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Report of the Office of Internal Audit

Note by the Secretariat

The Secretariat of the Assembly of States Parties has received the following report from the Office of Internal Audit and has been requested to submit it to the Assembly, through the Committee on Budget and Finance.

Letter of Transmittal

29 June 2007

Pursuant to the decision of the Assembly, adopted at its second session in September 2003, I am pleased to submit my third and final annual report to the Assembly, through the Committee on Budget and Finance. It has been a privilege and an honour to serve as the first Internal Auditor of the International Criminal Court.

(Signed) Joe Martire
Director
Office of Internal Audit

Contents

	<i>Page</i>	<i>Paragraphs</i>
Summary	4	
I. Introduction	5	1 - 6
II. Staffing / budget of the Office of Internal Audit	6	7 - 8
III. Performance audits	6	9
A. Asset management	7	10 - 18
B. Confidentiality of data concerning victims within the Division of Victims and Counsel	8	19 - 31
C. Travel management	10	32- 33
IV Ad hoc work at the request of management	10	
A. Joint UNDSS/ICC review of staff security in the field	10	34- 41
B. Review of potential risks associated with arrangements to administer the pension plan of the Judges	11	42- 45
V. Monitoring implementation of recommendations	12	46-47
VI. Other matters		
A. Coordination with the External Auditor	12	48
B. Internal Oversight Committee	12	49

Summary

The Office of Internal Audit is honoured to submit its third annual report to the Assembly, through the Committee on Budget and Finance. The report highlights the significant activities undertaken by the Office during the past year.

The Office acts in accordance with the provisions of the Rome Statute, the Financial Regulations and Rules of the Court, as well as relevant resolutions of the Assembly. The work of the Office is conducted in accordance with generally accepted common auditing standards.

The Office responded to the remarks and recommendations made by the Committee on Budget and Finance concerning the role of internal oversight as contained in paragraphs 25 to 27 of the Report of the Committee on Budget and Finance on the work of its seventh session (ICC-ASP/5/23). The Office informed the Chair of the Committee that the lack of clarity regarding the Internal Auditor's legal external reporting obligation combined with management's concerns over the perceived risks of reporting publicly major internal audit findings were the main factors that had led to the seemingly tense relationship between the Office and management.

During the past year, the Office continued to focus its limited resources on carrying out its risk-based audit plan and responding to ad hoc requests from management for assistance. The Office issued detailed performance audit reports on Asset Management and on the Confidentiality of Data Concerning Victims within the Division of Victims and Counsel. As at the reporting date, the Office was completing the examination phase of a performance audit of travel management and had begun drafting its report.

In response to a request by the heads of organ of the Court, the Office together with senior representatives of the United Nations Department of Safety and Security (UNDSS) and the Safety and Security Section of the Court carried out a joint UNDSS/ICC review of staff security in the field. A joint report was submitted to the three heads of organ in February 2007.

In response to a request by the Registrar, the Office reviewed potential risks associated with the arrangements being undertaken by the Court to administer the pension plan of the Judges. The Office identified several risks and suggested ways to mitigate them. The Office also informed the Registrar that the inclusion of approximately €1.05 million in the 2005 accounts as the estimated cost of administering the pension plan for the financial periods from 2003 to 2006 was questionable and needed to be reviewed.

Overall, the Office's findings during the past year indicate that the Court continues to make progress. However, work remains to be done to put in place administrative systems and practices to provide reasonable assurance that the assets of the Court are safeguarded and controlled, that financial, human and physical resources are managed with due regard to economy and efficiency and that transactions are in compliance with governing authorities. Summary information about the objectives, scope and conclusions of the performance audits and other significant work carried out by the Office during the past year, together with management responses where available, is presented in Part III of this report.

The Office made 52 recommendations (including the 21 recommendations contained in the joint UNDSS/ICC report) during the past year and has made a total of 81 recommendations since it became operational in late 2004. The Office's recommendations are aimed at assisting management to strengthen internal controls, operate more efficiently, realize potential cost savings and ensure compliance with governing authorities.

