

Transitional Justice for Ethiopia

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(Amharic Version Available)

Summary

Transitional Justice is when people move from authoritarian regimes to democratic rule by correcting past state abuses. Transitional Justice enables the promotion of truth, access to justice, and reparations, and guarantees non-recurrence, eventually enabling peaceful coexistence. For a wounded nation like Ethiopia, this is what is needed to avert further genocide and civil war and ensure the safety of 120 million people. This goal for transitional justice informs the kind of struggle to be conducted to achieve it. This regime has to be removed in the only way that it has forced the people to react: defend their rights by any means necessary. The Fano movement is just, necessary and the only means to achieve change. This is an account of transitional justice and lessons learned.

“Those who make peaceful revolution impossible will make violent revolution inevitable” John F Kennedy

If dictators would resign, they would make the transition less bloody and complicated. Dictators refuse to resign because their personality does not allow them to think rationally and they fear being persecuted by the next person who takes over. When you think they are about to change they double down and become even more brutal. An overwhelming number of cases show that dictators refuse to cede power because they believe that once they are in power, they cannot leave and even if they wish to do so, they cannot because their road to power, and in power, is littered with death, torture, displacement, and destruction, that the victims will take revenge if the dictator were to step down. The number of crimes committed multiplies every year because narcissistic and sick dictators like Abiy are not bound by rational thinking. They are compelled to resort to increasingly greater oppression to stay in power.

“Assume that the ruler plays an annual game where he wonders: am I better off if I retire now or if I commit another crime which would make my retirement next year more difficult but my rule this year safer? The answer is simple: he is better off committing another crime in the expectation that this would make his overthrow less likely. He replays that game every year and every year he reaches the same conclusion. Thus, the ruler’s decisions are not at all irrational or even inconsistent”¹

The End of Famous Dictators

Muammar Gaddafi of Libya

He was captured by Libyan rebels while hiding in a drainage ditch. After dragging him out and beating him, he was shot and a bayonet was shoved where the sun does not shine. They put his battered body *on display and later in a shopping mall freezer.*

Mussolini of Italy:

Nazi Germany rescued and reinstated him for a year and a few months, but communist partisans caught up with him and his mistress as they tried to escape to Spain. They were both shot and hanged upside down in a gas station in Milan.

Samosa of Nicaragua

The Sandinistas prevailed eventually and Samosa was forced to flee Nicaragua taking much of the country's wealth. He was later assassinated by a squad in Asuncion in his car with an anti-tank RPG and the former dictator burnt in his car.

Nicolae Ceausescu of Rumania:

After an hour of speaking, the crowd turned against him and sparked a country-wide rebellion. He and his wife were forced to flee but were captured by the police and handed over to the army and after being tried and convicted for economic sabotage and genocide he was executed with a rain of bullets.

Mobutu Sese Seko of DRC

When rebel forces led by Laurent Desire Kabila overran the DRC, President Mobutu Sese Seko who ruled the country for 32 years was forced to flee. He was known for his corruption and lavish lifestyle. Already suffering from advanced cancer, he died on his way to his luxury home in Europe, in Morocco.

Idi Amin of Uganda

The Tanzanian army and rebel forces successfully captured Kampala in 1979 and ousted him from power. He was known for his brutality and the death of 300000 Ugandan civilians. Amin fled to Saudi Arabia where he died of illness.

Emperor Bokassa: of CAR

Bokassa, a self-proclaimed emperor in the Napoleonic style of CAR, never achieved recognition by states except by France. He was deposed after the coronation. He was obsessed with everything that was European, He was deposed by a rebel group and though sentenced to death, lived in his village in CAR as a pastor, sick and poor, until his death.

Said Barre of Somalia

The Somali rebellion successfully ejected Said Barre in a civil war. Barre was forced into exile to Kenya first, where he was denied asylum. He later moved to Nigeria and died a few years later on his way to a hospital.

Charles Taylor of Liberia

Former Liberian president Charles Taylor was found guilty, in May 2012, becoming the first head of state to be convicted for war crimes since the Second World War. He was sentenced to 50 years by an international hybrid court.

Al Bashir of Sudan

Bashir On 11 April 2019, al-Bashir was removed from his post by the Sudanese Armed Forces after many months of protests and civil uprisings. He was immediately placed under house arrest pending the formation of a transitional council. He is still in prison.

Mengistu Hail Mariam

Mengistu ruled Ethiopia for 17 years with absolute, power and an oppressive political system. He fled to Zimbabwe as the TPLF forces ringed the capital. He was found guilty of mass atrocities and sentenced to death in absentia.

