

**Constitutional Rights and Constitutional Wrongs:
Justice System Reform Through Accountability in Ethiopia¹
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Thank you for inviting me to speak at the *Ethiopia Roundtable Forum* of the Canadian Peacebuilding Coordinating Committee (CPCC) in Ottawa, Canada.

The CPCC network, which is made up of about 75 Canadian organizations and individual members involved in peacebuilding and conflict prevention activities, is engaged in enabling dialogue on peace and conflict issues and in articulating peacebuilding policy and program approaches.

Let me also thank the Solidarity Committee for Ethiopian Political Prisoners (SOCEPP) of Canada for its assistance in organizing this Roundtable Forum. Please be assured that all of us engaged in the defense and advancement of the cause of democracy, freedom and human rights fully support your efforts to obtain the release of all political prisoners in Ethiopia.

Though I am unable to join you in person, I thank you all for giving me the opportunity to comment on the issue of “justice reform” in Ethiopia.

I shall focus my remarks narrowly on individual rights under the “Constitution of the Federal Republic of Ethiopia.”

Ethiopia, Utopia?

Let me begin with the observation that anyone who bothers to read the “Constitution of the Federal Republic of Ethiopia” will no doubt be overawed by the panoply of political rights and due process guarantees in it. Indeed, the reader may be left with the distinct impression that this constitution describes not Ethiopia, but Utopia-- that imaginary island with a perfect social, legal, and political system described by Sir Thomas Moore.

And looking through the prism of this constitution, Ethiopia would appear to be a land where its citizens live in perfect freedom and harmony with ironclad protections for their individual rights, unencumbered by fear of government abuse, political persecution and harassment, or extrajudicial killings of perceived political opponents.

I am afraid on closer inspection one will quickly discover that this constitution is merely a hollow collection of borrowed legal platitudes, clichés, buzzwords and slogans. To paraphrase Shakespeare, it is a constitution full of lofty sounding legal words and phrases signifying nothing, at least in terms of the current day-to-day protection of the rights of ordinary Ethiopian citizens.

Procedural Due Process

The architecture of the “Constitution of the Federal Republic of Ethiopia” purports to show a government based on the rule of law. Art. 9 declares the “Constitution is the supreme law of the

¹A penultimate draft of this speech was presented at the **Ethiopia Roundtable Forum** of the **Canadian Peacebuilding Coordinating Committee** (<http://www.peacebuild.ca/>) in Ottawa, Canada, on May 4, 2007, even though I was unable to personally attend the Roundtable Forum due to unforeseen circumstances. The Solidarity Committee for Ethiopian Political Prisoners (SOCEPP), Canada, was a co-sponsor of the Forum (<http://www.socepp.de/statutes%20of%20socepp.pdf>).

land.” It is the duty of “all citizens, organs of state, political organizations, other associations as well as their officials to obey it.”

This “supreme law of the land” guarantees that “Every person has the inviolable and inalienable right to life, security of person and liberty... [and] protection against bodily harm.” (Arts. 14, 15, 16, 17.) “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” (Art. 25.) It is ordained that the “human and democratic rights of citizens and peoples shall be respected.” (Art. 10.)

The catalogue of specific individual liberties is dazzling; and procedural due process is guaranteed in a multiplicity of ways: “No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him.” (Art. 17.) “Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.” (Art. 18.) Persons accused of crimes “have the right to be informed promptly of any charge against them. [They] have the right to remain silent... not be compelled to make confessions or admissions which could be used in evidence against them... be brought before a court within 48 hours of their arrest and... be released on bail.” (Art. 19.)

Other procedural guarantees include the right to “a public trial by an ordinary court of law within a reasonable time after having been charged...be presumed innocent until proved guilty and not to be compelled to testify against themselves...full access to any evidence presented against them, to examine witnesses testifying against them...be represented by legal counsel of their choice [or] be provided with legal representation at state expense...and the right to appeal.” (Art. 20.) The dignitary interests of the individual are protected in Arts. 21 (humane treatment of convicted persons and guarantee of communication with loved ones and friends), and 24 (personal reputation and integrity).

