

Justice and National Dialogue

A humble advice to selected members of the National Dialogue.

Retributive Justice

There cannot be stability and peace without justice. The objective of any national dialogue should be the transition to peace and stability and the only tool to get to this point is through justice. There must be justice and no impunity for those who have introduced an ideology of hate and massacre of hundreds of thousands and looted the country. Perpetrators of these crimes should be brought before criminal trials and, if found guilty, punished. Such kind of trials and conviction (Retribution) typically focus 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 such things from happening again, to punish offenders, and rehabilitate some and educate people on the wisdom of peaceful co-existence.

Such purposes include: promoting the value of legality or the rule of law producing 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 to reconcile. These are personal choices. But the rule of law protects people from being harmed by people 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* here. The offending party is not necessarily a part of this process.¹

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.

Said Smedes: *"It takes one person to forgive, it takes two people to be reunited."*

You can forgive someone who is 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."²

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 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 have a duty to 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 complimented by international law: the ICC is one. Examples are: Rwanda, DRC, former Yugoslavia, Sudan, Kenya, Liberia, Myanmar (ICJ)

"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)

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. However, they opened a way to talk about the individual and systemic wrongs committed in their respective countries,

The South African Truth and Reconciliation Commission was a result of a process and what can be called a gradual democratization or negotiated settlement. Previous leaders played role in guaranteeing a peaceful transition, in which case retributive justice may be waived to ensure future peace and stability but since justice and reparation was lacking the experiment did not get the desired result.

South African Truth and Reconciliation, according to mine and many others who had the opportunity to live there, was not effective enough to bring peace and reconcile the population. South Africa remains to be the most unequal country in the world and also one of the most crime infested countries where anger and resentment has reached a dangerous level. South Africa is a fragile democracy which may explode 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."

But as I said above it had a good start and believe all other countries including South Africa have learnt their lessons and recognize the need to correct through “lessons learnt,” as it seems it is doing. Peace and stability can only be found when the evil in the country is identified and corrected. No country trying to come out of an autocratic system through which hundreds of thousands have been massacred and brutalized can succeed without justice and reparation and then reconciliation

For the perpetrators of the ideology of hate and those who looted Ethiopia, killed and tortured many, there should be no other recourse except the hand of justice, like Pol Pot of Cambodia, like the Nazis, like those who committed genocide in Rwanda, in Liberia and Sierra Leone and many others Justice precedes reconciliation and forgiveness not only for retribution but to also enable people to truly put their past behind them and move forward.

Restorative Justice

Restorative justice is usually for smaller offenses and not for crimes against humanity and not for the kinds of crimes committed on people, in the community, at groups exercising their rights of freedom of expression by evil minded government or groups, with the clear intention of causing bodily harm, and to ensure the submission of the masses to their will and to eliminate the a particular group of people or ethnic group. The restorative justice system uses victims and offenders to dialogue and address 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 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 a person who has lost his organs, a woman who has been violated in the most inhuman way, a man who has lost his limbs, a man who had a bottle hanging from his penis for days, a man beaten...etc.... 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 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 own way of implementing justice.

Restorative justice is often defined in contrast to retributive justice. Rather than viewing crime as a violation of the law with the state being the victim, restorative justice views crime as a violation to people and relationships. 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 in order 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 approbation, remorse, and pardon, and aspires to address the underlying causes of conflict, as well as to help prevent future abuses.

But to use 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 law. Once justice is done, the process of how to move on both as a country, as a community and as individuals can take over through transitional (restorative Justice) justice.

Transitional Justice

Transitional justice consists of both judicial and non-judicial mechanisms, including prosecution initiatives, reparations, truth-seeking, institutional reform, or a combination of similar efforts. Whatever combination is chosen must be in conformity with international legal standards and obligations.

“Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and 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.”⁴

From the “GUIDANCE NOTE OF THE SECRETARY-GENERAL United Nations Approach to Transitional Justice. 5

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 the 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 to promote 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 postconflict and transitional periods.

A national dialogue is very much needed for Ethiopia to enable it to come out of this quagmire which can only lead to continued instability, loss of life and economic disaster, leading to the creation of war lords who would not be willing to give up their turf to any kind of political system that will take away their hold on their people, the land and the resources. The spillover effect and the possibility of direct or indirect foreign interference will be a nightmare for Ethiopia, the region and the continent and beyond.

Dear selected members of the national dialogue:

I know you are knowledgeable people who don't need my advice or lecture. This is just to remind you how serious and urgent your task is and emphasize that with the mandate that you have you will not be able to bring peace and stability in Ethiopia no matter how patriotic and committed you may be. The only path to peace and stability in Ethiopia is transitional justice as explained above. If you wish to make history and make historic contribution to peace and stability in a united Ethiopia you have to dismiss the mandate and manner in which you have been selected. Because now you are only a government branch no better than the cabinet of the government. Without underestimating your sense of patriotism in accepting this selection I request on behalf of millions who want to see Ethiopia along the path of sustainable peace I request that you consider this approach and correct it amend it and do what needs to be done so long as the members of the national dialogue are independent individuals not selected by government but mandated by a national Convention which represents Ethiopians of all backgrounds.

The National Convention will be independent, and the commissioners elected will coordinate the activities of the National Convention which will essentially have three major functions:

- 1 The first part is the Constitutional Committee mandated to review the current constitution and come up with proposals. These proposals will be thoroughly discussed by the members of the National Conference and submitted to the people for referendum
- 2 The second part is the establishment of Truth, Justice, Reparation and Reconciliation committee which will discuss the path towards reconciliation and pave the way to peaceful co-existence
- 3 The third part will be the establishment of a committee for an independent electoral board and the definition of its mandate.

If you could see yourself suggesting this to the government in a convincing manner it would have been a bold heroic act which would save Ethiopia from perpetual turmoil. The beginning and the resolve to do this will bring a great confidence to the people, though the process towards meaningful peaceful co-existence might be long and painstaking. The details of these proposals are many. Through the resources you have at your disposal you will be able to work this out. The most important are the principles of independent National Conference responsible only to the people and not the government becomes the foundation that would lead our people to wards sustainable peace and show to the world that we Ethiopians can resolve our problems without the intervention of third parties who come with their own agendas. I have no doubt, under the circumstances that exists there is no other option except a bold selfless action by the government. Neither do I have any doubt that you will be able to convince the government if you are convinced yourselves that this general approach is the only option, we have been left with to bring our people together.

- 1 <https://www.psychologytoday.com/us/basics/empathy>
- 2 <https://www.psychologytoday.com/us/blog/in-therapy/200909/four-elements-forgiveness>
- 3 https://www.goodreads.com/author/quotes/56576.Lewis_B_Smedes
- 4 https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf
- 5 https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf