

The Special Court for Sierra Leone: an open letter from Amnesty International to President Olusegun Obasanjo

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Dear President Obasanjo,

You will recall that Amnesty International wrote to you on 11 July 2003 to express concern about your offer to former President Charles Taylor that he leave Liberia for Nigeria. Although not stated explicitly by you or other representatives of your government at the time, the inference was that Charles Taylor would enjoy immunity from prosecution if he were to go to Nigeria despite his indictment by the Special Court for Sierra Leone and an international warrant for his arrest.

Any guarantee of immunity from prosecution for Charles Taylor, before either the Special Court or the Nigerian courts, demonstrates blatant disregard for international law and the Special Court. The Special Court was established at the initiative of an African state, Sierra Leone, in agreement with the United Nations (UN), to act on behalf of the entire international community to provide justice to victims of crimes against humanity and war crimes.

After Charles Taylor relinquished power on 11 August 2003 and travelled to Nigeria, Amnesty International again reminded the Government of Nigeria that its action in sheltering a person indicted for crimes against humanity and war crimes violated international law. Since then, however, there appear to have been no moves to fulfil Nigeria's obligations under international law.

On the second anniversary of the signing of the agreement between the UN and the Government of Sierra Leone to establish the Special Court on 16 January 2002, Amnesty International is once again urging the Government of Nigeria to fulfil those obligations, to cooperate fully with the Special Court and to arrest Charles Taylor. He should either be surrendered to the Special Court or an investigation should be opened with a view to determining whether to pursue criminal or extradition proceedings in Nigerian courts.

An international warrant for Charles Taylor's arrest was issued on 4 June 2003 when the indictment against him was made public by the Special Court. On 4 December 2003 the international police organization Interpol also issued a red notice seeking the arrest of Charles Taylor with a view to transferring him to the custody of the Special Court.

Charles Taylor has been indicted by the Special Court for "bearing the greatest responsibility" for crimes against humanity, war crimes and other serious violations of international law falling within the Special Court's jurisdiction. These crimes include killings, mutilations, rape and other forms of sexual violence, sexual slavery, conscription of children, abduction and forced labour perpetrated by Sierra Leone armed opposition forces which Charles Taylor had actively supported.

International law requires that those responsible for crimes against humanity, war crimes and other breaches of international law must be brought to justice. Each state that is a party to the Geneva Conventions, as is Nigeria, is under an obligation to investigate persons suspected of having

committed or ordered grave breaches of the Conventions and, if there is sufficient admissible evidence, to prosecute them in its own courts, to extradite them to another country willing and able to do so or to transfer them to an international criminal court. This obligation is absolute, and no state can excuse itself or another state from fulfilling it. No one, regardless of his or her status – including a head of state – has immunity for the most serious crimes under international law.

The action by the Government of Nigeria in allowing Charles Taylor to enter Nigerian territory without threat of arrest and prosecution goes against the will of the international community that impunity for all persons, regardless of rank or status, for crimes against humanity, war crimes and other grave crimes must come to an end. It denies justice to tens of thousands of African victims of the worst possible crimes in the world. It also runs counter to the progress made by the establishment of the International Criminal Court. The Government of Nigeria ratified the Rome Statute of the International Criminal Court in 2001. In doing so, it accepted to be bound by all the provisions of the Rome Statute, including Article 27 of the Rome Statute which, reflecting customary international law, states that:

“Official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute”.

Similarly, Article 6.2 of the Statute of the Special Court states that:

“The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment”.

The Government of Nigeria’s refusal so far to arrest Charles Taylor raises questions about the extent to which Nigeria will comply with its obligations under the Rome Statute to arrest and surrender persons indicted for crimes under international law. It is in marked contrast to the approach of other African parties to the Rome Statute, such as the Democratic Republic of the Congo, that are providing in their implementing legislation or draft implementing legislation that no one, including a head of state, has immunity from prosecution for genocide, crimes against humanity or war crimes.

The Government of Nigeria is also bound by its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which it ratified in 2001. Article 6 (1) of the Convention against Torture expressly provides:

“Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted”.

Since the crimes specified in the indictment against Charles Taylor include “bearing the greatest responsibility” for acts of torture and other cruel, inhuman or degrading treatment or punishment committed in Sierra Leone during the period over which the Special Court has jurisdiction, the Government of Nigeria is obliged under the Convention against Torture to arrest Charles Taylor, pending a preliminary investigation into the allegations of torture set out in the indictment.

The argument has been made that allowing Charles Taylor to travel to Nigeria was in the interests of securing a political settlement to Liberia’s internal armed conflict. Amnesty International is aware of the leading role played by Nigeria within the Economic Community of West African States in these efforts, which has been widely acknowledged by the international community. This cannot, however, be at the expense of ending impunity and abiding by international law.

Experience in Sierra Leone has shown that there can be no durable peace unless those who have committed serious violations of international human rights and humanitarian law are brought to justice. The position taken in Lomé, Togo, in 1999 in negotiating a peace agreement for Sierra Leone – that holding parties to the conflict accountable for the gross human rights abuses committed during Sierra Leone’s conflict would forfeit peace – not only violated international law, as the UN Secretary-General made clear at the time, but was also ineffective in ensuring a just and long-lasting peace, as became apparent within less than a year. The Special Court is playing a major role in contributing towards justice for victims of human rights abuses, reconciliation and sustained peace in Sierra Leone. Frustrating efforts to end impunity is not in the interests of peace in either Liberia or the West Africa region.

The UN Secretary-General and Security Council have consistently expressed their support for the Special Court and repeatedly called on all states to cooperate fully with it.

Amnesty International also believes that failure to cooperate fully with the Special Court in relation to Charles Taylor is incompatible with Nigeria’s position as a member of the Management Committee of the Special Court. The mandate of the Management Committee is to assist the UN Secretary-General in obtaining adequate funding for the Special Court, and also to provide advice and policy direction on all non-judicial aspects of the Special Court’s operations, including questions of efficiency. Nigeria is clearly acting in bad faith with regard to its responsibilities to promote the Special Court; it has undermined its work by protecting from arrest and prosecution an individual indicted by the Special Court. By exercising a role in the establishment and operation of the Special Court, Nigeria has an even greater obligation to cooperate fully with the Special Court and to set an example to other states.

The Government of Nigeria, and all other states, should cooperate fully with the Special Court by promptly entering into a binding legal agreement with the Special Court to assist it fully in any investigation, including tracing, freezing, seizing and forfeiting assets, and in surrendering individuals who are indicted by the Special Court. Rule 8 (C) of the Rules of Procedure and Evidence of the Special Court states that “[t]he Court may invite third States not party to the Agreement [between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone] to provide assistance on the basis of an *ad hoc* arrangement, an agreement with such State or any other appropriate basis”. We urge the Government of Nigeria to respond favourably to any invitation by the Special Court to enter into such an agreement.

A number of individuals and non-governmental organizations in Nigeria, including lawyers, journalists and human rights activists, have publicly expressed their disquiet at the Nigerian government’s action in harbouring Charles Taylor and violation of its obligations under international law, and share the concerns of Amnesty International.

I look forward to receiving your response to the issues raised in this letter, including assurances that the Government of Nigeria will cooperate fully with the Special Court and comply with its obligations under international law.

Yours sincerely,

Irene Khan
Secretary General