Management's responses to recommendations have generally outlined action taken against some of the recommendations since issuance of the draft audit reports and indicated that further action will be taken in the future. However, management disagreed with the Internal Auditor's view that the transfer from one major programme to another of significant assets that have not been budgeted and approved for use by more than one major programme – as opposed to the direct transfer of funds to purchase the assets – could potentially be construed as an indirect contravention of Financial Regulation 4.8.

Having developed the methodology and database for monitoring and assessing progress on the implementation of audit recommendations, the Office worked closely with the Office of the Controller, which has been assigned functional responsibility for this process. As at the reporting date, however, the Controller informed the Office that she could not report on implementation progress as she had not received the necessary information.

The Office had reasonable access to persons, including the heads of organ of the Court, as well as to books, records and other documents which were, in the opinion of the Office, necessary for the performance of its work. However, a part of the scope of the audit of asset management was limited due to lack of supporting documentation. Furthermore, formal management responses to reports, including recommendations, were either slow or not forthcoming. There has been no formal management response to the joint UNDSS/ICC report or to the report on the Confidentiality of Data Concerning Victims within the Division of Victims and Counsel.

A good working relationship continued between the Office and the External Auditor. Information has been exchanged, including work plans and reports.

The need for an independent audit committee with a majority of outside members is widely recognized and the Office has provided management with its initial thoughts about the committee's composition and terms of reference. However, at the time of writing, it was not clear when the committee would be established or what remit it would have. It is important that the independence of the Office of Internal Audit and the transparency of the results of its work are preserved and enhanced.

I. Introduction

1. This third report of the Office of Internal Audit ("the Office") of the International Criminal Court ("the Court") is submitted to the Assembly of States Parties ("the Assembly") pursuant to the decision of the Assembly, adopted at its second session in September 2003, wherein it endorsed the recommendation of the Committee on Budget and Finance (CBF) that "the internal auditor should be able to decide his or her annual work programme independently, including any issues raised by the Committee, and that the internal auditor should submit an annual report about the activities of the Office to the Assembly, through the Committee."¹

2. The Office acts in accordance with the provisions of the Rome Statute, the Financial Regulations and Rules, as well as relevant resolutions of the Assembly. The work of the Office is conducted in accordance with generally accepted common auditing standards.

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Second session, New York, 8-12 September 2003* (United Nations publication, Sales No. E.03.V.13) part II, A.1, para. 1 and part II, A.6, para. 29.

3. The activities of the Office during the past year focused on undertaking performance audits set out in the Office's risk-based audit plan, which was endorsed by the Court's Internal Oversight Committee comprising the three heads of organ of the Court. The plan was also circulated to the Committee at its fifth session. The Office also responded to several ad hoc requests from senior management for assistance on several important subjects.

4. The Office responded to the remarks and recommendations made by the Committee concerning the role of internal oversight as contained in paragraphs 25 to 27 of the Committee's report on the work of its seventh session (document ICC-ASP/5/23). The Office informed the Chair of the Committee that, inter alia, the lack of clarity regarding the Internal Auditor's legal external reporting obligation combined with management's concerns over the perceived risks of reporting publicly major internal audit findings were the main factors that had led to the seemingly tense relationship between the Office and management. Accordingly, the Office informed the Chair of the Committee that it would be helpful if the Committee and the Assembly would provide greater clarity concerning the nature and extent of the Internal Auditor's reporting obligation to the Committee and to the Assembly.

5. The Office had reasonable access to persons, including the heads of organ, as well as to books, records and other documents which were, in the Office's opinion, necessary for the performance of its work. However, supporting documentation does not always exist, and formal management responses to reports, including recommendations, were slow or not forthcoming. The Office assisted management to develop a process aimed at finalizing audit reports on a timelier basis and to strengthen monitoring of audit recommendations.

