Awol Allo & Beza Tesfaye

Spectacles of illegality: mapping Ethiopia's show trials

Article (Accepted version) (Refereed)

Spectacles of Illegality: mapping Ethiopia's show trials

Awol Allo (a.k.allo@lse.ac.uk)* & Beza Tesfaye (Btesfaye@alumni.princeton.edu)**

Centre for the Study of Human Rights, London School of Economics and Political Science; ** Beza Tesfaye is Researcher, Princeton University, MPA.

Abstract:

General jurisprudence conceives the courtroom as a space of adjudication and justice far removed from the gravitational field of politics. Both in its normative inscription and function, the court is conceived as a site of truth and justice elevated above and beyond the expediency of power and politics. However, despite the predominance of this normative meaning, courts have been used to advance persecutive forms of politics that had nothing to do with the determination of guilt and innocence or the pursuit of justice. In this article, we will explore the role of the Ethiopian judiciary in legitimizing and rationalizing the politics of repression and elimination under the guise of law and legality. Drawing on Otto Kirchheimer's seminal work on the political trial, we will examine Ethiopia's strategic deployment of the judicial space and the devices of justice to produce narratives and generate 'truths' in the image of the ruling party.

Key words: Legal repression; political trials; show trials; Ethiopia; the Red Terror Trial

> Humanity does not gradually progress from combat to combat until it arrives at universal reciprocity, where the rule of law finally replaces warfare; humanity installs each of its violences in a system of rules and thus proceeds from domination to domination.
>
> *—Michel Foucault, Nietzsche, Genealogy, History, 1971*

Introduction

In 1994, Ethiopia adopted a new constitution, inaugurating a unique constitutive instrument that represented a radical departure with the country's past.[1] The constitution inaugurated a new mode of being and new systems of discourses that radically reoriented the form and structure of the Ethiopian state. It instituted self-constituting and regulating ethno-national states, establishing a federal state structure in which federating units enjoy a sovereign status and the unqualified right to self-determination including secession. What was once a fiercely centralized unitary state was reconstituted as a decentralized

[1] The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995, 8 December 1994.

multi-national state in which ethnicity and ethnic nationalism acquired a normative status, becoming the principal mode of political organizing and mobilization.

Contra the three previous constitutions, the new constitution entrenched human rights and fundamental freedoms *à la* Universal Declaration of Human Rights and proclaimed the rule of law and democracy as the constitutive and regulative principles of the new Ethiopia. From a constitutional point of view, the Federal Democratic Republic of Ethiopia constitution did more than just institute a new normative-institutional paradigm: it reconfigured dominant modes of thought and forms of knowledge that organize and structure the Ethiopian state. However, despite these constitutional promises for a break with the oppressive practices of the past, Ethiopia remained a fiercely repressive and authoritarian state.[2] Instead of defending and protecting citizens, the Constitution became the primary discursive instrument mobilized by the regime to suppress and marginalize the very people it promised to liberate.[3]

In this article, we want to consider one of the vital instruments of power rationalization and order legitimization constantly mobilized by the Ethiopian government: political show trials. In Ethiopia today, political show trials constitute the second most important weapon of order preservation and consolidation only after the military-security apparatus. Though the turn to the judicial apparatus and the devices of justice to eliminate political foes was limited to certain categories of individuals until the 2005 elections, the last decade saw a frightening normalization and institutionalization of political show trials. From the Red Terror Trials[4] to the trial of the then Prime Minister Tamrat Layne[5] and ex-Defense Minister Siye Abreha[6], from the Treason Trial[7] to the trial of Bekele Gerba and Olbana Lelisa[8], from the trial of prominent journalist Eskindir Nega to the trial of the

[2] See Freedom House, Ethiopia, 2014 Country Report; Human Rights Watch, One Hundred Ways of Putting Pressure, 24 March 2010; Human Rights Watch, Journalism Is not A Crime: Violations of Media Freedoms in Ethiopia, 22 January 2015.

[3] Merara Gudina, Elections and Democratization in Ethiopia, 1991-2010, 5(4) Journal of Eastern African Studies, (2012), 664-66; Awol Allo and Abadir M. Ibrahim, Redefining Protest in Ethiopia: What Happens to the Terror Narrative When Muslims call for a Secular State, Open Democracy, 23 October 2012.

[4] The Red Terror Trial refers to the trial of government officials responsible for perpetrating atrocities during Ethiopia's Red Terror era. For a useful genealogy of the Red Terror, see Pietro Toggia, The Revolutionary Endgame of Political Power: the Genealogy of 'Red Terror' in Ethiopia, 10 (3) African Identities, (2010), 270-73.

[5] Tamrat Layne was Prime Minister of Ethiopia from June 1991 to August 1995 in the Transitional Government of Ethiopia (TGE). After a coerced public confession in Parliament, he was tried for abuse of power and corruption and jailed for 12 years in what was condemned by the human rights community as a politically motivated trial.

[6] Siye Abreha was Defense Minister of Ethiopia from 1991 to 2002. Following a bitter split within the Tigrean Peoples' Revolutionary Front, he was accused of abuse of power and corruption and subjected to a political show trial by Prime Minister Meles Zenawi's faction.

[7] The Treason Trial is a trial of 129 individuals including leaders of the Coalition for Unity and Democracy party following the disputed 2005 elections. The accused were charged with treason, attempted genocide, outrage against the constitution, and several other state crimes.

[8] Bekele Gerba and Olbana Lelisa were members of the opposition parties Oromo Federalist Democratic Movement and the Oromo People's Congress respectively. They were accused of working with the Oromo Liberation Front, considered a terrorist organization by Addis Ababa, and for meeting with

'Arbitration Committee of 17'[9] and several other journalists, bloggers, activists, and members of the opposition; one observes a discerning use of the law and the devices of justice to pursue repressive political ends: 'the courts eliminate foes of the regime in accordance with prearranged rules.'[10] As a result, "the country now holds the shameful distinction of having the second-most journalists in exile in the world, after Iran."[11]

The article proceeds in four stages. Drawing on key texts on political trials, Part I offers a brief conceptual account of the political trial and its productive and repressive architectures. Part II will analyze some of the salient features of Ethiopia's political trials. Part III will identify some of the key changes that have been introduced following the 2005 elections and how these changes have shaped the government's mobilization of the courts as weapons of order preservation. Finally, Part IV will explore some of the prominent political trials of the last two decades with the view to exposing the insidious functions of the Ethiopian judiciary: rationalizing, justifying, authenticating, consolidating and ultimately preserving relations that are not of equality and sovereignty but of domination and inequality between the various political forces within the Ethiopian body-politic.