Governmental power is limited by prohibitions on ex post facto laws (Art. 22) and double jeopardy limitations under Art. 23.

Privacy Rights

The peoples’ right to privacy is protected by broad and sweeping language in Art. 26, which prohibits “searches of home, person or property,...letters, and [electronic] communication”. Art. 27 guarantees that “Everyone has the right to freedom of thought, conscience and religion.” (Art. 27.)

Political Rights

The enumerated political rights are equally impressive. “Everyone has the right to hold opinions without interference...through any media of his choice. Freedom of the press and other mass media and freedom of artistic creativity is guaranteed, [and there is] prohibition of any form of censorship... Any media financed by or under the control of the State shall be operated in a manner ensuring its capacity to entertain diversity in the expression of opinion.” (Art. 29).

The right of the people to peaceably associate, assemble and petition is guaranteed under Arts. 30 (“Everyone has the right to assemble and to demonstrate together with others peaceably and unarmed, and to petition.”) and 31 (“Every person has the right to freedom of association for any cause or purpose.”)

Article 13: Scope of Application and Interpretation of Individual Rights

Article 13 is arguably the most important provision in the scheme of liberties guaranteed in this “constitution” because “the fundamental rights and freedoms” set forth therein “shall be interpreted in

a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.” Simply stated, the enumerated rights must be interpreted consistent with the general body of international human rights law. This article precludes idiosyncratic or constricted interpretations of rights based on local or uniquely national considerations.

Dystopia in Ethiopia

I am afraid the reality in Ethiopia today describes not the Utopia of Moore, but the dystopia of Orwell’s 1984, albeit African style.

Orwell’s country of Oceania is ruled by the Party, which is led by a self-absorbed and malevolent figure called Big Brother. Oceania’s population is divided into three groups: The Inner Party, The Outer Party and The Proles (the masses). The common people of Oceania suffer under the repressive thumb of Big Brother.

Not unlike Oceania, the evidence of repression and injustice in Ethiopia is overwhelming and irrefutable.

The 2007 U.S. State Department Human Rights Report on Ethiopia reveals facts about the ruling regime that are shocking to the conscience. Here is a sampling:

On arbitrary deprivation of life and liberty:

In late October [2006] the commission of inquiry established by the government to investigate the alleged use of excessive force ... found that 193 civilians--nearly four times the number originally reported by the government-- and 6 members of the security forces were killed, while 763 civilians and 71 members of the security forces were injured, many seriously.

On torture and infliction of cruel, inhuman, or degrading treatment or punishment:

Although the [Ethiopian] constitution and law prohibit the use of torture and mistreatment, there were numerous credible reports that security officials often beat or mistreated detainees.

On arbitrary arrest and detention:

Although the [Ethiopian] constitution and law prohibit arbitrary arrest and detention, the government frequently did not observe these provisions in practice.... Authorities regularly detained persons without warrants and denied access to counsel and family members, particularly in outlying regions. The independent commission of inquiry... found that security officials held over 30,000 civilians incommunicado for up to three months in detention centers located in remote areas... Other estimates placed the number of such detainees at over 50,000.

On the denial of fair trial:

While the law provides for an independent judiciary, the judiciary remained weak and overburdened. The judiciary was perceived to be subject to significant political intervention.

On the lack of freedom of speech and press:

While the [Ethiopian] constitution and law provide for freedom of speech and press, the government restricted these rights in practice. The government continued to harass and prosecute journalists, publishers, and editors for publishing allegedly fabricated information and for other violations of the press law. The government continued to control all broadcast media. Private and government journalists routinely practiced self censorship.

On the lack of academic freedom and cultural events:

The government restricted academic freedom during the year, maintaining that professors could not espouse political sentiments. Authorities did not permit teachers at any level to deviate from official lesson plans and discouraged political activity and association of any kind on university campuses...The government arrested students and teachers during the year. Professors and students were discouraged from taking positions not in accordance with government beliefs or practices.

Mr. Zenawi says his regime upholds the rule of law; and human rights violations, if any, are minimal and reflect the birth pangs of a “fledgling democracy.” He is dismissive of the findings and conclusions of human rights reports on Ethiopia. He says none of the State Department human rights reports on Ethiopia over the past decade have any credibility; and the 2007 report in particular should be disregarded because it is “not the last word in the Bible.”

