

Guest Lecture Series of the Office of the Prosecutor

“Nigeria, International Justice System and Charles Taylor: Challenges and Opportunities”

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Introduction

I consider it a great privilege and honour to be invited to deliver this lecture as part of a series of Guest lectures being organized by the Office of the Prosecutor of this Court. The lecture affords me the opportunity to shed some light on the asylum granted by my country, the Federal Republic of Nigeria to Charles Taylor, former President of Liberia. It is necessary to begin with some background information.

From Nuremberg to Rome

It was the Nuremberg Tribunal that first established and applied the principle that ‘Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced’. This principle which was applied in the trial, conviction and sentence of some perpetrators of offences against humanity after the World War II has stood the test of time. Although the trials were then criticized as an exercise in ‘Victors’ justice’ or as ‘law in the service of vengeance’, the principle of personal responsibility of individuals for grave abuses of human rights appears to have now taken firm roots. The establishment of the International Criminal Court (ICC) and the overwhelming vote (120 to 7) that approved its Statute bears eloquent testimony to the fact that the world would no longer tolerate impunity and the perpetration of crimes against humanity.

In ratifying the Rome Statute that established the ICC, Nigeria clearly identifies with the aspirations of the international community to punish the perpetrators of crimes against humanity no matter how highly placed. As Africa’s largest contributor to international peace-keeping operations around the world, Nigeria pledges support for the ICC which, we believe would help to reduce the perpetration of war crimes and impunity around the world and particularly in Africa. It is significant that already, four major African conflicts have been referred to the Court.

These are the Darfur-Sudan Crisis, Ugandan Conflicts, Democratic Republic of Congo Conflict and that of the Central African Republic. There is also the possibility of reference to the Court of the Sierra Leonean War Crime Cases and the Rwandese Genocide Cases which are now before special tribunals. It is unimaginable that an international war crimes tribunal would be established for every war-torn zone (and there are many!) of Africa and elsewhere. Being a permanent international tribunal, the International Criminal Court therefore appears to offer a solution to the problem of proliferation of international criminal tribunals.

The mere fact that there now exists a permanent international forum for making warlords and other violators of humanitarian law account for their actions is a warning to potential war criminals that their actions will not go unpunished. That is why Nigeria would like to use this opportunity to appeal to the international community to give full support to the International Criminal Court in order to be able to execute its mandate, conduct investigations without fear of molestation, effect arrest warrants and prosecute cases promptly. On our part, we would like to assure the Court of our full cooperation and support. As would be seen shortly, our decision to grant asylum to former President Charles Taylor should not be seen as a mark of disrespect for the Special Court for Sierra Leone or for the international criminal justice system. It should also not be seen as encouraging impunity or as an endorsement of the gruesome acts for which former President Taylor has been indicted. I shall return to this issue anon.

For the avoidance of doubt, let me state clearly that Nigeria fully identifies with the current trend of the international criminal justice system to hold accountable and bring to trial war criminals and perpetrators of crimes against humanity.

Permit me to make one more preliminary comment on the Court: Nigeria is particularly pleased at the establishment of the 'Victims Trust Fund' by the Court. It is certainly a step in the right direction as it shows the sincerity of purpose of the Court and its strong determination, not only to prosecute and punish offenders but also to provide relief for victims as far as possible.

