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Proposed programme budget for 2020

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

Twenty-second report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for 2020

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/74/352](#)). 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 2019. In addition, the Secretary-General requests the General Assembly to approve a subvention for the Residual Special Court in the amount of \$2,899,500 to enable the Court to continue to carry out its mandate in 2020. 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 26 November 2019.

2. The report of the Secretary-General was submitted pursuant to General Assembly resolution [73/279 A](#), 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 2019 as a bridging financial mechanism and requested him to report on the use of the commitment authority at the main part of its seventy-fourth session.

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, have been convicted and sentenced to terms of imprisonment ranging from 15 to 52 years (A/74/352, 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).

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. 23). The remaining fugitive remains at large and his status remains unclear (*ibid.*, para. 19).

6. The recent activities of the Residual Special Court are set out in paragraphs 15–42 of the Secretary-General’s report. In terms of judicial and administrative proceedings, in March 2019, the Registrar and Principal Defender received a request for a review of the partially indigent status of one of the convicted persons, and another prisoner will be eligible to apply for conditional early release in December 2019, by which time he would have completed two-thirds of his 25-year sentence (*ibid.*, paras. 18 and 20).

II. Current financial situation and voluntary contributions

Use of the commitment authority

7. In its resolution 73/279 A, the General Assembly approved a commitment authority not to exceed \$2,537,000 for 2019, to complement the pledges, contributions and other sources of income, which are estimated at \$144,599. As the expenditures are projected at \$2,531,558, an amount of \$2,386,959 would be sought for appropriation for 2019 and a surplus of \$150,041 is expected at the end of 2019 (*ibid.*, table 1 and annex IV). According to the Secretary-General, the projected unspent portion of the commitment authority would be surrendered in the context of the second performance report on the programme budget for the biennium 2018–2019. (*ibid.*, para. 55).

8. Upon request, the Advisory Committee was provided further details, reflected in the annex to the present report, concerning the total funding received by the Residual Special Court since its inception, actual expenditures, commitment authority used and unspent balances. The 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 and \$2,300,000 for 2018 exceeded the expenditures of the

Residual Special Court in the corresponding years, after utilization of the voluntary contributions. According to the updated information provided, an amount of \$994,100 of the commitment authority for 2016 was returned to Member States, and unspent balances amounting to \$939,600 in 2016, \$63,600 in 2017 and \$22,150 in 2018 have been carried forward into subsequent years. In this specific connection, the Committee was informed, upon enquiry, that the commitment authority returned for 2016, amounting to \$994,100, had been inadvertently omitted from the information provided to the Committee in the context of its previous report. The Committee notes that, in annex IV to his report, the Secretary-General does not provide an adequate explanation for the negative unspent balance of \$54,523 in 2016, which was carried forward in 2017 (see [A/73/580](#), annex, and [A/74/352](#), annex IV).

9. **The Advisory Committee recalls that the subvention from the regular budget is a bridging financing mechanism approved on the basis of set conditions for the purpose of supplementing insufficient voluntary contributions (see [A/72/7/Add.20](#), para. 26, and [A/73/580](#), para. 18). The Committee reiterates its recommendation that the General Assembly request the Secretary-General to return any unused balance of commitment authority funds, in accordance with the decision of the General Assembly (see resolution [72/262 A](#), sect. VIII, para. 6). The Committee trusts that the unspent balances for 2017 and 2018 will be returned to Member States without further delay in 2020.**

Voluntary contributions

10. In section VI of his report, the Secretary-General describes his combined fundraising efforts with the Government of Sierra Leone, the Oversight Committee and the principal officials of the Residual Special Court. The Advisory Committee notes that the actual voluntary contributions have increased from \$27,462 in 2016 to \$164,942 in 2017 and \$264,102 in 2018. However, the anticipated level of actual voluntary contribution only amounts to \$61,200 (see [A/74/352](#), 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 resolution [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 is sustained.**

11. In terms 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 provides contributions that include the provision of rent-free office space and the task of monitoring the Special Court indictees in Sierra Leone. The Government of the United Kingdom enforces the sentence of Mr. Taylor at no cost to the Residual Special Court. The Government of Rwanda covers all other costs related to the enforcement of sentences for those prisoners in custody in Rwanda, with the exception of the cost of welfare. The Government of the Netherlands houses the archives of the Residual Special Court free of charge. In addition, the Residual Special Court has approached the Government of the Netherlands with a request for the provision of rent-free office space ([A/74/352](#), paras. 50 and 53). **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/73/580](#), para. 9).**

III. Resource requirement and request for a subvention for 2020

Resource requirements

12. The Secretary-General indicates that the 2020 budget of the Residual Special Court approved by its Oversight Committee amounts to \$2,899,500, consisting of \$2,367,900 for non-judicial activities and \$531,600 for judicial activities, compared with the approved subvention of \$2,537,000 for 2019.

13. The report of the Secretary-General and the supplementary information provided to the Advisory Committee indicate that resource requirements in the amount of \$1,308,600 would provide for: (a) the continuation of the 13 existing full-time non-judicial positions, 6 of which are 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 (Local level)); (b) pro rata remuneration for four months for the Prosecutor (Under Secretary-General) and a Principal Defender (P-4) who work remotely and only as necessary; and (c) one Local level position in The Hague funded through general temporary assistance to provide archiving support (see [A/74/352](#), para. 45). An additional requirement of \$132,400 would provide for additional staff in the event of judicial activity, such as proceedings related to contempt of court (*ibid.*, annex II).