Well, this is how Zenawi explained it all to *Al Jazeera*²:

I regret the deaths as you know, up to 194 civilians died, six policemen were killed, more than 70 policemen were wounded, I regret all these deaths but there was a challenge to the constitutional order in Ethiopia and that challenge had to be faced.

According to Zenawi, the U.S. State Department always gets it wrong:

That’s not the case [occurrence of gross violations of human rights] ... I have not read [the 2007 State Department human rights report], but I know having read the department of state reports on human rights for over a decade now that they do tend to get things wrong, that what they write is not always the last word in the Bible.

Zenawi often chafes when questioned about political prisoners.

Well, people are entitled to their own opinion in the case of Ethiopia, we took people to court, they've had their day in court we are still waiting for the verdict of the court, we detained a large number of people immediately after the attempted

² Andrew Simmons interview of Zenawi, "Talk to Al-Jazeera", March 24, 2007; see <http://english.aljazeera.net/NR/exeres/80AA000E-7081-4D35-B0F4-25902CC79D04.htm>

insurrection but we released them within weeks, the vast majority of them were released within weeks, the 100 or so were detained and taken to court. I do not believe that is a disproportionate response to a concerted effort to bring about a change in government by force.

Restructuring the “Justice System” in Ethiopia: The Need for Accountability

Is it possible to “reform the justice system” in Ethiopia?

This question may be somewhat oxymoronic. In order to meaningfully discuss justice reform in Ethiopia one has to presuppose the existence of certain minimal conditions: 1) a marginally functioning justice administration system with an independent judiciary securely insulated from political interference, 2) a law enforcement institution that respects and understands constitutional rights, and 3) prosecutorial policy-makers that have minimal levels of professionalism and ethical standards.

Unfortunately, the current regime has so cataclysmically subverted the “justice system” and judicial process in the country, such minimal conditions do not exist. Not surprisingly, there is little popular confidence in the integrity of the judges, judicial institutions or the outcomes of judicial proceedings.

When the U.S. State Department report concluded that the Ethiopian “judiciary remained weak and overburdened... [and] was perceived to be subject to significant political intervention”, it is diplomatically hinting to the massive deficit in public confidence and deep popular cynicism in the justice system. The indisputable fact is that the courts and associated institutions in Ethiopia today serve as instruments of political control and repression; and are systematically used as vehicles for the wholesale deprivation of the peoples’ rights.

With the foregoing caveat, I shall advance some preliminary proposals for accountability-based justice reform in Ethiopia.

I. Officials Must Be Held Accountable For Their Actions and/or Omissions Under the “Constitution”

Regime officials in Ethiopia today are not held accountable for their actions and omissions under their own “constitution”. Consider, for instance, Zenawi’s oft-repeated claim that he has authority to take extraordinary preemptive actions against perceived opponents to his regime if he believed they posed a “challenge to the constitutional order in Ethiopia.”

In his *Al Jazeera* interview Zenawi stated matter-of-factly: “I regret the deaths as you know, up to 194 civilians died, six policemen were killed, more than 70 policemen were wounded, I regret all these deaths *but there was a challenge to the constitutional order in Ethiopia and that challenge had to be faced.*” (Emphasis added.)

But his claim for such broad and sweeping powers to reflexively crush a “challenge to the constitutional order” has no textual basis in the “constitution”.

The issue of “challenge to the constitutional order” is explicitly addressed in three articles. Article 31 (Right to Association), contemplates threats to the “constitutional order” from subversive

organizations: “Everyone shall have the right to form associations for whatever purpose...[except those] formed... with the objective of *overthrowing the constitutional order*...” (Emphasis added.)

All other references to “constitutional order” deal with other matters. Article 62, sec. 8, authorizes action against a “state” by authorizing the Council of the Federation to “order the Federal Government to intervene where any state, by violating the provision of this Constitution, *endangers the constitutional order*.” (Emphasis added.)

Article 95 authorizes the “Council of Ministers of the Federal Government [to] declare a state of emergency in the event of *external aggression* or where conditions arise *which endanger the constitutional order*...” (Emphasis added.)