The Liberian Crisis and the Role of Nigeria

A brief review of the history of the Liberian war is necessary in order to fully appreciate the context of Nigeria's acceptance into its territory of former President Charles Taylor. Liberia is Africa's oldest Republic founded in 1847. It enjoyed relative calm until 1980 when William Tolbert was overthrown by Sergeant Samuel Doe following food price riots that led to the killing of about 40 Liberians. Doe's ascendancy ended the long domination of Liberian politics by the minority Afro-American settlers, but it was the beginning of political turmoil, instability and wars. By the late 1980s, political ineptitude, dictatorial rule and mismanagement had culminated in a total collapse of the country's economy and political system. The resultant Civil War which lasted for about fourteen years caused the displacement of more than two thirds of the country's 3.3 million population. It led to the death of nearly one million people and brought serious destabilization to the sub -region until the recent restoration of some semblance of peace following the resignation of former President Charles Taylor. The Liberian Crises which had begun under Samuel Doe reached a climax in 1989 when Charles Taylor's National Patriotic Front of Liberia (NPFL) launched an offensive against Samuel Doe's government. The following year, the Economic Community of West African States (ECOWAS) sent in a peacekeeping force made up largely of Nigerians. Fighting intensified as the rebels splintered and engaged themselves, the Liberian military and the West African intervention force (ECOMOG) in fierce fighting. Although a peace agreement was signed in 1995, no peace was possible with the election of Charles Taylor, the leader of the dominant rebel group as President of the country. Surprisingly, the international observers who monitored the elections had come up with a verdict that the elections were largely free and fair.

Dissatisfied with the outcome of the elections, the other rebel groups then went into the bush and launched incessant attacks against government forces while also terrorizing innocent civilians. Soon, factional fighting had spread to the capital city of Monrovia. In January 1999,

Ghana, Nigeria and some other West African countries accused Liberia of supporting the Revolutionary United Front (RUF) in Sierra Leone while Taylor accused Guinea of supporting Liberian rebels in the North. The area was plunged into outright anarchy as Liberia, Sierra Leone and Guinea as well as the various rebel groups engaged themselves in fierce fighting. In May 2001, the UN Security Council re-imposed an arms embargo to punish Taylor for trading weapons for diamonds from rebels in Sierra Leone.

Meanwhile, the number of Liberian and Sierra Leonean Refugees and displaced persons had reached alarming proportions. As usual, the great majority of these refugees found their way into Nigeria. In February 2002, Taylor declared a state of emergency but that did not help matters as the fighting intensified and the rebels overran villages, killing, raping and maiming many as they advanced closer to Monrovia. In June 2003, talks were launched in Ghana between Government and rebel troops aimed at bringing the fighting to an end. But the talks ended abruptly with the issuance by the Special Court in Sierra Leone of indictment against President Taylor accusing him of war crimes over his alleged backing of rebels in Sierra Leone. With the indictment hanging over his head, the Ghana peace talks were abruptly ended and fighting became intensified as government troops battled the rebels for control of Monrovia. Several hundreds of people, including women and children were killed. At that juncture, the ECOWAS agreed to send in peacekeepers. In terms of human and material costs, Nigeria undoubtedly bore the brunt of the Liberian inferno beside Liberia herself: In addition to contributing the greatest number of peace-keepers, Nigeria has expended a whopping sum of money on the Liberian crises. Viewed against this background, the grant of asylum on August 11, 2003 to former President Charles Taylor ought to be seen as a further demonstration of our commitment to the full restoration of peace in Liberia.

The Indictment of Charles Taylor

Charles Taylor's indictment relates to what he is alleged to have done either personally or through some others in the war in Sierra Leone during the political crises there. Seventeen counts have been framed against him. These include terrorizing civilian population, collective punishments, unlawful killings, violence to life, sexual slavery, rape, pillage, conscription of children under fifteen years, attacks on humanitarian assistance, abduction and hostage taking, etc. It is undisputable that the various acts alleged are offences under article 3 of the Geneva Conventions of 1949 to which Nigeria is a party. The conventions were domesticated in the Geneva Conventions Act, Cap. 162 of the Laws of the Federation, 1990. The Act empowers Nigeria to try in her own court any person of whatever nationality for a grave breach of any of the Conventions.

Nigeria may also *if it* prefers and in accordance with the provisions of her own legislation hand such persons over for trial to another party to the Convention provided such party has made out a *prima facie* case against the accused. Although, the Special Court may have made a *prima facie* case against Charles Taylor, the Court is not a party to the Geneva Conventions to whom may be handed over the suspect under the Laws of Nigeria.