6. Overall, the Office's findings during the past year indicate that the Court continues to make progress. However, work remains to be done to put in place administrative systems and practices to provide reasonable assurance that the assets of the Court are safeguarded and controlled, that financial, human and physical resources are managed with due regard to economy and efficiency and that transactions are in compliance with governing authorities. The Office's work is aimed at assisting management to strengthen internal controls, operate more efficiently, realize potential cost savings and ensure compliance with governing authorities.

II. Staffing / budget of the Office of Internal Audit

7. The Office's approved budget for 2006 of €341,000 represented less than half of one per cent of the Court's total budget for 2006 of €82,417,200. The Office comprised the Director, one auditor and one audit assistant. An additional professional post (P-4 senior auditor) was approved, to be effective as from the second half of 2007. The Office believes that it has sufficient resources to carry out its mandate.

8. To facilitate a smooth transition, the Internal Auditor, in February 2007, informed the Court that he did not wish to renew his employment contract when it came up for renewal in July 2007. As at the date of the report, recruitment action for the P-4 senior audit post and the vacant audit assistant post were in progress. However, the Court had not advertised the Director's post.

III. Performance audits

9. The Office issued detailed performance audit reports on Asset Management and on the Confidentiality of Data Concerning Victims within the Division of Victims and Counsel. As at the reporting date, the Office was completing the examination work relating to the

performance audit of travel management and had begun drafting its report. The results of that audit will be reported in the 2008 report.

A. Asset Management

Introduction

10. A significant proportion of the Court's non-staff costs are attributable to the procurement of assets. Actual expenditure on property items (regardless of classification) totalled some €9.7 million or 47 per cent of non-staff cost in 2004, and some €4.3 million or 19 per cent of non-staff cost in 2005. As at December 2005, the Court reported that its non-expendable assets (those with a purchase price greater than €600) and 'special items' (those that are defined as attractive items) had a total purchase price of around €6.9 million.

11. The regulatory environment for the control and management of property items is included within Rules 110 and 111 of the Court's Financial Regulations, which were formally adopted in August 2004. The Registrar, under Rule 110.20 of the Financial Regulations, is "responsible for the management of the property of the Court". The General Services Section performs the day-to-day management of the Court's overall inventory register. Specialist 'organizational units' such as the Information and Communication Technologies Section (ICTS) and the Security and Safety Section also maintain inventories of items particular to their functions.

Focus of the audit and scope limitation

12. The Court is working to develop an asset management system that meets its operational requirements and stewardship responsibilities. To assist management, the audit focused on assessing the Court's progress in implementing the requirements of the relevant governing authorities concerning asset management and to identify improvement opportunities. The work concentrated primarily on assets that are managed in The Hague. However, some of the findings also apply to field assets. Although the procurement, budget setting and budgetary control systems were outside the scope of the audit, a general review of these systems was carried out to obtain a better overall view of the way assets are procured and managed.

13. Relevant Court staff and key asset users from the Registry, the Office of the Prosecutor and the Presidency were interviewed. The Court's regulatory framework for asset management and reporting, the systems and practices in place and relevant financial data were reviewed. Walkthrough testing of control processes and random testing of key controls were conducted and supporting documentation was examined. Additional work was carried out on two classes of high value assets, namely vehicles and a digital radio communication system. The selection of these high value assets was a judgemental decision taken by the Office based on an assessment of risk.

14. Due to poor documentation, the Office was not able to examine fully the process followed to justify the requirement for 21 field office vehicles and their specifications. The examination covered the period from the inception of the Court to 31 December 2005, unless otherwise stated.

Conclusion

15. Overall, the audit concluded that the Court is in the process of establishing an effective regulatory environment for asset management. The detailed report contains

recommendations concerning areas in which the Court could strengthen controls, including budget setting for assets and maintenance. The report notes that the incident of lost or stolen items seems high and draws attention to the need to better align staff forecasting with asset budgeting and to implement the SAP asset management module as soon as practical.

