



**Office of Internal Oversight Services
Internal Audit Division II**

AA – ICTR (01/06)

16 February 2006

TO: Mr. Adama Dieng, Registrar
International Criminal Tribunal for Rwanda (ICTR)

FROM: Corazon Chavez, Officer-in-Charge
Internal Audit Division II
Office of Internal Oversight Services

SUBJECT: **Audit of ICTR Legal Aid Programme (AA2005/260/05)**

1. I am pleased to submit the final report on the audit of ICTR Legal Aid Programme, which was conducted between June and November 2005 in Arusha by Ms. Mona Romilly. A draft of the report was shared with the Head, Defence Counsel Unit in December 2005, whose comments, which were received in February 2006, are reflected in the attached final report, in italics.
2. I am pleased to note that all/most of the audit recommendations contained in this final Audit Report have been accepted and that the Defence Counsel Unit has initiated their implementation. The table in paragraph 56 of the report identifies those recommendations, which require further action to be closed. I wish to draw your attention to recommendations 03, 04, 06, 07, and 14, which OIOS considers to be of critical importance.
- 3.
4. I would appreciate if you could provide Ms Mona Romilly with an update on the status of implementation of the audit recommendations not later than 31 May 2006. This will facilitate the preparation of the twice-yearly report to the Secretary-General on the implementation of recommendations, required by General Assembly resolution 48/218B.
5. Please note that OIOS is assessing the overall quality of its audit process. I therefore kindly request that you consult with your managers who dealt directly with the auditors, complete the attached client satisfaction survey form and return it to me.
6. I would like to take this opportunity to thank you and your staff for the assistance and cooperation extended to the audit team.

Attachment: Final report and Client Satisfaction Survey Form

cc: Mr. C. Burnham Under-Secretary-General for Management (by e-mail)
Mr. L. Munlo, Deputy Registrar, ICTR (by e-mail)
Ms. A. N’gum, Head, Defence Counsel Unit (by e-mail)
Mr. S. Goolsarran, Executive Secretary, UN Board of Auditors (by e-mail)
Mr. M. Tapio, Programme Officer, OUSG, OIOS (by e-mail)
Mr. C. F. Bagot, Chief, Nairobi Audit Section, IAD II, OIOS (by e-mail)
Ms M. Romilly, Resident Auditor, IADII, OIOS (by e-mail)

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**Office of Internal Oversight Services
Internal Audit Division II**

Audit Report

**Audit of ICTR Legal Aid Programme
(AA2005/260/05)**

Report date: 16 February 2006

Auditor: Mona C. Romilly



**Office of Internal Oversight Services
Internal Audit Division II**

AUDIT OF ICTR LEGAL AID PROGRAMME (AA 2005/260/05)

EXECUTIVE SUMMARY

From June to November 2005, OIOS conducted an audit of ICTR Legal Aid Programme. The audit covered activities with a total expenditure on defence teams of approximately US\$15.5 million during the period January 2004 to August 2005. Whilst OIOS is pleased to note that the arrangements in place were generally in compliance with UN Regulations and Rules, ICTR's Statute, Rules of Procedure and Evidence and Directives, OIOS noted a number of areas where there was scope to improve the efficiency and effectiveness of current arrangements. OIOS is pleased to note that all/most of the findings discussed below have been accepted by the Defence Counsel Unit and action has been initiated.

Appointment of Defence Counsel

To ensure the easy retrieval of documents and the efficient management of staff members' files, OIOS recommended that the current filing system should be reviewed and the checklists used in the processing of documents as a tool in its records management. A more formal mechanism should be developed in making enquiries of national bar associations on the professional status of counsel and a record of the responses should be placed on file.

Assignment of Counsel

In the opinion of OIOS, the Defence Counsel Unit should seek the cooperation of defence counsel to obtain the signatures of detainees they represent, for 'the Declaration of Means' form. To ensure that there is a formal basis to prohibit the appointment of family members and close friends of suspects, accused and counsel to act as counsel, experts, legal assistants, investigators, interpreters or translators unless the assignment is in the interest of justice, OIOS recommended that ICTR should consider an amendment to the Directive on the Assignment of Defence Counsel. OIOS also recommended that information sent from the Security and Safety Section, Kigali to the Defence Counsel Unit regarding requests for security clearance for members of the defence team from Rwanda, should be accompanied by copies of any supporting documents received from the Government of Rwanda.

Financial Management

OIOS recommended that the Defence Counsel Unit should discuss with the Chief, Finance Section the possibility of having 'read-only' access to the information entered in the Finance Section so that reconciliations could be undertaken regularly and to ensure the accuracy and integrity of information in DCU's financial tracking system.

Article 15 A of ICTR's Directive on the Assignment of Counsel which states that no counsel shall be assigned to more than one suspect or accused. However, there is no formal mechanism to identify whether counsel are assigned to accused at both Tribunals. OIOS recommended that, Article 15 A should be extended to include assignment to suspects at ICTY unless in the interest of justice

