

JUSTICE UNDER FIRE

TRIALS OF OPPOSITION LEADERS, JOURNALISTS
AND HUMAN RIGHTS DEFENDERS IN ETHIOPIA

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1. INTRODUCTION

This report covers a major political trial in Ethiopia lasting from May 2006 to March 2008, in which opposition party leaders, journalists and civil society activists considered by Amnesty International to be prisoners of conscience were tried for crimes that carried possible death sentences or life imprisonment.

They were arrested in November 2005 in connection with demonstrations against the government led by the opposition party, the Coalition for Unity and Democracy (CUD), after the CUD alleged rigging of the 15 May 2005 elections by the government and ruling party, the Ethiopian People's Revolutionary Democratic Front (EPRDF). The demonstrations in Addis Ababa turned violent. Over 180 people were killed by the security forces, six police officers were killed by demonstrators, and considerable damage was caused to city facilities.

The charges against those arrested included: outrages against the Constitution; attack on the political and territorial integrity of the state; organizing or leading armed rebellion or inciting civil war; obstruction of the exercise of constitutional powers; impairing the defensive power of the state; high treason and genocide. Most of these charges carried a possible penalty of death or life imprisonment.

The principal defendants were convicted on most of the charges and most were sentenced to life imprisonment or long prison terms, while some other defendants were acquitted. However, after an extraordinary Ethiopian mediation initiative, all those convicted were released under presidential pardons after they signed a letter to the Prime Minister "apologizing for their mistakes".

This report also describes related trials of opposition supporters; treatment of the defendants in prison, including torture of some defendants; a Commission of Inquiry into alleged excessive force against demonstrators by the security forces; and relevant developments since the trial.¹ It concludes with recommendations to the Ethiopian government and the international community.

1.1 AMNESTY INTERNATIONAL'S CONCERNS

Amnesty International² was concerned from the outset that many of those arrested appeared to be prisoners of conscience who had not used or advocated violence, and called for them to be released immediately and unconditionally. When it was clear that they would instead be put on trial, the organisation demanded, among other things, that all elements of fair trial be afforded to them; that the death penalty would be excluded; and that they should be treated humanely while in custody in accordance with international and regional standards for the treatment of prisoners.³

After preliminary proceedings, the trial began substantively in May 2006. The CUD leaders and journalists decided, in advance of the opening of the trial, to boycott the trial and not enter a defence on the grounds that they believed the trial would be fundamentally unfair

and that the court was not independent. The court entered pleas of “not guilty” on their behalf when the defendants refused to plead. Three civil society activists and human rights defenders did not boycott the trial. They pleaded “not guilty” and presented their defence.

The CUD leaders and journalists were found guilty of most of the charges in June 2007, but were quickly released after signing a letter of apology admitting mistakes and being granted a presidential pardon. The trial continued in July 2007 with two of the civil society activists and human rights defenders, Daniel Bekele and Netsanet Demissie, presenting their defence. The third civil society activist had been acquitted in April 2007. The two were found guilty in December 2007, and sentenced to 30 months’ imprisonment. They were released in March 2008 after signing the same apology letter and receiving the same presidential pardon.

Amnesty International closely followed the trial proceedings in order to assess whether the court adhered to internationally recognised standards of fair trial as set out in the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights, both of which Ethiopia has ratified. The European Union, which was also concerned about the fairness of the trial, appointed an international trial observer to monitor the conduct of the trial.

This report focuses on an account and analysis of the trial, as well as the circumstances surrounding it, in relation to international human rights standards. Amnesty International’s conclusion is that the trial failed to meet international standards of fair trial.

The report ends with Amnesty International’s recommendations to the government of Ethiopia on reforms to its criminal justice system and laws, and on full recognition and implementation of the rights to freedom of expression, association and assembly. Amnesty International also makes recommendations to the international community in relation to their political and economic relations with Ethiopia.

1.2 METHODOLOGY

This report is based on information obtained through a variety of public and private sources, including court documents, Ethiopian government statements, media reporting from a range of government, opposition and independent sources, legal experts, and interviews with numerous individuals, including former prisoners, many of whom requested anonymity for fear of reprisal.

Obtaining information on the CUD trial was difficult due to the absence of continuous, complete or independent daily reporting of the trial. The international media were only occasionally present, while the local media were heavily restricted, with many publishers, editors, reporters and publishing companies on trial themselves. Amnesty International sent a delegate to observe the trial hearings in October 2006 and March 2007. However, Amnesty International’s observers were barred from attending the trial in October 2007.

Court documents were rarely made publicly available and were difficult to obtain. Despite these challenges, Amnesty International considers it gathered sufficient information on the trial and its context to enable it to make an impartial and valid assessment of the trial and related human rights issues.

2. BACKGROUND

Ethiopia's third general elections under the current government and the Constitution (1995) for the national parliament (the House of People's Representatives), the Addis Ababa and Dire Dawa City Councils, and the seven Regional State Councils, were held in May 2005.⁴ The Somali Region elections were held later in September 2005. The May 2005 elections were observed by the European Union, the African Union, the US-based Carter Centre and some Ethiopian non-governmental organizations (NGOs). Prime Minister Meles Zenawi's ruling Ethiopian People's Revolutionary Democratic Front (EPRDF), a coalition with affiliated regional parties, was facing two opposition coalitions – the Coalition for Unity and Democracy (CUD) and the United Ethiopian Democratic Front (UEDF); and several independent candidates.

Prior to the 2005 elections, Amnesty International had documented human rights violations against opposition members, particularly the CUD, including several killings, arbitrary detentions, harassment and intimidation by police and local militia.⁵ The poll itself was peaceful. In early June 2005, the National Election Board, headed by the President of the Supreme Court, announced preliminary results giving the EPRDF a narrow lead over the CUD. The CUD alleged rigging by the government and ruling party, and CUD supporters subsequently demonstrated in Addis Ababa. The Prime Minister banned the demonstrations and took personal control of the security forces in Addis Ababa.⁶ On 8 June 2005 a special army unit shot dead at least 36 protestors and wounded many others in Addis Ababa. There were similar demonstrations and some killings in other parts of Ethiopia. During the protests and soon after, some 9,000 CUD supporters including about 2,000 university students were detained by police and many allegedly beaten, but they were provisionally released on bail by the end of July 2005 without being charged with any crime. CUD leaders were not arrested.

The final official election results gave the EPRDF and its affiliated parties some two-thirds of seats in the federal parliament and control of all the regional assemblies. The CUD had a third of parliamentary seats and almost all seats in the Addis Ababa City Council, while the UEDF and independent candidates also gained some seats. The CUD repeated its allegations of widespread rigging. The National Election Board recognized some of their complaints and ordered re-runs in a small number of constituencies – which the opposition boycotted on account of intimidation by government officials of candidates and voters.

In August 2005, the European Union Election Observation Mission in its interim report expressed serious concerns about the fairness of the elections. It said the widespread violations of human rights “undermined the opposition's ability to participate effectively in the process, independently of their competence to argue their case: material evidence was unobtainable because detained or fearful witnesses were unable to testify and, in one case an important witness was killed.” Prime Minister Meles Zenawi dismissed this interim report as “garbage.”⁷

In a second series of CUD demonstrations in early November 2005, riot police shot dead over 100 protestors in Addis Ababa, wounded hundreds of others⁸ and detained most of the CUD leadership, which had called for non-violent demonstrations. The protests, which started

peacefully with drivers honking their horns and a workers' stay-home strike, led to violence. Six police officers were killed by protesters, and there was considerable damage to government property and public vehicles.

Shortly before, during and after the demonstrations, the security forces arrested tens of thousands of CUD officials and supporters in Addis Ababa, the Amhara Region and some other regions, including many who had been previously arrested in June 2005. Many were beaten when being arrested – but not the CUD leaders. CUD offices were closed down by police.

The most prominent and critical journalists of the private media were also detained and their publications shut down. Three civil society activists were detained, including two human rights lawyers, Daniel Bekele⁹ and Netsanet Demissie, who had been involved in election monitoring and mediation between the CUD and government, and Kassahun Kebede, an official of the Ethiopian Teachers Association (ETA), which had come under heavy government pressure for many years. Further pro-CUD protests, such as students boycotting classes, took place in the next few months and were harshly suppressed.

The CUD leadership decided to boycott the new parliament in protest. The UEDF, independent MPs, a dissident section of the CUD and eventually also several CUD MPs-elect who had not been detained, took up their seats in parliament.¹⁰ The Prime Minister set up a “caretaker” Addis Ababa City Council of persons said to be without political affiliations, which the federal parliament later endorsed.

The detained CUD leaders and others held with them went on hunger strike in November 2005 in protest at their detentions. In December 2005, charges were brought against 131 detained CUD leaders and others. The court denied bail, citing the provisions of the Criminal Procedure Code that exclude bail for serious crimes. The Prime Minister on several occasions before and after the charges were laid publicly accused the CUD leaders of treason and of organizing a violent uprising aimed at overthrowing the government, which they denied. He refused to authorize the release of the detainees despite appeals for a political reconciliation by the United States of America (USA), the European Union (EU) and other embassies. The Prime Minister said the detainees would receive a fair and prompt trial.

Because of concerns about election irregularities and the killings that took place during the demonstrations, the international community and some of the Donors' Group imposed sanctions on Ethiopia. In January 2006 the British government ended direct budget support to the Ethiopian government, re-directing aid worth US\$88 million to specific development programmes not administered by the federal government. The World Bank took a similar measure.

The final EU election report published in March 2006 concluded that “overall ... the elections fell short of international principles for genuine democratic elections.” The report stated that “while the pre-election period saw a number of positive developments and voting on 15 May was conducted in a peaceful and largely orderly manner, the counting and aggregation process were marred by irregular practices, confusion and a lack of transparency. Subsequent complaints and appeals mechanisms did not provide an effective remedy. The human rights situation rapidly deteriorated in the post-election day period when dozens of

citizens were killed by the police and thousands were arrested.”¹¹ The government did not respond but had earlier criticized at length the head of the observation mission, Ana Gomes, a Member of the European Parliament.

Later in March 2006, a parliamentary Commission of Inquiry established in November 2005 began investigations into the demonstration violence.

The main CUD trial began in May 2006 after preliminary proceedings, during which charges against 18 defendants were withdrawn by the prosecutor. The CUD defendants and journalists boycotted the trial (though they attended the court hearings), leaving only the three civil society activists defending themselves with their legal representatives.

Along with the main trial of the CUD leaders, journalists, civil society activists and other CUD supporters, court cases were initiated against several hundred others, while many of the thousands of other CUD detainees were provisionally released on financial bonds by mid-2006. Kifle Tigeneh, a CUD Supreme Council member and one of their MPs-elect, was charged with similar offences as the CUD leaders, along with 32 other defendants. As many as 22 other case-files were reportedly opened by the Ministry of Justice, although few are known to have commenced.

