

“J’Accuse”¹

Updated Testimony regarding the 21st Century Versions of the Apartheid Era Treason Trials Made in Ethiopia

By *Dadimos Haile*

Note from the Author

On June 11, 2007, shortly after the following testimony was delivered at the European Parliament, the Ethiopian Court convicted 38 leaders and members of the Pro-democracy opposition, the Coalition for Unity and Democracy Party (CUDP) and journalists for multiple aggravated offences that carry capital punishment. The list includes CUDP chairman Mr. Hailu Shawel, Professor Mesfin Wolde-Mariam, the renowned Ethiopian human rights advocate and last year’s Sakharov Prize Nominee, Dr. Yaqob Woldemariam, former envoy of the UN Secretary General and Prosecutor at the International Criminal Tribunal for Rwanda, Dr. Brehanu Nega, Mayor-Elect of Addis-Ababa and former president of the Ethiopian Economic Association, Judge Birtukan Mideksa, a former judge known for her independence.

In my testimony, I drew some parallels with the South African Treason Trials of half a Century ago but expressed my fear that the Ethiopian Judges may outdo their South African Counterparts by convicting rather than acquitting the accused. The conviction, in a way, was not unexpected for the judges have already ordered the accused to defend the cases against them where there was actually none to defend.

What is surprising is the summary fashion with which the Judges delivered the conviction half way through the trials blatantly holding that the accused have refused to defend themselves despite their insistence that they be given access to the documents, materials and the facilities necessary for their defense.² In the course of several adjournments leading to their conviction, the judges have refused³:

¹ Phrase associated with the title of the 1898 Article by the French novelist Émile Zola, which was written in reaction to the wrongful conviction of Alfred Dreyfus, a Jewish Army Captain.

² Defendants have the right, to have adequate time and facilities to prepare their defence. Article 20(4) of the 1994 Constitution reads: “Accused persons have the right to full access to any evidence presented against them, to examine witnesses testifying against them, to adduce or to have evidence produced in their own defence, and to obtain the attendance of and examination of witnesses on their behalf before the court.” The above rights is also one of the *minimum minimorum* guarantees of fair trial under international human rights instruments to which Ethiopia is a party.

Article 11(1) of the Universal Declaration of Human Rights, for example, states “everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.” Article 11(1).

Article 14(3) of International Covenant on Civil and Political Rights, on the other hand, provides, in relevant part, that “in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;”

³ See Mesfin Wolde-Mariam, A brief note on the June 11 hearing and its legality, Letter from prison, at <http://www.mdhe.org/doc/Pro.MWM-letter-from-kality-eng-june07.pdf>

- 1) to allow the defendants to have access to the trial transcripts, including the testimony of the witnesses.
 - 2) to order the return of the items that have been confiscated from the defendants by prison officials. These items included the notes that they have been taking during the proceedings, diaries and other documents and evidence.
 - 3) to grant the defendants' request for access to the data and documents that have been confiscated from their offices and premises.
 - 4) to examine their complaints that some of the defendants couldn't appear because of the grave injuries they sustained as a result of severe abuses and inhumane treatment in prison.
- On the day of the conviction, the accused persistently demanded to be given the opportunity but were persistently refused by the judges who chose to listen, instead, from their jailers as to whether the defendants had all they needed to defend themselves. Having received, as can be expected, a positive response from the prison guards, the judges retired to their chambers and came back with their guilty verdict.

In doing so, the judges have registered their names and the trials in the record of the worst partisan and unfair trials in history that includes, among others, Stalin's Trials of the 1930's (*aka*, Moscow Trials).

