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Request for a subvention to the Special Court for Sierra Leone

Report of the Secretary-General

Summary

In a letter addressed to the President of the Security Council (S/2010/560), the Secretary-General drew the attention of the Council to the difficulties faced by the Special Court for Sierra Leone, and proposed that the matter be brought to the attention of the General Assembly with a view to seeking funding for the Court from the regular budget. In his reply (S/2010/561), the President of the Security Council noted the course of action proposed by the Secretary-General and expressed no objection with the following understanding: (a) it is not expected that there will be additional subventions for the Special Court for Sierra Leone; and (b) that the United Nations Secretariat, the Management Committee, and the Registrar and other senior officials of the Special Court will intensify their efforts to fund the activities of the Court through voluntary contributions.

The present report, submitted in response to the exchange of letters, sets out the overall level of resources required for the completion of the Special Court's activities for the period from 1 November 2010 to 29 February 2012.

The approval of a subvention of up to \$17,916,560 is sought from the General Assembly, of which \$4,502,355 covers a shortfall of requirements owing to the unpaid pledge of \$1,233,045, and \$3,269,310 for projected expenditures from 1 November to 31 December 2010. The estimated requirements for 2011 are \$12,290,500. However it is anticipated that a pledge of \$1,233,045 will be received in 2011; therefore the net requirement would amount to \$11,057,455. Further, an amount of \$2,356,750 would be required from 1 January to 29 February 2012 to allow the Court to complete its work by 29 February 2012.



The amounts being sought in the present report are intended to supplement voluntary contributions that were expected to be received by the Court, but have not materialized despite all efforts to secure such funds. To the extent that voluntary contributions received exceed the level currently anticipated, the relevant amounts sought from the Assembly as assessed contributions would be adjusted.

I. Introduction

1. In his letter to the President of the Security Council dated 6 October 2010 (S/2010/560), the Secretary-General informed the Council of the financial difficulties faced by the Special Court for Sierra Leone with regard to its operation beyond 31 October 2010. Notably, the Council was advised that, despite the efforts of the Secretary-General as well as demarches and other efforts at the highest level by representatives of Member States, financing through voluntary contributions would enable the Special Court to carry out its operations only up to 31 October 2010, by which time the Court would have consumed most of the funds thus far available.

2. The Secretary-General indicated to the Security Council that the shortfall for all or part of the completion costs should be addressed through assessment, while preserving the independent nature and structure of the Special Court. Further, the Secretary-General indicated that the Council might wish to invite him to bring the matter to the attention of the General Assembly.

3. In his letter to the Secretary-General dated 29 October 2010 (S/2010/561), the President of the Security Council expressed no objection to the approach proposed by the Secretary-General on the understanding that it is not expected that there will be additional subventions for the Special Court, and that the United Nations Secretariat, the Management Committee, and the Registrar and other senior officials of the Special Court will intensify their efforts to fund the activities of the Court through voluntary contributions. The Council was also of the view that any action taken by the Secretary-General with the General Assembly on the issue would in no way affect the independence and structure of the Special Court for Sierra Leone as established by the Agreement between the United Nations and the Government of Sierra Leone signed on 16 January 2002.

4. The present report sets out the overall level of resources required for the period from 1 November 2010 to 29 February 2012, the date when the Court expects to complete its work, and requests a subvention of up to \$17,916,560 to supplement voluntary contributions already pledged but outstanding in the amount of \$1,233,045. Since its inception, the Special Court has received voluntary contributions totalling \$200,034,874 for its core operations.

II. Historical background on the financing of the Special Court for Sierra Leone

5. The Security Council, by its resolution 1315 (2000), requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone with a view to creating an independent special court with the primary objective of prosecuting persons who bore the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law committed within the territory of Sierra Leone.

6. In previous reports (S/2000/915, para. 71, and S/2001/40, para. 11), the Secretary-General expressed the view that the only realistic solution was for the Special Court to be financed from assessed contributions, as that would produce a viable and sustainable financial mechanism affording secure and continuous funding. In his letter to the Secretary-General dated 22 December 2000

(S/2000/1234), the President of the Security Council reiterated the support of the Council for its resolution 1315 (2000), under which the Special Court would be funded through voluntary contributions. It was, however, understood by the Security Council that the Secretary-General would not be expected to create any institution for which he did not have adequate funds in hand for at least 12 months and pledges to cover expenses for a second year of the Court's operation.

7. Consequently, after sufficient funds had been received and substantial amounts pledged for that purpose, on 16 January 2002 the United Nations Legal Counsel and the Attorney-General of Sierra Leone signed the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (S/2002/246 and Corr.2 and 3, appendix II).

8. Article 6 of the Agreement stipulates that "should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Special Court".

