

**Briefing by the Registrar of the Special Court for Sierra Leone to the Fifth Committee**

(16 May 2013 - REVISED)

**I. Introduction**

1. The Special Court for Sierra Leone (“Special Court”, “Court” or “SCSL”) presents this report as an update to the Fifth Committee of the United Nations (“Fifth Committee”) on the progress of the Court’s completion activities and transition to the Residual Special Court for Sierra Leone (“Residual Court” or “RSCSL”).
2. As you will recall, despite extraordinary efforts of the key donors of the Special Court, including the Member States of the Management Committee, and the intense fundraising efforts made by the Principals of the Court, financing through voluntary contributions was not sufficient to meet the budgetary requirements for the Court’s operations until the completion of its judicial activities in September 2013 and for its transition to the Residual Special Court for Sierra Leone by December 2013.
3. In November 2012, an exchange of letters between the Secretary-General and the President of the Security Council occurred. In his 8 November 2012 letter (S/2012/891), the Secretary-General wrote that despite increased efforts to secure funding for the Special Court, there would not be sufficient voluntary contributions for the Court to complete its work and indicated that the possibility of the Court running out of funds was of particular concern since the Court was in the process of completing the appeal in its final case against the former President of Liberia, Charles Taylor. On 28 November 2012 (S/2012/892), the President of the Security Council replied that the Council members had taken note with certain reservations of the intention expressed in the letter and that they requested the United Nations Secretariat, the Management Committee and the Registrar and other senior officials of the Special Court to intensify their efforts to balance the budget and fund the activities of the Court through voluntary contributions.
4. Thus, due to unforeseen factors including the steep decline of voluntary donations following the delivery of the Trial Judgement in the *Prosecutor v. Charles Taylor*, and in order to allow the SCSL to complete its work, the Secretary-General felt it was necessary to request a subvention in the amount of \$14,000,000 for the Special Court for its operations from December 2012 to 31 December 2013 (A/67/606).
5. On 14 December 2012, the Advisory Committee approved a subvention of up to \$14,000,000, including \$1,500,000 for transition, for the period from 8 December 2012 to 31 December 2013 intended to supplement any voluntary contributions received so that the Special Court could complete its work.

## II. Current Financial Position

6. The Court has received two payments totalling \$7,200,000 of the approved amount of \$14,000,000 in subvention. This Subvention amount was apportioned as follows:

8 December 2012 – 31 December 2012	\$ 921,156
1 January – 30 September 2013	\$11,578,844
October – December 2013 (transition)	\$ 1,500,000

7. We have also received \$1,674,680 in voluntary contributions towards our core budget - over 80% of this was received from one of our primary donors, the United Kingdom. There have been no further pledges made.
8. The table of our spending profiles shows our expenditure at 30 April 2013:

SPENDING PROFILE 2013 (nearest '000,000)

Months	2013 Projected Expenditure	Actual Disbursement (AD)	Outstanding Obligations (OO)	Total Expenditure (AD + OO)	Variance in Budget
January	1.3	1	0.4	1.4	-0.1
February	1.3	1	0.7	1.7	-0.4
March	1.3	0.9	0.1	1.0	0.3
April	1.3	1.1	0.0	1.1	0.2
May	1.3	0.0	0.0	0.0	1.3
June	1.3	0.0	0.0	0.0	1.3
July	1.3	0.0	0.0	0.0	1.3
August	1.3	0.0	0.0	0.0	1.3
September	1.2	0.0	0.0	0.0	1.2
<b>Total</b>	<b>11.6</b>	<b>4</b>	<b>1.2</b>	<b>5.2</b>	<b>6.4</b>

9. The Special Court Principals and the Management Committee continue to fundraise for both the Court and the Residual Court. In 2013, over 30 fundraising meetings have already been conducted. The Court remains diligent in its efforts to procure voluntary donations, while simultaneously ensuring that the Court focuses on completion and transition tasks to avoid any further delays in the completion of the Court's mandate. The Appeals Chamber continues to work towards September 2013 as the projected date for delivery of the final judgement, after which the Court will transition to the Residual Court. It should be noted that the Appeals Chamber has consistently met all prior deadlines.