Abiy Ahmed..... (Next)

Whatever the scenario may be leading to the end of Abiy's regime, the country will end up establishing a transitional government which, if it is in the hands of good people, would enable the beginning of a long arduous work of healing and stabilization. This article deals with the second item in this process: The establishment of Truth, Justice, Reparation, and Reconciliation (TJRR) or in a different term Transitional Justice to achieve the goal of peaceful coexistence for the Ethiopian people. Such a process can begin only after the exit of the current oppressive regime and will include both judicial and non-judicial mechanisms.

The sequence of events that would lead to Transitional Justice and sustainable peace would be:

1. The establishment of an all-inclusive transitional government (TG) after Abiy's regime is removed
2. The establishment of a National Conference (NDC) which will decide on:
 - The establishment of the Truth Justice, Reparation and Reconciliation Commission (TJRR)
 - The establishment of the Constitution Drafting Commission, (CDC)
 - The establishment of an Electoral Board Commission (EBC)
 - Referendum
- 3 The process of stabilisation of the nation
- 4 Election

These series of events are preceded by various scenarios that would lead to the removal of the regime. A detailed analysis of the entire process is to be found in another document. This article deals with the role of transitional justice: The Establishment of Truth, Justice, Reparation and Reconciliation Commission (TJRR), in Ethiopia, a country at war with an illegitimate government. Attention would be given to four elements:

- **Truth-seeking** (or fact-finding). Non-judicial bodies would initiate investigations into genocide, human rights violations war crimes, and massive displacements. These would often look not only at the events but also at their causes and
- **Justice** through criminal prosecutions for those who were responsible for the most serious crimes. Traditional (tribal) court systems would handle minor crimes (see below).
- **Reparations** for human rights violations take a variety of forms: individual, collective, material, and symbolic.
- **Reconciliation** may include forgiveness and commitment to live in peace concerning diversity including a federal arrangement to ensure decentralization of power. (TJRR)

Universal Rule of Law: The Universal Rule of Law is about Accountability: Just law: Transparent and Participatory Government and: impartial justice. Transitional Justice and the Rule of Law have clear overlap, as well as similar sets of ideas and outcomes in post-conflict societies. Rule of Law in conflict and post-conflict situations involves breaking with repressive past regimes, atoning to the impact of war crimes, and building institutions of justice, that are consistent with international laws and human rights while at the same time restoring public confidence, and strengthening civic society. Transitional Justice deals with

past crimes of a repressive and violent political system. With the violation of human rights, and the emergence of totalitarian systems war and conflicts are inevitable. When such repressive regimes are defeated, the following questions arise:

- how to rebuild the nation and the society and
- how to prevent the repetition of past injustices.

One of the answers to these questions is by reestablishing the Rule of Law. However, the establishment of the rule of law in societies hit by war, conflict, or repressive regimes is not an easy task at all. There are many dilemmas and challenges in that process. What to do with the problematic past is one of the most important and at the same time one of the most bitter questions that are being posed after the war conflict ends or after the fall of the repressive regime. In this context, the following question is posed: will dealing with the problematic past positively contribute to restoring the rule of law, or will the opening of the past push society into new conflicts and problems? Experiences and logic show that dealing with the problematic past is one of the key elements to restoring the rule of law.

Transitional justice may not be in line with the rule of law because it relies on retroactive justice. However, the practical application of such kind of justice has proved to be the only way to the future, for societies that come out of bitter war and conflict. There cannot be peace without justice and only the implementation of a comprehensive transitional justice strategy could lead to the establishment of the rule of law, also to sustained peace, and some sort of democracy. Law is the part of the justice system that focuses on prevention and investigation through punishment. The law itself can be unjust if the makers of the law are illegitimate or wrong because they do not give the kind of justice that humanity and morality demand.

Martin Luther King once said; **“Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregated a false sense of inferiority. If a law is unjust, a man is not only right to disobey it, he is obligated to do so.”** In the case of Ethiopia Fano is fighting a regime that enforces an illegitimate law. Therefore, their struggle is just.

Retributive Justice is about justice under a just law. Such laws focus on the punishment of criminals. Under an unjust law, some criminals are spared to live with impunity. Under a just law, criminals are given punishment proportionate to the gravity of the crimes they committed. This is called retributive justice. Retribution is based on the belief of retaliation or revenge. It is based on the principle of equal and direct retribution, as the biblical and Koranic expressions of justice: **“an eye for an eye”** putting out the eye of a criminal. It does little to the victims of crimes. Under retribution, a guilty act and a guilty state of mind are primary considerations for proportional punishment. Retributive justice focuses solely on punishment, rather than on prevention of future crimes or the rehabilitation of offenders. It assumes that punishment will deter people from committing crimes. Lately, **Restorative Justice** has been suggested as an alternative to Retributive Justice.

