

AMERICAN COURT FOR CRIMES COMMITTED IN NIGERIA? YES, IT IS PERFECTLY IN ORDER!

By

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Michael O. Folorunso's article entitled "[American Court for crimes committed in Nigeria](#)" published in the [www.Nigerdeltacongress.com/](#) last week is both timely and interesting. Basically, it was written in reaction to the suit currently pending against certain Nigerian past military dictators, of which General Abdusalam is a principal party, in a federal district court in Chicago. Mr. Folorunso, like several other individuals, is concerned about the propriety and even the possibility of a US court of law authoritatively assuming jurisdiction over dictators and torturers who committed these crimes outside of the United States of America. In other words, they are questioning the competence or jurisdiction of local courts here in the US to want to try such people.

Development in the Law

No doubt, these are very important questions of law as every nation is expected to have judicial powers only over matters emanating from within its own legal system or within the confine of its national territorial sovereignty. To a very large extent, that was the principle as firmly established in the old law of nations. As a matter of fact, many people I have discussed this case with, including some US trained attorneys, have expressed doubt about the viability of the case pending against Abdusalam and other named Nigerian dictators. It sounded rather novel to some of them. What they seem not be aware of or have forgotten, is that, since after the end of the second World War, there has been such fundamental paradigm shifts in both municipal and international jurisprudence, that what were previously thought impossible in law have since become routine while previously 'established and sacrosanct' principles of law have crumbled dramatically, starting with the Nuremberg trial of the Nazi war criminals.

Under the old law, there would have been no basis to try those Nazi generals, as they would easily have pleaded the fact that they were "acting under superior orders" and that would have been enough to free them. But to their fatal shock, the international tribunal rejected this time-honored defense and found them guilty of "crimes against humanity". If soldiers are to obey superior orders, whether in war or in peace, they must be 'lawful orders', otherwise, they will pay dearly for it if in the process, they violate others' human rights.

The Basis of Jurisdiction in US Courts

The quick explanation to Mr. Folorunso's query when he said that "I am not completely sure WHY a US court will issue a summons to be served on visiting foreign DIGNITARIES except that it wanted to create confusion and embarrass all parties involved" (emphasis mine). But for what I may call the manifest inferiority complex of most Nigerians which obviously induced the allusion to the concept of 'dignitaries' in an action before a court of law, I would have thought he was hypocritical about it, for the law is not a respecter of persons, but the question he asked is quite similar to those previously posed by many others in the past, when

the victims of the holocaust which occurred more than half a century ago in far away Germany were now suing their tormentors who killed them and confiscated their gold and other valuables in US courts. No doubt, there have been questions like: "Why can people use the courts of the United States to reclaim goods that were lost in foreign nations and taken by foreign companies and people?" "What allows such action to be taken?" "Why were these cases not filed in the foreign nations' courts? Well, the answers to these questions can be located squarely within the jurisdictional laws of the United States. The case law on the subject is replete with precedents but the cases I am referring to are those of **Weisshaus, et al v. Union Bank of Switzerland, Freidman, et al v. Union Bank of Switzerland** and **World Council, et al. Union Bank of Switzerland** which were later consolidated the class action into the single famous case of **In re: Holocaust Victims Assets** by the United States District court, Eastern District of New York (CV-97-4849). The defendants in this case tried very hard to resist the jurisdiction of the US courts by relying on the decision in the **Union Carbide** case which resulted from the explosion in Bhopal India where many people died and the US courts declined jurisdiction to those who wanted to sue over the incident in the US. This may not be the appropriate forum to go to town on the jurisprudence of this case and similar other cases as a learned law review may well be the best forum on which to expound on the details and complex legalism of the subject. But one will try to make the position of the law as one understands it as simple as possible.

The basis of this jurisdiction is on the 1789 Act of Congress known as the Alien Tort Claims Act. Interestingly, this piece of law was enacted well before the US began to assume the role of the policeman of the world. So, it does not suffer from the taint of arrogance, which has become the most singular defect in all the US interventionist moves in world affairs lately. From all indications, there is yet no political element in the enforcement of the law apparently due to the doctrine of separation of powers that is prevalent in the US system of law. It was an enactment with which the United States wanted to behave as a responsible member of the international comity by joining in the raging fight against international piracy which was a major threat to international trade in those days. Because piracy was considered in international law as a crime against humanity, all nations of the 'civilized world' were duty bound to prosecute and punish it within their borders, irrespective of when and where the crimes were committed. With time, what was known as 'crime against humanity' expanded in scope to include slavery, war crimes, genocide, torture, political oppression, racism, apartheid, etc. For example, the Act was successfully evoked in 1795 in the case of **Bolchos v. Darrel** in an action for restitution following the piratical seizure and sale of slaves by the defendants who were Spanish and French nationals. The foreign nationalities of the culprits were set aside as they were duly dealt with under the municipal laws of the US.

