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Report on the use of the commitment authority and request for a subvention to the Residual Special Court for Sierra Leone

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction and background

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the use of the commitment authority and request for a subvention to the Residual Special Court for Sierra Leone ([A/71/386](#) and Corr.1), in which a subvention of \$2,980,500 is requested to enable the Court to continue to carry out its mandate in 2017. In the report, the Secretary-General also provides information on the use in 2016 of the commitment authority authorized by the General Assembly (see resolution [70/248](#) A of 23 December 2015, sect. VII) and on the current financial situation of the Residual Special Court and addresses options for future financing arrangements for the Court. During its consideration of the report, the Committee met with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 1 November 2016.

2. The report of the Secretary-General was prepared in response to General Assembly resolution [70/248](#) A, in which the Assembly authorized the Secretary-General to enter into commitments, in an amount not to exceed \$2,438,500, to supplement the voluntary financial resources of the Residual Court for the period from 1 January to 31 December 2016 as a bridging financing mechanism and requested the Secretary-General to report at the seventy-first session on the use of the commitment authority. In the same resolution, the Assembly endorsed the conclusions and recommendations contained in the report of the Advisory Committee ([A/70/7/Add.30](#)), including the recommendation that alternative options be developed concerning the future financing arrangements for the Residual Court. The report addresses the use of the commitment authority granted for the Residual



Court for the period from 1 January to 31 December 2016 and reports on the result of the Secretary-General's consultations with stakeholders to propose comprehensive future funding solutions for the Court.

3. The Secretary-General recalls in his report that the Residual Special Court was established by the Agreement between the United Nations and the Government of Sierra Leone in August 2010, with the concurrence of the Security Council, to carry out a number of vital residual functions of the Special Court for Sierra Leone. The Special Court was itself established in 2002 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. The Special Court indicted 13 individuals. Three indicted persons died and one remains at large. Nine individuals, including the former President of Liberia, Charles Ghankay Taylor, were convicted and sentenced to terms of imprisonment ranging from 15 to 52 years ([A/71/386](#), para. 7).

4. The Residual Special Court 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 sub-office in Freetown for witness protection and support and coordination of defence issues (*ibid.*, para. 9). The functions of the Residual Special Court include investigations and an administrative hearing concerning the violation of conditional early release, the management and preservation of archives and completion of archiving work from the Special Court of Sierra Leone, engaging with witnesses to address their needs, supervision of the enforcement of sentences and responding to requests for information and evidence from national prosecuting authorities (*ibid.*, para. 13).

II. Recent activities of the Residual Special Court

5. The Secretary-General indicates that since the commencement of the operations of the Residual Special Court, the focus has been to review and build on the necessary structures and systems for the proper functioning of the institution and develop additional personnel policies to regulate internal administrative matters. Furthermore, a headquarters agreement between the Netherlands and the Residual Court was ratified by the Parliament of the Netherlands, entering into force on 1 May 2016, and the Court began reviewing the Practice Direction on the Conditional Early Release of Persons convicted by the Special Court for Sierra Leone (*ibid.*, paras. 10 to 11).

6. In terms of its functions, the Residual Court continues to actively monitor and support over 100 witnesses (*ibid.*, para. 14), while continuing to hold judicial and administrative proceedings concerning the conditional early release applications of two applicants, pursuant to rule 124 of the Residual Court's Rules of Procedure and Evidence (*ibid.*, para. 15). The Residual Court also has the responsibility to supervise the enforcement of sentences for persons convicted by the Special Court, with seven convicts currently in custody, one in the United Kingdom of Great Britain and Northern Ireland and six in Rwanda (*ibid.*, para. 24), and provides assistance to national prosecuting authorities. Further functions include the maintenance and storage of the archives, as well as access to the archives, the upgrading of the Residual Court's electronic records management software and the

holding the second plenary of judges, from 30 November to 4 December 2015 in The Hague, in order to review rules and procedures, hold judicial elections and approve the jurisprudential legacy project of the Appeals Chamber (*ibid.*, paras. 29 to 32).