TABLE OF CONTENTS

CHAPTER	Paragraphs
I. INTRODUCTION	1 – 6
II. AUDIT OBJECTIVES	7
III. AUDIT SCOPE AND METHODOLOGY	8 – 9
IV. AUDIT FINDINGS AND RECOMMENDATIONS	
A. Governance and Mandate	10 – 11
B. Organisational Structure	12 - 13
C. Work Plans	14
D. Monitoring and reporting	
(a) Accuracy and completeness of ireports	15
(b) Performance Indicators and Statistics	16 – 18
(c) External Reporting	19 - 20
E. Appointment of defence counsel	
(a) Appointment of counsel	21
(b) Establishment of roster	22 – 25
(c) Maintenance of roster	26
(d) Choice of counsel	27
F. Assignment of counsel	
(a) Establishment of indigence	28 – 29
(b) Declaration of means	30 – 31
(c) Confirmation of assets	32 – 33
(d) Assignment of counsel	34
(e) Change of counsel	35 - 36
(f) Appointment of defence team	37 – 38
(g) Fee-splitting	39 - 40
G. Financial Management	
(a) Financial monitoring	41 – 44
(b) Guidelines on remuneration of defence team	45
(c) Remuneration of defence team members	46 – 48

(d) Travel	49 – 50
(e) Processing of invoices	51
(f) Overlapping of activities of defence counsel	52 – 53
(g) Lump sum payment	54 – 55
V. FURTHER ACTIONS REQUIRED ON RECOMMENDATIONS	56
VI. ACKNOWLEDGEMENT	57

I. INTRODUCTION

1. This report discusses the results of an OIOS audit of ICTR Legal Aid Programme, which was carried out between June and November 2005 in accordance with the International Standards for the Professional Practice of Internal Auditing.
2. The ICTR Defence Counsel Unit (DCU) is a unit under the Defence Counsel and Detention Management Section (DCDMS) and its main responsibilities are to assist indigent accused persons with their defence by assigning qualified counsel and to liaise with the United Nations Detention Facility (UNDF).
3. DCU is headed by the Deputy Chief of DCDMS, a P-4 legal officer who reports directly to the Chief, DCDMS, a P-5 senior legal officer which is under recruitment. The Deputy Chief is assisted by three legal officers, two at P-4 and one at P-3 under recruitment, two staff members at the Field Service (FS) level, two General Service (GS) staff and three GS staff on General Technical Assistance (GTA).
4. The activities of the DCU are funded through ICTR's assessed budget and forms part of the allocation to the Registry. No separate budget is maintained and expenditure is only tracked as part of the Registry.
5. The Board of Auditors, in its management letter dated 10 July 2003, made a number of recommendations, which included the recruitment of a financial investigator to monitor the accused's financial position and the monitoring of the lump sum payment system at ICTY to determine whether this system limits the increasing cost of legal aid. OIOS also made recommendations in reports A/55/759 (Report of the Office of Internal Oversight Services on the investigation into possible fee-splitting arrangements between defence counsel and indigent detainees at ICTR and ICTY) and A/56/836 (Follow-up investigation into possible fee splitting arrangements between defence counsel and indigent detainees at ICTR and ICTY) for the further improvement of the legal aid system. All of the above were considered when conducting this audit.
6. A draft of this report was shared with the Head, Defence Counsel Unit in December 2005, whose comments, which were received in February 2006, are reflected in the attached final report, in italics. All/most of the audit recommendations contained in this final Audit Report have been accepted and the Defence Counsel Unit has initiated their implementation.

II. AUDIT OBJECTIVES

7. The overall objective of the audit was to advise the Registrar, ICTR on the adequacy of arrangements implemented by DCU for the provision of legal aid services accorded to indigent accused and suspects. This involved:
 - a) Evaluating whether adequate guidance and procedures were in place;
 - b) Determining the reliability and integrity of the data available from the present systems;
 - c) Determining whether legal assistance to the accused and suspects was in accordance with the applicable UN Regulations and Rules, Administrative Instructions and relevant ICTR directives and policies; and

- d) Evaluating the economical, efficient and effective management of resources by DCU with a special emphasis on the expenses incurred for legal assistance to the accused and suspects.

III. AUDIT SCOPE AND METHODOLOGY

8. OIOS reviewed the legal aid services provided by DCU during January 2004 to August 2005. The audit included interviewing staff, reviewing available documentation analysis of applicable data and a review of the available documents and other relevant records.

9. A total of 69 detainees have benefited from legal assistance assigned by ICTR and DCU who paid approximately US\$15.5 million to defence teams during the period January 2004 to August 2005.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Governance and Mandate

10. Adequate arrangements for Governance and a clear mandate were in place. The legal aid programme is governed by Article 20 of the Statute of ICTR, which was established by the Security Council to guarantee a fair trial to the accused. Responsibility for implementing Article 20 lies with the Judges and the Registry. The rules, procedures and policy adopted by the Registry for the legal aid system are proposed by the Registry in consultation with concerned parties. Current rules and directives were approved as shown below:

- a) The Statute of the Tribunal was last updated in March 2004
- b) The Rules of Procedure and Evidence was amended in June 2005
- c) The Directive on the Assignment of Defence Counsel was last amended in May 2004

11. The General Assembly has reviewed the legal aid system. The Tribunal submitted a comprehensive report A/58/366 (Comprehensive report on the progress made by the International Criminal Tribunal for Rwanda in reforming its legal aid system) in September 2003 on the progress made by ICTR in reforming its legal aid system and a performance report A/59/549 (First performance report of the International Criminal Tribunal for Rwanda for biennium 2004-2005) in November 2004. ICTR also presents annual performance reports to the General Assembly and Security Council.

B. Organisational Structure

12. In executing his responsibility for the administration and servicing of the Tribunal, the Registrar has assigned the mandate of managing legal assistance to the Defence Counsel Unit (DCU) of the Defence Counsel and Detention Management Section (DCDMS). The DCU is responsible for ensuring that the ICTR Legal Aid System is functioning effectively and in accordance with the applicable regulations, rules and policies and that the rights of the detainees are upheld. OIOS is of the opinion that the roles and responsibilities of DCU are clearly outlined in the Statute, Rules and Directives and the structure is aligned to its mandate.

