

2 For example: a seminar on the administration of justice and human rights was held in 1999, a national conference on human rights in 2001, and workshops in 2003 on the theme “What Justice for the Democratic Republic of Congo,” and on torture and cruel, inhuman and degrading treatment.

3 Larcier, a respected publisher of the Belgian code, has recently undertaken to publish a compilation of Congolese codes.

4 In October 2003, the country’s judges went on strike to demand greater independence, claiming in particular that low salaries weaken their institutional independence, allowing for manipulation both by government and nongovernmental actors. Almost three months later, they returned to work with no concessions made by the government.

Challenging Charles Taylor’s Political Asylum in Nigeria

Babatunde Fagbohunlu,[†] one of a team of lawyers representing the plaintiffs in the case of *David Anyaele and Emmanuel Egbuna v. Charles Taylor, the President of the Federal Republic of Nigeria and Three Others*, describes progress to date.

Whatever moral or political justification the Nigerian government may believe exists for its decision to grant political asylum to former President of Liberia Charles Taylor, the action is highly questionable from a legal perspective. The decision is also now being challenged in court by Nigerian victims of the atrocities committed against civilian populations during the civil war in Sierra Leone. The war crime victims want Taylor to face trial on an indictment issued by the prosecutor of the UN-backed Special Court for Sierra Leone, which accuses him of bearing the “greatest responsibility” for atrocities committed by the Revolutionary United Front (RUF) of Sierra Leone, a rebel movement that Taylor is believed to have sponsored and encouraged.

The case against Taylor

The charges against Charles Taylor are extremely grave: war crimes, crimes against humanity, and serious violations of international humanitarian law. Nigeria’s grant of refugee status in August 2003, which has prevented enforcement of the warrant to compel his attendance at the proceedings in Freetown, Sierra Leone, has become increasingly controversial. Human rights groups and international organizations have flooded Nigerian President Olusegun Obasanjo with petitions to have the former Liberian leader arrested and his asylum status reviewed or rescinded. In this context, the initiation of legal proceedings to nullify the asylum grant, brought by two surviving Nigerian victims of RUF atrocities, is timely.

David Anyaele and Emmanuel Egbuna were tortured and mutilated in 1999 by rebel groups in Freetown. Both were subjected to amputations, which led, in Anyaele’s case, to the permanent loss of both hands. Their quest for legal redress is at the heart of the litigation commenced in Nigeria’s

Federal High Court in Abuja. The litigation challenges not only Charles Taylor, but also the Government of the Federal Republic of Nigeria and the National Commission for Refugees.¹ Anyaele and Egbuna are represented on a *pro bono* basis by the Nigerian law firm, Aluko & Oyebode. I am leading the team of lawyers representing the victims.

Our objective is to establish that the grant of political asylum to Charles Taylor contravenes both domestic statutory provisions and Nigeria's international legal obligations, notably under the United Nations Convention on the Status of Refugees.² The challenge takes the form of a judicial review application, a procedure that enables the court to strike down acts or decisions of the government which are found to have been made illegally, or exercised for an extraneous purpose. The review procedure also allows the court to act against decisions taken or made on inappropriate grounds without regard to relevant considerations and in violation of the fundamental rights of the citizenry as protected by Nigeria's 1999 Constitution and the African Charter on Human and Peoples' Rights.³

Should Taylor's asylum be struck down in Nigeria's courts, the decision would open the way for him to face war crimes charges in the Special Court for Sierra Leone, where Anyaele's and Egbuna's grievances can be addressed directly.

Small steps forward

On May 31, 2004, the Federal High Court of Nigeria, presided over by

Justice Steven Adah, ruled that the court must accept the applications—thereby effectively granting leave to each applicant to pursue judicial review. This was the first important hurdle the applicants had to clear in the pursuit of their claims.

The second obstacle was establishing an effective and inexpensive procedure for serving the court processes on Charles Taylor—that is, for informing him that proceedings are underway against him. Ordinarily, defendants should be informed in person, but it was apparent from

The case invokes the duty of states to refuse indicted war criminals refugee status.

the start that this would be impossible in Taylor's case because of the heavy retinue of Nigerian security personnel protecting him. Therefore, the court directed that the processes be delivered to the office of the Governor of Cross Rivers State in Calabar, where Taylor is said to be taking refuge. However, the Governor, Donald Duke, declined to cooperate, citing immunity provisions in the Nigerian Constitution. The court considered the arguments ill-founded, but granted the victims' request to simplify the procedure. On June 13, 2004, the court allowed that Taylor could be served by advertisements in two daily newspapers, together with notices put up in the premises

of the Abuja and Calabar Judicial Divisions of the Federal High Court.

