



Office of Internal Oversight Services

INTERNAL AUDIT DIVISION

AUDIT REPORT

Planning and monitoring of court schedules in ICTR

**ICTR needs to strengthen its planning and
monitoring of court schedules in order to
facilitate the achievement of the Tribunal's
completion strategy**

30 November 2009

Assignment No. AA2009/260/01

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: Judge C. M. Dennis Byron, President
A: International Criminal Tribunal for Rwanda

DATE: 30 November 2009

REFERENCE: IAD: 09- 03156

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

Fatoumata

SUBJECT: **Assignment No. AA2009/260/01 - Audit of planning and monitoring of court schedules in**
OBJET: **ICTR**

1. I am pleased to present the report on the above-mentioned audit.
2. Based on your comments, we will keep all recommendations open in the OIOS recommendations database as indicated in Annex 1. In order for us to close the 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., recommendations 2 and 11) in its annual report to the General Assembly and semi-annual report to the Secretary-General.

cc: Mr. Swatantra Goolsarran, Executive Secretary, UN Board of Auditors
Ms. Susanne Frueh, Executive Secretary, Joint Inspection Unit
Mr. Moses Bamuwanye, Chief, Oversight Support Unit, Department of Management
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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 planning and monitoring of court schedules in ICTR

OIOS conducted an audit of the planning and monitoring of court schedules in the International Criminal Tribunal for Rwanda (ICTR). The overall objective of the audit was to assess the effectiveness of the standards and tools used for planning and monitoring court schedules. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

Adequate planning and monitoring of court schedules is a critical factor in mitigating the risk of inefficient management of resources. It is also an important factor for attaining the objectives of the completion strategy. The findings of the audit indicated that ICTR needs to take additional measures in order to strengthen its planning and monitoring of court schedules. These measures include:

- Regular updates and analyses of data on time utilization for major stages of the trial;
- Regular analyses of the utilization of the courtroom space;
- Consistent use of the tools available for monitoring court proceedings in the Trial Chambers (trial conferences, limiting the volume of closing briefs and the time allocated for closing arguments);
- Timely amendments of indictments and disclosures by the Office of the Prosecutor; and
- Timely appointment of defence counsel and close monitoring of defence preparedness for the trial.

To ensure the effectiveness of these measures, the Office of the President should be strengthened by the addition of a Performance Evaluation and Planning Officer.

The Office of the President should also strengthen its coordinating role by using formal tools provided for in the ICTR Rules of Procedure and Evidence.

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I. INTRODUCTION

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the planning and monitoring of court schedules in the International Criminal Tribunal for Rwanda (ICTR or the Tribunal). The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

2. As of May 2009, the ICTR, in accordance with its statute, was successful in convicting 44 accused perpetrators of the Rwandan Genocide. In addition, five trials involving 14 accused were closed, but no judgments have been delivered yet. In one case with four accused, the trial was closed but the closing arguments were yet to be heard. There were also four cases with six accused where the trials were ongoing. Six more accused were awaiting trial. In 2003, the Tribunal, in accordance with Security Council Resolution 1503 (2003), formalized a strategy (the completion strategy) with the objectives of completing its investigations by the end of 2004, all trial activities at first instance by the end of 2008 and all work completed in 2010.

3. ICTR had an initial approved budget of \$267 million for the biennium 2008-2009 with the staff posts decreasing from 1,042 in 2006-2007 to 693 in 2008-2009. However, as described in the ICTR report to the Security Council on the Completion Strategy of the Tribunal (S/2008/726 dated 21 November 2008), its workload would significantly increase in 2009.

4. In October 2008, ICTR submitted to the General Assembly the revised budget estimates for an additional \$27 million with a proposal to postpone the abolition of posts. One reason ICTR needed additional resources was the unavailability of courtroom space and judges for trials of the three fugitives apprehended on 22 February 2008 (budget document A/63/506, paragraph 4). This emphasizes the importance of planning and monitoring of court schedules in the management of the Tribunal's work, as it has direct implications in the achievement of goals established in the completion strategy and for the efficient use of resources.

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

II. AUDIT OBJECTIVES

6. The main objectives of the audit were to assess:

(a) The standards and processes used by management in planning and monitoring court schedules; and

(b) The effectiveness of the measures taken by management in order to further improve court scheduling and monitoring.

III. AUDIT SCOPE AND METHODOLOGY

7. Planning of court schedules in ICTR consists of two interrelated processes: (a) scheduling of individual trial proceedings made with scheduling orders for every trial by each Trial Chamber and (b) preparing an overall judicial calendar for the whole year showing courtroom utilization for different trials. Planning at the first level depends on, among other things, the preparedness of the parties (prosecution and defence) and the Registry for the trial; the timeliness of their submissions and disclosures; the number and availability of witnesses; the number of motions and appeals; the timely filing of briefs and closing arguments; the preparation of judgments, etc. The timelines for planning at the second and higher level are standard.