The only explicit constitutional basis for Zenawi to claim that the political prisoners, including Kinijit and other opposition leaders, are imprisoned for their “challenge to the constitutional order” is under Art. 31. But Kinijit was not “formed with the objective of overthrowing the constitutional order”, in violation of Art. 31. Kinijit would not have been allowed to engage in electoral politics in 2005 if it were perceived, or determined, to be an “association” illegally organized to “overthrow” or “endanger” the “constitutional order”.

Kinijit and its defiant leaders became a threat to the “constitutional order” when they won the massive numbers of parliamentary and local government seats in the 2005 elections. When Kinijit leaders declared their intentions not to legitimize the rigged elections, they became a “challenge” to the “constitutional order”. But if Kinijit presented a “challenge”, the ruling regime would have been the object of the challenge. But that is the essence of competitive democratic elections: Challengers challenge incumbents; and when challengers win as they often do, incumbents make way, play the role of vigilant opposition and launch their own challenge in the next election.³ Such is the elegant logic of democratic politics.

Incredibly, Zenawi brazenly continues to assert a nonexistent constitutional claim of extraordinary powers to kill, maim, imprison and persecute individuals he considers a “challenge to the constitutional order”, without anyone challenging him in a court of law. But therein lies the real problem. It is impossible to challenge his unwarranted arrogation of dictatorial powers without an independent judiciary before whom he can be held accountable.

II. Judicial Independence is Essential to Justice System Reform Through Accountability

Art. 78 declares that “An independent judiciary is established by this Constitution.” It further guarantees that “Courts of any level shall be free from any interference of influence of any governmental body, government official or from any other source. Judges shall exercise their functions in full independence and shall be directed solely by the law.”

Notwithstanding Art. 78, the 2007 U.S. State Department Human Rights Report concluded:

³ It is noteworthy that some purported Kinijit leaders who joined the parliament as they were ordered to do so by Zenawi were neither arrested nor prosecuted even though they were a core part of the leadership that presumably posed a mortal “challenge to the constitutional order”.

While the law provides for an independent judiciary, the judiciary remained weak and overburdened. The judiciary was perceived to be subject to significant political intervention.

One Ethiopian legal scholar in an unpublished manuscript has suggested that the “TPLF/EPRDF-led government formally pledged to promote democracy and the rule of law in order to distinguish itself from the Dergue,” and not out of a genuine commitment to the rule of law. Indeed, this scholar has persuasively argued that the ruling regime in its “attempt to reconcile its desire to provide a democratic façade for a political doctrine and practice inspired by a totalitarian outlook had also placed the judiciary at the centre of politics for the first time in the country’s history but at the cost of transforming it into a highly politicized and partisan institution.”

The importance of judicial independence can not be understated. It was one of the principal grievances in the American Revolution of 1776. In the Declaration of Independence, Thomas Jefferson accused King George III for making “judges dependent on his will alone” and depriving the people the right to administer justice impartially for themselves.

Like the British judges in colonial America, few Ethiopian judges today are prepared to rule against the regime if they want to keep their jobs. Judge Birtukan Midekssa was forced off the bench, and ultimately jailed, in retribution for her courageous exercise of judicial independence, and defense of the rule of law. For other courageous judges such as Frehiwot Samuel and Woldemichael Meshesha, the price of judicial independence was exile.

An independent judiciary is the essential bulwark against tyranny. Dictatorial powers are exercised so pervasively in Ethiopia today because there are no judges empowered and independent enough to put the brakes on the regime’s wholesale arbitrary arrests, tortures and extrajudicial killings.

Judicial independence is not a difficult idea to understand. As one American jurist aptly put it: “Judicial independence is the judge’s right to do the right thing or, believing it to be the right thing, to do the wrong thing.”

Practically, judicial independence means: 1) judges are able to decide cases fairly and impartially based on the fact of each case and the applicable law, and 2) in their performance of their duties, they are insulated from all external pressures -- political, public, media or other pressures -- that impair their neutrality and impartiality.

Here are two recent examples that demonstrate judicial independence in action in the United States.

