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# Comment and Analysis

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## **Between Courtroom Reality TV and Justice**

*Merely televising Charles Taylor's trial in The Hague to Freetown contributes to sidelining human rights accountability on the African good governance agenda*

Michael Hammer

The progress in the trial of former Liberian President Charles Taylor is cause for celebration for all who value justice. His arrest in Nigeria and subsequent handover to the Special Court for Sierra Leone in April 2006, and then the start of his trial in The Hague in June 2007 are important steps to bring him to account. The Court will judge his responsibility and guilt for masterminding, politically controlling and economically supporting war crimes and crimes against humanity committed in the war in Sierra Leone, which cost tens of thousands of lives, left many more injured and mutilated, and hundreds of thousands displaced in the area.

But a trial alone is not enough, due process must be respected and all, no matter how grave the accusations against them, have the right to their day in court. Whilst some may bemoan the recent adjournment until 20 August, it will also give the Court time to avoid further failures in the broadcasting of the trial back to Freetown. Charles Taylor's eventual appearance in the Courtroom and request to be represented by lawyers, rather than to do this himself, will also help fulfil the requirements of due process.

The trial of Charles Taylor, together with the progress of the International Criminal Court (ICC) on other trials with a growing number of cases under investigation and new indictments being issued in relation to Darfur, will advance the cause of international criminal accountability and increase its support at global level.

The broadcast of his trial in Freetown is vital to give the people of the country for whose misery he is on trial an opportunity to see the trial for themselves – justice must be seen to be done. The continuing trial of his co-accused in Freetown itself will strengthen the link people can form to the process.

Nevertheless, the physical removal of Charles Taylor's trial from Africa to The Hague may limit the impact of the trial to a narrow community of interested international lawyers, policy makers and human rights activists who primarily work at the global level. At worst the broadcasts will followed in Africa as a Telenovela or Reality TV show, especially if drawn out in many episodes over a protracted period of time. This would undermine its credibility with those who have the greatest stake in them and could contribute to human rights accountability remaining a marginal issue for African governance.

## **Human Rights Accountability is needed for Good Governance**

Over the next few years the Special Court for Sierra Leone and the International Criminal Tribunal for Rwanda will come to an end. Then all current and future cases relating to Africa will fall within the remit of the ICC and are likely to be tried in The Hague. As yet there is no African regional court established and capable of dealing with such crimes *in situ*, despite an agreement by the African Union to set one up several years ago. Unless progress is made many future cases will be tried outside the countries and continent where the crimes in question were committed.

This is a dangerous trend which contradicts the main intention behind setting up the Special Court for Sierra Leone as a mixed tribunal sitting in Freetown, which was to make the trial against those most responsible for alleged war crimes and crimes against humanity committed in Sierra Leone accessible to Sierra Leoneans, and ensure it is part of the ongoing process of transitional justice.

Whilst the cost of the court was astronomical by local standards and economically out of kilter with the realities of local people, the costs were justified by the need to enable the countries in question to get back on the road to peace whilst ensuring a justice which remained accessible to those most affected. Indeed, in its few years of existence the Court has achieved a wider public discussion of transitional justice, and has involved and trained judicial personnel from Sierra Leone and the wider area to support the strengthening of justice. No other international court has been able to achieve all this.

Its purposes and achievements are, however, not only put at risk by the fact that the Charles Taylor trial takes place outside the region, but also its relay by TV which could easily assume the characteristics of a soap opera undermining its value as a tool of transitional justice. Done and dusted in less than three months after his arrest the transfer of Charles Taylor to Europe and the parameters of his trial therefore seem at odds with the political, and financial, logic previously applied to the case. These were precisely to make justice happen were the crimes were committed, even if at elevated expense.

The decision in 2006 to move the trial out of Africa from Freetown to The Hague may have been well grounded in fears for security. To critics the expediency of the decision and implementation, however, appeared to be driven by feelings of 'good riddance' rather than concern for the fulfilment of the original intention to strengthen an association between the people affected and the trial itself. This sets a problematic precedent for the future of judicial and political accountability for human rights abuses on the African governance agenda. A trend is also evidenced by the continuing difficulties of African leaders to muster the political necessary to effectively address other major human and human rights tragedies unfolding in Africa including in Sudan, Zimbabwe and Democratic Republic of Congo.