14. With respect to non-staffing requirements, an amount of \$399,200 is requested for judicial activities, under compensation to judges (\$129,700), travel (\$158,000), contractual services (\$50,000) and general operating expenses (\$61,500). The Advisory Committee notes that those requirements relate to judicial proceedings that, for the most part, have not taken place in previous years and may again not materialize in 2020, but continue to be included in the request for a subvention (see [A/71/613](#), para. 15, [A/72/7/Add.20](#), para. 15, and [A/73/580](#), para. 12). **In that respect, 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/71/613](#), para. 16, [A/72/7/Add.20](#), para. 15, and [A/73/580](#), para. 12).**

15. With respect to official travel, requirements for 2020 are estimated at \$268,300, including \$110,300 for non-judicial travel. Upon request, the Advisory Committee was provided with additional detail concerning travel plans for 2020, which, in its view, reflected instances in which proposed trips were not well justified or could be combined. **Considering the severe scarcity of financial resources, the Advisory Committee reiterates its previous recommendations (see [A/71/613](#), para. 18, [A/72/7/Add.20](#), para. 18, and [A/73/580](#), para. 13) and continues to stress that the Residual Special Court should strictly limit travel requirements to ensure that any travel is directly associated with its core functions.**

Request for a subvention

16. The Secretary-General indicates that, in view of the absence of pledges for voluntary contributions for 2020 and minimal prospects that such pledges will be made, the Residual Special Court will not have sufficient funds to continue its mandate in 2020. 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 \$2,899,500, which represents the full amount of the requirements of the

Residual Special Court for 2020, with the understanding that any contribution received would reduce the utilization of the funding provided by the United Nations (see [A/74/352](#), para. 5).

Efficiency measures

17. In his report, the Secretary-General indicates 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 (*ibid.*, paras. 46–55). The Advisory Committee was informed, upon enquiry, that the identification of savings had resulted in a reduction of \$85,100 in the proposed budget for 2020 compared with the estimated requirements for 2019.

18. The Secretary-General indicates that the International Residual Mechanism for Criminal Tribunals has continued to provide logistical and administrative support to the Residual Special Court on a cost-reimbursable basis, pursuant to section III, paragraph 11, of General Assembly resolution [73/279 A](#). On the basis of information provided to it, the Committee notes that resources in the amount of \$379,700 would provide for the cost of sharing an administrative platform with the International Residual Mechanism, the rental of office space within its premises in The Hague and the provision of information technology and other administrative services. The Secretary-General indicates that experts of the International Residual Mechanism also provided assistance with regard to the assessment being conducted of the Residual Special Court's digital preservation and information technology migration needs (*ibid.*, para. 51).

19. **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/72/7/Add.20](#), para. 19, and [A/73/580](#), para. 16).**

IV. Conclusions and recommendations

20. **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/70/7/Add.30](#), para. 21, [A/71/613](#), para. 23, [A/72/7/Add.20](#), para. 23, and [A/73/580](#), para. 19). 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.**

21. **The Advisory Committee notes that the Residual Special Court managed to implement its mandate in 2019 drawing on the approved commitment authority in the amount of \$2,537,000. The Committee further notes that the requirements for 2020 includes resources for judicial activities that 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 2020 (see paras. 9 and 10 above). In view of those elements, the Committee considers that the Residual Special Court should be able to operate in 2020 on the basis of a subvention of the same amount as the one for 2019.**

22. 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 2020, in an amount not to exceed \$2,537,000 for the period from 1 January to 31 December 2020. The Committee recommends that the Assembly request the Secretary-General to report, during the main part of its seventy-fifth session, on the use of the commitment authority.

23. 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) If voluntary contributions are received in excess of the remaining requirements for the Residual Special Court for 2020, 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

<i>Year</i>	<i>Approved budget^a</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>Actual commitment received^d</i>	<i>Total funding available for the year</i>	<i>Commitment authority used</i>	<i>Actual full year expenditure</i>	<i>Unspent balance</i>	<i>Commitment authority returned</i>
<i>Year</i>	<i>(a)</i>	<i>(b)</i>	<i>(c)</i>	<i>(d)</i>	<i>(e)</i>	<i>(f)</i>	<i>(g)=(b)+(c)+(d)+(f)</i>	<i>(h)</i>	<i>(i)</i>	<i>(j)=(g)-(i)</i>	<i>(k)</i>
2014 ^b	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	2 438 500	3 657 635	1 528 219	2 718 058	939 577	994 100
2017	2 980 500	939 577	164 942	(95 543)	2 800 000	1 805 900	2 814 876	2 681 882	2 751 281	63 595	–
2018	2 965 900	63 595	264 102	32 186	2 300 000	2 264 000	2 623 883	2 264 000	2 601 730	22 153	–
2019 ^c	2 984 600	22 153	61 200	25 246	2 537 000	2 473 405	2 582 004	–	2 531 558	–	–

^a Approved by the Oversight Committee.

^b The Residual Special Court for Sierra Leone commenced operations in 2014.

^c Represents the status as at 15 July 2019. Figures on any voluntary contribution received, actual full year expenditure, and subvention amount to be appropriated by the General Assembly and the unspent balance for 2019, will be available at the year end.

^d Reflects cash amounts transferred to the Residual Special Court for Sierra Leone after any reductions done by the United Nations.