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Proposed programme budget for the biennium 2016-2017

Request for a subvention to the Residual Special Court for Sierra Leone

Thirty-first report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2016-2017

I. Introduction and background

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the request for a subvention of \$6,034,800 to the Residual Special Court for Sierra Leone to contribute to the funding of its resource requirements for 2016-2017 ([A/70/565](#)). During its consideration of the report, the Advisory Committee met with the Registrar and other representatives of the Residual Special Court, and with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 2 December 2015.

2. The report of the Secretary-General was prepared in response to an exchange of letters between the Secretary-General and the President of the Security Council. In his letter dated 14 October 2015 to the President of the Council ([S/2015/855](#)), the Secretary-General noted that the prevailing financial situation of the Residual Special Court was such that it would be unable to continue its work beyond March 2016 should there be no further voluntary contributions. The Secretary-General proposed that the matter be brought to the attention of the General Assembly, with a view to securing funding for the Residual Special Court for Sierra Leone through a subvention under the assessed programme budget.

3. In his reply of 10 November 2015 ([S/2015/856](#)), the President of the Security Council informed the Secretary-General that the members of the Council had taken note, with certain reservations, of the intention expressed in the letter of the Secretary-General, on the understanding that the requested subvention would be on a one-time basis, covering the proposed period, and would be subsequently reimbursed from the voluntary contributions received by the Residual Special Court.



4. The Secretary-General recalls in his report that the Special Court for Sierra Leone was established pursuant to Security Council resolution 1315 (2000) (A/70/565, para. 5). The Special Court indicted 13 individuals, of whom 10 were brought to trial, including Charles Ghankay Taylor, the former President of Liberia. The Special Court was the first international criminal tribunal to try and to convict persons for “the use of child soldiers, forced marriage as a crime against humanity, and attacks directed against United Nations peacekeepers”. It was also the first modern international court (and the first court since Nuremberg) to indict a sitting Head of State; and on 31 December 2013, it became the first United Nations-assisted international criminal tribunal to complete its mandate successfully, to close and transition to its residual mechanism, the Residual Special Court for Sierra Leone.

5. The Residual Special Court was established by an Agreement concluded in August 2010 between the United Nations and the Government of Sierra Leone. It commenced its operations on 1 January 2014, immediately following the closure of the Special Court and carries out its functions at its interim seat in The Hague, with a branch/sub-office in Freetown for witness protection and support and coordination of defence issues (ibid., para. 7).

6. The mandate of the Residual Special Court is to carry out a number of vital functions of the Special Court that must continue after its closure. These functions include, inter alia, the supervision of the enforcement of sentences; review of convictions and acquittals; conduct of contempt-of-court proceedings or the referral thereof to national jurisdictions; witness and victim protection and support; and maintenance and preservation and management of the archives of the Special Court (ibid., para. 6).

7. Pursuant to article 3 of the Agreement, the expenses of the Residual Special Court shall be borne by voluntary contributions from the international community. The parties and the Oversight Committee may explore alternative means of funding the Residual Special Court.

II. Activities of the Residual Special Court since its establishment

8. At the commencement of operations of the Residual Special Court in 2014, eight persons who had been convicted by the Special Court were serving their sentences in Rwanda, one was serving his sentence in the United Kingdom of Great Britain and Northern Ireland and one, convicted of contempt, was serving his sentence at the detention centre in Freetown (A/70/565, para. 21). Since its creation, the Residual Special Court has processed two applications for conditional early release of its prisoners and engaged in proceedings stemming from a motion filed by Mr. Taylor for a termination of the enforcement of his sentence (ibid., para. 11). The Residual Special Court issued 15 decisions flowing from these proceedings (ibid., paras. 14-20). Other activities of the Residual Special Court include those of the Witness and Victim Protection and Support Office programme, based in Freetown, which continues to actively monitor over 100 witnesses within and outside Sierra Leone, and the maintenance of the archive of the Special Court (ibid., paras. 13 and 25).