8. The audit covered the activities of all three major bodies of the Tribunal: the Chambers, the Office of the Prosecutor (OTP) and the Registry for the period 2008-2009. The present audit did not include the operations of the Appeals Chamber common to both ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY), which is located in The Hague. The audit also assessed the coordinating role of the Office of the President of the Tribunal. In addition, the audit reviewed the effectiveness of ICTR tools for planning and monitoring its court schedules and trial proceedings. The audit sample comprised 18 court cases (out of 68 before the Tribunal), which involved 38 out of a total 96 accused. The audit was conducted through interviewing key officials of the Tribunal, reviewing documentation and verifying the processes.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Planning court schedules

Tools and standards for planning and monitoring court schedules

9. In his latest report to the Security Council (S/2008/726) dated 20 November 2008, the President of the Tribunal wrote: "The particularly high workload level at the Tribunal at this stage of its operations requires strong management of its resources to optimize their use." A strong management includes, among other things, a clear set of performance standards. It is accepted that specifics of trial work include unpredictable factors which can seriously influence the achievement of the established goals. Under these circumstances, the establishment of performance standards may be difficult. In this respect, general historical trends may be useful along with comparing ICTR's performance with other Tribunals like ICTY. It is important that the data used to establish such standards should be systematically gathered and analyzed.

10. The Tribunal recognizes these principles. In the above-mentioned report to the Security Council (S/2008/726), the President wrote that "[t]he successful accomplishment of the [T]ribunal's goal to meet the requirements of the Completion Strategy can be facilitated through objective performance standards to evaluate achievements and to identify and address difficulties. They are also

helpful for purposes of internal and external audit.” The President added that “[t]he Office of the President has developed a number of performance standard tools for this purpose, including charts presenting the percentage of use of each courtroom over the year, the actual hours spent in court against the projected judicial calendar for each case and the compilation of statistics connected with the progress of cases. These grids are continuously updated, fine tuned and analyzed.”

11. In the same report, the President wrote that there is an average break of six to eight weeks between the presentation of the prosecution and the defence case. Similarly, there is another break after the defence closes its case, which lasts on average two months, to allow the parties to prepare and file their closing briefs. For planning purposes, the average time projected for drafting a judgment for a single accused case was four months. It was also indicated that Trial Chambers had difficulties meeting the prior projection of a six-month average for judgment drafting in multi-accused cases. Furthermore, the Trial Chamber and its support team’s involvement in several cases at the same time could also affect the time required for writing the judgments.

12. It would appear that these timelines are neither comprehensive nor precise. They do not include a pre-trial stage and they fail to take into account the fact that most judges are engaged in at least two or more cases simultaneously. In most cases where the judgment was delivered in 2008-2009, the timelines were exceeded (see Table 1).

Table 1: Comparison of average timelines used for projection of ICTR work and actual time elapsed between major trial events in selected trials

Cases	Time between Prosecution closing and Defence opening		Time between Defence closing and closing arguments		Time between closing arguments and Judgment	
	Projected average (weeks)	Actual (months)	Projected average (months)	Actual (months)	Projected average (months)	Actual (months)
Rukundo	6-8	4	2	4	4	12
Nchahimigo	6-8	3	2	4	4	8
Bikindi	6-8	7	2	7	4	6
Zigiranyirazo	6-8	2	2	6	4	6
Bagosora <i>et al.</i>	N/A	5	N/A	4	N/A	18

13. In one case (Renzaho), the trial proceedings ended on 15 February 2008. On 21 November 2008, the ICTR reported to the Security Council that the judgment was “expected soon;” however, the judgment was not actually projected until July 2009. Notably, the Trial Chamber that heard this case was

involved in three other cases during 2008 and 2009. Moreover, four other cases have been completed but their original projected judgment dates were postponed from 2009 to 2010. These include Nsengimana, Bizimungu et al., Butare and Military II.

14. The Office of the President maintains a statistical database showing the time elapsed between the major events of the trials. These statistics could be used to establish more precise standards, if they were analyzed, taking into account two types of trials (single-accused and multi-accused cases) and the participation of Trial Chambers and their sections in more than one trial simultaneously.

15. The grids mentioned by the President include the following:

- An Excel table containing dates of major pre-trial and trial events for each accused (this table shows the duration of each stage and produces their average lengths);
- Excel tables showing daily usage of courtrooms by different Trial Chambers by case; and
- A table showing actual time spent in court per case compared to the time originally projected, and a table showing the average time per court decision by individual cases.

16. These databases could serve as useful tools for performance evaluation. However, they do not seem to be regularly updated. For example, the last entry in the table with the dates of major events which was provided to the auditor in May 2009 was dated 12 June 2008. The other tables contained data for 2008 only.

