

Keystone Cops, Prosecutors and Judges in a Police State **Alemayehu G. Mariam**

A Personal Note to the Reader:

Here I go again, talking about human rights! Everyone else is talking about war and rumors of war. I am still talking about human rights in Ethiopia. Again! Do I sound like a broken record? I don't mind.

Ah! Yes. 12 years -- very long years -- later, we finally find out the guy living in Zimbabwe is a genocidal maniac and gross violator of human rights! It takes 12 years to identify the perpetrators of atrocious crimes committed in 1977? Justice in Ethiopia must not only be blind, deaf and mute; it must also be paralyzed.

But, wait. I just remembered. There is a new show in town: "It Takes an Eternity to Get Justice in Ethiopia!" Quick, get the smoke machine and mirrors!

Anyway....

On February 19, 2007, the judges in the "Kality defendants" case will make a ruling on the sufficiency of the prosecution's evidence, and determine whether the defense should present its case. These defendants -- patriotic opposition political leaders, human rights defenders, journalists, civic society advocates, and all among the best and brightest sons and daughters of Ethiopia -- face persecution because they committed the crime of standing up and defending human rights and democracy in Ethiopia. They stand accused by notorious criminals whose hands drip with the blood of the thousands of innocent victims.

The principal aim of this analysis is to take an in depth analysis of the government's case against these patriotic Ethiopians, and demonstrate that the whole case against them is a thinly veiled legal lynching by Zenawi and his regime. This analysis will show that these patriots are not only victims of a sordid political persecution, but also that their "trial" represents a systematic and calculated effort to stamp out all political opposition and dissent in Ethiopia.

Many Ethiopian human rights advocates regret not having the honor of defending these great patriots in a real court of justice. But we shall stand for them and with them -- and all other political prisoners -- and their cause of freedom, human rights and democracy in Ethiopia in the court of world opinion.

Towards the end of this analysis, I advance a simple proposal to secure the release of the Kality political prisoners and all other political prisoners in Ethiopia. I remain convinced that while justice is long delayed in coming to Ethiopia, it will come soon; and when it does, it will flow like the might waters of the Blue Nile and uplift the righteous and wash the wicked out to sea!

Caveat: So that the reader is not left with the wrong impression in reading this analysis of the Kality "trial", let's get a few facts straight:

- 1) The so-called trial of the Kality defendants is a third-rate theatrical production staged to dupe the international community. Zenawi wants to convince the world that he governs by the rule of law and due process. He doesn't. He rules by terror and intimidation.

2) The Kality court is a kangaroo court -- an elaborate hoax, a make-believe tribunal complete with hand picked judges, trumped up charges, witless prosecutors, no procedures and predetermined outcomes -- set up to produce only one thing: *a monumental miscarriage of justice.*

3) Zenawi is using a dysfunctional and bankrupt judicial system to systematically destroy political opposition and dissent in the country; and the Kality "trial" is a transparent ruse designed to buy time and perpetuate his tyrannical regime. He must be constantly reminded that he has not fooled anybody, except himself.

4) While we may not be able to defend Ethiopian political prisoners in Zenawi's police state, every freedom-loving Ethiopian -- particularly those living outside of Ethiopia -- have a moral duty to be their voice. We all have the responsibility of telling their stories to our children, our neighbors, our townfolk, our political, civic and religious leaders and to anyone who will listen, wherever we are.

5) We must tell Zenawi -- insist at every opportunity -- from all corners of God's good earth: "Let our people go! Let all political prisoners go!")

About the Kality Defendants and Political Prisoners in Ethiopia

The "Kality" defendants consist of 111 of the finest patriotic Ethiopians of our time, who languish in jail on trumped up charges of committing "crimes against the (police) state" of Zenawi. Among them are lawyers/former judges, academics, members-elect of the national parliament, the office of Addis Ababa mayor and City Council, journalists and civil society leaders.¹ With the exception of the civil society leaders, the other defendants have refused to participate, reasoning that they had as much chance of getting a fair trial in Zenawi's kangaroo court as a snowball has a chance of making it out of hell. And they are in hell in Kality prison, with Zenawi stationed at the Gate.

The Lying Liars and the Prosecutors Who Bring Them to Kality Kangaroo Court

In the criminal defense business, the pursuit and discovery of truth requires a least three sets of efforts: 1) meticulous investigation of the alleged crime, collection of exculpatory evidence and development of effective trial strategies techniques to smash or cripple the prosecution's case, 2) careful analysis of the law and precedent applicable to the crime, and 3) anticipation of the likely strategies (legal and otherwise) to be employed by the prosecution in proving its case.

Having undertaken a critical analysis of the prosecution's likely strategy against the Kality defendants, in a presentation at the American University Law School on November 4, 2006, I opined:

¹ See Endnotes on the last page for list of defendants.

It is laughable that the prosecution should charge the defendants and ask the court for numerous continuances to go out and collect evidence. [The] government prosecutors [are] running around the country fabricating evidence against the Kality defendants and coaching witnesses to lie on the stand. [I] would have welcomed the opportunity to cross-examine those liars on the stand, but ... such a thing could happen only in a real judicial system as opposed to the current kangaroo show trial.²

On November 29, 2006,³ the last day of the prosecution's case-in-chief, much to my own consternation and horror, the world learned from the lips of witnesses that chief prosecutor Shemelis Kemal had been running a Club Med for perjurers and liars.

In a moment of poetic justice, it became crystal clear that the entire case against the Kality defendants was based on orchestrated perjury, falsehoods, deceit and fabrication. Even Judge Adil was so disgusted by sheer volume and stench of the perjury on the last day of the prosecution's case, he had to sternly chastise prosecutor Kamal to wrap up his case and get out. Evidently, even Adil couldn't take it anymore. But the tip of the perjury iceberg in the story of Kamal's subornation of perjury (coaching witnesses to lie under oath) displayed on November 29, reveals the monstrosity and shamelessness of this prosecution, and Zenawi's determination to obtain a "conviction" against the defendants by all means.

Perjury-fest in Kality Kangaroo Kourt

On the last day of the prosecution's case-in-chief, Kamal produced as his lead witness an elderly gentleman who tearfully testified that he was severely beaten and left for dead by a group of Kinijit members during the public protests following the stolen elections in 2005. He boldly claimed that he was assaulted because he was "speaking in Tigrinya." He said he spent 4 months in the hospital recovering from his injuries, and is now permanently disabled due to brain damage. When asked to identify his assailants in court, he became confused and repeatedly misidentified them. Brian damage, the purported cause of the misidentification.

Lo and behold, on cross-examination, the old man recanted his entire testimony. The defendants never laid a hand on him! When chastised by the judge for lying under oath, the old man fingered prosecutor Kamal as the one who coached him to suborn perjury. Good God! Wallahi! It was unreal!

Kamal then trotted out three guards from Tor Hailoch Hospital to testify about a large group of rioters who had attempted to storm that medical facility. According to these guards, thousands of young rioters arrived at the hospital chanting "Thief! Thief!" and gesturing the Kinijit "V sign" with their fingers. They hurled stones and climbed

²http://www.ethiomeia.com/addfile/hr5680_final_report.pdf at p. 7.

³ The description of the November 29, 2006, "trial circus" is based partially on the reported observations of the blogger at: <http://www.lewit.blogspot.com/>

fences to assault the facility. But the guards took quick action preventing a takeover, and detaining a number of them. They inspected the identity cards of the detainees, and quickly determined they were all Christians.

On cross-examination, confronted with the fact that the identity cards did not contain information on religious affiliation, the guards casually overrode their earlier testimony and claimed they could tell the rioters were Christian by the way they dressed! (Naturally, fashion-conscious Christians would never be caught (dead or alive) at a riot without their Sunday-best!!)

Kamal then led another panel of liars, consisting of several former EPPF (Ethiopian People's Patriotic Front) fighters. According to these perjurers, the leaders of EPPF, an allegedly Eritrean-trained and -funded guerilla group, told them "Kinijit is one with them" because both EPPF and Kinijit "share the same purpose [and] the same enemy". Top Kinijit leaders allegedly met with EPPF leaders in Germany and Eritrea to announce that "Kinijit will join their armed struggle" because "peaceful means were futile". How clever!

Kamal even had the temerity to produce a pathetic and confused member of the national theatrical group, Kinet, to testify against the defendants. The poor slob kept going back to the beginning of his scripted and memorized testimony whenever he was interrupted by a question. Even Kamal must have chuckled at this pitiful broken-record of a witness.

The perjury extravaganza continued as Kamal chaperoned three clueless Bole kebele officials to the stand. They were expected to testify that they had witnessed a search of the defendants' homes for criminal evidence by the police (as required by art. 33 of the Ethiopian Criminal Procedure), even though there was no proof the search was done pursuant to a valid court authorized warrant. Kamal got nailed again. Asked by the judge to identify their signatures on legal papers provided by the prosecution as proof of the search, the hapless kebele officials could only acknowledge signing the cover page. They had never seen the attachments to the signature page (presumably containing description of criminal evidence seized by the police) in "their entire lives!" What a low down, dirty shame it is to try to get a conviction based on perjured testimony. Kamal proved that day it was altogether possible to get lower than a snake's belly!

Undaunted, Kamal tried to shore up the cascade of perjured testimony he had unleashed in courtroom with theatrical flair; but no more lies, no more perjury. Judge Adil had heard enough lies for a day, perhaps for an entire trial, and adjourned the session until February 19, 2007, when the judges are expected to rule on whether the prosecution has met its burden of producing sufficient evidence under art.141 of the Ethiopian Criminal Procedure.

