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Agenda item 141

### Proposed programme budget for 2021

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

### **Twenty-first report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for 2021**

#### **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/75/343). In the report, the Secretary-General provides an update on the activities of the Residual Special Court and information on the use of the approved commitment authority for 2020. In addition, the Secretary-General requests the General Assembly to approve a subvention for the Residual Special Court in the amount of \$2,856,300 for 2021 to enable the Court to continue to carry out its mandate in 2021. During its consideration of the report, the Committee interacted remotely with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 30 November 2020.

2. The report of the Secretary-General was submitted pursuant to General Assembly resolution 74/263, in which the Assembly, inter alia, authorized the Secretary-General to enter into commitments in an amount not to exceed \$2,537,000 to supplement the voluntary financial resources of the Residual Special Court for 2020 and requested him to report on the use of the commitment authority at the main part of the seventy-fifth session of the General Assembly.

3. In his report, the Secretary-General recalls that the Residual Special Court was established by the Agreement between the United Nations and the Government of Sierra Leone concluded in August 2010, with the concurrence of the Security Council, with the mandate to carry out essential residual functions of the Special Court for Sierra Leone. The Special Court itself was 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 for Sierra Leone indicted 13 individuals. Three indicted persons have died, and one remains at large. Nine individuals, including Charles Ghankay Taylor, the former President of Liberia, were convicted and sentenced to terms of imprisonment ranging from 15 to 52 years (see [A/75/343](#), para. 8).

4. After completing its mandate, the Special Court for Sierra Leone closed on 31 December 2013 and passed on its residual functions to the Residual Special Court. These functions include: supervising the enforcement of sentences; reviewing convictions and acquittals; conducting contempt of court proceedings; providing witness and victim protection and support; maintaining, preserving and managing the archives of the Special Court for Sierra Leone and the archives of the Residual Special Court itself; responding to requests from national authorities for access to evidence and with respect to claims for compensation; providing defence counsel and legal aid for the conduct of proceedings before the Residual Special Court; and preventing double jeopardy by monitoring national proceedings. In addition, the Residual Special Court has the power to prosecute the remaining fugitive, Johnny Paul Koroma, should he be alive and if his case is not referred to a competent national jurisdiction (*ibid.*, para. 9).

## II. Activities of the Residual Special Court for Sierra Leone

5. The Residual Special Court commenced operations on 1 January 2014. It has an interim seat in The Hague, with a sub-office in Freetown for witness protection and support and the coordination of defence issues (*ibid.*, para. 10). The Residual Special Court currently has six convicts in custody: one in the United Kingdom of Great Britain and Northern Ireland and five in Rwanda (*ibid.*, para. 30). The fugitive is still at large, and his status remains unknown (*ibid.*, para. 25).

6. The recent activities of the Residual Special Court are set out in paragraphs 17-45 of the report of the Secretary-General ([A/75/343](#)). In respect of judicial appointments, the Secretary-General indicates that, in September 2019, he appointed James C. Johnson of the United States of America as Prosecutor of the Residual Special Court. The Secretary-General also indicates that the six-year term of the 16 judges on the roster of the Residual Special Court ended in December 2019. In November 2019, he reappointed 10 judges, and the Government of Sierra Leone reappointed 4 judges and appointed 2 new judges to the roster (*ibid.*, paras. 11-13).

7. With regard to judicial and administrative proceedings, the Secretary-General indicates that, in November 2019, Augustine Gbao filed an application to the President of the Residual Special Court for consideration for eligibility for conditional early release. In his decision of 10 January 2020, the President determined that Mr. Gbao is eligible for consideration for conditional early release. In June 2020, Mr. Taylor filed an application before the President of the Residual Special Court requesting a “temporary transfer to a safe third country to continue his imprisonment due to a massive outbreak of COVID-19 in the United Kingdom”. In July 2020, he filed an application requesting the withdrawal and/or recusal of the designated judge from hearing the motion. In August 2020, a panel of judges dismissed the recusal application (*ibid.*, paras. 27-29).