17. In the absence of a Performance Evaluation and Planning Officer, ICTR does not review its performance on a regular basis, which increases the risk of not attaining objectives and targets of the completion strategy. The Office consists of the President (who also acts as a Judge), his Special Assistant and a Secretary. If the Office created a position for a Performance Evaluation and Planning Officer, this officer would be able to improve planning tools, collect relevant data and review the data for planning purposes. Therefore, this position should be placed in the Office of the President.

Recommendations 1 and 2

(1) The Office of the President, ICTR should initiate a review of existing performance standards to enhance their comprehensiveness and precision.

(2) The ICTR Administration should strengthen the evaluation and monitoring function of the Office of the President by adding a position of a Performance Evaluation and Planning Officer.

18. *The Office of the President accepted recommendation 1 and stated that two databases have been set up to compile statistical data and to establish regular reporting mechanisms from the trial teams to the Office of the President.*

The existing performance standards will now be reviewed against the statistical data collected from the databases. Recommendation 1 remains open pending the full implementation and use of the database and an inspection by OIOS of the documentation showing that the performance standards are being reviewed.

19. *The ICTR Administration accepted recommendation 2 and stated that the performance evaluation and planning tasks will be performed by a team of staff members who are yet to be identified.* Recommendation 2 remains open pending receipt of documentation showing the addition of a Performance Evaluation and Planning Officer.

Judicial calendars

20. Article 34 of the Directive for the Registry of ICTR stipulates that:

“1. The Court Management Section [of the Judicial and Legal Services Division] is responsible for keeping a daily calendar of the scheduled hearings of the tribunal to be used in scheduling other hearings, to provide notice and to ensure the efficient administration of justice.

2. The calendar shall be notified to the Judges and relevant Parties in a timely manner, and if no objection is received to the calendar within forty-eight hours of such notification, it shall become mandatory. A copy of the calendar of the scheduled hearings shall be posted in public view in the Tribunal. This calendar should provide the case name and number, the Judge or the Chamber, the date and time of the proceedings and whether it is a public or closed proceeding.”

21. In his latest report to the Security Council (S/2008/726), the President of the Tribunal wrote: “Every six months, the Office of the President issues for this purpose [of strong management of Tribunal’s resources to optimize their use] a Judicial Calendar, after consultation with the Presiding Judges, taking into account the particularities of each case and the overall workload in Chambers.”

22. ICTR publishes on its website a daily journal of judicial proceedings showing a case (without number), the courtroom of the hearings, the stage of the hearing, the trial Chamber and the Judges. The ICTR website also contained judicial calendars for the periods of: July through December 2008 for Trial Chamber I (prepared by the Court Management Section with the reference to Article 34 of the Directive); July through December 2008 for Trial Chamber II, and October through December 2008 (2nd Judicial calendar) for Trial Chamber III. These calendars showed case names, case numbers, courtrooms, judges, prosecution and defence teams, the dates and time (with some exceptions) of proceedings and whether the proceedings are public or closed. There were no published judicial calendars available for 2009.

23. During the audit, the Office of the President was in the process of updating a “Judicial Calendar 2008-2009: Cases at hand,” which was finalized on 29 May 2009. This document showed the distribution of cases during 2009 by four courtrooms, but not by Trial Chambers or their sections. It included the

dates of the proceedings, but did not indicate their times or trial Judges. According to the Special Assistant to the President, who was preparing the judicial calendar, it was based on the projections by the Office of the Prosecutor of the preparedness of cases for trials, and was prepared in consultation with the Trial Chambers. This calendar is constantly updated based on the progress of the trial proceedings.

24. It appeared that ICTR was not following its own directives on the issuance of the judicial calendars. Their publication format and timing are inconsistent from one year to another. In 2009, unlike in 2008, the public was not informed of the planned activities of the Tribunal. There are no guidelines or instructions regarding the preparation of the judicial calendars which clearly establish, for example, who is responsible for preparing the calendars, what format should be used or their timing.

25. In the discussion of this finding, the President of the Tribunal commented that the Court Management Section of the Registry was responsible for the judicial calendars published on the ICTR website. The purposes of planning and monitoring court schedules are well served by the judicial calendars prepared by his Office in consultation with Trial Chambers. In his opinion, ICTR should improve its website management to ensure comprehensive and correct information is being disseminated to the public. As to the publishing of the judicial calendar prepared by his Office, this should be done by the Press and Public Affairs Unit in the Registry to whom the calendar is made available.

Recommendations 3 and 4

The Office of the President, ICTR should:

(3) Establish guidelines for the format of the judicial calendars and assign the responsibility for their preparation and publication; and

(4) Monitor the implementation of the guidelines.

