

DOCUMENT OF INTERNATIONAL MONETARY FUND
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EBS/87/145

CONFIDENTIAL

July 2, 1987

To: Members of the Executive Board

From: The Secretary

Subject: Sierra Leone - Overdue Financial Obligations to the Fund -
Report and Complaint Under Rule S-1, and Notice of Failure
to Settle Trust Fund Obligations

Attached is a report and complaint under Rule S-1 with respect to Sierra Leone's overdue financial obligations in the SDR Department, and notice of failure to settle Trust Fund obligations.

As explained in paragraph 6 of the paper, it is proposed that the substantive consideration of the complaint be held together with the review of Decision No. 8566-(87/61), adopted April 17, 1987, regarding Sierra Leone's overdue obligations in the General Department which is scheduled to take place on July 17, 1987. Such timing would entail a departure from the standard one-month period for substantive consideration of a complaint, but is consistent with the flexibility of timing that has been applied in similar circumstances in the past.

It is not proposed to bring the attached memorandum to the agenda of the Executive Board for discussion unless an Executive Director so requests by the close of business on Wednesday, July 8, 1987. In the absence of such a request and in the absence of full settlement by Sierra Leone of the overdue financial obligations by that date, the draft decision that appears on page 3 will be deemed approved by the Executive Board and it will be so recorded in the minutes of the next meeting thereafter.

Mr. Berthet (ext. 7633) or Mr. Pritchett (ext. 7640) is available to answer technical or factual questions relating to this paper.

Att: (1)

INTERNATIONAL MONETARY FUND

Sierra Leone - Overdue Financial Obligations to the Fund -
Report and Complaint Under Rule S-1, and Notice
of Failure to Settle Trust Fund Obligations

Prepared by the Treasurer's, African, and Legal Departments

(In consultation with the Exchange and Trade Relations Department)

Approved by F.G. Laske, G.E. Gondwe, and F.P. Gianviti

July 2, 1987

1. Sierra Leone is at present overdue in discharging net SDR charges due May 1, 1987 and Trust Fund obligations dating from January 30, 1987, as well as a number of other financial obligations to the Fund. On April 17, 1987 the Executive Board considered a report and complaint under Rule K-1 of the Fund's Rules and Regulations regarding the non-observance by Sierra Leone of its financial obligations to the Fund in the General Resources Account. 1/

The decision adopted by the Executive Board on April 17, 1987 provides that Sierra Leone shall not make use of the Fund's general resources until Sierra Leone has become current in its obligations relating to repurchases and the payment of charges in the General Resources Account. 2/ The decision further provides that a review will be held within a period of three months from the date of the decision.

2. Sierra Leone's overdue obligations to the Fund at the time of the decision referred to above totaled SDR 5,473,270, including Trust Fund obligations of SDR 52,757, and the Executive Board was informed at that time that a notice of failure to settle Trust Fund obligations would become necessary in the absence of prompt settlement of these Trust Fund obligations. 3/ Since then, additional obligations totaling SDR 6,824,745 have become due while Sierra Leone has not made any payment to the Fund. Accordingly, Sierra Leone's overdue financial obligations to the Fund now total SDR 12,298,015, as shown in Attachment I.

Sierra Leone has been repeatedly late in meeting its obligations in the SDR Department since 1984, and a complaint under Rule S-1 of the

1/ See EBS/87/63 (3/17/87), EBS/87/78 (4/13/87), and EBS/87/78, Sup. 1 (4/20/87).

2/ Decision No. 8566-(87/61), adopted April 17, 1987.

3/ See paragraph 3 on page 1 of EBS/87/78.