**Testimony before the Joint Meeting of the Committee on Development and Sub
Committee on Human Rights of the European Parliament**

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***Human Rights and Democratisation in Ethiopia, Two years after the May 15
Elections***

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Honourable Chairs, Mr. Borrell and Madame Flautre, Honourable Members of the European Parliament, thank you very much for giving me the opportunity to speak at this important hearing. It has been a little less than two years since I first attended a meeting of the Development Committee and listened to the passionate pleas of Dr. Brehanu Nega, the mayor-elect of Addis Ababa, the Honourable Mrs. Gomes and other members of the European Election Observation Mission in Ethiopia. Dr. Brehanu is in jail since, but the European Parliament has remained one of the few places where he and his fellow prisoners of conscience and other victims of post-electoral repression in Ethiopia are not forgotten. I would like to express my heartfelt gratitude to Mrs. Gomes, Mr. Wijkman, Mrs. Auken, Madame Flautre, Mrs. Morgantini, among many other MEPs and their able professional staff for that.

I must also add that it is a privilege for me to be on the same panel as the courageous individuals who are here today. The Honourable MP, Dr. Mululem Tarekegn who has the courage and integrity to refuse to be part of an institution that does not allow her to serve the people who elected her; Judge Woldemichael Meshesha, Vice-president of the Commission of Inquiry that investigated the tragic aftermath of the May 2005 elections. Judge Woldemichael, Judge Frehiwot Samuel, the Commission's president, and the majority of the Commissioners have demonstrated the highest form of civic courage by refusing to bend the law and the truth per the dictates of those in

power. I would also like to take this opportunity to express my respect to the great journalist-friend of Ethiopia Anthony Mitchell, who died in a recent plane crash in Cameroon and my sympathies to his family. Anthony was the first to trace Judge Woldemichael - after the latter fled the country with the 'dangerous truth' - and break the story to the larger world. Finally, I regret that Ms. Alemzuria Teshome is unable to tell you her tragic personal story today because she was denied visa. She is a remarkably lady of courage, who defied those who killed her mom and then tried to force her to mourn in silence.

I had intended to comment on the ongoing prosecution of pro-democracy leaders and members, ant-poverty activists and journalists from a human rights perspective. That is too easy to do. I'm a lawyer by training, have served on the bench in Ethiopia and can enumerate the catalogue of violations of the due process and fair trial guarantees that adorn the Ethiopian Constitution and are provided for in the international and regional instruments to which Ethiopia is a party. However, talking about fair and unfair trials in the present case would be grossly misleading and would dignify what is, perhaps, the most elaborate travesty of justice of the 21st century. So, I thought I would be able to give you a better picture of what is going on in Ethiopia if I draw some parallels with a well known historical example.

About half a century ago, the Apartheid government of South Africa rounded up 156 people including almost the entire leadership of ANC - its President, Chief Albert Luthuli, Nelson Mandela and Walter Sisulu and other opposition groups, trade unionists, prominent lawyers. The detainees also included four publishers of news papers and periodicals and two lawyers who had consulted with the prisoners. The principal charge against all of them was a conspiracy to overthrow the state and establish communism.

While that trial was ongoing, the South African police brutally suppressed a mass protest killing sixty-nine people and wounding close to two hundred. The event is remembered as the Sharpeville massacre.

One would think that times have changed since and that the "international community" will not tolerate regimes that perpetrate such abuses against their citizens. Alas! The South African treason trial and the Sharpeville massacre offer interesting parallels but pale in comparison to what happened and is happening in Ethiopia at the beginning of the 21st century both in the magnitude of the repression and the extent to which the legal system is abused. What's more, there seems to be little evolution in the policies of the world's powerful democracies except that the vocabulary of appeasement has changed from "constructive engagement" to "dialogue" with the oppressor.

The Ethiopian government has arbitrarily detained not just 200 – not even 1000 civilians - but over twenty thousand suspected supporters and sympathizers of the opposition, members of the civil society and journalists. The security forces have also killed almost three times and wounded four times as many people as those killed and wounded at Sharpeville. Both the Sharpeville massacre in South Africa and the June and November killings in Ethiopia were followed by more rather than less repression. Yet, in South Africa, the authorities had at least the reticence not to charge the opposition for the death of peaceful demonstrators. In fact they had set up a

Committee to examine victims' complaints and had, at least in principle, agreed to compensate them, albeit, without accepting responsibility.