16. When implemented, the SAP asset management module should provide efficiency gains by obviating the current need for the General Services Section, ICTS and the Security and Safety Section to each independently duplicate the input of asset data into separate asset management systems. It will also provide, in conjunction with the separate business warehouse application, more detailed asset data, facilitating more effective asset management control procedures. It should also facilitate any future move towards compliance with the International Public Sector Accounting Standards.

17. With respect to the procurement of vehicles, the audit concluded that the administrative controls, including needs definition, options analysis and procurement for The Hague-based vehicles were satisfactory. However, documentation to support the planning and acquisition of vehicles in the field was poor. The audit concluded that better planning and management of field-based vehicles could have reduced costs significantly. Moreover, potential cost savings associated with different procurement options were not communicated to the Procurement Review Committee or to the Registrar to inform their decision-making. Management also needs to better monitor the actual use of armoured vehicles to ensure that these expensive assets are used appropriately. The audit also highlighted several areas where greater management attention is needed to avoid the risk of inadvertently breaching Financial Regulations. The report contains 16 recommendations for management's consideration.

Management's response

18. Management responded to the draft report that was sent to the heads of organ for comment. The response outlines action that has already been taken against some of the recommendations and states that further action will be taken in the future. However, management disagreed with the Internal Auditor's view that the transfer from one major programme to another of significant assets that have not been budgeted and approved for use by more than one major programme - as opposed to the direct transfer of funds to purchase the assets - could potentially be construed as an indirect contravention of Financial Regulation 4.8. Regulation 4.8 states that "no transfer between appropriation sections may be made without authorization by the Assembly of States Parties..." Management considers that controls are in place to safeguard against the risk of inadvertent non-compliance.

B. Confidentiality of data concerning victims within the Division of Victims and Counsel

Introduction

19. The Division of Victims and Counsel (DVC) processes detailed information on the identity of victims who have applied to participate in Court proceedings or for reparations; those who have been accepted by the relevant Chamber as being entitled to participate; and those whose well-being could be endangered in the event that information as to their identity were to fall into the wrong hands.

20. The participation of victims in criminal proceedings and the consequent administration of victim-related data is a new and still developing area in international law. Consequently, it is likely that the administrative and data-dissemination procedures developed by DVC will need to continue to evolve in response to new developments.

21. As at September 2006, nine victim participants had been confirmed as participants in Court proceedings by Chambers and about 100 applications had been received by DVC. The Division expects that the number of victim applications will grow significantly over the near term.

22. An effective data confidentiality and security environment is dependent upon the establishment of a management system that is conducive to confidentiality requirements and able to adapt to evolving circumstances.

Focus of the audit and scope

23. The audit was undertaken at the request of the Registrar. It focused on assessing the control measures in place in the Division of Victims and Counsel to safeguard the confidentiality of data concerning victims, including communication to third parties, and where appropriate, to recommend areas for improvement. The examination covered the period from February to September 2006, unless otherwise stated, and was assisted by the Information Security Officer of the Court.

24. Other organs and sections of the Court that also handle data concerning victims, such as Chambers, the Office of the Prosecutor (OTP), the Victims and Witnesses Unit (VWU), the Office of Public Counsel for Victims (OPCV), the Office of Public Counsel for Defence (OPCD), and the Trust Fund for Victims were excluded from the scope of the audit. Other organizations, such as non-governmental organizations, United Nations organizations, local human rights organizations etc. that may also handle victim data were also excluded from scope of the audit.

25. Relevant DVC and ICTS staff at headquarters and in the Uganda field office were interviewed. Relevant documents and information technology systems were reviewed and identified. The key controls in place to safeguard confidential data were identified and tested.

26. The Presidential Directive on Information Security (ICC/PRES/D/G/2005/001) and the draft administrative instruction on the Court's information protection policy served as the primary audit criteria.

