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Eritrea Symposium: The Imperative for Common Action

Possibilities for Transitional Justice Mechanisms in Eritrea

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The recent peace agreement between Ethiopia and Eritrea, as well as the lifting of UN sanctions against Eritrea, gives hope for the future of the country. When invited to be part of the panel in this Symposium, I was positively surprised that the issue of transitional justice is on the agenda. At the same time, the question inevitably does present itself: is Eritrea ready to start dealing with its past? In my presentation, I will first talk about the challenges when setting up transitional justice measures in Eritrea. I will conclude that the options available in Eritrea today are limited. I will then describe those options.

It is of course never too early to speak of how to handle the grave crimes committed in the past. However, when it comes to the success of a transitional justice measure, timing is of crucial importance. If carried out too early, the institutions risk lacking impartiality and might be unable to protect victims and witnesses. Once a mechanism has failed, it might be hard to gather the support for trying again at a more favourable moment. A failed measure might deepen the victimhood and sense of hopelessness of those who suffered.

For a transitional justice regime to be successful, it must be comprehensive, inclusive and driven by a sense of local ownership.

When it comes to the comprehensiveness, previous experience from transitioning countries have clearly shown that it is not enough to involve one measure, such as trials, or compensation regimes, or truth commissions. All mechanisms have their limitations. Courts are generally bad at truth-finding. Truth commissions, on the other hand, may be perceived as meek if unaccompanied by “harder” mechanisms. And to a victim, retrieving her land back or being able to send her children to school might mean much more than court proceedings.

As we all know, there are several impediments to introducing transitional justice mechanisms in Eritrea. The first one is the lack of a functioning and independent court system, which in my opinion currently hinders carrying out criminal justice through court trials. Even if court trials are far from the only transitional justice mechanism available, it is hard to envision a successful transition where none of the most responsible persons are prosecuted. There are many reasons for this. Firstly, most people have a strong sense of that justice is not done where the gravest crimes go unpunished. Secondly, it is impossible to build up the rule of law in a culture of impunity. Why should petty crimes today be prosecuted, when the grave crimes of yesterday were not? Thirdly, there can be no real transition if the perpetrators continue to hold high offices. Thus, trials are arguably an inevitable part of a legitimate transition. The aim of court trials in transitional justice is not only to put those most responsible for grave crimes on trial, but also to aid the process of reconciliation and rebuilding of institutions in a post-conflict society. Setting up for instance a special tribunal gives an opportunity to strengthen the local

judiciary and aid the establishment of the rule of law. However, to be able to impact these processes and contribute towards a lasting peace, the court must be perceived as legitimate by the population it addresses.

Another possible measure are reparation programmes. These can be individual or collective, financial or non-monetary. Non-monetary and collective compensations have several advantages: it is a viable option for states with limited resources, and it is often easier to secure that vulnerable groups, such as children, benefit from those measures. A practical example is that the building of a school in a particularly exposed area, or health benefits, are more likely to profit vulnerable groups, than monetary compensation, which is likely to go directly to the head of the family. A successful reparation programme has the advantage of giving victims restitution and recognition. However, such a regime needs to have governmental support. Thus, a second impediment is getting the necessary political leverage. Needless to say, it must also be guided by rule of law principles.

Whatever mechanisms are employed, they must be inclusive and gender sensitive. Often, marginalised groups are the ones disproportionately affected by a conflict. In Eritrea, according to UN General Assembly reports, women in the military are particularly exposed. Women who are victims of sexual violence risk double victimhood by being ostracised from their communities. A starting point could therefore be to provide grass-root level initiatives to incorporate these women back into their communities, and safe spaces for them to talk about their experiences. Another example could be educational programmes for youth on gender roles.

Another starting point could be setting up a Truth-Seeking Commission in Eritrea. The information to date on what happens in the country is limited and unreliable. A first step is therefore setting up an independent body to investigate the crimes committed and record a reliable and legitimate account of the past. As with any other measure, there is no doubt that such a commission will fail if it is not objective, independent and legitimate. The question is if there are resources today to set up such a commission.

Whatever path is chosen, it is important to remember that the capacity of transitional justice measures to right the wrongs of the past are limited. It is very positive and a step forward that the discussion today takes place. Transitional justice is a prerequisite for establishing a democracy and healing wounds. However, previous experience from transitioning countries show that the process often leads to disappointment at the individual level. Transitional justice will, necessarily, be imperfect. This is vital to keep in mind when managing expectations and making promises to the people.