



POST-LEGISLATIVE SCRUTINY OF THE INTERNATIONAL TRIBUNALS (SIERRA LEONE) ACT 2007

Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty

January 2014

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MEMORANDUM TO THE FOREIGN AFFAIRS COMMITTEE: POST-LEGISLATIVE SCRUTINY OF THE INTERNATIONAL TRIBUNALS (SIERRA LEONE) ACT 2007

A. Summary of the objectives of the Act

The International Tribunals (Sierra Leone) Act 2007 amended the International Criminal Court Act 2001 (ICCA). It inserted article 77A into the ICCA which provided for a vires to draft secondary legislation to apply to Sierra Leone sections 42-48 of the ICCA on sentence enforcement agreements with the UK.

The Special Court for Sierra Leone was established in 2002 by treaty between the Government of Sierra Leone and the United Nations. Its function was to prosecute those accused of bearing the greatest responsibility for serious violations of international and national law during the civil war in Sierra Leone (1991-2002).

In 2006 the UK offered to enforce any sentence of Charles Taylor by the Special Court of Sierra Leone. We made this offer as part of a diplomatic agreement which the Dutch Government required before offering to host the trial in The Hague. The decision, subject to parliamentary legislative approval, was announced to the UK Parliament by the then Foreign Secretary the Right Honourable Margaret Beckett on 15 June 2006 in a Written Ministerial Statement, which read:

“Since 29 March, former President of Liberia, Charles Taylor, has been in detention at the Special Court for Sierra Leone in Freetown, indicted for crimes against humanity and war crimes allegedly committed during Sierra Leone's brutal civil war.

Regional leaders and the wider international community judge his continued presence there to pose a considerable and immediate threat to regional security. An attempt to free him by force, for example, even if unsuccessful, could jeopardise the fragile security of Sierra Leone, Liberia and neighbouring states.

It is for this reason that regional leaders and the international community have supported the proposal to hold the trial outside the region, as is provided for in the agreement establishing the Court.

The Government of the Netherlands has agreed that it would allow the trial to take place before the Special Court for Sierra Leone sitting in The Hague. If acquitted, former President Taylor would be free to leave the Netherlands. If convicted, he would serve any sentence imposed by the Court. The Dutch offer is conditional upon a State agreeing now to allow former President Taylor, if convicted and should circumstances require, to serve his sentence in that State. Once that condition is met, the proposal to transfer the trial could be discussed again by the UN Security Council, where a draft Resolution establishing a legal basis for transfer is already in circulation.

At the request of the UN Secretary-General, I have therefore agreed that, subject to parliamentary legislative approval, the United Kingdom would allow former President Taylor, if convicted and should circumstances require, to enter the UK to serve any sentence imposed by the Court. This is entirely without prejudice to the eventual location or outcome of the trial. Former President Taylor's right to a fair trial must be respected.

Were the Court to acquit former President Taylor, we would not be required to allow him to come to the UK. Were he to be convicted, and subsequently released after serving a sentence, the expectation at this stage is that former President Taylor would leave or face removal from the UK.

By offering these assurances, we are removing one potential obstacle to allowing the trial to proceed. We are also demonstrating the UK's absolute determination to see the alleged perpetrators of genocide, crimes against humanity and war crimes held to account.

The UK has a strong international reputation as one of the world's leading advocates for international justice. We played a key role in negotiating the establishment of the International Criminal Court as well as the establishment of other international criminal tribunals relating to the former Yugoslavia and Rwanda, as well as the Special Court for Sierra Leone itself.

Agreeing to allow former President Taylor, if convicted and should circumstances require, to serve his sentence in the UK sends a strong signal of our willingness to combat impunity by assisting in bringing those who bear the greatest responsibility for war crimes, crimes against humanity and genocide to justice.

Former President Taylor's handover to the Special Court in Freetown was an historic day for the people of Sierra Leone and West Africa. The international community must not fail them by asking them to run the risk associated with his continued presence in Freetown. It is for that reason that we have decided to take this step.