In 2006, a U.S. District Court judge (the lowest level federal court in the U.S.) ruled that a program set up by the Bush administration since 2002 to monitor phone calls and emails of American citizens without court-issued warrants violated a federal law and the US Constitution. The U.S. Supreme Court (the highest court in the land) also ruled last year that President Bush did not have the constitutional or statutory authority to set up military tribunals for “enemy combatants” at Guantanamo Bay, Cuba. The Court declared the “military commissions” illegal under both military justice law and the Geneva Convention. **Object Lesson:** Even in the most powerful man on planet Earth is subject to the rule of law as interpreted and applied by independent ordinary and extraordinary judges.

Of course, no Ethiopian court today is likely to declare that Zenawi's detention of opposition leaders in Kality prison and the thousands of political prisoners in various prisons throughout the country is in violation of the "constitution" *as interpreted consistent with international human rights conventions* (Art. 13). No court or judge in Ethiopia has the power to countercheck the excesses of Zenawi's regime.

Many things can be done to enhance the independence of the Ethiopian judiciary. One set of very practical suggestions is found in the recently introduced Ethiopia Democracy and Accountability Act of 2007 (H.R. 2003), in the U.S. House of Representatives, discussed more fully below.

H.R. 2003 proposes the creation and implementation of a "*judicial monitoring process, consisting of local and international groups, to monitor judicial proceedings throughout Ethiopia, with special focus on unwarranted government intervention on strictly judicial matters, and to investigate and report on actions to strengthen an independent judiciary.*" Implementing such a process would be a giant first step in "justice system reform" through accountability in Ethiopia.

III. There Must be Legal Accountability in Any "Justice Reform" Effort in Ethiopia

There must be legal accountability for past and present human rights abuses in any justice reform effort in Ethiopia, and strict provisions must be made for future accountability as well.

The inescapable fact is that thousands of people have been imprisoned, tortured and killed by the current regime. The Inquiry Commission revealed the tip of the human rights abuse iceberg when it meticulously documented the massacres that took place over a few days in 2005. But for the past decade, numerous international human rights organizations have documented rampant human rights abuses by regime forces. There must be accountability: The killers and those who authorized the killing of 193 unarmed protesters and shooting of 763 others after the May, 2005 elections must be brought to justice. Those who ordered the arrest and detention of 50,000 persons during the same period must also be held accountable. The killers of 24 Oromo National Congress members must be apprehended and brought to justice. Those who ordered the massacre of hundreds of Anuaks in Gambella in 2003 must face justice for crimes against humanity. And so on, and so forth.

Of course, human rights violations are commonplace in Ethiopia today. How many political prisoners are covertly arrested and jailed every day? How many persons continue to disappear without a trace? How many political prisoners rot in detention without trial? How many keep their mouths shut because they are afraid if they speak their minds they will be persecuted? This must STOP now!

But we must look to the future as well. Safeguards must be put into place to prevent future human rights abuses. No more massacres. No more extrajudicial killings. No more arbitrary detentions. No more tortures. No more political persecution, harassment and intimidation of the civilian population!

And there is a real possibility of ensuring overall accountability. On April 23, 2007, U.S. Congressman Donald Payne introduced H.R.2003 in the U.S. House of Representatives. This bill replaces H.R. 5680 (Ethiopia Freedom, Democracy and Human Rights"). Enactment of H.R. 2003 into law is an important component of any "justice system reform" through accountability in Ethiopia. Here are just a few of the specific provisions that should help in this effort:

Release of all political prisoners and prisoners of conscience in Ethiopia and restoration of their civil and political rights, and provision of a fair and speedy trial for those held in detention;

Strengthening human rights monitoring and regular reporting on human rights conditions in Ethiopia and prevention of unreasonable interference, harassment, intimidation and persecution of international and Ethiopian human rights organizations engaged in human rights monitoring work in Ethiopia;

Legal support for the active monitoring of political prisoners and prisoners of conscience;

Increasing the independence of the Ethiopian judiciary through constructive dialogue with members of the ruling regime and civil society representatives on international human rights standards so that the courts can uphold the Ethiopian Constitution and international human rights standards;

Creation of a judicial monitoring and investigative process with special focus on unwarranted government intervention on strictly judicial matters;

Establishing a mechanism to identify and prosecute all persons who have engaged in gross human rights violations, regardless of their current place of residence;

Non-interference or censorship of the print and broadcast media in Ethiopia and repeal of laws restricting media freedom, including sections of the Ethiopian Federal Criminal Code.