In April 2007, 54 defendants, including one of the civil society activists – an Ethiopian Teachers Association official – and the four political parties comprising the CUD coalition, were acquitted when the judges ruled that they did not have a *prima facie* case to answer, after hearing the prosecution case. The judges ruled that all other (76) defendants had a case to answer and should present a defence.

For the leading CUD defendants and journalists who had refused to present a defence, the trial ended in some confusion, described below, in July 2007. They were found guilty as charged and sentenced to life imprisonment or long prison terms, although the prosecutor had demanded the death penalty. However, they were all freed in July and August 2007 under a presidential pardon after an unprecedented mediation process described in section 7 below in which they signed an apology letter to the Prime Minister.

The trial continued in July 2007 for the remaining two civil society activists who were presenting a defence, Daniel Bekele and Netsanet Demissie. It ended in December 2007 with convictions and prison sentences of 30 months each. Daniel Bekele and Netsanet Demissie were denied the usual opportunity of remission of one-third of their sentence for good behaviour, when they had already served two-thirds of the sentence. Facing the possibility of being imprisoned for many more months, given the prosecutor's appeal against the sentence and demand for the death penalty, they signed the same apology letter and were pardoned and released in March 2008.

3. TRIAL NARRATIVE

This section includes details of the defendants and the charges against them in the main CUD trial, and a chronological summary account of the trial, focusing on the key decisions of the Court. The main part of the trial lasted from May 2006 to July 2007, with numerous adjournments including the annual court vacation in August-September. The subsequent continuing trial of Daniel Bekele and Netsanet Demissie in which they presented their defence followed on, from July 2007 to March 2008.

3.1 DEFENDANTS AND CHARGES

131 defendants were originally charged and listed for trial, including ten “legal entities” - the four political parties constituting the CUD coalition, and six publishing companies which published eight newspapers. Of the 121 individuals originally charged, two were discharged during police investigations, and on 22 March 2006 the prosecutor informed the Court that he was dropping the charges against 18 other defendants. 25 defendants were tried in their absence.

The 76 individual defendants before the court comprised the following (see Table I below for a list of the main defendants, and the Annexe at the end of the report for the complete list with fuller details):

- 38 CUD Supreme Council members and other prominent CUD figures
- 14 journalists, who were mostly also linked to the six publishing companies on trial
- Three civil society activists who were human rights defenders and officials of the international development agency ActionAid, the Organisation for Social Justice in Ethiopia (OSJE) and the Ethiopian Teachers Association (ETA)
- Other CUD officials and supporters

The original seven charges referred to the following crimes: (see *Table IIA and IIB*):

- Outrages against the Constitution or the Constitutional Order (article 238 of the 2005 Criminal Code of Ethiopia¹²);
- Obstruction of the exercise of Constitutional Powers (article 239);
- Armed rising or civil war - by inciting, organizing or leading armed rebellion against the government (article 240);
- Attack on the political or territorial integrity of the state (article 241) - later dropped;

- Impairment of the defensive power of the state (article 247);
- High treason (article 248); and
- Genocide (article 269) - later amended to attempted genocide.



Hailu Shawel ©Private



Berhanu Negga © Amnesty International



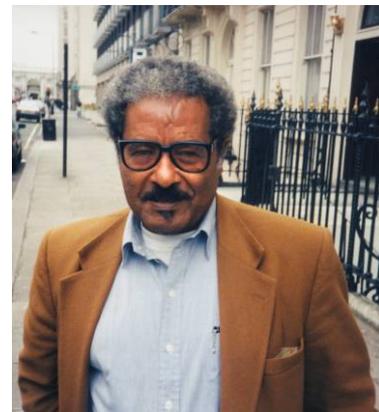
Birtukan Mideksa © Amnesty International



Yakob Hailemariam © Amnesty International



Muluneh Eyuel ©Amnesty International



Mesfin Woldemariam © Amnesty International

TABLE I: PRINCIPAL DEFENDANTS

<i>A. CUD Supreme Council members and others</i> ¹³	
Hailu Shawel	CUD president and All Ethiopia Unity Party (AEUP) leader, civil engineer
Birtukan Mideksa (f)	CUD vice-president, Rainbow party leader, lawyer and former judge
Berhanu Negga	Economics professor, Rainbow party official
Muluneh Eyuel	CUD secretary general, Ethiopian Democratic League (EDL) leader, economist
Debebe Eshetu	CUD public relations officer, Rainbow party official, theatre professional
Hailu Araya	Ethiopian Democratic Unity Party (EDL) leader, former academic and journalist
Yakob Hailemariam	US-based law professor, Rainbow party official, former UN genocide prosecutor at the Rwanda Tribunal and former UN Special Envoy in the Cameroon/Nigeria border dispute
Mesfin Woldemariam	CUD adviser, retired Addis Ababa University geography professor, founder and former chair of the Ethiopian Human Rights Council (EHRCO)
<i>B. 14 Journalists</i>	
Andualem Ayele	Etiop editor
Dawit Fasil	Satenaw deputy editor
Dawit Kebede	Hadar editor
Dereje Habtewold	Minilik and Netsanet deputy editor
Eskinder Nega	Satenaw editor
Fasil Yenealem	Addis Zena publisher

Feleke Tibebe	Hadar deputy editor
Mesfin Tesfaye	Abay editor
Nardos Meaza	Satenaw editor
Serkalem Fasil (f)	publisher of Asqal, Minilik and Satenaw, wife of Eskinder Nega (above)
Sisay Agena	Etiop publisher and editor
Wonakseged Zeleke	Asqal editor
Wossenseged Gebrekidan	Addis Zena editor
Zekarias Tesfaye	Netsanet publisher
C. Three civil society activists	
Daniel Bekele	Policy, research and advocacy manager of the Ethiopian office of ActionAid[fn], the international development agency, lawyer.
Netsanet Demissie	Founder and director of the Organization for Social Justice in Ethiopia (OSJE), lawyer
Kassahun Kebede	Teacher and chair of the Addis Ababa branch of the Ethiopian Teachers Association (ETA)
D. Exiles and others tried in their absence	
Five journalists	US-based Voice of America (VOA) radio station
Kassa Kebede	Former Foreign Minister under the Mengistu Hailemariam government
Elias Kifle	Publisher of the US-based Ethiopian Review website
Abraha Belay	Editor of the US-based Ethiomedia website

Getachew Haile	US-based academic
Mammo Muchie	Denmark-based academic
Negede Gobezie	Leader of the Me'isone political party which originally supported the Dergue but later opposed it
Andargachew Tsege	Former deputy Mayor of Addis Ababa and EPRDF member, CUD representative in UK
Kefalegne Mammo	Former president of the Ethiopian Free Press Journalists Association (EFJA)
Taye Woldesmiate	Former general secretary of the Ethiopian Teachers Association (ETA)
Kifle Mulat	President of the Ethiopian Free Press Journalists Association (EFJA) and editor of Lissane Hezeb newspaper
E. Ten "legal persons or entities"	
The four constituent parties of the CUD (AEUP, EDL, Rainbow and UEDP).	
Six publishing companies whose editors or journalists were also individual defendants.	

TABLE IIA: THE CHARGES

Charges (Numbered according to the court charge-sheet)	Article of Criminal Code (2005)	Penalty
1. Outrages against the Constitution	27, 32, 34, 38, 238 (1), (2)	3-25 years imprisonment, or “where the crime has entailed serious crises against public security or life” life imprisonment or death
2. Obstruction of the exercise of constitutional powers	32, 34, 38, 239	Up to 15 years imprisonment
3. Armed rising or civil war	32, 34, 38, 240 (2), 258*	Life imprisonment or death
4. Attack on the integrity of the state	32, 38, 241	10-25 years or “in cases of exceptional gravity” life imprisonment or death
5. Impairment of the defensive power of the state	32, 34, 38, 247 (a), (c), 258*	5-25 years or “in cases of exceptional gravity” life imprisonment or death
6. High treason	32, 34, 38, 248 (b), 258*	5-25 years imprisonment or “in cases of exceptional gravity” life imprisonment or death
7. Genocide	32, 34, 38, 269 (a)	5-25 years imprisonment or “in more serious cases” life imprisonment or death
* In case of aggravation in a crime where the law provides for life imprisonment or death, the court shall pass sentence of death.		

TABLE IIB: GROUPS OF DEFENDANTS AND CHARGES

Defendants	Charges (See Table 1 for description)						
	1	2	3	4*	5	6	7**
Numbered according to the court charge-sheet							
1-39 CUD leaders	x	x	x	x	x	x	x
40-69 Exiles	x						
70-90 Journalists	x			x	x		x
91-95 Civil society activists	x						
96-120 Other CUD officials	x	x	x				x
121-127 Other CUD members	x	x	x				x
128-131 CUD parties	x	x	x	x	x	x	x
* This charge was withdrawn by the prosecution in March 2006.							
** This charge was amended in March 2006 to "attempt to commit genocide".							

FIRST CHARGE – OUTRAGES AGAINST THE CONSTITUTION OR THE CONSTITUTIONAL ORDER

All 131 defendants were charged with this crime.

Article 238 of the Criminal Code defines the crime as follows:

- (1) Whoever, intentionally, by violence, threats, conspiracy or any other unlawful means:
 - (a) overthrows, modifies or suspends the Federal or State Constitution; or
 - (b) overthrows or changes the order established by the Federal or State Constitution.

The punishment is imprisonment from three to 25 years, or life imprisonment or death where “the crime has entailed serious crisis against public security or life.”

The prosecutor’s case focused on proving the existence of a criminal conspiracy involving all defendants in an attempt to “overthrow the Constitution”. The prosecutor provided the particulars of the offence, by dividing the defendants into different groups and outlining, for each group, their alleged criminal activities.

- The CUD political leadership (defendants 1 to 39), were charged with inciting and mobilizing CUD members and supporters to riot in the run-up to and after the elections of May 2005, as well as threatening the government and the Election Board. These actions resulted, according to the prosecutor, in the violence that took place in Addis Ababa in June and October/November 2005 and caused the death of 50 persons and the injuring of 182 persons¹⁴ as well as substantial damage to property.
- Defendants 40 to 69 (in their absence) were charged with producing and distributing written articles, and mobilizing material and financial support aimed at overthrowing the constitutional order.
- Journalists (defendants 70 to 90) were charged with inciting the public by means of their publications to riot and violence.
- Members of civil society organizations (defendants 91 to 95) were charged with mobilizing and inciting violence and rioting as well as using the organizations they represented as instruments to commit the crimes.
- Other CUD officials (defendants 96 to 127) were charged with causing loss of life and damage to property by leading and participating in the rioting in Addis Ababa on 1 November 2005, and by organizing armed groups in East Gojjam and North Shoa.
- The four political parties forming the CUD coalition were charged with being instruments for the commission of the crime.