Restorative Justice is usually for smaller offenses and not for crimes against humanity or the kinds of crimes committed against people. The restorative justice system uses victims and offenders to dialogue and addresses the harm caused by a crime as well as victims' experiences, interests, and needs. This approach can be practiced using victim-offender mediation, or facilitated through face-to-face conferences that include victims, offenders, their families, friends, and other community members. Restorative justice can occur throughout the criminal justice process, from pre-arrest to post-sentence, and can take place in settings such as prisons and communities.

Judges may consider reducing some offenders' sentences following restorative justice. It is not possible to bring to a person the organs he has lost or to compensate a woman who has been violated most inhumanly, or a man who had a bottle hanging from his penis for days, a man tortured in other brutal manners. It is not imaginable to bring these two sides and create a condition that the victim would forgive the violator. It is a crime by itself to try to bring these two communities together without justice. Nothing can remove the scars, the pains, or the hate without justice. Any attempt to preach to people about forgiveness and reconciliation without justice will not be accepted and the hate that people will carry will one day explode and people will revert to their way of implementing justice.

Restorative justice, in contrast to retributive justice, views crime as a violation concerning people and their relationships, rather than a violation of the law with the state being the victim. The aim of restorative justice is not to establish guilt and punish perpetrators of crimes, but to identify obligations as well as to meet the needs of everyone involved and promote healing. Furthermore, rather than viewing the process of justice as a dispute between offenders and state law – 'which in most cases leads to a win-lose outcome' – the process of restorative justice involves all stakeholders in a conflict – including the larger community – in identifying obligations and solutions, thus promoting dialogue and mutual agreement and contributing instead to a win-win outcome. Instead of punishing perpetrators by means such as fines, penalties, or confinement, restorative justice seeks to reintegrate them into society. It recognizes that to heal, people need to be able to tell their stories and hear the stories of others. By using the tools of "mediation and dialogue", it generates space for expressions of official public remorse, and pardon, and aspires to address the underlying causes of conflict, as well as to help prevent future abuses. **It is emphasized that the use of restorative justice as a substitute for criminal justice is wrong.** There cannot be and should not be forgiveness without justice. Justice determines guilt or innocence not based on the words of criminals but through the due process of the law. Once justice is served, the process of how to move on, both as a country, as a community, and as individuals can take over through transitional justice.

Transitional Justice consists of both judicial and non-judicial mechanisms, including prosecutions, justice, reparations, truth-seeking, institutional reform, or a combination of similar efforts. Whatever combination is chosen, it must be done so in conformity with international legal standards and obligations. Transitional justice can only take place after a political transition. It cannot happen under a political system that is responsible for the

crimes and injustices. It can only happen when the regime responsible for the crimes or for creating that situation is forced to give up its power.

“Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and the promotion of possibilities for peace, reconciliation, and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades.”²

The following paragraph is taken from the Guidance of the Secretary-General United Nations Approach to Transitional Justice. 3

Transitional justice processes and mechanisms do not operate in a political vacuum but are often designed and implemented in fragile post-conflict and transitional environments. The UN must be fully aware of the political context and the potential implications of transitional justice mechanisms. In line with its Charter, the UN supports accountability, justice, and reconciliation at all times. Peace and justice should be promoted as mutually reinforcing imperatives and the perception that they are at odds should be countered. The question for the UN is never whether to pursue accountability and justice, but rather when and how. The nature and timing of such measures should be framed first of all in the context of international legal obligations and taking due account of the national context and the views of the national stakeholders, particularly victims. In situations in which national conditions do not allow for or limit the effectiveness of transitional justice measures, the UN supports activities that encourage and lay the foundation for effective mechanisms and processes. These could include dialogue to assist national stakeholders in promoting interest in and understanding of transitional justice measures. **The UN cannot endorse provisions in peace agreements that preclude accountability for genocide, war crimes, crimes against humanity, and gross violations of human rights, and should seek to promote peace agreements that safeguard room for accountability and transitional justice measures in the post-conflict and transitional period.**

Reconciliation is the ultimate objective of societal reconciliation and sustainable peace can be achieved through a process popularly known as TRC but is TJRR as above. TJRR is an aspect of transitional justice that takes place during the transition from one political order to another. Retributive justice focuses on prosecuting all those complicit in committing the said crimes. while transitional and restorative justice focus on the victims' needs, the root causes of the conflict, and the possibility of reintegrating the perpetrators into society and rehabilitating them. The concept of such justice is to prevent the crimes from happening again, to punish offenders to rehabilitate some, and to educate people on the wisdom of peaceful co-existence.