9. Accordingly, in 2004, during the Special Court's second year of operation, as a result of the lack of voluntary contributions, there was a further exchange of letters between the Secretary-General and the President of the Security Council (S/2004/182 and S/2004/183), in which the Secretary-General drew the attention of the Council to the difficulties faced by the Court with regard to its third-year budget and proposed that the matter be brought to the attention of the General Assembly with a view to seeking the appropriation of funds to the Court. The Secretary-General then submitted a request for a subvention of up to \$40 million to the General Assembly (see A/58/733). In its resolution 58/284, the General Assembly, *inter alia*, authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed \$16.7 million for the period from 1 July to 31 December 2004, on the understanding that any regular budget funds appropriated for the Court would be refunded to the United Nations at the time of liquidation of the Court should sufficient voluntary contributions be received. The commitment authority was not utilized and was subsequently surrendered.

10. In a subsequent report of the Secretary-General (A/59/534/Add.2) a request was made for an appropriation in the amount of \$20 million with effect from 1 January to 30 June 2005. In its resolution 59/276, the Assembly, *inter alia*, authorized the Secretary-General to enter into commitments in an amount not to exceed \$20 million to supplement the financial resources of the Court with effect from 1 January to 30 June 2005. In view of the anticipated full utilization of the \$20 million commitment authority approved in resolution 59/276, the Secretary-General sought an additional subvention of \$13 million for the period from 1 July to 31 December 2005 (see A/59/534/Add.4). The Assembly in its resolution 59/294, *inter alia*, authorized the appropriation of \$20 million of the previously approved commitment authority, and a further commitment authority in the amount of \$13 million. In reporting on the utilization of the commitment authority in the context of the second performance report on the programme budget for the biennium 2004-2005 (see A/60/572/Add.1), the Secretary-General advised the General Assembly that the full \$13 million commitment authority would not be required and in lieu only a provision of \$11.2 million would be required as an appropriation. In Assembly resolution 60/245 A on the final appropriations for the biennium 2004-2005 the provision of \$11.2 million was appropriated. It should be noted that, as indicated in the report of the Secretary-General (A/61/593/Add.1), in accordance with financial regulation 5.3 of the Financial Regulations and Rules of the United Nations, it was anticipated that, of the \$11.2 million appropriation, an estimated

unspent balance of \$2,401,326.95 would be surrendered under the programme budget as at 31 December 2006. However, based on actual expenditure, an amount of \$3,286,505.63 was surrendered at 31 December 2006.

III. Progress made

11. Since its inception in 2002, the Special Court has made significant progress in achieving its mandate. The Court is currently engaged with its last trial, relating to the former President of Liberia, Charles Taylor, and is in its completion phase. In spite of the complexities inherent in managing such a high profile case, the trial is progressing efficiently in The Hague. The defence will close its arguments by the end of 2010. The trial judgement is expected in June 2011, the appeals phase will start in 2011, and an appeal Judgement will be rendered in February 2012, if applicable.

12. Eight persons have been successfully prosecuted and convicted for the commission of war crimes, crimes against humanity and serious violations of international humanitarian law. The eight convicted belong to the three warring factions, namely, the Armed Forces Revolutionary Council, the Revolutionary United Front and the Civil Defence Forces. The convicted persons are now serving sentences ranging from 15 to 52 years.

13. The jurisprudence of the Special Court has contributed to the development of international law and the work of other international tribunals. For the first time in history the Court convicted persons of forced marriage as a separate crime against humanity; the recruitment and use of child soldiers and sexual slavery as an outrage against human dignity; and the specific war crime of "attack on peacekeepers". In addition, the Court's decisions in the Taylor trial addressing the responsibility of a Head of State for war crimes and crimes against humanity are landmark decisions.

14. The Court has been conducting phased downsizing in order to align its human resource and financial requirements with its judicial proceedings and its completion strategy. In July 2010, the United Nations and the Government of Sierra Leone signed the Agreement on the Establishment of the Residual Special Court for Sierra Leone. The Court has also made significant progress in dealing with all matters pertaining to liquidation of the Court and transition to the residual mechanism. In addition, the Court is working with the Government of Sierra Leone to enhance the rule of law.

IV. Financial position

15. Despite the efforts of the Special Court, the Secretary-General and Member States to mobilize further resources, the level of voluntary contributions available to the Court remains low. Current estimates indicate that available voluntary contributions will sustain the Special Court's operations only until 31 October 2010. One pledge amounting to €1 million (approximately \$1,233,045) is expected to be received in January 2011. The Special Court has not received further pledges for 2011 and 2012, hence the Special Court is currently in an extremely precarious financial situation.