Rationale for accepting Charles Taylor on Asylum

The foregoing notwithstanding, the grant of asylum to Charles Taylor in Nigeria was informed by overriding humanitarian considerations and the compelling need for peace and quick resolution of the Liberian conflict. While it was not clear that there would be an automatic return to peace following his resignation and departure, it was clear that no kind of peace was possible with him in the country. It was also clear that his exit would increase the prospect of ending the carnage and bringing an end to the long suffering of the Liberian people

and their neighbours. This perhaps was the reason why the international community tacitly consented to the offer of asylum to him by the President of Nigeria. America's former Secretary of State, Collin Powel confirmed this much during President Obasanjo's recent visit to the United States. Pursuant to the offer of asylum Charles Taylor flew into Nigeria on August 11, 2003 in the company of John Kuffour, President of Ghana and Chairman of ECOWAS. President John Kuffour was joined by President Thabo Mbeki of South Africa, as out-going Chairman of African Union and President Joachim Chissano of Mozambique, as the incoming Chairman of African Union. President Olusegun Obasanjo received Charles Taylor in Nigeria on behalf of ECOWAS, African Union and the international community. The UN Secretary-General agreed and supported, and so were the permanent members of UN as confirmed recently by Colin Powell in Washington DC.

In offering Charles Taylor an asylum, Nigeria made it clear that it should not be harassed to hand him over for trial. This condition appeared to have been consented to or acquiesced in by the rest of the world, as there was no dissenting voice. Indeed Charles Taylor took his time before taking up the offer but no country, organization or body objected to the right of Nigeria to attach that condition to the offer of asylum.

It was probably that undertaking by Nigeria and the tacit consent by the rest of the world that persuaded Charles Taylor to accept the offer of asylum thereby bringing the carnage in Liberia to an end.

The argument had been canvassed by some that the General Assembly Declaration on territorial asylum (Resolution 2312 (XXII) December 14, 1967, article 1(2), disentitled Taylor from being granted asylum. It provides that:

"The right to seek and enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined by international instruments drawn up to

make provision in respect of such crimes".

It is submitted with respect that it only disentitles Taylor from claiming a right to asylum and does not affect the right of the receiving state to decide whom to grant asylum. This is why Article 1(3) of the Declaration further provides as follows:

"It shall rest with the state granting asylum to evaluate the grounds for the grant of asylum".

It cannot therefore be overemphasized that the primary ground for the grant of asylum to Charles Taylor was the overriding need to bring the war in Liberia to a quick end in order to save the lives of thousands of Liberians and other West Africans who might have been killed or displaced by the war. No one genuinely interested in the peace of Liberia and West Africa would deny that this humanitarian consideration was adequate justification for the grant of asylum to Charles Taylor by the Nigerian government. The only alternative then was to leave Taylor in the country to continue to fight in the process of which many more innocent lives would have been lost. It is therefore in bad faith to turn around now and criticize Nigeria for taking him out of Liberia in those circumstances.

Pressure from the International Community

Intense pressure has been brought to bear on Nigeria over the non-release of Charles Taylor following his indictment which was there before the granting of asylum. Some governments and non-governmental organizations in Nigeria and around the world have urged the Nigerian President to hand the indictee over to face his trial. Their basic argument is that having been indicted of war crimes or grave violations of international humanitarian law, Nigeria was obliged in international law to either try him under its own laws or hand him over for trial. There have even been calls for sanctions against Nigeria from certain quarters for the non-release of Taylor to the Special Court in Sierra Leone. It seems to me that much as the argument for the

handing over of Taylor to the Special Court for trial may be sound in law, it fails to take account of the context in which Nigeria granted sanctuary to Taylor in the first place. The indictment was there before the international community, agreed to ease Charles Taylor out of Liberia for asylum in Nigeria. It also fails to consider the possible effect of the hand-over of Taylor on the tenuous peace in both Sierra Leone and Liberia. In our view, the political situation in those two countries is still so fragile that the international community may be unwittingly inviting another round of violence by having Charles Taylor brought to trial now. No one would deny that the interim government in Liberia is still very fragile. Only recently, the Speaker of the Interim Assembly was removed on account of corruption while the Assembly itself has suggested that the elections now slated for October be postponed. An attempt was also made a few weeks ago by some rebels to overthrow the President of Guinea. While it may be easy to talk about the obligation of Nigeria under the Geneva Conventions which we do not doubt anyway, all well-meaning analysts of the West African situation would agree that the sub region is still so prone to violence and instability that the situation may further be compounded if the trial of Taylor before a Sierra Leonean Court is attempted at this time. Charles Taylor still has horde of supporters in Liberia and what happens or fails to happen to him may still be critical in determining the fortune of Liberia.