26. *The Office of the President accepted recommendation 3 and stated that guidelines for the format of the judicial calendar will be established. These guidelines will also clarify the responsibility for the publication of the calendar. Recommendation 3 remains open pending receipt of the documented guidelines regarding the format and assignment of the responsibility for publication of the calendars.*

27. *The Office of the President accepted recommendation 4 and stated that the judicial calendar is reviewed by the Office of the President before distribution. Recommendation 4 remains open pending receipt of documentation showing that the implementation of the guidelines is being monitored.*

B. The Chambers - Planning and monitoring trial proceedings

Standards and tools for planning trial proceedings

28. Article 19 of the Statute of the Tribunal stipulates that “[t]he Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.” The Tribunal’s report to the Security Council dated 20 November 2007 (S/2007/676) indicated that “the Trial Chambers have progressively developed and adopted time-standards and practice directives in the management of their respective cases. This allows a firm control over the proceedings and the avoidance of undue delays, while upholding the rights of the Prosecutor to present a fair case and that of the accused to a fair trial.”

29. Planning of court schedules depends largely on the correct determination of length of trial proceedings. The ICTR Rules of Procedure and Evidence establish time standards for certain trial proceedings, such as the timing of disclosure of materials by the prosecutor (Rule 66 (A)), the timing for motions (Rules 72 (A) and 73) and the timing of final trial briefs before closing arguments (Rule 86). However, these standards do not include the time for setting the date of trial by the Registrar after the initial appearance of the accused, according to Rule 62 (A) (iv), neither do they include a date of the judgment delivery after closing arguments and deliberations by the Trial Chambers.

30. The President of the Tribunal advised that he had initiated a project which requires the judges to prepare confidential trial and judgment delivery plans for each trial, which are then submitted to the President. The plans include the dates for the major trial events, the assignment of tasks and the steps taken in the judgment drafting process.

Recommendation 5

(5) The Chambers, in consultation with the Office of the Prosecutor and the Registrar, should develop time standards for setting the starting dates of the trials and for the delivery of judgments.

31. *The Chambers accepted recommendation 5 and stated that time standards for the delivery of the judgments have now been developed and implemented through judgment drafting plans.* Recommendation 5 remains open pending receipt of documentation showing that the development of the delivery of the judgments and the implementation of the judgment drafting plans have been completed.

Pre-trial and trial conferences

32. OIOS recognizes that there are unpredictable elements in the trial proceedings which can significantly affect their duration. There are, however, some measures designed to plan and control the proceedings of a trial. Rule 73 *bis* of the ICTR Rules of Procedure and Evidence establishes that a Trial Chamber should hold a pre-trial conference prior to the commencement of the trial. At this conference, the Trial Chamber may order the prosecutor, within a certain time limit and before the date set for trial, to file the following:

- (a) A pre-trial brief addressing the factual and legal issues;
- (b) Admissions by the parties and a statement of other matters not in dispute;
- (c) A statement of contested matters of fact and law;
- (d) A list of witnesses the prosecutor intends to call including:
 - The name or pseudonym of each witness;
 - A summary of the facts on which each witness will testify;
 - The points in the indictment on which each witness will testify; and
 - The estimated length of time required for each witness.
- (e) And a list of exhibits the prosecutor intends to offer stating, where possible, whether or not the defence has any objection as to authenticity.

33. The Trial Chamber may order the prosecutor to provide copies of written statements of each witness whom the prosecutor intends to call to testify. The Trial Chamber may order the defence to file a statement of admitted facts and law and a pre-trial brief addressing the factual and legal issues, not later than seven days prior to the date set for trial.

34. Rule 73 *ter* provides that Trial Chambers may hold a conference prior to the commencement of the defence case. At that conference, the defence may be ordered to file the same information as the prosecutor under the Rule 73 *bis*. Rule 65 *bis* also allows the Trial Chamber to convene a status conference in order to organize exchanges between the parties and ensure expeditious trial procedures. Article 38 of the Directive for the Registry of ICTR states that “[a]t the initial appearance of an accused or at any time before trial, the trial Chamber, upon a request of a party *or proprio motu*, may order a status conference to consider any matter that will promote a fair and expeditious trial.” The Article further specifies that “[t]he Court Management Section shall be responsible for the preparation of status conferences... The provisions of Article 35 of the present Directive shall apply to the schedule adopted at the status conference.” In addition, Article 35 provides that: “The Registrar, Deputy Registrar or their delegate shall, in consultation with the appropriate Judge or Chamber, schedule the date and time

of hearings before the Tribunal for each case, taking into account the requirements of justice and notably the right of an accused to be tried without undue delay...”.

35. The Tribunal recognizes the importance of pre-trial, pre-defence and status conferences. In his report to the Security Council dated 31 May 2008 (S/2008/322), the President wrote: “The Trial Chambers have effectively used pre-trial and pre-defence status conferences to streamline trial proceedings and identify with the parties issues to be resolved. In particular, disclosure issues that may affect the expeditiousness of the proceedings are monitored at the pre-trial stage.”

