



INTERNAL AUDIT DIVISION

AUDIT REPORT

Management of leased cells and services for ICTY Detention Unit

The agreement for the lease of detention facilities and services needs to be reviewed by the Headquarters and Local Committees on Contracts and expenditures for external medical services need to be adequately documented

20 January 2011
Assignment No. AA2010/270/01

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. John Hocking, Registrar
A: International Criminal Tribunal for the former Yugoslavia

DATE: 20 January 2011

REFERENCE: IAD: 11-00047

FROM: Fatoumata Ndiaye, Director
DE: Internal Audit Division, OIOS

fatoumata

SUBJECT: **Assignment No. AA2010/270/01 - Audit of the management of leased cells and services for ICTY Detention Unit**
OBJET: **for ICTY Detention Unit**

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. David Falces, Chief Administrative Officer, ICTY
Mr. Ken Roberts, Deputy Registrar, ICTY
Mr. David Kennedy, Commanding Officer of the Detention Unit, ICTY
Mr. Swatantra Goolsarran, Executive Secretary, UN Board of Auditors
Ms. Susanne Frueh, Executive Secretary, Joint Inspection Unit
Mr. Jonathan Childerley, Chief, Oversight Support Unit, Department of Management
Mr. Byung-Kun Min, Special Assistant to the USG-OIOS
Ms. Corazon Chavez, Chief, Nairobi Audit Service, OIOS
Ms. Amy Wong, Programme Officer, Internal Audit Division, OIOS

INTERNAL AUDIT DIVISION

FUNCTION

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EXECUTIVE SUMMARY

Audit of the management of leased cells and services for ICTY Detention Unit

OIOS conducted an audit of the management of leased cells and services for the International Criminal Tribunal for the former Yugoslavia (ICTY) Detention Unit. The overall objective of the audit was to assess the adequacy and effectiveness of internal controls in ensuring that the leased cells are managed efficiently in accordance with the requirements of the Tribunal. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

Due to the protracted negotiations of the terms and conditions, the Detention Facilities and Services Agreement (DFSA) had not been finalized. The long delay was mostly attributed to postponement of negotiation meetings and disadvantageous proposals on pricing, terms and conditions.

OIOS identified the following issues related to management of leased cells and services for the ICTY Detention Unit:

- The draft 2008-2011 DFSA, the interim agreement of July 2010 and the draft 2007-2008 DFSA need to be submitted to the Local Committee on Contracts and the Headquarters Committee on Contracts for review;
- Expenditures for external medical and dental services need to be adequately documented to avoid the risk of paying for services covered under DFSA; and
- ICTY needs to vacate and return another block of cells at the earliest opportunity to reduce the leasing cost.

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I. INTRODUCTION

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the management of leased cells and services for the International Criminal Tribunal for the former Yugoslavia (ICTY) Detention Unit. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

2. The United Nations Detention Unit (UNDU) houses all persons who are accused by the ICTY Prosecution after they have been transferred to The Hague to stand trial. Most of them also spend the pre-trial period in detention. Unlike in national systems, where detention matters are generally overseen by the Ministry of Justice, the UNDU in The Hague is supervised by the Registry. The Registry is responsible for ensuring that UNDU meets the highest international standards for detention. Remand times at the UNDU depend on the length of pre-trial, trial and appeals. Sometimes detainees need to be accommodated for long periods. Since all accused are presumed innocent until proven guilty, the regime in the UNDU is quite different from that of a prison which houses convicted criminals.

3. UNDU runs a comprehensive programme of remand which has a full daily schedule providing for fresh air, exercise, medical care, occupational therapy, spiritual guidance, conditions suitable for the preparation of defense, computer facilities and training, visiting and recreational and sport activities. The detainees also have access to satellite TV stations and press from the former Yugoslavia. The average age of detainees is relatively high and most of them arrive at the UNDU with various health problems.