I. Political Trials as Legal Technologies of Domination

Trials are performative legal events capable of concealing and camouflaging the real issue at the heart of the social and political conflict they adjudicate. As John Griffith writes, "The political neutrality of the judiciary is a myth, one of those fictions our rulers delight in, because it confuses and obscures. […] The judiciary does not of course call its prejudices political or moral or social. It calls them the public interest."[12] By re-casting inherently political conflicts into legally understandable and articulable categories, and by situating contingent and contestable political issues within the framework of the rule of law and justice, trials conceal the political motive behind irreducibly political conflicts. In 'Democracy in America,' Alexis de Tocqueville encapsulates the concealing power of the judicial apparatus:

> "It is a strange thing what authority the opinion of mankind generally grants to the intervention of courts. It clings even to the mere appearance of justice long after the substance has evaporated; it lends bodily form to the shadow of the law."

The notion of the political trial is not a distinctively modern phenomenon. From the ancient Greece to the Roman antiquity, from the medieval period to modernity and

---

Amnesty International researchers. See Amnesty International Report, "Ethiopian Opposition Leaders Detained After Meeting with Our Delegates", 31 August 2011.

[9] Eskinder Nega is a prominent journalist known for writing critical commentaries about the Ethiopian government. He was accused of terrorism and sentenced to 18 years imprisonment following what can only be described as an authentic political show trial.

[10] Otto Kirchheimer, Political Justice: the Use of Legal Procedure for Political Ends, (Princeton: Princeton University Press, 1961), 6.

[11] The Washington Post, Ethiopia's Stifled Press, available at http://www.washingtonpost.com/opinions/crackdown-in-ethiopia/2015/02/08/ad1e6bce-abef-11e4-ad71-7b9eba0f87d6_story.html, (Accessed 15 February 2015).

[12] John Griffith, The Politics of Judiciary, New Statesmen, 4 February 1977.

postmodernity, in both autocratic and democratic states, the courtroom has been deployed as strategic instrument to vindicate and legitimize established authorities. The use of the judicial space as a technology of power—as instruments of order preservation, vindication, rationalization, or authentication—is as old as the birth of Western philosophy. Indeed, the most famous and the first recorded political trial in history is the trial of Socrates. Accused of "failing to acknowledge the gods" of the city and "introducing new deities" by the Athenian Assembly, the founder of Western philosophy stood trial in 399 BC and sentenced to death. Athenians legally eliminated a transgressive subject who contested the norm and exceeded 'the limit'.[13]

In his nearly definitive account of the political trial, Otto Kirchheimer distinguishes between three types of political trials. The first is what may be called the trial of a political criminal "involving a common crime committed for political purposes."[14] The offense in question is committed out of a purely political reason either to make a political point or with the view to use the trial as a platform from which to spell out the political considerations behind the offense.[15] The second is what he calls the "classic political trial" in which a regime 'attempts to incriminate its foes public behavior with a view to evicting him from the political scene."[16] The third is "the derivative political trial" in which the devices of law and justice (such as defamation, perjury, and various forms of civil proceedings) are strategically used with the goal of embarrassing, demonizing, or delegitimizing a political foe. The judicial machinery is activated not with the view to determine guilt and innocence, but to attain a political end – to undermine or strengthen existing power positions within the body politic.[17] Regardless of the instrument used or the political objective pursued, what distinguishes the political trial proper and gives it its distinctive color is the direct involvement of the judicial apparatus in struggles over power relations.

In Kirchheimer's schema, the political trial is a complex juridico-political enterprise that produces and generates consequences central to the operation of modern techniques of power. It is not merely a blunt instrument of repression and elimination but also a productive assemblage: it produces strategic knowledge of power that generates power effects of various forms. For him, court intervention in political struggle far exceeds the determination of guilt and innocence or the simple question of elimination.[18] When "court action is called upon to exert influence on the distribution of political power," there is often something far more significant than the mere elimination of the adversary. When laws are selectively mobilized and courts are enlisted to eliminate regime adversaries, they not only eliminate, but, most fundamentally, delineate the juridico-political field within which domination and resistance interact.

[13] Plato, The Trial and Death of Socrates, (3rd ed.) trans. G.M.A. Grube, (Indianapolis: Hacket Publishing Company, Inc., 2000), 2.
[14] Otto Kirchheimer, Political Justice, 46.
[15] Kirchheimer, Political Justice, 46.
[16] Kirchheimer, Political Justice, 46
[17] Kirchheimer, Political Justice, 49.
[18] Kirchheimer, Political Justice, 49.

While elimination is the most salient function of the political trial, far more important are the technologies of knowledge production and image generation at work in every political trial. Behind the processes of adjudication lay the authentication and vindication of the political order that benefit hugely from the trial's superior quality of truth generation and image formation. For those who control the reign of justice and the prosecutorial machinery, this is a rewarding discursive space that eliminates adversaries of the regime while producing ideas and concepts in their image. In his genealogical reading of sovereignty, Michel Foucault critiques the discourse of rights and the judiciary apparatus in no uncertain terms: The court's essential function is to constitute, to organize, a space for the daily and permanent display of royal power in all its splendour." Of the rights discourse, he says,

> the essential function of the technique and discourse of right is to dissolve the element of domination in power and to replace that domination, which has to be reduced or masked, with two things: the legitimate rights of the sovereign on the one hand, and the legal obligation to obey on the other." [19]

The courts play a strategic role not only because they limit political action but also because they are the system's reservoirs of truth. The rights discourse provides the raw material necessary to rationalize, justify, and ultimately erase domination and inequality from being recognized and contested. As the radical lawyer William Kunstler once observed, every tyrant learns that spectacles of law and legality – judicial theater, injunctions, confessions, convictions, and prisons – produce and disseminate hegemonic discourses far more effective than the swords of the executioner.[20]

But the political trial has a potential for subversive interventions as well. For those usurped off their voice and intelligibility as speaking beings, and those deprived of the means of narrative production; the political trial provides an alternative space for contestation and struggle.[21] There is a spatial and temporal openness that makes a given concept conceivable and a new notion thinkable even in the face of a system that refuses to recognize the visibility and voice of the defendant.

II. Ethiopia's Political Trials

The use of the legal system for political ends is one of the signature traits of the EPRDF government. The judicial apparatus is mobilized against political adversaries with the

[19] Michel Foucault, Society Must be Defended: Lectures at the College de France, 1975-76, (eds. Mauro Bertani and Alessandro Fontana), trans. David Macy, (New York: Picador, 2003), 26.
[20] William Kunstler, Disturbing the Universe, available at <https://www.youtube.com/watch?v=UL7Ct_urpUY>, (Last accessed 12 February 2015).
[21] Henning Grunwald, Courtroom to Revolutionary Stage: Performance and Ideology in Weimar Political Trials, (Oxford: Oxford University Press, 2012); See James Boyd White, Acts of Hope: Creating Authority in Literature, Law and Politics, (Chicago: The University of Chicago Press, 1994), 278-87.

view to limit and circumscribe the space available for critique and political intervention.[22] Most political trials in Ethiopia are of the classic prototype, in which the government sets the trial mechanics into motion with the view to incriminate its foe's political profile, and ultimately eliminating them from the political sphere.[23] Since assuming state power, the government turned to its judicial apparatus to execute its repressive policies: to harass, intimidate, exile, dehumanize, and even expunge its enemies not only from the democratic public sphere but also from the historical record.[24] Ever since the government observed the glittering rewards of political trials during the internationally sponsored Red Terror Trials, the judicial apparatus has become a crucial political space used, among other things, to dispose resistant elements within society, while validating and authenticating state action. Indeed, no spectrum of dissent has escaped this technology of repression since the Red Terror Trials. But unlike the events constituent of the Red Terror Trials, today's Ethiopia conceals and renders its violence invisible and inaccessible through the invocation of open and indeterminate discourses of law and legality, rule of law and justice, and securitizing discourses and narratives. In particular, it is through the mobilization of its judicial apparatus, the same institution supposed to be above and beyond politics, that it forecloses the very possibility of political action. But how do we account for the disjuncture between the emancipatory promises of the constitution and the actual repression?