7. The Secretary-General indicates that preserving the legacy of the Special Court is an important element of the work of the Residual Court, including its standing as the first international criminal court in history to adjudicate cases on crimes relating to child soldiers, attacks on peacekeepers and forced marriage. In that regard, the report details the non-remunerated activities in which the judges and other officials of the Court have participated over the past year so as to promote the legacy of the Special Court (*ibid.*, paras. 33 to 35).

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

8. The report indicates that intensive fundraising efforts by the Oversight Committee¹ and the principal officials of the Residual Court have continued in 2016. Efforts included targeted communications (letters and notes verbales) sent to Member States and regional organizations, as well as the holding of bilateral meetings and briefings at different levels, drawing the attention of Member States and organizations to the dire funding situation of the Residual Court. However, as of the date of the report, no voluntary contributions or pledges had been received for 2017 (*ibid.*, paras. 49 to 53).

9. The Advisory Committee recognizes the efforts made by the Residual Special Court to raise funds to cover the costs of its ongoing operations. In view of the persistent funding challenges faced by the Residual Special Court, the Committee stresses the ongoing need for intensified fundraising efforts by the Secretary-General, including by broadening the donor base for the Residual Special Court.

10. The Secretary-General indicates that, as at 31 December 2016, the Residual Special Court expects that, out of the \$2,438,500 in commitment authority, an amount of \$1,444,400 would have been utilized during the period from 1 January 2016 to 31 December 2016. Accordingly, the utilized portion of the commitment would be reported in the context of the first performance report on the programme budget for the biennium 2016-2017 for appropriation (*ibid.*, para. 5). The total resource requirements of the Residual Court for 2017 are estimated at \$2,980,500, representing the entire subvention request, as no voluntary contributions are forecasted for the remainder of 2016 or for 2017. In the light of the current financial situation of the Residual Court, the Secretary-General indicates that the Court would be unable to continue its work in 2017 without the approval of an additional subvention (*ibid.*, para. 37).

¹ The Oversight Committee is composed of the Government of Sierra Leone, the United Nations and significant contributors to the Residual Court. Currently, the Oversight Committee is composed of Canada, Nigeria, the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

11. In connection with the Residual Court's ongoing resource requirements, the Advisory Committee was informed, upon enquiry, that the review and approval of the budget of the Court is a function of the Oversight Committee, composed of the Government of Sierra Leone, the United Nations and significant contributors to the Residual Court, and that officials of the Court consult the Oversight Committee on matters concerning the management of the Court. The Oversight Committee also assists the Residual Court in obtaining funding and provides advice and policy direction on all non-judicial aspects of the operation of the Court.

12. While recognizing that requests for a subvention do not constitute formal budget proposals, the Advisory Committee reiterates its view that, as a matter of general principle, any request for a subvention from the regular budget should be fully justified (see [A/70/7/Add.30](#), para. 18). In the case of the Residual Special Court, this would allow the General Assembly to scrutinize its resource requirements and the staffing of the Residual Special Court, without prejudice to the voluntary nature of the current funding arrangements. Further, the Committee expects that the Residual Special Court will undertake all efforts to exercise budgetary discipline and to identify operational efficiencies.

Staffing requirements

13. The report indicates that staffing requirements would consist of a total of 13 full-time staff based at the two locations, with the Residual Court relying on short-term consultancies, expert services, interns and pro bono services to supplement its staff resources as required:

(a) The office in The Hague, consisting of six staff members: one D-2 Registrar; one P-4 Prosecution Legal Adviser; one P-4 Legal Officer in the Registrar's Office; one P-1 Associate Legal Officer; one P-2 Archiving Officer; and one P-2 Office Manager. In addition, one General Service position, funded by general temporary assistance, will provide archiving assistance;

(b) The sub-office in Freetown, consisting of seven staff members: one P-4 Senior Legal Officer; one P-1 Associate Defence Legal Officer; three Witness Protection and Support Supervisors/Officers (National Professional Officers); one Administrative Assistant (Local level) and one Cleaner (Local level).

