

# HOW CAN LAW FACILITATE THE POLITICAL UNITY OF AFRICA?

By Chief Charles A. Taku

## Abstract

The answer to the question whether the law can facilitate the political unity of Africa is undoubtedly in the affirmative. Indeed, Africa has regional, sub-regional and continental multilateral treaties which can provide Africa with the much sought but elusive political unity. Regrettably, the political unity of Africa has not occurred. This is not due to the paucity of the laws that may bring about the political unity of the continent. It is due to the lack of the political will by African leaders to rely on the law to attain the political unity of the continent.

It is not reasonably disputed that law is a panacea for Africa's political unity. It is also not reasonably disputed that law provided the legitimacy of the deconstruction and dehumanization of Africa. This brings the question, how law can be that capricious. How can law be the bane and panacea for Africa unity?

This paper attempts to explain how this capricious bane and balm construct so-called law can be relied on to facilitate the political unity of a continent whose political, cultural and economic sovereignty were eviscerated and destroyed using the law. The partition of the continent attained the force of law with profound enduring political, cultural, economic and legal consequences.

## Introduction

Africa may at best be characterized as the "Curse of Berlin"; a reference to the partition of Africa by European nations at the Berlin Conference in 1884. The partition of Africa was done under the cloak of legality, just as the slave trade before it. The fact that slavery was outlawed several centuries after did not and has not eliminated the enduring effect of the crime on Africa and victims of the crime.

The end of colonial rule did not end the enduring effect of the partition of Africa in 1884. The immutability of colonial boundaries acquired at independence has attained the character of customary international law. The sovereign identity of African states was defined by colonial boundaries and laws imposed by Africa colonial masters to subjugate and manage their Africa colonial possessions.

The slave trade before and the partition of Africa in Berlin in 1884, that defined Africa and Africans as chattels for the fulfillment of Western economic interests were accorded a seal of legality by the so-called gate-keepers of freedom, legality and sound constitutionalism. The realization of these crimes was facilitated by a deliberate policy of looting, pillaging and the evisceration of the indigenous African cultural, political, economic sovereignty over Africa. Africa lost its core sets of human values, its civilization and its natural identity to colonial imposed set of subhuman values. African therefore lost the originality and authenticity of its identity, sovereignty and its creativity.

The enduring effect of Africa redrawn and managed under the direct jurisdiction of Europe for the economic benefits of these foreign predators is an Africa with a distorted identity, a conflicting set of humans, economic and cultural values constantly at war with its soul. Addressing the dire situation confronting Africa requires a critical examination of the ill-afflicting Africa.

Without identifying these problems, the unity of Africa to reclaim its lost identity; its lost human, cultural and economic values that were tossed and let loose in the wild seas of universal competing human survival interests will not be realized. The bridging of the divisions that are still being fueled by the ghosts of Africa's colonial past has made the political unity of Africa elusive. One critical tool for the attainment of this goal is the use of the laws that were relied on to enslave and divide Africa to facilitate Africa unity.

### **The ghosts of Africa's colonial legacy**

The criminal origin of present day Africa Nations in their present configuration, poses serious obstacles for the political unity of the continent. Lacking economic sovereignty despite the abundance of economic resources, the curse of Berlin and the ghost of colonial rule haunts the troubled continent and impedes its political unity.

The perpetrators of the crimes that enslaved, partitioned, colonized and exploited Africa considered their conduct legal and legitimate. The international multilateral treaties regime under which they conducted their criminal acts did not consider Africa as a subject of international law. Deprived of legal recognition as a subject of international, Africa and Africans did not benefit from the protections afforded by the international treaty regime. The situations facetiously changed with the supposed political independence granted African countries by the end of mid-twenty century.

The erstwhile colonial states of Africa were considered as subjects of international law and entitled to the protections afforded by the international multilateral treaty regime. There is no gainsaying that the supposed independent Africa that were granted independence by erstwhile colonial masters is an indisputable offspring of legalized international criminality.

### **The multilateral framework of the law for the political unity of Africa**

Prior to and on attaining independence, the Pan-African Movement laid out a sound ideological basis for African unity culminating in the creation of the Organization of African Unity (OAU) in 1963.<sup>1</sup> An elaborate legal framework has over the years been put in place keeping the dream of an effective political unity of Africa alive. This notwithstanding, the ghost of colonial rule and the curse of Berlin syndrome have constituted serious affronts to the realization of this objective.

The founding fathers of the Organization of African Unity led by the Osageyfo Dr. Kwame Nkrumah recognized the fact that colonial rule divided and devastated Africa; in so doing impeded its unity. It required the liberating spirit of the law carefully established in the founding treaty of the OAU in 1963 for Africa to establish the legal foundation for a United Africa, which is considered the linchpin to the development of a prosperous and peaceful Africa.<sup>2</sup>

An elaborate multilateral treaty framework for the political unity of Africa exists. What is lacking is the political will for their implementation.<sup>3</sup> The question may be asked why African countries lack the political will to ratify and enforce the laws established to facilitate the political unity of the continent?