8. In respect of witness protection, the Secretary-General indicates that, following a threat assessment completed in the fourth quarter of 2019, the number of vulnerable witnesses under the care of the Residual Special Court has been reduced from 113 to 72 (*ibid.*, para. 19). Upon enquiry, the Advisory Committee was informed that the Residual Special Court had reprioritized its resources to cover any impact on

witnesses of unanticipated actions of the Court's prisoners. For example, the recent motions and complaints filed by the prisoners have been a source of anxiety for some witnesses who are fearful of reprisals. According to the Secretary-General, these developments require additional resources but, instead of increasing the budget, the Residual Special Court has maintained the same level of budgetary requirements to be able to continue to meet its obligations towards witnesses.

### III. Current financial situation and voluntary contributions

#### *Use of the commitment authority*

9. In its resolution [74/263](#), the General Assembly approved a commitment authority in an amount not to exceed \$2,537,000 for 2020 to complement the voluntary financial resources, which are estimated at \$61,358 (see [A/75/343](#), table 2). As the expenditures for 2020 are projected at \$2,537,000, it is anticipated that an amount of \$2,475,600 of the commitment authority would be utilized, leaving an unspent balance of \$61,400, corresponding to the estimated voluntary contributions. The Secretary-General indicates that the final amount will be determined at the end of the budget period and reported in the context of the financial performance report on the regular budget for 2020 (*ibid.*, para. 78).

10. With respect to the previous periods, the Advisory Committee notes that the commitment authority authorized by the General Assembly in the amounts of \$2,438,500 for 2016, \$2,800,000 for 2017, \$2,300,000 for 2018 and \$2,537,000 for 2019 exceeded the expenditures of the Residual Special Court in the corresponding years, after utilization of the voluntary contributions. The Committee recalls that the commitment authority returned for 2016, amounting to \$994,100, had been inadvertently omitted from the initial information provided to it (see [A/74/7/Add.21](#), para. 8). The Committee also notes that, in his report, the Secretary-General seems to indicate that the unencumbered balances for 2017 (\$63,595), 2018 (\$58,153) and 2019 (\$49,256) were carried forward in subsequent years (see [A/75/343](#), annex IV). Upon enquiry, however, the Committee was informed that the unspent balances for 2017 and 2018 had been returned to Member States as part of the total amount returned of \$150,041 (*ibid.*). The balance of \$28,293 was an estimate of the unspent balance for 2020 at the time of issuance of the report on the use of the commitment authority and request for a subvention to the Residual Special Court ([A/74/352](#)). The amount of \$150,000 (rounded) was returned in the context of the second performance report on the programme budget for the biennium 2018–2019 (see [A/74/570](#), para. 46). At that time, approval was sought for an appropriation in the amount of \$2,387,000, under section 8, Legal affairs, of the programme budget for the biennium 2018–2019 in relation to the Residual Special Court's commitment authority for 2019, against the commitment authority of \$2,537,000. The Committee was also informed that the General Assembly, in its resolution [74/250](#), approved the Secretary-General's proposal.

**11. While noting that the unencumbered balances for 2017 and 2018 were returned to member States, the Advisory Committee nonetheless considers that the tabular information contained in annex IV of the report of the Secretary-General ([A/75/343](#)) is unclear. Therefore, the Committee trusts that further clarification will be provided to the General Assembly at the time of its consideration of the present report and the information contained in the next budget submission will be aligned with the additional information provided in the context of the report of the Secretary-General on the request for a subvention to the Extraordinary Chambers in the Courts of Cambodia ([A/75/242](#)).**

12. The Advisory Committee recalls that the subvention from the regular budget is a bridging financing mechanism approved with a view to supplementing insufficient voluntary contributions (see [A/74/7/Add.21](#), para. 9, [A/73/580](#), para. 18, and [A/72/7/Add.20](#), para. 26). The Committee reiterates its recommendation that the General Assembly request the Secretary-General to return any unencumbered balance of commitment authority funds. The Committee trusts that all the unencumbered balances will be returned to Member States without delay.