36. A review of the minutes of sixteen trials held at the Tribunal at different stages during 2008 and January through May 2009 indicated that Trial Chambers commonly used status conferences in all reviewed cases. However, there were no records of pre-trial conferences for the following seven cases: Bikindi (TC3), Nsengimana (TC1), Military II (TC2), Kalimanzira (TC3), Setako (TC1), Ntwaukullyayo (TC3) and Munyakazi (TC3). Formal pre-defence conferences were held only in three out of sixteen cases. It was noted that some of the issues related to the pre-trial and pre-defence stages were discussed at numerous status conferences.

37. In some cases, the status conferences did not resolve all pertinent issues affecting the scheduling of the trials and as a result, the trials had to be rescheduled. In the case of Ngirabatware, the Appeals Chamber pointed out that “the accused raised the issue of the trial date at the status conference... but the Trial Chamber declined to discuss it on the ground that a status conference was not the right place to do so.” In that case, the Appeals Chamber also observed (decision dated 12 May 2009) that pre-trial matters were still pending (although the trial date was scheduled for 18 May 2009). The Appeals Chamber found that “the Trial Chamber abused its discretion in failing to address the factors relevant to its taking a fully informed and reasoned decision as to whether the setting of the trial in May 2009 infringed Ngirabatware’s right to a fair trial and in setting an unreasonable date for the start of the trial.”

38. The President of the Tribunal advised that the absence of minutes of some conferences did not mean that no such conferences had taken place. In some instances, the conferences were held under the heading of status conference instead of pre-trial conference but covered the same issues. He pointed out that modern trial practice encourages exchanges and informal meetings between the parties and resolution of contentious issues before they go into formal conferences. That may be the reason why not all the issues discussed are recorded in the minutes of the formal conferences. To address the matters of trial management, the Tribunal created a Rules Committee that prepared a number of proposals to improve the process. In addition, the Trial Management Committee also organized relevant training.

Recommendation 6

(6) The ICTR Chambers should adopt guidelines governing conferences to address all trial-related issues as prescribed by the Rules, and these guidelines should be based on the proposals by the Rules and Trial Management Committees.

39. *The ICTR Chambers accepted recommendation 6 and stated that guidelines for the pre-trial chambers have been developed and those for the other issues of trial management are being developed. The Chambers will also appoint a liaison officer who will be responsible for evaluating each defence team's availability and state of preparedness. Recommendation 6 remains open pending receipt of the checklist used by the pre-trial chambers for pre-trial conferences, documented guidelines for the other issues of trial management and the appointment of a liaison officer in the Registry.*

Limiting the size of briefs and the time for closing arguments

40. Limiting the size of closing briefs and time allocated for closing arguments is a useful tool for managing court proceedings. As described by the President in his report to the Security Council dated 21 November 2008, "the parties' closing arguments have in many cases presented a particular challenge for an expeditious trial due to their length." He also wrote that "the Trial Chambers have worked in cooperation with the parties to determine a maximum number of pages for closing briefs."

41. ICTR, unlike ICTY or its own Appeals Chamber, does not have guidelines to establish these limits. Consequently, it appeared that the ICTR practices of limiting the size of briefs and the time for closing arguments were not consistently or universally applied. For instance, in the case of Nyiramasuhuko et al, the Trial Chamber reconsidered its previous decision to limit the defence closing briefs (not to exceed 200 pages and 60,000 words each) and the prosecution closing brief (not to exceed 400 pages and 120,000 words). At the request of the parties, the Chamber increased the limits for both parties: 250 pages and 75,000 words for the defense and 600 pages and 180,000 words for the prosecution.

42. In another case (Ndindiliyimana et al), the Trial Chamber ordered that the prosecution closing brief should not exceed 400 pages, 250 pages for the defence of the two accused and 200 pages for the other two accused. It also established the typeface, line spacing and margins of the documents. The decision also limited the time for the closing arguments for the prosecution (4.5 hours) and the defence (2.5 hours for two accused and 2 hours for the other two accused).

43. Furthermore, the Trial Chamber in Zigiranyirazo granted each party four hours for the presentation of their closing arguments. The limit for their closing briefs was not established. The same decision was taken in the case of Bikindi. In

other cases, where the trial proceedings ended in 2008 and 2009, the minutes did not show any decisions on this subject.

44. The President of the Tribunal commented that the majority of judges would not agree to strict limits regarding the volume of briefs and time allocated for closing arguments. These limits are sometimes formally ordered and sometimes informally discussed with the parties who abide by the reached agreements. The Tribunal addresses the issue of the utility of size limits through discussions in informal plenary meetings and at judicial workshops.

Recommendation 7

(7) The Chambers should promulgate and apply guidelines for limiting the length of closing briefs and time allocated for closing arguments in order to further streamline the court proceedings.

45. *The Chambers accepted recommendation 7 and stated that guidelines, which need to be flexible based on the size and complexity of each case, will be promulgated by the Trial Chamber.* Recommendation 7 remains open pending the development of guidelines for streamlining the court proceedings and the implementation thereof.

