

The International Criminal Court and the Trial of Charles Taylor

Implications for Africa

Michael Vunyingah

This policy brief puts into perspective the trial of the former president of Liberia, Charles Taylor, at the International Criminal Court (ICC) for his clandestine role in Sierra Leone Civil War of 1991–2002. The brief gives a critical analysis of issues in the case in relation to Sierra Leone as far as state sovereignty, immunity and international humanitarian law are concerned. The indictment and trial of Taylor at the ICC highlight the problem of African identity and judicial imperialism in an era of the African renaissance and globalisation. The trial therefore heralds a new political culture in the struggle for accountability, rule of law and an impunity-free Africa.

A Biography of Charles Taylor

Charles Taylor was born in Arthington near Monrovia on 28 January 1948. His father, Nelson Taylor, was an Americo-Liberian and his mother, Bernice Taylor, was from the Gola ethnic group. Taylor was 24 years old when he attended Bentley College in Waltham, Massachusetts, where he earned a degree in Economics. His nickname, 'Ghankay', was thought to have been adopted as part of a deliberate strategy of attempting to identify more closely with the indigenous peoples of Liberia. While studying in the United States, he joined the Union of Liberian Associates (ULA) and became its national Chairman. In 1979 he led a demonstration at the Liberian Mission to the UN in New York to protest against President William

Tolbert. He threatened to seize the Liberian Mission by force. He was arrested by the New York police and, on his release; he was invited to Liberia by Tolbert.¹

Taylor was party to the insurgency launched by Samuel Kanyon Doe on 12 April 1980 that led to Tolbert's death with Doe and his men murdering the president while he slept. Other reports also implicate the US Central Intelligence Agency (CIA) in the execution. The ensuing political turmoil led to hundreds of government officials fleeing the country, while many others were imprisoned.

The Krahn of Liberia, Doe's ethnic group, had long suffered suppression and repression by the Americo-Liberians. The coup effectively ended 133 years of the domination of this group over the indigenous peoples.²

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Doe appointed Taylor to government in the portfolio of General Services Agency of Liberia; however, this appointment was short-lived as he was sacked in May 1983 on charges of embezzling almost US\$1 000 000 and siphoning off funds to a US bank account. He fled to United States on 24 May 1984. However, he was arrested on arrival and jailed in a House of Corrections in Plymouth, Massachusetts. On 15 September 1985 he escaped mysteriously from prison together with four other inmates. The other escapees, including his wife, Enid, and sister-in-law, Lucia Holmes Toweh, were later apprehended. It is thought that Taylor fled the United States for Libya where he underwent guerrilla training with the support of Colonel Muammar al-Gaddafi. If the statements made by Prince Yormie Johnson during Liberia's Truth and Reconciliation Commission (TRC) on 27 of August 2008 are to be believed, the United States released Taylor clandestinely in order to mastermind the overthrow of President Doe.³

Taylor returned to Liberia in 1985 and in 1991 formed an alternative national administration – the National Patriotic Reconstruction Assembly Government (NPRAG) – with Johnson. Taylor declared himself head of the administration, which led to Johnson forming a breakaway faction of the National Patriotic Front of Liberia (NPFL). This faction operated under the name of the Independent National Patriotic Front of Liberia (INPFL). Between 1992 and 1996 war amongst the different factions ensued and, on 17 August 1996, there was a cessation of hostilities as a result of the efforts of the Economic Commission of West African States (ECOWAS). This followed the signing of the ECOWAS-mediated Abuja Accord supplement. Amid accusations of intimidation, Taylor's National Patriotic Front (NPF) won the elections of 1997. His campaign was based on the infamous slogan: 'He killed my ma, he killed my pa, but I will vote for him.' His legacy from this era also includes such atrocities as having a pregnant woman buried alive in the sand and the mass killing of his political opponents. The film, *Blood Diamond*, portrays graphically the types of atrocity committed by Taylor and the Revolutionary United Front (RUF) during this period.

Introduction

As at December 2009, Taylor faced 11 counts of impeachment at the International Criminal Court (ICC) in the Special Court for Sierra Leone (SCSL). He is suspected of playing a clandestine role in the decade-long Sierra Leone Civil War from 1991

to 2002. This policy brief highlights the legal and political complexities leading up to his arrest and subsequent trial. The critical analysis outlines the prospects and ramifications in the context of the rule of law, accountability, state sovereignty and immunity in contemporary African politics.