Keystone Kops, Prosecutors and Liars in Action in Kangaroo Court

The last day of the Kality kangaroo trial was a page straight out of a Keystone Cops movie of the silent movie era in America. Old movie buffs will recall that the Keystone Cops were the laughable guardians of law, order and justice in America. This hopelessly incompetent group of policemen would be called to some part of town to restore law and order. But they could never get to the scene of the crime, or catch the wrongdoers because they were always in a state of collective confusion and bewilderment. They were best at chasing their own tails, tooling down one street and up the other. Along the way, they'd hit fruit stands, popcorn wagons, telephone poles and chicken coops. They could never do anything right, but they provided the townsfolk much laughter and merriment from their slapstick mayhem and buffoonery.

Kamal and his prosecutorial team are Ethiopia's equivalent of the Keystone Cops and laughable guardians of law, order and justice in the police state that is Ethiopia today. They are laughable not only for their ineptitude and cluelessness about prosecuting a complex politically-driven "criminal" case, but also for their witlessness and shameless audacity in trying to pull the wool over the eyes of the world with their harebrained shenanigans.

Unlike the gags and misadventures of the Keystone Cops (prosecutors), however, there is nothing funny about Kamal's courtroom capers with perjurers. No doubt, there are a great many Ethiopians inside and outside Ethiopia who find it hard to believe that lying in court and coaching others to lie in court is a crime even in the police state of Ethiopia. After all, they say, one should not be surprised because there is a full-scale cottage industry of perjurers, forgers, fraudsters, extortionists, blackmailers, racketeers and scammers that sustains the Ethiopian judicial system; and everyday, hundreds of innocent Ethiopians are dump-trucked to prison on the basis of fabricated evidence and perjured testimony.

But believe it or not, there really is a law in Ethiopia against lying in court and coaching others to offer perjured testimony. (I mean there is one on paper.) According to the Art. 455 (Provocation and Suborning) of the Ethiopian Criminal Code:

(2) Whoever, by violence, intimidation or by promising or offering or giving undue advantage causes another to make false accusation or give false testimony or obstructs, through interference, the giving of testimony or the production of evidence in relation to a crime punishable with rigorous imprisonment for more than two years or obstructs law enforcement officials or public servants while exercising their official duties in relation to the same crime, is punishable with rigorous imprisonment not exceeding seven years. (Emphasis added.)

That's right! 7 years in the Big House for causing a witness to lie in court.

Now, let see: For suborning perjury on the last day of the prosecution's case alone, Kamal should be charged with seven counts of violation of Art. 455. A pretty easy case to prosecute, I should think. As prosecutors sometime taunt defense lawyers when they have an airtight case against the defendant, "it's a slam dunk!"

OK. Time for Kamal to start thinking seriously about a plea bargain. Let's see: If he pleads to 7 counts of subornation of perjury, that would earn him 49 years, 7 years per each count, if run consecutively. With good time/work time, he should be out in about 15-19 years. Naah! Too severe, you think?

Let's run the sentence for all seven counts concurrently, and go for the max of 7 years, straight time (no parole, no probation). Drop all other possible counts such as conspiracy to suborn perjury, obstruction of justice, fabricating and doctoring evidence, etc. Oh, yes, throw in permanent disbarment from the practice of law once he serves out his sentence.

This is a fair deal, Kamal. You're good for it! Take it or... your looking at 3- 49 years.

Will prosecutor Shimeles Kemal please stand up and indict (charge) himself on seven counts of subornation of perjury?

Wouldn't it be nice to see a real criminal go to jail?

Hold your horses, now! Don't get excited. It will never happen! Like I said perjury is the hard currency of the Ethiopian judicial system; and it is dyed into the fabric of the entire police state. A perjury prosecution in this case comes with an inconvenient truth: If you indict (charge) Kamal, then you'd have to indict all of the criminals who instigated and authorized this entire "prosecution" (or at least name them as unindicted co-conspirators). How likely is that?

But there is something truly comical about this Keystone judicial system. They can't even catch and prosecute a criminal who committed crimes of subornation of perjury right there in the courtroom, in daylight, in plain sight of the judges, bailiffs, court reporters and shocked international observers. So, Kamal will get away, for now. But in a real justice system, not only would he have been prosecuted and disgraced from the legal profession for gross unethical and criminal misconduct, he'd be eating some serious jail time. Like I said, in a real justice system!

"Keystone Cops, Prosecutors and Judges: Misadventures in Kangaroo Court"

Episode 1: "Get the Kinijit &*%\$#^@"

Prosecutor Kamal's problems with the evidence (or more accurately lack thereof) did not just pop up on the last day of the government's case-in-chief with a full court

exhibition of a platoon of lying witnesses. His problems started at the very conception of the case, probably in a conversation in the offices of a very high official:

“I can’t believe we got thumped. How could we have lost? We rigged the damn elections, and they still won! I can’t believe it!”

“Yes, sir. We not only got thumped, we got dumped!”

“These &*\$#^@ Kinijit leaders. We should show them what the “K” stands for in their name, and ‘kick their _ _ _.’”

“Kamal, can’t you do something?”

Yes, massah (master)! I can throw the book at them!”

“Good, good, good! So what the hell are you waiting for? Do it!”

“Yes, massah.”

“Do you want me to jack up all of them?”

“Hell no! Charge only the ones who refused to join parliament.”

“But, sir! All of the Kinijit leaders, including those who joined parliament, committed the same crimes at the same time. It will look like political persecution, I mean prosecution, if we just charged the ones who refused to join parliament.”

“Who is calling the shots around here? Somebody, get this guy outa here?”

Exit. Kamal bows and retreats.

Episode 2: “Throw the Book at Them and Hope Something Sticks”

Believe it or not, art. 42 of the Ethiopian Criminal procedure provides: “The public prosecutor shall institute proceedings in cases affecting the Government when so instructed by the Minister.” You need to read the preceding sentence again. Under art. 42, it does not matter whether a crime is actually committed, or there is independent evidence of the commission of a crime. Any two-bit government minister can order the arrest and prosecution of any law-abiding Ethiopian citizen. Can you believe that? Well, you better believe it!

When Kemal filed the charges against the Kality defendants -- without any credible evidence, to be sure -- it is obvious that he did so because some “minister” (umm?? can’t quite say which one, but take a wild guess) had ordered him to “institute proceedings.” But the decision and order “to institute proceedings” specifically against the leaders of the Coalition for Unity and Democracy (CUD) and possibly others, was made long before the November, 2005 demonstrations, and even the May,

15, 2005 elections. Consider this evidence: *On May 6, 2005, ten days before the elections and seven months before the November demonstrations, Reuters quoted Zenawi accusing the CUD leaders of trying to cause a “Rwanda-type genocide” by spreading ethnic hatred and strife, organizing a violent uprising aimed at overthrowing the government, and treason.*

These were three of the seven “criminal” charges (that is, violations of Criminal Code, arts. 248 [high treason], 240 [armed uprising or civil war], and 269 [genocide]) that were leveled against the opposition leaders in November, 2005. Zenawi had laid his plans long before the alleged crimes were committed by the CUD and other defendants. He was merely waiting for the right opportunity to charge them, and conveniently used the November demonstrations as a pretext to implement his long hatched plan. This analysis is further supported by the fact that no self-respecting prosecutor with any experience in criminal law would have filed those seven absurd and asinine charges against the defendants, as we shall see below.

Nonetheless, critically evaluating Kamal’s strategy -- giving him the benefit of the doubt that he actually had one -- in hindsight, it appears self-evident that he did not do a rigorous job of conceptualizing and planning out the practical aspects of his case. One or more of the following reasons may account for his sloppiness in filing the 7 counts⁴ against the defendants:

- 1) He was instructed to file the absurd, goofy and harebrained charges by the highest political authority in the country in a moment of arrogant outrage, and did so reluctantly, or with servility.
- 2) He filed the charges believing the defendants would most likely boycott the bogus political trial, and thereby obtain a conviction by default; or if some defended, they would not do so vigorously, and he could still win convictions on the basis of fabricated evidence provided courtesy of the EPDRF dirty tricks workshop.
- 3) He must have believed that he will inevitably win a conviction, regardless of what happens at trial because the case has been fixed, that is the judges are under orders to convict. So, no sweat! Slap any charge, it should stick.
- 4) He just did not do his homework -- that is, he did not carefully evaluate what evidence he needed to prove the charges -- or the case was far too complex for his limited legal skills; and as his courtroom performance manifestly showed, he had no clue what evidence he’d need to legally and ethically prove his case.
- 5) He believed he could outsmart everybody and win the case “fair and square” on the strength of perjured testimony, doctored documents and videos (hoping he could pull the wool over the judges, defense lawyers and the international observers). There is now clear evidence to support at least the fifth scenario.

⁴ See “End Notes” for list of charges on the last page of this analysis.

Regardless of Kamal's own analysis of his evidence or his lame trial strategy, a simple review of the allegations reveals the fundamental legal and evidentiary problems with the prosecution's case.

Kamal's (Zenawi's) Follies

First, a look at the charges. Kamal's (the regime's) first tactical blunder was to charge the defendants with political crimes under articles of the Ethiopian Criminal Code designated "Crimes Against the (police) State"⁵. These "crimes" are not crimes at all. Rather, these articles in the Code constitute vaguely written and politically-motivated prohibitions aim at discouraging dissent and stamping out opposition political activity. They are sweeping and all-encompassing in their reach, and have the effect of criminalizing any political act and/or speech that opposes the regime in power. These "Crimes Against the (police) State" are designed to be used almost exclusively against opposition leaders and members, or individual political opponents and dissidents; and occasionally, disloyal and incorrigible members of the ruling party.

As prosecutable offenses, "Crimes Against the (police) State", present special problems for the prosecution, the defense and the judges. It is easy for any prosecutor to slap a charge on a citizen by whipping out vague, overbroad and sloppily written criminal "laws". Proving them by established and legally accepted evidentiary standards, as Kamal learned rather late in the game, is a much more difficult task.

Kamal charged the defendants without analyzing the law of the case, and without reviewing his evidence for sufficiency, credibility, integrity, weight and relevance. Take for instance, the "genocide" allegation. Kemal thought he could prove a case of genocide with evidence of "beatings causing bodily injury on a Tigrayan-born individual..., arson on the home and property of two Tigrayan-born individuals...; acts causing fear and harm to the mental health of members of an ethnic group based on their ethnic identity; and indirect and direct acts causing harm to members and supporters of the EPRDF by excluding them from social interactions and preventing them from attending funerals".

In March, 2005, five months after he slapped the genocide charge, he had to request permission from the court to amend it to a charge of "attempted genocide". He (and the regime) had become the laughing stock of the international legal and human rights community for making such a screwy allegation, and for his lack of basic knowledge and familiarity with the law of genocide under well-established international standards. The Ethiopian defense lawyers were also quick to point that out to him.

⁵ETHIOPIAN CRIMINAL CODE, TITLE I, CRIMES AGAINST THE STATE, CHAPTER I, CRIMES AGAINST THE NATIONAL STATE, Section I.

But Kamal still did not get it! At “trial”, he sought to prove his charge of “attempted genocide” by piling up perjured testimony, and the comic relief provided by victim-witnesses who were psychologically “traumatized” by ethnic insults and epithets, police officers who suffered mental anguish from seeing rioters flipping their middle fingers (the bird) at them, and suffering the outrage of being called God-awful names. Other proof of attempted “genocidal” acts included construction of roadblocks from “dirt and stones” and infliction of excruciating pain to the eyes and throat by burning berbere-filled (powdered red peppers) mattresses. Absolutely, bizarre!

Kamal also had to file an amendment in March, 2006, to three allegations in favor of non-aggravated forms (arts. 240/258 (inciting, organizing or leading armed rebellion), 247/258 (impairing the defensive power of the state), and 248/258 (high treason), which if left in aggravated form (art. 258) call for a mandatory sentence of death (art. 258 states, “the Court shall pass sentence of death” and does not allow judicial discretion to impose a lesser sentence of life imprisonment). Kamal withdrew these charges when he realized the “law” requires the defendants to be executed for the aggravated offenses if they were convicted. (By the way, we could infer from this move that Kamal (regime) does not intend to seek the death penalty when the defendants are convicted, as they will surely be.) But he had no idea of these legal issues when he filed the charges!

Such gross and shocking incompetence is, of course, inexcusable professionally and ethically for any lawyer practicing in any country, except perhaps Ethiopia. A prosecutor should never accuse a defendant of the most serious crime possible under the criminal law of any nation (genocide) just because he was ordered by a minister, regardless of how high that minister sits government. So much for the rule of law in Ethiopia!!

But there is a more fundamental question to ask about the genocide charge of the Kaliti defendants in light of the in absentia conviction of former junta strongman Mengistu Haile Mariam, after a 12-year trial, who has been holed up in Zimbabwe since 1992. In the “genocide” charge, is Zenawi claiming that the imprisoned CUD leaders, journalists, human rights defenders and civil society leaders are responsible (culpable) for attempting similar acts of “genocide” as occurred during the Derg period of Red Terror, and other atrocities that resulted in the deaths of hundreds of thousands of Ethiopian? If convicted, will the CUD leaders, journalists, human rights defenders and civil society leaders also face the death penalty as does Mengistu, and his henchmen?

For the defense, these “Crimes Against the (police) State” present unique challenges and problems. Often, defendants charged with political crimes know that they are being persecuted (not prosecuted) for their political opposition and stands and not for any ascertainable crime. So, how does one defend against political crimes, or “Crimes Against the (police) State”? Well, for that see, Episode 8 below.

Judges have their own special problems in cases of “Crimes Against the (police) State”. They know full well that such “crimes” are merely bogus allegations used to persecute political opponents, and have little to do with real crimes such as coaching witnesses to lie in court. They know full well, for instance, that the Kinijit leaders, as well as the other defendants, are in court not because they committed any criminal offenses but because they won the May, 2005 election, refused to acknowledge the legitimacy of Zenawi’s theft of that election, and in act of classic Gandhian civil disobedience refused to join Zenawi’s parliament. *How else can one explain the fact that the other leaders in the CUD who joined parliament were never charged with any crime even though they were present and a part of all of the “crimes against the state” allegedly committed by the Kinijit leaders in Kality prison? Think about it!*

“Crimes against the (police) State” present special technical problems for ethical and professional judges who may be forced to adjudicate them. For instance, take the question of “intent” in the various allegations against the Kality defendants. In civilized countries, before a defendant is held liable for a criminal act, the prosecution must prove 1) “specific intent” (that is, the defendants acted willfully, knowingly, or deliberately) or “general intent” (that is, the defendant’s act or omission caused the alleged harm), and 2) commission of the criminal act by the defendant. No one could be properly convicted of a crime without proof of both intent and act.

In “Crimes Against the (police) State”, there is no ascertainable element of intent. An allegation of commission of these “crimes” -- intent and act -- could be proven by anything the prosecutor chooses. Kamal tried to “prove” his case by rearranging the “criminal events”, and compiling, distorting and doctoring the documentary and video/audio evidence. For instance, according to one trial observer, Kamal would present “audio, video and documentary evidence taken out of context, edited, and distorted in an extremely prejudicial and dishonest way.” In various instances, “he does not even link the evidence with the actual defendants, or with the specific charges.” Incredibly, the judges allowed him to present such cockamamie evidence despite strenuous defense objections.

Episode 3: “Kamal Throws the Book, But Nothing Sticks!”

Kamal (the regime) overcharged the defendants. He “threw the book” at them, and included the kitchen sink to boot. The only thing he forgot to include in his “Crimes Against the (police) State” charges was the “crime of breathing God’s good air”; and come to think of it, even that may have been a lesser included offense of one of the seven charges.

Consider the first charge of “outrage against the constitution” under art. 238 of the Ethiopian Criminal Code [Criminal Code] (*Citations to the Ethiopian Criminal Code are provided on the last page, “Endnotes”.*) This offense involves 1) the use of “violence, threats, conspiracy or other unlawful acts” with intent to “overthrow,

modify or suspend the federal or state constitution,” and 2) accomplishing the prohibited act through such means.

The problem with art. 238, as well as the other six charges brought against the Kality defendants, is that nobody knows what the words in the “law” mean. These “laws” are written (drafted) in such a vague and fuzzy manner that the government -- that is any minister can order -- can charge a citizen with their violation with or without evidence of wrongdoing. But the ordinary citizen-defendant has no reasonable way of knowing or ascertaining what these “laws” mean, what they prohibit, how to avoid violating them, or defend against them if charged. The only thing clear about these “Crimes Against the (police) State” is that if you violate any one of them, you are looking at 3-25 years in prison (and life in prison or death if charged as aggravated [in exceptionally severe form] offenses).

Facing such extreme consequences, how could the ordinary Ethiopian citizen figure out when s/he is about to “overthrow, modify or suspend the constitution” and avoid violation of art. 238 it? How does s/he know what these words mean? Who does s/he ask to find out? What must be going on in his head (intent) when he thinking about “overthrowing” the constitution? What act is a necessary condition for “overthrowing, modifying or suspending the constitution”? The answer to these questions could be found only in Kamal’s creatively shrouded imagination.

Art. 238 is so insidiously sweeping and overbroad that any person could be charged merely for speaking his mind. Supposing a person goes before a crowd in public and states: “I have nothing but contempt for Zenawi. He is an oppressor, a dictator and murderer of innocent men, women and children. He stole the elections. I believe he and his government should be replaced by any means necessary.” That person could easily be charged for violation of art. 238 because he used the threat of imminent violence (by any means necessary) to “overthrow” the constitution. So much for free speech!

Journalists could be charged for reporting the statement since that would be tantamount to endorsing the underlying unlawful message. Political analysts could be charged for commenting on it, favorably; and scholars for analyzing it, favorably, and dare I say comedians, who may joke about it, favorably. (Art. 238 is no joking matter, don’t you know!??)

Let’s take the second charge (violation of art. 239) of “obstruction of the exercise of constitutional powers” which requires the intentional use of “violence, threats or other unlawful means to restrain or prevent an official or government agency.” Using the same example above, if the person directed the foregoing statement to a member of the “Ethiopian Elections Board,” (even if he meant it in a joking way [intent]) he could be charged for violation of art. 239 because the statement as directed to the board member could constitute a threat of imminent violence (regardless of the fact that it was a bad joke) to “prevent a federal official from exercising his powers.”

If the same person made the statement to a group of people who took offense at the language and “suffered psychological and physical trauma” as the witness who claimed such injury because he was “speaking Tigryna”, the person who made the statement could be prosecuted for genocide (art. 269) or attempted genocide because his statement could cause “serious injury to the physical or mental health of members of the group.”

But we need not dwell on legal hypotheticals. The prosecution’s evidence against the Kality journalist-defendants for “Crimes Against the (police) State” consists of mainly published interviews with opposition leaders and criticism of the government and EPRDF during the election process. For the record, based strictly on the prosecution’s evidence, the journalists are being prosecuted for doing precisely what they are guaranteed under the art. 29 (4) of the “Ethiopian Constitution”:

In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, *the press shall*, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions. (Emphasis added.)

Other journalists charged with “Crimes Against the (police) State” included American citizens broadcasting interviews with government opponents for the Voice of America. The case against the VOA defendants was dropped in March, 2006 under U.S. Government pressure, but two young gutsy and defiant US-based Ethiopian webeditors, Abraha Belay of Ethiomedia, Elias Kifle of Ethiopian Review, remain charged in absentia for presenting diverse points of view to their readers.