The UK has been a key player in efforts to support Sierra Leone, Liberia and the wider region, as it seeks to bring an end to the cycle of destruction and violence which it has suffered for so long.

We were also instrumental in bringing peace to Sierra Leone, and have supported Sierra Leone as it has built on that peace, and worked to put the years of war decisively in the past. Our action today will help to close the chapter of conflict, by allowing the trial of former President Taylor to go ahead, which will determine the truth regarding his alleged involvement in Sierra Leone's vicious civil war."

Although the International Criminal Court Act 2001 contained provision for sentence enforcement in the UK of those convicted by the International Criminal Court, this did not provide an adequate legal basis to implement a sentence enforcement agreement with the Special Court of Sierra Leone. The International Tribunals (Sierra Leone) Act 2007 had a single purpose: to add a new section to the International Criminal Court Act 2001 so as to permit the implementation in the law of England and Wales of an agreement with the Special Court for Sierra Leone under which persons convicted by that Court may serve their sentences of imprisonment in England and Wales.

The Act had cross-party support and received Royal Assent on 18 June 2007.

B. Implementation

Following Royal Assent, Lord Malloch-Brown, Minister of State at the Foreign and Commonwealth Office, signed the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Special Court for Sierra Leone on the enforcement of sentences of the Special Court for Sierra Leone (the sentence enforcement agreement) on 10 July 2007.

On 26 April 2012, the Special Court for Sierra Leone convicted Charles Taylor on 11 counts of war crimes, crimes against humanity, and other serious violations of international humanitarian law, including, murder, forced labour and slavery, recruiting child soldiers and rape. On 30 May 2012, the Special Court for Sierra Leone sentenced him to 50 years imprisonment. Both the defence and prosecution appealed.

On 26 September 2013, the Special Court for Sierra Leone delivered their judgment on appeal and upheld the original sentence. Following a request from the President of the Special Court for Sierra Leone to the UK, former President Taylor was transferred to the UK on 15 October to serve the remainder of his sentence in a British prison. Charles Taylor has been imprisoned in a Category A prison. He has 43 years left to serve and will only be eligible to apply for early release at the two thirds mark of his sentence, at which point he would be 91. As part of the UK's ongoing financial support to the Court and the follow up mechanism, the UK will cover the cost of his imprisonment. Whilst he is held in a high security dispersal prison this will be approx £60,000 per year but this could change over the course of the sentence as prisoner classifications are reviewed and the prisoner may be moved to a different type of prison.

If Charles Taylor is released the Home Office will take steps to remove him from the UK. He has not been granted a visa, and as a convicted war criminal it is likely that his past conduct would render him ineligible for refugee protection.

C. Secondary legislation

The International Tribunals (Sierra Leone) (Application of Provisions) Order 2007, which specifically applied the provisions on sentence enforcement in the ICCA 2001 to the Special Court in Sierra Leone, was made with the vires in section 77A in the ICCA as inserted by the Special Tribunals (Sierra Leone) Act. It was laid before Parliament on 22 May 2007 and entered into force on 15 August 2007. The Order in Council implemented the sentence enforcement agreement between the Government of the United Kingdom and the Special Court.

D. Legal issues

There are no outstanding legal issues in relation to this Act.

E. Preliminary assessment of the Act

The conclusion of the Charles Taylor trial and his subsequent imprisonment was the last substantial judicial task of the Special Court for Sierra Leone. The Special Court for Sierra Leone is now the first international tribunal of its kind to successfully complete its mandate, marking a significant milestone for international justice. A smaller Residual Special Court will carry out the essential ongoing functions such as witness protection and managing the sentences of the convicted. It will also secure the legacy of the Court and accountability in Sierra Leone and Liberia, helping the region to draw a line under the past.

The objective of the Act was to add a new section to the International Criminal Court Act 2001 so as to permit the implementation in the law of England and Wales of an agreement with the Special Court for Sierra Leone under which persons convicted by that Court may serve their sentences of imprisonment in England and Wales. This objective was achieved.



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