16. The Special Court's Principals and its Management Committee, after lengthy fund-raising efforts, decided that the necessary voluntary funding for the Special Court to complete its work would not be found. Since 2009, 174 fund-raising

meetings have been held by the Court across capitals and diplomatic missions, and 225 fund-raising appeal letters have been sent to capitals and diplomatic missions.

17. Despite these efforts it has proved impossible to secure voluntary contributions sufficient to complete the mandate of the Special Court. In view of the responses from the Court's traditional donors, it is highly unlikely that further funding will be secured through voluntary contributions.

18. In order to continue its operations until 31 October 2010, the Special Court deferred vendor payments and curtailed all non-essential travel and activities and, as a last resort, is considering a voluntary salary reduction for professional staff. A shortfall in November 2010 will mean that the Taylor proceedings will come to a halt if there are no funds for operations, payment of vendors, salaries, etc. Further information is provided in annexes I and II relating to availability of funds and projected requirements.

19. While the mobilization of resources is continuing, immediate alternative mechanisms for financing are necessary to bridge the anticipated shortfall. However, as shown in annex I, given expected pledges and the proposed overall level of resources required from November 2010 to February 2012, an anticipated funding shortfall of approximately \$17,916,560 is expected.

20. To ensure that the Special Court is able to complete its work, the Secretary-General proposes that a subvention for this amount be made available to the Special Court, while preserving its independent nature and structure. Of that amount, an estimated \$4,502,355 would be made available for the remainder of 2010, \$11,057,455 for 2011, and \$2,356,750 for January and February 2012 (see table), when the Court is expected to complete its work.

Financing of the Special Court for Sierra Leone, 1 November 2010 to 29 February 2012

(United States dollars)

A. Requirements

1 November to 31 December 2010 ^a		4 502 355
1 January-31 December 2011	12 290 500	
Less: Pledge by Germany 2010	(1 233 045)	11 057 455
1 January-29 February 2012		2 356 750
Total estimated requirements		17 916 560

B. Subvention

Amount sought for the biennium 2010-2011		15 559 810
for 2010	4 502 355	
for 2011	11 057 455	
Amount to be sought in the context of the proposed programme budget for 2012-2013		2 356 750
Total subvention		17 916 560

^a The contribution from the Government of Germany will be received in 2011, hence the shortfall for 2010 will be \$1,233,045 plus the requirement for November and December of \$3,269,310, making a total requirement of \$4,502,355 for the year 2010.

21. As it is expected that efforts to mobilize voluntary contributions will continue, the Secretary-General would propose to revert to the General Assembly at its sixty-sixth session, *inter alia*, on the status of the Court's financial position including details on available voluntary contributions and the utilization of the subvention being sought in the current financial period (2010-2011) and a request for the subsequent financial period (2012-2013).

22. The requested subvention, once approved by the General Assembly, would be disbursed by the Organization to the Special Court on the same basis as for previous subventions, as explained in the report of the Secretary-General (A/58/733, para. 13), on an incremental basis through the mechanism of the Controller effecting transfers to the Registrar. The Registrar, as an appointee of the Secretary-General, would be required, in this regard, to provide the Controller with monthly statements of all expenditure and income of the Special Court. The existing arrangements whereby the Court contracts with the Office of Internal Oversight Services for internal audits, and with the Auditor-General of South Africa for external audit services, would remain in place.

V. Conclusion and recommendation

23. **The Secretary-General seeks the approval of the General Assembly for funding of up to \$17,916,560 to supplement the voluntary financial resources of the Special Court for Sierra Leone to enable it to complete its mandate.**

24. **Should the General Assembly decide to approve such support for the Special Court, the Assembly may wish:**

(a) **To approve a subvention in the amount of \$15,559,810 for the period from 1 November 2010 to 31 December 2011 to the Special Court for Sierra Leone, under the provisions of paragraph 11 of annex I to resolution 41/213 of 19 December 1986, under special political missions in section 3, Political affairs, of the programme budget for the biennium 2010-2011;**

(b) **To note that an additional subvention amounting to \$2,356,750 for the period from 1 January to 29 February 2012 to the Special Court for Sierra Leone would be submitted as a first charge against the provision for special political missions under section 3, Political affairs, of the proposed programme budget for the biennium 2012-2013 at its sixty-sixth session;**

(c) **To request the Secretary-General to report to the General Assembly at its sixty-sixth session on the implementation of the subvention during the biennium 2010-2011 and the status of voluntary contributions for the Special Court.**

Annex I

Availability of funds and projected requirements

Availability of funds for the Special Court for Sierra Leone as at 30 September 2010 and projected requirements from 1 November to 31 December 2010

(United States dollars)