13. The roles and responsibilities of staff members are clearly defined and their reporting lines are reflected in the organisational chart of the Unit.

C. Work Plans

14. The planning process is considered to be satisfactory. DCU has developed annual work plans for the period 2004-2005 and 2005-2006 aligned to the PAS cycle, and the goals of the staff members were linked to the work plan. The plans clearly outline the goals of the Unit, the related actions and the evaluation criteria. These plans are discussed with the Chief, DCDMS to ensure consistency with the goals of the Section prior to submission for approval by the Deputy Registrar.

D. Monitoring and Reporting

(a) Accuracy and completeness of internal reports

15. A number of fortnightly reports were prepared and distributed internally to the Judges, the Registrar and Deputy Registrar and other Sections. These reports included lists of all assigned counsel, duty counsel, potential counsel and counsel discharged by the Registrar, a list of defence teams and a list of detainees. These lists were prepared by the Secretary within the Unit and their accuracy was verified by a legal officer, prior to distribution. OIOS reviewed 24 out of 240 reports produced during January 2004 to August 2005 and found them to be accurate, complete and prepared in a timely manner.

(b) Performance Indicators and Statistics

16. The Head of DCU indicated that the Electronic Data Processing Management Information Systems Unit has created a database to assist DCU with the generation of workload statistics developed for 2006-2007. At the time of issuing this report discussions were underway to ensure that the information requested would be quantifiable. OIOS is of the opinion that the proposed 15 workload statistics reflect all the activities undertaken within DCU and would assist management in reviewing DCU activities.

17. The workload statistics should be supplemented by the development of indicators designed to measure efficiency of activities and performance against planned work and objectives. In combination with workload statistics these indicators would provide valuable information on the adequacy of resources.

Recommendation:

- To assist in monitoring how efficiently its resources are being utilised, the ICTR Defence Counsel Unit should supplement existing workload statistics with indicators designed to measure efficiency and performance against planned work and objectives (Rec. 01).

18. *ICTR commented that the Defence Counsel Unit (DCU) of the Defence Counsel and Detention Management Section (DCDMS) is convinced that the workload indicators formulated for the 2006 to 2007 Biennium Budget are adequate for measuring efficiency and performance against planned work objectives. The new workload indicators have already been added to the statistics. The challenge is the collection and compilation of the data and entering it into the database.* OIOS notes the response and recognises ICTR's approach to performance-based management. However, the collection of workload indicators are the first step and performance indicators should now be developed and used as benchmarks to assess the efficiency and effectiveness of work undertaken. Consequently, OIOS will keep the

recommendation open pending clarification whether ICTR intends to develop performance indicators, and if not why not.

(c) External reporting

19. OIOS was satisfied with the adequacy of arrangements for the collection, verification, completeness, accuracy and timeliness of the reports produced. In accordance with Article 32 of the ICTR Statute the President submits an annual report of the ICTR to the Security Council and the General Assembly. An annual report outlining the activities and achievements of the Unit is prepared as DCU's contribution to the report that is submitted by DCDMS.

20. Prior to the commencement of a biennium, a detailed report is also prepared as part of the budget submission. OIOS viewed the report for the biennium 2004-2005 and 2006-2007 and no problems were noted as information provided was accurate and complete.

E. Appointment of Defence Counsel

(a) Appointment of counsel

21. Adequate mechanisms are in place to ensure that the suspects or accused are informed of their rights to defence counsel and legal aid. On arrest of suspects or accused, duty counsel are available to provide initial legal advice and advise the suspect or accused of his or her rights until counsel is engaged or is assigned by ICTR. In addition, the detainee is also given a kit containing the basic documents of ICTR and the internal rules of UNDF.

(b) Establishment of roster

22. DCU has mechanisms in place to ensure that counsel on the roster meet the criteria stipulated in the Rules and Directives. However, arrangements for document management are weak, such that ICTR cannot easily demonstrate that the mechanism is working. OIOS reviewed the qualifications and experience of 40 defence lawyers from 376 on ICTR's roster to ensure that the counsel met the criteria stipulated in Rules 44 and 45 of the Rules of Procedure and Evidence and Articles 13 and 14 of the Directive on the Assignment of Defence Counsel. It was noted that in approximately twelve cases, even though originals were required by the application form for inclusion on the roster, only copies of certificates were found and there were many inconsistencies and gaps in the information provided. OIOS is of the opinion that this was due to the fact that the files were badly documented. There was no organization in the filing of documents so that documentation could be found randomly placed in any of the sections of the files. OIOS felt that greater attention was required in organizing the information in files as missing documents could easily be undetected.

23. Although original documents are required to accompany application forms, OIOS felt that arrangements for entry on the roster could be further strengthened by performing and documenting background checks. This could also simplify checking at a later stage when counsel is assigned.

Recommendations:

- To enable ICTR to demonstrate that its roster is working as intended and to ensure the easy retrieval of documents and the efficient management of the files, the Defence Counsel Unit should review the current filing system. In addition, the development of checklists

for all the documents required by the application forms would provide a useful tool in records management (Rec. 02).