C. The Registry – Appointment of defence teams

Delays in appointment of defence teams

46. Timely appointment and adequate professionalism of defence counsel supported with sufficient resources facilitate trial scheduling and expeditious conduct of the proceedings. Article 20 of the Statute of the Tribunal stipulates that the accused shall be entitled to a fair and public hearing. The accused is entitled to certain minimum guarantees, such as having adequate time and facilities for his or her defence; to communicate with counsel of his or her own choosing; to be tried without undue delay; to defend himself or herself in person or through legal assistance of his or her own choosing; to have legal assistance in any case where the interest of justice so requires; and to be assisted by counsel at no cost to the accused if he or she does not have sufficient means to pay for it.

47. The Rules of Procedure and Evidence regulating the assignment of counsel are set forth in Rules 44 to 46. There is also a Directive on the Assignment of Defence Counsel prepared by the Registrar and approved by the Tribunal. In addition, there is a Code of Professional Conduct for Defence Counsel promulgated by the Registrar in accordance with Rule 46 of the Rules of Procedure and Evidence of the Tribunal.

48. In 2009, a new lump sum system for the remuneration of defence teams at ICTR was introduced, replacing the existing hourly rate system and a previous lump sum system adopted in 2005. The new system is designed to promote the effective defence for the accused while reducing incentives for the defence to

delay or extend the court proceedings and to file unnecessary motions and appeals.

49. In a number of cases before the Tribunal, the court proceedings had to be rescheduled due to the delayed appointment of the defence team. In the case of Ngirabatware, for example, the Appeals Chamber noted that there was a delay in assigning a legal assistant and an investigator to the defence team. There was also a delay in appointing a co-counsel. The Appeals Chamber concluded that the defence was not allowed enough time to prepare for trial. Hence, the original trial date had to be reconsidered. The Defence Counsel Management Section (DCMS) of the Judicial and Legal Services Division commented that the delays were caused by factors beyond its control.

50. In the case of Nshogoza, the issue of defence counsel's remuneration caused delays in the proceedings. In this case, DCMS made an offer to a defence counsel to represent the accused on 15 May 2008. The defence counsel accepted the offer in a letter dated 19 May 2008. On 30 May 2008, she countersigned the offer and hand delivered it to DCMS. Despite this, on 6 June 2008, DCMS issued a new offer to the counsel, which changed the original remuneration. DCMS changed the terms based upon the fact that the defence counsel had not returned the countersigned offer within seven days from its date. The counsel contested that decision.

51. On 24 July 2008, the Trial Chamber expressed a concern that the Registrar had failed to assign a counsel to the accused. The Chamber noted that the Registry's failure to resolve the matter of remuneration terms was delaying the proceedings and having an adverse impact on the management of the case. For example, the Chamber pointed to the fact that the status conference scheduled for 18 June 2008 had to be cancelled since there was no counsel formally appointed. The Trial Chamber then ordered the Registrar to appoint a counsel to the accused "without any further delay." On 25 July 2008, DCMS sent the defence counsel another offer with the same remuneration terms outlined in the 6 June 2008 letter. She again declined this offer. On 18 August 2008, the Trial Chamber once again found that the Registrar's failure to appoint a counsel for the accused continued to adversely impact upon the Trial Chamber's management of this case, and risked compromising the accused fair trial rights. It ordered the Registrar to appoint a defence counsel within ten days. The appointment of a new counsel made by the Registrar was contested. As a result, the trial scheduled to commence on 29 September 2008, had to be adjourned. On 13 October 2008, the Trial Chamber directed the Registrar to withdraw the appointment of the new counsel and assign the initially appointed counsel in accordance with the terms offered to her on 15 May 2008. Consequently, the trial date was postponed until 9 February 2009.

52. In the opinion of DCMS, the rights of the accused were always guaranteed and he was always represented by a counsel of his choice. Hence, the case should have continued despite the assignment. This opinion was not supported by the decisions of the Trial Chamber. In this case, the Trial Chamber had to consider several additional motions by the defence and the Registrar, and to issue three orders before the issue was resolved. ICTR also incurred

unnecessary expenses of approximately \$14,000 of payments to the counsel whose appointment was withdrawn.

53. In the case of Hategekimana, at the status conference held on 15 December 2008, the defence counsel complained that no co-counsel had been assigned to the case despite his request in April 2008. He stated that the defence team consisted of only three members instead of five. DCMS explained that the delay was actually caused by the defence counsel who did not submit the name of his co-counsel until December 2008.

54. In a number of cases, the defence teams complained that they had insufficient time or resources to timely prepare for trial proceedings and the Chambers had to extend the time limits for their preparations. It appeared that DCMS was not always informed of the difficulties experienced by the defence until they were brought to the attention of the respective Trial Chambers.

Recommendation 8

(8) The ICTR Chambers support teams should establish a practice where the progress in the development of the defence case is monitored to enhance its preparedness for the trial.

55. *The ICTR Chambers accepted recommendation 8 and stated that the Defence Counsel and Detention Management Section, in consultation with the Chamber support staff are diligently monitoring developments in the defence case. Recommendation 8 remains open pending receipt of documentation showing that monitoring developments has been undertaken by the Defence and Detention Management Section.*

D. The Office of the Prosecutor – Indictments and disclosures

Amendment of indictments

56. Rules 47 to 53 of the Rules of Procedures and Evidence establish how an indictment should be submitted by the Prosecutor, reviewed and confirmed by the reviewing Judge, amended and served on the accused. Rule 50 (B) and (C) stipulate that if the amended indictment includes new charges and the accused has already appeared before a Trial Chamber, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges. The accused shall have a further period of thirty days in which to file preliminary motions in respect of new charges and, where necessary, the date for the trial may be postponed to ensure adequate time for the preparation of the defence.

57. In some cases, the OTP significantly amended the original indictments causing defence counsel to file motions to postpone the trial starting dates. In the case of Ngirabatware, the Trial Chamber observed that “the Prosecution does not appear to have exercised due diligence in bringing forth the proposed additional facts more than nine years after confirmation [of the indictment] was originally

sought... [T]he Prosecution... has not convincingly demonstrated that the materials underlying the amendments could not have been discovered and submitted to the Chamber earlier in time.” The Trial Chamber noted, however, that some of the amendments “will narrow down the indictments and may increase the fairness and efficiency of the proceedings.”

58. The Trial Chamber also found deficiencies in the amended indictment and ordered a further appearance. The Appeals Chamber noted that “the indictment was significantly amended on 5 February 2009, and further amended on 14 April 2009. Although the Prosecution withdrew counts, removed certain allegations and restructured the indictment so as to render it clearer and more specific, it also added a considerable number of new allegations.” This was one of the reasons the Appeal Chamber decided to reverse the Trial Chamber’s decision to set the trial date.

Recommendation 9

(9) The Office of the Prosecutor, ICTR should adopt additional measures to ensure that indictments are presented to court in adequate condition to avoid delays in court proceedings and the rescheduling of trials.

59. *The Office of the Prosecutor accepted recommendation 9 and stated that it will ensure that OIOS observations are taken into consideration during indictment review sessions.* Recommendation 9 remains open pending receipt of documentation showing the deliberations of the indictment review sessions.

Timeliness of disclosures

60. Under Rule 66 (A), the prosecutor shall disclose to the defense:

- Within 30 days, all the material which accompanied the indictment and prior statement from the accused, and
- No later than 60 days before the date set for trial, all statements of witnesses whom the Prosecutor intends to call to testify.

61. In the case of Bagaragaza, the defence complained of the late disclosure by the prosecution of a substantial amount of material and asked for the postponement of the trial commencement. In another case, Ntawakulilyayo, the Trial Chamber found the prosecution breached its disclosure obligations under Rule 66 (A) (ii) stating that, notwithstanding the postponement of the trial, a large number of disclosures had been made after the expiration of the 60 day time limit.

62. Likewise, in the case of Muvunyi, the Trial Chamber noted that the prosecution had not complied with some aspects of the Scheduling Orders, e.g. the directive to file a list of exhibits it intended to use at the trial and to disclose the exhibits themselves not later than 11 May 2009. The Trial Chamber stated that “[t]he repeated disregard for the Scheduling Order... is disrespectful and

unacceptable from an officer of the Court.” The Chamber further noted that “the Prosecution[’s] conduct could have an impact on trial fairness and the obligation to conduct proceedings without undue delay”.

63. The Acting Chief of Prosecutions commented that the highlighted deficiencies were the result of insufficient resources. The most experienced staff left the Tribunal and the new staff required additional time to review and analyze the numerous documents of the cases. He also mentioned that the Office of the Prosecutor had recently introduced its own control measures to review the completeness of disclosures.

Recommendation 10

(10) The Office of the Prosecutor, ICTR should ensure that all required disclosures of trial cases are made in a timely manner.

64. *The Office of the Prosecutor accepted recommendation 10 and stated that a disclosure verification team has been appointed to deal with the problem of disclosures.* Recommendation 10 remains open pending the receipt of the documented procedures adopted by the disclosure verification team to ensure that all required disclosures of trial cases are made in a timely manner.

E. Coordinating role of the Office of the President

65. Considering the composition of the Tribunal, it is important that all three major organs (The Chambers, The Office of the Prosecutor and The Registry) act in a coordinated manner. Rule 19 of the ICTR Rules of Procedure and Evidence stipulates that the President of the Tribunal should preside at all plenary meetings of the Tribunal, coordinate the work of the Chambers and supervise the activities of the Registry. Rule 23 *bis* establishes the Coordination Council, which is composed of the President, the Prosecutor and the Registrar. In order to achieve the mission of the Tribunal, as defined in the statute, the Coordination Council coordinates the activities of the three organs of the Tribunal. The Coordination Council should meet once a month at the initiative of the President.