4. As of July 2010, UNDU is comprised of 64 cells, which are located in the premises shared with the International Criminal Court Detention Facility (ICCDF) and the Special Tribunal for Lebanon Detention Centre (STLDC) within the Penitentiair Inrichting Haaglanden (the Dutch Penitentiary). The three organizations run autonomous regimes but share common facilities. The residential part of UNDU is divided into four wings, two of 20 cells and two of 12 cells, allowing the management to distribute detainees based on considerations of safety, security and judicial concerns and to establish suitably balanced social groupings of detainees with due attention to all international standards governing the treatment and detention of the remanded. For the period January 2008 to July 2010, ICTY incurred a total expenditure of \$22,861,159 in leasing the detention cells and services from the Dutch Government.

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

II. AUDIT OBJECTIVES

6. The main objective of the audit was to assess the adequacy and effectiveness of internal controls in ensuring that the leased cells are managed efficiently in accordance with the requirements of the Tribunal.

III. AUDIT SCOPE AND METHODOLOGY

7. The audit covered the lease of cells and services from the Dutch Government to ICTY for the period from January 2008 to July 2010. The audit was conducted from September to November 2010 and involved a review of the draft Detention Facilities and Services Agreement (DFSA) covering the period from October 2007 through September 2008 and the draft DFSA for the period from October 2008 through September 2011. The audit included interviews with key ICTY personnel involved in the management of leased cells and services and review of relevant documents pertaining to lease of cells and services, and provision of medical and dental services to detainees.

IV. AUDIT RESULTS

A. Contractual arrangements

Protracted negotiations of DFSA

8. During the protracted negotiations with the Dutch Government for entering into DFSA, the ICTY management has endeavored to negotiate the best possible terms and conditions, including different prices for occupied and unoccupied cells, returning a block of 20 cells to reduce the number of cells to 64, and downsizing of Dutch custodial guards from 70 to 59. Due to the protracted negotiations, mostly attributable to the Dutch Government's insistence on higher prices for the same period, DFSA was still in draft form at the time of the audit. Based on the interim terms and conditions, ICTY paid \$9,090,249 (Euro 6,258,193) for the period from October 2008 through December 2009.

9. The requirements of DFSA must be reviewed by the Local Committee on Contracts (LCC) and the Headquarters Committee on Contracts (HCC) before ICTY and the Ministry of Justice Custodial Institutions Agency of The Netherlands (CIA) can finalize the agreement. An interim agreement was signed between ICTY and CIA on 20 July 2010, wherein ICTY and CIA agreed in principle on the terms and conditions of the draft DFSA for the initial period from 1 October 2008 to 30 September 2011 with the option to extend it under the same terms and conditions for six successive periods of six months.

10. As of 31 October 2010, the ICTY Procurement Section had not presented the draft of the new DFSA to LCC for review, delaying further the finalization of the agreement, which still has to go through the HCC review process. The Procurement Section explained that it was awaiting information from UNDU on

the calculations of expected costs up to September 2014. The 2007-2008 DFSA was not presented to LCC and HCC for review either as required under Financial Rules 105.13 and 105.18 and Chapters 12 and 13 of the Procurement Manual.

11. Delay in finalizing the new DFSA raises the risk that CIA may become non committal to the terms and conditions of the draft agreement, including the mechanism for the downsizing of cells. In addition, financial commitments and funding requirements may also be affected. This already happened towards the end of the last biennium when obligations could not be recorded before the last quarter of the 2008-2009 biennium. At the time of the audit, an obligation in the amount of \$757,145 remained outstanding as invoices for the difference between the rates in the draft DFSA from October 2008 to December 2009 and the amount paid by ICTY were not yet billed by the Dutch Penitentiary.

Recommendation 1

(1) The ICTY Administration should ensure that the requirements covered by the draft of the new Detention Facilities and Services Agreement, together with those in the interim agreement of July 2010 and the draft agreement for 2007-2008, are submitted without further delay to the Local Committee on Contracts and the Headquarters Committee on Contracts, and finalized as soon as possible.