Background to the Taylors' Trial

The basis of Taylor's indictment before the SCSL is the Sierra Leone Civil War. This conflict started in early March 1991 and was formally ended only on 18 January 2002 following an announcement by President Ahmed Tejan Kabbah. It is alleged by the Prosecutor of the SCSL that Taylor underwent military training in Libya with Foday Saybana Sankoh, leader of the Revolutionary United Front (RUF) of Sierra Leone. During this period the two made a pact to assist one another in taking power in their respective countries. Sankoh backed Taylor and his NPFL in their attack on Liberia in December 1989. Taylor also took part in a military junta between 30 November 1996 and 18 January 2002 with the RUF and later the Armed Forces Revolutionary Council (AFRC), AFRC/RUF alliance.⁴

Taylor's impeachment is related to 11 counts of crimes against humanity and violations of international humanitarian law – including: sexual slavery, recruitment of child soldiers and mutilations – during Sierra Leone's Civil War. It is estimated that approximately 200 000 civilians lost their lives during the fighting. A Security Council Resolution 1688 passed on 16 June 2006 paved the way for Taylor's indictment by the SCSL. The Hague Resolution 1688 also requested that all states cooperate to ensure that any evidence or witnesses are provided when requested by the SCSL. Taylor's trial began on 7 January 2008 in The Hague.⁵ In principle, Taylor's trial is not an ICC trial. It is merely complying with Security Council Resolution 1688 of 2006. The ICC is therefore not bound by the timeframes and procedures. The salient and thought-evoking questions are: Will Taylor face a fair trial? Are the issues in the case against him justifiable? Did the SCSL contravene the principle of state sovereignty in the struggle to arrest Taylor?

Issues in the Case of Charles Taylor and in Relation to Sierra Leone

There has been an intractable debate relating to issues of state sovereignty, peace and security in the literature. Claims of immunity have been advanced by Taylor's defence lawyers as contempt of

the principle of sovereign equality and immunity. The principle of sovereign equality prohibits one state from exercising its authority in the territory of another. There is an exception where a state may prosecute acts committed in the territory of another state by a foreigner, but only where the perpetrator is present in the territory of the prosecuting state. The Bench of prosecutors have dismissed these claims asserting that Taylor has been indicted in accordance with article 1(1) of the Special Court Statute for crimes committed in the territory of Sierra Leone and not the territory of another state. On the other hand, the transmission of documents to Ghanaian authorities could not violate the sovereignty of Ghana. This is based on the premise that Ghana was not obliged to give effect to the warrant.

According to international law, it is generally admitted that heads of state, government, and foreign ministers are immune from criminal prosecution by courts of third states. The principle of sovereign equality of states is guaranteed in the international legal order. Backed by international law, diplomats can carry out their duties effectively, without harassment. Thus prosecuting a foreign head of state before a national court amounts to challenging a state's sovereignty by virtue of the principle *par in parem imperium non habet* (an equal has no power over an equal). Disregarding this immunity accorded to major representatives of a state recognised under international law contradicts international law.⁵

Did the SCSL infringe on the principle of state sovereignty? If the agreement between the Secretary-General of the UN, Kofi Annan, and the government of Sierra Leone signed on 16 January 2002 is any indication, then claims of immunity and state sovereignty are frivolous. This agreement removed all legal barriers and paved the way for the SCSL to exercise its judicial function. This agreement is enshrined in UN Security Council Resolution 1315 of 15 August 2000. This stated that there should be no ambiguity as to the Security Council's resolution to reject immunity as a defence before the newly created institution (Special Court). This resolution mandated the SCSL to have jurisdiction over persons who bear the greatest responsibility, including those leaders who in committing such crimes threatened the establishment and implementation of the peace process in Sierra Leone.⁶

The Security Council Resolution 1315 of 15 August 2000 also spelt out the importance of compliance with international humanitarian law and, it was further reaffirmed, that persons who authorised serious violations of international humanitarian law should be held individually

responsible and accountable, and that the international community will exert every effort to bring those responsible to justice in accordance with international standards of justice, fairness and due process of law. The prosecution of a head of state before an international criminal court should no longer be a matter of controversy in international criminal law, if the UN Security Council Resolution should be affirmed. This same resolution had elevated the SCSL to an international *status quo*.

Furthermore, article 6(2) of the Security Council Resolution paved the way for the Special Court Statute to indict Taylor during his state visit to Ghana. According to this clause, the official position of any accused persons shall not relieve such person of criminal responsibility nor mitigate punishment. What does the indictment and trial of Taylor signify for Africa? Is it a new dawn for the rule of law and accountability in African political leadership?

View of the AU and Ramifications for the Future Prospects of Africa

The deal brokered by the African nations represented by former Nigerian president, Olusegun Obasanjo, and former South African president, Thabo Mbeki, and the international community with Taylor's government forced him to resign in 2003 and vacate the country. The agreement specified that:

- Taylor would give up the presidency of Liberia;
- leave Liberia for Nigeria;
- never directly or indirectly interfere with the politics of Liberia.

In return, the agreement assured Taylor:

- Safety from arrest and prosecution either by the Liberian government, the Nigerian government or any international court constituted by the UN and its various agencies,
- The provision of safe and reasonable accommodation in Nigeria for himself and his family for the foreseeable future.