### III. Progress to Date

10. The Special Court has implemented a multi-prong approach in order to finish the Court's work and transition to the Residual Court, which include, i) conducting judicial proceedings; ii) completion and closure tasks; iii) performing transition tasks; and iv) a transition period.

#### A. Judicial Proceedings

##### *Charles Taylor Appeal*

11. The final major case before the SCSL, *Prosecutor v. Charles Taylor*, is in its appellate and final phase. On 22 and 23 January 2013, the Appeals Chamber held oral hearings and subsequently began deliberations. The Prosecutor and Mr Taylor cumulatively filed 49 grounds of appeal against the trial judgement.
12. Since the Subvention was granted, the Appeals Chamber has made decisions on various motions filed by both parties prior to and following the oral hearings, including a Defence Counsel motion to present additional evidence pursuant to Rule 115 ("Rule 115 Motion"). On 18 January 2013, the Appeals Chamber denied the Rule 115 Motion.
13. The filing of these motions in the appellate phase, are illustrations of the complexity and unpredictability of the judicial process, while at the same time are a great examples of the judicial efficiency of the SCSL Appeals Chamber.

##### *Contempt Proceedings*

14. The successful administration of justice requires the protection of witnesses and adherence to witness protection measures. During its completion phase, the Court noticed an increase in witness protection issues that it was obligated to investigate.
15. As of 14 May 2013 all contempt of court cases brought before the Court have been completed. The Appeal Judgements in *Independent Counsel v. Bangura, Kargbo, Kanu, and Kamara* and *Independent Counsel v. Prince Taylor* were delivered on 21 March 2013 and 14 May 2013 respectively. In the case *Independent Counsel v. Eric Senessie*, Mr. Senessie, gave up his right to appeal when he filed his "Motion for Review".
16. The six persons convicted of contempt of court were sentenced to terms of imprisonment ranging from 18 months to two-and-a-half years. Ibrahim Bazy Kamara and Santigie Borbor Kanu (who are SCSL convicted persons already serving their sentence in Rwanda) were sentenced to prison terms of one year and 50 weeks, to be served consecutively with their prior sentences. Hassan Papa Bangura was sentenced to 18 months, Eric Senessie was sentenced to

2 years and Prince Taylor was sentenced to two-and-a-half years of imprisonment. Samuel Kargbo received an 18 month suspended sentence on the condition that he remain of good behaviour for two years. Bangura, Senessie and Taylor are currently serving their sentences at the SCSL Detention Facility.

17. The Special Court conducted many of the proceedings by videoconference. Two of the six accused charged with contempt had already been convicted by the Court and were serving their sentences in Mpanga Prison in Rwanda. Thus, the Court was able to conduct the trial from Freetown, linking the proceedings in Freetown, the Hague, and Kigali via two and three-way videoconference. This was made possible as a result of the inter-Tribunal cooperation between the Special Court and the United Nations Headquarters in New York, the United Nations Logistics Base in Brindisi, the International Criminal Tribunal for Rwanda and the Special Tribunal for Lebanon. Additionally, the Court was able to use a videoconference link for the Prince Taylor sentencing hearing, by allowing the Independent Counsel to cross-examine a witness in Freetown from the UN Headquarters in New York. By using videoconference, the Court was able to save on additional costs, including flights, accommodations, and the transfer of prisoners from Rwanda to Freetown.
18. On 26 March 2013, "The Supplementary Agreement Between the Special Court for Sierra Leone and the Government of the Republic of Sierra Leone on the Enforcement of Sentences of Persons Convicted of Contempt of the Special Court of Sierra Leone" was signed by the Special Court and the Government of Sierra Leone. This Agreement regulates all matters arising out of requests of the Government of Sierra Leone to enforce sentences of contempt of court imposed by the Special Court.
19. On 9 April 2013, in response to a letter from the SCSL Registrar, the Government of Sierra Leone expressed its willingness to accept and enforce the sentences of those convicted of contempt of the Special Court.
20. Pursuant to Rule 103 of the Rules of Procedure and Evidence and the Practice Direction for Designation of State for Enforcement of Sentence, the SCSL President determines the state of enforcement. Relevant information has been sent to the President in order for her to make an informed decision as to the enforcement state. A confidential order has been issued by the President for two of the three prisoners to serve their sentences in Sierra Leone. Preparations are underway for the transfer of prisoners to the enforcement state.
21. The final contempt of court case, *Independent Counsel v. Prince Taylor*, was only completed on 14 May 2013, therefore, the process for deciding the enforcement of sentence state has just begun. An order from the President concerning the final prisoner should be made shortly and the SCSL will then hand over its final detainee to the enforcement state.