Fund's Rules and Regulations was issued on September 17, 1985. 1/ Following settlement of the overdue obligations in the SDR Department on March 12, 1986, the complaint under Rule S-1 was withdrawn. 2/

3. The most recent description of the economic and financial situation of Sierra Leone is contained in the recent staff reports on overdue financial obligations to the Fund, which were discussed by the Executive Board on April 17, 1987. 3/ A staff team is presently in Freetown and an update of developments will be provided in the staff report to be issued in connection with the forthcoming review by the Executive Board of its decision to limit Sierra Leone's use of the Fund's general resources scheduled for July 17, 1987.

4. In a cable dated June 18, 1987 Fund management informed the authorities that unless Sierra Leone settled its overdue net SDR charges promptly, it would be necessary to issue a complaint under Rule S-1, and that if its overdue Trust Fund obligations were not settled promptly, a notice of failure to settle Trust Fund obligations would need to be issued. 4/ No reply has been received from Sierra Leone concerning the timing of settlement of the overdue net SDR charges or Trust Fund obligations.

5. Under the Articles of Agreement, By-Laws, and Rules and Regulations of the Fund, a member that does not observe its obligations under the Articles of Agreement is subject to the application of remedies by the Fund that seek to protect the Fund's resources in the General Department and the rights of participants in the SDR Department. The Fund has a certain choice of remedies, and discretion in selecting the remedy appropriate to the circumstances. These various options, as outlined in papers for other members in similar circumstances, are set out in the Annex to this report. In the past, in similar circumstances, the Fund has adopted a decision in accordance with paragraphs 5(b)(ii) and 5(c) as set forth in the Annex, after having given full and adequate opportunity to the member to remedy the situation or state its case.

6. In the absence of any indication of prompt settlement of the overdue obligation in the SDR Department and of the overdue Trust Fund obligations, it is considered appropriate that a complaint pursuant to Rule S-1 and a notice of Sierra Leone's failure to settle its Trust Fund obligations be issued at this time. In view of the Executive Board's review of its Decision No. 8566-(87/61) mentioned in paragraph 1, to be held on July 17, 1987, it is proposed that the Managing Director's complaint and notice, which are contained in Attachment II along with a

1/ See EBS/85/220 (9/17/85).

2/ See EBS/86/63 (3/14/86).

3/ See EBS/87/63 (3/17/87) and EBS/87/78 (4/13/87).

4/ See EBS/87/78, Supplement 3 (6/23/87).

draft cable to the authorities (Attachment III), be noted by the Executive Board on a lapse of time basis and that the matter be placed on the agenda of the Executive Board for July 17, 1987 together with the review of Decision No. 8566-(87/61). Under this proposal, the period between the issuance of the complaint and notice and their consideration by the Executive Board would be about two weeks, as compared with the standard one-month period.

Accordingly, the following draft decision is proposed for adoption by the Executive Board:

Proposed Decision

1. The complaint of the Managing Director regarding Sierra Leone's overdue obligation in the SDR Department and the notice of failure to settle Trust Fund obligations dated July 2, 1987, in EBS/87/145, are noted. It shall be placed on the agenda of the Executive Board on July 17, 1987, the same date as the review of Decision No. 8566-(87/61). If at that time Sierra Leone is not current in its obligation to pay charges in the SDR Department, the Fund will consider suspending the right of Sierra Leone to use SDRs it acquires after the suspension pursuant to Article XXIII, Section 2(b), other than for settlement of financial obligations to the Fund.

2. The Fund urges Sierra Leone to become current in its financial obligations to the Fund promptly and to avoid thereby the need for the Fund to take remedial action.

3. Consideration of the complaint in accordance with Rule S-1 and the Trust Fund notice particularly affects Sierra Leone. The member shall be informed by rapid means of communication of this matter and of its right to present its views through an appropriately authorized representative.