On February 21, 2006, the Ministry of Justice threatened to prosecute ActionAid, (a South African-based nongovernmental organization) for obstruction of justice, “libel and other criminal offenses” because they called for the release of its Ethiopian policy director Daniel Bekele, and Netsanet Demissie, chair of the Organization for Social Justice in Ethiopia, and for asserting that these two individuals were innocent of the charge of “outrage against the Constitution”.

Needless to say, fundamental fairness requires that everyone is entitled to know what the government commands or forbids; and laws should be written in clear enough language for the average person to understand and follow. But these “Crimes Against the (police) State” are used to treacherously snare unwary citizens.

Episode 4: Goofy Goes to Kourt

Goofy⁶, the Disney cartoon character had a favorite expression: “Well, whaddya

⁶ Goofy, the not-so-bright Disney cartoon character, was best known for his series of “how to” sporting films in which Goofy demonstrates with clumsiness. The result was a hilarious visual depiction of “how NOT to” accomplish the task being described. But Goofy remains undaunted, ready to move on to the next

know ...?” Well, it’s seems obvious that Kamal is clueless about prosecuting a complex, multi-defendant, multi-count criminal case. No clue whatsoever!

Any reasonable prosecutor reviewing the Kality defendants’ case would have invoked art. 42 of the Ethiopian Criminal Procedure and NOT “instituted proceedings”, because it was plain from the outset that there was NOT “sufficient evidence to justify a conviction.” The manifest purpose of art. 42 is judicial and prosecutorial economy, and prevention of oppressive treatment and arbitrary prosecution of innocent persons by an overzealous and vindictive prosecutor. It was not intended to expedite the willy-nilly charging of innocent citizens for fuzzy crimes, or to facilitate the fabrication of evidence of wrongdoing after innocent citizens are charged and jailed.

Exhibit I: Consider the fact that after Kamal filed charges, he had to request and be granted numerous continuances over a period of months so that he could go out and gather (fabricate) more evidence of the defendants’ wrongdoing. Once a criminal case is filed, in any civilized criminal justice system, the prosecutor turns over the discovery (the alleged evidence of guilt) to the defendant and proceeds to trial. No self-respecting judge would -- and no self-respecting prosecutor would request -- grant requests for endless continuances so that the prosecutor could run around town in search of incriminating evidence while the defendants are languishing in jail.

The standard procedure for any court in the civilized countries is to dismiss the charges without prejudice, allowing the prosecutor to re-file when he is ready with his evidence to go to trial. In the meantime, the defendants are released either on bail, or on their own recognizance.

Incredibly, in the kangaroo trial of the Kality defendants, the prosecutor is allowed to file charges without “sufficient” evidence in clear violation of art. 42, and then given as much time as he wants so that he could cruise around town in search of perjurers and “jive turkeys” (to use a vernacular), and to manufacture and fabricate documentary and video evidence against the defendants. What a pathetic criminal justice system!

Exhibit II: Consider the fact that Kamal was clueless about the applicable criminal law and procedure on various legal issues at “trial.” For instance, he argued to the court that under Ethiopian law, unless evidence was collected by force it was not considered “illegally collected.” (This explains why he’d think perjury would be perfectly admissible since no force is used to produce it, may be a little cash, but no force.)

In a display of legal savvy on the law of evidence, he argued that there is no specific law in Ethiopia that prohibits the use of hearsay at trial. The laughable supporting

lesson. Kamal’s prosecution of the Kality defendants is the Goofy version of “how NOT to” prosecute a case of “crimes against the state”.

authority: a 1959 Michigan Law Review article! (If one must appeal to American legal [scholarly, in contrast to established precedent] authority on the hearsay rule, one ought to have the diligence of familiarizing oneself with McCormick on Evidence, 6th edition.) Kamal would also liberally cite “legal authority” from India and Germany in support of his arguments on the elements of conspiracy, apparently oblivious of the fact that such authority is procedurally disapproved in Ethiopian courts, as pointed out by the defense.

Exhibit III. Kamal argued that the web pages he printed out should be admitted as reliable evidence because such pages obtained from the internet “cannot be manipulated without permission from the webmaster of a site” or “without a password,” and therefore impossible to forge! (Also impossible to believe such ignorance by a prosecutor!)

Exhibit IV: Providing timely discovery to the defendants (giving the alleged evidence of wrongdoing to the defendants) was completely alien to Kamal. He denied defendants’ witness lists, copies of video and audio tapes and documents so that they could investigate and prepare their defenses during the long court adjournments. He’d assure them that they will have the evidence on the day of “trial”. Art. 20 (4) of the “Ethiopian Constitution” provides that the accused within a “reasonable time after having been charged” has 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,....” Kamal couldn’t care less about what the “Constitution” says!

For Kamal “reasonable time” for “full access to the evidence and witnesses” is the day of trial. He seems to have trained at the “school of trial by surprise and hiding the ball”. (In all fairness, his inability to comply with the request for witness lists may be excusable, since at the time of the defense request, it is entirely possible that Kamal may not have recruited and coached his cadre of perjurers.)

Exhibit V: Kamal argued that two defendants who had complained of mistreatment, assault and lack of medical care to the court should have done so to the prison authorities. He was chastised by the judge that it is “the duty of the court to monitor treatment of the prisoners.” Birtukan Mideksa, a former judge, had to remind the judges that “[w]hen the court goes on recess for 2-3 months, we will continue to be treated like this [put in solitary confinement]. Our suffering will be the responsibility of the bench. If the courts are concerned with human rights, they must look into this issue during the rainy season.” In an act of unforgivable cowardice, the Kality judges time and again failed to look into allegations of mistreatment and torture by the defendants. On March 21, 2006, a number of the defendants complained to the court that they had been beaten, deprived of food for long periods, and tortured with electric shocks and denied medical treatment. No investigation of their torture complaints was ordered.

Exhibit VI: After Kamal completed his months-long fishing and archeological expedition for evidence, the best he could get from the EPDRF Dirty Tricks Workshop was a bunch of confused perjurers and liars, and transparently doctored documentary, video and audio “evidence”. All of his star witnesses were pitiful. Several of them claimed they had suffered brain or psychological damage from their visual experiences of the alleged rioters. Some claimed suffering insomnia and disturbed sleep because of their harrowing experiences watching the riotous defendants. One witness diagnosed his father-in-law’s hand paralysis and high blood pressure as being caused by the “psychological trauma” of viewing the rioters. Another witness claimed that he contracted tuberculosis because his shop was burned down by unidentified CUD supporters.

On November 29, 2006, much to the (comic) relief of everyone -- defendants, judges, international observers -- Kamal wrapped up his perjury extravaganza. But perhaps not fully appreciated by many, Kamal had thrown in the towel. *He called off testimony from 289 scheduled “witnesses”*. He said their testimony was cumulative (redundant). This is the one thing Kamal did right in this “trial”. There is no need to repeat the same pack of lies an additional 289 times. Also a very good way to avoid total personal humiliation!

Assessments of Kality Kangaroo Court Observers⁷

On Prosecutorial Misconduct

“The prosecution makes extremely suspect arguments based entirely on hearsay and speculation; and if that fails, outright deception.”

“The ActionAid defendants are usually implicated in evidence having nothing to do with them, and almost never issued copies of the evidence being used against them.”

“The arguments against CUD members presented in Court are so far a field from the actual evidence, often in direct contradiction with the evidence presented, that these entire proceedings almost seem humorous. At one point Shimelis stopped to summarize several CUD press releases by saying ‘in nearly every speech they say they support peaceful struggle, but essentially they are promoting violence.’”

“ The prosecution is routinely, between 45 min - 1 hour, late to court. This would be grounds for contempt or obstruction of justice [in a U.S. court].”

On Judicial Incompetence, Impotence and Misconduct

“There is moderate evidence of misconduct on the part of the Court, and demonstrable irregularities with the proceedings.”

⁷ Extracted from trial notes of distinguished independent observers.

“The Court consistently provides the prosecution extraordinary latitude in the presentation and admission of evidence, [and] has yet to actually compel the prosecution to produce copies of any of the video evidence (and most of all other forms of evidence) to the defense.”

“The Court does not demand that the prosecution produce copies of new evidence in advance of trial presentation.”

“The Court often allows the prosecution to introduce new evidence not included with initial charges without furnishing a copy for the defense.”

“The prosecution is simply never held accountable for its habitual delay of proceedings, including arriving late, being unprepared, or introducing new evidence without producing copies to the defense.”

“The Court routinely delays ruling on the treatment of defendants while in State custody, or on motions from the defense for copies of evidence. As of July 24, it appears the prosecution has not produced copies of the video evidence to defense council, and the Court continues to sit on its hands despite repeated requests from the defense.”

“The Court also overruled objections to video evidence presented in support of charges against "all defendants" despite the fact that not all defendants were shown, claiming a criminal code that provides the prosecution with considerable latitude in the way it chooses to present evidence.”

“In every phase of the trial the prosecution seems to receive a great deal of latitude in introducing new evidence in the middle of trial, none of which ever seemed to be produced to the defense beforehand.”

On the Quality of the Prosecution’s Evidence

“Generally speaking, the prosecution’s evidence is of extremely dubious quality.”

“Quotations are taken out of context, distorted or edited to remove mitigating prefacing comments. “

“As calling for armed struggle and military sedition. Hailu Shawul [in the evidence presented] seems to consistently refer to a peaceful struggle.”

“In most cases, the prosecution's arguments do not even correspond to what is said on tape [introduced into evidence]. The link between the video evidence and the charges relies on an almost absurd form of speculation. For example, the prosecution showed a video tape of Hailu Araya cautioning that the CUD must proceed responsibly, as a collapse of the government due to their actions could bring about a “disintegration of the state” citing past changes in government as reasons to act responsibly. The prosecution interprets this as calling for the downfall of the state, though it sounds a lot more like Hailu is warning against it.”

“The content of tapes [introduced into evidence] appear to have been distorted to the point that they are prejudicial, one tape presented was little more than a montage of

damning 10- 15 second sound bytes. This makes it impossible to establish the authenticity of the tape, whether it came from a single source.”

“The Court's position on the introduction of evidence was beyond accommodating, as the prosecution was able to introduce video, documentary, and audio evidence without being required to provide copies to the accused.”

“None of the video or audio evidence was produced to the defendants prior to being presented in court.”

On the lack of Due Process

“The defendants have not been provided with a speedy trial, or the right to confront evidence presented against them in its fullness. On any given day, a number of defendants were absent, however this does not prevent the prosecution from presenting evidence against them.”

“During the trial many third parties, Ethiopian Television, corrections officials, and police officials seem to be engaged in activities that were either prejudicial or otherwise detrimental to the defendants. The Court was repeatedly asked to provide relief to the defendants. While the Court seemed to willing take seriously some objections, either a) the Court's recommendations to third parties are being ignored, and the Court is powerless to enforce them, or b) the court provided *de facto* approval of the actions of third parties because it is clear its orders were not followed, and the Court did not appear to make any earnest efforts to ensure that they were.”

On the Treatment of Prisoners of Conscience

“It seems very clear that corrections officials ignored court requests for humane treatment of the defendants while they are in state custody, and that the Court has no real jurisdiction over the treatment of prisoners. Court orders for special attention to Kidist Bekele's epilepsy condition were ignored. Berhanu Nega complained of ill-treatment at Kaliti prison and additional lack of medical care for prisoners, and while the court asked prison officials to resolve this, they were of course ignored. The court refused to issue any ruling to improve the conditions for prisoners, stating a lack of evidence of ‘poor conditions.’”

“The defense complained that Ethiopian Television's coverage, which only seemed to show the prosecution's side of the story, was unfair and deceptive. The court maintained it could not “dictate [to] the journalists" despite demonstrably inflammatory press coverage.”

“When the defense objected to the confiscation of various items during execution of a search warrant at the CUD's premises, the judge claimed it was out of his jurisdiction because none of the items in question appeared on the list of evidence submitted to the court. It was within the court's jurisdiction to address the matter further.”

Episode 5: Keystone Judges – ‘See Nothing, Hear Nothing, Do Nothing!’

There is little doubt that the particular judges in the Kality defendants’ matter were hand selected by the political authorities for their loyalty and trust-worthiness to deliver a guilty verdict. The question is whether they will play out their roles as scripted for them, or act independently as did Frehiwot and Woldemichael in their work on the Inquiry Commission.⁸

At this stage in the circus, the job of the judges is to determine, under art. 141 of the Criminal Procedure, whether the prosecution has presented sufficient evidence “which, if unrebutted would warrant conviction.” Simply sated, they will vote to acquit (free) the prisoners if they believed the prosecution has not met its burden of proving its case beyond a reasonable doubt. But could they acquit?

The judges could determine on the merits that the prosecution’s perjured testimony and doctored documents and videos are insufficient as a matter of law (since perjured testimony and doctored evidence is not competent evidence at all) to “warrant a conviction” and acquit the defendants. To any fair-minded person, this outcome should be a “no brainer”. The prosecution’s case is based entirely on lies, deceit, falsehoods, distortions, fraud, slander and defamation of the defendants. Under no circumstances could a fair court determine that the prosecutor has met his burden of proving the defendants’ guilt beyond a reasonable doubt on the basis of the pile of perjured testimony and doctored documents. If the judges do the right thing, at the close of business on February 19, the Kality defendants should be on their way home to rejoin their families. That is, if the judges did their jobs professionally, ethically and independently, as mandated under art. 78 of the “Ethiopian Constitution.”

Of course, such an outcome is a near impossibility. But let’s assume the judges determined the prosecution’s case is insufficient under art. 141. Would they be courageous enough -- as were Judges Frehiwot, Woldemichael, Teshale -- to come out and make such an announcement to the world? Unlikely. Acquitting the defendants without even hearing the defense case would bring such embarrassment and humiliation to Zenawi and his regime, it is unthinkable.

An acquittal under art.141 would mean the government did not have a case from the beginning and the whole trial is one massive political persecution using the court system. It would support the defendants’ stated position that the whole “trial” is

⁸ There is a broader and deeper structural problem with the judicial system, and perverted politicization of the role and functions of judges in Ethiopia. In conversations with current and past Ethiopian judges, I have come to appreciate the fact that the professional life of a judge in Ethiopia is an endless struggle between one’s conscience, professional integrity and ethical duties on the one hand, and doing the bidding of the political authorities who want to mask their corruption and oppression in the garb of justice and the rule of law. After listening to the public statements of former judges and Inquiry Commission chair Frehiwot and vice chair Woldemichael, who would not feel genuine heartfelt pity and sympathy for the plight of Ethiopian judges?

merely one manifestation of the regime's systematic program of persecution of regime opponents. In any case, one would wager to say that the judges have a clear understanding that such an outcome is unacceptable under any circumstances. Zenawi has learned from his experiences with the Inquiry Commission. He will not allow another humiliating embarrassment to occur, and this time crown himself Keystone Prime Minister!

But if these judges do not acquit the defendants, they will face the judgment of their consciences, and of history.⁹ In their work on the Inquiry Commission, Judges Woldemichael and Frehiwot boldly chose to follow their consciences and stand for the truth, come hell or high water. They paid a very high price -- life in exile as refugees. I suppose we can all call them Refugees for Truth and Justice.

Will Judges Adil Ahmed, Luel Gebremariam, and Mohammad Abdulsani choose to stand for truth, freedom, human rights and democracy? If they don't, history and generations yet unborn will remember them for their cowardice; and they will find out, as did Dr. Faust in his deal with Mephistopheles, that in the end the devil always takes your soul.

What the Kality judges have shown in the courtroom over the past year is disheartening; and their presence in the courtroom is reminiscent of the "three wise monkeys": see no evil, hear no evil, speak no evil. Except for Judge Adil's apparent disgust with Kamal's lying witnesses on the last of the prosecution's case, the three judges -- the triumvirate -- for the past year have sat in that courtroom blind to the parade of perjurers and suborning prosecutors, deaf to the pleas of the defendants for justice and their cries to halt the torture and mistreatment in prison, and mute in the face of outrageous misconduct and shenanigans by the prosecution.

But in the final analysis, the Kality case could be a moment of glory or infamy for the judges as individuals and as representatives of the entire Ethiopian judiciary.¹⁰ They have a clear choice between eternal glory and eternal infamy. If they find "sufficient" evidence in all of the perjured testimony and doctored evidence and order the

⁹ There is of course, a high personal price to pay for exercising judicial independence (the ability of judges to perform their judicial functions without political interference) in a police state. Ethiopian judges depend for their livelihood by doing the government's bidding. If they don't do what they are told by the political authorities, they will be out of a job! That's exactly what happened to Birtukan Midekssa, when she said: "Hell no! I am going to do my job professionally and ethically."

¹⁰ Ethiopian judges, I must say, deserve our pity and sympathy. I recall the words of a friend with intimate knowledge of the plight of judges in Ethiopia today: "Don't think it's easy being a judge in Ethiopia. Woe is the professional life of an Ethiopian judge. He will sentence an innocent man to jail or take away his property because he is ordered by officials, and go home and curse himself through endless sleepless nights." It must be hell to be a judge in Ethiopia today!

defendants to present a defense, they would have written the final chapter for injustice in Zenawi's police state.

Episode 6: "February 19, Judgment Day?"

A. Acquittal on One or Two Charges

One likely scenario on February 19 is a partial "acquittal" ("that no case against the accused has been made out") on some of the charges, say attempted genocide and/or treason, while sustaining the prosecution's case on the other charges; and ordering the defense to present its case on the remaining counts. Such an outcome would provide excellent cover for Zenawi. He could trumpet to the world that, contrary to the naysayers, the court he set up is not a kangaroo court as everybody believes, but a real one. He'd say "See, the judges did their jobs independently like real judges. There was no political interference. They acquitted on some charges, while sustaining others."

Since the international community has very little expectation or confidence in the "trial", Zenawi could try to sell this outcome as conclusive evidence of a fair trial. On its face, such an outcome could appear fair, and the international community could potentially (not very likely) be duped into accepting the outcome as somewhat valid and look forward to the next stage, which is presentation of the defense case.

Such an outcome would be a pretty clever strategy because, in a way, it could put the defense on the defensive. One could reason that if the defendants are acquitted on some of the charges because of weaknesses in the prosecution's case, the perception could be created, it is entirely possible they could beat the rap altogether if they presented a full defense. If they refuse to defend, then Zenawi can claim they gave up their right to a fair trial; and try to convince the international community that had they defended, it was entirely possible they could have been acquitted on some or all of the remaining charges.

B. Sustain All Counts

The judges could sustain the prosecution's case on all counts and order the defense to proceed. Such an outcome would be counterproductive. Everybody would be back at square one, and the prosecution (regime) would gain no tactical advantage. Criticism will continue from all sectors; and the credibility of the judges will be openly questioned since sustaining all counts would mean that the judges have implicitly accepted the body of perjured testimony and doctored evidence as substantial evidence to convict, and are merely giving the defense a *pro forma* "fair hearing".

Well, so much for the prosecution's burden of proof and the standard of proof beyond a reasonable doubt. Of course, the defense has to prove NOTHING. The burden of proof is entirely on the prosecution. And in this case riddled with perjury, fraud and

distortions, sustaining any count is tantamount to a finding of guilt. *So, what's the point of presenting a defense?*

It seems reasonable to suppose that Zenawi has to at least create the appearance of credibility for the prosecution. He will gain nothing from insisting on sustaining all counts, and he desperately wants a way out this mess. But the whole case has been so poorly and mindlessly planned and executed (at least by rational legal standards), I would not be surprised if the Keystone judges sustained the prosecution's case in its entirety.

C. Withdraw All charges

Art. 122 of the Criminal Procedure allows the prosecutor to withdraw charges before judgment at any stage of the proceeding with the permission of the court. This can be done on the prosecutor's own motion or at the "instructions of the government". Under this article, the withdrawal of a charge is no bar to subsequent proceedings. Conceivably, Zenawi could devise a political solution resulting in withdrawal or suspension of all charges and proceedings while negotiations are underway. Art. 122 could be a good face saving tactical procedural measure for Zenawi.

D. Grant Leave to the Prosecution to Amend the Charges to Conform to the Evidence

Since the whole Kality kangaroo "trial" seems to ignore the Criminal Procedure for litigation practice, the judges could grant leave to the prosecution to amend the charges to conform to the evidence. They could, for instance, allow the prosecution to amend the complaint and align the evidence for lesser included offenses. This could result in a "conviction" on some relatively minor offenses, and discharge the defendants on the basis of time served. Zenawi could claim victory that they were convicted, yet allow the defendants to be released in an attempt to make the issue go away.

E. Acquit on All Counts

Dream on! But suppose the judges get divine inspiration and determine that the prosecution has made "no case against the accused" under art. 141, and acquit all defendants on all charges. What would that mean for them and the Ethiopian judicial system? It would mean, first and foremost, a new day for Ethiopian justice. It would mean the birth of an independent judiciary against all odds. It would mean that there will no longer be political prosecutions in Ethiopian courts, no place for perjury and suborners of perjury.... It would be a New Millennium for the Ethiopian judicial system. It would also mean payment of an enormous personal price for the judges.

Zenawi's Trump Card If Defendants Are Acquitted on All Charges

If the defendant's were acquitted on all counts, Zenawi could still have a trump card. He could dump the entire responsibility for the ill-conceived and -fated prosecution on Kamal, and throw him out to the wolves. Let him twist in the wind! Tell the world that Kamal is personally responsible for the entire fiasco. Praise the judges for doing their jobs in a professional and ethical manner, beat his chest in victory and announce to the world the Ethiopian judiciary is truly independent and fair.

Helloooo, prisoners of conscience! Goooooodbye, Kamal! (P.S. Prosecution of Kamal for subornation of perjury would be the icing on the cake.)

F. Craft a Political Solution Between Now and February 19

Crafting a political solution out of this mess is Zenawi's best outcome. It has been reported that he has sent representatives or mediators to talk to the political prisoners in Kality jail. (See Episode 9 below, for a possible approach.) One proposal for release suggests renunciation of politics by the prisoners. Another proposal involves condemnation of certain political organizations. Both proposals are non-starters.

There is little doubt that if Zenawi could find a face saving way of releasing the prisoners, he'd do it at the drop of a hat. This "trial" has become an albatross around his neck, and continues to be a focal point for a gathering storm of opposition against him. He knows, or should know, that if the matter is unresolved, there will be increasing pressure from the U.S., the European Union, the giants in the Diaspora and other sources. He desperately needs a way out, and put the controversy behind him. But how? (See Episode 9, below.)

G. Appeal and Pardon?

Another possible outcome is to bring the "trial" to a quick conclusion after the defense presents its case (assuming it does), or in the alternative, if it defaults and does not present one. In such a situation, the judges would find the defendants guilty and quickly impose sentence. Zenawi then intervenes and grants a pardon. They go home. "Hooray! Zenawi is a nice guy after all!"

Episode 7: "Zenawi's Choice- Between the Devil and the Deep Blue Sea"

Zenawi knows that the Kality "trial" is a "tale full of sound and fury signifying nothing." Whatever his original plans were for having the "trial" -- intimidate the opposition leaders into submission, decapitate the opposition leadership, etc. -- those plans have failed. The "trial" has proven to be a colossal folly and backfired on him. The defendants are more emboldened than ever -- they are writing smashing bestsellers from jail -- and they can look into the eye of the Beast and say: "We don't negotiate our freedom. We are wrongfully imprisoned. Let's us go!" And so, Zenawi finds himself between the "devil and the deep blue sea" (no pun intended).

The defendants are ready for the long haul, and no doubt Zenawi will do his best to make their lives a living hell in his stinking jails. But fortune has cast these Kality heroes this fate so they can become beacons of light and hope for 75 million of their people. From the darkness of Zenawi's prison, they will shine like the early morning sun. But let the whole world know that such uncommon valor is in their blood; heroism and bravery is a tradition of their fathers and forefathers. This too shall pass!

The defendants have already won (see Episode 8, below). They have no illusions about the outcome of the kangaroo "trial", or whether they will get justice in Zenawi's court. It does not matter what happens on February 19, 2007. If they are "convicted," ho hum, followed by a yawn! Everybody knows the "trial" is fixed. If Zenawi's judges sentence them to whatever term of years of imprisonment, ho, hum followed by a yawn. Everybody knows that also.

This "trial" was Zenawi's to lose, and he has lost. He is the object of condemnation and scorn by the whole world -- Ethiopians, international donors and human rights organizations and groups, Ethiopians in the Diaspora, the European Union, the U.N., the U.S. Congress and the State Department, and others. But he has been a loser from the day he imprisoned the Kality defendants. Zenawi had only one card to play, and he played it the day he arrested the defendants. His ace in the hole -- his trump card -- was his power to imprison the defendants, keep them in jail and make them suffer. Well, he's kept them in jail for more than a year, and some of them even in solitary confinement. He tortures them, denies them medical care and the basic amenities of life in prison, and makes them suffer everyday. So what more can he do to them?

Sure, he can take extreme action against them while they are in jail, and claim they died from one type of illness or another. Or as he did with prior groups of Kality prisoners, machine gun them as they sit in the jails and claim that they were shot while trying to escape. We know all his old tricks. But that will not solve his problem. Surely, Zenawi must realize that he can only oppress so much, kill so many innocent people, jail so many more and exile so many hundreds of thousands more before he must face justice himself!

The longer he keeps the prisoner's of conscience in jail, the more opposition he will generate internally and internationally. We all know he does not believe it; he said so himself. Consider his statements in an interview with the Washington Post on December 14, 2006¹¹. In response to a question on whether a "limited conflict between Ethiopia and Somalia, even a short conflict, would ultimately spawn terrorist

¹¹ Interview with Stephanie McCrummen, Washington Post; located at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/14/AR2006121400820.html?referrer=emailarticle>

attacks”, Zenawi responded: “This argument does fascinate me. It does surprise me that intelligent people in the 21st century could claim that if you respond to the terrorists with force, you spawn terrorism, but if you appease them, you somehow tame them.” He described the detained political prisoners as “leaders of this insurrection”, and that he does not regret imprisoning them.

Now, the semantic difference between a “terrorist” and an “insurrectionist” is not much. Roget’s New Millennium Thesaurus lists these two words as readily interchangeable synonyms. Accordingly, it would surprise Zenawi that intelligent people in the 21st Century could claim that using force, killing, torturing and jailing “insurrectionist leaders” and their followers would spawn “more insurrection”, but “if you appease them” -- that is dialogue and negotiate with them -- “you could tame them.” Unfortunately, much to Zenawi’s chagrin, there are millions of us dimwitted dumbbells living in the 21st Century who really believe that you can “tame” “insurrectionist political leaders” if you bring them to the negotiating table and talk to them in a genuine spirit of national harmony and reconciliation. (Oh! Lest we forget, We, the 21st Century schmucks and boneheads, are awed by Zenawi’s genius!)

There is no doubt Zenawi has a streak of stubborn arrogance which prevents him from knowing when he has lost the only game he knows how to play, a zero-sum game of “kill’em, torture’em and jail’em”. He believes that all contests, challenges and disagreements must result in a total win for himself and a total loss for everybody else. He measures his win exactly in proportion to his adversary’s loss; and if he can’t win by corrupting his adversaries, he will try to win by any other means.

But to get out of this mess, he needs to think in terms of non zero-sum game outcomes where his gain or win does not (should not) necessarily correspond with a total loss by his opponents. And he can really win if he can teach himself how to play a non zero-sum game and master the strategies of negotiation, bargaining and compromise. (A tiny suggestion from 21st Century schmucks.)

Analyzing the reported outreach to the Kality prisoners, for instance, his offer of “quitting politics” in exchange for their freedom presents a zero-sum outcome for the political prisoners. They lose everything (including their self-respect and respect of their countrymen and women) by quitting politics, and gain nothing (since they have already been forced to accept loss of their liberties and sit in his stinking jails). Zenawi gains everything, because if they quit politics, not only would he reign supreme, it would also mean that they would be accepting the legitimacy of the stolen elections, their own wrongful incarceration over the past year. He should realize that they accepted the risk of imprisonment when they engaged in opposition politics, and therefore, release in exchange for crawling back under the rock is a non-starter.

Similarly, the reported offer that the political prisoners condemn certain political groups in exchange for release is silly, and insulting to the intelligence of the political prisoners. He must realize that they are in no position to condemn anybody from jail,

and least of all in exchange for their freedom. They may have their own positions and approaches with respect to other opposition groups. But to condition release on condemnation of other opposition groups is contemptible.

But there is a simple non-zero-sum game Zenawi could play, and have a win-win outcome for himself and the political prisoners. He needs to make proposals that are fair, and likely to produce mutually satisfactory outcomes. For instance, propose unconditional release followed by negotiation on issues important to both sides. Start, for instance, with the 8 point CUD proposal, which is very reasonable by any objective non-partisan standard.

These proposals are simple and fair, and include 1) restructuring of the elections to function independently, 2) equal access to electronic and print media, 3) an independent judiciary, 4) non-involvement of military/police in politics, 5) undoing of parliamentary procedures that devalue the role of the opposition, 6) release of political prisoners, and 7) free operation of political parties. The one other condition -- independent investigation of the killings -- is no longer an issue. But objectively: What is wrong with these proposals?

Zenawi could use these proposals as openers for negotiations, and do so without any loss of personal prestige or power. He may even appear magnanimous to the rest of the world for having done it (might I say, an entirely appropriate act for “one of Africa’s new breed of leaders”).

But as long as the political prisoners remain jailed, it is unlikely that there will be dialogue to resolve the various crises facing country. Absent dialogue and negotiations with the political prisoners and opposition elements, Zenawi’s only choice is to replay the same game of “jail’em, torture’em, kill’em or exile’em” to maintain himself in power. The more violence and repression he uses, the more opposition he generates; and in the end he will be condemned to inherit the fate of all tyrants.

Episode 8: “The Defense Rests!”

You may be surprised when I say this: The defendants have won, and Zenawi has lost! Yes, Zenawi’s political prisoners have won mightily. They have won the hearts and minds of the vast majority of the 75 million of their countrymen and women. And they have won their cases in the court of world opinion. They have even won in kangaroo court, hands down, as the prosecution piled perjured testimony over fabricated evidence. *The defense rests!*

The defendant’s victory in the court of world opinion is as secured as is their conviction in Zenawi’s kangaroo court is certain. Amnesty International has declared that it considers that the CUD leaders, human rights defenders and journalists being tried are prisoners of conscience who have not used or advocated violence, and called

for their immediate and unconditional release. The European Union has condemned the widespread violations of human rights in Ethiopia. At its 38th Ordinary Session held in Banjul, the African Commission on Human and Peoples' Rights adopted a resolution on the human rights situation in Ethiopia, deploring "the killing of civilians during confrontations with security forces" and requesting "that the Ethiopian authorities release arbitrarily detained political prisoners, human rights defenders and journalists."

The British government ended direct budget support to the Ethiopian government because of concerns about human rights and governance. Ethiopia's main donor group, the Ambassadors' Donors Group, (including African Development Bank, the European Commission, the UN Development Programme and the World Bank), have called for the release of the imprisoned CUD leaders and representatives of the media and civil society. The UN High Commissioner for Human Rights has strongly criticized Ethiopia's human rights situation. The United States Department of State has repeatedly called for the immediate release of the political prisoners and denounced the killing of civilians by Zenawi's forces. In H.R. 5680, sec. 3 (10), the U.S. House of Representatives called for the release of all political prisoners. And so on....

So, the defendants have WON in the court of world opinion. For them to defend in Kality kangaroo court is akin to negotiating the surrender of a border town in arbitration proceedings that was won on the ground at the cost of hundreds of thousands of lives. (But that's another story.) On February 19, 2007, the judges and Zenawi can do whatever the hell they want; but it will not change the fact that Zenawi has lost his own staged "trial."

Episode 9: "A Way Out! The New Ethiopian Century!"

One of the greatest political leaders of the 20th Century, Nelson (Madiba) Mandela, despite 27 years of imprisonment, was able to heal the deep wounds inflicted on South African society by the inhuman system of apartheid. In his inaugural speech in 1994, Madiba said:

The time for the healing of the wounds has come. The moment to bridge the chasms that divide us has come. The time to build is upon us..., we enter into a covenant that we shall build the society in which all South Africans, both black and white, will be able to walk tall, without any fear in their hearts, assured of their inalienable right to human dignity - a rainbow nation at peace with itself and the world.

No one knows more than the great Madiba what it means to be a political prisoner, or has more experience dealing with prison wardens. During the 1970s, Madiba refused the offer of a release from prison if he'd only recognize Transkei and live out his life there. In the 1980s, he rejected P.W. Botha's offer of freedom if he agreed to renounce violence. In his memorable words, he said "prisoners can not make

contracts.” He cautioned that while it is possible to begin negotiations when one party is in prison, it impossible to conclude an agreement when the very condition of release depends on the outcome of the negotiation. Only free people can agree to agree. But shortly after his release, on February 11, 1990, Madiba agreed to the suspension of armed struggle, a strategic principle that the African Congress had held for decades.

No one understands better than Madiba what is negotiable and what is not when the ruling regime has political prisoners under its thumb. But Madiba was able to reach an agreement with de Klerk as South Africa was seething with fear, political violence, and divisions within both the white and black communities. On the first day of free voting for all South Africans, Madiba said: “Today is like no other before it. Voting in our first free and fair election has begun. Today marks the dawn of our freedom.”

May 15, 2005, was a day like no other in Ethiopia’s 3000-year history. The Ethiopian people voted by the tens of millions -- 26 million to be sure -- and unambiguously resolved: “15 years is enough! We now choose the opposition.” May 15, 2005, was a “day like no other before it”. It was the dawn of freedom in Ethiopia; and yes, Dr. Berhanu was absolutely right in titling his fascinating and must-read book Dawn of Freedom (ነጻነት፣ ጎሀ፣ ሲቀድ) in Ethiopia. The irony of history is that Mandela was able to use democratic elections to free South Africa from decades of apartheid rule and the clutches of white supremacists. Zenawi was able to take May 15, 2005 -- a day like no other in Ethiopian history -- and plunge Ethiopia into an era of darkness and oppression.

At his presidential inauguration on May 10, 1994 (almost 11 years to the week of the May 2005 Ethiopian elections), Madiba pleaded for unity and reconciliation of his people: “We understand there is no easy road to freedom. We must therefore act together as a united people, for national reconciliation, for nation building, for the birth of a new world.”

Zenawi, follow in Madiba’s footpath. Instead of sending college professors, consular officials and politicians to talk to the Kality political prisoners, take the bold step of asking Nelson Mandela to mediate their release. He has the experience, the stature and moral authority to bring about an understanding between yourself and the prisoners. If he can bring black and white South Africans together after apartheid, he could help us all achieve national reconciliation in the new Ethiopian Millennium.

There is also Archbishop Desmond Tutu who could mediate. The Archbishop brought all South Africans together using his ubuntu (community and humanness) theology, which “seeks to restore the oppressor's humanity by releasing and enabling the oppressed to see their oppressors as peers under God.” Archbishop Tutu has taught that human beings are defined not by their race, ethnicity, nationality, region, political affiliation, language, etc., but by their createdness in God’s image (*imago Die*), which

brings value and dignity to all people. He says, “we can be human only in ... community, in *koinonia*, in peace.”

When the Archbishop delivered the Report of the Truth and Reconciliation Commission, he said: “We...have looked the beast in the eye. We.... have come to terms with our horrendous past and it will no longer keep us hostage. We will cast off its shackles and, holding hands together, black and white will stride into the future, the glorious future God holds out before us - we who are the Rainbow people of God - and looking at our past we will commit ourselves...” He reminded his people: “Dear fellow South Africans, accept this Report as a way, an indispensable way to healing. Let the waters of healing flow from Pretoria today as they flowed from the altar in Ezekiel’s vision to cleanse our land, its people, and to bring unity and reconciliation.”

Zenawi: Let the waters of healing flow from Addis Ababa today as the altar in Ezekiel's vision to cleanse our land, its people, and to bring unity and reconciliation.”
Let Tutu mediate.

Let President Bill Clinton mediate. The President said: “The real differences around the world today are not between Jews and Arabs; Protestants and Catholics; Muslims, Croats, and Serbs. The real differences are between those who embrace peace and those who would destroy it; between those who look to the future and those who cling to the past; between those who open their arms and those who are determined to clench their fists.”

Let it be said that the real differences between Ethiopians today is not between Christians and Muslims, Oromos, Amharas, Tigreans, Gurages or any of the other great ethnic groups that make up the beautiful mosaic of Ethiopia. The real differences are between those who embrace freedom, democracy and human rights, and those who would destroy or suppress them; between those who look to the past and magnify historical mistakes and injuries to prevent present harmony and future progress; between those who are committed to the rule of law, and those who would use the law to hammer those committed to the rule of law. Let Bill Clinton mediate.

Zenawi, It’s your choice. Invite Mandela. Archbishop Tutu. President Clinton. Take your pick. Have any one of them mediate. There is a way out, a peaceful way that will enable us to “act together as a united people, for national reconciliation, for nation building”, for the birth of a new Ethiopia in the New Millennium.”

Episode 10: “For the Defense: ‘The Defense Never Rests!’”

A criminal defense lawyer has one job above all else: the defense of liberty, wherever liberty is threatened. I speak and write not as an Ethiopian or an American, Ethiopian American, or African or a member of any political, ethnic or religious group. I speak up as an ordinary man whose conscience is seared by knowledge of the killing, torture, imprisonment and persecution of innocent Ethiopians, and as an implacable

defender of liberty and human rights anywhere, everywhere. That is my lot in life, and defending liberty is my passion!

In May, 2005, Ethiopians came out to vote by the millions. It was an act unparalleled in Ethiopia’s 3000-year history. It was the dawn of freedom. The imprisoned winds of liberty were let loose that Spring day, and they breathed life into every neighborhood, hamlet, town and city. It was as if the Gates of Heaven had opened. But soon, the dawn of freedom had turned to a nightfall of despair as Ethiopians were arrested by the thousands, imprisoned, tortured and shot. But neither Zenawi nor his “Agazi militia” could extinguish the flame of liberty kindled that day in May. It still flickers in the profoundest depths of the souls of Ethiopians trapped in Zenawi’s police state. So long as those flames flicker, the defense shall not rest!

The seeds of liberty and democracy that were scattered on May 15, 2005 now germinate not only across the fertile soil of our homeland, they are in full bloom in the hearts and minds of Ethiopia’s children wherever they have been scattered by the winds of oppression and destiny. The spirit of liberty and democracy broke free from the corked bottle of oppression on May 15, 2005. And all of Zenawi’s men and Zenawi’s horses can not put that spirit back in the bottle.

In his recent interview¹², asked whether he had plans for a third term, Zenawi responded: “My party will try not only for a third term but for a tenth term. And me personally, I think I've had enough.” Duh!! Zenawi, you think you’ve had enough? Check out the election results of May 15, 2005. Millions of Ethiopians have had enough of you too! Anyway, Godspeed! መንግሥት፡ ጨርቅ፡ ያርግላህ።

Let me close by quoting a passage from the introduction of Dr. Berhanu’s book Dawn of Freedom (which I urge every Ethiopian to read and study with great care¹³):

ይህ ታሸጎ ከነበረበት የፍርሐት ጠርመራ ከፍቶ የወጣ ሕዝባዊ የነፃነት መንፈስ ተመልሶ የነበረበት እሽግ ውስጥ በጉልበትና በሽብር ለመክተት በጭራሽ አይቻልም። «ማሸግ ይቻላል» በማለት አሁን እየተደረገ ያለውን ሙከራ ውጤት ከወዲሁ በእርግጠኛነት ለመናገር ባይቻልም ቢያንስ እንደ ከዚህ በፊቱ ቀላል እንደማይሆን በተግባር እያየነው ነው። የነፃነት መንፈስ አንዴ ከተቀመሰ እንዲህ በቀላሉ የሚለቅ አባዜ አይደለም።

¹² See fn. 7.

¹³ Here is a rough translation: “The spirit of popular freedom that was uncorked from the bottle of fear can not be re-bottled and sealed up by force and terror. Even though it is not possible to say for sure that those who claim it is “possible to seal” the spirit of freedom, we can see in action that it is not going to be easy. Once the spirit of freedom moves you, it is not easy to cast off the genie. ”

Let the wise heed the words of Dr. Berhanu. And Zenawi can do whatever he wants on February 19, 2007.

But on February 19, let's all shout a mighty shout from every corner of God's good earth: **"Zenawi, LET OUR PEOPLE GO! LET THEM GO!!"**

On February 19, let's all send out telegrams, letters, faxes, emails to Zenawi, his ambassadors and representatives everywhere, his bankers at the World Bank and the International Monetary Fund, and the other so-called development banks, his supporters in the U.S. State Department and wherever else they may be, containing the words : "Zenawi, LET OUR PEOPLE GO! LET THEM GO!!"

Send out emails to everyone you know asking each one to send out telegrams, letters.... to Zenawi, his ambassadors, bankers...

Thank You!!!

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ENDNOTES:

1. Among the defendants are: lawyers/former judges Anteneh Mulugeta, Birtukan Mideksa, human rights lawyers Daniel Bekele and Netsanet Demissie (both NGO officials), and Yakob Hailemariam (an academic and former UN genocide prosecutor at the Rwanda tribunal and former UN Special Envoy in the Cameroon/Nigeria border dispute); academics including Professor Mesfin Woldemariam, Dr. Berhanu Negga (mayor-elect of Addis Abeba), Gizachew Shifferaw, Dr Hailu Araya; members-elect of the national parliament, including Abayneh Berhanu, Bedru Adem, Befekadu Degifie, Getachew Mengiste, Gizachew Shifferaw, Hailu Araya, Hailu Shawel, Mamushet Amare, Yakob Hailemariam; elected Addis Abeba city government officials. Other women defendants include CUD officials Seblework Tadesse, Nigist Gebrehiwot, Kidist Bekele and Serkalem Fasil (journalist). Civil society advocates include, among others mentioned above, Kassahun Kebede of the Ethiopian Teachers Association. 14 editors and reporters of independent and privately-owned newspapers are also imprisoned including, Andualem Ayele (Etiop editor), Dawit Fasil (Satenaw deputy editor), Dawit Kebede (Hadar editor), Dereje Hailewold (Menilik and Netsanet deputy editor), Eskinder Negga (Satenaw editor), Fasil Yenealem (Addis Zena publisher), Feleke Tibebu (Hadar deputy editor), Mesfin Tesfaye (Abay editor), Nardos Meaza (Satenaw editor), Serkalem Fasil (co-publisher of Asqual, Menilik and Satenaw), Sisay Agena (Etiop publisher and editor), Wonakseged Zeleke (Asqual editor), Wossenseged Gebrekidan (Addis Zena editor), and Zekarias Tesfaye (Netsanet publisher).

Article 238.- Outrages against the Constitution or the Constitutional Order.

(1) Whoever, intentionally, by violence, threats, conspiracy or any other unlawful means:
(a) overthrows, modifies or suspends the Federal or State Constitution; or (b) overthrows or changes the order established by the Federal or State Constitution, is punishable with rigorous imprisonment from three years to twenty-five years. (2) Where the crime has entailed serious crises against public security or life, the punishment shall be life imprisonment or death.

2. The "Crimes Against the State" charges leveled against the Kality defendants include:

Article 239. - Obstruction of the exercise of Constitutional Powers.

Whoever, by violence, threats or any other unlawful means, restrains or prevents any official or body constituted by the Federal or State Constitution from exercising their powers or forces them to give a decision, is punishable with rigorous imprisonment not exceeding fifteen years.

Article 240.- Armed Rising or Civil War.

(1) Whoever intentionally: (a) organizes or leads a revolt, mutiny or armed rebellion against any official or body constituted by a Constitution; or (b) raises civil war, by arming citizens or inhabitants or by inciting them to take up arms against one another, is punishable with rigorous imprisonment from ten years to twenty-five years. (2) Where the crime has entailed serious crises against public security or life, the punishment shall be life imprisonment or death.

Article 241.- Attack on the Political or Territorial Integrity of the State.

Whoever, by violence or any other unconstitutional means, directly or indirectly, commits an act designed to destroy the unity of the peoples, or to destroy the Federation, or to sever part of the territory or population from the Federation or the State, is punishable with rigorous imprisonment from ten years to twenty-five years, or, in cases of exceptional gravity, life imprisonment or death.

Article 247.- Impairment of the Defensive Power of the State.

Whoever intentionally impairs the defensive power of the State:(a) by unjustifiable surrendering, or by destroying, sabotaging, or putting out of action any enterprise, installation or position, any means of production, trade or transport or any works, establishments, depots, armaments or resources of a military nature or intended for the defence of the country; or(b) by delivering troops to, or by recruiting a citizen of the State for, or encouraging his enlistment in, the military service of a foreign power, or by himself entering such service, if a citizen; or (c) by publicly instigating refusal to serve, mutiny or desertion, or by inciting a person liable to military service to commit any of these crimes; or(d) by obstructing, impeding or in any other way sabotaging military measures taken for the purpose of national defence, is punishable with rigorous imprisonment from five to twenty-five years, or, in cases of exceptional gravity, such as in time of war or danger of war, with life imprisonment or death.

Article 248.- High Treason.

Whoever, enjoying Ethiopian nationality or being officially entrusted with the protection of Ethiopian national interests:(a) takes up arms or engages in hostile acts against Ethiopia; or(b) has dealings with or keeps up a secret correspondence with a power at war with Ethiopia, or with a person or body acting on behalf of such power, for the purpose of ensuring or promoting the enemy's success in any manner whatsoever; or(c) delivers to the enemy, whether directly or indirectly, an object, armament, plan, document or resources of any kind used for the national defence, or aids the enemy by rendering services or delivering supplies to him, is punishable with rigorous imprisonment from five to twenty – five years, or, in cases of exceptional gravity, with life imprisonment or death.

Article 269.- Genocide.

Whoever, in time of war or in time of peace, with intent to destroy, in whole or in part, a nation, nationality, ethnical, racial, national, color, religious or political group, organizes, orders or engages in:(a) killing, bodily harm or serious injury to the physical or mental health of members of the group, in any way whatsoever or causing them to disappear; or (b) measures to prevent the propagation or continued survival of its members or their progeny; or(c) the compulsory movement or dispersion of peoples or children or their placing under living conditions calculated to result in their death or disappearance, is punishable with rigorous imprisonment from five years to twenty five years, or, in more serious cases, with life imprisonment or death.

A panel of federal judges ruled that even though Ms Brooks's violation--driving 12 miles per hour over the speed limit--was "not serious," and she did not pose "even a potential threat" to anyone's safety, the officers' actions did not violate "clearly established" law. Qualified immunity is hardly the only reason why police officers rarely face criminal penalties for actions such as stealing cash and coins, or repeatedly tasing a pregnant woman--actions that an ordinary citizen would almost certainly have to answer for in court. Criminal cases have to be prosecuted; prosecutors work closely with police; police tend to close ranks around their own; and a prosecutor who made enemies of his city or county's police force would find it hard to do his job. Police unions tend to back their brother officers. Prosecutor, government official charged with bringing defendants in criminal cases to justice in the name of the state. Many prosecutors are in charge of all phases of a criminal proceeding, from investigation by the police through trial and beyond to all levels of appeal. The English procedure does not centralize all prosecutions for crime in a public official or department and thus differs from the system employed in Scotland and continental European countries, as well as from the American system. In the United States the prosecutor presents evidence at a hearing before a grand jury, which may or may not return an indictment for trial. In most civil-law countries, however, a special investigating magistrate is in charge of the preliminary hearing. Police officers have simply stopped making arrests for whole categories of crimes, including open-air drug use and drug dealing, turnstile-hopping, panhandling, harassment and other crimes that officers have been explicitly instructed to ignore. Finally, radical judges in New York City courts routinely refuse to uphold the law and allow dangerous criminals, including habitual drug dealers, to walk free. Mayor de Blasio has taken a job that stood for service, excellence and maintaining law and order and helped reduce it to a politicized chaperoning service. Meanwhile, Commissioner O'Neill, who fashioned himself as a cop's cop, has forever lost the respect and confidence of officers who rightly see his firing of Daniel Pantaleo as a cowardly bow to political correctness.