Specifically, the Alien Tort Claims Act 28 U.S.C. S1350 provides that "The District court shall have original jurisdiction of any civil action by an alien for tort only, committed in violation of the LAW OF NATIONS or a treaty of the United States" (emphasis mine). By 'law of nations' here, we mean international law and all treaty obligations based on intentional law with respect to those acts and omissions that qualify to be regarded as parts of customary international law. In contemporary times, however, human rights have become a major chunk of the corpus of the law, if not the dominant portion. So, any one who committed gross violations of human rights anywhere in the world is, by virtue of this Act, liable for trial in the US if certain conditions are met. It is not my business here to say whether or not the military dictators of Nigeria, including defendant Abdusalam violated the human

rights of Nigerians. But my research here in the United States reveals that 9 out of every 10 Nigerians that had applied for asylum to stay in the US in the last several years had based their claim on the horrible human rights conditions created by the various military regimes in Nigerian of which Abdusalam and Babangida are major characters. If American courts had been told, and they are convinced, that there are human rights violations in Nigeria and on the basis of which conviction thousands of asylum applications had been granted, it is elementary logic that it would be a simple case of judicial notice for any American court to hold that those men who ran Nigeria militarily had committed these heinous crimes against humanity.

In the last twenty years or so, there has been frequent resort to the Alien Tort Act by aggrieved parties in the US. Most of these cases have been against corporations violating sundry laws like polluting the environment or running sweatshops in far away places. One of the latest of such high profile cases is the one where native Indians in Ecuador sued Texaco in New York because the company's subsidiary in Ecuador was unlawfully dumping crude oil in their jungle. The plaintiff could not have succeeded in Ecuador because the local laws there are enacted to protect the oil companies just as it is the case in Nigeria and for that reason, the Alien Tort Act was evoked since there is evidence that the local laws of the perpetrator of the crimes would not punish the criminals (*in Re Holocaust case*). Again, there may be no class action yet recognized in the country of the perpetrator and also, it is possible that the local courts do not have jurisdiction over the criminals as it is common knowledge, for example, that Babangida has for the umpteen times refused to attend to court summons issued in Nigeria. But in the US there are no dignitaries before a court of law. The recent lessons of the cases against Presidents Nixon and Clinton ought to have put all on notice that, if US courts do not defer to incumbent presidents within the realm, how much less would they recognize bush generals from elsewhere who once held their peoples down militarily in the name of governance.

As a matter of fact, many lawyers initially thought that the Act was applicable only to enforce treaty obligations or activities falling under international law. Good enough, the case against Abdusalam and others is founded on this established premise. But the application of the Act itself has been creatively expanded, over time, to include several violations, which are quite 'unrelated' to human right violation or international law, *per se*. In the instant case, Nigeria is signatory to many treaties which the military juntas flagrantly violated by torturing our people and denying them their human rights. For that reason alone, the court ought to have jurisdiction over them whenever they are here on the soil of US. We are not here speculating on what their fate could be under the emerging international criminal justice system of which Arusha and Bosnia are clear indications.

Take for example, the case of a Paraguay woman who was able to convince a federal appeal court in New York that the crime of torture qualifies as an offense against international law and by implication, one against humanity. A Paraguay policeman had killed the woman's 17 years old brother in Paraguay in an effort to silence their family's criticism of the Paraguay government, a very good case of political killings such as had happened in Nigeria several times. Later the police officer was in New York probably visiting and the woman got to know of it and promptly sue him. Guess what. She was awarded the sum of \$10,400,000 as compensation! Are you saying that General Abdusalam and Babangida cannot afford a compensation award of 5 billion dollars? Yes, they can, if found guilty. For the avoidance of doubt, the punishments for offenses like war crimes and crimes against humanity such as

torture and state sponsored terrorism, as established under the Nuremberg trial and other fora include:

Death

Life imprisonment or a term with hard labor

Fine

Forfeiture

Restitution of property wrongfully acquired; and

Denial of certain rights.

In our own case we are only asking for compensation and unreserved apology to the victimized people of Nigeria from these generals.

As recently as 1985, a NY court of appeals allowed a case to proceed against Radovan Karadzic, the Bosnia Serb leader accused of rape, genocide and other war crime by a group of Bosnia refugees resident in the US. The court ruled that genocide and crimes against humanity are violations of treaties EVEN if those responsible are 'dignitaries' acting on behalf of the government or not. In 1997, Judge Richard A. Paez in California refused to dismiss an Alien Tort Claim class action against Unocal Corp., based in Segundo, Californian, for alleged atrocities committed while clearing the way for a gas pipeline to be laid in the far away jungle of Burma. Their crime was that they forcefully removed villagers from their homes and even forced some of them to work on the pipeline project, an act the court readily compared to slavery—a crime against humanity.

