce the intended results.

Recommendation 1

(1) The ICTR Administration should put in place a mechanism to assess the adequacy and impact of the efficiency measures introduced to ascertain whether these have had the desired impact.

15. *The ICTR Administration accepted recommendation 1 and stated that the Chambers has already initiated the process of reviewing and assessing the adequacy of measures put in place with the aim of enhancing the effectiveness of case management. To this effect a consultant has already been engaged and the report will be used to make further improvement. Recommendation 1 remains open pending receipt of a copy of the consultant's report.*

Need to ensure that there is sufficient qualified staff to achieve the completion strategy deadlines

16. At the time of the audit, Chambers was supported by 44 staff comprising 26 Professional, 7 Field Service, 5 GTA and 6 General Service. This is anticipated to reduce by 40 percent from 1 January 2009 to meet completion strategy targets. This planned reduction may not be realistic for the following reasons:

- the terms of office of some judges have been extended to the end of 2009 and it is estimated that by December 2009 the trial

chambers will be required to deliver judgments against 38 accused;

- one case transferred to the Netherlands in 2007 was returned to the Tribunal in 2008 and three transfer applications to Rwanda filed in 2007 were denied in 2008. This would lead to an increase in the work to be undertaken; and
- three accused were recently arrested and have to be tried by the Tribunal. In view of these arrests, the President of the Tribunal in the thirteenth annual report to the General Assembly and the Security Council dated 4 August 2008 indicated that an adjustment of the projections of the Tribunal was required for the completion of its trial work.

Recommendation 2

(2) The ICTR Administration should review the current completion strategy targets for staff reductions in Chambers to ensure that staff reductions are matched with changes in workload.

17. *The ICTR Administration accepted recommendation 2 and stated that Chambers and indeed the entire Tribunal have undertaken a review of the staff requirements in view of the increased workload and this was the basis of the supplementary budget proposal. ICTR is now awaiting the approval of the budget by the General Assembly. Based on the action taken by ICTR, recommendation 2 has been closed.*

C. Office of the Prosecutor (OTP)

Adequate arrangements in place for identifying and achieving completion strategy staff reductions

18. OTP has used a reasonable basis for planning a phased restructuring and realignment of resources. This has centered on a review of their organizational structure. As a result of these efforts, OTP will reduce from 225 to 142 posts from 1 January 2009, and unexpected peaks of activity will be met through GTA. The Investigations Division of the OTP has been reorganized and restructured around the support work required by trial and appeals teams. With the anticipated increase in the number of appeals, the Appeals Section has now been upgraded to a division, the Appeals and Legal Advisory Division (ALAD), through the deployment of 31 posts from the Investigations Division.

Adequate arrangements for monitoring OTP achievement of completion strategy targets

19. OTP established a Completion Strategy Monitoring Committee in April 2004. The terms of reference of the committee require it to check that all deadlines and milestones were achieved or accomplished as stated in the OTP's plans. OIOS noted that the committee had a work plan and received regular

updates. OIOS was satisfied that the monitoring committee was functioning as intended.

D. Registry

Adequate arrangements for identification of posts

20. As part of the completion strategy, a Staff Retention Task Force (SRTF) was established in July 2007 to develop criteria for determining the number of staff and the competencies required for effective completion of the work of the Tribunal. The SRTF came up with a set of retention indicators to guide programme managers in recommending staff to be retained in their units and sections. Criteria used, in order of importance, were:

- the competence of the staff member;
- the number of functions a staff member is able to perform;
- the number of years of service;
- gender;
- geographical distribution; and
- pension eligibility

21. OIOS assessed that the criteria used were equitable and balanced and the score card used was adequate for a proper evaluation of staff to be retained.

Absence of mechanism for determining the impact of retention incentives for staff

22. Following discussions with the Office of Human Resources Management (OHRM), New York, ICTR announced a number of exceptional measures intended to encourage staff to remain at ICTR. These measures include:

- exceptional use of special post allowance (SPA);
- step protection for ICTR staff appointed or transferred to the Secretariat;
- extension of contracts beyond retirement age;
- exceptional consideration of ICTR staff at the 30-day mark for Secretariat vacancies at their current level and one level above;
- waiver for pro-rating education grant in the case of abolishment of posts;
- waiver for reimbursement of home leave within six months when a post is abolished;
- flexibility in granting early repatriation;
- exceptional use of the rosters for recruitment and selection of candidates without the need to re-advertise;
- the payment of SPA upon three months of satisfactory service at the higher level from the day the staff assumed the higher level functions; and
- the use of the field service (FS) category for posts at the P-2 and P-3 levels.

23. OIOS was satisfied with ICTR's efforts to create incentives to retain staff for the completion of the Tribunal's mandate. However, there was no mechanism in place to assess the impact that these incentives have had on staff retention. This could assist senior management in addressing concerns and averting the risk of key staff not being retained during the critical phase of the completion strategy.