Incidentally, H.R. 2003 includes an appropriation of \$20 million for each of the fiscal years 2008 and 2009 to undertake “justice system” reform. Let us all unite to get this legislation passed!

IV. Canada Can! Ethio-Canadians Should Undertake Grassroots Advocacy to Demand Official Accountability in Ethiopia

Canada can play a decisive role in improving the human rights situation in Ethiopia today by demanding accountability on the part of the ruling regime.

As we all know, Canada has been a prominent leader in the struggle for human rights, and in spreading democratic values throughout the world in the post WW II period. Canada was an original drafter of the ***Universal Declaration of Human Rights*** back in 1948, and played a central role in establishing the position of the U.N. Office of the High Commissioner of Human Rights and in supporting its numerous field operations throughout the world. Canada has been a prime mover in the annual meetings of the UN Commission on Human Rights in Geneva and regularly co-sponsors human rights resolutions.

Canada also played a significant role in establishing the International Criminal Court (ICC) which has jurisdiction over genocide, crimes against humanity and other war crimes. A Canadian judge was made president of the ICC in 2003 for a three-year term. The Canadian International Development Agency has made enormous contributions by helping build human rights capacity in the judicial, legislative, electoral and media institutions in numerous developing countries. So there is no question that Canada is a champion of human rights in the world!

Ethio-Canadians, together with your Canadian brothers and sisters, should undertake grassroots efforts to persuade Prime Minister Stephen Harper, his cabinet members and other parliamentarians to demand accountability in Ethiopia. And you have a righteous case to put before the Prime Minister and his cabinet members:

The current regime in Ethiopia should not be rewarded with Canadian aid so long as it continues to flagrantly violate the human rights of Ethiopians, and suppress their democratic aspirations. Canada must insist to the regime that it places a high value on freedom, democracy and human rights in Ethiopia. Canadian taxpayers must not bankroll a dictatorship in Ethiopia that thrives on gross violations of human rights.

In your advocacy efforts, it is important to clarify that you are not talking about termination of humanitarian aid. Opponents of H.R. 5680, and its predecessor H.R. 4423, once sought to characterize these bills as measures intended to deny medical care to Ethiopian HIV patients and relief assistance to famine victims. Humanitarian aid is always welcome in Ethiopia.

There is an important lesson Ethio-Canadians may find useful from the grassroots advocacy efforts of their counterparts in the U.S. Many Ethiopian Americans in the U.S. have learned that whatever success we have achieved in policy advocacy is largely a product of our efforts to create wide public awareness of human rights abuses in Ethiopia within our own community and the broader American society. You should strive to create such awareness in Canada and actively engage Canadians, as you have done here in exemplary fashion with the Canadian Peacebuilding Coordinating Committee.

I have no doubts that the vast majority of Canadians share with Americans and Ethiopians a common understanding of freedom, democracy, human rights; and that regime accountability should be a touchstone for receiving Canadian aid by any country seeking such aid. That is why it is important to urge the Canadian government to adopt specific human rights benchmarks for its economic aid program in Ethiopia: immediate and unconditional release of opposition leaders, restoration of freedom of speech and press, elimination of regime censorship, repeal of repressive press laws in the Ethiopian criminal code, cessation of arbitrary arrest, search and seizure and detention, and prosecution of human rights abusers, among other things. In other words:

CLONE H.R. 2003 IN CANADA! DEMAND ACCOUNTABILITY!

Let me conclude my remarks on justice system reform in Ethiopia with the words of the Prophet Amos: “Let justice flow like a river and righteousness like a never-failing stream.”

In the spirit of Amos, I ask you to join me in proclaiming the words: “Let justice flow in Ethiopia like the holy waters of the majestic Abay (Blue Nile) and righteousness like the mighty River Awash!”

Thank you.