## **B. Completion and Closure Tasks**

22. In order to ensure that the transition phase is minimized, numerous completion and closure tasks must be completed prior to the delivery of the Appeal Judgement in the Taylor Case.

### *Liquidation of Infrastructure*

23. An assessment regarding Communications and IT infrastructure, applications and services of the SCSL has begun, with an aim to determining how and when to dismantle, transfer or destroy various elements of the Court's internal connections, as well as those with Brindisi and The Hague. For example, there are 46 servers combined in Freetown and The Hague, and the gradual process of liquidating them, while ensuring data security, will take time and careful planning. Additionally, determination for appropriate dates for discontinuation or transfer of all applications and services is ongoing.

### *Liquidation of Assets*

24. An inventory has been conducted as the Court begins the second phase of its liquidation policy, which will be completed once various assets are prepared for handover to the Government of Sierra Leone. Additionally, coordination for handing over of the Court Site to the Government of Sierra Leone continues. It is anticipated that the next phase of this process will be marked by the handing over of the SCSL Detention Centre to the Government in the coming weeks.

### *Closure of Liberia Office*

25. Following meetings held during a recent visit to Freetown by lead counsel of the Charles Taylor Defence team, Morris Anyah, the Principal Defender made arrangements for the immediate closure of the Defence office in Liberia. All assets at the Defence Office will be dealt with in accordance with the SCSL's respective liquidation and archiving policies.

### *Legacy Projects*

26. On 7 January 2013, the NGO, No Peace Without Justice, officially launched its report, "Making Justice Count: Assessing the Impact and Legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia". The report was commissioned by the European Union to detail the efficacy of the Court's outreach in Sierra Leone and Liberia and found that 91% of Sierra Leoneans and 78% of Liberians believe that the Special Court has contributed to bringing peace to their countries.
27. On 6-7 February 2013, the SCSL partnered with the International Center for Transitional Justice to host the second of two Legacy Conferences held in Freetown. The first Conference was held in New York on 7-8 November 2012.

The aim of the two conferences was to bring together individuals from the international community and Sierra Leone to discuss the legacy of the Court and create a report on Best Practices that could be helpful to other international criminal courts.

### **C. Transition Tasks**

28. In preparation for transition and closure, two groups meet fortnightly to discuss preparations for transition to the Residual Court - the Section Chiefs Meeting and the Residual Special Court Working Group. These groups have focused on the following transition tasks that make up the Court's continuing legal obligations with the Residual Court.