The ultimate objectives include: promoting the value of legality or the rule of law and bringing about closure. If victims and criminals agree, they can initiate a dialogue to find the whole truth and begin reconciliation. But to create a country at peace with itself and move forward in unity and harmony, justice must precede every other option. There cannot be a country without the rule of law. No citizen can be forced to love and reconcile. These are personal choices. But the rule of law protects people from being harmed by those who don't believe in love forgiveness and reconciliation.

“Forgiveness is an internal process where you work through the hurt, gain an understanding of what happened, rebuild a sense of safety, and let go of the grudge (more on *how to forgive*. The offending party is not necessarily a part of this process.”⁴

On the other hand, reconciliation is an interpersonal process where dialogue with the offender about what happened, exchanging stories, expressing the hurt, listening to the remorse, and beginning to reestablish trust. It is a much more complicated process that includes but moves beyond forgiveness. ‘Forgiveness is solo, reconciliation is a joint venture.’ As Said Smedes once noted: *“It takes one person to forgive, it takes two people to be reunited.”* You can forgive someone dead. Or someone you never see anymore. Or someone who has no intention of apologizing. So, apologies aren't necessary, but when available, they do help.”⁵ People are ruled by law and not by people's wishes. The concept of a legitimate rule of law rests on the idea of a community governing itself under the law. In countries under conflict and striving and wishing for major political changes, like Ethiopia where a legitimate rule of law is not fully developed, the state has no legitimacy to make the necessary changes because it is part and parcel of the problem. Though states must prosecute human rights violations if they are not able or willing to do so, the task of convening and overseeing a national dialogue and the task of ensuring the primacy of universal human rights should be handed over to neutral entities complemented by international law: the ICC being one.

“An International Criminal Court (the ICC) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute” (2002)

Lessons Learnt from Experiences on TRC

Examples of countries that went through this include Rwanda, DRC, former Yugoslavia, Sudan, Kenya, Liberia, and Myanmar- Notably, the gold standard for how a divided society with a violent past might work through its past and present and move forward was set 25 years ago by South Africa's Truth and Reconciliation Commission and then in Rwanda and Liberia, inspiring other similar efforts around the world. These countries have learned over time that working through a complicated past takes time. The future of

Ethiopia like in these and other countries depends upon *Truth, Justice, Reparations, and Reconciliation in this order*. A blueprint of this has been published in my recent book.

Truth and Reconciliation in South Africa: The South African Truth and Reconciliation Commission (TRC) was a result of a process and what can be called a gradual democratization or negotiated settlement. Previous leaders played roles in guaranteeing a peaceful transition, in which case retributive justice may be waived to ensure future peace and stability. However, since justice and reparation were lacking the experiment did not get the desired result. South African Truth and Reconciliation, according to my opinion and those of many others who had the opportunity to live there, and a considerable segment of the population believe it was not effective enough to bring peace and reconcile the population. South Africa remains the most unequal country in the world and also one of the most crime-infested countries where anger and resentment have reached a dangerous level. But the population has full rights of freedom of expression and has affirmed its right to demonstrate writing and complain in many forms and the government listens but it has been unable to bring the desired change because of the entrenched inequalities, policies, and attitudes that have successfully resisted the call for fundamental change for which the TRC was expected to build a road map., With no road map, South Africa has become a fragile democracy that may explode at any time unless dramatic changes take place. The TRC has achieved neither justice nor reconciliation. It failed to bring a proper balance between reconciliation and justice.

Winnie Mandela once said:

"Look at this Truth and Reconciliation charade. He should never have agreed to it." Her anger was focused on Mandela. "What good does the truth do? How does it help anyone to know where and how their loved ones were killed or buried? That Bishop Tutu who turned it all into a religious circus."⁶

South Africa brought the term "transitional justice" to the world's attention, a more specific type of restorative justice whose goal is to create a lasting peace. The public face of the TRC was Archbishop Desmond Tutu who assured those who doubted the concept of restorative justice that "there is justice...the perpetrators don't get off scot-free...they have to confess publicly." Public confession was not, however, the only condition for the granting of amnesty. Importantly, confessors were required to provide honest and comprehensive disclosures of all relevant facts.⁶ There is no doubt that the TRC's restorative justice efforts moved South Africans closer together both at the individual level and for the country as a whole. People could tell their stories and clear their consciences, finding peace in truth. As one South African historian put it, "Nothing short of a miracle can heal a country" but "for the first time, it was possible to see beyond the pain that many had suffered. As a country we would have been much poorer had the truth not been told. I believe it was truly a necessary part of our history."⁷