#### *Voluntary contributions*

13. In section VI of his report, the Secretary-General describes his combined fundraising efforts with the principal officials of the Residual Special Court. The Advisory Committee notes that the actual voluntary contributions have increased in past periods from \$27,462 in 2016 to \$164,942 in 2017 and \$264,102 in 2018, before declining to \$75,293 in 2019 (see [A/74/343](#), annex IV). **The Advisory Committee emphasizes again the ongoing need for intensified fundraising efforts by the Secretary-General, including by broadening the donor base of the Residual Special Court and by developing more innovative fundraising approaches (see also resolutions 74/263, sect. VI, para. 7, and 73/279 A, sect. III, para. 6). The Committee trusts that all efforts will be made to ensure the trend of increased voluntary contributions in 2017 and 2018 and that this trend will resume in future periods.**

14. In respect of contributions in kind, the Secretary-General indicates that the Auditor General of South Africa continues to conduct the annual audit of the Residual Special Court on a pro bono basis. The Government of Sierra Leone continues to provide free office space and other services to the sub-office of the Residual Court in Freetown at no cost to the Court. The United Kingdom continues to enforce the sentence of Mr. Taylor and also hosts some of the relocated witnesses of the Residual Special Court at no cost to the Court. The Government of Rwanda continues to cover the cost of the enforcement of sentences of the prisoners in Rwanda, with the exception of the cost of welfare, which is borne by the Residual Special Court. The Government of the Netherlands continues to house the archives of the Residual Special Court and provides other support at no cost to the Court. Canada continues to host annual diplomatic briefings to raise the profile of the Residual Special Court and assist with fundraising on behalf of the Court at no cost to it. The United States, which was the largest donor of the Special Court for Sierra Leone and the Residual Special Court, continues to provide much-needed support to the latter Court to allow it to fulfil its mandate (see [A/75/343](#), para. 58). **The Advisory Committee continues to welcome the provision of in-kind contributions to the Residual Special Court and encourages further cooperation in support of the mandate of the Court, without prejudice to its independence and judicial requirements (see also [A/74/7/Add.21](#), para. 10, and [A/73/580](#), para. 9).**

## **IV. Resource requirement and request for a subvention for 2021**

#### *Resource requirements*

15. The Secretary-General indicates that the 2021 budget of the Residual Special Court approved by its Oversight Committee amounts to \$2,856,300, which represents an increase of \$319,300, or 12.6 per cent, compared with the estimated expenditures for 2020 (see [A/75/343](#), table 2).

16. The information provided to the Advisory Committee indicates that the proposed post resources of 1,520,600, reflecting an increase of \$111,200, or 7.8 per cent, compared with the estimated expenditure for 2020, would include:

(a) An amount of \$1,402,500 under non-judicial proceedings for: (i) the continuation of 13 full-time non-judicial positions, including 6 located in The Hague (1 D-2, 2 P-4, 2 P-2 and 1 P-1) and 7 in Freetown (1 P-4, 1 P-1, 3 National Professional Officers and 2 General Service (Other level); and (ii) pro rata remuneration for four months for the Prosecutor (Under-Secretary-General level) and a Principal Defender (P-4), who are required to work away from their normal place of residence;

(b) An amount of \$118,100 under judicial proceedings, for salaries and common staff costs for part-time staff for contempt of court and witness variation proceedings, comprising two Legal Officers (1 P-4 and 1 P-3) and 4 administrative positions (Local level) over a period of two months.

17. The proposed non-post resources of \$1,335,700 represent an increase of \$208,100, or 18.4 per cent, compared with the estimated expenditure for 2020. This overall increase reflects increases under travel (\$100,900), contractual services (\$81,300) and compensation for judges (\$31,300), which would be partially offset by reductions under consultants and experts (\$3,900) and general operating expenses (\$1,500). **With respect to the requirement for travel, the Advisory Committee continues to stress that the Residual Special Court should strictly limit the travel requirements directly associated with its core function (see [A/74/7/Add.21](#), para. 15, [A/73/580](#), para. 13, [A/72/7/Add.20](#), para. 18, and [A/71/613](#), para. 18). In addition, the Committee trusts that information on the variances between the estimated expenditure for the current period and the proposed resources for the next period will be provided to the General Assembly at the time of its consideration of the present report and that updated information will be included in the next budget submission.**

