

Editor's Note: There is no doubt in my mind that Journalist Eskinder Nega is a highly capable and dedicated professional. My criticism of his recent articles on the forgiveness-pardon issues dealing with convicted Derg Officials ought to be read in that limited range of discourse. Nevertheless, without any condescension but only with my sincere appreciation, I would say that Eskinder Nega has shown us all the right behavior and comportment when facing writers, even rude ones, with his great restraint and professional discipline one can see in his response to my sharp (maybe even belligerent) criticism of his articles dealing with the pardon issue of convicted Derg Officials. [See the article below posted in Ethiomedia] I regret the tone (not the content) of my personalized responses to Eskinder's rational interpretive statements on the subject of genocide. It is my human passion and a burning desire to see justice done for the millions of Ethiopians, including myself, who were victims of the horrendous seventeen years of the reign of terror of Mengistu Hailemariam and the Derg Members that drove me to write with "unnecessary roughness." In addition to Eskinder, Professor Firew Kebede is a great illustrative example of proper manner and comportment in public forum. I am much indebted to these two outstanding fellow Ethiopian Brothers. Melkam Genna to All. TH

Ethiopia: The politics of imagined genocide

By Eskinder Nega | January 7, 2011



Top leaders of the Derg minus Col. Mengistu H. Mariam appear before court on January 11, 2007 in Addis Ababa (AP Photo/Les Neuhaus)

(KKK)." Chip away the First Amendment rights of extremists and the rights of everyone else will be endangered, argued the official.

The cries of "Shame on you!!!" by groups of protesters occasionally resonate outside the offices of the American Civil Liberties Union (ACLU). A wide range of issues irk the protesters. Sometimes it would be the ACLU's spirited defense of the First Amendment rights of the Ku Klux Klan. At other times, it would be the no less passionate defense of Neo-Nazis and scores of other fringe groups.

The convictions of the ACLU and most of the lawyers that constitute the core of its membership, however, could broadly be described as left-to-the-center (in the American, not the European sense). What then could explain ACLU's defense of the First Amendment rights of white supremacists KKK and Neo-Nazis?

"It was no-brainer to take these cases in the sense of the First Amendment principle. Did we want these cases? Did we want to receive those phone calls?" an ACLU once official told a group of protesters outside his office. "Hell no, but once it came it was no-brainer. We had to defend them

Partially because I have always been inspired by the principled stance of the ACLU, and partly because I adamantly believe that the trial of the imprisoned Derg officials is not only about our past, but also, by the power of precedence it sets, also essentially about our future, I have defended their right to a fair trial (which ranges from prosecutorial impartiality and independence to competence of defense lawyers and judges) and disputed their genocide convictions.

But in doing so, I have inadvertently been mistaken for a Derg sympathizer. To Professor Tecola W Hagos, an established public intellectual, whom I respect and admire, I "seem to admire the arrogance and blood thirsty posturing of those sub-human creatures." To Frew Kebede Tiba, an impressive up- and-coming public intellectual, whom I have also come to respect and admire, the "tone" of my analysis is not only ridden with sympathy for the Derg but could be tainted with an ulterior motive.

Aghast, I read and read my article, carefully scanning for the tone, the alleged insinuation between the lines that imply sympathy for the Derg. Alas, I could find nothing! But this is me: the accused! I concede that I could not be a credible judge. That role would have to be assumed by third, neutral parties. But until they come out in more numbers (that is, in addition to Abebe Gelaw), my conscience would not rest without stating this:

I am no more a Dergist for defending the rights to a fair trial of imprisoned Derg officials than the ACLU is racist for

defending the First Amendments rights of the KKK and Neo- Nazis. I stand for principle like the ACLU; I stand for the truth as a journalist; and because of the powerful precedent this trial and its outcome sets (indeed, for the whole of Africa not just Ethiopia) I am worried about the course it has taken as a citizen.

Addressing the issue of genocide, I wrote last week:

"(The widely known) definition (of genocide by the United Nations) was an outcome of a compromise between Stalin-led Soviet Union and the West in 1948, when the UN was established. While the West pushed for the inclusion of political groups in the genocide clause, the Soviets, with the legacy of the Red Terror in their immediate past, resisted, and finally had their way when it was excluded. To many, the UN convention has been lacking ever since. And many countries, including Ethiopia, went on to incorporate political groups in their national genocide laws."

But curiously, both Tecola (directly) and Frew (indirectly), reproach me for being uninformed about Ethiopia's law and basing my analysis (as many people do) on the UN's incomplete definition. Thus, Tecola says,

"Eskinder Nega, after going through some torturous and wrong analysis of the Genocide Convention and the meaning of "Genocide" (ends up with the wrong conclusion about the Derg trials.) In the Penal Code of Ethiopia, in Article 281, it is clearly stated that a "political group" is one of the protected groups. The 1948 Genocide Convention that Ethiopia was among the first to ratify in 1949, does not mention "political group" as one of the protected groups. Such fact does not in any way prevent Ethiopia from identifying and prosecuting and punishing crimes committed against "political" groups. There seems to be a confused understanding of the interplay of international agreements with domestic sovereign power in Eskinder's analysis."

Frew's account is based on the same premise as Tecola's:

"(Considering) the fact that the Ethiopian Penal Code of 1957 pre-existed the commission of the crimes, there is no legal ground for disputing (as Eskinder has) that the suspects could not be charged with genocide. Yes, our law is not co-extensive with the genocide convention or the national laws of other countries which excluded political groups from protection, but it does not contradict any rule of international law and it better protects Ethiopian citizens."