Thousands of victims and perpetrators made statements. It wasn't all one-sided; the ANC's struggle was found to be legitimate, but some acts committed in the name of that struggle were not. Albie Sachs, a former ANC member who became a judge had this perspective: "It had to involve a degree of acknowledgment by those who'd done terrible things, not only on the side of the regime but also members of the ANC, to which I belonged. We'd done bad things. We had to come clean on that."⁸ The work of the Commission ended with recommendations, including "specific guidelines for financial reparations to victims, a list of over 300 perpetrators of apartheid who should be prosecuted, and specific steps for restoring dignity nationwide and equalizing the playing field in a country grounded in massive inequality."⁹ But for Judge Albie Sachs, "*...the most important part of the truth commission was not the report, it was the seeing on television of the tears, the laments, the stories, the acknowledgments. As one political scientist put it, what the Truth Commission did was convert knowledge into acknowledgment.*"¹⁰

That is all well and good, but it didn't work. The Commission had an almost impossible task: how to balance blanket amnesty with legal prosecutions, who to forgive, and who to lock up. It was inevitable that there would be criticism from all sides. Still, it must be admitted today when we look back that there were several glaring problems. First, it was too rushed and the scope of the Commission was too ambitious, too broad, and simplistic. It seems that it was trying to give a quick solution to a complex problem that was deeply entrenched in the majority of the South African population. The TRC was not planned out very well. There was a rush to come up with a sense of making some people accountable quickly for the nation to move forward. The Commission was trying to cover human rights abuses spanning the years 1960 to 1994. The mandated period for them to complete their task was very limited if one considers the fact that this was a unique Commission and many people had to be trained to carry out tasks, especially on lower levels. The Committees established by the Commission did not have clear methods of working and the coordination between them was poor. The methodology followed by the TRC was flawed.¹¹

Then there were too many amnesties. Some victims felt bitter as they watched confessed murderers walk free and did not receive the promised compensation. The executive director of the TRC Institute for Justice and Reconciliation, Stan Henkemann, commented: "The government and particularly the criminal justice system failed the people of this country in terms of the amnesty process. And you can imagine what it does to somebody whose family member was killed by somebody, and they can see that person walking around."¹² Nelson Mandela thanked the TRC for doing a "magnificent job" while acknowledging its imperfections, but some believe Mandela and the TRC were too forgiving and that White people continue to reap the rewards of apartheid.¹³ The Commission recommended reparations. It never happened. Tutu lamented how Mandela's successors had left TRC business "scandalously unfinished". He said: "By unfinished business, I refer specifically to the fact that the level of reparation recommended by the commission was not enacted; the proposal of a once-off wealth tax as a mechanism to affect the transfer of resources was ignored, and those who were declined amnesty were not prosecuted."¹⁴

Truth and Reconciliation in Liberia: After 14 years of civil war that left 250,000 dead and millions displaced in a small country of a little over four million, a Truth and Reconciliation

Commission was agreed upon in the August 2003 Comprehensive Peace Agreement in Accra, Ghana.¹⁵ The goal of the TRC was to “promote national peace, security, unity, and reconciliation,” and also make it possible to hold perpetrators accountable for gross human rights violations.¹⁶ I was in Liberia from 2008 to 2010 and closely followed the process, even attending some of the deliberations of the TRC. I was also there when the final report was issued. I had the opportunity to talk to many politicians, witnesses, and many of the victims of the 14-year civil war. What I saw and heard showed the difficulties of any process of reconciliation. The mandate of the Commission Setting up the TRC was not as rushed as in South Africa. The TRC Act was approved in 2005 and the Commission began active work three years later, holding public hearings after a period of assembling witnesses and collecting their testimonies. But reconciliation has been an elusive objective and Liberians continue to suffer from the trauma of the war, the abject poverty it left behind, and the exclusion of the majority from the dividends of peace. Funds allocated for reconciliation were never released. Whatever was released was considered an insult. Even President Sirleaf admitted as she left office that she had failed at reconciliation and anti-corruption.¹⁷ Yes, Charles Taylor was put on trial but not for the war crimes he committed in Liberia but in Sierra Leone

If the TRC Commission recommendations in Liberia were implemented it could have been said that justice was served. But that was not done. Some criminals were prosecuted and convicted outside Liberia, in France, Belgium, the UK, and the USA. Authorities in other countries have been pursuing cases under the principle of universal jurisdiction, which allows national courts to try international crimes committed abroad by non-nationals against other non-nationals. They have also brought cases for crimes related to immigration, such as lying on immigration forms about involvement in abuses in Liberia. Chucky Taylor and many others have been prosecuted and sentenced in the USA, Belgium, the UK, and France. More needs to be done. Impunity crystallizes into a society without due process of law where the most powerful survive and the rest remain without or on the sidelines of justice. For victims, just as there can be no reconciliation without justice, so there can be no justice without truth. If a country is to come to terms with its past and successfully turn its attention to the future is essential that the truth of the past be officially established. It is impossible to expect “reconciliation” if part of the population refuses to accept that anything was ever wrong, and the other part has never received any acknowledgment of the suffering it has undergone or of the ultimate responsibility for that suffering.¹⁸ So long as unresolved historic injustices continue to fester in the world, there will be a demand for truth commissions. Unfortunately, there is no end to the need. In summary: in Liberia’s TRC the truth was not told; justice was not been served; reparations were not made, and there is no reconciliation between those who have been historically enslaved and their oppressors, between the warlords and the victims of the war. The TRC in Liberia was a failure.