Attachments

Sierra Leone - Overdue Financial Obligations to the Fund

(As of July 1, 1987)

| Type of Obligation | Date of Purchase or Loan | Due Date | Days Overdue | SDR Amount |
|-------------------------------------|--------------------------|----------|--------------|-------------------|
| <u>General Resources Account</u> | | | | |
| CF repurchase | 2/17/83 | 2/13/87 | 138 | 2,587,500 |
| Quarterly charges | -- | 2/13/87 | 138 | 719,173 |
| Special charges GRA | -- | 2/23/87 | 138 | 1,048 |
| EF repurchase | 4/02/81 | 4/01/87 | 91 | 1,313,375 |
| EF repurchase | 4/02/81 | 4/01/87 | 91 | 799,417 |
| Assessment | -- | 4/30/87 | 62 | 3,339 |
| Quarterly charges | -- | 5/11/87 | 51 | 691,124 |
| CT repurchase | 2/14/84 | 5/13/87 | 49 | 755,078 |
| CF repurchase | 2/17/83 | 5/15/87 | 47 | 2,587,500 |
| EF repurchase | 5/19/81 | 5/18/87 | 44 | 558,333 |
| EF repurchase | 5/19/81 | 5/18/87 | 44 | 837,500 |
| Special charges GRA | -- | 5/21/87 | 41 | <u>11,920</u> |
| Subtotal | | | | 10,865,307 |
| <u>Special Disbursement Account</u> | | | | |
| SAF interest | -- | 6/30/87 | 1 | 28,714 |
| <u>SDR Department</u> | | | | |
| Net SDR charges | -- | 5/01/87 | 61 | 251,630 |
| <u>Trust Fund</u> | | | | |
| Repayment (balance) | 7/31/80 | 1/30/87 | 152 | 52,220 |
| Special charges TF | -- | 2/23/87 | 128 | 537 |
| Repayment | 4/30/80 | 4/29/87 | 63 | 307,500 |
| Repayment | 11/13/79 | 5/12/87 | 50 | 757,500 |
| Special charges TF | -- | 5/21/87 | 41 | 5,013 |
| Interest | -- | 6/30/87 | 1 | <u>29,594</u> |
| Subtotal | | | | 1,152,364 |
| Total | | | | <u>12,298,015</u> |

To: Members of the Executive Board July 2, 1987

From: The Managing Director

Subject: Sierra Leone - Complaint Under Rule S-1, and Notice of Failure to Settle Trust Fund Obligations

1. The following complaint is made in accordance with Rule S-1 of the Fund's Rules and Regulations. The complaint is that it appears to me that Sierra Leone is not fulfilling the obligation of Article XX, Section 2 of the Articles of Agreement, referred to in Rule S-1, to pay charges in the SDR Department. The nonfulfillment of this obligation is a basis for a complaint under Rule S-1 and could lead to suspension under Article XXIII, Section 2(b). As of July 1, 1987, this obligation was to pay charges of SDR 251,630, which were due on May 1, 1987.

2. The following notice is provided in accordance with the Fund's responsibility as Trustee of the Trust Fund established by Executive Board Decision No. 5069-(76/72):

(a) It appears to me that Sierra Leone is not fulfilling the obligation pursuant to Section II, paragraph II, paragraph 4(a) of the Instrument annexed to that decision to repay disbursements and to pay interest under its Trust Fund loans. As of July 1, 1987 Sierra Leone was to pay Trust Fund interest of SDR 29,594 due on June 30, 1987; to repay balance of SDR 52,220 due on January 30, 1987 in respect of a Trust Fund loan received on July 31, 1980; to repay SDR 307,500 due on April 29, 1987 in respect of a Trust Fund loan received on April 30, 1980; and to repay SDR 757,500 due on May 12, 1987 in respect of a Trust Fund loan received on November 13, 1979.

(b) It appears to me that Sierra Leone is not fulfilling the obligation pursuant to Executive Board Decision No. 8165-(85/189) G/TR, adopted December 30, 1985, as amended. As of July 1, 1987, Sierra Leone was to pay SDR 537 due on February 23, 1987 and SDR 5,013 due on May 21, 1987, each in respect of special charges under the Trust Fund.