This charge was accompanied by article 27 of the Criminal Code – Attempt (in the commission of a crime) which states,

- (1) Whoever intentionally begins to commit a crime and does not pursue or is unable to pursue his criminal activity to its end, or who pursues his criminal activity to its end without achieving the result necessary for the completion of the crime shall be guilty of an attempt

SECOND CHARGE - OBSTRUCTION OF THE EXERCISE OF CONSTITUTIONAL POWERS

The CUD political leadership and other CUD officials and supporters were charged with obstruction of the exercise of constitutional powers. Article 239 of the Criminal Code defines the crime as:

“whoever, by violence, threats or any other unlawful means, restrains or prevents any official or body constituted by the Federal or State Constitution from exercising their powers or forces them to give a decision”.

The crime carries a penalty of imprisonment for up to 15 years.

The prosecution accused the defendants of attempting to obstruct the Election Board and in calling on the public to participate in an “illegal strike”.

No distinction between defendants or any further details were provided by the prosecutor to explain this charge.

THIRD CHARGE – ARMED RISING OR CIVIL WAR

The CUD political leadership, other CUD officials and supporters were charged with inciting civil war. Article 240 (1(b)) of the Criminal Code defines this crime as:

“whoever, intentionally:

...raises civil war, by arming citizens or inhabitants or by inciting them to take up arms against one another.”

Punishment is life imprisonment or death “where the crime entailed serious crises against public security or life” (Article 240 (2)).

CUD leaders were charged with inciting, organizing and leading armed rebellion in Addis Ababa and other regions after 1 November 2005, while the other CUD defendants were charged with participating in the rebellion.

FOURTH CHARGE – ATTACK ON THE POLITICAL OR TERRITORIAL INTEGRITY OF THE STATE

The CUD leadership, journalists and the political parties forming the CUD were charged with this offence. Article 241, under which the defendants were charged, defines it as follows:

“Whoever, by violence or any other unconstitutional means, directly or indirectly, commits an act designed to destroy the unity of the peoples, or to destroy the Federation, or to sever part of the territory or population from the Federation or the State”.

This crime carries a penalty of ten to 25 years’ rigorous imprisonment, or life imprisonment or death in “cases of exceptional gravity”. This charge was withdrawn by the prosecution in March 2006 before the trial started.

FIFTH CHARGE – IMPAIRMENT OF THE DEFENSIVE POWER OF THE STATE

The CUD political leadership, journalists and the political parties forming the CUD were charged with this crime. Article 247(a) and (c) of the Criminal Code defines it as follows:

“whoever intentionally impairs the defensive power of the state:

- (a) by unjustifiable surrendering, or by destroying, sabotaging or putting out of action any enterprise, installation or position, any means of production, trade or transport or any works, establishments, depots, armaments or resources of a military nature or intended for the defence of the country; or
- (b) [...]
- (c) by publicly instigating refusal to serve, mutiny or desertion, or by inciting a person liable to military service to commit any of these crimes;”

The crime is punishable with five to 25 years’ rigorous imprisonment, or “in case of exceptional gravity, such as in time of war or danger of war”, with life imprisonment or death.

The prosecution alleged that the CUD leaders were part of a criminal conspiracy which led to the setting on fire of military vehicles in November 2005, as well as inciting mutiny and desertion. The journalists (defendants 70 to 90) were accused of taking part in such criminal conspiracy by publishing materials aimed at inciting division within the military.

SIXTH CHARGE – HIGH TREASON

The prosecutor charged the CUD leaders and the political parties forming the CUD with high treason, according to article 248 (b) of the Criminal Code, which defines it as follows:

“Whoever, enjoying Ethiopian nationality [...]:

has dealings with or keeps up a secret correspondence with a power at war with Ethiopia, or with a person or body acting on behalf of such power, for the purpose of ensuring or promoting the enemy’s success in any manner whatsoever.”

The crime is punishable with five to 20 years’ rigorous imprisonment, or “in cases of exceptional gravity” with life imprisonment or death.

The defendants were charged with siding with and providing support to the Eritrean government and the Ethiopian People’s Patriotic Front (EPPF), which is supported by Eritrea.

15

SEVENTH CHARGE – GENOCIDE

Originally, the prosecutor charged the CUD leaders, officials and supporters, and the journalists with the crime of genocide. This was amended to “attempted genocide” in March 2006, before the trial started.

Article 269 of the Criminal Code defines it as follows:

“Whoever, in time of war or in time of peace, with intent to destroy, in whole or in part, a nation, nationality, ethnical, racial, national, colour, religious or political group, organizes, orders or engages in:

- killing, bodily harm or serious injury to the physical or mental health of members of the group, in any way whatsoever or causing them to disappear; [...]”¹⁶

The crime is punishable with five to 25 years' rigorous imprisonment, or "in more serious cases" with life imprisonment or death.

The acts deemed by the prosecution to constitute genocide are listed on the original charge sheet as follows:

- "beatings causing bodily injury on a Tigrayan-born individual¹⁷...";
- arson on the home and property of two Tigrayan-born individuals;
- acts causing fear and harm to the mental health of members of an ethnic group based on their ethnic identity; and
- indirect and direct acts causing harm to members and supporters of the EPRDF "by excluding them from social interactions and preventing them from attending funerals".

Amnesty International early on had criticized as absurd the use of the extremely serious charge of genocide on such unsubstantial grounds.

PROSECUTOR'S DEMAND FOR MANDATORY DEATH SENTENCES

For the first, third, fourth, fifth, sixth and seventh charges listed above, the prosecutor invoked article 258 of the Criminal Code, which provides that for those crimes which carry life imprisonment or death in aggravated circumstances, the Court shall pass a death sentence where, *inter alia*, the crime has been committed "during or under threat of war or internal disturbance". All defendants thus faced possible death sentences if convicted.

ATTACHED CHARGES

Further articles of the criminal code were attached variously to the seven main charges.

The charge sheet against the defendants stated "all of the accused are charged with criminal conspiracy and collective crimes in an attempt to overthrow the Constitution and the constitutional order". The crime of criminal conspiracy (article 38 of the Criminal Code) was attached to all of the seven main charges. Article 38 states,

(1) Where two or more persons enter into an agreement to commit a crime the provisions regarding participation and aggravation of punishment due to the above-mentioned circumstances are applicable.

Criminal Code article 32(1(a) and (b)) – 'Principal Criminal' was similarly attached to all of the seven main charges. Article 32 states,

- (1) Any person shall be regarded as having committed a crime as a principal criminal and punished as such if:
- (a) he actually commits the crime either directly or indirectly, in particular by means of an animal or natural force, or
 - (b) he without performing the criminal act itself fully associates himself with the commission of the crime and the intended result...

Finally, article 34 – Participation of a Juridical Person in a Crime, was attached to all of the charges except for the fourth charge. This article addresses the criminal responsibility of legal persons or entities. The final group on the charge sheet consisted of ten “legal persons or entities” – the four constituent parties of the CUD (AEUP, EDL, Rainbow and UEDP) and the six publishing companies. Article 34 states,

(1) A juridical person ... is punishable as a principal criminal, an instigator or an accomplice where it is expressly provided by law.

A juridical person shall be deemed to have committed a crime and punished as such where one of its officials or employees commits a crime as a principal criminal, an instigator or an accomplice in connection with the activity of the juridical person with the intent of promoting its interest by unlawful means or by violating its legal duty or by unduly using the juridical person as a means.

3.2 PRE-TRIAL PROCEEDINGS

Most of the defendants were arrested in early November 2005 as the demonstrations were beginning or under way. When they were arrested, they were not told the reasons for their arrest, nor were their families officially informed where they were held. Their relatives had to search all possible places of detention and find informal means to locate them.

The defendants were variously brought to court some days or weeks later. Ethiopian law prescribes that an arrested person must be brought before a court within 48 hours but this was not done in most cases. When they were brought to court the defendants were remanded in custody for 14 days at the request of the police for time to investigate the crime. The remand was renewed every 14 days until the defendants were formally charged on 21 December 2005.

The trial was officially known as “*Federal Prosecutor vs. Engineer Hailu Shawel and others*”, case file 43246. It was designated for hearing before a specially constituted bench of three judges, including a presiding judge of the Federal High Court in Addis Ababa.

Several pre-trial hearings were conducted, mainly to address the issue of bail and the serving and amendment of the charges.

All defendants applied for bail but this was denied by the Court on 4 January 2006.

The Court’s denial of bail was based on article 19 of the Constitution and article 63 of the Criminal Procedure Code. While the Constitution provides for the right to bail, it specifies that restrictions to such right may be imposed in exceptional circumstances prescribed by law (article 19 (6)). Article 63 of the Criminal Procedure Code provides, *inter alia*, that defendants are entitled to bail unless the offence for which they are charged carries the death penalty or imprisonment for 15 years or more.

Following the denial of bail on 4 January 2006, all the defendants, with the exception of the three civil society activists Daniel Bekele, Netsanet Demissie and Kassahun Kebede, refused to recognize the court or to enter a plea. It appears that the CUD defendants made this decision as a matter of CUD policy. According to some of the journalists, who were not CUD

officials or members, they made their own decision independently of the CUD. As a result, in March 2006, the Court entered a “not-guilty” plea on behalf of all the boycotting defendants.

The three civil society activists, who were not CUD members, took a different position about their trial, recognizing the court and entering a plea. They retained legal counsel, who entered a not-guilty plea, and appealed against the refusal of bail to the Supreme Court. In March 2006 the Supreme Court confirmed the decision of the Federal High Court to deny them bail. By the time the trial reached its conclusion in December 2007, Daniel Bekele and Netsanet Demissie had submitted to the Supreme Court and Court of Cassation a total of six requests for bail on different grounds, all of which were denied. Daniel Bekele and Netsanet Demissie had also argued that no evidence had at that point been submitted against them to justify the charges laid against them.

Daniel Bekele and Netsanet Demissie also petitioned the Court to separate their trial from that of the other defendants, on the ground that they were not CUD members or supporters and that the prosecutor had not provided any documentary evidence against them when serving the charges, and that this also violated their right to a speedy trial. The Court dismissed the request on 1 March 2006.

The pre-trial stage continued until 22 March 2006, when charges were dropped against 18 defendants (including the Voice of America journalists). The Court also ruled that the prosecution did not need to reveal the identities of the prosecution witnesses and should begin its presentation of documentary and video evidence on 2 May 2006. Advance disclosure of witnesses is usual in Ethiopia but safety of witnesses was cited by the prosecutor to justify his request for non-disclosure, which was accepted by the court. In a similar, later ruling, the Court also allowed defendants not to disclose their list of witnesses to the prosecution when the defence case opened.