12. *The ICTY Administration accepted recommendation 1 and stated that the preparation of the LCC presentation had been initiated and the case would be submitted to the LCC not later than end of January 2011.* Recommendation 1 remains open pending receipt of documents showing that the new Detention Facilities and Services Agreement has been approved by LCC and HCC.

Delays in payment of invoices

13. According to the terms and conditions of the draft DFSA and interim agreement, payment is due within 30 days following the receipt of invoices. However, three out of five invoices received from the Dutch Government between December 2007 and November 2009 (as shown in Table 2), were not paid within the 30 days requirement. Also, all five invoices received from the Dutch Government between November 2009 and March 2010 (as shown in Table 3) were paid with delays ranging from 15 to 195 days. Although the agreement does not provide for late payment penalties, delays in invoice payment may affect the credibility of ICTY and impact future negotiations with the Dutch Government.

Table 2: Payments made for the 3rd Quarter 2007 to 3rd Quarter 2008

Date		Description	Amount (in US\$)	
Received by ICTY	Paid		Invoiced	Paid
24-12-07	21-01-08	2007 - 3 rd qtr (84 cells)	2,356,358	2,356,358

30-01-08	15-09-08	2007 - 4 th qtr (84 cells)	2,405,706	2,255,327
27-05-08	15-09-08	2008 - 1 st qtr (84 cells)	2,542,642	2,230,813
31-07-08	15-09-08	2008 - 2 nd qtr (84 cells)	2,566,629	2,230,813
10-11-09	9-12-09	2008 - 3 rd qtr (84 cells)	*2,329,183	2,413,370
Total			12,200,518	11,486,681

* Note: This invoice replaced a prior invoice which was received by Procurement Section on 14 November 2008. It was certified by the UNDU Commanding Officer on 24 September 2009 and by the Chief General Service Section on 6 October 2009.

Table 3: Payments made for the draft 2008-2009 DFSA

Date		Description	Amount (in US\$)		
Received by Procurement Section	Paid		Invoiced and Paid	Per 2008 draft DFSA	Difference
10-11-09	23-04-10	2008- 4 th qtr (64 cells)	1,742,395	1,695,744	46,651
10-11-09	23-04-10	2009- 1st qtr (64 cells)	1,703,132	1,658,880	44,252
10-11-09	23-04-10	2009- 2nd qtr (64 cells)	1,718,419	1,677,312	41,107
10-11-09	23-04-10	2009- 3rd qtr (64 cells)	1,735,897	1,695,744	40,153
04-03-10	23-04-10	2009- 4th qtr (64 cells)	1,792,094	1,695,744	96,350
Total			8,691,937	8,423,424	268,513

14. The delay was mainly attributed to disagreement over the negotiated costs, as the Dutch Government was proposing higher cost schedules. In addition, the Dutch Government submitted bills for services rendered for the period from October 2007 to September 2008 that were higher than what ICTY management was negotiating with them. For the period from September 2008 to December 2009, the ICTY management and the Dutch Government agreed to pay the latter based on the 2006 price schedule, since they had not reached an agreement for the lease of detention cells from September 2008. For the calendar year 2010, no payments were made as at 31 October 2010 because invoices were only submitted by the Dutch Government on 1 November 2010, after repeated follow-ups by the UNDU management.

Recommendation 2

(2) The ICTY Administration should ensure that invoices are paid within 30 days of their receipt as required in the Detention Facilities and Services Agreements.

15. *The ICTY Administration accepted recommendation 2 and stated that there were no outstanding invoices as at 13 December 2010, as invoices received on 29 October 2010 for the first and second quarters of 2010, were paid on 10 November 2010. The ICTY Administration reminded the Dutch Ministry of Justice on 12 November 2010 to submit the 2010 third quarter invoice. Based on the action taken by ICTY, recommendation 2 has been closed.*

Need to vacate a block of cells at the earliest opportunity

16. With effective advance planning, ICTY managed to return one block containing 20 cells to the Dutch Penitentiary in October 2008. This brought down the number of cells/guards from 84 cells with 70 guards to 64 cells with 59 guards. However, currently there are nine unutilized cells. Also, with the remaining 64 cells and projected 40 detainees, and based on current court schedules, there is opportunity for the Tribunal to vacate an additional block of 12 cells and reduce the total capacity to 52 cells and thereby reduce the relevant leasing cost.