A. Income as at 30 September 2010			Total
Cash balance brought forward as at 1 January 2010			1 064 800
Contribution from Spain received in 2010 (pledges in 2009)			71 870
Contributions received January-September 2010			15 199 314
Restricted contribution ^a			481 516
Subtotal (A)			16 817 500
B. Expenditure as at 30 September 2010			
<i>Current year</i>	<i>Disbursement</i>	<i>Obligation</i>	<i>Total expenditure</i>
January	1 135 679	1 050 980	2 186 659
February	1 413 942	(119 337)	1 294 605
March	2 001 521	108 151	2 109 672
April	1 578 568	322 958	1 901 526
May	1 789 271	438 630	2 227 901
June	1 942 374	14 171	1 956 545
July	1 834 845	(261 351)	1 573 494
August	1 703 215	(332 059)	1 371 156
September	1 558 786	(15 649)	1 543 137
Subtotal (B)	14 958 201	1 206 494	16 164 695
Excess of income over expenditure as at 30 September 2010			652 805
Add: Pledge from Sweden to be received in 2010			444 840
Projected expenditure October 2010			(1 900 000)
November and December 2010			(3 700 000)
Total requirement 2010			(4 502 355)

^a Funds donated by several donors and organizations for specific projects.

Annex II

Requirements by component and object of expenditure

Requirements by component

(United States dollars)

<i>Component</i>	<i>1 November- 31 December 2010</i>	<i>1 January- 31 December 2011</i>	<i>1 January- 29 February 2012</i>	<i>Total budget</i>
1. The Chambers	872 585	2 916 256	519 655	4 308 496
2. The Office of the Prosecutor	624 630	1 829 200	308 567	2 762 397
3. The Registry	3 449 980	7 545 044	1 528 528	12 523 552
Subtotal	4 947 195	12 290 500	2 356 750	19 594 445
Less pledge from the Government of Germany		(1 233 045)		(1 233 045)
Less pledge from the Government of Sweden	(444 840)			(444 840)
Total	4 502 355	11 057 455	2 356 750	17 916 560

Requirements by object of expenditure

(United States dollars)

<i>Object of expenditure</i>	<i>1 November- 31 December 2010</i>	<i>1 January- 31 December 2011</i>	<i>1 January- 29 February 2012</i>	<i>Total requirement</i>
Posts (gross)	2 266 497	6 513 400	1 158 050	9 937 947
Temporary posts	447 153	354 200	13 200	814 553
Compensation to judges	431 145	2 006 600	357 100	2 794 845
Consultants and experts	136 196	74 700	12 500	223 396
Witness costs	46 542			46 542
Travel of witnesses	50 700			50 700
Travel	189 675	213 600	78 000	481 275
Contractual services	377 767	971 000	162 500	1 511 267
General operating expenses	535 617	1 421 300	367 100	2 324 017
Hospitality and outreach	9 520	44 400	7 800	61 720
Supplies and materials	130 740	496 300	98 000	725 040
Acquisition of furniture and equipment	24 432	45 000	2 500	71 932
Tax liability	301 211	150 000	100 000	551 211
Subtotal	4 947 195	12 290 500	2 356 750	19 594 445
Less pledge from the Government of Germany		(1 233 045)		(1 233 045)
Less pledge from the Government of Sweden	(444 840)			(444 840)
Total	4 502 355	11 057 455	2 356 750	17 916 560

Annex III

Post requirements and drawdown staffing plan

Post requirements at 1 November 2010

<i>Category</i>	
Professional and above	
Judges (USG level)	9
USG	1
ASG	2
D-2	1
D-1	2
P-5	3
P-4	10
P-3	22
P-2	11
P-1	4
Subtotal	65
General Service	
Principal level	
Local level	23
Field Service	9
National Professional Officer	14
Subtotal	46
Total	111

Drawdown staffing plan (November 2010-February 2012)

	<i>Professional category and above</i>									<i>General Service and related categories</i>			<i>National staff</i>			<i>United Nations Volunteers</i>	<i>Total</i>
	<i>USG</i>	<i>ASG</i>	<i>D-2</i>	<i>D-1</i>	<i>P-5</i>	<i>P-4</i>	<i>P-3</i>	<i>P-2/ P-1</i>	<i>Subtotal</i>	<i>Field/ Security Service</i>	<i>General Service</i>	<i>Total inter-national</i>	<i>National Officer</i>	<i>Local level</i>			
1 November to 31 December 2010	10	2	1	2	3	10	22	14	64	8	—	72	14	25	—	111	
1 January to 30 June 2011	10	1	1	2	3	8	20	13	58	8	—	66	12	18	—	96	
1 July to 31 August 2011	11	1	1	1	3	8	19	10	54	6	—	60	10	9	—	79	
1 September 2011 to 29 February 2012	7	1	1	1	3	6	16	7	42	5	—	47	10	8	—	65	