3.3 THE COURT

The pre-trial hearings were held in the Federal High Court in central Addis Ababa. For the trial itself, the court was moved to the suburb (or sub-city) of Kaliti on the outskirts of Addis Ababa. The trial took place in a building in Kaliti, which was previously an urban-dwellers association (*kebele*) hall, around 45 minutes’ drive from the centre of Addis Ababa and close to the Kaliti prison where the defendants had been moved. After July 2007, the trial was moved back to the Federal High Court for the final stage involving only Daniel Bekele and Netsanet Demissie.

The trial was held before a special bench of three judges of the Federal High Court. It was conducted in the official Amharic language but for the first time in Ethiopia’s court history, to Amnesty International’s knowledge, the court provided simultaneous Amharic-English interpretation for the international observers and others, such as international media representatives (the BBC, Reuters, Associated Press and others) who attended at times. Such interpretation service¹⁸ was discontinued in October 2007, when the Court reconvened in the Federal High Court in Addis Ababa, after the summer 2007 recess, following the presentation of defence for Daniel Bekele and Netsanet Demissie.

Although trial observers were not given translated transcripts of the hearings, in a few instances, during the presentation of the prosecution’s evidence, they were given English

translations of the prosecution's written explanations of its evidence.

The trial was open to the public. Members of the public, including defendants' relatives and local NGOs, required a court pass issued by the Registrar of the Federal High Court and security clearance, which were mostly granted, although it was perceived by some members of the public to be conducted in an intimidating atmosphere.

Although the day and time of each hearing was announced by the presiding judge at the end of each court sitting, there were often delays, sometimes of hours.

3.4 INTERNATIONAL OBSERVERS

The trial attracted considerable diplomatic and international media interest. The Prime Minister stated on a number of occasions that the trial would be public and open to observers.

The Presidency of the Council of the European Union (EU) appointed a trial observer, who attended virtually all the hearings.

The first EU trial observer covered the trial up to August 2006 and delivered a preliminary report to the EU delegation in Ethiopia, which was then conveyed to the Ethiopian Minister of Justice. A second EU observer was appointed for the remainder of the trial. They were not allowed to meet the defendants. Both EU observers were bound by an undisclosed confidentiality agreement between the EU and the Ethiopian government and did not talk to the media. The final trial observation report was submitted to the government and the EU at the end of the trial. Neither the first observer's preliminary report nor the final report have to date been made public by the EU nor has the Ethiopian government given a public reply. To Amnesty International's knowledge, the EU does not intend to publish its observers' reports.¹⁹

In addition to the observers appointed by the EU Presidency, staff from several embassies in Addis Ababa observed the trial on a rotation basis, while the US embassy had one of its staff attending on a regular basis.

Among international non-governmental organizations, Lawyers Without Borders²⁰ conducted a full trial observation but has not published its report. Representatives of ActionAid²¹ attended most sessions and representatives of the International Federation of Human Rights (FIDH) and Amnesty International were present for a few hearings.

Staff in the office in Addis Ababa of the UN High Commissioner for Human Rights also attended some of the hearings. A representative of the Inter-Parliamentary Union (IPU) attended for a short period because of IPU's concerns about the human rights of parliamentarians in respect to seven defendants who had been elected to the national parliament.

Amnesty International often sends an observer to attend political trials involving serious human rights issues in order to assess whether they meet international standards of fair trial. The organization was unable to observe this trial throughout or at length but sent a representative on two occasions, in October 2006 and March 2007. This provided brief

glimpses of the trial at the earlier stages where defendants did not submit a defence.

However, an Amnesty International delegation intending to observe the defence of Netsanet Demissie and Daniel Bekele in July 2007 did not materialise, due to the denial of visas to the designated representatives. The Ethiopian embassy in the United Kingdom informed Amnesty International that the visa applications had been referred to the Ministry of Foreign Affairs in Addis Ababa and it was awaiting a response. No response was received, so the delegates were unable to travel to Ethiopia for the trial. This meant in effect that Amnesty International was barred from observing the trial at this important stage, contrary to the Prime Minister's pre-trial assurance that the trial would be open to international observers.

3.5 PROSECUTION CASE

The trial opened on 2 May 2006 with the prosecutor's presentation of the charges and explanation of the evidence.

The prosecutor presented 19 video tapes, 2 audio tapes, over a thousand pages of documentary evidence, and had a list of over 370 prosecution witnesses. The prosecution did not present any statements made, or allegedly made by defendants.

The showing of hundreds of hours of video evidence took up the first three months of the trial. For the most part, the videotapes documented public meetings of the CUD and footage of CUD demonstrations (mostly taken by CUD and seized during the arrests and searches of offices and homes) before and after the 2005 elections. There were also tapes from government sources showing the violence that took place in Addis Ababa in June and November 2005.

During the video showings in court, concerns were expressed by defence lawyers about the relevance of the videos to the charges and to specific defendants. However, the presiding judge ordered the prosecutor to present the videos in their entirety, against an earlier suggestion of the prosecutor to present only parts of them, on the grounds that they should not be presented selectively or in a biased way.²²

Amnesty International's analysis of such videos and the court's April 2007 decision (see below), and interviews with persons present in court, could not find any reference in them or evidence of direct incitement to violent protest. Indeed, in most of the tapes, the defendants called for peaceful demonstration against the government, making explicit reference to the events in Ukraine and Georgia.²³

PROSECUTION DOCUMENTARY EVIDENCE

The prosecutor began the presentation of the documentary evidence in July 2006. (It should be noted that Daniel Bekele and Netsanet Demissie did not at this stage have access to the particular evidence against themselves.) The request of the prosecutor in early July to distribute documentary evidence against them was objected to by their legal counsel, and the Court, in a majority ruling given on 4 July 2006, upheld the objection.

The documentary evidence presented by the prosecutor ranged from the CUD statute, its articles of association and election manifesto, to a variety of CUD public statements and other documents. For example, documentary evidence no. 29 contained a CUD call for

“peaceful struggle” in October 2005 including non-violent civil disobedience actions, a strike, a call to people to stop listening to state-controlled televisions and radios and other examples. Many newspaper articles, editorials and interviews were also included as documentary evidence.

In mid-July 2006, the prosecutor requested the Court to allow him to introduce around 88 items of additional documentary evidence, amounting to more than 800 pages. On 31 July, the defence counsel for Daniel Bekele and Netsanet Demissie presented an objection to the admissibility of the additional documentary evidence. The grounds for the objection included that no documentary evidence had been submitted when the charges were filed, the alleged illegality of the acquisition of some of the documentary evidence, the fact that some evidence was not authentic and that some was simply “hearsay” and did not apply to the two defendants.

On 4 August 2006, on the last day before the court recess, the Court, without the presiding judge, who was absent, heard the prosecutor’s response to the defence’s objection. It then decided to adjourn the case without taking a decision on the prosecution request to submit additional documentary evidence until after the annual court recess of two months.

On 13 October 2006, the Court resumed and dismissed the objections raised by the defendants and ruled in favour of the submission of the additional documentary evidence. In doing so it stated that, given the lack of a specific law in Ethiopia concerning admissibility of evidence, allowing the presentation of such additional documentary evidence would not preclude the Court from ruling on the credibility or appropriateness of the evidence submitted by the prosecutor at a later stage.

The additional documentary evidence included more newspaper articles, as well as CUD documents allegedly showing that it had financial and political backing from members of the Ethiopian diaspora in Europe and the United States of America.

Notably, the additional documentary evidence presented by the prosecutor included, for the first time, documentary evidence against Daniel Bekele and Netsanet Demissie.

The prosecutor's description of the evidence states that the bulk of the evidence related to the first charge. While some of the documentary evidence (video, audio and written documents) was said to be relevant to the second charge, there was little explanation how this was the case. By contrast, charges 3, 5 and 7 were referred to only occasionally.

PROSECUTION WITNESSES

On 22 March 2006, the Court had ruled against the request made by defence counsel for the prosecutor to disclose his list of witnesses in order to enable them to prepare a defence. This ruling, confirmed in subsequent pronouncements of the Court, was based on alleged concern for the safety of the witnesses.

As a result, until the last hearing before the prosecutor’s first witnesses appeared in court on 25 October 2006, the defendants and their legal counsel did not have any information on the witnesses, nor on what they were going to testify about. Furthermore, at the first hearing of witnesses’ testimonies, the judges ruled that witnesses’ identities could not be disclosed to

the public, even after their appearances in court.

Of nearly 400 witnesses originally on the prosecutor's list, only around 70 were called to testify in court, with the rest excused by the prosecutor. However, on 23 November 2006, the Court granted the request of the prosecutor to call about 15 additional witnesses.

The prosecutor's witnesses testified on various issues, including public meetings of the CUD where allegedly some defendants incited participants to prepare for violence. It should be noted that many of the witnesses testified that CUD members called for non-violent civil disobedience.

A large number of witnesses stated that they were victims or witnesses of the violence that took place in Addis Ababa in June, October and November 2005. Some were police officers on duty during the demonstrations. In most cases, such testimonies did not refer to direct participation of the defendants in such demonstrations or attacks. In two cases when they did so, the witnesses mistook the identity of or failed to identify the defendants, as was acknowledged later by the Court.

As regards the testimonies of police officers and other security services, neither the prosecutor nor the judges raised any questions related to the killings and wounding of protesters by the security forces in dealing with the demonstrations in June and November 2005, or referred to the Parliamentary Commission of Inquiry.

Some witnesses testified on an alleged plot by some of the defendants for armed rebellion in East Gojjam and some of the additional witnesses testified to an alleged link between the CUD leadership and the armed opposition Ethiopian People's Patriotic Front (EPPF).

Daniel Bekele and Netsanet Demissie, both directly and through their legal counsel, extensively cross-examined the prosecutor's witnesses testifying against them, and challenged prosecution attempts throughout to portray the case against them as closely linked to the case against the CUD members and journalists.

With the remainder of defendants not presenting a defence, the evidence against the CUD and journalists went mostly unchallenged. The judges asked some questions to the witnesses following their testimonies, albeit not systematically. It should be noted that the Criminal Procedure Code states that "the court may at any time put to a witness *any question which appears necessary for the just decision of the case*" (article 136 (4), italics added).

The last hearing of 2006 took place on 29 November, when the additional prosecution witnesses testified, which concluded the presentation of the Prosecution's evidence.

The Court resumed in March 2007 after a long adjournment. After some further adjournments it rendered its first major ruling.

3.6 COURT RULING ON A PRIMA FACIE CASE TO ANSWER

On 30 March 2007, after four months of deliberation, the Court proceeded to give its ruling on the evidence presented by the prosecutor. This ruling was to determine whether and under which charges each defendant had a case to answer and should present a defence, and

whether any defendant should be acquitted with no case to answer.

Given that all except three of the defendants were boycotting the trial and had not challenged any of the prosecutor's evidence or carried out any cross-examination of witnesses and were not represented by lawyers, the court's ruling on the prosecution's evidence represented a crucial step in the trial.