#### *Administrative and Technical Platform Sharing*

29. Close cooperation and coordination continues between SCSL and ICTY staff regarding the sharing of administrative and technical platforms between their respective residual mechanisms. An Exchange of Letters between the SCSL and ICTY was completed in February, establishing an agreement to create the IT and administrative infrastructure for the RSCSL. This agreement will remain in place through 30 September 2013.
30. Pursuant to the Exchange of Letters, the ICTY has provided – free of charge – office space, equipment, materials, supplies and furniture for the RSCSL interim office in The Hague for use by SCSL staff during the preparatory phase to ensure a smooth and timely transition to the RSCSL. The SCSL has refurbished the space to meet its requirements, and has procured equipment, including the V-block IT structure, which was delivered on 8 April 2013.
31. A Memorandum of Understanding (“MOU”) is currently being negotiated with the ICTY that will govern the administrative and technical platform sharing arrangements upon the Court's closure. A draft of the MOU has been sent to the Management Committee and Office of Legal Affairs for review. In order to facilitate these arrangements, the Management Committee previously approved the SCSL's request to harmonize its staff rules with those of the United Nations. The SCSL Personnel office is liaising with their counterparts at the ICTY to complete the harmonization process.

#### *Headquarters Agreements*

32. The Headquarters Agreement for the RSCSL Headquarters in Freetown has been signed by the Government of Sierra Leone. The RSCSL Headquarters Agreement with The Netherlands for the interim seat in The Hague is currently pending with the Government of The Netherlands.

*Archiving and Digitization*

33. Due to the heavy workload from three contempt of court cases and the terminal illness of one of its staff on the archiving team, the SCSL's Court Management Services and CITS were faced with a backlog in the preparation of the archives. As a result, in December 2012, a comprehensive health assessment of the archiving systems was conducted. Numerous recommendations were made to expedite the work and to ensure a smooth transition.
34. With regard to the description of documents, the assessment looked at the description system, its compatibility with ISAD(G) and the detail in the descriptions to establish how clear they are and the link between the description database (Docustore) and the digital storage (Trim) ensuring that all the systems properly communicate with each other. They also helped us with their knowledge of applying information technology to the archiving especially Docustore and Trim so that a better link between the two can be established.
35. The digitization of audio visual records continues in The Hague Sub-office. An assessment of the digitization process found that there was a significant backlog of material to be digitized. Therefore, additional resources have been allocated in order to expedite the digitization process.

*Access Policy*

36. A draft Access Policy on the management of the archives of the Court has been compiled and reviewed by all of the Court's organs, as well as by the Management Committee and the United Nations Office of Legal Affairs. Additionally, a committee, which includes the Prosecutor and Principal Defender, has been convened to make final revisions on the draft Access Policy.

*Review of Contracts, Agreements and Rules of Procedure and Evidence*

37. Due to the unavoidable absence of the Deputy Registrar, the Court hired a consultant, who has been assigned specifically to undertake a review of all contracts, agreements, grants, practice directions and Rules of Procedure and Evidence of the SCSL in order to advise the Court on its continuing obligations and termination requirements and recommending any amendments, if necessary. In particular, the SCSL's Enforcement of Sentences agreement with Rwanda has been reviewed in order to ensure a smooth transition of the agreement to the RSCSL. It should be noted that the Deputy Registrar has provided her services in this area, *pro bono*, while on leave.

*Witness and Victims Section*

38. The Witness and Victims Section ("WVS") continues to work closely with the National Witness Protection Unit and the Sierra Leone Police regarding the

eventual closure of the SCSL and the transition to the RSCSL. The WVS has responded to an increased number of concerns from its witnesses. One reason for this increase is the fear among the witnesses that the Court's completion would leave its witnesses unprotected.

39. A critical function of the Residual Court will be to continue to protect the Court's witnesses. All witnesses will be individually informed of the arrangements that are being put in place, including contacts of those who will continue to be responsible for their security and support. The Court has also initiated targeted outreach activities to inform the public about the Residual Court in communities across Sierra Leone and Liberia where witnesses have been threatened. Further, the WVS continues to prepare for the transition of witness responsibilities to the Residual Court, including through the ongoing revision of the final threat assessment prior to closure.
40. Additionally, the Witness Roundtable has been reconvened, following its November 2010 closure, with the aim of addressing post trial witness issues and consulting with the National Witness Protection Unit in order to determine modalities for cooperation with the RSCSL.

