

**BRIEFING TO THE SECURITY COUNCIL BY JUSTICE EMMANUEL  
OLAYINKA AYOOLA  
PRESIDENT, THE SPECIAL COURT FOR SIERRA LEONE**

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- Madam President, distinguished members of the Security Council, it is a great honour to represent the Special Court for Sierra Leone today and have the unique opportunity to brief you on the Court's efforts to implement its mandate in accordance with Security Council Resolution 1315 of 14 August 2000 and the Agreement between the United Nations and the Government of Sierra Leone signed on 16 January 2002.
- I would like to start by thanking the Secretary-General for supporting my initial request to hold a briefing on the Court in the Council and all Council members for accepting the suggestion of the Secretary-General.
- In the course of my presentation, I will describe the progress of the Court to date and, as requested by the General Assembly in resolution 58/284, I will introduce the updated version of the Special Court's completion strategy, adopted by the Management Committee for the Special Court on 19 May 2005. I will also outline the challenges ahead referring in particular to the issues of funding, security and cooperation of states.

**Background**

- Madam President, I will briefly outline those characteristics which make the Special Court different from the other international tribunals. Firstly, the Special Court is the first international tribunal to use "greatest responsibility" as its standard for prosecuting alleged perpetrators. Secondly, the Court is located in the country where the alleged crimes took place. Thirdly, the Special Court was established by an

agreement between the United Nations and the Government of Sierra Leone as an independent hybrid organization. This hybrid nature is reflected in the composition of its staff and its Judges, and in the fact that its Statute draws both from international humanitarian law and domestic criminal law. Finally, the Special Court is the first international criminal court to be funded from the outset by voluntary contributions.

- The Special Court began its operations in July 2002. I am happy to report that since then, the Court has seen significant progress in many areas, in particular in the areas of personnel, infrastructure, prosecutorial activities and judicial activities<sup>1</sup>.

- The founders of the Court, the Government of Sierra Leone and the United Nations, deliberately sharpened the focus of the Court, by limiting its mandate to those persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone in the relevant period<sup>2</sup>.

- Of the thirteen indictments issued by the Prosecutor, eleven are currently active. In December 2003, the indictments against Foday Sankoh and Sam Bockarie were withdrawn as a result of their deaths. Of the eleven remaining accused, nine are currently in the custody of the Special Court in Freetown. Of the two remaining accused, Charles Taylor, the former President of the Republic of Liberia, has been granted refuge in Nigeria; the leader of the Armed Forces Revolutionary Council,

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<sup>1</sup> This includes the recruitment of more than 300 international and national personnel; the renovation and conversion of a former Sierra Leone prison into the Special Court Detention Facility; the setting up of pre-fabricated office facilities; the construction of a new landmark courthouse; the issuance and approval of thirteen indictments; the conduct of hearings on a number of pre-trial motions; and the start of trials.

<sup>2</sup> Since 30 November 1996, the date of the Abidjan Peace Agreement between Government of Sierra Leone and the Revolutionary United Front.

Johnny Paul Koroma, also remains at large. Although the Prosecutor has indicated the possibility of additional indictments, their number would be extremely limited and, possibly, linked to existing indictees.

- In January 2004, the Trial Chamber issued decisions ordering three joint trials<sup>3</sup>. As a result, three joint trials, instead of nine separate trials, are currently underway in the two chambers of the Special Court. Two trials began in June and July 2004 respectively, before the first trial chamber, which is alternating them on a six-week basis. In February 2004, the President of the Special Court requested a Second Trial chamber. Judges of the second Trial Chamber were appointed by the Secretary-General and the Government of Sierra Leone in January 2005 and the third trial began in March 2005.

#### **Completion of trials**

- At the time of its creation, the Special Court was envisaged as a cost effective and time efficient accountability model. It is to be remembered that in his report on the establishment of the Special Court submitted to the Security Council in October 2000, the Secretary-General indicated that three years would be the "minimum time required for the investigation, prosecution and trial of a very limited number of accused". As the Court enters its fourth year of operations, the identification of a completion date for its operations becomes essential.