The Honorable Sheka S. Kanu
Governor of the Fund and
Minister of Finance
Ministry of Finance
Freetown, Sierra Leone

July , 1987

Dear Governor Kanu:

I refer to the various communications of the International Monetary Fund to you concerning the nonobservance of obligations under the Articles of Agreement of the Fund.

I attach for your information the text of my memorandum of July 2, 1987 to the Executive Board setting forth the obligation under the Articles of Agreement of the International Monetary Fund and under Executive Board Decision No. 5069-(76/72) establishing the Trust Fund that appears to me is not being observed by Sierra Leone.

The Executive Board has decided to place on its agenda for July 17, 1987, the same date as the review of Decision No. 8566-(87/61) on overdue obligations in the General Department, the complaint set forth in my memorandum.

Consideration of the complaint in my memorandum could result in the suspension under Article XXIII, Section 2(b) of the right of Sierra Leone to use SDRs that it may acquire after the suspension, other than for settlement of financial obligations to the Fund.

The Executive Board will also consider the notice in paragraph 3 of my memorandum, which could affect future relationships between the Fund and Sierra Leone.

The Government of Sierra Leone is entitled under the Articles and By-laws of the Fund, and therefore invited, to present its views, both orally and in writing, through an appropriately authorized representative at the meeting of the Executive Board referred to above and at such subsequent meetings as the Executive Board may hold on this matter at the Fund's headquarters in Washington, D.C. If you desire, the Executive Director elected by Sierra Leone may represent Sierra Leone at any such meetings.

I am prepared to make arrangements at your request for the full briefing of your representative on all relevant matters.

Michel Camdessus
Managing Director
International Monetary Fund

Legal Remedies Available to the Fund in Cases of
Members with Overdue Financial Obligations

1. Under the Articles of Agreement, By-Laws, and Rules and Regulations of the Fund, a member that does not observe its obligations under the Articles of Agreement is subject to the application of remedies by the Fund that seek to protect the Fund's resources in the General Department and the rights of participants in the SDR Department. The Fund has a certain choice of remedies, and discretion in selecting the remedy appropriate to the circumstances.

2. With respect to the General Department (whether in the General Resources Account or the Special Disbursement Account), the Fund should deal with (i) the outstanding use of the Fund's resources, including the accrual of charges or interest, and (ii) the question of future access to the Fund's resources. Such action would be based on Article XXVI, Section 2, which provides that:

(a) If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund. Nothing in this Section shall be deemed to limit the provisions of Article V, Section 5 or Article VI, Section 1.

(b) If, after the expiration of a reasonable period the member persists in its failure to fulfill any of its obligations under this Agreement, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the Governors having eighty-five percent of the total voting power.

(c) Regulations shall be adopted to ensure that before action is taken against any member under (a) or (b) above, the member shall be informed in reasonable time of the complaint against it and given an adequate opportunity for stating its case, both orally and in writing.

Such action as indicated above with respect to Article XXVI, Section 2(a) has been taken to date in connection with a failure to fulfill financial obligations to the Fund in the cases of Viet Nam (Executive Board Decision No. 7855-(84/173), 12/3/84), Guyana (Executive Board Decision No. 7972-(85/73), 5/15/85), Liberia (Executive Board Decision No. 8134-(85/169) G/S/TR, 11/25/85), Sudan (Executive Board Decision No. 8168-(86/1) G/TR, 1/3/86), and Peru (Executive Board Decision No. 8276-(86/76), 5/6/86).

In circumstances in which the Fund is authorized to declare the member ineligible to use the general resources of the Fund, it can and has taken a lesser action under Rule K-2, which provides that:

Whenever the Executive Board is authorized by the Articles to declare a member ineligible to use the general resources of the Fund it may refrain from making the declaration and indicate the circumstances under which, and the extent to which, the member may make use of the general resources.