The trials of the last two decades cannot be adequately understood in isolation from the relationships of inequality and domination that inaugurated the moment of foundation. Indeed, political trials are often surface manifestations of depth problem, the surface appearance of a long submerged crisis of sovereignty. The moment of the political trial marks the moment at which law's rotten past, its exclusions and injustices, the dispossessions and repressions it underwrite, appear on the normative structure of the system. It signifies a moment at which the state turns to the law to, once again, suppress, contain, or manage the crisis that unsettles existing configurations of power from within its normative mainstay. Notwithstanding the democratic credential of the system, the mobilization of the trial process to eliminate a political foe signifies a deeper crisis and submerged problems that unsettle sovereignty from within its normative order.

If we look beneath the formal structure of laws and institutions and the dissymmetry of power between the various ethnic forces in the national economy or the formal apparatus of the state, we will see that these trials are nothing but the surface manifestations of a much deeper moral and political crisis that cannot be explained without regard to the unequal force relation underneath the constitutive instrument. In order to preserve these unequal and hegemonic relations between the various ethnic groups or the power relations between those in power and those who seek to bring about change, Ethiopian authorities used the image of courts and the legal system to silence criticism and suppress

[22] Awol Allo, The 'politics' in Ethiopia's Political Trials, Open Democracy, 30 November 2012; See also the Economist, Snatched: Justice and Politics in Ethiopia, 9 July 2014.

[23] Awol Allo, Ethiopia: The War on Terror and the Trial of 28 Community Leaders, Open Democracy, 4 March 2013.

[24] These trials have the objective not only of disposing the political foe from the political sphere but also tarnishing the integrity and reputation of the individuals to the point of erasing their legacy from the historical record.

that founding inequality from being publicly seen, heard, and/or contested. In other words, this inequality and dissymmetry of force relations that can be seen in the institutional distribution of power, the usurpations and dispossessions that can be discerned in the political influence exerted by some ethnic nationalities, in the injustices and battle cries that continued to be heard beneath the generous proclamation of rights – all these injustices are being suppressed, managed, and contained through the instrumentality of the political trial. It is used to accuse, denigrate, condemn, and dehumanize the adversary.[25]

Whatever the constitutional position of the Ethiopian judiciary, the latter is integrated into the official establishment as a functionary of the party and the government through both formal and informal arrangements.[26] This total integration of the judiciary into the political field, the transformation of the judge into a functionary of the state, has two purposes: to predetermine the outcome of the trial and to harmonize judicial function with administrative policies. As the only party in charge of the prosecutorial machine, the integration of judiciary enables the government not only to stage manage the outcome of specific trials, but also to introduce new concepts and procedures that enables the government to mobilize the judicial apparatus in the future. Instead of being a house of justice elevated above and beyond the realm of politics, Ethiopian courts are hegemonic sites of power engaged in the production of what Rancière calls 'infinite justice,' – a justice in which all necessary distinctions crucial for its materialization are obliterated to guarantee the absolute invulnerability of the order.[27] They are sites of 'infinite justice' where politics and justice, policing and war, law and fact, guilt and innocence, rehabilitation and retaliation, prosecution and judgment, are synchronized to produce maximum political rewards for the ruling party. Janne Portikivi refers to this form of justice as a justice that "ignores all the distinctions by which its practice is traditionally delimited".[28] All these vital distinctions central to the administration of legal justice are set aside in the interest of political expediency. Rather than being institutions of justice that operate according to predetermined judicial principles and presuppositions, the courts are now the government's first line of defense in its struggle with the political opposition.

[25] A brief look at the terms of the pardon offered to those tried and released on pardon shows that Ethiopia's show trial industry has the purpose of coercing its foes into capitulation and accepting a diminished self.

[26] For example, in the case against Abubaker Ahmed and 28 others, the Council of Constitutional Inquiry, a quasi-judicial body responsible for receiving and examining petitions for constitutional interpretation, simply shelved the petition, while the High court rendered its own interpretation of the Constitution and proceeded with the trial. In doing so, the Council enabled the government to drag the defendants before its courts without embarrassing itself and its institutions. The existing constitutional arrangement is here used to contain and suppress the questionable legality of a repressive legislation used by the government to preserve its authoritarian hold on power.

[27] For an account of 'infinite justice', see Jacques Rancière, Prisoners of the Infinite, trans. Norman Madarasz, available at < http://www.counterpunch.org/2002/04/30/prisoners-of-the-infinite/>, (Last accessed 20 January 2015).

[28] Janne Portikivi, What is so funny about infinite justice, in Ari Hirvonen and Janne Porttikivi (eds.), Law and Evil: Philosophy, Politics, Psychoanalysis, (Abingdon, Routeledge, 2010), 200.

With the emergence of the 'war on terror' as an overriding preoccupation of the West and the indifference of its discourse to normative notions such as the rule of law and justice, Ethiopia redefined the 'war on terror' and situated its internal political struggles with its foes within the framework of counter-terrorism operations.[29] By situating its repressive policies against legitimate political forces and critics within the framework of the global war on terror and by imputing the violent characteristics of terrorism to domestic political movements (and those exiled by the government), Ethiopia appropriates the global war on terror for a radically different end. The judicial apparatus is now used as a mainstream instrument of preservation and legitimation of the established relationship of domination and inequality among Ethiopia's disparate political and social groups: the state regularly mobilizes repressive legislations to neutralize real or perceived foes from the political landscape, effectively colonizing the democratic public sphere.

Just like the 'fight against communism' under Apartheid South Africa provided a cover for the Apartheid regime to perpetuate its racist violence, the 'war on terror' provided Ethiopia with a convenient discursive weapon, with which it lures both the West and a section of its society into tolerating its oppressive policies and practices. While Apartheid relied on the signifying power of anti-communism and its legal arm, the Anti-Communism Act, to delegitimize, harass, and repress the opposition, Ethiopia uses the discourse of counter-terrorism and its notoriously broad anti-terrorism proclamation to achieve precisely the same goal and objective.[30] Like the rhetoric of anti-communism, counter-terrorism is a discourse that conveniently marginalizes, delegitimizes, and even dehumanizes those accused of it and justifies the violence perpetrated against them by overstepping their legal rights.