#### *Enforcement of Sentences*

41. The SCSL Chief of Detention is conducting an assessment of Enforcement of Sentences issues in preparation for the handover, as well as in an effort to resolve any pending issues. The Chief of Detention travelled to The Hague to meet with SCSL detainee Charles Taylor, and to Mpanga prison in Rwanda to make an assessment of conditions prior to closure. In preparation for the management of Freetown detainees, the "Supplementary Agreement Between the Special Court for Sierra Leone and the Government of Sierra Leone on the Enforcement of Sentences for Contempt of the Special Court" was signed, wherein the Government agreed to enforce the sentences of those convicted of contempt of court.

#### *Transfer of Johnny Paul Koroma Case*

42. The Court has one fugitive indictee at large, Johnny Paul Koroma. The Prosecutor is currently negotiating the transfer of the Koroma case to a State that has jurisdiction and is willing and adequately prepared to accept the case. Resources are required to analyse jurisdictional questions, examine case files, address witness issues, and prepare case files and evidence for potential transfer should the indictee be apprehended.

#### *Selection of Residual Court Principals*

43. The Appointment of the Residual Court Principals has been taken under advisement by the Management Committee and the Office of Legal Affairs. The



selection of the Roster of Judges, the President, the Prosecutor and the Registrar of the Residual Court will be determined soon, as well as the hiring of all support staff.

44. The determination of when the Special Court closes and the Residual Court will open is currently being discussed by the relevant parties, including the Special Court, the Management Committee and the Office of Legal Affairs. It is expected that these discussions will be concluded shortly and a decision will be made imminently.

#### *Peace Museum*

45. The SCSL continues to make progress on the design and construction of the Peace Museum, Memorial Garden and Peace Bridge. The Peace Museum's Project Management Team meets fortnightly to discuss issues pertaining to the acquisition of artefacts and completion of construction at the Peace Museum, which will house the archives of the Court and the Truth and Reconciliation Commission.

#### **D. Transition Period**

46. The transition period will begin upon delivery of the final judgement in the Charles Taylor Appeal and should last approximately 8-10 weeks.
47. Transition tasks that will be completed during this time period include the finalization of archives and court records, finalization of financial reports, liquidation of assets; repatriation of non-essential staff, CITS dismantling of services and conducting a final audit. A handover of the premises and other assets to the Government of Sierra Leone will then take place and the Residual Court will begin operations, followed by the transfer of paper and electronic records from the Office of the Registrar to the Residual Court.

#### **IV. Challenges**

48. In December 2012, an assessment of transition and completion tasks was carried out, which concluded that there were certain areas where improvement could be made. Due to a number of factors, including heavy workload, lack of adequate staff, the need for staff to work simultaneously on SCSL and RSCSL projects, lack of proper equipment and lack of structured accountability mechanisms, significant steps would need to be taken in order to meet projected timelines for transition and closure. With this in mind, requirements were revised, additional staff was hired and new equipment was purchased. In particular, as noted above, archiving was behind schedule, thus, additional staff was recruited, technical trainings were held and accountability mechanisms were put in place to regulate output.

49. Additionally, because the RSCSL is an entirely new entity and will be sharing its administrative and technical stage with another new entity, the process of creating an administrative and technical structure for the RSCSL is a significant challenge. The lack of prior experience in this area is an unavoidable fact and is being negotiated as carefully as possible. It has, however, caused difficulty anticipating future resource requirements, resulting in delays in decision making and procurement. In order to best prepare staff to deal with the novel issues regarding Residual structures confronting the Court, members of various sections have sought the advice of experts and participated in training programmes in Europe and Asia so that they can effectively take a lead on these issues.
50. As with any completion strategy, there have been challenges, but we are vigilant in recognizing them early and believe that with these new measures the work toward transition and closure will proceed on target.