The court's ruling was almost 200 pages long, and it took the court six days to read it out. The ruling began by describing the charges presented by the prosecutor, followed by an extensive summary of the prosecution evidence.

As a result of this ruling, 54 defendants were acquitted of all charges, including 21 who were tried in their absence. All defendants were acquitted of the 6th charge (high treason) and also of the 7th charge (attempt to commit genocide), while some defendants were acquitted of other charges.

With the exception of some of the additional documentary evidence which was deemed irrelevant to the case, some instances when the Court noted evidence to be repetitive and some cases where the credibility of witnesses were questioned, the Court by and large accepted and relied upon all the prosecution evidence presented.

The major part of the ruling related to the 1st charge of attempt to commit outrages against the Constitution and the constitutional order through conspiracy. The Court assessed whether the prosecutor had proved the causal link between statements made by the CUD and the events which occurred in Addis Ababa on 8 June 2005 and after 31 October 2005.

In doing so, it referred to article 24 of the Ethiopian Criminal Code, which states:

“(1) In all cases where the commission of a crime requires the achievement of a given result, the crime shall not be deemed to have been committed unless the result achieved is the consequence of the act or omission with which the accused person is charged. This relationship of cause and effect shall be presumed to exist when the act within the provisions of the law would, in the normal course of things, produce the result charged.

(2) Where there are preceding, concurrent or intervening causes, whether due to the act of a third party or to a natural or fortuitous event, which are extraneous to the act of the accused, this relationship of cause and effect shall cease to exist when the extraneous cause in itself produced the result.”

It then considered whether such events constituted crimes under Ethiopian law, and if so, whether they were covered by article 238, relating to the crime of outrage against the Constitution. Finally, it assessed whether the prosecutor had proved the participation of the defendants in the crime.

The political opinions expressed in the statements, including press releases, interviews and opinions expressed in public meetings by various CUD members, as presented by the prosecution to the Court, were critical of the government and the institutions mandated to ensure free and fair elections (i.e. the National Election Board). The Court itself

acknowledged that defendants called for various forms of “peaceful struggle”, and references were made to the “revolutions” in Ukraine and Georgia.

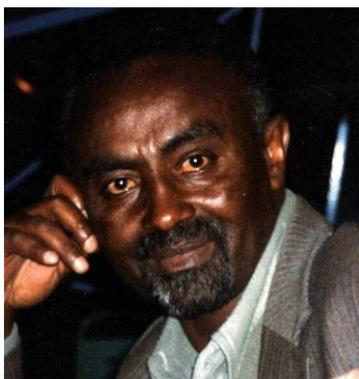
When dealing with the violence that took place in June and November 2005 in Addis Ababa, the Court referred mainly to the statements of the police officers called by the prosecutor and to some video evidence. The court referred to violence by demonstrators against police, including the killing of six police officers, but as regards the killings by the security forces, it merely spoke briefly of “loss of lives” without indicating how these lives were lost, at whose hands or how many. There was no mention of the parliamentary Commission of Inquiry into the demonstration violence,²⁴ which even took evidence from the CUD leaders in prison while the trial was proceeding.

The Court ruled that the activities of the CUD and the statements issued by newspapers had a “cause and effect” relationship with the violence. It based its ruling on article 24 of the Criminal Code, which states: “this cause and effect shall be presumed to exist when the act within the provisions of the law would, in the normal course of things, produce the result charged.” In this regard, the Court acknowledged that the CUD calls were accompanied by words such as “peaceful” struggles. However, it did not clarify whether or not, or in what way the CUD’s call for demonstrations constituted incitement to violence.

Having asserted such causal link between the CUD statements and the violence, the Court moved on to interpret the elements of the crime under article 238 of the Criminal Code. In doing so, it seemed to consider the statements of the CUD leaders regarding the alleged fraud in the elections, and their subsequent decision not to enter Parliament, as sufficient to constitute a crime under article 238.

In ruling on the criminal responsibility of each defendant for each crime alleged, the Court appeared to have rejected the prosecutor’s case that a criminal conspiracy existed among all defendants to commit the crime. In fact, the Court, after clarifying the concept of conspiracy under Ethiopian law, applied it only with regards to the members of the CUD Supreme Council and the CUD adviser Professor Mesfin Woldemariam. The Court ruled that they should present a defence on this charge, regardless of whether or not they individually took part in the meetings that decided the political strategy of the CUD.

For the other defendants, the Court proceeded to assess whether the evidence of the prosecutor provided a *prima facie* case that the defendants individually participated in the criminal activities instigated by the CUD Supreme Council. In doing so, the Court acquitted 20 defendants on the grounds of lack of evidence presented by the prosecutor.



Kassahun Kebede ©Private

The Court also ruled on the evidence presented against the 14 journalists. For seven, the Court stated that the contents of the newspaper articles were similar to the contents of the CUD Supreme Council’s decisions and directions, and thereby ordered them to present their defence. Seven others were acquitted for lack of evidence.

Of the three civil society activists, Kassahun Kebede was acquitted on the grounds that the prosecutor had not

proved he was in the leadership of the Ethiopian Teachers Association (ETA).

In a majority ruling, the Court ordered Daniel Bekele and Netsanet Demissie to present a defence on the 1st charge. The presiding judge filed a dissenting opinion, acquitting the two men.

The four political parties composing the CUD coalition were acquitted on the grounds that the law of Ethiopia did not provide for criminal responsibility of “judicial persons” for the crimes on which they were charged.

The Court dealt briefly with the other charges, as follows:

- On the 2nd charge, of “obstruction of the exercise of constitutional powers”, the Court acquitted all the defendants with the exception of the members of the CUD Supreme Council, who were found to have a case to answer. As grounds, the Court stated that the statements brought as evidence of the first charge showed that the CUD leaders had attempted to obstruct the activities of the Election Board.
- On the 3rd charge of “inciting and organizing an armed rebellion against the government”, the Court found that the only evidence presented by the prosecutor related to the organizing of an armed group in the countryside. Only five (of the originally more than 70) defendants were ordered to present a defence to this charge.
- On the 5th charge, revised as “attempt to impair the defensive power of the state”, the Court found that the prosecutor’s evidence provided a *prima facie* case in relation to the burning of military vehicles on 8 June 2005. As such, only those 10 defendants who were members of the CUD Supreme Council at that time were ordered to defend themselves, together with the editor-in-chief of *Abay* newspaper. The other defendants were acquitted of this charge.
- On the 6th charge of high treason, the Court found that the prosecutor, despite various witnesses and documentary evidence presented, failed to prove that the defendants developed a relationship with the Government of Eritrea for the purpose of facilitating its war efforts against Ethiopia. As a result all 39 defendants were acquitted of this charge. One judge dissented on this part of the ruling.
- On the 7th (revised) charge of “attempt to commit genocide”, the Court ruled that the prosecutor failed to prove any intent of the defendants to destroy members of a group in whole or in part, and acquitted all 70 defendants of this charge. One judge dissented on this part of the ruling.

After the ruling, the prosecutor appealed to the Supreme Court against all the acquittals.

3.7 PREPARATIONS FOR A POSSIBLE DEFENCE

As a result of the ruling, as many as 15, or possibly more, defendants said they were considering whether to present a defence at this late stage. CUD leaders raised issues related to the preparation of their defence, and requested copies of the video and audio evidence, witnesses’ testimonies and the Court’s ruling, and requested the court to allow them to meet

among themselves to discuss their defence.

After a few inconclusive hearings on this matter, on 2 May 2007 the Court accepted the requests and ordered the prison administration to arrange for their viewing of video evidence. The Court also said that the defendants could meet in prison to confer. Defendants later complained that the time given to their permitted meeting on 5 June 2007 was short and they were not allowed a postponement which they had requested on account of the absence of Hailu Shawel, the principal defendant, who was in hospital. The Court refused the defendants' request for the return of documents and notes they had taken of the hearings which had been confiscated at their homes or offices when they were arrested or by the prison authorities.

In the weeks between 2 May and 11 June 2007, there were various hearings on technical and administrative matters including the availability of the prosecutor's evidence, and transcripts of witnesses' testimonies. On 1 June 2007 the court ordered the defendants to complete their viewing of the video evidence and prepare their defence to start on 11 June 2007.

3.8 VERDICT AND CONVICTIONS

On 11 June 2007 when the court convened, the defendants requested the judges hear their complaints about the absence of two of the prosecution videos and their anxieties over the ill-health of Muluneh Eyuol, who had been moved to the Central Prison as a prison punishment. Some 15 defendants were represented by legal counsel and notified the court that they would submit a defence.

After the prison administration reported on the circumstances under which the defendants watched the videos and heard the audio evidence, some defendants were frantically indicating their wish to speak, but were not given the opportunity to do so.

The presiding judge was reported to have then stated that despite the two months given by the Court, most of the defendants did not take seriously the order of the Court to defend themselves, since they had not taken steps to start their defence.

The presiding judge said the judges would adjourn for ten minutes to consider the effect of their not having submitted a defence. When the three judges returned two and a half hours later, they stated they had reached a decision. The Court ruled that a defendant who fails to present a defence is deemed guilty as charged.

Accordingly, the Court immediately found that 38 defendants, as well as one defendant *in absentia* and the publishing companies, were guilty as charged, as they had presented no defence. It ordered the defendants who had said they would present a defence, as well as Daniel Bekele and Netsanet Demissie, to appear in court the next week to start their defence.

Accounts of the hearing on 11 June 2007 and testimonies gathered by Amnesty International from some of the defendants and international observers indicate that the Court's sentence came as a surprise and created some confusion in the court. Most observers were expecting some further rulings on the issue of the defendants' petitions for full access to all prosecution evidence.

While the defendants had previously been asked to present a defence, at no point during this crucial hearing did the judges ask the defendants collectively or individually whether they intended to present a defence. No defendant had said they would not present a defence. Nor did the rulings in previous hearings suggest that the court intended to pass a guilty verdict should the defendants fail to file their defence with the Court's Registrar.

3.9 SENTENCING AND PARDON

In a subsequent hearing, the prosecutor demanded death sentences for all those found guilty by the Court.

On 16 July 2007, the Court sentenced the 38 convicted defendants (CUD leaders and journalists) to life imprisonment or long-terms of imprisonment. It also ordered them to be deprived of their political rights²⁵ for five years.

At this stage, the parallel non-judicial process of pardon described in section 7 came into play. The 38 convicted defendants signed a letter of apology on 22 July 2007 addressed to the Prime Minister and some days later they were pardoned by the President of Ethiopia and released. The pardons lifted their prison sentences and restored their political rights.

The 15 or more defendants who had said they would present a defence then withdrew their intention to defend, and the court found them guilty as charged and sentenced them to various terms of imprisonment. They subsequently signed the same apology letter and were pardoned and quickly released.