III. The 2005 Election: A Turning Point?

Following the 2005 national election, the government introduced several legislative and policy measures intended to mute and paralyze democratic movements.[31] Accusing all forms of democratic organizing and mobilization as reprehensible subversion, the system moved to preserve and defend "the legal rule of a minority" from being replaced by the rule of the majority.[32] With the enactment of the anti-corruption proclamation, the coming into force of the revised criminal law (with a series of state crimes designed to reflect and protect the federal structure) and the progressive integration of the judiciary into the political field, the authorities redefined and circumscribed the political field and

[29] Human Rights Watch, Ethiopia: Stop Using Anti-Terror Law to Stifle Peaceful Dissent, 21 November 2011.

[30] Abigail Salisbury, Human Rights and the War on Terror in Ethiopia, available at http://jurist.org/forum/2011/08/abigail-salisbury-ethiopia-terror.php, (Last accessed 17 February 2015); See also UN experts urge Ethiopia to stop using anti-terrorism legislation to curb human rights – available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15056&LangID=E#sthash.Oz4XJQuP.dpuf, (Last accessed 15 February 2015).

[31] Lovise Aalen & Kjetil Tronvoll, The End of Democracy? Curtailing Political and Civil Rights in Ethiopia, 120 Review of African Political Economy, (2009), 199-204.

[32] Nicole Stremlau, The press and the political restructuring of Ethiopia, 5(4) Journal of Eastern African Studies, (2011), 727.

the nature of the struggle between the ruling party and the opposition. Between 2005 and 2009, the most popular and performative devices of criminal law used by the government include: 'outrage against the constitution,' 'obstruction of the exercise of constitutional powers,' 'inciting, organizing or leading armed rebellion,' 'endangering the integrity of the state,' 'impairing the defensive power of the state,' 'high treason,' and even 'genocide.'

With the adoption of the anti-terrorism proclamation[33] and the Charities and Civil Societies Proclamation[34] in 2009, Ethiopia completed the series of legislative measures it needed to sustain, preserve, and consolidate the regime. By codifying relationships of inequality and domination into laws, institutions, and the bureaucracy, it transformed inherently unequal relations into legal relations, rendering them rational, autonomous, objective, and independent of power and politics. These two legislative measures marked a significant rupture in the strategies, instruments, discourses, and spaces used for the preservation of existing relationships of domination and inequality in the past. Unlike the spectacles of horror unleashed against "counter-revolutionaries" during the Red Terror years, the last decade saw a worrying pattern of judicialization of repressive politics, not merely through coercive violence, but through the synchronization of violent techniques with notions and practices that act on the subject, and ultimately, totalize the political sphere itself. Today, violence and injustice are bureaucratized and rationalized. No longer material, visible, and palpable – violence became normative and epistemic. It is performed and perpetrated in the name of truth and justice – in the very iteration of ideals of equality and democracy, what Michael Hardt and Antonio Negri refer to as 'a perverse dialectic of the enlightenment.'[35] In essence, the 2005 election marked the moment at which 'the rule of a minority' began to be relentlessly protected by law and its agencies from being challenged, contested, and criticized by the majority.[36]

One of the most alarming developments of this strategic shift is the emergence of Stalinist show trials as the predominant instrument of preservation and power rationalization. Without any pretense, Ethiopian courts today eliminate real or perceived political foes of the regime, including opposition party leaders, journalists, activists, and bloggers, according to rules and processes put in place to guarantee the invulnerability of the order. High-profile conflicts with its opponents and critics are no longer arbitrated through physical violence: they are legalized and judicially adjudicated. By depoliticizing and submitting these conflicts to a presumably professional, neutral and impartial judge who arbitrate conflicts in the realm of reason and justice, the system secures the raw material that guarantees its vitality and continuity. By adjudicating these legalized inequalities and power relations, the court normalizes and pacifies a violent state that

[33] Committee to Protect Journalists, Anti-terrorism Legislation Further Restricts Ethiopian Press, 23 July 2009; Roy Greenslade, Ethiopia uses anti-terror laws to silence critical journalists, The Guardian newspaper, 29 September 2011.
[34] Sisay Alemayehu Yeshanew, CSO Law in Ethiopia: Considering its Constraints and Consequences 8(4) Journal of Civil Society, (2012), 375-77.
[35] Antony Negri and Michael Hardt, Empire, (Cambridge: Harvard University Press, 2000), 25.
[36] Kirchheimer, Political Justice, 121.

actually bombs itself to blame its foes.[37] By creating a dangerous and monstrous snapshot of the accused adversary, Ethiopian courts rationalize and justify the government's narrative of the adversary and their consequent elimination as legal, legitimate, and therefore 'just.'

Finally, there is a thriving show trial industry haunting the Ethiopian justice system. These trials are not ordinary run-of-the mill criminal trials. They are unique juridico-political events in that they tell a story whose spatio-temporal coordinates cannot be neatly delineated. These trials embody a distinctive affective story with special claim about law, the state and society. They engage and confront "events that occur beneath the State, that ignore right, and that are older and more profound than institutions".[38] They are trials that tell us stories of foundation, representation, and recognition. In them, we will find the raw materials for understanding the ways in which the legal order helps conceal, suppress or otherwise contain the disjuncture between the normative guarantees of the Constitution and violent practices. In what follows, we will discuss three major political trials that illuminate some features of Ethiopia's show trial industry.

1. The Red Terror Trial: Trial by Fiat of the Successor Regime

Ethiopia's Red Terror Trial is the quintessential example of a political show trial by fiat of the successor regime. Named after a particularly brutal episode in which euphemisms such as 'revolutionary justice,' *netsa irmja* (free action), 'delivery without receipt,' 'neutralization,' and 'special operation' were used to rationalize and justify violence[39], the Red Terror Trial had an ambitious juridico-political goals.[40] It was designed to create and affirm the categories of accusers and accused, good and bad, violent and peaceful, and victors and vanquished. According to Human Rights Watch, a total of 5,198 individuals were charged with genocide, crimes against humanity and homicide, of which 2,246 individuals have been detained, while the remaining 2,952 were charged in absentia[41]

---

[37] Thomas C. Mountain, Wikileaks Ethiopia Files: Ethiopia Bombs Itself, Blames Eritrea, Foreign Policy, 16 September 2011.

[38] See Foucault, Society Must be Defended, 134.

[39] See Melakou Tegegn, Mengistu's 'Red Terror', 10(3) African Identities, 260-63. The term "red terror" was popularized by Lenin, who used to name his terror against the "Socialist Revolutionaries" then referred to as "white terrorists". The response of the Bolsheviks in Lenin's view was justified and hence, "red", signifying communism. In the Ethiopian context, Dergue officials revived this phrase to justify the destruction of the Ethiopian People's Revolutionary Party (EPRP) and its supporters, which quickly became the military junta's biggest threat after the overthrow of Emperor Haile Selassie II.