Truth and Reconciliation in Rwanda: The UN Security Council established the International Criminal Tribunal for Rwanda (ICTR) to “prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations in the territory of neighboring States, between 1 January 1994 and 31 December 1994...” The resolution specifically mentions genocide among those violations.¹⁹ The Tribunal was located in Arusha, Tanzania with offices in Kigali, Rwanda. Its appeals chamber was in The Hague, Netherlands. Ninety-three individuals were indicted, 62

were found guilty and sentenced, 10 were acquitted and 10 were referred to national court. Those sentenced included high-ranking military men, government officials, businessmen, church and media leaders. Beyond its effectiveness in prosecuting these criminals, the ICTR was important for several reasons: for the first time in history an international tribunal delivered verdicts against persons responsible for committing genocide and it was also the first institution to recognize rape as a means of perpetrating genocide.²⁰ Another ‘first had to do with the media: the ICTR was the first international tribunal “to hold members of the media responsible for broadcasts intended to inflame the public to commit acts of genocide.”²¹

The National Court System and the Gacaca Community Courts Rwanda’s national courts prosecute those accused of planning the genocide or of committing serious atrocities, including rape. By mid-2006, the national courts had tried approximately 10,000 genocide suspects. In 2007, the Rwandan government abolished the death penalty, which had last been carried out in 1998 when 22 people convicted of genocide-related crimes were executed. This development removed a major obstacle to the transfer of genocide cases from the ICTR to the national courts, as the ICTR drew to a close. Delivering justice for mass atrocities is a daunting challenge in any country, and the scale of the Rwandan genocide would have overwhelmed even the best-equipped judicial system. In Rwanda, the task was made more difficult by the fact that many judges, lawyers, and other judicial staff were killed during the genocide, and much of the country’s infrastructure was destroyed. Despite these challenges, the Rwandan government embarked on an ambitious and unprecedented approach to delivering justice, using both conventional domestic courts and community-based *gacaca* courts.²²

Addressing the cases of many awaiting trials required the Rwandan government to re-establish the traditional community court system called “gacaca” (pronounced GAH-CHA-CHA), which became fully operational in 2005. *Gacaca* means “clean-cut grass. In the gacaca system, communities at the local level elect judges to hear the trials of genocide suspects accused of all crimes except the planning of genocide. The courts give lower sentences if the person is repentant and seeks reconciliation with the community. Often, confessing prisoners return home without further penalty or receive community service orders. It is a homegrown system of justice. There were informal means of solving disputes around issues like theft, marital issues, land rights, and property damage which were constituted as village assemblies, presided over by the senior citizens, where each member of the community could request to speak. The trials were meant to promote reconciliation and justice for the perpetrator in front of family and neighbors. Well-respected elders, known as *Inyangamugayo*, were elected based on their honesty by the people of the community. ... The *inyangamugayo* would assemble all parties to a crime and mediate a resolution involving reparations or some act of contrition.²³ The gacaca trials were formally closed²³ in May 2012. As of January 31, of that year at least 1,951,388 genocide cases had been tried and completed.²⁴

To Rwandans, this was a success story and to the rest of Africa, it was a model that could be adopted for their own judicial needs. It would be wrong to judge this traditional system in the context of the standards the West has established. In extraordinary times one needs to take extraordinary measures. In the circumstances that Rwanda found itself this was the most creative way of bringing closure to the tragedies every Rwandan had been through. There is no manual for reconciliation and peacekeeping, only a set of principles. Taking people out of

the ashes and rebuilding a nation required giving up some classic rights and freedom for the sake of greater objectives: peace and reconciliation. Rwandans believed that gacaca courts were a homegrown answer to their need for justice, and they perfectly fit into the underlying stated objective of accountability with overtones referring to reconciliation.²⁵ Instead of monetary reparations to victims, those convicted were put to work constructing and repairing public roads and buildings. "In this way, the government believed that the public works would benefit Rwandans in general as well as the victims who enjoyed those public works constructed by the convicts."²⁶