Apart from the foregoing, the clamourings for the release of Charles Taylor by Nigeria for trial now fail to appreciate the consequences such release will have on the image and credibility of Nigeria. Today, Nigeria plays a leading role in promoting pacific settlement of conflicts in Africa. The measure of success achieved by Nigeria in her intervention in Cote d'Ivoire, Togo, Sudan, Sao Tome and Principe cannot be divorced from her credibility. What countries of the world ought to do is to encourage Nigeria to continue to build and consolidate on that credibility as a vital instrument for fostering peace in conflict-torn areas of Africa. If Nigeria were to renege on her asylum, obligations to Charles Taylor, and by extension to ECOWAS and

African Union it would strike a devastating blow at the credibility of Nigeria. This point was well put by *This Day* a Nigerian Newspaper in its edition of August 17, 2003, where it was written that:

“.....The consequences of renegeing (on Nigeria’s obligations under the terms of Mr. Taylor’s resettlement) will be calamitous for Nigeria and the African continent. Going back on such a solemn undertaking is not only perfidious, it will erode completely, the international credibility and integrity of Nigeria and by extension, its ability to broker peace on the continent in future. Handing over Taylor will be a Pilate’s gesture....”

It seems relevant to touch on an important issue concerning fair trial raised by some writers in so far as the Special Court in Sierra Leone is concerned. We are reminded that the Court in Sierra Leone is a product of a bilateral agreement between the United Nations and the Government of Sierra Leone. It is then argued that if care is not taken the impression may be created that Taylor is being tried in the court of Sierra Leone which is a party to his prosecution. As Joseph Tellewoyan argued:

“...the Special Court for Sierra Leone itself does not appear to be an independent body, since it is jointly sponsored by the United Nations and Sierra Leone. While in my heart, I feel that Charles Taylor got what he deserve (sic) for putting the Liberian and Sierra Leonean people through hell, in my head, I feel he cannot get a fair trial in Sierra Leone.”¹

The writer then argues further that while Sierra Leonean war criminals may be prosecuted by the SCSL, an independent judicial body, in an independent country, should prosecute Charles Taylor for whatever crimes he has committed. The writer then likens the trial of Charles Taylor before the SCSL to a situation where the United Nations created a special court in Croatia, with the cooperation of the Croatian Government to issue indictment against

¹ See Joseph Tellewoyan, at <http://pages.prodigy.net/jkess3/charlesTaylor2.htm> pp.1-3.

Slobodan Milosevic for offences committed while he was President of Yugoslavia. He then concluded on this note:

“The point is you cannot have the victim as part of the prosecution. The Assistant Prosecutor of the SCSL is a Sierra Leonean and Sierra Leonean laws are allowed to be used. This makes it almost impossible for SCSL to ignore internal pressures and nationalistic feelings in prosecuting Charles Taylor”.

It may be that another reason why some campaign for the immediate surrender of Taylor for trial in Sierra Leone is that the SCSL has a limited time left and is constrained by very limited resources. It is therefore considered necessary and urgent to bring Taylor before the Court before it winds up its activities. In a recent Address to the Security Council, the outgoing President of the Court said:

“...the whereabouts of Armed Forces Revolutionary Council (AFRC) leader Johnny Paul Koroma, who had 17 counts against him, were not known. However, the indictment remained valid until evidence of his death might be available to the Prosecutor. The other indictee, former Liberian President Charles Taylor, had since been granted refuge in Nigeria. On 3 March 2003, the Prosecutor had issued a 17-count indictment against him, which had been disclosed by the Court on 12 June of that year. The Court had continued its efforts, so far unsuccessfully, to have Mr. Taylor transferred to Sierra Leone for trial, and all necessary logistical and financial arrangements were in place. A delay in the transfer and trial of Charles Taylor would have a negative impact in terms of the Special Court’s completion strategy, as well as funding and security arrangements. Also, the importance of trying Mr. Taylor and Mr. Koroma could not be overemphasized, because of the strong impact their trials would have on the perception of the Court on the part of the people of Sierra Leone and of Africa, as well as on the Court’s contribution to combating the culture of impunity.”

While we do not object to the trial of Charles Taylor, we believe that we should first

consolidate the on-going peace process in the West African Sub region, allow the return of a democratic government to Liberia and make necessary arrangements to prevent a recurrence of the mindless violence and instability that had characterized the sub region. It appears shortsighted to ignore the realities on the ground in the sub region and assume that once Charles Taylor has been tried and jailed all will automatically be well. What about all the other perpetrators of war crimes in Liberia and even Sierra Leone where only about 13 trials are as yet underway! Apart from those countries themselves, Nigeria is the country that has borne the greatest brunt of the Liberian and Sierra Leonean wars. We know where the shoe pinches. While we acknowledge the need for a concerted effort against impunity, we do not feel legally or ethically bound to cooperate with a timetable that may derail the peace process that is already underway in the sub region.

In any case, the crimes for which Taylor has been indicted are not charges, which anyone could wish away. Neither are they subject to any limitation statute.² As the President of the Special Court himself has said in his Report to the Security Council, the charges would remain hanging on the head of the indictees until their death.

If it is true as has been suggested in some quarters that Taylor is behind the attempted coup in Guinea or some of the skirmishes in the sub region since his admission into Nigeria, that will amount to a breach of the terms of his asylum. Let me assure you that Nigeria is closely looking into the allegations which must be shown to be true for Nigeria to act. Such allegations that Charles Taylor has traveled out of Nigeria since being granted asylum is simply false.

² See the Convention on the Non-applicability of Statutory Limitation to War Crimes and Crimes Against Humanity which entered into force on November 11, 1970.

The need for a comprehensive solution: Options before Nigeria and the International Community

We believe that the simplistic solution of handing Charles Taylor over for trial in Sierra Leone is fraught with many political, legal and ethical dilemmas. Those who demand his trial are certainly justified to do so. However, the circumstances that warranted his admission into exile in Nigeria with the consent of the international community when charges of war crimes were hanging over his head do not appear to have changed much. Nigeria of course will be prepared to hand over Charles Taylor to a democratically elected government after elections in Liberia, if such a request is made. But the point ought to be made that even the present government in Liberia is not under any illusion that the time is not yet ripe for the return of Taylor to Liberia. Indeed on July 7, 2004 the request of some human rights groups to Liberian Parliament to seek the release of Charles Taylor from Nigeria was flatly rejected. They took the view that “Taylor went into exile in Nigeria as part of an ECOWAS arrangement to have peace restored to Liberia and that acceding to the request would hamper the peace process”³. We would offer the following ideas for the consideration of the United Nations and the international community:

Firstly, it is necessary to allow the peace process in Liberia to continue and for a reasonable measure of stability to return to the country before contemplating the trial of Charles Taylor in the appropriate forum.

If the supreme end of the law is peace, we should be more interested in building lasting peace rather than pursuing natural human instinct for immediate reprisal.

Although the International Criminal Court does not have retroactive powers, there is nothing in law which prevents the Security Council from referring the Liberian crisis to that court. The emerging international criminal justice system is too important to be subjected to the rules of expediency rather than well established principles of fairness which alone could stand

³ See <http://www.allAfrica.com>

the test of time.

Upon it all, it is perhaps important to remind ourselves that the urge to bring Charles Taylor to justice now should not be allowed to becloud our sense of obligation not to endanger the lives of thousands, indeed millions of others.