[40] The crimes being accounted for took place under the bloody reign of the Military *Dergue* Regime from 1974-1991. According to Amnesty International, during the first four months of the "Red Terror Campaign", the government killed at least 2,500 civilians (mostly students) in Addis Ababa city alone. From August-October 1997, an additional 3,000-4,000 people were killed in Addis Ababa and in the final phase between December-February 1978, 5,000 more were killed in the capital. Outside of Addis Ababa, the death estimates were roughly 10,000 during this time. In addition, some 30,000 individuals were detained and tortured in jails throughout the country.

[41] Human Rights Watch, Human Rights Curtailed in Ethiopia, 10 December 1997,< http://www.hrw.org /news/1997/12/08/human-rights-curtailed-ethiopia>, (Accessed 29 December 2012).

The Red Terror Trial was launched amidst great optimism and with the dual aim of historical instruction and normative reconstruction. According to the law establishing the Office of the Special Prosecutors[42] (SPO) for the prosecution of members of the old regime, the former was formally tasked with ensuring accountability and establishing a public memory for the 17 years of violence perpetrated by the vanquished regime. Unlike many post-conflict transitional societies that confronted their violent past through either retributive or restorative justice paradigms, the Red Terror Trial was announced and legally proclaimed as an experiment in both retributive and restorative justice. However, like most trials by fiat of the successor regime, the trial degenerated into a spectacle of victor's justice, abandoning its publicly stated purposes of ensuring accountability and constructing a permanent wall between the tyranny of the old regime and the promise of a new society under the rule of law. Instead of contributing towards reconstructing the social fabric and the making of a new society, the trial process deteriorated into a vengeful enterprise and an exercise in the construction of legitimacy for the new regime.

The Red Terror Trial was designed to reconstruct the past as part of the project of establishing a public memory and an official history that would become a "possible weapon in the battle for political domination."[43] This memory had to have been historicized and politicized in order for it to serve as a weapon in future struggles with other forces within the country. In order to do this effectively, the government needed to portray itself as committed to ensuring accountability and fighting impunity. At the same time, it sought to depict a murderous and violent image of the previous regime on par with some of the totalitarian regimes of the twentieth century. In order to reinforce this view, the new regime tried the defendants for acts of genocide under the Ethiopian criminal law. Former President Mengistu Hailemariam and 72 other top-ranking officials of his regime were charged with 269 acts of genocide and other serious human rights violations. Two other groups comprised of military and civilian field commanders who carried out orders and passed them down the chain of command were charged with lesser crimes such as first-degree homicide.[44]

Conveniently enough, the Ethiopian Criminal Code enforce since the reign of Haile Selassie I defines the crime of genocide as an act intended to destroy in *whole or in part* national, ethnical, racial, religious and political groups.[45] Unlike the Genocide convention, the law protects political groups as well. Since the majority of the victims of the *Dergue* were students and political opponents, a conviction on genocide charges can easily be achieved under domestic law and domestic trial whose process and outcome the regime can fully control. By accusing its vanquished adversaries for the most serious crimes of concern to the international community, by presenting itself as a system committed to the liberal ideas of human rights and the rule of law, the regime wanted to

[42] Ethiopia: Reckoning under the Law, Human Rights Watch, <http://www.hrw.org/reports/1994/12/01/ethiopia-reckoning-under-law>, 1 December 1994, (Last accessed 12 December 2012). The Special Prosecutor's Office (SPO) was created with the mandate to investigate and prosecute "any person having committed or responsible for the commission of an offense by abusing his position in the party, the government or mass organizations" under the Dergue regime.

[43] Otto Kirchheimer, Political Justice, 110.

[44] *Id.*

[45] The Penal Code of Ethiopia, Proclamation No 158/57, art. 281.

show both to the international and domestic audience the difference between the cruelty of the past and the promise of a new era of accountability and justice.

In December 2006, some twelve years after the trials began, 71 high-level officials of the Dergue were found guilty of genocide and sentenced to life in prison. At the long awaited sentencing hearing, only 34 of the defendants were in court, while 25 were sentenced in absentia, and the remaining 14 had died during the lengthy process.[46] Taking note of the defendants' old age, the court passed a sentence of life in prison rather than the death penalty sought by the prosecutor. After serving a total of 20 years in prison, 16 of these high-level officials were pardoned in 2011.[47]

The legacy of the Red Terror Trial is far from clear. Far from ensuring accountability and establishing public memory, the trial was tainted by the prosecution's belligerent pursuit of an officially-sanctioned history and selective memory. Notwithstanding the brutality of the facts before the court and the symbolism of the individuals on trial, the trial failed in captivating the national consciousness as a significant historical event. Since the government was interested in the trial as a tool of political expediency and in the verdict as a signpost for the future, the trial failed in its stated objectives of historical instruction and normative reconstruction. Though the international community has lauded the Ethiopian government for its aggressive pursuit of accountability for crimes against the human condition, the trial was a huge disappointment for those who expected it to be a national cultural artifact in which the nation will recognize the ills of its past. Twenty years on, instead of the clean break promised by the Transitional Charter, the constituent instrument of the SPO and the FDRE Constitution, Ethiopia remained the same authoritarian state in which legal repression and disciplinary technologies of control complemented the physical violence of the past. While the government momentarily benefitted from the glittering rewards of the judicial theater and the excitement of the human rights community, this did not last longer.

More than two decades after the government promised to mainstream and embed accountability by establishing "a public record of the atrocities for posterity,' the Red Terror Trial archives still remained closed to the public. Even evidence presented in court remained closed to the public long after the verdict and the judgment entered history books. If one of the key goals of atrocity trials in transitional societies is providing finality and closure to the victims and the nation as a whole, the Red Terror Trial had failed in achieving this. To the contrary, the Red Terror Trial laid the foundation for the proliferation of political show trials, in which the courtroom emerged as a battleground for the creation, and recreation of images, narratives, and realities productive to the authorities.