Recommendation 3

(3) The ICTY Administration should vacate an additional block of cells at the earliest opportunity.

17. *The ICTY Administration accepted recommendation 3 and stated that ICTY would vacate another block of cells in accordance with the dependant cell usage, as dictated by the prevailing court schedule. Recommendation 3 remains open pending receipt of documentation showing that another block of cells has been vacated by ICTY.*

Inadequate documentation on file for specialized medical and dental services

18. Both the draft 2008 DFSA and the 2007 DFSA state that the host prison shall provide medical services including mental and dental health care services available at the hospital of the host prison. Also, medical services shall include primary health care comprising of all forms of treatment that a general practitioner is competent to provide and referrals shall be made to external medical specialists or civilian hospitals where needed.

19. A sample of 53 vouchers for the period January 2008 to July 2010 in the amount of \$206,964 (Euro 141,031) showed that ICTY incurred expenditures related to external medical, psychiatric, dental services and medications. Some psychiatric services were contracted by the Office of Legal Aid and Detention Matters based on court orders. However, for payments totalling \$182,736 (Euro 135,773) there were no indications on whether these treatments were either ordered by the court, or were beyond the regular medical and dental services currently provided by the Dutch Penitentiary.

20. In addition, incurring costs related to specialized medical, mental and dental care services and pharmaceutical expenses could indicate that the medical and health care services provided by the Dutch Penitentiary are inadequate. In

the absence of sufficient documentation, there is a risk that ICTY may be paying for services that should be covered under the agreement.

Recommendation 4

(4) The ICTY Administration should ensure that external medical and dental expenditures are adequately documented to avoid the risk of paying for services covered under the Detention Facilities and Services Agreement.

21. *The ICTY Administration accepted recommendation 4 and stated that ICTY proposed to issue standard operating procedures to clarify the process and reduce the risk of paying for medical services covered under the Detention Facilities and Services Agreement. However the ICTY Administration notes that the language of the medical annex (Annex H) of the DFSA is open to interpretation and therefore intends to renegotiate the language of that annex with the Host State authorities to reduce the risk of non-payment of medical invoices leading to the non-treatment of a medically fragile detainee population. Recommendation 4 remains open pending receipt of a copy of the Standard Operating Procedure for processing medical services for detainees and a copy of the renegotiated Annex H.*

V. ACKNOWLEDGEMENT

22. 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 requirements covered by the draft of the new Detention Facilities and Services Agreement, together with those in the interim agreement of July 2010 and the draft agreement for 2007-2008, are submitted without further delay to the Local Committee on Contracts and the Headquarters Committee on Contracts, and finalized as soon as possible.	Compliance	High	O	Receipt of evidence that the Detention Facilities and Services Agreement has been approved by the Local Committee on Contracts and the Headquarters Committee on Contracts.	30 Jan 2011
2	The ICTY Administration should ensure that invoices are paid within 30 days of their receipt as required in the Detention Facilities and Services Agreements.	Compliance	Medium	C	Action completed.	Done
3	The ICTY Administration should vacate an additional block of cells at the earliest opportunity.	Financial	Medium	O	Receipt of evidence that an additional block of cells has been vacated.	01 Jan 2012
4	The ICTY Administration should ensure that external medical and dental expenditures are adequately documented to avoid the risk of paying for services covered under the Detention Facilities and Services Agreement.	Operational	Medium	O	Receipt of a copy the standard operating procedure for processing medical services for detainees and the renegotiated language of the medical annex of DFSA (Annex H).	01 Jul 2011

1. C = closed, O = open

2. Date provided by ICTY in response to recommendations.