24. *ICTR commented that DCU has two secretaries GS-4 on GTA who manage the DCDMS Registry. These two have never had any filing training or experience in that field, before they joined DCU and they need a lot of training before they can operate efficiently as filing clerks. DCU requested the Judicial Records and Archives Unit of the Court Management Section to give them in-house training, but they felt that this was not useful for them. DCU is negotiating with the Training Unit to see whether the two can join a clerical training programme that is relevant to our needs. In addition, DCU will request for the appointment of a filing clerk on GTA for a period of three months to assist in resolving the filing issue especially the indexing of all files, especially the backlog. It is expected that by end of June 2006 the filing problem will have been resolved. Finally, DCU will intensify the use of checklists which were already developed, for all documents required by the application forms. OIOS is pleased to note that checklists have been developed for all documents required for the application forms and that ICTR intends to provide training for the filing clerks. The recommendation will be left open until OIOS receives an action plan for the efficient management of the files within DCU.*

- To ensure that defence counsel are eligible to be on ICTR's roster and to simplify checking on assignment of a case, the Defence Counsel Unit should ensure that background checks are undertaken and documented prior to entry of counsel's details on the roster (Rec. 03)

25. *ICTR commented that DCU states that background checks are indeed taken routinely once a counsel on the ICTR roster is recommended for assignment as lead or co-counsel. We have yet to find counsel who was not qualified to be on the list at the time of making a recommendation to the Deputy Registrar. Consequently, DCU will not have the time and resources to make rigorous background checks for counsel who may never be assigned to a case at ICTR, considering its meager staff complement. Whilst appreciating that backgrounds checks are conducted, OIOS is of the opinion that this initiative would be enhanced by documenting these checks. OIOS will close the recommendation upon receipt of documentary evidence of background checks made of defence counsel.*

(c) Maintenance of roster

26. OIOS was informed that the roster is updated regularly with new applicants. However, there were no procedures in place for maintaining the list to ensure that counsel continue to be eligible for inclusion and that there were no grounds for exclusion. In addition, there was no evidence on the files to show that the national bar associations were contacted to verify the professional status of counsel on the roster. OIOS was told that confirmation was often done through e-mails and telephone calls. In the opinion of OIOS a more formal mechanism should be put in place in order that a record of responses from the national bar associations could be placed on file and counsel should provide DCU with certificates of good standing on an annual basis to remain on the roster. *ICTR commented that DCU agrees with this and on 03 January 2006 a letter was transmitted to all counsel on the ICTR Registrar's List of Counsel that are eligible to represent indigent suspects or accused persons before the ICTR. That letter requested them to indicate whether they were still interested in remaining on the list. In addition, counsel who were interested in remaining on the list were requested to*

provide original certified true copies of Counsel's Practise Certificates and Letters of Good Character from their national bar associations or universities. OIOS is very pleased to note the information provided by ICTR and in view of this additional information is not raising any recommendation.

(d) Choice of counsel

27. The choice of lead counsel is at the discretion of the accused and there was no indication of interference in the process by ICTR. The accused or suspect usually chooses the lead counsel by submitting three names from the potential list of lawyers compiled by DCU and circulated internally. For the choice of co-counsel, the lead counsel submits three names to the Head, DCU. The choice made by the accused and by the lead counsel is usually respected but it is at the discretion of the Registrar. In 2004, there were approximately two cases of rejection, one regarding the selection of lead counsel and the other, the selection of co-counsel. The reasons for rejection were fully documented.

F. Assignment of counsel

(a) Establishment of indigence

28. A financial investigator was employed by ICTR in 2003 to assist in establishing indigence. There were no arrangements in place for the establishment and approval of the ceiling for indigence. Unlike ICTY who uses a formula based on social and economic indicators to decide on the indigency of the accused, ICTR uses the financial threshold of US\$10,000, which was recommended by a consultant in the General Assembly Report A/58/366 (Comprehensive report on the progress made by the International Criminal Tribunal for Rwanda in reforming its legal aid system). OIOS is of the opinion there must be a verifiable basis for the amount used, which should include the circumstance under which the amount should be changed.

Recommendation:

- To ensure an adequate basis for the ceiling ICTR uses for indigency, the Defence Counsel Unit should establish arrangements for the establishment and approval of the ceiling used for indigence. This should consider the current arrangements used by ICTY, based on social and economic factors (Rec. 04).

29. *ICTR commented that DCU states that the Report containing the findings of the Financial Investigator will be studied so that the financial means at the disposal of the accused persons will be ascertained. In addition, our counterparts in The Hague will be contacted and if possible Inter-Tribunal Cooperation meetings should be made for a first hand experience of how ICTY is managing their affairs. We would like to take this opportunity to underscore the sad fact that the Financial Investigator has not received the requisite support from Member States where the accused persons were arrested or where their families are residing. Moreover, despite repeated requests, the investigation travel budget has not been availed to the Financial Investigator. However, a request will be made so that funds will be made available to enable the Financial Investigator to visit certain countries commencing with Rwanda, during the first half of 2006. This will enable him to collect the requisite data for use in deciding on a ceiling for indigence. It should be remembered that unlike ICTY Detainees, the ICTR Detainees were Refugees most of whom were residing in other countries before they were arrested. However, a review should be made by August 2006.* OIOS notes

the response and will close the recommendation upon notification of the outcome of the review of the ceiling used for indigence.