This left only two defendants still on trial – civil society activists Daniel Bekele and Netsanet Demissie, who had declined to sign the apology letter on the grounds that it appeared to incriminate their lawful civil society activities, and continued with their defence case.

Some days later, the court found four of the publishing companies on trial guilty as charged, ordered them to be dissolved and fined them between 60,000 and 120,000 birr (USD equivalent \$12,000 and \$24,000²⁶), while two other publication companies were acquitted for lack of evidence.

3.10 DEFENCE OF DANIEL BEKELE AND NETSANET DEMISSIE



Daniel Bekele ©Private

As described above, Daniel Bekele and Netsanet Demissie (together with Kassahun Kebede, another civil society activist, who was acquitted in April 2007) had from the start distinguished themselves from the other defendants by presenting a defence as well as a series of bail applications and appeals. Their early application to be tried separately was rejected by the Court.

They were tried from the start alongside the other defendants. They presented their defence on 27 July 2007 soon after the court's ruling that they had a case to answer on the 1st charge.

As lawyers themselves, they had from the start participated fully in the trial along with their defence counsel. They

challenged the prosecution on points of law and constantly complained when the prosecutor systematically lumped them together with the CUD defendants, which the presiding judge eventually criticised and ordered the prosecution to stop. The defendants were not always given the opportunity to speak and were on several occasions prevented from cross-examining prosecution witnesses.

PROSECUTION CASE

The prosecution had alleged that Daniel Bekele and Netsanet Demissie attempted through conspiracy to overthrow the Constitution and the constitutional order by mobilizing and inciting violence and using the organizations they represented (that is, ActionAid and the Organization for Social Justice in Ethiopia) as instruments to commit the crime.

When Daniel Bekele and Netsanet Demissie had initially been charged, the prosecutor did not include any documentary evidence specifically referring to them. Given that the list of prosecution witnesses was also withheld, their separate trial began with no evidence at all having been presented to substantiate the charges against them.

The prosecutor had argued that all the defendants were “conspirators”, including Daniel Bekele and Netsanet Demissie, and that therefore all evidence presented applied to all defendants. This was strongly objected to by Daniel Bekele and Netsanet Demissie’s defence lawyers. Eventually, in July 2006, the presiding judge agreed with the defence. However, subsequently, the Court accepted the request of the prosecutor to file additional documentary evidence, among which there were documents purporting to prove the charges against Daniel Bekele and Netsanet Demissie.



Netsanet Demissie ©Private

The prosecutor’s evidence against them consisted of various documentary evidence and testimony from seven witnesses. This evidence was presented to show that the defendants were representatives of the CUD, actively instructing people to incite protest with the view of overthrowing the constitutional order, and using the associations they represented to incite such protest.

Of the nine documents that referred directly or indirectly to Daniel Bekele and Netsanet Demissie, the prosecutor submitted some explanation of only four documents purporting to prove the charge against them.

The first item of evidence was an unsigned and unauthenticated computer print-out of a two-page letter (additional documentary evidence No 52), allegedly written by Elias Kifle (the exile owner of Ethiopian Review website, who was tried in his absence and acquitted) to Ms Frezer Negash (a journalist working in Ethiopia for the US-based Voice of America radio station, briefly detained but not charged) and to another person. The letter allegedly indicated that the two defendants were contact-persons for the CUD based on what the CUD president Hailu Shawel was reported to have said. The defence responded that this document was fabricated.

A second item of documentary evidence whose authenticity was likewise strongly contested by the defence was another computer print-out (additional documentary evidence No 65). It consisted of a compilation of opinions published by various media criticising the government but without any advocacy of violence. Two prosecution witnesses alleged that Daniel Bekele and Netsanet Demissie had given the media materials for distribution inciting people to mobilize persons to carry out demonstrations and other acts in line with the CUD instructions.

Daniel Bekele and Netsanet Demissie, both directly and through their legal counsel, tried to extensively cross-examine the prosecutor's witnesses testifying against them. Their court presentations were frequently obstructed by the judges. In early November 2006, apparently as a reprisal for their cross-examination of some prosecution witnesses, the two men, who had first been held in solitary confinement, were moved to separate zones from other defendants in a different part of Kaliti prison which was overcrowded, dirty and noisy. They protested against these reprisal measures and said they would no longer be able to participate in the trial. They complained to the court that they were "psychologically tormented", could hardly sleep, were not well enough to cross-examine witnesses, and were prevented from being able to defend themselves properly. The presiding judge remonstrated against the prison administration, stating that its action was illegal, and ordered them to be returned to their original cells, which was done after some delay.

Under cross-examination from the defendants and their legal counsel, the two prosecution witnesses gave contradictory statements and presented different versions of the events concerned. For example, as mentioned in the unofficial translation of the Court's summary record of hearings, both witnesses claimed that they incited, on instructions from the defendants, anyone they met on the street. However, they admitted they could not provide the Court with the name of any persons they allegedly incited.

One witness claimed that, although he did not know Daniel Bekele until meeting him for the first time in a cafe for about two minutes, Daniel Bekele instructed him to organize the people to riot. The witness also stated that he [the witness] did not know the name of the owner of the house where he claimed he had been in hiding for two months before surrendering at a police station as a wanted person.

The prosecutor also presented as evidence the proceedings of two meetings of NGOs held in Addis Ababa in August 2005, which resulted in a joint civil society call entitled "National interest should come before the interest of political parties", issued on 9 August 2005. The statement called on all opposition MPs-elect to join the parliament and for contested electoral results to be settled in court – which was, in fact, directly the opposite of the CUD position. It also called for an independent inquiry into the violence following the May 2005 elections. It called for a peaceful response and contained no advocacy of violence against the government.

THE APRIL 2007 PRIMA FACIE RULING

In a majority ruling on 5 April 2007, the Court found that the prosecutor's evidence proved *prima facie* that Daniel Bekele and Netsanet Demissie were related to the CUD and took part in the criminal activity, as charged, and had a case to answer on the 1st charge of committing outrage against the Constitution, which was the only charge against them.

The presiding judge dissented with the majority ruling. Notably, in his dissenting opinion, he argued that the prosecutor did not offer evidence to prove the relationship of the defendants with the CUD or to prove that the defendants used their NGOs to overthrow the Constitution. Indeed, he argued that the statement issued by the civil society groups did not have any criminal content. He also expressly questioned the credibility of the witnesses presented by the prosecutor.

The presiding judge found that Daniel Bekele and Netsanet Demissie should be acquitted of all the charges against them. However, the majority verdict prevailed, as required by law.

Daniel Bekele and Netsanet Demissie appealed against the verdict. The Supreme Court rejected the appeal on procedural grounds on 19 July 2007.

A week later, Daniel Bekele and Netsanet Demissie began the presentation of their defence to the 1st charge, of outrage against the Constitution.

DEFENCE CASE

On 27 July 2007, the defence started to present its witnesses. They included former (recently released) co-defendants in the trial, such as members of the CUD Supreme Council, and also friends and neighbours of the two defendants, other civil society activists involved in activities related to the election and post-election period in 2005, and an international adviser who had coordinated donor support for the elections and capacity building.

The main line of the defence, through the testimonies of the above mentioned witnesses and around 300 pages of documentary evidence filed in support, was that:

- They were not members of CUD and had no connection with the CUD;
- The civil society work in which the defendants participated was legal and peaceful;
- The activities of the defendants were peaceful and within the framework and mandate of their respective organizations;
- The testimonies presented by the prosecutor's witnesses were false and some of the documentary evidence was fabricated and inadmissible.

Defence witnesses included some released CUD leaders who testified that the two were not CUD members, NGO activists who testified on their peaceful activities and their character, and the international election advisor who said they did not depart from their authorized tasks of election observation.

Overall, the defence presented 29 witnesses, who were considered in four hearings from 30 July to 2 August 2007.

Despite a request by the defendants to allow the defence and the prosecutor to present their final arguments quickly with the view to completing the trial before the court recess due to start in early August, the Court ruled for the adjournment of the trial until 9 October. It instructed the prosecution and defence to make their final statements in writing by 25 and 30 August 2007 respectively.

VERDICT AND SENTENCING

On 9 October 2007 when the court reconvened after the recess, the presiding judge announced that the Court needed more time to examine the final statements by the prosecutor and the defence. He adjourned the Court to 22 November 2007. On that date he announced that one of the three judges was ill. After a further short adjournment, a substitute judge was appointed and given a month to familiarize himself with the case. A verdict date was set for 24 December 2007.

On 24 December 2007 the Court gave its verdict. As in April 2007, it was a majority ruling with the presiding judge dissenting. The majority ruling found Daniel Bekele and Netsanet Demissie not guilty of the charge of outrage against the Constitution but guilty of the charge of provocation and preparation (rather than commission) of the offence under article 257 of the Criminal Code.²⁷

The majority ruling expressly acknowledged that the two defendants were not CUD members. The ruling stated that the prosecutor failed to provide sufficient evidence to prove that the defendants were contact persons of the CUD, or that they were part of a criminal conspiracy.

The majority ruling also explicitly stated that all the activities of Daniel Bekele and Netsanet Demissie were legitimate civil society actions and completely lawful. It strongly rejected the prosecutor's argument and evidence that the two defendants used their organizations to incite violence.

The only evidence on which the judgment rested was the statements of the two prosecutor's witnesses, whose credibility had been strongly contested by the defence and also by the dissenting opinion of the presiding judge. Even on the testimonies of these two witnesses, the majority ruling admitted that the testimonies were contradictory and there was no evidence of the crimes having been committed. It expressed reservations, and regrets that the witnesses were not able to provide the Court with more credible and detailed information on their actions. The ruling even praised the two defendants for their civil society activities which it acknowledged were fully legal, peaceful and courageous.

Nevertheless, it concluded that while it was not proved that Daniel Bekele and Netsanet Demissie had any connection with the violence, they were guilty of inciting individuals, apparently the two prosecution witnesses.

Sentencing was set for 26 December 2007. The prosecution demanded a sentence of ten years' imprisonment. The court sentenced them both to two years and six months' imprisonment.

REMISSION FOR GOOD BEHAVIOUR REFUSED

In the Ethiopian court practice after sentencing, one-third remission of sentence²⁸ for good behaviour in prison is usually quickly granted by the court on the recommendation of the Prison Administration, unless the prisoner has failed to meet the behaviour criteria, which is rare. In the case of Daniel Bekele and Netsanet Demissie, who had already served two-thirds of their sentences, it was expected that this would be expedited quickly and lead to their release.

There was considerable diplomatic and international campaigning activity for their quick release – after all, the opposition leaders and principal defendants had been pardoned and released more than six months earlier.