3. With respect to the SDR Department, Rule S-1 provides that:

The Managing Director shall report to the Executive Board any facts on the basis of which it appears to him that a participant is not fulfilling obligations under the Articles that could lead to a suspension under Article XXIII, Section 2, and may include a complaint in his report.

If a member holds no SDRs, net charges are overdue and continue to accrue, and the Fund must create SDRs to the extent of the nonpayment, it is appropriate to consider action under Article XXIII, Section 2(b), which provides that:

If the Fund finds that a participant has failed to fulfill any other obligation with respect to special drawing rights, the Fund may suspend the right of the participant to use special drawing rights it acquires after the suspension. 1/

4. A failure of a member to comply with its obligation to repay loans received under the Trust Fund does not constitute a failure of an obligation under the Articles in the sense of Article XXVI, Section 2 and Rule K-1 and, consequently, the Fund has no authority to apply any of the remedies available under these provisions with respect to a member that fails to repay a Trust Fund loan. Similarly, a failure of a member to make a timely repayment of such a loan cannot lead to the member's ineligibility to use the Fund's general resources under Article V, Section 5, which allows the Fund to apply certain remedies in the case of a member that is using the general resources of the Fund in a manner contrary to the purposes of the Fund. This does not mean, however, that a member's obligations under the Trust Fund are not binding upon it or that the Fund does not regard a failure to repay Trust Fund loans as a serious violation of the member's obligations under the Trust. As Trustee of the Trust Fund, the Fund has the obligation to provide and administer loans in accordance with the terms and conditions set forth in the governing Instrument. That Instrument sets forth the schedule and terms of repayment applicable to all loans from the Trust. In carrying out its responsibilities, the Fund is bound to comply strictly with the terms of the Instrument and thus to assure the repayment of Trust Fund loans. While no specific remedies are provided under the Trust Fund Instrument in respect of the duty of the recipients of Trust Fund loans to make timely payments, in an appraisal of a member's

1/ The reference to "any other obligation" is an indirect reference to the main obligation under Article XIX, Section 4 to provide currency in a transaction with designation, which is not involved here.

standing vis-a-vis the Fund, for any reason, including decisions on any request to use the Fund's resources, a failure by a member to do so would not be disregarded by the Fund.

5. Application of the Fund's Articles, Rules, and Procedures as set forth in paragraphs 2, 3, and 4 allows for the following actions.

(a) With respect to the General Department, the Fund has a choice of actions that it may take:

(i) the Fund could find that the member has not observed the relevant obligations under the Articles of Agreement referred to earlier, and declare the member ineligible to use the general resources of the Fund. This would mean that even if the member were to resume to fulfill these obligations under the Articles, its eligibility would not be restored automatically but a further decision of the Executive Board would be required, which could provide for the restoration of eligibility with or without special limitations or conditions, or

(ii) the Fund could find as in (i), but refrain from a declaration of ineligibility by adopting the course of limitation in accordance with Rule K-2, and decide that the member may not make use of the general resources of the Fund until such time as the member is fulfilling its obligations under the Articles of Agreement other than obligations with respect to SDRs, or indicate the circumstances under which, and the extent to which, the member may make use of the general resources.

(b) With respect to the SDR Department, the Fund also has a choice of actions that it may take:

(i) the Fund could find that the member has not observed its obligation to which Article XXIII, Section 2(b) applies, and suspend the member's right to use SDRs it acquires after the suspension. This would mean that termination of the suspension would require a further decision by the Executive Board, which may be taken with or without special limitations or conditions, or

(ii) the Fund could find as in (i), but provide that the suspension will terminate when the member is fulfilling its obligation under the Articles to which Article XXIII, Section 2(b) applies.

(c) With respect to the Trust Fund, the Fund could inform the member that, if the member were otherwise eligible to make use of the general resources of the Fund, the existence of any overdue obligations to the Trust Fund would nonetheless be taken into account in Fund decisions on any request by the member to use the general resources of the Fund.