18. The Advisory Committee notes that the proposed non-post resources include significant requirements for judicial proceedings – \$135,000 under travel, \$99,600 under compensation for judges, \$50,000 under contractual services and \$48,000 under general operating expenses – which, for the most part, had not taken place in previous years and may again not materialize in 2021, but continue to be included in the request for a subvention (see [A/74/7/Add.21](#), para. 14, [A/73/580](#), para. 12, [A/72/7/Add.20](#), para. 15, and [A/71/613](#), para. 15). **The Advisory Committee recalls that the General Assembly stressed the need for the Residual Special Court to adopt a realistic approach to budgeting reflecting actual needs (see resolution [72/262 A](#), sect. VIII, para. 5). While recognizing that the occurrence of the judicial functions of the Residual Special Court may not be fully anticipated, the Committee continues to emphasize that resources for judicial activities should be based on past experiences, best available projections and the identification of further operational efficiencies, without prejudice to the judicial requirements of the Court (see [A/74/7/Add.21](#), para. 14, [A/73/580](#), para. 12, [A/72/7/Add.20](#), para. 15, and [A/71/613](#), para. 16).**

*Request for a subvention*

19. The Secretary-General indicates that, in view of the absence of pledges for voluntary contributions for 2021 and minimal prospects that such pledges will be made, the Residual Special Court will not have sufficient funds to continue its mandate in 2021. To address the funding shortfall, the Secretary-General is seeking the approval of the General Assembly for a subvention from the regular budget in the

amount of \$2,856,300, which represents the full amount of the requirements of the Residual Special Court for 2021 (see [A/74/343](#), para. 5).

#### *Efficiency measures*

20. The Secretary-General provides information on the efficiency measure in section V of his report ([A/75/343](#)). He indicates notably that the Residual Special Court has continued to implement efficiency measures, such as the use of short-term consultancies, interns and pro bono services to supplement its staff resources as required (see [A/75/343](#), paras. 55 and 56).

21. With regard to the possibility of integrating the Residual Special Court into the financing arrangements for the International Residual Mechanism for Criminal Tribunals, the Secretary-General indicates that there continue to be mixed views, including reservations on the part of some members of the Security Council. The Secretary-General notes that the Council is the parent organ of the Residual Mechanism and the intergovernmental organ that provided the mandate for the establishment of the Residual Special Court (see [A/75/343](#), para. 73, and [A/67/648](#), para. 22).

22. **The Advisory Committee recalls that the General Assembly has requested the Secretary-General to identify possible savings and additional measures on transparency, accountability and cost efficiency of the use of the commitment authority (see resolution 73/279 A, sect III, para. 8). The Committee notes the efforts undertaken so far. However, in view of the persistent funding challenges facing the Residual Special Court, the Committee trusts that the Residual Special Court will redouble its efforts to lower the costs of its operations (see [A/74/7/Add.21](#), para. 19, [A/73/580](#), para. 16, and [A/72/7/Add.20](#), para. 19).**

## V. Other matters

23. The Secretary-General indicates that end-of-service liabilities for staff would amount to \$240,3 00 (see [A/75/343](#), para. 75). **Bearing in mind that the General Assembly decided to establish the Residual Special Court on the basis of voluntary funding, the Advisory Committee considers that it would be for the Assembly to decide, as a matter of policy, the appropriate source and modality of funding for the end-of-service liabilities of the staff members.**

24. With regard to the impact of the coronavirus disease (COVID-19) pandemic, the Secretary-General indicates that the Residual Special Court promptly adopted measures to allow for remote work in order to mitigate the risk of infection among its staff and to carry out its work. As a result, with the exception of archiving, major planned activities for the first quarter of 2020 were not severely affected by the pandemic, and staff have continued to perform their functions (see [A/75/343](#), para. 59). Upon enquiry, the Advisory Committee was informed, however, that the pandemic had notably had the following adverse consequences: (a) the audit of the 2019 accounts scheduled to take place in September 2020 had been postponed; (b) travel for fundraising had been limited and, therefore, the Residual Special Court had relied on social media and teleconference platforms and 40 fundraising bilateral meetings had been conducted virtually; (c) the annual visit of the Court to Rwanda to supervise the conditions of imprisonment could not take place; and (d) field missions for security and welfare checks on the most vulnerable witnesses could not take place.

## VI. Conclusions and recommendations

25. The Advisory Committee reiterates, once again, its concern regarding the sustainability of voluntary contributions to fund the activities of the Residual Special Court (see [A/74/7/Add.21](#), para. 20, [A/73/580](#), para. 19, [A/72/7/Add.20](#), para. 23, [A/71/613](#), para. 23 and [A/70/7/Add.30](#), para. 21). The Committee therefore recommends that the General Assembly request the Secretary-General to continue to analyse the options concerning the long-term arrangements for the Residual Special Court in greater detail, including by identifying possible savings and economies of scale, and to report to it thereon and on the use of the commitment authority in the next budget submission.