Conclusion

27. The audit found that the Division of Victims and Counsel has been proactive in instigating work methods aimed at ensuring a consistent approach to data security and continues to make good progress. The Division places a high priority on the confidentiality of data, and is willing to codify and set internal standards to guide staff. The audit concluded that the draft Court administrative instructions on information security provide a reasonable framework for safeguarding information security.

28. Measured against the criteria contained in the draft administrative instructions on information security, the audit concluded that overall the control measures in place in the Division of Victims and Counsel provide a low to medium level of assurance to safeguard the confidentiality of data concerning victims. The detailed audit report makes 15 recommendations aimed at strengthening controls to provide a high level of assurance. While some of the recommendations can be implemented by DVC alone, others need to be considered and decided upon by management as they could affect Court-wide operations.

29. As the volume of applications is expected to increase significantly, the audit concluded that the confidentiality of data needs to feature more prominently in DVC's formal objectives statements, to better reflect its significance. The Division has drafted a set of good

practice guidelines that should be finalized and promulgated. The audit concluded that a more formal chain of custody system to control the transfer of data and documents from the field to The Hague is required. Moreover, future consideration of electronic data transfer and storage systems should include explicit information security advice from both ICTS and the Court's Information Security Officer. The report also contains specific recommendations concerning the use of encrypted memory sticks; the use of the TRIM document managing system for all sensitive documents; and the controlled use of non-secure printers. Periodic checks should also be made to confirm that Counsel is still in good standing.

30. Management can assist the DVC in its confidentiality objectives by: ensuring that the draft administrative instructions on information security are finalized and promulgated on a priority basis; strengthening IT data security and confidentiality systems; strengthening the security clearance procedures for new staff and broadening its application to include non-staff personnel that have access to confidential data; including explicit confidentiality guidance in future outreach strategy documents; and ensuring that a data retention policy is developed and promulgated in a timely manner.

Management's response

31. The Division of Victims and Counsel responded that the report is "fair and accurate and that it also provides very positive recommendations that have assisted and will assist us greatly". Management has not responded to the report.

C. Travel Management

32. As at the reporting date, the Office was finalizing its examination work relating to the performance audit of travel management and had begun drafting its report thereon. The objectives of the audit are to:

- a) assess whether the Court's travel management systems and practices provide reasonable assurance that travel funds are expended in compliance with relevant Court regulations and policies and with due regard to economy, efficiency and effectiveness; and
- b) identify opportunities for improvement, including providing any initial advice to management on the question of outsourcing the travel process.

33. The results of the audit will be reported in the 2008 report of the Internal Auditor.

IV. Ad hoc work at the request of management

A. Joint UNDSS/ ICC review of staff security in the field

Introduction

34. The Court has field offices in Ndjamena and Abeche (Chad), Bunia and Kinshasa (Democratic Republic of the Congo) and Kampala (Uganda).

35. Following the establishment in 2004 of the Negotiated Relationship Agreement between the International Criminal Court and the United Nations, the Court entered into a Memorandum of Understanding (MOU) with the United Nations whereby the Court's international staff would participate in United Nations security arrangements (this is the

standard MOU signed between UNDSS and non-United Nations organizations). In early 2005 the contents of the MOU were forwarded to all United Nations duty stations where the Court was present. In June 2006, it was agreed that the Court and the UNDSS would undertake a joint review of Court staff security in the field.

Focus of the review and scope

36. As the Court's field offices have been in existence for a relatively short period of time, and dedicated Field Security Unit personnel have been deployed for an even shorter time, the objective of the review was to carry out a preliminary assessment of the level of compliance of the Court field offices with United Nations security policies and procedures; to identify good practices; and to recommend opportunities for improvement. The work concentrated on the safety of Court staff. A detailed evaluation of matters such as witness protection was not within the scope of work.