Yet the Prison Administration took no steps to put into effect the remission process. It made no recommendation for remission nor did it give any reason or allow the two men to make representations for remission for the remaining part of their sentence. Instead, at the end of January 2008, they were separated and taken to another part of the prison with harsher conditions. No reasons were given for this decision. Daniel Bekele and Netsanet Demissie were not able to meet to discuss submitting a court appeal.

PROSECUTION APPEAL

In mid-February 2008 the prosecution appealed against the verdict and sentence, demanding they be convicted of the original charges and demanding the death penalty. For their part, the defendants appealed against their conviction, reiterating their innocence.

Given the terms of the prosecutor's appeal (challenging all the evidence presented by the defendants and requesting their convictions under the original charges), it was possible under Ethiopian law that the Supreme Court would order their continued detention (without bail) pending the hearing of the appeals, which might not be heard for a long time and might last for many months or more, even long after they had served the full term of their sentence (that is, by May 2008.)

The Supreme Court convened on 25 March 2008, originally to hear the appeal of the defendants, but decided to hear both prosecution and defence appeals on 3 April 2008.

PARDON AND RELEASE

It was in this context that they finally signed the same apology letter which other defendants had already signed, and which they had initially refused to sign. The letter was presented to them by the "Elders" – a group of prominent Ethiopians with no political affiliations who had been responsible for the informal mediation process between the CUD and the EPRDF which had resulted in the pardon process (as detailed in Section 7).

After they signed the apology letter, the process moved extremely speedily, and the prosecution withdrew its appeal (as did the defence too). They were pardoned by the president and released on 28 March 2008.

4. AMNESTY INTERNATIONAL'S CONCERNS ABOUT THE TRIAL

This section sets out Amnesty International's human rights concerns about the main CUD trial following from the trial narrative in the previous section. It focuses on issues of fair trial and the right to freedom of expression, association and assembly. It examines fundamental international standards of fair trial, such as the presumption of innocence, the right to present a defence and the right to adequate time and facilities to prepare a defence, as well as the substance of the trial and whether the defendants who were convicted received a fair trial by an independent and impartial court.

As described above, all convicted defendants were in the end released through presidential pardons. Section 7 describes the pardon process and the complex relationship which developed between the trial and the pardons, which came about as a result of a simultaneous and unprecedented informal process of mediation by the "Elders" between the CUD and the ruling EPRDF party (and effectively the Prime Minister).

The trial is analysed in relation to international human rights law and Ethiopia's obligations arising from its ratification of international and regional human rights treaties, in particular the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (African Charter), as well as Ethiopia's own Constitution and laws. Provisions in articles 9 and 14 of the ICCPR and articles 6 and 7 of the African Charter provide minimum standards of fair trial which must be afforded to all those charged with a criminal offence.

4.1 GENERAL FEATURES OF THE PROCEEDINGS

Features of the trial which were generally positive, though not always so, were as follows:

- Consistent with the right to a public hearing, the trial took place throughout in open court with the attendance of the defendants' relatives, the general public, local and international media, diplomatic representatives and other international observers, who were all to Amnesty International's knowledge given court passes to attend without refusal or any onerous restriction. There was, however, an atmosphere of intimidation reported, and there was often little space left in court due to the presence of numerous security personnel.
- Consistent with the right of civilians to be tried by an ordinary court, the defendants were tried before an ordinary court which was established for the case (as a special bench).
- Consistent with the right to defend oneself or to be defended by a legal counsel of own choice, the three defendants who were presenting a defence from the start were often – but not always - allowed to speak in their defence, to submit documents, petitions, as well as to call and cross-examine witnesses, though this was often obstructed by the judges.
- Defendants not presenting a defence were often - but not always - allowed to present to

the court requests and complaints relating to their prison conditions, by raising their hands.

- On some occasions the Court ruled in favour of defendants' complaints against the Prison Administration and criticized the latter for ignoring Court orders - although on other occasions complaints were ignored or rejected.
- Some international observers and journalists were allowed and present at different stages or throughout the trial – although Amnesty International's second delegation of representatives was refused entry into Ethiopia. Simultaneous Amharic-English translation was provided at the court's expense.
- There was no substantial delay in laying charges and opening the trial.

4.2 SPECIFIC CONCERNS ABOUT THE FAIRNESS OF THE TRIAL

Before the trial started substantively, the pre-trial stages raised some serious concerns in relation to international standards of fair trial, including:

- The accused were arrested without warrant and were not brought to court within the stipulated 48 hours.
- Documents and other materials belonging to the accused were seized in their homes or offices by police without warrants, and not returned to them later for the purpose of preparing their defence.
- Lawyers' meetings with their clients, who at that stage had not yet decided to boycott the trial, were restricted and the prison authorities refused to allow their meetings to take place in private and throughout the trial often obstructed communications with their clients or sharing of documents.
- Lawyers offering to represent the CUD defendants in the early stages of the trial were harassed and threatened by security officers.

All defendants considered themselves innocent of the charges, and all except the three civil society activists decided to present no defence, claiming they would not receive a fair trial for political reasons and that the court would not be independent and impartial. Amnesty International examines below its concerns about specific aspects of the trial in relation to international standards of fair trial.

Throughout the trial, defendants remained deeply concerned about the independence and impartiality of the court, and believed that the Court ruled in favour of prosecution submissions and against defence submissions far more than was justified by the reasons given for the rulings. The length of the trial was also a matter of concern for them, particularly the number and length of adjournments, and particularly in the case of Daniel Bekele and Netsanet Demissie's longer trial.

4.2.1 PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The fact that most of the defendants decided, after the refusal of bail, to exercise their right to remain silent and not to defend themselves, does not, in itself, mean they forfeited the right to be presumed innocent, which is one of the fundamental principles of fair trial.²⁹

The burden of proof rests therefore on the prosecution to prove, beyond reasonable doubt, the guilt of the defendants.³⁰ Indeed, in trials such as this where the death penalty can be imposed, the standards of proof are even more stringent.³¹

At the beginning of the main CUD trial in May 2006, Amnesty International expressed its concerns that the presumption of innocence may have been prejudiced by statements made by the Prime Minister, the Minister of Information and state media commentators accusing the CUD of fomenting violence and ethnic hatred, committing treason and planning a Rwanda-type genocide.³²

For most of the trial, the prosecutor kept calling the defendants “conspirators” or “criminals”. Only after a series of objections by the defence counsel for the civil society activists did the Court rule that the prosecutor should cease to use such terms when referring to them. It should be noted that, in doing so, the Court did not make any reference to the presumption of innocence of the defendants.

The documentary, video and audio evidence against the defendants who were not presenting a defence went mostly unquestioned by the court (see section below on admissibility of evidence). The judges asked some questions, albeit not systematically, to the prosecutor’s witnesses. This is despite the Criminal Procedure Code stating that “the court may at any time put to a witness *any question which appears necessary for the just decision of the case* (article 136 (4), italics added.)

When defendants exercise their prerogative not to present a defence, the role of the court to ensure that they receive a fair trial is even more prominent. This includes not only conducting the court proceedings in a fair manner, but also ensuring that the prosecutor does not infringe defendants’ rights and that the evidence presented meets the necessary standards of proof.

Overall, the prosecutor’s evidence went, for the most part, unchallenged by the court in any important respect, and most defendants were merely convicted as charged. The issue of the prosecutor discharging his burden of proof in the case of those not presenting a defence did not appear to be addressed by the court.

Proof of the charge beyond reasonable doubt was also highly suspect in the court’s conviction of Daniel Bekele and Netsanet Demissie, despite the thorough rebuttal by the defence (including by cross-examination of witnesses) of the prosecutor’s evidence against them. The presiding judge filed a dissenting opinion acquitting them of the charge. No satisfactory explanation was given as to why the two other judges rejected the dissenting judgment of the presiding judge, and indeed the dissenting opinion had no effect as the majority ruling prevailed.

Furthermore, the verdict in December 2007 convicted Daniel Bekele and Netsanet Demissie of a revised charge of provocation and preparation of outrages against the Constitution, in place of the original charge of outrages against the Constitution.³³

Although convicting Daniel Bekele and Netsanet Demissie, the Court seemed to have dismissed all of the evidence presented by the prosecutor, with the exception of two witnesses' testimonies, whose credibility was strongly disputed by the defence and the dissenting judge, and on which the Court itself expressed reservations. It also seemed to praise their activities as NGO leaders.

4.2.2 ADMISSIBILITY OF EVIDENCE

Central to the issue of presumption of innocence and the burden of proof is the treatment of the prosecutor's evidence by the Court.

As it became apparent during the hearings debating on the admissibility of the prosecutor's additional documentary evidence in July 2006, Ethiopian law does not have specific, detailed provisions regulating the admissibility and exclusion of evidence (including the standards that such evidence needs to meet before being admitted in a criminal case). Indeed, as mentioned by the Court itself, judges in Ethiopia enjoy an unusually wide discretion on this subject.

Despite the lack of specific evidence law, both the Ethiopian Constitution and the Ethiopian Criminal Procedure Code contain some provisions on admissibility and relevance of evidence. These provisions (quoted in endnotes) provide for:

- Prohibition of evidence obtained through coercion or inducement;³⁴
- Prohibition of evidence acquired through unlawful search and seizure.³⁵

The Criminal Procedure Code also contains provisions limiting the admissibility of out-of-court statements. The general rule, as expressed in article 136, provides that only relevant testimony of a witness who has testified in court and been cross-examined can be admitted in evidence. This is in line with relevant international human rights standards that recognize the right of the accused to "examine, or have examined, witnesses against" him or her.³⁶ Exceptions, allowing the admissibility of out-of-court statements (articles 144 and 145), relate to depositions made during a preliminary inquiry hearing, if the witness is no longer available (because of death, insanity, or because he or she has left the country) and statements made by witnesses during police investigation, on request from the prosecutor or accused.

Despite the above provisions, and due to the lack of specific law regulating the admissibility of evidence, the Court exercised wide discretion on this subject. For example, the Court ruled admissible all the additional documentary evidence presented by the prosecutor in July 2006, but at the same time retaining its discretion in assessing the pertinence of such evidence to the offences, although rejection was rare.

Such rulings resulted in the admission of a huge amount of documentary and other evidence which did not seem to be relevant in proving the relevant criminal offences. It also resulted in

the admission of evidence that was allegedly obtained illegally (for example, without the necessary warrants) or was fabricated, as was argued by Daniel Bekele and Netsanet Demissie in July 2006.

Despite the earlier ruling and the discretion granted to the Court by the lack of specific provisions under Ethiopian law, the Court, ruling on the *prima facie* case of the prosecution in April 2007, accepted most of the documentary and video evidence without question. As for witnesses' testimonies, the Court posed some questions to some of the witnesses, albeit not systematically, but with very few exceptions it seemed to accept their uncorroborated and sometimes dubious-sounding testimonies. The Court did reject some of the additional prosecution evidence, though this was generally those items which dated from after the arrests of the defendants, suggesting that the test of admissibility may have been simplistic.