9. Since 1 January 2014, the required full-time staff members have been recruited and a roster of former staff members and defence counsel has been created. Staff rules and regulations, a code of conduct, eleven personnel policies and six practice directions have been issued (*ibid.*, para. 10).

10. The Oversight Committee,¹ the Registrar and other officials of the Residual Special Court have been involved in intensive fundraising efforts over the course of 2014 and 2015. Since 1 January 2014, 282 appeals letters have been sent and 150 fundraising meetings held (A/70/565, paras. 35-40). Despite those efforts, the Advisory Committee was informed, upon enquiry, that the Oversight Committee has advised that there were no future prospects for sustained contributions from Member States. In addition, a number of past donors indicated that they will not contribute to the budget of the Residual Special Court following their most recent contributions.

III. Current financial situation, resource requirements and request for a subvention

11. The Secretary-General indicates that as at 17 November 2015, there were three outstanding pledges amounting to \$784,065 which, assuming they are paid, will provide funds sufficient for a continuation of the activities of the Residual Special Court until the end of April 2016 (A/70/565, para. 34).

12. The total resource requirements of the Residual Special Court for 2016-2017 are estimated at \$7,192,600, of which it is anticipated that \$1,157,800 will be met from available voluntary contributions forecasted in 2016. The proposed subvention thus amounts to \$6,034,800, which would be provided in the form of a grant to the Residual Special Court (A/70/656, para. 28, and table). The report of the Secretary-General indicates that any further contribution received during 2016 and 2017 would reduce the utilization of the subvention, which would be reported accordingly in the second performance report on the programme budget for the biennium 2016-2017 (*ibid.*, para. 44).

Staffing requirements

13. The report indicates that, for 2016-2017, the requirements of the Residual Special Court will be the following:

(a) The Hague office staff will comprise six members: one Registrar (D-2), one Prosecution Legal Advisor (P-4), one Legal Officer (P-3), one Archiving Officer (P-2/1), one Office Manager (P-2) and one Associate Legal Officer (P-2/1);

(b) The sub-office in Freetown will consist of seven staff: one Senior Legal Officer (P-4), one Associate Defence Legal Officer (P-1), three Witness Protection

¹ According to the Secretariat, the Oversight Committee is composed of Sierra Leone, the United Nations, Canada (as Chair), Nigeria, the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America. Its function is to assist in obtaining funding and to provide advice and policy direction on all non-judicial aspects of the operation of the Residual Special Court, which includes approving the budget of the Residual Special Court. The Oversight Committee does not report formally but informs the Secretary-General of any serious matters that may require his action.

and Support Supervisors/Officers (National Professional Officer), one Administrative Assistant (General Service (Local level)) and one Cleaner (General Service (Local level)).

14. In addition, the amount of \$372,600 would provide for the part-time posts of four Legal Officers (P-4), two Legal Officers (P-3) and 5 General Service (Other level)) over a period of up to two months and an additional \$437,800 would provide for the salaries of the President (\$185,800), as pro rata remuneration of up to 12 months, and the six judges (\$252,000) in 2016-2017. Annex III to the Secretary-General's report contains details on post requirements by category, level and location.

15. The requirements for other staff costs are estimated at \$786,300 in 2016, compared with \$408,200 in 2015. The Advisory Committee was informed, upon enquiry, that the increase of \$378,100 is due to provision for travel upon appointment, travel upon repatriation, malicious act insurance, home leave for staff and income tax liability based on actual 2014 expenditures. The increase also relates to the daily subsistence allowance for judicial personnel attending judicial proceedings.