2. The Seye Abraha Trial: "The Anticipation of Remote Consequences"

[46] Les Neuhaus, "Mengistu found guilty of genocide," *Ethiomedia,* 13 December 2006, http://www.ethiomedia.com/addfile/mengistu_guilty_of_genocide.html (Last accessed 29 December 2012)

[47] Zekarias Sitayehu, "Dergue officials released from jail," *The Reporter,* 05 October 2011, http://www.thereporterethiopia.com/News/breaking-news-Dergue-officials-released-from-jail.html (Last accessed 21 December 2012)

A bitter split within the executive committee of the Tigrean People's Revolutionary Front (TPLF), the leading party in the ruling EPRDF coalition, triggered an internal crisis that necessitated the deployment of the judicial machinery against a prominent party member and ex-Defense Minister, Seye Abraha. The fiasco can be traced back to the 1998-2000 territorial war between Ethiopia and Eritrea. Several high-level officials and founding members of the TPLF Party of Prime Minister Meles Zenawi accused the Prime Minister of not heeding intelligence warnings about an imminent attack by Eritrea. [48] Consequently, the TPLF split into two camps—those who stood with the Prime Minister and those who questioned his leadership ability and loyalty to Ethiopia, led by Seye Abraha. As former comrades in arms, Zenawi and Abraha knew each other very well. Zenawi understands Abraha's bent of mind and will power to be able to anticipate the consequences, however remote or proximate, of a rebellion that was likely to take down his party. To avert the possibility of a rebellion, Zenawi quickly engineered the dismissal of 13 members of the ruling party's Central Committee who had opposed him, including Seye Abraha and General Tsadkan Gebre-Tensae —then army-chief of staff.[49]

As a continuation of the same war by a legal means, Zenawi ordered the arrest and detention of Abraha for unspecified charges. After a prolonged pre-trial detention, he was charged with corruption, one of the most convenient legal devices available at the time.[50] Despite a ruling by the First Instance Federal Court—a competent court of jurisdiction with authority to examine and determine the merit of the case—ordering Abraha's release on bail, Abraha was immediately rearrested as he left the courtroom under instruction from the Prime Minister.[51] Within days, Abraha was back in a court facing trial in the Federal Supreme Court, while the judge who ordered his release, Ms. Birtukan Mideksa, was subsequently dismissed from her position.[52]

Abraha faced two charges of corruption brought forth by the Federal Ethics and Corruption Commission, an institution that was established *ex post facto*.[53] In the first case, Abraha was accused of using his status as a government official to unlawfully benefit family members, including his brother Miherete'ab Abraha who was also being tried.[54] The second case against Abraha was for allegedly collaborating on illicit business dealings with former Prime Minister of Ethiopia, Tamrat Layne, who was already serving

[48] Gregory R. Copely, "The End of the Ethiopian Façade: Meles Isolated as the Ruling TPLF Implodes," *The Horn of Africa*, March 2001, 12.
[49] "Ethiopia: Paper says about 400 military officers arrested," *BBC*, July 11, 2001.
[50] "Ethiopia: Court Acquits Official of Corruption Charges," *This Day*, July 13, 2003.
[51] "Ethiopia: Seye Arrested After Being Bailed Out," *The Daily Monitor*, June 19, 2001.
[52] Alemayehu G Mariam, "Human Rights Matters in the New Millennium: The Critical Need for an Independent Judiciary in Ethiopia," *International Journal of Ethiopian Studies* (2008): 127.
[53] "Ethiopia: Supreme Court Denies Ex-Minister Bail Rights," *The Daily Monitor*, 31 August 2001.
[54] Issayas Mekuria, "Ethiopia-Seye Abreha and Tamrat Layne found Guilty of Corruption," *Addis Fortune*, 3 July 2007, http://nazret.com/blog/index.php/2007/07/03/ethiopia_seye_abreha_and_tamrat_layne_fo (Last accessed 12 January 2014).

an 18-year jail term following an authentic political show trial that followed a coerced confession of the defendant in parliament. Layne claimed that government authorities tried to blackmail him to testify against Abraha and forced him to face trial again because he refused to do so.[55]

During the trial, the Federal Supreme Court denied bail for the accused, citing an amendment of the law, which had established the Federal Ethics and Corruption Commission. The defendants challenged the decision arguing that this amendment was enacted after the First Instance Federal Court had already granted the right to bail for the accused.[56] Moreover, the defense questioned the constitutionality of the law, maintaining that the right to bail is a constitutional right, which the court can only deny with regard to the specific circumstances of each case, not through a blanket law.[57] Nonetheless, the Federal Supreme Court upheld its decision and detained the accused for six years throughout the duration of the trial.

From the outset, Abraha's trial was marked with a number of procedural irregularities including the denial of the right to presumption of innocence and other due process rights. In order to weaken Abraha's power position within the party, the government needed a legal weapon to discredit and disrepute him—even remove him from the political space—while still preserving the pretense of legality and fairness. However, given the legal landscape at the time, the Prime Minister's faction could not effectively situate its political conflict with the vanquished factions within the framework of the law without a *post facto* criminal law designed to eliminate a figure of extraordinary will power leading a rebellious group. As intended, the verdict removed the defendant from the political space and enabled the Prime Minister's faction to reconstitute itself and restructure the party both at the local and the national level.

In 2007, the court passed a guilty verdict against Seye Abraha, Miherete'ab Abraha and Tamrat Layne on one count of corruption, each. All of the defendants, except for Layne, were released on parole because they had served the majority of their jail sentencing during the trial.[58] Even so, the trial had succeeded in defaming Abraha who maintained his innocence and argued that the case was a pretext to censure him for "political differences with the leaders." Pointing out the hypocrisy and political nature of the charges, Abraha stated in court: "if there is corruption, it is Meles (Zenawi) himself who is corrupt."[59] Abraha alleged that the Prime Minister had stolen 2 million birr each year

[55] "Ethiopia: Supreme Court Adjourns Corruption Hearing," *The Daily Monitor, 30* November 2001.
[56] "Ethiopia: Supreme Court Denies Ex-Minister Bail Rights," *The Daily Monitor,* 31 August 2001.
[57] Simeneh Kiros Assefa, "Normative, Institutional and Practical Challenges in the Administration of the Criminal Justice in Ethiopia," 3 Ethiopian Human Rights Law, 2010, 10.
[58] "Seye Abraha released after six harrowing years," *Ethiomedia,* 12 July 2007, http://ethiomedia.com/atop/siye_abraha_released.html (Accessed 12 January 2013).
[59] "Ethiopia: Seye Abraha Strikes Back," *Indian Ocean Newsletter,* 23 March 2002.

for the past ten years and urged an audit of all Central Committee members' accounts.[60] As usual, the court simply chastised Abraha for making 'political statements' during the trial.[61]

The Seye Abraha Corruption Trial is a classic political trial that displays all the appearances of a carefully engineered political theater to silence dissent and opposition. To say that it was the classic political trial is not to affirm Abraha's innocence but to claim that his trial is merely a mask for behind the scene political struggle between the two factions. Had it not been for the political conflict with the Prime Minister, Abraha would not have been the subject of a criminal investigation let alone a show trial. To sustain the invulnerability of the Prime Minister's faction, the system needed to engineer a spectacle of legality, aimed not only at disposing the individual on trial but also at annihilating the juridical conditions for collective agency and resistance.