14. In addition, details on staffing requirements by category, level and location for 2017, inclusive of judicial functions, if required, are provided in annex III to the report ([A/71/386](#)). The report also indicates that the Registrar is the only senior full-time staff member of the Residual Special Court, with the President, judges (called from the roster as and when needed), Prosecutor and Principal Defender all working from off-site locations, only as necessary, and remunerated on a pro rata basis (*ibid.*, para. 47).

15. The requirements for compensation to judges are estimated at \$183,000 in 2017, with an increase of \$108,400 compared to 2016. The Advisory Committee was informed, upon enquiry, that the compensation for judges for 2017 comprises \$53,300 for non-judicial functions and \$129,700 for judicial functions. Notwithstanding the fact that judicial proceedings have not yet been held in 2016, the Advisory Committee was informed, upon enquiry, that the amount would cover compensation for three judges for 2 months in the event of judicial activity in 2017. The Advisory Committee notes that the requirements reflect judicial activities that have not been undertaken in previous years.

16. **The Advisory Committee stresses that the Residual Special Court should adopt a more realistic approach to budgeting for judicial and other activities, reflecting the actual needs of the Residual Court, past experiences, as well as efforts to identify further efficiencies, without prejudice to the judicial requirements of the Residual Court.**

17. The Advisory Committee was informed, upon enquiry, that the Oversight Committee had approved the budget for 2017 and that the posts of the Residual Court are not part of the staffing table under the programme budget of the United Nations. While the total number of posts has not changed for 2017, the report indicates that staff requirements include the post of Legal Officer, which was upgraded from a P-3 to a P-4 post, and the post of a cleaner at the local level in the Freetown office. Upon enquiry, the Committee was informed that the Oversight Committee had approved the budget, including the post at the higher level. Justification regarding the necessity for a cleaner in an office staffed by seven staff members was not provided. **While recognizing that the staffing requirements are not being submitted for the approval of the General Assembly, the Advisory Committee stresses that, as a matter of principle, all staffing requirements, including the upgrading of posts, should be fully justified.**

Non-staffing requirements

18. The requirements for travel are estimated at \$290,100 in 2017 compared with \$182,710 in 2016. While the Advisory Committee was informed, upon enquiry, that non-judicial related travel amounting to \$122,600 (ibid., annex II) was required for various meetings, enforcements of sentences and foreign investigative travel, the Committee remains concerned at the escalating travel requirements. **Particularly in the light of the persistent scarcity of financial resources, the Advisory Committee stresses that the Residual Special Court should limit travel requirements to those directly associated with the core functions of the Residual Special Court through measures such as the combining of trips and the use of alternative means of communication, including videoconferencing. The Committee strongly stresses 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).**

19. The report indicates estimated requirements of \$31,500 for consultants and experts, \$591,000 for contractual services, of which \$541,000 is for non-judicial services and \$50,000 for judicial services (A/71/386, annex II). Of the \$541,000, expenses for the technological platform provided by the International Tribunal for the Former Yugoslavia and the rental of office space amount to \$379,700, while various other services and requirements, including security and liaising activities, constitute the remaining balance. Increases in common staff costs from an estimated \$225,000 in 2016 to projected requirements of \$403,300 in 2017 are also reflected in the report (A/71/386/Corr.1, table 2). As part of the efficiency measures implemented (A/71/386, paras. 46-48), the report indicates that the sub-office in Freetown is co-located with the National Witness Unit, and the interim seat of the Court in The Hague is co-located and continues to share an administrative and technical platform with the International Tribunal for the Former Yugoslavia. **The Advisory Committee stresses that further efforts should be made to lower the costs of the Court and to identify efficiencies.**