Recommendation 3

(3) The ICTR Administration should conduct a staff survey to assess the impact of retention incentives for staff and evaluate their adequacy.

24. *The ICTR Administration accepted recommendation 3 and stated that as the Tribunal gets closer to the final phase of the completion strategy, the contractual uncertainty and overall job insecurity will contribute to high staff turnover. The management has continued to explore opportunities of ensuring that the staff remains until completion of the mandate but it would be unrealistic to expect staff to turn down offers of more stable jobs elsewhere. Thus in order to mitigate the effect of departure, rosters of qualified candidates have been established for various functions with the aim of reducing time it takes to get recruitment completed. In the Tribunal's efforts to determine the effectiveness of staff retention measures adopted, as a first step ICTR will look at improving exit interview procedures to assist in determining what additional measures could be put in place as an incentive for staff to remain at ICTR.* Recommendation 3 remains open pending the receipt of documentation demonstrating the action taken to assess the impact of retention incentives taken for staff and evaluate their adequacy.

Need to improve communication with staff who will be retained

25. ICTR has made efforts to ensure that the staff retention arrangements are transparent. Regular information circulars are disseminated to staff, and a section on the ICTR intranet has been dedicated to the completion strategy documents. OIOS, however, observed that while the issue of timely notification to staff who would not be retained had been addressed during the management retreat on the completion strategy, there was no evidence of measures to deal with the staff to be retained. Therefore, there was no guarantee that these staff members would still be available. This will expose the Tribunal to the risk of a staff shortage resulting from the departure of these staff members. A mechanism needed to be put in place to address this issue in order to ensure continuity and the success of the completion strategy.

Recommendation 4

(4) The ICTR Administration should develop a mechanism to address the issue of the availability of staff members who are to be retained.

26. *The ICTR Administration accepted recommendation 4 and stated that staff retention committees are made up of staff in the same section and therefore they know colleagues who have expressed interest to stay. Even if staff is identified to stay there is no guarantee that they will not leave when better opportunities arise. The change in the judicial calendar has impacted on ICTR's timeline for separating staff members. The abolishment of posts has now been put on hold pending approval of the supplementary budget submitted to the General Assembly. ICTR therefore will be revisiting the communication strategy dealing with staff members who are to be retained. Recommendation 4 remains open pending the receipt of details of the mechanism put in place to address the issue of the availability of staff members who are to be retained.*

Need to consider rental savings arising from staff reduction

27. The premises leased by ICTR represent a significant cost to the Tribunal and as such these facilities require proper advance planning to secure their availability for continuing operations during the completion strategy phase. ICTR management therefore proposes to undertake a comprehensive review of office space after a final decision is taken on the number of staff to be retained in 2009. OIOS believes that considerable savings will be made given the imminent reduction in staff which would require less office space. OIOS felt that following the review of office space, new rental rates should therefore be negotiated as savings achieved could be deployed elsewhere.

Recommendation 5

(5) The ICTR Administration should, on completion of its comprehensive review of office space, negotiate new rental rates for office facilities in line with its new requirements.

28. *The ICTR Administration accepted recommendation 5 and stated that Division of Administrative Support Services is constantly reviewing the adequacy of the office space with the view to surrendering any space that is not required. Furthermore due to the pressure from the landlord to surrender space for other tenants, ICTR has now started making use of container offices and arrangements are under way to relocate some containers from Kigali office to Arusha with a view to reducing the office rent. Recommendation 5 remains open pending receipt of evidence of new rental rates negotiated for office facilities in line with the Tribunal's new requirements.*

V. ACKNOWLEDGEMENT

29. We wish to express our appreciation to the Management and staff of ICTR 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 ICTR Administration should put in place a mechanism to assess the adequacy and impact of the efficiency measures introduced to ascertain whether these have had the desired impact.	Operational	High	O	Receipt of a copy of the consultant's report	March 2009
2.	The ICTR Administration should review the current completion strategy targets for staff reductions in Chambers to ensure that staff reductions are matched with changes in workload.	Human Resources	Medium	C	Action completed	Implemented
3.	The ICTR Administration should conduct a staff survey to assess the impact of retention incentives for staff and evaluate their adequacy.	Human Resources	Medium	O	Receipt of documentation demonstrating the action taken to assess the impact of retention incentives taken for staff and evaluate their adequacy.	June 2009
4.	The ICTR Administration should develop a mechanism to address the issue of the availability of staff members who are to be retained.	Human Resources	Medium	O	Receipt of details of the mechanism put in place to address the issue of the availability of staff members who are to be retained.	March 2009
5.	ICTR should, on completion of its comprehensive review of office space, negotiate new rental rates for office facilities in line with its new requirements.	Financial	Medium	O	Receipt of evidence of new rental rates negotiated for office facilities in line with its new requirements.	September 2009

1. C = closed, O = open

2. Date provided by ICTR in response to recommendations.