37. The review involved discussions with many, but not all appropriate staff at headquarters and in the field. The team reviewed documentation and interviewed a number of Court personnel at headquarters and in the field. In addition, interviews were carried out with UNDSS Chief Security Advisers (CSA) and Field Security Coordination Officers (FSCO) as well as the Area Security Coordinator in Abeche, Chad. The mission was scheduled to visit the Court offices in Ndjamena and Abeche, Chad; Bunia, Democratic Republic of the Congo; and Kampala, Uganda. Unfortunately, time constraints and aircraft unavailability precluded the anticipated visit to Bunia.

Conclusion

38. Overall, the review concluded that the Court has made substantial progress in a relatively short period of time in establishing a security system to support its field operations. The review noted many good practices and procedures that are in conformity with the established and approved United Nations security policies and procedures.

39. The review also noted, however, that improvement opportunities exist in a number of areas to strengthen compliance with the security MOU signed between the United Nations and the Court. Most important and challenging perhaps is the need for the Court to establish a clear and formalized management and accountability framework for security matters in general and for security of Court staff in the field in particular.

40. The report makes 21 recommendations aimed at strengthening compliance with the MOU by both parties.

Management's response

41. Management has not responded to the report.

B. Review of potential risks associated with arrangements to administer the pension plan of the Judges

42. In response to a request by the Registrar, the Office identified several risks associated with the arrangements being undertaken by the Court to administer the pension plan of the Judges. On the one hand, the Office noted that responsible staff do not appear to possess the requisite capacity to understand clearly the nature of the pension scheme, including being able to identify any ambiguities and to assess the reasonableness of underlying assumptions, calculations, methods and the source data used by specialists. Consequently, there may be a risk that the contract that is in the process of being negotiated with the selected insurance

provider could provide benefits beyond those approved by the Assembly or that it might not meet sufficiently all the benefits of the plan as perceived by its participants.

43. On the other hand, the Office noted that there is a risk that the Court may be placing too much reliance on consultants for advice and assistance without having clearly defined expected deliverables. The Office noted that the Court has paid about €85,000 to the consultants through several purchase orders. However, as the consultants were not selected through a competitive process there is also a risk that the Court may have overpaid for the consultants' services.

44. The Office also questioned the inclusion of approximately €1.05 million (15 per cent of the estimated pension liability) in the €8 million figure reported in the 2005 Accounts of the Court. The €1.05 million figure represents the Court's estimated cost to administer the plan during the financial periods from 2003 to 2006. However, the Office saw no evidence that these costs were likely to be incurred.

45. To assist management, the Office offered to review the contract that is in the process of being negotiated with the selected insurance provider. The Office also recommended that a detailed reconciliation be carried out between the liability estimate reported in the 2005 accounts and that provided by the insurance provider for the financial periods from 2003 to 2006. The results of the reconciliation should be reported to the Committee on Budget and Finance.

V. Monitoring implementation of recommendations

46. Having developed the methodology and database for monitoring and assessing progress on the implementation of audit recommendations, the Office worked closely with the Office of the Controller, which has been assigned the functional responsibility for this process. The Office provided the Controller with a summary of external and internal audit recommendations, together with a summary of the commitments management made in response to the Office's 2004 risk assessment report, which was presented to members of the Coordination Council.

47. As at the reporting date, the Controller informed the Office that she could not report on implementation progress as she had not received the necessary information.

VI. Other matters

A. Coordination with the External Auditor

48. A good working relationship continued between the two offices. Information has been exchanged, including work plans and reports.

B. Internal Oversight Committee

49. The Internal Oversight Committee comprises the three heads of organ of the Court. The Committee held one meeting during the reporting period. The need for an independent audit committee with a majority of outside members is widely recognized and the Office has provided management with its initial thoughts about the committee's composition and terms of reference. However, at the time of writing, it was not clear when the Committee would be established or what remit it would have. It is important that the independence of the Office of Internal Audit and the transparency of the results of its work are preserved and enhanced.