- As outlined in the Completion Strategy which was submitted to the distinguished members of the Council, the Registry consulted with the Office of the

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<sup>3</sup> Respectively of the three alleged members of the Revolutionary United Front (RUF) [Sesay, Kallon and Gbao], of the three alleged members of the Armed Forces Revolutionary Council (AFRC) [Brima, Kamara and Kanu] and of the three alleged members of the Civil Defence Forces (CDF) [Hinga Norman, Kondewa and Fofana].

Prosecutor and the Principal Defender in order to forecast a date for the completion of the ongoing trials.

- Based on the current usage of court time, as well as the actual witness hearing time, it is estimated that two of the three ongoing trials, namely those of the CDF and the AFRC, will be completed at the trial chamber stage around the end of 2005 or early 2006. Taking into account an estimated time for appeals of between 4 and 6 months, the appeals could finish by mid-2006.
- The completion of the RUF trial at the trial chamber stage is estimated by the end of 2006, and at the appeals stage by early to mid-2007. The Registry, in consultation with the other organs, is actively working to ensure that this provisional estimate is further improved upon and that the appeals stage be completed by the end of 2006. It should be noted, however, that the appeals stage will require a smaller establishment compared to the trial stage.
- In this context, I would like to underline that events before the Trial Chambers are, in our adversarial procedure, to a large extent, party-driven until decisions are made by the Trial Chambers. Apart from this, there are several factors that can influence the progress of the trial process, ranging from the number of witnesses to illness or sudden unavailability of key individuals participating in the proceedings.
- Trials at the Special Court may also take additional time due to specific factors such as the location in Sierra Leone amidst a still fragile and unpredictable political and security climate, and the need for protective measures and security arrangements for the majority of witnesses testifying before the Court.
- Nevertheless, the Court remains seized of the determination to complete the trials expeditiously, without sacrificing integrity of the judicial process and fair trial to

the need for expedition.

- Madam President, let me turn now to some key issues, all of which impact the Completion Strategy, namely those of funding, security, and the cooperation of states in transferring to the Special Court those indictees who are still at large.

### **Funding**

- Funding has been, since the early stages of its life, one of the main concerns of the Court. The funding issue is raised against the background of the reluctance on the part of the United Nations at the inception of the Court to embark on another tribunal funded through assessed contributions, in addition to the ICTR and ICTY. Resolution 1315 determined that the operations of the Special Court would be financed through voluntary contributions of funds, equipment and services from States, intergovernmental and nongovernmental organizations. This financial arrangement was adopted in spite of the Secretary-General's concern that voluntary contributions would not provide the assured and continuous source of funding for the operations of the court, and that a special court based on voluntary contributions would be neither viable nor sustainable.

- As a compromise, however, the Secretary-General asserted his right to revert to the Security Council 'should voluntary funding be insufficient for the Court to implement its mandate' [article 6 of the Agreement].

- To date, the Special Court has received a total of approximately \$54.9 million in voluntary contributions from 33 States, against a four year budget of \$104 million. As a result of this shortfall in voluntary contributions, the Secretary-General reverted to the Security Council and sought a subvention under the UN programme budget for special political missions, to supplement voluntary contributions. With the Security

Council's endorsement, the Secretary-General requested the General Assembly to appropriate up to \$40 million to the Special Court. The General Assembly at its fifty-ninth session authorised a commitment authority of \$20 million for the period 31 July 2004 to 30 June 2005. The Fifth Committee is currently considering a further commitment authority of \$13 million for the period 31 July to 31 December 2005.

- I wish to emphasise that there is currently no assurance of funds for the Special Court beyond the end of 2005, even though the Registrar is pursuing additional voluntary contributions from member states and other organizations, including the European Union. The Special Court has recently employed a consultant to develop a fundraising strategy, which the Registrar will discuss this week with the Management Committee.

- The Special Court will not only need funds to carry it through the end of the trials, but also, after rendering final judgments in the trials of all accused in custody, for the purposes of transferring any convicted persons to prisons outside of Sierra Leone and discharging a number of residual activities that will need to be carried out. Those include the supervision of enforcement of sentences, if any; the provision of support and protection to witnesses, particularly those who are relocated from Sierra Leone to other States<sup>4</sup>; the maintenance of judicial records and archives; and, importantly, the retained capacity to prosecute any accused who have been indicted but who are brought into the custody of the Special Court after or shortly before the winding down process.

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<sup>4</sup> Under bilateral agreements on the relocation of witnesses concluded between the Special Court and States, the Special Court will have specific legal obligations which will continue even after witnesses have been relocated.

