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**Proposed programme budget for 2022**

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

### **Tenth report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for 2022**

#### **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/76/329](#)). In his report, the Secretary-General provides an update on the activities of the Court and information on the use of the approved commitment authority for 2021. In addition, the Secretary-General requests the General Assembly to approve a subvention for the Court in the amount of \$2,919,300 for 2022 to enable the Court to continue to carry out its mandate in 2022. During its consideration of the report, the Committee received additional information and clarification, concluding with written responses received on 19 October 2021.

2. The report of the Secretary-General was submitted pursuant to General Assembly resolution [75/253](#) A, in which the Assembly 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 2021 and requested him to report on the use of the commitment authority in the context of his next report.

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, one remains at large and 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/76/329](#), 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 still 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, Netherlands, with a sub-office in Freetown for witness protection and support and the coordination of defence issues. The Court currently has five persons in custody: one in the United Kingdom of Great Britain and Northern Ireland and four in Rwanda (*ibid.*, paras. 10 and 32).

6. The recent activities of the Residual Special Court are set out in paragraphs 16 to 48 of the report of the Secretary-General. In terms of witness protection, the Secretary-General indicates that the Court continues to implement protective measures as well as welfare and medical assistance to 72 witnesses. The Secretary-General also indicates that some witnesses informed the Court representatives of attempts to induce them to recant their testimonies in order to secure the release of certain individuals. Subsequently, in November 2020, the Court Prosecutor appointed an investigator to inquire into those allegations of witness tampering. The findings of the investigator were under review by the Prosecutor as at 16 September 2021. The Secretary-General further indicates that the trial of Gibril Massaquoi, a Sierra Leonean national and former witness of the Special Court, commenced in February 2021 before a Finnish court. Mr. Massaquoi is accused of murder of civilians, aggravated war crimes and aggravated crimes against humanity committed in Liberia between 1999 and 2003. The Residual Special Court is monitoring the Finnish trial (*ibid.*, paras. 17, 20 and 21).

7. With regard to judicial and administrative proceedings, the Secretary-General indicates that, in September 2020, the President of the Residual Special Court adopted the recommendations of the report of the inquiry into complaints by the prisoners. The recommendations included the provision of duty counsel services to further educate the prisoners on the legal authority of the Court. Also in September 2020, the President granted Mr. Gbao's application for conditional early release, subject to a further period of three months of imprisonment to undergo specific training. Subsequently, the President ordered the transfer of Mr. Gbao from Mpanga Prison in Rwanda to Sierra Leone. The transfer of Mr. Gbao to his community took place in December 2020. He has started serving the remainder of his 25-year sentence under strict conditions and close monitoring until 2028 (*ibid.*, paras. 26–29).

8. In terms of requests for assistance from national authorities, the Secretary-General indicates that the Residual Special Court has received 55 such requests, including 16 requests since October 2020 (*ibid.*, para. 39). Upon enquiry, the

Advisory Committee was informed that the recent increase in the number of requests was partially due to the national proceedings involving a former witness of the Special Court (see para. 6 above).

9. With regard to fundraising and diplomatic activities, the Secretary-General indicates that he addressed letters of appeal to all Member States in May 2021 to seek their financial support for the Residual Special Court. Similarly, the Government of Sierra Leone wrote to the Group of African States to draw its attention to the financial situation of the Court and to seek funding for its activities. As at 16 September 2021, more than 58 fundraising bilateral meetings, including 56 virtual meetings, had been held in 2021. More than 30 additional meetings are scheduled to be conducted virtually by 31 December 2021. In addition, the principals and staff members of the Court have undertaken fundraising activities with diplomatic missions in Brussels, Freetown, The Hague and New York to broaden the donor base and garner financial support. The Secretary-General also indicates that, in June 2021, the Court Registrar met in person with the Registrar of the International Residual Mechanism for Criminal Tribunals to discuss matters relating to the administrative sharing and cooperation between their respective entities (*ibid.*, paras. 63–72). Upon enquiry, the Advisory Committee was informed that the funds received in voluntary contributions in 2021 were in response to the Secretary-General's letter of appeal.