The shift of the trial and the visible problems of giving its conduct a sense of importance in Sierra Leone itself, appears to be based on the assumption that issues of justice, accountable governance and development can be separated from politics. Not only are many of the conflicts in Africa rooted in exactly this separation, but peace deals have failed to deliver when based on a balance of conflicting interests rather than enshrining good governance, including the need for accountability for human rights abuses. In this case, there should have been international support to mitigate the security risks associated with a trial in Freetown in return for a groundbreaking willingness by African leaders to set an example and pull through this trial near the victims of the crimes concerned.

The overall positive message sent by trying someone who is potentially one of the most serious offenders in Africa risks being undermined by the impact of the trial being held in The Hague.

Despite its television relay this will mean that in real terms once again human rights accountability has been removed from or downgraded on the agenda of African leadership. As so often in the past, this could be interpreted as justice being better delayed, buried or deferred as it endangers existing power relationships.

## **Break a bad record**

This is particularly relevant as the record of accountability for serious human rights abuses in Africa remains weak; few cases of serious human rights abuses have been subject to a fair judicial inquiry or trial in Africa. The exceptions include the South African 'Truth and Reconciliation' hearings following the end of the Apartheid in South Africa, the trials before the International Criminal Tribunal for Rwanda after the genocide, and now the cases before the Freetown end of the Special Court for Sierra Leone. In many other cases the leaders responsible for these abuses have either stayed in power, or found refuge in countries run by benevolent protectors, often within Africa. This is epitomised by the treatment of former Presidents Hissein Habré from Chad or Mengistu Haile Mariam from Ethiopia. Such an approach is not an active choice by African societies, and has been widely criticised by many African and international activists as an untenable situation which scorns the victims, leaves deep wounds open in society and generates new conflict.

The public commitments made by African leaders over the past few years have not yet changed this record. Promises to improve African governance systems and practices through the African Union (AU); to make rights guaranteed and individually justiciable under the African Charter for Human and Peoples' Rights; and to use the New Partnership for Africa's Development (NePAD) peer review mechanism to reward good governance practice are producing very limited progress. In some cases, such as Zimbabwe, observers remain stunned by the failure of African leaders to bring about a change in the trend of bad governance that is life threatening for millions of citizens.

The transfer of the Charles Taylor trial out of Africa and there being little prospect of other trials of the same importance being held in the region in the foreseeable future reinforces this trend. For the critics, African leaders will be seen to continue failing their people by not making the necessary link between justice, accountable governance and development, especially in post-conflict societies.

In order to counter such negative impressions of African governance African leaders must change these dynamics and make human rights accountability a priority for their good governance agenda. Only by doing this can periods of violence and governance failures be brought to a close, and societies able to progress without the fear of renewed armed conflict.

## **Bringing Justice Home**

To support leaders in improving standards and perception of governance in Africa the international community should also consider the impact of the current centralisation of international criminal justice processes in The Hague. The distance between the judicial process taking place in Europe and those affected by the crimes must be addressed.

However, even if the ICC takes steps to bring its work closer to those affected by the crimes it tries, African leaders will need to actively support this process. It will be hard to begin with, but holding perpetrators of abuse to account *in situ* and to international standards of due process would demonstrate that African leaders are serious about their own accountability to their people. Such visible action will also show that they are willing to hold each other accountable as peers beyond the discredited 'quiet diplomacy' which has failed so many times. International criminal trials are an opportunity to improve the historically tarnished accountability and governance record of Africa in the eyes of the world.

Accessible justice exemplifies the rule of law. A functioning judicial system is as much a necessary element of good governance as a democratic process of choosing a government through free and fair elections, and a functioning and accountable executive. Nobody would suggest that these last two could be run elsewhere, put off or dropped. So why do decision-makers suddenly feel they can do without judicial accountability, including in relation to the most important cases, close to home?

Just as one would not expect an executive to take some of its most critical decisions outside the country it governs, it must be a priority for international prosecutions to take place at an appropriate level and in an appropriate place ensuring access by those affected. This would show respect to people in Africa as citizens.

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This paper is part of the One World Trust's research and policy advocacy work to generate wider commitment to the principles and values of accountability in global governance and to the international rule of law. With our work in this area we aim at developing greater understanding of the role of human rights accountability in global conflict prevention in particular amongst parliamentarians and others in the policy community.

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