The Gacaca model is touted by the government of Rwanda, its allies, and some scholars as a largely successful model of providing justice and building reconciliation. Chief among Gacaca's scholarly supporters is Phil Clark, who argues that, while imperfect, Gacaca provided an avenue for many instances of successful reconciliation and built a foundation for an evolving, post-conflict legal system in Rwanda. Others, however, argue that the Gacaca courts' results are mixed. Boston University scholar Tim Longman found that rather than bringing Rwandans together, Gacaca courts have reinforced ethnic divisions as they are only used to prosecute crimes committed during the genocide period, to the exclusion of crimes (particularly revenge killings) committed by the ruling Rwandan Patriotic Front and by other Tutsis in the years immediately following. Other scholars are cited in the article who agree with Longman, predicting that the ethnic divisions will only get worse because of the gacaca courts' decisions.²⁷ However Rwandese lawyers and scholars have a different opinion:

Transitional justice in the Rwandan experience has a record of enormous success if viewed from its angle of ultimate goals: a) **to restore the lost Rwandan element of humanity, peace, co-existence, unity, and reconciliation of Rwandans.** [authors' emphasis] ... The establishment of Gacaca Courts which tried nearly two million suspects within ten years was not only impeccable but also a strong signal to Rwandans that solutions to their problems are within their means.²⁸

I can confidently report that those scholars who predicted a worsening of ethnic divisions in Rwanda were wrong. I have seen the transformation year by year. When I was in Rwanda immediately after the genocide, I was working among a population confused, traumatized, insecure, horrified, grieving, and not clear on how to continue a normal life as Tutsis and Hutus and as friends and neighbors. Both have only Rwanda as their country. They have nowhere else to go. Our discussion daily with my Rwandese friends was how can Rwanda move on from here. It was difficult to answer then. I went back to Rwanda again a few times. I saw some promising changes, but they were still struggling. Finally, I went back 20 years after the genocide. Nobody would have thought that a society filled with hate and the memories of horrifying crimes could come to terms with the terrible tragedies of the past, accept responsibilities, forgive, repent, learn from the mistakes of the past, wash their conscience before God and their community and create a peaceful harmonious society.

It was a miraculous achievement to see Rwanda thriving and letting people know that the only way we can live a decent life, raise our families, and fulfill our ambitions is through tolerance and openness. That is happening in Rwanda. It is there for the whole world to see. It needed strong leadership. Without strong leadership, you have despair and chaos. Strong leadership makes peace and tolerance a priority and considers politics a tool to bring people together. President Paul Kagame has done a remarkable job. Some accuse him of being too

strong, but liberal democracy cannot function in every society. In this case, Paul Kagame took the right step in making the transition and allowing the wounded hearts of millions to slowly heal and give way to tolerance and openness. From one of the most troubled countries in Africa, today Rwanda is leading Africa in every way. This has become possible because hate and revenge have given way to tolerance and peaceful co-existence. Hutus and Tutsis communicate with no hostility, work together, farm together, and attend community obligations together. People feel secure and less suspicious of each other. Rwanda has opened its gates to all kinds of investors. Its communication technology is growing by leaps and bounds. It has become the technology hub of Africa. After Botswana, Rwanda is the least corrupt country on the African continent.²⁹ People focus more on growth and prosperity and have no time to look back, though there are still remnants of the *Interahamwe* who are operating along the Ugandan border. The Great Lakes region has complex security problems that need to be addressed urgently. Rwanda's problem with DRC, Uganda, and Burundi is also a cause for concern.

Despite those challenges, under Paul Kagame's leadership, Rwanda is thriving. His rule is not without controversy. Some of his high-handed policies have been subject to criticism. But there is no doubt that he has shown resilience consistently and made the prevention of another conflict in his country a number one priority. Few leaders have shown such result-oriented character and strength. On 4 December 2018, *Forbes Africa* magazine named him the 2018 African of the Year and described him as a visionary. In addition, he was the winner of the African of the Year in the All-Africa Business Leaders Awards. Many in Rwanda believe that he has been an indispensable leader for the last three decades. "On a continent where we have become so accustomed to hearing negative news, Rwanda under the leadership of Paul Kagame defies all the odds with its tenacity and creativity."³⁰

Conclusion

If we compare Truth and Reconciliation in South Africa and Rwanda, the lessons are clear. Both processes had more or less the same objectives but the outcomes were very different. I believe that with all the flaws it had and with all the hard criticisms leveled against a top-down reconciliation effort, Rwanda did much better than South Africa or any other country in Africa. In Rwanda, the truth was told, perhaps not with complete accuracy, but it was out there in the community, in the presence of victims and suspected criminals. Justice was done through the gacaca system, the Rwandan court system, the ICTR, and the special tribunal in Arusha. Nothing close to this has happened in South Africa. There the truth was not told. All the perpetrators and criminals were not brought before the TRC and no reparations with Justice and Reparation were made and no efforts to reconcile all of the four communities which apartheid has divided: the Whites, the Indians, the Coloreds, and the Blacks. They remain as segregated as they were during the apartheid regime. Today it can be said that South Africa's future is uncertain and it remains the most unequal country in the world. Rwanda, on the other hand, is a success story, taking into consideration the circumstances and its history. The world needs more Truth and Reconciliation, but it has to be done right.