26. The Advisory Committee notes that the Residual Special Court managed to implement its mandate in 2020 drawing on the approved commitment authority in the amount of \$2,537,000. The Committee further notes that the requirements for 2021 include resources for judicial activities which may not materialize. In addition, the Committee recalls once again that the commitment authority is a bridging mechanism and expects the ongoing fundraising efforts to generate additional voluntary contributions in 2021 (see also para. 11 above). In view of these elements, the Committee considers that the Residual Special Court should be able to operate in 2021 on the basis of a subvention of the same amount as for 2020.

27. The Advisory Committee recommends that the General Assembly authorize the Secretary-General to enter into commitments, as a bridging financing mechanism in view of the voluntary funding projections for 2021, in an amount not to exceed \$2,537,000 for the period from 1 January to 31 December 2021. The Committee recommends that the Assembly request the Secretary-General to report, during the main part of its seventy-sixth session, on the use of the commitment authority.

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

(a) The Residual Special Court intensifies its efforts to seek voluntary contributions, including through more innovative fundraising approaches;

(b) Should voluntary contributions be received in excess of the remaining requirements for the Residual Special Court for 2021, any corresponding funding provided under the commitment authority to the Court for the period would be refunded to the United Nations in a timely manner and credited to Member States;

(c) Additional measures for achieving efficiencies in the Residual Special Court are taken.

**Total funding versus actual expenditure for judicial and non-judicial functions, 2014–2020**

(United States dollars)

<i>Year</i>	<i>Approved budget<sup>a</sup></i>	<i>Actual balance brought forward on 1 January</i>	<i>Actual voluntary contributions</i>	<i>Interest earned and other adjustments</i>	<i>Commitment authority authorized by the General Assembly</i>	<i>Projected underexpenditure on the utilization of the commitment authority</i>	<i>Subvention amount appropriated or proposed to be appropriated</i>	<i>Total funding available for the year</i>	<i>Actual full-year expenditure and 2020 projected expenditure</i>	<i>Unspent balance</i>
<i>Year</i>	<i>(a)</i>	<i>(b)</i>	<i>(c)</i>	<i>(d)</i>	<i>(e)</i>	<i>(f)</i>	<i>(g)=(e)+(f)</i>	<i>(h)=(b)+(c)+(d)+(g)</i>	<i>(i)</i>	<i>(j)=(h)-(i)</i>
2014 <sup>b</sup>	2 128 700	–	3 370 268	(125 357)	–	–	–	3 244 911	2 098 315	1 146 596
2015	3 454 000	1 146 596	2 681 423	(68 825)	–	–	–	3 759 194	2 569 355	1 189 839
2016	3 596 300	1 189 839	27 462	1 834	2 438 500	(994 100)	1 444 400	2 663 535	2 718 058	(54 523)
2017	2 980 500	(54 523)	164 942	(95 543)	2 800 000	–	2 800 000	2 814 876	2 751 281	63 595
2018	2 965 900	63 595	264 102	32 186	2 300 000	–	2 300 000	2 659 883	2 601 730	58 153
2019	2 984 600	58 153	75 293	93 652	2 537 000	(150 041)	2 386 959	2 614 057	2 564 801	49 256
2020 <sup>c</sup>	2 899 500	49 256	11 527	575	2 537 000	(61 358)	2 475 642 <sup>d</sup>	2 537 000	2 537 000	–

<sup>a</sup> Approved by the Oversight Committee.<sup>b</sup> The Residual Special Court for Sierra Leone commenced operations in 2014.<sup>c</sup> Represents the status as at 31 July 2020. Figures on any actual voluntary contributions received, the actual full-year expenditure, the actual subvention amount to be appropriated by the General Assembly and the actual unspent balance for 2020, if any, will be available at year end.<sup>d</sup> The Residual Special Court estimates that, of the \$2,537,000 in commitment authority for 2020, an amount of \$2,475,600 will be required for the period from 1 January to 31 December 2020. The final amount will be determined only at the end of the budget period and the related appropriation requested in the context of the financial performance report on the regular budget for 2020.