IV. Future financing arrangements for the Residual Special Court

20. The Secretary-General provides information in his report on the alternative options for the future financial arrangements for the Residual Special Court and states that, given the temporary nature of any approved funding for 2017, a long-term solution to the financing of the Court is necessary. The Secretary-General indicates that the Secretariat engaged with the Government of Sierra Leone, the Oversight Committee of the Court, the Registrar of the Court and other stakeholders on alternative options for the future financing of the Residual Court (*ibid.*, para. 6). The first option under consideration foresees the coverage of the Court's costs by the Government of Sierra Leone, as one of the parties to the Agreement on the Residual Special Court. The Secretary-General indicates that, owing to budgetary constraints arising from the crisis linked to the Ebola virus disease, the Government of Sierra Leone is not in a position to fund the Residual Court and would not be in a position to do so in the near future. The Advisory Committee was informed, upon enquiry, that the Government did not indicate its ability to fund the Residual Court in the period following the recovery from Ebola. The report indicates, therefore, that this option is not viable. The Committee was informed, upon enquiry, that the Government of Sierra Leone supports the work of the Residual Court by co-locating the Residual Court office in Freetown with the National Witness Unit, providing the use of the National Witness Unit staff services to the Court and the use of a court room in Freetown to the Court when required, at no cost to the Court, making available Sierra Leone police and prison officers to monitor the terms and conditions for prisoners granted early release by the Court and the use of the Government's detention facilities in Freetown.

21. The second option indicated in the report is the proposed funding of the Residual Court from United Nations resources, which, as indicated by the Secretary-General, is a matter that must be decided by the General Assembly, including the amount and form of the funding and the length of time it should continue to fund the Court (*ibid.*, para. 59). The second option also includes the provision of administrative support to the Residual Court by the International Residual Mechanism for Criminal Tribunals. The Secretary-General indicates that the Assembly has affirmed the high priority accorded to the work of the Residual Court and that its activities are carried out in furtherance of the purposes of the United Nations, in particular the maintenance of international peace and security, in conformity with the principles of justice and international law, and promoting and encouraging respect for human rights and fundamental freedoms (*ibid.*, para. 60). The report also indicates that in addition to securing a stable source of funding, co-locating the court's offices in The Hague with the International Residual Mechanism for Criminal Tribunals would allow more cost-effective and efficient administrative support to be provided to the Court on a reimbursable basis and would replicate the current arrangement with the International Tribunal for the Former Yugoslavia (*ibid.*, paras. 61 to 64).

22. The report indicates that the Office of Legal Affairs is examining the possible inclusion of the Residual Court in the financing arrangements for the International Residual Mechanism for Criminal Tribunals, as previously suggested by the Advisory Committee (A/67/648, para. 22). **The Advisory Committee stresses the need for a sustainable long-term financing solution for the Residual Special**

Court, given that its existence will be determined by key functions linked to the enforcement of sentences and the continued presence of witnesses subject to protective measures.

V. Conclusions and recommendations

23. The Advisory Committee again recalls its concern regarding the sustainability of voluntary contributions to fund the activities of the Residual Special Court and legacy activities (A/70/7/Add.30, para. 21). The Committee acknowledges the efforts to examine alternative financing options for the residual activities of the Special Court but considers that further analysis and development of existing options, as well as the possible identification of other options, is required. In particular, the Advisory Committee points out the long-term implications of co-locating the Residual Court's offices with the International Residual Mechanism for Criminal Tribunals in The Hague or, alternatively, in Arusha. The Committee, therefore, recommends that the General Assembly request the Secretary-General to further analyse the options in greater detail, develop additional alternatives concerning the long-term arrangements for the Residual Special Court and to report thereon in the context of the Secretary-General's provision of details on the use of the commitment authority.

24. In view of the projected funding shortfall for 2017, the concerns raised by the Advisory Committee regarding budgetary discipline and operational efficiencies in the paragraphs above, the absence of pledges and contributions 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 \$2,800,000, in order to supplement voluntary financial resources of the Residual Special Court for the period from 1 January to 31 December 2017. The Advisory Committee recommends that the General Assembly request the Secretary-General to report, during the main part of its seventy-second session, on the use of the commitment authority.

25. The Advisory Committee notes that the final use of the commitment authority would depend upon the receipt of voluntary contributions from donors. The Advisory Committee continues to stress that its recommendations are made on the basis that:

- (a) The Residual Special Court continues its efforts to seek voluntary contributions;
- (b) If voluntary contributions are received in excess of the remaining requirements for the Residual Special Court for 2017, any corresponding funding provided under the commitment authority to the Residual Special Court for the period would be refunded to the United Nations;
- (c) Appropriate measures for achieving efficiencies in the Residual Special Court are taken.