## Security

- In addressing the issue of security, I take the opportunity to reiterate that a crucial feature which differentiates the Special Court from the international tribunals for the Former Yugoslavia and for Rwanda is the location of the Special Court in the country in which the conflict took place.
- There are, no doubt, crucial advantages in locating the Court in the country where the conflict took place<sup>5</sup>. However, the location in Sierra Leone has also resulted in considerable pressure on the operations of the Special Court as a result of the security situation. A very large part of the budget is devoted to security, namely 20 percent, of which substantial resources have to be allocated to the protection of witnesses during the trial and post-trial phase<sup>6</sup>.
- The presence of UNAMSIL in Sierra Leone has been crucial in supporting the Special Court's mandate. I would like to commend the Mission for the efficient security provided to the site of the Special Court. In particular, a Company of Nigerian soldiers has been providing security since the early stages of the Special Court. The arrangement has been of the greatest assistance.
- The Department of Peacekeeping Operations briefed you last week on UNAMSIL's withdrawal plan, and the Secretary-General has highlighted in his latest report on UNAMSIL that serious challenges continue to be to be faced in building

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<sup>5</sup> In particular, the opportunity to connect and interact with the civilian population in explaining the purpose of the Court and identifying their expectations of it, and the diffusion of legal knowledge from international to local judicial officials, which will assist in rebuilding the country's judicial system.

<sup>6</sup> As of last week, the Witness and Victims Section was taking care of an overall total of 123 witnesses and dependants, both in separate safe houses and in the Special Court's Secure Facility. In addition, the Section is currently dealing with over 100 witnesses who have already testified, in the post trial monitoring program, and roughly 100 more witnesses for security and support assessments.

durable peace in Sierra Leone, also in light of the regional security situation. The report also notes that new security arrangements for the Special Court will need to be in place by early November 2005.

- The Registrar has informed both DPKO in New York and UNAMSIL on the ground of our preferred options and our financial constraints, as no budgetary provision has been made for security post-UNAMSIL. It is felt that the only viable option for the Special Court is to retain an international force on-site, preferably a military force, or a formed police unit from UNMIL. To this end, DPKO has initiated consultations with UNAMSIL, UNMIL and with the Special Court to provide recommendations to the Security Council by July 2005 and ensure that arrangements are in place in due time. We hope that the Security Council will support the continued provision of security to the Special Court, as the Court was created as a part of the overall effort of the international community to bring lasting peace and stability to Sierra Leone.

#### **Cooperation of member states**

- Another crucial issue at this stage in the life of the Court concerns the transfer to the Court of those indictees who are still at large. In my capacity as President of the Special Court, I raise this issue without forming any opinion on the individual criminal responsibility of any person indicted before the Special Court, but to highlight to you the practical implications of outstanding cases.

- As I have earlier mentioned in the course of this presentation, there are currently two indictees who are not yet in the in custody of the Special Court in Freetown. The whereabouts of Johnny Paul Koroma, who is indicted with 17 counts, are not known. However, the indictment remains valid, until evidence of his death



may be available to the Prosecutor. The other indictee, Charles Taylor, who resigned as President of the Republic of Liberia in August 2003, has since that date been granted refuge in Nigeria. On 3 March 2003, the Prosecutor had issued a seventeen-count indictment against him, for crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and other serious violations of international humanitarian law. His indictment was disclosed by the Special Court on 12 June 2003. The Special Court has continued its efforts, so far unsuccessfully, to have Taylor transferred to Sierra Leone for the conduct of the trial against him, and all necessary logistical and financial arrangements are in place.

- A delay in the transfer and trial of Charles Taylor will have a negative impact in terms of completion strategy, funding and security requirements. Also, the importance of trying Taylor and Johnny Paul Koroma before the Special Court cannot be over-emphasized because of the strong impact that this would have on the perception that the people of Sierra Leone and of Africa have of the Special Court and of similar institutions, and on the Court's contribution to combating the culture of impunity.