I am at a complete loss where I overlooked, disputed the right to, or questioned the good judgment of the inclusion of political groups in the genocide clause of the Ethiopian Penal Code. On the contrary, in line with Frew's argument, I believe it was the right thing to do because it corrects a fundamental shortcoming of the UN convention. Nor did I dispute the right of the SPO to file charges of genocide. What I questioned was the SPO's prosecutorial impartiality and independence in determining whether genocide charges should have been pursued. Politics, more than the weight of evidence, led the SPO in that direction. The Derg trials should be about justice as protection and defense of the civil liberties of victims (those killed, tortured and imprisoned) through due process of law, a process in which prosecutorial impartiality and independence is of critical importance. The Derg trails do not measure up to this standard.

Professor Tecola also dismisses the issue of the other international standards for the trials that I had raised. "Another misguided and disingenuous argument is to claim that the judicial system of Ethiopia in Ethiopia does not meet international standards; therefore the convictions and decisions of punishments are erroneous. What type of international standard is to be used, and what authority for such insistence could such individuals present to convince us of the validity of their arguments," asks the good Professor.

Standards and authority there are. Ethiopia is a signatory of the International Covenant on Civil and Political Rights (ICCPR.), which protects the right to a fair trial. The statutes of this covenant are legally binding on Ethiopia. The right to a fair trial is protected in articles 14 and 16 of this covenant. The articles stipulate that all accused persons have a right to a fair trial.

As a minimum, a fair trial must meet these standards:

1. The right to be heard by a competent, independent and impartial tribunal

2. The right to a public hearing
3. The right to be heard within a reasonable time
4. The right to (a competent) counsel
5. The right to interpretation

The Derg trials clearly fail short of at least three of these five standards (tribunal, reasonable time and competent counsel) They bear mightily on the issue of a fair trial. In both the US and New Zealand, where Tecola and Frew reside, the absence of any one of these standards would be enough either for an overturning of a conviction or a mistrial. The absence of a broad network of human resources---qualified judges, prosecutors and defense lawyers--- needed to undertake a major genocide trial would have been a deterrent for a prudent SPO and a government concerned about a fair trial. Unfortunately for us as a nation, this was not meant to be. And what should unite us therefore has ended up dividing us.

Both Tecola and Frew fail to vouch for the competence, independence and impartiality of prosecutors, defense lawyers and judges involved in this saga, but still insist on the sanctity of the convictions. And frankly, I am distressed that the issue of a fair trial is being underplayed by two distinguished Ethiopian scholars, particularly when capital punishment is involved. Professor Tecola has rightly maintained that all countries dispense justice with what they have, not with what they should have. But this argument would have been more convincing if the charges were limited to the more earthly "crimes against humanity" and "aggravated murder." Only the compelling presence of overwhelming evidence (as in Rwanda) would support an argument in favor of a genocide prosecution with whatever resources a country has. The arguments and evidences in favor of an Ethiopian genocide, however, are at best murky. Risking the complications of a major genocide trial in this context was at best reckless. And crucially, the outcome has denied us the closure we need as a nation.

Frew rightly points out "the essence of the law against genocide is not about numbers" but more of intentions. True. And he goes on to say, "the Derg has tried to eliminate parts of political groups standing in opposition to its revolution." Again, true. But does this make the Derg an anomaly of its time, as genociders would be under normal circumstances? All opposition groups intended the same for the Derg. Opposition groups also intended the same against each other. The TPLF, for example, murdered the entire leadership of the TLF, its competitor in Tigray. All African governments, save Botswana, also intended the same against their opponents. And most of them killed to that effect. The suppression of Communism in Indonesia, Iran, Chile, Argentina, Brazil and Spain entailed the lives of tens of thousands Communists in each country--- a terrible, ghastly "permanent solution." Unlike the Derg, they succeeded in eliminating entire Communist parties. The lives lost in each of these cases were no less than in the Derg's cases---in fact, much more in some of them. By the standard Frew proposes, genocide stops being an historical aberration and becomes a permanent feature of the pre-1989 past. This trivializes both the spirit and memory of the true genocides in history---chiefly, that of European Jews at the hands of Nazis. This greatest of all follies in human history becomes just one more crime, distinguished from many others only by numbers.

The world changed radically---for the better--- with the fall of the Berlin Wall in 1989. The moral clarity we have today was only a preserve of the West before the implosion of the Soviet bloc. Unless past events are contextualized---inside and outside a court---within this framework, our understanding of them will be fundamentally flawed. And the end result will be imagined genocides throughout the world.

Finally, Professor Tecola, at the supreme height of his eloquence, reminds us all of the victims:

"(The Derg's) victims were not dogs and cats, but real human beings: young and old, men and women, school children and vibrant youngsters et cetera. How about their torrent of blood? Their suffering? Their memories? It is not some fading memory either; it is seared in the ethos of those who suffered: Us, millions of Us!"

I hear you, sir. I hear you, loud and clear!!! If you only knew how difficult this is for me!!!

Melakm Gena to all.

Eskinder Nega

(Last part of this series will appear next week)

The writer, prominent Ethiopian journalist Eskinder Nega, has been in and out of prison several times while he was editor of one of several newspapers shut down during the 2005 crackdown. After nearly five years of tug-of-war with the 'system,' Eskinder, his award-winning wife [Serkalem Fassil](#), and other colleagues have yet to win government permission to return to their jobs in the publishing industry. Email: serk27@gmail.com