The case against the Marcos family of Philippine is yet another instance for the application of the law against foreigners who committed offenses outside of the US. Why should dictators be allowed to retire or holiday in peace when they have shattered the lives of millions of others? As a matter of fact, many suits that would have in previous times been considered as frivolous have now been successfully litigated in the US. The recent judicial victory of our compatriots, the Ogonis, over the giant Shell, although on a different legal principle, is one of such progressive development in the US legal system. These days, corporate lawyers are contending with law suits based on environmental pollution presented as crimes against humanity and oil and other extractive industry oriented companies are paying heavily for negligence committed in far away countries here in the US.

Admittedly, there have been some notable setbacks in the trend, but certainly not enough to suggest a change of the momentum working against dictators. For example, Judge Rakoff once ruled in the Texaco case from Ecuador, that "plaintiff imaginative use of this courts power must face the reality that US district courts are court of limited jurisdiction" and that " it does not include a general writ to right the world's wrong' (1997). Fortunately, however, a federal appeals court later over-ruled Rakoff as he was ordered to reconsider whether NY or Ecuador would be a more appropriate forum. Of course, with the well publicized institutional obstacles in the way of litigation in Ecuador, your guess as to the best place to sue is as good as

mine. If the US and any appropriate state fails to discourage dictatorship and political oppressions overseas by punishing violators by all means possible, they would inevitably have to contend with the army of refugees who would come knocking at their doors at the most inauspicious times and at greater cost to their social facilities. So, there are some good reasons beyond those of the law and ethics why these foreign 'dignitaries' must be punished here.

The Principle in the Suit against Abdusalam and co.

The case against Abdusalam is real. Those behind it are all of us victimized Nigerians acting under the aegis of the National Pro-democracy Movement, NPDM; a broad coalition of concerned citizens who are desirous of reclaiming our human rights that the military dictatorship stole. Let me quickly say that the NPDM members who initiated the suit against the Nigerian human rights violators are doing so in the hope of fulfilling the law and, ultimately restore our collective humanity, which the military dictators so ruthlessly and carelessly destroyed. It is in pursuit of a higher principle to which all Nigerians are cordially invited. The laws of America provide, as we have seen, the opportunity for all those unfairly treated in their homelands to bring their cases to the district court, in the spirit of the Alien Tort Claim Act once certain conditions are met. We believe that, in this particular case, there are ample grounds to punish the butchers who made life difficult for many Nigerian during their reign. Even though the scale of brutalization in Nigeria is nothing compared to the Holocaust suffered by the Jews, it is however a proposition too plain to be contested, that the lives of Nigerians are no less valuable than those of the Jews who have rightly continued to extract justice from their Nazi tormentors for crimes committed along time ago. Rather than doubting whether the case will succeed or not, all Nigerian of goodwill should, in fact, be contributing their quota to seeing that the criminals of yesteryears in Nigeria are brought to books wherever they may be. Your support is therefore needed in the successful prosecution of this test case as far as Nigeria is concerned, which has all the ingredients of a long and tortuous litigation.

We all know that because of the hold this criminal have on the Nigerian political system, nothing will come their way in terms of prosecution. Since these men are above the law in Nigeria, we should try to let them know that whenever they step out of the protection of the Nigerian iniquitous system that they are liable to potentially expensive law suits. If you do not put a good value to your life and liberty, they would be treated as trash. Patriots like Ken Saro Wiwa, MKO Abiola and countless others did not die in vain. It is the duty of those of us, still alive, to bring justice to them. So, this suit is not frivolous nor vexatious because the principle behind it is noble and redeeming. Let there be no resting-place for those who collaborated to ruin Nigeria.

Finally, we as a people must convince the world that our collective memories are not that short. If the white people are still correcting the wrongs of 1939-45, Nigerians and the Black world should therefore not forget that what happened during the military dictatorship in Africa could still happen again and that if we do not act against our tormentors now, bigger ones will spring up tomorrow. That is the law of nature. Because we bore feudalism, they came up with slavery; because we bore slavery they came up with colonialism; and because we bore colonialism; they came up with neo-colonialism and the vicious cycle of oppression and racial put down continues. But this is an opportunity for us to begin to break it, if not for ourselves, but for our

children. It was Saro Wiwa yesterday; it could be you tomorrow. So Abdusalam and co. have debts to pay to us and we are not about to let go.

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