(b) Declaration of means

30. On transfer to UNDF, the accused or suspect is required to complete a 'Declaration of Means' form in order to be assigned counsel. Since March 2004, this form was improved to include an undertaking from the accused that a financial contribution for the costs of the defence will be made in the event that in the future it comes to the attention of the Tribunal of the accused's ability to make such a contribution. The new declaration form is required to be signed by all detainees but to date 57 of the 69 detainees have not signed the form and 14 of the 57 detainees have never signed a 'Declaration of Means' form. OIOS felt that the cooperation of defence counsel should be sought to obtain the signatures of the detainees they represent.

Recommendation:

- To ensure that a legal basis is established for possible future contributions to the defence costs by the accused, the ICTR Defence Counsel Unit should seek the cooperation of defence counsel to obtain the signatures of detainees they represent, on the 'Declaration of Means form' (Rec. 05).

31. *ICTR commented that DCU agrees with this recommendation and states that a letter will be sent to all lead counsel by the end of February 2006 requesting for their cooperation in obtaining the requisite signatures from the Detainees who have not yet done so.* OIOS notes the response and will close the recommendation on receipt of documentary evidence of discussions held with lead counsel and confirmation that the 'Declaration of Means' form has been completed by all detainees.

(c) Confirmation of assets

32. To date, all accused/suspects have been classified as indigent as difficulties have been experienced in getting timely feedback from the Government of Rwanda to confirm the assets of detainees. OIOS confirmed that of the 18 requests sent by ICTR's financial investigator to the Government of Rwanda between April 2004 and August 2005, no responses have been received. An additional 14 requests are in the process of being finalised. Efforts by DCDMS to make enquiries about the means of the accused/suspects in the countries in which they were arrested, have not been satisfactory. The issue has been discussed in meetings of senior management with the Special Representative of the Rwanda Government to ICTR, but there was no indication of any follow-up action on decisions taken in the meetings. OIOS is of the opinion that ICTR should be more proactive in following up on decisions taken in meetings with the Government of Rwanda and deadlines should be established for the implementation of decisions.

Recommendation:

- To ensure that decisions taken at meetings and requests to the Government of Rwanda are implemented, the Registrar should request the Chief, External Relations and Strategic Planning Section to develop a mechanism for the follow-up action of pending issues

and the establishment of deadlines for their implementation. Any inaction on the part of the Government of Rwanda should then be reported to the General Assembly (Rec. 06).

33. *ICTR commented that DCU agrees with this recommendation and looks forward to receiving a copy of the said correspondence from the Chief, External Relations and Strategic Planning Section. OIOS notes the response and will close the recommendation upon receipt of details of the mechanism to be put in place for the follow-up action of pending issues and the establishment of deadlines for their implementation.*

(d) Assignment of counsel

34. Recommendations on random assignment by the Board of Auditors and OIOS have been superseded by a decision taken by the Chambers to the effect that although an accused does not have the freedom to choose counsel as an affording accused, he/she has the right to counsel chosen from the roster. However, the system in place for the assignment of counsel needs to be strengthened. Currently, if the accused is considered as indigent, three names of counsel chosen by the accused from the roster are submitted in order of preference to the Head, DCU. The qualifications and experience of counsel are reviewed by DCU and checks are performed to ensure that counsel is in good standing and have not been disbarred in their national jurisdiction. A recommendation is then prepared by DCU through the Deputy Registrar for final approval by the Registrar. No evidence was provided to indicate that the checks mentioned above were carried out but this issue was addressed under Recommendation 03 above. OIOS also noted that there was no provision in the Directive that prohibits the appointment of family members, close friends of accused and counsel on the defence team, which is the case in ICTY. However, on the form to be completed by co-counsel, legal assistants and investigators on their appointment, the candidate is required to indicate any relation to the accused. OIOS felt that a formal basis for the enforcement of this requirement should be established and included in ICTR's Directive on the Assignment of Defence Counsel. *ICTR commented that the evidence to indicate that the checks were carried out is shown in the letter that we sent to the Deputy Registrar. DCU ensures that the letters, faxes or emails received showing Counsel's good character are attached to the memo sent to the Deputy Registrar.*

(e) Change of counsel

35. Between 1997 and 2005, there were 31 requests for a change in lead counsel and 20 for a change in co-counsel. Reasons for withdrawal included dishonesty, breakdown in communication, appeal/trial chambers decision, disagreement of strategy, loss of confidence, unavailability or health problems. OIOS reviewed five cases and was satisfied that counsel was withdrawn or changed only on exceptional grounds. A request for withdrawal or change of counsel is made to the Registrar by the accused. Acceptance or rejection of the request is at the discretion of the Registrar and made in the interest of justice.

Recommendation:

- To ensure that there is a formal basis to prohibit the appointment of family members and close friends of suspects, accused and counsel to act as counsel, experts, legal assistants, investigators, interpreters or translators unless the assignment is in the interest of justice, ICTR should consider an amendment to the Directive on the Assignment of Defence Counsel (Rec. 07).