3. The Treason Trial of CUD and Others: Opposition as Treason

In May 2005, the EPRDF faced the most serious threat to its power when it emerged that the opposition had made significant gains in the parliamentary elections, taking all seats in the capital Addis Ababa. The ruling party moved quickly to declare victory before all votes had been tabulated, leading the opposition to accuse it of widespread vote rigging and crackdown on its supporters and activists. As the tension between the government and the opposition continued to rise, the government declared a state of emergency and banned all forms of demonstrations and gatherings. In the months that followed, massive protests broke out in various urban areas, resulting in the death of some 193 civilians.[62] In late 2005, the government accused the main opposition party, Coalition for Unity and Democracy (CUD) and arrested its leading members along with 3 civil society actors, 14 journalists, and other individuals.[63]

The government accused CUD leaders of undermining the constitutional order by, among other things, boycotting parliament, questioning the independence of the National Electoral Board, and the judiciary. In the government's view, these are acts calculated to bring about disrepute on the legitimacy and credibility of state institutions and are part of a conspiracy by the opposition to overthrow the government. [64] Defendants were charged with some of the most explosive crimes available to the authorities: including genocide, treason, outrage against the constitution, and rebellion. As crimes against the state and the

[60] "Ethiopia: Seye Arrested After Being Bailed Out," *The Daily Monitor*.
[61] "Supreme Court Chides Seye Lawyers," *The Daily Monitor*, 26 June 2002, https://groups.google.com/forum/?fromgroups=#!topic/soc.culture.ethiopia.misc/4-jRJaRfRuw (Last accessed12 December 2012)
[62] Wondwosen Teshome, "Electoral Violence in Africa: Experience from Ethiopia," *International Journal of Human Sciences* 4 (2009): 466, https://www.waset.org/journals/ijhss/v4/v4-6-60.pdf (Last accessed 13 January 2013).
[63] Id, 5-7.
[64] American Embassy Addis Ababa to U.S. State Department, "Ethiopia: Evidence Weak So Far in Opposition Trial," WikiLeaks, cable:06ADDISABABA1539, 06-06-05, accessed http://wikileaks.org/cable/2006/06/06ADDISABABA1539.html

collective existence, these offenses name and condemn crimes society regards as horrific and inexcusable. They "entered popular parlance as a powerful vehicle for expressing profound outrage at horrific atrocities."[65] By accusing defendants of these outrageous offenses against the collective existence, the government is signifying and imputing the cultural and political meanings that go along with these crimes to the accused. By virtue of their discursive operation, they generate meanings that far exceed their legal meanings and produce political effects.

The majority of the defendants dismissed the case as a politically motivated charade and refused to enter a plea or mount a defense, while the three civil society defendants, Daniel Bekele, Netsanet Demissie, and Kassahun Kebede, sought counsel and entered a plea of not guilty to the charge of "outrage against the constitution".[66] After a two-year trial, the court passed a guilty verdict against defendants who refused to plea or mount a defense for the charge of "Outrages against the Constitution," and sentenced all to death.[67] Outside the courtroom, however, discussions have been underway to secure the freedom of the defendants. By the time the verdict was handed down, an agreement has already been reached to pardon the defendants in return for an unconditional admission of criminality and an unqualified apology to the government and the Ethiopian people.[68]

Though pardon and amnesty serve symbolic functions in the social order, the pardon deal offered to these defendants is ironic at best: it is neither evidence of magnanimity nor an expression of a desire for reconciliation. It is intended (1) to give the government a way out of the impasse and (2) to shore up a highly contested and problematic verdict and penalty. Since pardon by definition presupposes an admission of wrong and a written confirmation of the assumptions and thoughts on which the verdict and the sentence is predicated, the same defendants who rejected the charge are forced to admit not only to the accusation but also the verdict and the sentence. In this way, the pardon serves to retroactively justify a questionable trial and vindicate the government's narrative of events.

When the pardon was presented to the accused, all but two of the civil society defendants, Daniel Bekele and Netsanet Demissie, accepted the offer. The two civil society leaders maintained their innocence and decided to fight off, claiming that "things will work out

[65] Lawrence Douglas, Perpetrator Proceedings, in The Trial on Trial, 197.
[66] American Embassy Addis Ababa to U.S. State Department, "Trial of Ethiopian Opposition Begins With Videos," WikiLeaks, cable:06ADDISABABA1402, 06-05-19 http://www.wikileaks.org /cable/2006/05/06ADDISABABA1402.html.
[67] American Embassy Addis Ababa to U.S. State Department, "Ethiopia: Prosecution Recommends Death Penalty for CUD Leadership," WikiLeaks, cable:07ADDISABABA2137, 07-07-09, accessed http://wikileaks.org/cable/2007/07/07ADDISABABA2137.html
[68] Id.

according to proper legal procedures."[69] What follows is a detailed exploration of their engagement with the court.

3.1. The Case against Daniel Bekele and Netsanet Demissie

Before the election night, civil society organizations were seen as crucial stakeholders both by the government and the opposition. This view changed dramatically in the immediate aftermath of the election as the government lost in areas where the civil society had strong presence. The tension between civil society and the government continued as opposition parties raised accusations of fraud, implying that the ruling party was unable to win in areas where civil society observers were present, but manipulated votes in their absence outside urban area. In the midst of the ongoing fracas over the election outcomes, the government linked civil society organizations with the opposition and accused them of engaging in purely political activities under the guise of civic neutrality.[70] This culminated in the implication of the three prominent civil society leaders in the Treason Trial. The prosecution accused them of using the "cover of reconciliation" while operating "under the umbrella of the CUD to foster the conspiracy".[71]

The case against the civil society leaders rested on speculative reasoning that departs from the assumption that the accused are indeed members of the CUD. The evidence consisted of personal testimonies, documents, audio, and videotapes. Over 20 hours of videotapes showing opposition campaign speeches, press conferences and rallies were presented alongside substandard documentary evidence that lacked in the credibility and authenticity required of evidence in a criminal trial. Ninety-one documents, including a document the prosecution claimed was a CUD hit list of top government officials, and a plan to supply supporters with ammunition and correspondences showing intention to cooperate with the Eritrean government were submitted in evidence.[72] However, none of these documents were substantiated in court. Only photocopies of the original documents were shown and there are no signatures or other means of verification to ensure that the documents had not been forged.[73] For example, one piece of evidence brought against the

[69] American Embassy Addis Ababa to U.S. State Department, "Ethiopia: CUD Defense Attorneys Outline Case Against Civil Society," WikiLeaks, cable:06ADDISABABA2731, 06-10-11, accessed http://wikileaks.org/cable/2006/10/06ADDISABABA2731.html
[70] Former Ethiopian Civil Society Leader in discussion with author, 30 November 2012.
[71] American Embassy, Addis Ababa, to U.S. State Department, "Ethiopia: CUD Trial Moves On To Witnesses," WikiLeaks, cable:06ADDISABABA3003, 06-11-14, accessed http://wikileaks.org/cable/2006/11/06ADDISABABA3003.html
[72] Id.
[73] Daniel Bekele, "A concluding final response letter to charges made against defendant #94, 12.

civil society defendants was a letter allegedly written by Elias Kifle—an exiled journalist and government critic—in which Kifle mentions that Hailu Shawel, the leader of the CUD, appointed Daniel Bekele and Netsanet Demissie as CUD communication officials.[74] The defense easily refuted the letter by calling Mr. Shawel as a witness, who testified that he had neither known of nor met Daniel and Netsanet before the trial and never sought to collaborate with them.[75]