### III. Financial situation of the Residual Special Court for Sierra Leone

#### *Voluntary contributions*

10. Pursuant to article 3 of the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Residual Special Court for Sierra Leone, the expenses of the Court are to be borne by voluntary contributions from the international community, and the parties and the Oversight Committee may explore alternative means of funding the Court. However, since 2015, the Court has not received sufficient voluntary contributions for its operations and has had to rely on subventions from the regular budget of the United Nations (*ibid.*, para. 1). A table on the funding and expenditure since 2014 is annexed to the present report.

11. The Secretary-General indicates that, during the period from October 2020 to July 2021, the contributions and pledges received by the Court amounted to \$416,462, divided as follows: \$62,015 for 2020, \$31,933 for 2021, \$30,000 for 2022 and earmarked contributions of \$292,514 for special projects. These projects are activities ordered by the President of the Court or mandated by the statute of the Court but that are not included in the regular budget of the Court or the request for subvention from the United Nations (*ibid.*, para. 4). In terms of trend, the Advisory Committee notes that the non-earmarked voluntary contributions increased from \$27,462 in 2016 to \$164,942 in 2017 and \$264,102 in 2018, before declining to \$75,293 in 2019, \$73,500 in 2020 and \$31,900 in 2021 (see [A/76/329](#), annex IV, [A/75/7/Add.20](#), para. 13, and [A/75/343](#), annex IV). **The Advisory Committee trusts that information on the earmarked voluntary contributions to the Residual Special Court since its inception will be included in the next report.**

12. While noting that the fundraising activities undertaken in 2021 have yielded limited results in terms of voluntary contributions, the Advisory Committee emphasizes again the 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 [75/253 A](#), sect. XVI, para. 6, [74/263](#), sect. VI, para. 7, and [73/279 A](#), sect. III, para. 6).

*Use of the commitment authority*

13. In its resolution [74/263](#), the General Assembly 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 in 2020. Total expenditure as at 31 December 2020 amounted to \$2,485,100, which was covered by voluntary contributions and other income (\$75,000) and resources drawn from the subvention (\$2,410,100) ([A/76/329](#), para. 52 and table 1).

14. In its resolution [75/253](#) A, the General Assembly 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 in 2021. Upon enquiry, the Advisory Committee was informed that expenditure amounted to \$1,791,079 as at 31 August 2021. Total expenditure at the end of 2021 is estimated at \$2,555,900. The Court intends to cover the expenditure by using the anticipated pledges and the pledges, contributions and other income (\$32,400) and drawing an amount of \$2,523,500 from the commitment authority ([A/76/329](#), table 2).

15. **The Advisory Committee reemphasizes that the subvention from the regular budget is a bridging financing mechanism approved with a view to supplementing insufficient voluntary contributions.** ([A/75/7/Add.20](#), para. 12, [A/74/7/Add.21](#), para. 9, [A/73/580](#), para. 18, and [A/72/7/Add.20](#), para. 26).

## IV. Requirements and subvention request for 2022

*Budget requirements*

16. The Secretary-General indicates that the Oversight Committee approved a budget of \$2,949,300 for 2022 representing an increase of \$393,400, or 15.3 per cent, compared with the projected expenditure of \$2,555,900 for 2021 ([A/76/329](#), table 2).

17. The proposed post resources of \$1,604,100, which represent an increase of \$233,500, or 17 per cent, compared with the estimated expenditure of \$1,370,600 for 2021, would provide for the continuation of 13 posts, namely, six posts in The Hague (1 D-2, 2 P-4, 2 P-2, 1 P-1) and seven posts in Freetown (1 P-4, 1 P-1, 3 National Professional Officers, 2 Local level). In addition, one general temporary assistance position (Local level) provides archiving assistance in The Hague (*ibid.*, para. 51 and table 2). Upon enquiry, the Advisory Committee was informed that the overall increase in post resources was due to increases in the salary scales for both professional and national staff and post adjustment, which increased from 38.0 per cent to 49.1 per cent in The Hague and from 48.6 to 48.7 per cent in Freetown. **The Advisory notes that the information provided only partially explains the proposed increase in post resources and therefore considers that the proposed requirement for posts is not fully justified.**

18. The proposed non-post resources amount to \$1,345,200, which represent an increase of \$159,900, or 13.4 per cent, compared with projected expenditure for 2021. The overall increase vis-à-vis projected expenditure reflects increases under contractual services (\$89,500), general operating expenses (\$39,400), travel (\$26,700) and compensation to judges (\$4,900), which are partially offset by reductions under consultants and experts (\$500) and supplies and materials (\$100) (*ibid.*, table 2).

19. With regard to the requirement for contractual services of \$650,400 for 2022, the Advisory Committee was informed upon enquiry that the increase of \$31,400 compared with the requirement of \$619,000 for 2021 was attributable to higher costs for the services provided by the International Residual Mechanism for Criminal Tribunals to the Residual Special Court. These higher costs reflect increases in salary scales and post adjustment.

20. Regarding the travel requirement, the Advisory Committee was informed that the low expenditure of \$59,200 in 2021 was mainly due to the restrictions on travel related to the coronavirus disease (COVID-19) pandemic, while the requirement of \$208,300 for 2022 reflected the intention of the Residual Special Court to resume the full scale of its judicial and non-judicial travel. **The Advisory Committee continues to stress that the Residual Special Court should strictly limit travel requirements to ensure that any travel is directly associated with its core function** (see also [A/75/7/Add.20](#), para. 17, [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). The Committee is of the view that, on the basis of the lessons learned from the travel restrictions imposed during the coronavirus pandemic, the Court should be able to carry out a significant portion of its activities remotely, including in the areas of fundraising and meetings with stakeholders. Therefore, the Committee considers that the travel requirement for 2022 is not fully justified.

#### *Subvention request*

21. The Secretary-General indicates that, despite the fundraising efforts, only one contribution in the amount of \$30,000 has been received for the 2022 fiscal year and there are minimal prospects that more pledges will be made. Consequently, the Secretary-General is seeking the approval of the General Assembly for a subvention from the regular budget in the amount of \$2,919,300 to cover the requirements of \$2,949,300, taking into account the estimated contributions of \$30,000 ([A/76/329](#), paras. 5 and 81 (b)–(d)).

#### *Efficiency measures*

22. The Secretary-General provides information on the efficiency measure in section V of his report. He indicates that the Residual Special Court remains committed to increasing efficiency by sharing administrative arrangements and staffing structure and recalls that the sub-office of the Court in Freetown is co-located with the National Witness Unit and that the interim seat of the Court in The Hague is co-located with and receives administrative and logistical support from the International Residual Mechanism for Criminal Tribunals on a cost reimbursable basis. Moreover, the Court has initiated the procurement of one vehicle with the assistance of the International Residual Mechanism, using funds secured under funding for special project activities. The new vehicle will replace one of the two vehicles of the Court, which has exceeded its useful lifespan. In addition, the Court explored the feasibility and cost-effectiveness of being co-located with the International Residual Mechanism in Arusha. The Mechanism has offered to erect prefabricated office space on a cost-reimbursable basis on its premises in Arusha. The Secretary-General notes, however, that under the current memorandum of understanding with the Mechanism, the annual rental fee for office space in The Hague amounts to \$33,888, while the archives of the Court are hosted by the Dutch National Archives at no cost ([A/76/329](#), paras. 54, 59 and 60).

23. **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 faced by the Residual Special Court, the Committee trusts that the Court will redouble its efforts in terms of cost efficiency (see also [A/75/7/Add.20](#), para. 22, [A/74/7/Add.21](#), para. 19, [A/73/580](#), para. 16, and [A/72/7/Add.20](#), para. 19).