By contrast, the Ethiopian authorities - unrestrained by law or common decency - had charged the opposition, among others, for the death and destruction caused by the security crackdown in June and November 2005. They did not even bother to await the findings of the Commission of Inquiry that they had established to investigate into the relevant events.

As in the South African Treason Trials, the accused in Ethiopia include nearly all of the leaders of the main opposition party, prominent civil society leaders, the country's most known human rights defender and advocate of non-violence, journalists and publishers of newspapers and other periodicals. Further, the Ethiopian authorities have also detained one of the lawyers who were in contact with the detainees and charged with some off the same serious offence after he had met a visiting dignitary, Commissioner Louis Michel. He was acquitted of the most serious charge and released on bail after almost a year in detention but still faces a potential conviction for a lesser offence.

Perhaps the most interesting parallel, however, is to be found in the nature of the claims that served as the basis of the principal charges in both the South African Treason trials and the ongoing criminal proceedings in Ethiopia.

The Prosecution's case in the South African Treason Trials mainly rested on what is known as the Freedom Charter adopted at the Congress of the People by the ANC and three other organizations. The Charter state, in part, *'We, the people of South Africa, declare for all our country and the world to know: That South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people.'* The prosecution attempted to show that the Freedom Charter was a Communist tract and that the only way it could be achieved was by overthrowing the present government.

The crucial element that served as a pretext for the current criminal proceedings in Ethiopia is the refusal of the leaders of the Coalition for Unity and Democracy Party (CUDP) to meet the deadline set by the ruling party for joining parliament unless their basic eight-point demands were satisfied. Those demands, for your information, consisted of an investigation into the killings of dozens of civilians in June 2005, the relaxation of the restrictive parliamentary rules adopted by the outgoing parliament just after the election, ensuring the neutrality of the army, law enforcement agencies, the public media, the judiciary and the likes. The prosecution alleged that those conditions are so radical, just as the Freedom Charter was considered to be by the apartheid Prosecutor, that their implementation presupposes the dismantlement of the constitutional order. Therefore, the subsequent call for civil disobedience to pressure the ruling party into accepting those demands amounted to an incitement to overthrow the constitution and the constitutional order.

One just needs to look at the relevant texts from the public call for civil disobedience that was introduced to prove the principal charge of criminal conspiracy and attempt to overthrow the constitution and the constitutional order (which is a capital offence) in order to understand ludicrousness of the whole affair. It reads, *"The purpose of the*

struggle shall not be state power. The purpose of this struggle is to build a lasting democratic political order. Its short term objective is to persuade the EPRDF to accept the eight pre-conditions put forth by CUDP" The statement continues 'The spirit of the struggle is to show that public office should only be assumed with the consent of the people and a government who rejects this and seeks to rule by force will not obtain the co-operation of the people, and if it does not obtain such cooperation it cannot govern the people.' (pages 8 and 9, Exhibit 29)

For the Apartheid Prosecutor, a communist subversion could be inferred from the mere use of the word 'Comrades'. For his Ethiopian counterpart, the fact that peaceful protestors were making the victory sign (the campaign symbol of CUDP) and references to the protest movements in Ukraine and Georgia - which the rest of the world considers as legitimate - clearly showed the existence of a conspiracy between the opposition leaders and the protestors and an attempt to overthrow the government through violence. All of the charges in the remaining counts were backed by similarly ridiculous allegations and evidence.

Honourable Chairs, members of the European Parliament,

The parallels with the South African Treason Trials, however, end here. The accused in the South African Treason Trial were duly granted bail and remained free for the duration of the trial whereas the accused in Ethiopia have been presumed guilty even before they were charged, their parliamentary immunity revoked and denied bail. Moreover, even the Judges appointed by the Apartheid government lacked the stomach to allow the farce to continue and eventually interrupted the process acquitting all the accused of all the charges. In Ethiopia, however, the judges are poised to convict most of the accused for multiple offences carrying capital punishment after having decided that the prosecution has proved its case beyond reasonable doubt during a marathon hearing that ended on April 9 2005.

The analysis and reasoning of the judges closely mirrors the Prosecution's allegations rather than the contents of the evidence before them and, therefore, are as farcical.