A large part of the prosecution's case was based on witnesses that many believed were "coached and coerced by the prosecution".[76] Those who testified attested that they had attended opposition rallies, where anti-government fliers were handed out, and meetings, during which the opposition called for an armed struggle and the use of violence against security forces.[77] The credibility of the prosecution's witnesses, however, was called into question several times during cross-examination. In an account of the trial, Mariam describes an incident in which a prosecution witness admits on the stand that he was coached by the prosecution to commit perjury, raising serious concerns about false testimonies.[78] Two key prosecution witnesses testified that Daniel and Netsanet had paid them to hand out anti-government fliers and mobilize youth and taxi drivers against the government. Yet, again, the prosecution witnesses' accounts began to fall apart when interrogated by the defense. For example, when these two witnesses were asked the names of the individuals they mobilized, the content of the fliers that they had handed out, and the locations where they claimed they had hidden from police, both claimed that they could not remember any of this information.[79]

The procedural irregularities were so grotesque that the scale of justice was extremely tilted towards the prosecution in ways that cannot be explained or justified with the orbit of law and legality. For example, the identities of prosecution witnesses were not revealed in advance, requiring the defense to conduct cross-examination without adequate preparation in violation of Article 20 of the Constitution, which guarantees the accused "the right to full access to any evidence presented against them".[80] The court also granted the prosecution's request to allow submission of additional documents, many of which the defense claimed were falsified long after the trial had begun.[81] Mariam notes

[74] American Embassy Addis Ababa to U.S. State Department, "Ethiopia: CUD Trial Moves On To Witnesses"
[75] Daniel Bekele, "A concluding final response letter to charges made against defendant #94," 23-24.
[76] American Embassy Addis Ababa to U.S. State Department, "Ethiopia: Political Trial Wraps Up, Civil Society Leaders Found Guility," WikiLeaks, cable:08ADDISABABA, 08-01-02, http://wikileaks.org/cable/2008/01/08ADDISABABA4.html, (Last accessed 03 March 2015).
[77] American Embassy Addis Ababa to U.S. State Department, "Ethiopia: CUD Trial Moves On To Witnesses"
[78] Mariam, "Human Rights Matters," 132.
[79] Daniel Bekele, "A concluding final response letter to charges made against defendant #94," 7-8.
[80] Mariam, "Human Rights Matters," 131.
[81] American Embassy Addis Ababa to U.S. State Department, "Ethiopia: CUD Defense Attorneys Outline Case Against Civil Society,"

that in standard criminal cases in Ethiopia, judges should not allow the prosecution to file charges without sufficient evidence; however, in the Treason Trial, the court accepted the charges and gave the prosecution more time to search for additional evidence to support its case.[82]

In a 2-to-1 decision, the bench decided that there was not enough evidence to convict the two defendants for the charge of "outrages against the constitution" but enough evidence to convict on another crime for which they were not tried: "Provocation to Commit Crimes Against the State".[83] While praising the civil society leaders for the work they did in the pre-electoral period and admitting that the defendants had proved that they were not at any time a part of the CUD party, the lead judge, nonetheless presented the guilty verdict based on the testimonies of two prosecution witnesses, maintaining that the defense had not disproved or addressed this piece of evidence.[84] This makes the verdict at once innovative and groundless: there is no basis for convicting an accused for crimes with which they were neither charged nor were able to defend themselves against under the Ethiopian law. But in a political trial where the law serves as an instrument of power and the trial as an act of war, this is not beyond the realm of possibilities. Given the intense political interest behind the case, the judges have no alternative but to convict regardless of the facts of the case. As former U.S. Ambassador to Ethiopia, Donald Yamamoto, noted: "To hear the case presented by both the prosecution and defense leaves no room for question as to whether Daniel and Netsanet committed the crimes they were accused of – they were not guilty".[85] They were sentenced to 2 to 30 months in prison, 25 of which had already been served during the trial.[86]

Interestingly, the conclusion of the legal case and the completion of their sentence did not end the political drama and their incarceration. Though many expected the defendants to be released on parole in the weeks after sentencing, they were denied parole. The prosecution threatened to either appeal the verdict or charge them with new crimes, unless they agree to a pardon deal like the rest of the Treason trial defendants in which, they will admit to the crimes and vindicate the government's account of events.[87] The defendants were told by a high-ranking official, via the Elders Council, that their freedom was contingent, not on the decision of the court, but on offering an unqualified apology and a subsequent pardon by the government. Seeing no other alternative and the prospect of a new trumped up charge, Daniel and Netsanet accepted the pardon, stating: "we will

[82] Mariam, "Human Rights Matters," 130.
[83] American Embassy, Addis Ababa to U.S. State Department, "Ethiopia: Political Trial Wraps Up, Civil Society Leaders Found Guilty,"
[84] Id.
[85] Id.
[86] Id.
[87] American Embassy Addis Ababa to U.S. State Department, "Ethiopia: Civil Society Leaders to be Pardoned," WikiLeaks, cable: 08ADDISABABA838, 08-03-28, accessed http://wikileaks.org/cable/2008/03/08ADDISABABA838.html

sign anything that gets us out of prison."[88] They were finally released in March 2008 after signing a letter accepting the Federal High Court's decision, apologizing for their actions and promising 'not to engage' in 'illegal' activities in the future.[89]

By agreeing to the intractable and demeaning terms of the pardon, Daniel and Netsanet, like the other treason defendants, were compelled into a post-conviction confession. Far from being a symbol of moderation and reconciliation, the pardon enterprise in Ethiopia's political trials is a vindictive technique that functions to vindicate the government by legitimizing and authenticating a questionable legal process. This confirmation of guilt and coerced expression of remorse is the final nail in the political opponent's coffin, which he is ceremoniously forced to hammer in himself.

Conclusion

The government's relentless and systematic perversion of discourses of truth and justice and the gradual transformation of its courts into the functionary of the state demonstrates the contempt with which the regime holds the very founding principles upon which the promise of the 'new' Ethiopia rested. By politicizing the judiciary and mobilizing it for hegemonic and oppressive political ends, the government failed in drawing a clear distinction between the moral failings of the past and the constitutional promises of the present. If the Red Terror Trial was an unsuccessful exercise in normative reconstruction and historical instruction, it is precisely because the government was not committed to those principles. To the contrary, the government saw the trial as a key site of knowledge production, order-legitimation and power-rationalization. They saw the trial as a critical opportunity to produce and filter horrific images of a lasting effect into the court of public opinion. While pretending to ensure the impunity of former regime officials who committed an attack against the human condition, the government perverted what was a novel enterprise into an infuriating obfuscation. Consequently, the Red Terror Trial only managed to provide a false sense of closure and finality to the nation and victims of that horrific episode.

[88] Id.
[89] Id.