36. *ICTR commented that DCU agrees that an amendment be made to the Directive on the Assignment of Defence Counsel. DCU will prepare a draft recommendation for circulation to the Judges or for putting before the next plenary session, whichever is earlier. A draft is expected to be out by end of April 2006 given the Staff complement of DCU. OIOS notes the response and will close the recommendation on receipt of the draft recommendation to be submitted before the next plenary session.*

(f) Appointment of defence team

37. OIOS was informed that during the case preparation and substantive trial proceedings, lead counsel could request the Registrar to approve the appointment of both legal assistants and investigators. A defence team could have a maximum of three supporting staff (two legal assistants and one investigator or two investigators and one legal assistant). For the assignment of co-counsel, lead counsel is required to submit three names to the Registrar for approval from the roster. The qualifications, experience and good standing of co-counsel are also checked prior to their appointment. As in the case of the lead counsel, no evidence was found of checks made. This is addressed by Recommendations 03 and 04 above and no additional recommendation is raised. Members of the defence team are required to sign a declaration that they have no ties with any detainees or other members of the team. In addition, security clearance is requested for counsel, legal assistants and investigators from Rwanda to ensure that they are not wanted for genocide. Security clearance for these individuals is submitted through ICTR's Security and Safety Section to the Government of Rwanda for vetting. OIOS reviewed the list of investigators employed on defence teams during the period January 2004 to August 2005 and noted that of 64 investigators appointed, 10 investigators were not cleared by the Government of Rwanda but are currently employed. A review of the list submitted to DCU from the Security and Safety Section, Kigali showed that these individuals had been cleared. OIOS was concerned that no supporting documents are sent to DCU by the Security and Safety Section giving details regarding requested security clearance.

Recommendation:

- To ensure that information sent from the Security and Safety Section, Kigali is accurate and valid, Defence Counsel Unit should request that copies of any supporting documents provided by the Government of Rwanda be attached to the responses received (Rec. 08).

38. *ICTR commented that that checks are always made before the assignment of co-counsel. Additionally that, as is the case with a request for assignment of lead counsel, DCU transmits all correspondence sent by fax, letter or email from the national bar associations or universities, to the Deputy Registrar as an attachment to the recommendation. This in turn is forwarded to the Registrar for his consideration. In certain cases e.g. the Paris Bar, Canadian and American Bars, such information can be downloaded from the websites of the various Bar Associations. However, DCU agrees that a letter should be sent to the Chief Security Services Section on or before 28 February 2006, requesting copies of any responses that have been received from Rwanda. OIOS is pleased with the action to be undertaken and will close this recommendation on receipt of a copy of the letter sent to the Chief, Security and Safety Services Section.*

(g) Fee-splitting

39. As part of the mandate of the financial investigator, alleged cases of fee-splitting are investigated. During the years 2004 and 2005, only one case alleged, was investigated and no conclusive evidence was found. ICTR's Code of Professional Conduct for Defence Counsel enforces rules against fee-splitting. OIOS noted that a number of initiatives were in place to minimise the risk of fee-splitting. These included:

- a) checks undertaken before assigning the defence team to ensure that there was no conflict of interest;
- b) a requirement for members of the defence team to sign an undertaking that they have no work, financial, family or other ties to any detainee or any other member of the defence team;
- c) provision within the Code of Professional Conduct for Defence Counsel (Article 5 bis) which prevents fee-splitting arrangements;
- d) a mechanism for conducting investigations in alleged cases of fee splitting.

40. OIOS was satisfied with the controls instituted to avoid fee splitting and agreed with the financial investigator that it was very difficult to identify cases of fee-splitting as parties are unwilling to admit to any participation in this activity.

G. Financial Management

(a) Financial monitoring

41. There were inadequate arrangements for financial monitoring in place such that DCU could not demonstrate the accuracy of the data entered. Finance Section provides DCU with a monthly allotment report detailing expenditure to defence counsel teams. DCU has also implemented a financial tracking system, which gives details of hours claimed and authorised, and payments made to the teams. OIOS was unable to reconcile the financial information in the allotment reports and the financial mechanism to underlying records and was unable to reconcile the figures contained in the two systems. There was no evidence of checks being carried out on either the accuracy or completeness of the allotment reports and no attempt was being made to reconcile the two systems. OIOS was pleased to note that DCU recognises the importance of having a financial tracking system but was concerned about the lack of this control and the inability to verify the accuracy and completeness of information entered. The financial tracking system should be further enhanced to enable DCU to use it for forecasting and decision making.

42. OIOS noted from the allotment reports provided by the Finance Section that one Miscellaneous Obligating Document (MOD) was raised for all the defence teams. In the opinion of OIOS, monitoring and control of payments to defence teams would be strengthened if an MOD was established for each defence team and these amounts be incorporated into DCU's financial tracking system.

Recommendations:

- To ensure the accuracy and integrity of information in the ICTR Defence Council Unit (DCU) financial tracking system and allotment reports, DCU should discuss with the Chief, Finance Section the provision of 'read-only' access to the information

entered in the Finance Section so that reconciliations can be undertaken regularly (Rec. 09).

43. *ICTR commented that DCU agrees to this recommendation and states that a memo will be sent to the Chief, Finance Section requesting for a meeting to be held before the end of March 2006 to iron out these findings and recommendations.* OIOS notes the response and will close the recommendation on receipt of documentary evidence on the results of the discussion with the Chief, Finance Section.

- To enhance the tracking of expenditure to ICTR defence teams, Defence Counsel Unit should discuss with the Chief, Finance Section the introduction of Miscellaneous Obligating Documents for each defence team. This would assist in monitoring and controlling payments to defence teams and could be used for forecasting and decision making (Rec. 10).

44. *ICTR commented that DCU agrees to this recommendation and will discuss the issue with the Chief, Finance Section.* OIOS notes the response and will close the recommendation on receipt of documentary evidence on the results of the discussion with the Chief, Finance Section.

(b) Guidelines on remuneration to defence team

45. Adequate arrangements were in place to ensure that defence counsel was aware of entitlements to remuneration. The Directive and Manual for Practitioners clearly stipulates procedures and documentation for proof of expenses, the system of payment, the appeal procedure in cases of dispute and the legal costs that may be paid by ICTR. When counsel are assigned to represent an accused, DCU informs them that the established guidelines could be accessed through ICTR's website. On arrival at the Tribunal the defence counsel are then provided with a hard copy of the guidelines.