The fact that on 24 February 2005 the European Parliament unanimously passed a resolution calling for Nigeria to transfer Taylor to the SCSL, followed by the US House of Representatives on 4 May 2005, and the US Senate House of Representative resolution of 11 May 2005, respectively, raises questions about the leverage and political will of the AU. Again, the fact that civil society petitioned the court on 30 June 2005, coupled with the UN Security Council passing Resolution 1638 of 2005 in November 2005 justifies this theoretical position. It was within this development that the President of Liberia, Ellen

Johnson Sirleaf, consulted the then Chairman of the AU and other West African regional groupings including ECOWAS. Following this, Obasanjo then publicly terminated Taylor's asylum.⁷

Another fundamental question then arises: Why did the AU not heed the ICC call to enforce a similar indictment against Sudanese President Omar Hassan al-Bashir? On 14 July 2008 the Prosecutor at the ICC filed ten charges of war crimes against the latter. These charges included three counts of genocide, five of crimes against humanity and two of murder. The ICC's prosecutors claimed al-Bashir 'masterminded and implemented a plan to destroy in substantial part' three tribal groups in Darfur because of their ethnicity. On 4 March, 2009 the ICC issued an arrest warrant for al-Bashir – although the ICC later claimed they lacked sufficient evidence to press the genocide charges. The AU's naïve reaction to the ICC indictment of al-Bashir begs the question whether the rule of law has been sacrificed on the altar of political occult worship? Why did the indictment of Taylor go unopposed by the AU? Why did the AU also remain silent over Robert Mugabe in spite of international pressure regarding post-election violence and intimidation in Zimbabwe? Perhaps there are two narratives in this line of thought?

Presidents Mugabe and al-Bashir appear to represent the category of the 'traditionalist' notion of African identity. That is an essentially anti-Western stance and portrays Africa through the eyes of 'patriotic' pan-Africanism. The postmodernist narrative incorporates Western values into a wider African-based variant of universalist moral responsibility. Taylor's trial, though managed by Africans, epitomises the latter. Sudan's response to the ICC, the AU resolution not to heed to Western pressure sees an attack on Mugabe and al-Bashir as an attack on African leadership and claims of judicial imperialism. The trial of Taylor at the ICC must be celebrated for the sake of justice.⁸

Policy Recommendations

- International humanitarian law should be ratified in order to enforce the arrest of an incumbent head of state. He or she should be tried and bear the responsibility as individuals for crimes committed during their tenure in government.
- African heads of state should be proactive in handing over perpetrators of serious crimes as part of their moral responsibility and contribution to rebuilding societies emerging from armed conflicts through justice and

reconciliation. The majority of these conflicts in Africa are sponsored by former colonial powers through rebel groups and frequently financed through the illegal exploitation of natural resources.

- The draft protocol for the establishment of the African Court of Justice (ACJ) should be fast-tracked to create a Court of Justice and Human Rights to rule on legal matters and human rights treaties.
- The Peace and Security Council of the AU should ratify the Security Council Resolution Act and clearly define what constitute crimes against humanity in international humanitarian law.

All perpetrations of violence and human rights abuse should, however, be investigated, even in the absence of war.

Conclusion

The trial of Charles Taylor heralds a new era in African leadership. In spite of conflicting Western and African ideologies or dichotomies as analysed in the policy brief, Taylor's trial must be celebrated by Africans as a triumph of democratic governance, transparency, the rule of law, accountability and an impunity-free Africa. It highlights a shift from the Hobbesian state of nature, where life is short, nasty and brutish, to a state of society established in the political philosophy of John Locke, where men ought to be punished no matter how mighty they are for transgressing on people's liberty and health. Taylor must be given a fair trial as a means of appeasing his victims and enhancing regional peace, stability and reconciliation in Liberia and Sierra Leone. In similar vein, George W Bush and Tony Blair must likewise be held accountable for the Iraq war. Navigating beyond the African and Western dichotomies is imperative for political stability in Africa.

Notes and References

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8. Knox Chitiyo. 2009. 'The Charles Taylor trial.' Royal United Service Institute (RUSI). The trial of Taylor is a milestone for justice in Africa; but it also has a global significance. Beyond the stereotypical media headlines of dictators running for cover, this trial could also have a serious impact on domestic politics and foreign policy in London and Washington.



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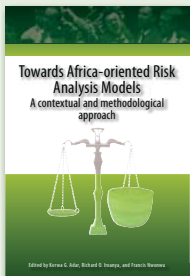
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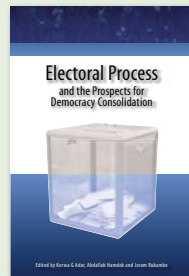
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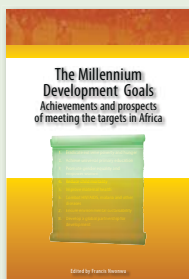
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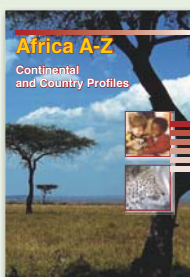
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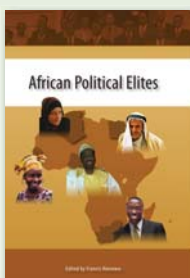
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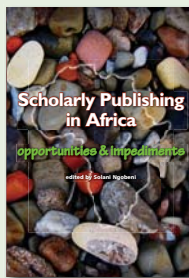
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