### **Outreach and public affairs**

- The Special Court has since its inception endeavoured to play an active role in contributing to the consolidation of peace in Sierra Leone and to the development of the rule of law.
- Since the very beginning of its operations, the Court has been aware of the need for a strong outreach programme in order to take full advantage of the unprecedented opportunity presented by its location. The Outreach Section, which is

entirely composed of Sierra Leonean staff, has undertaken a wide range of initiatives to create awareness and access to the Special Court, to provide forums for discussion about the meaning of the court's mandate, and to stimulate activities for legal sector reforms within Sierra Leone<sup>7</sup>.

- In a particularly innovative programme, the Special Court's Public Affairs Office has been producing video summaries of trial proceedings for the outreach efforts in the provinces, which are screened by the court's outreach program across Sierra Leone on mobile video units. The work of the Public Affairs Office with the local media, including radio campaigns, also serves to explain the Special Court's activities and legal complexities to the general public.
- I am proud to say that the outreach efforts of the Special Court have been regarded as a model by the Tribunals for Rwanda and Former Yugoslavia, and by the International Criminal Court.

### **Legacy**

- The location of the Special Court in Sierra Leone and its hybrid nature have given a prominent relevance to the concept of legacy. The notion of the legacy of the Special Court is embedded within the court itself and within the civil society community surrounding it.
- Foremost, the Special Court will leave behind a sense of justice for crimes

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<sup>7</sup> In particular, the Outreach Section regularly organizes town hall meetings in all fourteen provinces of Sierra Leone. It conducts training sessions for members of the local justice system, the Republic of Sierra Leone Armed Forces, and the Sierra Leone Police to inform them about ways in which the operations of the court could benefit the local administration of justice. The Section has also conducted an extensive program of activities with schools and colleges nationwide, and with a number of civil society groups and other audiences, in particular victims of the conflict.

committed during the decade-long conflict in Sierra Leone, and engender public awareness that criminal accountability for such crimes is possible.

- The Special Court will also leave a legacy for the Sierra Leonean personnel, who represent approximately 60 percent of the 340 staff members. In many ways, the Special Court will enable its Sierra Leonean personnel in all areas of operations, and their local counterparts, to develop their professional expertise despite the Special Court's lack of an explicit capacity-building mandate<sup>8</sup>.

- It is expected that when the Special Court winds down, it will also leave behind tangible and material resources for the Sierra Leonean legal system, including a state-of-the-art courthouse; a modern detention facility, in full compliance with international standards on prison accommodation; and the highly specialized collection of the Court's Library.

- Globally, our vision and mission is to leave a legacy that will serve as a model for ensuring accountability for violations of international humanitarian law in other post-conflict situations, in an expeditious and financially restrained fashion, without compromising on observance of fair hearing in the judicial process.

## **Conclusion**

- In conclusion, I would like to thank the Security Council and in particular those member states who funded and supported the Special Court thus far. I would also like to express my gratitude to the Secretary-General for his unwavering support,

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<sup>8</sup> These include legal professionals (such as prosecutors, defence counsel, court administrators and interns working in or before the Special Court) as well as administrative and support staff; correctional officers who have gained training and experience in the Detention Facility; law enforcement officials who have worked closely with Special Court security personnel; providers of psycho-social assistance and support in governmental institutions as well as NGOs who have collaborated with the Witnesses and Victims Support Section.

at a time when the United Nations has to face many varied challenges worldwide.

- The international community cannot afford to let the Court fail as such failure would send a negative message to those struggling to combat the culture of impunity and would undermine respect for human rights and international law, thus emboldening any who may plan to embark on a course of conduct that is in deliberate violation of international humanitarian law.

- With those key issues that I have outlined today in mind, I urge the Security Council to continue to give its wholehearted and effective support to the Special Court in any manner it may consider appropriate, in particular in the areas of adequate funding, the transfer of those indictees at large, and maintenance of the necessary security until the end of the operations of the Court.

- As the outgoing President, I would like to end on a more personal note. I am honoured, as are all my colleagues, judges of the Court and the entire staff of the court, to be a part of the Special Court and of the determination of the international community to end impunity. I would like also to express my gratitude to the Office of Legal Affairs of the United Nations. I acknowledge with gratitude the tremendous, healthy and constructive interest shown by several non governmental organizations in the work of the Court. Finally, I would like to express my gratitude to the Special Court's managers who are here today and to commend them and all the staff of the Court for helping to achieve justice for the victims of the Sierra Leonean conflict, sometimes under harsh circumstances, with an innovative and true commitment.