Non-staffing requirements

16. The requirements for travel are estimated at \$351,100 in 2016, compared with \$240,500 in 2015. The Advisory Committee was informed, upon enquiry, that the increase of \$111,600 is due to the provision for judicial proceedings with regard to contempt-of-court proceedings, witness variations and the higher cost for the transfer of four prisoners from Rwanda to The Hague. **The Advisory Committee encourages the Residual Special Court to exercise restraint in the use of resources designated for travel and reiterates that these resources should be utilized judiciously in the interest of the Organization through measures such as the combining of trips and the use of videoconferencing. The Committee also emphasizes that the primary consideration in authorizing official travel should be whether direct face-to-face contact is necessary for mandate implementation (see also A/69/787, para. 29).**

17. The requirements for general operating expenses will amount to \$502,300 in 2016, compared with \$291,200 in 2015. The Advisory Committee was informed, upon enquiry, that the increase of \$211,100 is due to the higher cost for software and hardware support licences, provisions for the death of prisoners, rental of courtrooms, medical emergencies, interpretation and training of monitors. The Committee was also informed, upon enquiry, that the requirement for auditing, amounting to \$42,000 in 2016-2017, does not include fees, as the audit will be conducted on a pro bono basis by the Office of the Auditor-General of South Africa. The requirement relates to air tickets, the daily subsistence allowance and expenses related to the conduct by pro bono auditors of their work in Freetown and The Hague.

18. **While recognizing that requests for a subvention do not constitute formal budget proposals, the Advisory Committee is of the view that, as a matter of general principle, any request for a subvention from the regular budget should be fully justified. In the case of the Residual Special Court, this would allow the General Assembly to scrutinize its resources requirements and the staffing of**

the Residual Special Court without prejudice to the voluntary nature of the current funding arrangements.

19. In his letter dated 14 October 2015, the Secretary-General indicated that the subvention proposal would be a temporary measure for addressing the current financial situation and that he would consult closely with the Government of Sierra Leone, the Oversight Committee and associated stakeholders during the biennium with a view to seeking more comprehensive solutions and proposing them to the Security Council and the General Assembly.

20. The Advisory Committee was informed, upon enquiry, that there is no prescribed end date to the mandate of the Residual Special Court and that the duration of its existence would be determined by timelines based on key functions linked, for example, to the length of the sentences that are being enforced and the lifetime of witnesses subject to protective measures. The Committee was further informed that the Office of Legal Affairs has given extensive consideration to the issue of the residual mechanisms associated with international courts and the appropriateness of different modalities for treatment.

IV. Conclusions and recommendations

21. The Advisory Committee recalls its concern regarding the sustainability of voluntary contributions to fund the activities of the Residual Court and legacy activities and that it previously recommended that the General Assembly request the Secretary-General to analyse the lessons learned and to examine alternatives such as, for example, the possibility of including the Residual Court in the financing arrangements for the International Residual Mechanism for Criminal Tribunals (see [A/67/648](#), para. 22). The Committee is of the view that the current proposal should have included comprehensive solutions regarding the financing of the residual activities of the Special Court. The Committee therefore recommends that the General Assembly request the Secretary-General to develop alternative options concerning the future financing arrangements for the Residual Special Court.

22. In view of the projected funding shortfall for 2016, the uncertain nature of outstanding pledges and commitments and the urgent need for resources to ensure the continued operations of the Residual Special Court for Sierra Leone, the Advisory Committee recommends that the General Assembly authorize the Secretary-General to enter into commitments, as a bridging financing mechanism, in an amount not to exceed \$2,438,500 in order to supplement the voluntary financial resources of the Residual Special Court for the period from 1 January to 31 December 2016, and request the Secretary-General to report, during the main part of its seventy-first session, on the use of the commitment authority and on the results of his consultations with stakeholders undertaken with a view to the proposal of more comprehensive funding solutions.

23. The final use of commitment authority would depend upon receipt of voluntary contributions from donors, so that the Residual Special Court could make progress towards fulfilling its mandate.

24. The Advisory Committee continues to stress that its recommendations are made on the basis that:

(a) Should voluntary contributions be received in excess of the remaining requirements for the Residual Special Court for 2016, any regular budget funds provided to the Residual Special Court for this period would be refunded to the United Nations;

(b) Appropriate measures for achieving operational savings and efficiencies in the Residual Special Court are in place;

(c) The Residual Special Court continues its efforts to seek voluntary contributions.