66. Rule 23 *ter* provides for the Management Committee, which consists of the President, the Vice-President, a Judge elected by the Judges in plenary session for a one year renewable mandate, the Registrar, the Deputy Registrar and the Chief of Administration. The Management Committee should assist the President with respect to all registry activities relating to the administrative and judicial support provided to the Chambers and to the Judges. The Management Committee should meet once a month at the initiative of the President. In view of the important roles of these two bodies, it would be expected that their functioning is regular and effective.

67. According to the President, the Coordination Council meets as needed, but does not keep formal minutes of these meetings. The Management Committee, on the other hand, does not meet at all. Instead, the President stated that all issues are successfully resolved through less formal contacts.

68. In OIOS opinion, this overreliance on informal methods of management -- although explainable by the shortage of time and support staff to organize formal meetings -- may result in inefficiency. There is no record of major decisions to address the challenges facing the Tribunal and to improve the support to the Chambers. The responsibilities for concrete measures adopted by the Coordination Council, as well as the measures themselves are not recorded. ICTR is not following its own rules on the coordinating mechanism.

Recommendation 11

(11) The President, ICTR should use the coordination mechanisms provided for in the Tribunal's Rules.

69. *The President accepted recommendation 11 and stated that he would hold consultations with all stakeholders before deciding upon the establishment of the Management Committee.* Recommendation 11 remains open pending receipt of documentation showing the outcome of the consultations by the President with all stakeholders.

V. ACKNOWLEDGEMENT

70. 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	Actions needed to close recommendation	Implementation date ²
1	The Office of the President, ICTR should initiate a review of existing performance standards to enhance their comprehensiveness and precision.	Operational	Moderate	O	ICTR to provide documentation showing that the performance standards are being reviewed.	End 2009
2	The ICTR Administration should strengthen the evaluation and monitoring function of the Office of the President by adding a position of a Performance Evaluation and Planning Officer.	Operational	High	O	ICTR to provide documentation showing the addition of a Performance Evaluation and Planning Officer.	End 2009
3	The Office of the President, ICTR should establish guidelines for the format of the judicial calendars and assign the responsibility for their preparation and publication.	Operational	Moderate	O	ICTR to provide documentation showing that guidelines for the format of the judicial calendars have been established and the responsibility for their preparation and publication has been assigned.	November 2009
4	The Office of the President, ICTR should monitor the implementation of the guidelines.	Operational	Moderate	O	ICTR to provide documentation showing that the implementation of the guidelines is being monitored.	End 2009
5	The ICTR Chambers, in consultation with the Office of the Prosecutor and the Registrar, should develop time standards for setting the starting dates of the trials and for the delivery of judgments.	Operational	Moderate	O	ICTR to provide documentation showing the development of the delivery of the judgments and its implementation.	Development complete and implementation is ongoing.
6	The ICTR Chambers should adopt guidelines governing conferences to address all trial-related issues as prescribed by the Rules, and these guidelines should be based on the proposals by the Rules Trial Court Committees.	Operational	Moderate	O	ICTR to provide: (i) the checklist for pre-trial conferences used by the pre-trial chambers for review; (ii) documented guidelines for the other issues of trial management; and (iii) documentation showing the appointment of the liaison officer in the registry.	November 2009
7	The ICTR Chambers should promulgate and apply guidelines for limiting the length of closing briefs and time allocated for closing arguments in order to further streamline the court proceedings.	Operational	Moderate	O	ICTR to provide the guidelines established for streamlining the court proceedings have been developed.	November 2009

Recom. no.	Recommendation	Risk category	Risk rating	C/ ¹ O ¹	Actions needed to close recommendation	Implementation date ²
8	The ICTR Chambers support teams should establish a practice where the progress in the development of the defence case is monitored to enhance its preparedness for the trial.	Operational	Moderate	O	ICTR to provide documentation showing that monitoring developments are now being undertaken by the Defence and Detention Management Section.	Not provided
9	The Office of the Prosecutor, ICTR should adopt additional measures to ensure that indictments are presented to court in adequate condition to avoid delays in court proceedings and the rescheduling of trials.	Operational	Moderate	O	ICTR to provide documentation showing the deliberations of the indictment review sessions.	Not provided
10	The Office of the Prosecutor, ICTR should ensure that all required disclosures of trial cases are made in a timely manner.	Operational	Moderate	O	ICTR to provide documented procedures established to ensure that all required disclosures of trial cases are made in a timely manner.	Not provided
11	The President, ICTR should use the more formal coordination mechanisms of coordination provided for in the Tribunal's Rules.	Governance	High	O	ICTR to provide documentation showing the outcome of the consultations by the President with all stakeholders.	September 2009

¹ C = closed, O = open

² Date provided by ICTR in response to recommendations