With respect to the charge of *conspiracy and attempt to overthrow the constitutional order*, for example, the judges came up with bizarre theory of causation, unheard of in any court of law. They surmised that there is a direct cause and effect relationship between the fear expressed by the opposition saying that the ruling party may rig the elections, their subsequent complaints and the popular protest that ensued. Hence, the opposition leaders can be convicted of the above offence irrespective of whether not the elections were actually rigged by the ruling party and the existence of other proximate causes, such as the June killings, the massive detentions and the ruling party's refusal to meet the opposition's demands, and despite the latter's explicit rejection of violence and a desire to take power.

The majority of the judges also held that the two civil society leaders, Daniel Bekele and Netsanet Demisse, can be convicted of the same offence because, among other things, they were said to have warned their trainees of possible power cuts by the ruling party during the counting of votes and distributed flashlights as trainers of election monitors.

Criticisms of the Electoral Board and predictions about the protest that would follow if the Electoral Board takes a partisan decisions is the basis of a possible conviction for the offence of *obstruction of constitutional powers* through threats, which entails a maximum of 15 years imprisonment.

The third offence for which five of the accused can be convicted and sentenced to death is *armed rebellion*. The judges held that notes written by unknown authors citing some of the accused as coordinators of would be rebels and the dubious testimony of witnesses, including that of a former prison chief, suffice to establish guilt.

The last charge that accused are ordered to defend concerns the offence of *impairment of the defensive power of the state*, which entails a possible death sentence. The judges reasoned that the following conducts warrant a conviction: reminding the armed forces that their loyalty should be to the nation and to the Constitution and not to the ruling party and calling them not to turn their arms against civilians and the fact that a single military truck was said to have been destroyed by protestors.

Honourable Chairs, Members of the European Parliament,

As incredible as the above story might sound, it reflects the tragic reality about the ‘trials’ that the Ethiopian government doesn’t want you to be told as was demonstrated in its recently reported and successful effort at having the report prepared by an EU appointed trial observer suppressed. Paradoxically, the European Commission also obliged and decided that the report shall remain confidential pending the “trials”.

I hope that I have made it clear to you why I felt that the usual fair trial and due process standards that are applicable to trials proper would be woefully inadequate to evaluate what is going in Ethiopia. I hope you will also understand the cynicism that many people feel when representatives of the free world call for the fair and speedy trial of people who should have never been put to trial in the first place, while treating those responsible for heinous abuses as privileged partners for dialogue.

In conclusion, the story that my colleagues and I recounted today raises disturbing issues regarding the policies of influential international actors that includes EU policy makers. The EU and some of its leading member states have been and remain very important sources of financial and political support for the regime in Ethiopia. This, despite the findings of the 200 member strong EU Election Observation Mission regarding the serious electoral irregularities and human right violations and despite the fact that democracy and human rights are clearly stated in the Cotonou agreement as the cornerstones of EU’s partnership with ACP-countries. I think it is legitimate to ask why the EU spends enormous resources and energy on Election Monitoring if its decision makers can simply ignore the findings of the monitors. How can such Missions are considered credible and respected by the stake holders in future elections if they are not respected within their own institutions. It is also important to ask the purposes of maintaining the high sounding principles and sanctions for non-compliance enshrined in the Cotonou agreement if they are not applicable to extreme situations such as the one being witnessed in Ethiopia? EU policy makers owe

explanation, if not to Ethiopians, to the majority of European tax payers who, I believe, do not wish to be associated with repressive regimes let alone to finance them.

I trust that you will remain, as parliamentarians and in your individual capacities, steadfast in your support for democracy and human rights in Ethiopia. I hope you will reiterate the demands contained in previous resolutions of the European Parliament, which the Ethiopian Government, the Commission and the Council, have failed to implement so far. These include the unconditional release of all political prisoners, accountability for past and ongoing human rights violations, the release of Trial Observation report prepared by an observer commissioned by the EU and the implementation of the relevant provisions of the Cotonou agreement.

Thank you!!