(c) Remuneration of defence team members

46. OIOS reviewed the submissions made by 67 defence team members to ensure that the statements of fees were in the required format and were duly signed by the lead counsel and that official travel was authorised by DCU prior to a request for reimbursement. In two cases, documents to support payments were not on file and in thirteen cases proof of payment by the Finance Section was missing. OIOS felt that, as a priority, the issue of document management needed to be addressed by DCU. OIOS was pleased to note that DCDMS had written guidelines to determine the reasonableness of certain activities. For other legal processes such as motions, reference is made to judicial pronouncements by the Tribunal, other Tribunals and national jurisdictions as guidelines. OIOS however felt that the system could be further enhanced by creating a database, which provided details of activities for which fees were claimed to avoid duplicate billing and therefore improve accuracy.

Recommendations:

- To ensure that information on ICTR Defence Council Unit files is complete, relevant and can easily be retrieved, DCU should develop document management procedures outlining the documents which should be retained on file to support payments, how completeness and accuracy will be verified and guidance on the format and

structure of the files to facilitate retrieval (Rec. 11).

47. *ICTR commented that DCU will request for a filing clerk on GTA for a period of three months to develop document management procedures and sort out the filing system. See comments on Rec. 02 supra.* OIOS notes the response and will close the recommendation on receipt of an action plan for the development of document management procedures.

- To ensure the accuracy of fees paid to ICTR defence counsel and avoid duplicate billing of activities of the defence team, Defence Counsel Unit should liaise with the Electronic Data Processing Management Information Systems Unit to assist in design and implementation of a database to hold details of activities invoiced and help identify duplicate invoices (Rec. 12).

48. *ICTR commented that DCU is already liaising with EDP and a database is in place. DCU will discuss this recommendation with EDP before the end of April 2006 to see if improvements can be made to the database so as to deal with the issue raised in herein. In the event that by June 2006 there has been no improvement to the database and to retrieving the requisite data from it, DCU will request for an independent Consultant to assist us in setting up a user-friendly database before the end of 2006.* OIOS appreciates the initiative being taken and will close the recommendation on receipt and review of discussions held with the Electronic Data Processing Management Information Systems Unit

(d) Travel

49. Assigned counsel are entitled to reimbursements of the costs and expenses related to legal representation necessarily and reasonably incurred. DCU authorises travel of counsel for client consultation, interviews with witnesses, and court hearings. Travel for investigators is authorised only for field trips and for legal assistants, and the travel is mainly for legal research where lead counsel is unable to undertake the mission due to other commitments. Travel plans must be submitted to DCU with work programmes and a travel request should be submitted at least one month prior to the proposed date of travel for adequate assessment and processing by DCU. OIOS reviewed the files of defence team members and was satisfied that travel requests were submitted on time with reasons for travel. For travel to be approved the defence team were required to submit a list of witnesses to be interviewed, the countries to be visited and estimated travel costs and reasons for undertaking travel at the particular time. OIOS reviewed the travel policy in relation to expenditures, which may be reimbursed and was satisfied that the guidelines provided were clear and adequate. OIOS felt that procedures could be enhanced by the submission of a mission report summarising the work performed to support the achievement of mission objectives.

50. *ICTR commented that DCU does not agree with OIOS's proposal that members of defence teams submit a mission report summarising the work completed, because we can foresee some Defence Counsel arguing that divulging their travel details etc. to DCU will reveal their Defence Strategy. Moreover, we submit that when Defence Team Members present their "Request for Reimbursement of Fees and Reimbursement" they provide the pseudonyms of the witness they visited, the time spent with him/her etc. We believe that requesting them to provide this information in the form of a mission report, which will not be reimbursable as it, is "B" Administrative, will not go down well with them. DCU will request an amendment to be made to the requisite Articles in the Directive as per comments made to Rec. 08 supra. In addition, DCU has commenced making the requisite draft amendments to the Manual for Practitioners and these proposals will be put before the Deputy Registrar for*

the Registrar's consideration by end of March 2006. OIOS appreciates the clarification and action proposed to tighten up controls to ensure travel funds are used effectively and as such is not proposing any further action.

(e) Processing of invoices

51. OIOS was pleased to note that there appeared to be adequate procedures in place for reviewing and approving of invoices prior to forwarding to the Finance Section for payment. A legal officer was responsible for reviewing the invoices for reasonableness and accuracy prior to certification by the Head, DCU. A review of invoices showed that generally invoices were submitted within the stipulated time of 90 days. Invoices submitted outside of that period were justified and were sent for the Registrar's approval. Any additional allotments made were also required to be justified and approved by the Registrar. DCU's internal policy of a processing time of a maximum of four weeks within the Unit was usually adhered to. With the additional checks implemented within the Finance Section and the introduction of the proposed lump sum system of payment, OIOS was satisfied that resources available to the defence counsel were being used efficiently.

(f) Overlapping of activities of defence counsel

52. OIOS noted that at least one member on the list of defence counsel represented accused at both ICTY and ICTR. ICTR has adopted a policy of not assigning counsel involved in cases at ICTY unless it is in the interest of justice. Currently, ICTR DCU consults with ICTY and the proposed counsel to confirm if they are assigned to any cases at ICTY. OIOS was concerned that there was, however, no formal mechanism in place to ensure that counsel were not assigned to accused at both Tribunals. OIOS felt that Article 15A of the Directive on the Assignment of Counsel which states that no counsel shall be assigned to more than one suspect or accused, should be extended to include assignment to suspects at ICTY.

Recommendation:

- To ensure there is a formal mechanism to identify whether counsel represent accused at both Tribunals, Article 15 A of ICTR's Directive on the Assignment of Counsel which states that no counsel shall be assigned to more than one suspect or accused, should be extended to include assignment to suspects at ICTY or other international Tribunal / Court in the interest of justice (Rec. 13).

53. *ICTR commented that they do not agree with this recommendation because the Registrar is already taking this matter into consideration when assigning counsel. Moreover, we have been informed that some lead as well as co-counsel are already assigned cases before the ICTR, ICTY, Special Court for Sierra Leone as well as the ICC. We are considering what will be the effect for those whose cases are actually in trial. ICTR questioned how changing this provision would affect them at this late stage. Consequently, we believe that this matter should be left to the discretion of the Registrar as decided by the Appeals Chamber.* OIOS appreciates the clarification and is pleased to note that the Registrar considers this matter. To ensure transparency in decision making, and to protect ICTR against any complaints about decisions taken, OIOS is of opinion that the informal processes should be codified. OIOS will leave the recommendation open pending clarification why ICTR prefers to maintain an informal rather than a formal process for handling counsel who represent accused at one more International Tribunal / Court at the same time.

(g) Lump sum payment

54. DCDMS is presently considering introducing the lump sum system for the first time as mandated by the General Assembly resolution 57/289 of 20 December 2002 to address legal costs. OIOS reviewed a comparison done by DCU on the current system, the proposed lump sum system and the lump sum system at ICTY. The comparison showed that the incidence of costs will be greatly reduced using the proposed system when compared to the current system and that used by ICTY. The lump sum payment system at ICTY is based on three levels of lump sum depending on the complexity of the case. The proposed ICTR lump sum system takes into account fixed remuneration for all judicial activities and pre-determines the number of members of the defence team to be involved in a particular activity. At the time of the audit the system was being reviewed to address a few controversial points raised by counsel and for the final approval of the President. The Directive on Assignment of Counsel has already been amended to provide the legal basis for a lump sum payment system, as an alternative to the fixed hourly rate. In the opinion of OIOS, with the introduction of the lump sum payment system, a mechanism should be put in place to demonstrate that savings will be made by using this system.

Recommendation:

- To demonstrate that the planned lump sum system allows ICTR to make savings as compared to the fixed hourly rate system, with the implementation of the proposed system, the Defence Counsel Unit should introduce a mechanism so that a comparison could be made between the two systems. The system should also be compared to the one used at ICTY to ensure that the best practice is adopted by both Tribunals (Rec. 14).

55. *ICTR commented that DCU agrees with this recommendation and we hope that approval will be granted in the near future for the lump sum system as proposed or an amendment thereof, to be put in place. It will be at that stage that DCU will introduce a mechanism to enable us to make a comparison of the two systems. In addition, it is hoped that Inter-Tribunal Cooperation meetings with our counterparts in ICTY the Hague will be authorised in 2006. This will enable us to have first hand knowledge of the actual savings if any that are being made in the ICTY Lump Sum System and make a comparison.* OIOS notes the response and will close the recommendation on receipt of the mechanism developed to compare the fixed hourly rate system, the lump sum system and the one used at ICTY.

V. FURTHER ACTIONS REQUIRED ON RECOMMENDATIONS

56. OIOS monitors the implementation of its audit recommendations for reporting to the Secretary-General and to the General Assembly. The responses received on the audit recommendations contained in the draft report have been recorded in our recommendations database. In order to record full implementation, the actions described in the following table are required:

Recommendation No.	Action Required
Rec. 01	Clarification whether ICTR intends to develop performance indicators, and if not why not.
Rec. 02	Receipt of an action plan for the efficient management of the files within DCU.
Rec. 03	Receipt of documentary evidence of background checks made of defence counsel.
Rec. 04	Notification of the outcome of the review of the ceiling used for indigence.
Rec. 05	Receipt of documentary evidence of discussions held with lead counsel and confirmation that the 'Declaration of Means' form has been completed by all detainees.
Rec. 06	Receipt of details of the mechanism to be put in place for the follow-up action of pending issues and the establishment of deadlines for their implementation.
Rec. 07	Receipt of the draft recommendation to be submitted before the next plenary session.
Rec. 08	Receipt of a copy of the letter sent to the Chief, Security and Safety Services Section.
Rec. 09	Receipt of documentary evidence on the results of the discussion with the Chief, Finance Section.
Rec. 10	Receipt of documentary evidence on the results of the discussion with the Chief, Finance Section.
Rec. 11	Receipt of an action plan for the development of document management procedures.
Rec. 12	Receipt and review of discussions held with the Electronic Data Processing Management Information Systems Unit
Rec. 13	Clarification why ICTR prefers to maintain an informal rather than a formal process for handling counsel who represent accused at one more International Tribunal / Court at the same time.
Rec. 14	Receipt of the mechanism developed to compare the fixed hourly rate system, the lump sum system and the one used at ICTY.

VI. ACKNOWLEDGEMENT

57. I wish to express my appreciation for the assistance and cooperation extended to the audit team by staff and management of the Defence Counsel Unit of ICTR.

Corazon Chavez, Officer-in-Charge
Internal Audit Division II
Office of Internal Oversight Service