---

<sup>1</sup> Leading proponents of Pan-Africanism were Osagefo Dr Kwame Nkrumah, Dr Julius Kambarage Nyerere, Marcus Garvey, Dr W.E.B Dubois, Emperor Haile Salesie, Milton Obote and later Muamar Gaddafi.

<sup>2</sup> The main objectives of the OAU were to rid the continent of the remaining vestiges of colonization, apartheid, promote unity and solidarity among African States. On September 9, 1999, African heads of States met in Sitre in Libya and transformed the OAU into the African Union with the objective to accelerating the process of the integration of the continent.

<sup>3</sup> Among several legal frameworks for African unity are: The Lagos Plan of Action and the Final Act of Lagos (1980) for incorporating programs for self-reliant and cooperation among African countries, The Africa Charter on Human and Peoples' Rights (Nairobi, 1981), Africa's Priority Program for Economic Recovery (1985), OAU Declaration on Political and Socio-Economic Situation in Africa and Fundamental Changes taking place in the world (1990), The Charter on Popular Participation (1990), The Abuja Treaty, Charter establishing African Economic Community ( 1991), The Mechanism for Conflict Prevention, Management and Resolution (1993), Cairo Agenda for Action (1995), African Common Position On Africa's External Debt Crisis ( 1997) , The Algiers decision on Unconstitutional Changes of Government (1999) Lomé Declaration on the Framework for OAU Response to Unconstitutional Changes of Government (2000) , The Constitutive Act of the African Union adopted in Lomé in 2000 and entered into force in 2001, NEPAD (Lusaka 2001), The Malabo Protocol to the African Court on Human and Peoples' Rights (2014).

The answer resides in the parallel existence of subsisting colonial treaties that were imposed by erstwhile colonial masters upon granting political independence but retained economic sovereignty over Africa.

Africa is in a predicament where by the operation of international law it was granted independence with established dire conditions for the exercise of the said independence under colonial and neo-colonial supervision. Africa that was supposed granted independence to the dismay of its people is still the ward of colonial governance.

The political structures established for the political unity of Africa are surviving on the life-support of financial contributions of colonial and neo-colonial powers that enslaved and partition African and plundered its resources and are using a meagre part of the same resources to sustain its policies of divide and rule over Africa. In the result, Africa is made to finance its own disunity while struggling strenuously to ensure its unity. Africa is kept in perpetual debt and mendacity to enforce the colonial era imposed economic supremacy and neo-colonial sovereignty over Africa.

### **Proposed solutions**

The realization of political unity of the continent through the law will not be by the political will of African leaders alone. It will require mass mobilization, participation and mass action, for this objective to be realized. The political independence of Africa was obtained through mass mobilization, participation and mass action through considerable sacrifices and risks to life and limb.

The African civil society organizations are well placed to mobilize African masses to reclaim the economic sovereignty of Africa over its natural resources. African masses are better placed to agitate for the termination of colonial and neo-colonial bilateral and multilateral treaties that have tied African countries to the apron -strings of enforced slavery and subjugation by erstwhile colonial powers. Africa masses must reject dependency on foreign aid and colonial treaties and embrace the implementation of the existing laws and treaties that foster the political unity of Africa and its economic sovereignty.

The endemic corruption of many of Africa's civil society organizations by erstwhile colonial and neo-colonial western state and non-state actors are an impediment to the use of the law to realize the political unity of Africa.

## **Conclusion**

The political unity of Africa through the law is a cognizable and realizable objective. The establishment of the legal framework for the attainment of this goal was commenced by the founding fathers of and painstakingly improved on by the succeeding political leaders. For the founding principles of the AOU and other laws established for attaining the political unity of Africa to be effective and beneficial for the continent and its peoples.

African countries must embark on a critical and urgent review or repeal of all colonial laws and policies that are hampering the effective ratification and implementation of laws established for that purpose. It is a shame that many African countries are paying lip service to Africa political unity while still subservient to their erstwhile colonial masters who continue to exert considerable economic and political influence over them.

## BIOGRAPHY OF CHIEF CHARLES ACHALEKE TAKU

### **Biography:**

Chief Charles A. Taku, a traditional Chief, is an International lawyer of thirty-seven years' trial experience. He specializes in International Criminal law, Humanitarian Law, International Human Rights Law and Practice, Civil and Commercial Law. Chief Charles Taku was counsel to a major petroleum exploitation company for over two decades. He was counsel in the banking, finance and insurance sector.

For the past eighteen years, as Lead Counsel, Chief Taku represented clients at the United Nations International Criminal Tribunal for Rwanda (ICTR), The Special Court for Sierra Leone (SCSL), the International Criminal Court (ICC), and the United Nations Human Rights Committee in Geneva and the African Court on Human and Peoples' Rights in Arusha Tanzania.

Chief Taku is the Vice President the International Criminal Court Bar Association (ICCBA), Vice President of the Association of Defense Counsel at the International Criminal Tribunal for Rwanda (ADAD), and member for life of the Governing Council of the African Bar Association (AfBA). Chief Charles Taku published and contributed to the publication of major books on international law and several scholarly articles. He has attended and made compelling contributions at several conferences on International Law in many parts of the world. He is proficient in English and French languages.