Another remarkable milestone was achieved in the proceedings when the Federal High Court granted the victims' request to issue a subpoena commanding the Nigerian Refugee Commission to attend the proceedings and to produce all documents relating to the grant of Taylor's political asylum.⁴ Willful disobedience or neglect to comply with an order of this nature is deemed to be contempt of court. As of the end of 2004, there had been no compliance with the court's order and the victims' lawyers were contemplating contempt proceedings against the Refugee Commissioner in order to enforce the court's subpoena.

The defense

All the respondents in the suit except Charles Taylor are represented by the office of the Federal Attorney General. A preliminary objection to the suit has been raised by the Attorney General's lawyer, challenging the jurisdiction of the court to entertain the victims' claims on three grounds: that (1) the victims lack standing before the court; (2) they have "disclosed no cause of action known to law" to entitle them to the relief sought; and (3) any challenge should have been made within three months of the grant of asylum to comply with the statute of limitations, a time limit long since passed.⁵ In response to these objections, the victims' lawyers shall contend that the acts challenged constitute a "gross abuse of office" and were done *mala fide* and therefore not susceptible to the kind of objections raised by the government. The reply shall be on

points of law and where necessary, will be supported by the averments contained in the processes already filed in this suit on behalf of the victims. So far, Charles Taylor has ignored the court proceedings.

Ultimately, if the court is persuaded that the grant of political asylum to Taylor by the Nigerian government was an "abuse of office" or was made illegally, exercised for an extraneous purpose and/or taken or made on irrelevant grounds without regard to relevant considerations and in violation of the fundamental rights of the citizenry, there is a likelihood that the court will declare Taylor's asylum illegal. The court may also make an injunctive order against the Nigerian government to preclude it from maintaining the asylum, thus removing any legal justification that the Nigerian government may have for refusing to deliver Taylor for trial at the Special Court for Sierra Leone.

The case is of wider significance to international law, as it invokes the duty of states to refuse refugee status to indicted war criminals and make every effort to facilitate their prosecution, both arguments put forward in a recent *amicus curiae* brief submitted by the Justice Initiative to the Abuja court in November 2004.⁶ If successful, the case will mark a significant victory in the struggle to end impunity for war criminals.

Notes

† Babatunde Fagbohunlu is a partner at the law firm of Aluko & Oyeboode.

1 *Suit No FHC/ABJ/M/216/04* and *Suit No FHC/ABJ/M/217/04* commenced by way of Originating Summons, were filed by

David Anyaele and Emmanuel Egbuna against Charles Taylor, the Federal Commissioner for Refugees, the Eligibility Committee for Refugees, the National Commission for Refugees, the President of the Federal Republic of Nigeria, and the Attorney-General of the Federal Republic of Nigeria, all sued as the 1st to the 6th Respondents in the action.

2 National Commission for Refugees, etc. Act, cap 244 Laws of the Federation of Nigeria 1990, 1951 United Nations Refugee Convention, African Charter on Human and Peoples' Rights (Ratification & Enforcement) cap 10 Laws of the Federation of Nigeria 1990.

3 Enacted in the Federal Republic of Nigeria by the African Charter on Human and Peoples'

Rights (Ratification and Enforcement) Act, Cap. 10, LFN 1990. See also Chapter IV of the Constitution of the Federal Republic of Nigeria and the Articles of the ACHPR.

4 The *Subpoena Duces Tecum* was signed on June 28, 2004.

5 The Public Officers Protection Act Cap. 379, LFN 1990 requires that any action or proceedings commenced against any person for any act done in pursuance or execution of any law or act or of any public duty or authority shall be instituted within three months of the act.

6 The *amicus curiae* brief and other materials relating to the Taylor case are available online at www.justiceinitiative.org.

Sudan's Government Does Not Hide its Atrocities

Kelly Dawn Askin[†] visited refugees from Darfur, Sudan, camped across the border in Chad.

As Bill Frist, the majority leader of the U.S. Senate, was interviewing refugees from Darfur in Chad earlier this month, the Sudanese government and Arab janjaweed forces attacked a number of black Darfurian villages just a few miles away, over the Sudanese border. Frist was in Chad because Sudan had refused to grant him a visa, even though Khartoum had done so on earlier occasions. The timing and location of the attacks demonstrated the Sudanese government's confidence that it could act with impunity.

I was in Chad at the same time to provide parallel assistance to a U.S. government-funded mission led by the Coalition for International Justice, to interview refugees about why they

fled Darfur, and to participate in documenting and assessing the crimes they endured or witnessed before leaving. According to witnesses I interviewed, since its independence from Britain and Egypt in 1956, Sudan has systematically discriminated against its black citizens, amounting to crimes against humanity of persecution and apartheid. It has now reached the scale of genocide—executed through violence, starvation, and other means of destroying the black Africans in the Darfur region.

After interviewing five boys aged 10 to 18 who had escaped from janjaweed or Sudanese government forces that had captured and tortured them, I then spoke with a Sudanese refugee-camp leader who had just received information that several Darfurian villages were being attacked by government and janjaweed troops.