## V. Other matters

24. The Secretary-General indicates that end-of-service liabilities for staff would amount to \$268,040 ([A/76/329](#), para. 76). **Bearing in mind that the General Assembly decided to establish the Residual Special Court on the basis of voluntary funding, the Advisory Committee still 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 (see [A/75/7/Add.20](#), para. 23).**

25. With regard to the impact of the COVID-19 pandemic, the Secretary-General indicates that, over the course of the reporting period, the Residual Special Court has faced the following challenges: two staff members of the Court were infected with the coronavirus, the plenary meeting of the judges and the annual diplomatic briefings have not been held, the audits of the 2019 and 2020 accounts have been delayed, and annual visits to supervise the conditions of imprisonment of the prisoners and family visits have been suspended ([A/76/329](#), para. 61).

## VI. Conclusions and recommendations

26. 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/75/7/Add.20](#), para. 25, [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).

27. Noting that the expenditure of the Residual Special Court for 2021 is estimated at \$2,555,900 and considering that the staffing and travel requirements for 2022 are not fully justified (see paras. 17 and 20 above), the Committee is of the view that the Court should be able to operate in 2022 with a subvention of \$2,773,300, representing a five per cent reduction from the requested subvention of \$2,919,300.

28. 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 2022, in an amount not to exceed \$2,773,300 for the period from 1 January to 31 December 2022. The Committee recommends that the Assembly request the Secretary-General to report, during the main part of its seventy-seventh session, on the use of the commitment authority.

29. The Advisory Committee reiterates that the final use of the commitment authority will depend upon the receipt of voluntary contributions from donors and 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 2022, 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.

## Annex

## Total funding versus actual expenditure for judicial and non-judicial functions, 2014–2021

(Thousands of United States dollars)

Year	Funding available for the year						Total funding available for the year	Commitment authority used	Actual full-year expenditure	Unspent balance	Commitment authority returned
	Approved budget <sup>a</sup>	Balance brought forward	Contributions of the Government of Sierra Leone	International voluntary contributions	Interest earned and other adjustments	Commitment authority authorized by the General Assembly					
	(a)	(b)	(c)	(d)	(e)	(f)	(g)=(b)+(c)+(d)+(e)+(f)	(h)	(i)	(j)=(g)-(i)	(k)=(f)-(h)
2014 <sup>b</sup>	2 128.7	–	–	3 370.3	(125.4)	–	3 244.9	–	2 098.3	1 146.6	–
2015	3 454.0	1 146.6	–	2 681.4	(68.8)	–	3 759.2	–	2 569.4	1 189.8	–
2016	3 596.3	1 189.8	–	27.5	1.8	2 438.5	3 657.6	1 444.4	2 718.0	939.6	994.1
2017	2 980.5	(54.5)	–	164.9	(95.5)	2 800.0	2 814.9	2 800.0	2 751.3	63.6	–
2018	2 965.9	63.6	–	264.1	32.2	2 300.0	2 659.9	2 300.0	2 601.7	58.2	–
2019 <sup>c</sup>	2 984.6	58.2	–	75.3	93.7	2 537.0	2 764.2	2 387.0	2 564.8	199.3	150.0
2020 <sup>d</sup>	2 899.5	–	–	73.5	1.5	2 537.0	2 485.1	2 410.1	2 485.1	–	–
2021 <sup>e</sup>	2 856.3	–	–	31.9	0.5	2 537.0	2 555.9	2 523.5	2 555.9	–	–

<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> The remaining balance for 2019 of \$49,300, which is the difference between the unspent balance of \$199,300 and \$150,000 and consists of refunds of expenditure for 2019, was recorded in the financial statements for 2020 (statement V), and will consequently be reported under income section 2 in the financial performance report on the programme budget for 2020 and refunded to Member States. The amount of \$150,000 was returned in the context of the second performance report on the programme budget for the biennium 2018–2019 (A/74/570, para. 46).<sup>d</sup> The amount of subvention used in 2020 will be reflected in the financial performance report on the programme budget for 2020 and has been absorbed within the approved appropriation for 2020 under the regular budget.<sup>e</sup> The final expenditure and related appropriation of the commitment authority for 2021 will be requested in the context of the financial performance report on the regular budget for 2021.