Over the past three decades, more than 40 countries have established truth commissions, including Canada, Chile, Ecuador, Ghana, Guatemala, Kenya, Rwanda, Gambia, Liberia, Morocco, the Philippines, Sierra Leone, South Africa, and South Korea. The hope has been that restorative justice would provide greater healing than the retributive justice modeled

most memorably by the Nuremberg Trials after the Second World War.³¹ Because of the number of violations and the fragile state of society not every violation will be dealt with as it might be in normal times. The Rwandan model can be used in such cases. For minor crimes and violations of human rights, the traditional systems within each ethnic group can reestablish community court systems that address the wrongs, punish the violators, and redress the victims. This can take time, but it is important to be thorough. It took 16 years for the Rwandan gacaca system to complete its work as it addressed close to 2 million cases.

Change of constitution, reform of laws and institutions, including the police, judiciary, military, and military intelligence will follow based on the findings and recommendations of the National Dialogue (Truth, Justice, Reparation and Reconciliation Commission). Any kind of attempt to create a sustainable peace in Ethiopia must do all of the above no matter how long it takes. Any attempt short of this will not lead to peace. As unaddressed grievances and grudges drag on relationships between the people will reach an irreparable stage. It has already started. Ethnic Politics has generated manufactured history and fake news. Many Ethiopians don't know the truth about anything in Ethiopia. What passes for facts is what the government has carefully selected. Ethiopia's history is better recorded than any in Africa, yet for over 30 years now Ethiopians have been exposed to a distorted and invented history of its people. They are fighting amongst themselves about history that has been created by politicians to serve a specific agenda. It would seem that many are unaware that history is being rewritten. The new generation does not read, cannot read, or does not have access to the historical facts. It accepts what the leaders of the various factions are telling them. Now the truth is being lost. ***There cannot be any transition to peaceful co-existence unless the truth is told and sincere attempts are made to have a clear mutual understanding and respect of the equal rights and history of all ethnic groups in the country, all crimes exposed, and the victims and the criminals are made to confront each other. When truth is exposed justice can be delivered, closures made, and lives reconstructed with reparations. Together with a better understanding of the rights of all as equal citizens, the process of reconciliation can begin in earnest in a reformed Ethiopia that has dealt with its past.*** In trying to bring peace and implement reconciliation Oromo extremists who are destabilizing the nation should be willing to accept the challenge to marshal their arguments, proclaim their fake history, and confront the historical facts in public before the National Dialogue (an independent Truth, Justice, Reparation and Reconciliation Commission.) Let all the public determine whose claims and historical assertions to accept. For some aspects of history and facts, people need to agree to give it time.

Since time immemorial, there has never been a moment in Ethiopian history where there have been frank public discussions on the grievances and claims of the various ethnic and religious groups. Now that the ethnic tensions have reached this level the only way to save the union, the only way to prevent civil war, and the only path to peaceful co-existence is an honest discussion through non-partisan historians on what happened. There would probably be a need for psychologists as well because there is a faction of extremists whose behavior suggests collective psychological problems that require scrutiny to be able to communicate in a way that normal people do. The psychological aspect of reconciliation requires a change in the conflictive ethos, especially concerning societal beliefs about group goals, the adversary group, the in-group, intergroup relations, and the nature of peace. In essence, psychological reconciliation requires the formation of an ethos of peace, but this is extremely difficult in

cases of intractable conflict. Political psychologists can and should work to improve the state of knowledge about reconciliation, which until now has received much less attention than conflict resolution.³⁰ Reconciliation without the complete truth however painful it may be does not relieve the deep pain that exists. It will only be a masquerade for the divisiveness that will persist and eventually manifest itself in extreme violence that becomes the only outlet for the pent-up anger and frustration accumulated over the years through irresponsible greedy elites that want neither truth nor stability. That is what we are seeing in Ethiopia.

It is a long healing process that can eventually bring people together if started in good faith and on a firm structural foundation and a political system that thrives to bring accountability, equality freedom, and justice to the people. reconciliation requires that structural injustices in the political, social, judicial, and economic domains be addressed. Indeed, ***"if the patterns from the past that produced and sustained violence remain unchanged, they will eventually produce the same outcome. Reconciliation must therefore be supported by a gradual sharing of power, an honoring of each other's political commitments, the creation of a climate conducive to economic justice, and a willingness among the population at large to accept responsibility for the past and the future. Political, social, and economic justice is a foundation of durable reconciliation."***³²

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