The Court thus failed to systematically review the evidence presented by the prosecutor, partly through lack of the necessary normative framework determining admissibility of evidence, which is a vital part of fair trial. Instead, it accepted and based its verdict on evidence that was allegedly obtained illegally, or was of dubious veracity or was not pertinent to the case.

4.2.3 STANDARD OF PROOF

Closely related to the issue of the admissibility of evidence is that of the standard of proof required under Ethiopian law to convict someone accused of a criminal offence. Once again, the Criminal and Criminal Procedure Codes are silent on the level of proof required for a conviction. International human rights standards, based on the principle of the presumption of innocence, require the charges to be proved beyond reasonable doubt.³⁷

According to article 23 (1) and (2) of the Criminal Code, an offence shall be deemed to have been committed only when its legal, material and moral elements are present.

According to the Criminal Procedure Code (articles 111 and 112), every charge shall contain these elements, the time and place of the offence and, where appropriate, the person against whom or the property in respect of which the offence was committed. Furthermore, each charge shall describe the offence and its circumstances so as to enable the accused to know exactly what charge he/she has to answer.

As mentioned above, the Criminal Code states that an offence is committed when all the elements, legal, material and moral, are present.

The charges and the evidence of the prosecutor did not systematically cover all elements of the crimes. As mentioned, the evidence was often introduced without an explanation of its probative value. However, the Court did, in its April 2007 ruling, acquit several defendants for lack of evidence on all or some charges.

Nevertheless, the normative gap in the standards of proof required for conviction was clearly shown in the way the Court turned the ruling on a *prima facie* case (April 2007) automatically into a guilty verdict (July 2007) for those defendants that were judged to have a case to answer and who did not present a defence.

There is nothing in the 11 June 2007 verdict pointing to the Court having reached the conclusion that the evidence presented by the prosecutor proved *beyond reasonable doubt* the guilt of the defendants.

The extent of such a serious anomaly – which could have entailed use of the death penalty, as the prosecution demanded - can be seen in the issue related to the conduct of the police and security forces during the demonstrations in May and November 2005. This issue was key in asserting a “cause and effect” link between the statements of the CUD leaders and the violence that ensued. The Court, however, only relied on the prosecutor’s evidence, which was mainly from police officers’ testimonies. Such evidence, on its own, could not give an independent account of those events. Indeed, the Court did not take any account of the findings of the parliamentary Commission of Inquiry, nor did it refer to them. Its ruling made no mention of the fact that the police and army were the perpetrators of the vast majority of the killings.³⁸

Even accepting that article 141 of the Criminal Procedure Code requires the prosecution to prove beyond reasonable doubt the guilt of the defendants, the 11 June 2007 ruling remains of serious concern. In April 2007, the defendants were ordered to defend the charges against them. Indeed, following such ruling the Court had accommodated some of their requests for facilities and time to be able to review the evidence of the prosecutor and determine their strategies. Despite this, on 11 June 2007, the Court refused to hear the defendants’ positions, denied them even the right to make a closing statement or final addresses (as allowed by article 148 of the Criminal Procedure Code)³⁹ and summarily convicted them.

4.2.4 RIGHT TO PRESENT A DEFENCE

Everyone charged with a criminal offence has the right to defend themselves, in person or through a lawyer. This fundamental principle of fair trial is recognized explicitly both in the ICCPR (article 14(3(d))) and in the African Charter (article 7(1)(c)), to both of which Ethiopia is a party. The right to defend oneself is inherent in the principle of “equality of arms” and, in order to be fully enjoyed, it requires the right to have adequate time and facilities to prepare the defence (see section below).

As mentioned in section 3, after the April 2007 ruling of the Court on the prosecutor’s evidence which ordered 38 defendants to defend themselves on the revised list of charges, at least 15 defendants said they were considering presenting a defence. The court recognized this by agreeing to their requests for copies of prosecution evidence and the opportunity to review audio and video evidence. Some defendants had already reportedly taken steps to register that they were going to present a defence, and none of the others had indicated they would not present a defence.⁴⁰

It is acknowledged that the court on various occasions told the defendants to present their defence, and the April 2007 ruling contained an order to that effect. However, to Amnesty International’s knowledge, the court did not inform defendants that they would be automatically convicted on 11 June 2007 if they had not begun their defence by then.

Indeed, the hearing of 11 June 2007 where the presiding judge cut short the defendants’ requests in relation to their possible defence presentations, went for a brief adjournment, but after a much lengthier adjournment suddenly delivered the Court’s verdict – which came as a

surprise. The judges declared the defendants automatically “guilty as charged” because they had not entered a defence. They did not cite the legal basis for this decision.

No attempt was made by the court to call on each defendant and/or their legal counsels to declare whether or not they would present a defence. This occurred despite the fact that some defendants were actually represented by a lawyer and at least 15 had indicated they would present a defence. The right to defend oneself in person or through legal counsel applies to all stages of the criminal proceedings. It is evident that several defendants were prevented from exercising that right at the hearing of 11 June 2007.

4.2.5 ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENCE

As mentioned above, the right of defence would not be meaningful if the accused and their counsel were not given adequate time and facilities to prepare the defence.⁴¹ This right must include access “to all materials that the prosecution plans to offer in court against the accused”⁴² as well as the right to confidential communications with counsels.⁴³

These rights were violated during the trial. At the initial stages of the trial, in accordance with the much-criticized customary procedure in Ethiopia, defence counsel were not allowed to communicate with their clients in full confidentiality, and police or prison officers were present within ear-shot during the meetings. Exchanging communications and documents with their clients was also prohibited. These restrictions were not fully enforced as the trial got underway, although communications were frequently obstructed up to the end of the trial.

Furthermore, court documents and transcript of court proceedings often took several weeks before they were made available to defendants and their lawyers.

Documents seized by the police from the homes, offices or computers of defendants were not returned to them. The court denied requests by Daniel Bekele and Netsanet Demissie to return such documents for the purpose of preparing their defence.

It was noted above that the prosecutor, until July 2007, did not provide any documentary or other evidence to support the charges against Daniel Bekele and Netsanet Demissie. This left the two accused with very little information, beyond the generic charge sheet, to enable them to prepare a defence.

Throughout their trial, the judges repeatedly refused requests by their defence lawyers to disclose the list of prosecution witnesses. The Court accepted at face value the prosecutor’s argument that these witnesses could not be disclosed on account of concerns for their personal security.

It is a recognized international standard that in order to have sufficient time to prepare a defence, defendants should be given the list of prosecution witnesses in advance.⁴⁴

Although there are exceptions to this standard, including in order to ensure the protection of witnesses, such exceptions should not infringe the right of the defence to “equality of arms”.⁴⁵ Until the day the witnesses appeared in Court, defendants were not even informed of the issues on which the witnesses were called to testify. This severely hampered the preparation of cross-examination and research into the witnesses’ reputation, credibility, or

connection to the government or ruling party. It should be noted that defendants were also granted the right not to disclose their list of witnesses to the prosecution when the defence case opened.

4.2.6 VAGUE CRIMES, NOT DIFFERENTIATING NON-VIOLENT DISSENT FROM VIOLENCE

The vague wording of some of the crimes and the way the Court interpreted non-violent expression of dissent as a criminal act resulted in the curtailment of the defendants' legitimate enjoyment of the constitutionally-guaranteed rights to freedom of expression, assembly and association.

These rights are recognized both in the ICCPR and the African Charter, which also allow the state to impose some restriction on them as provided by law, necessary and proportional to the scope of, *inter alia*, protecting national security, public order or public health or morals.

Some of the crimes in the Criminal Code do not contain sufficiently precise definition, thus undermining the principle of legality, which requires that criminal law is formulated sufficiently clearly and precisely to allow individuals to know what constitutes a crime. Indeed some provisions of the Criminal Code, as applied by the Court in the CUD trial, could be interpreted as criminalizing the peaceful and legitimate exercise of the right to freedom of expression, association and assembly beyond the recognized grounds and limits provided in international human rights law.

In particular, with regard to the crime of "outrage against the constitution", which in itself is a very vague and ill-defined concept, the Court interpreted it in such a way that even calls for peaceful protests were construed as criminal acts punishable with life imprisonment or even death.

Furthermore, the April 2007 ruling did not clarify the elements of the crime (as regards advocacy of violence, for example) or clarify the "cause and effect" link between the CUD call for demonstration and other forms of peaceful civil disobedience and the violence that ensued in June and November 2005. It is not even clear from the ruling whether the defendants, in particular the CUD leadership, were found guilty because they were found to have incited demonstrations which turned violent or because of any proof that they had incited violent demonstrations.

Of the latter, as mentioned in section 3, the prosecutor presented very little evidence. The CUD's public calls for demonstration and other forms of civil disobedience (as expressed in public statements and interviews) constantly and explicitly referred to peaceful forms of protest (including with references to the "revolutions" in Ukraine and Georgia, which were in large the part of non-violent demonstrations).

If, on the other hand, the Court interpreted the prosecutor's evidence to prove that the defendants incited demonstrations that turned violent, there was no explanation to suggest that they knew or should have known that the demonstrations (and specifically the second demonstrations of November 2005) would turn violent. Nor is there any indication in the ruling that calling for demonstrations automatically proved the intent to violently overthrow the constitutional order or the government.

Indeed, article 238 of the Criminal Code requires proof of threats and other *unlawful means* aimed at overthrowing the Constitution and constitutional order (*italics added*). However, the main evidence presented by the prosecutor on this charge, on which the Court based its *prima facie* case ruling and subsequent convictions, relates to criticisms directed at the National Election Board or the ruling party, and mere predictions of what the accused believed would happen if the grievances of the electorate were not addressed. These do not seem to fall within the category of “other unlawful means” for they were not shown to be either unlawful and of sufficiently serious magnitude as to result in the possible overthrow of the Constitution or government.

As a result of this approach by the Court, and due to the vagueness and lack of clarity of the crimes of “overthrowing the constitutional order” and “obstruction of exercise of constitutional powers”, no differentiation was made between calls or acts which were non-violent and any which were or might have been violent.

Of serious concern is the guilty verdict on Daniel Bekele and Netsanet Demissie. In Amnesty International's view, no credible evidence was presented before the Court to suggest that they were engaged in more than their legitimate exercise of their right to freedom of expression and association. Indeed, as leading human rights defenders in Ethiopia, their activities, and those of their organizations, were aimed at independently monitoring the election and, in their aftermath, identifying peaceful solutions to the ensuing political crisis.

The Court in a majority ruling ended up by rejecting completely the prosecution case and the charge of outrage against the Constitution (i.e. that they were part of an alleged CUD conspiracy to violently overthrow the government). Yet it found them guilty of the amended charge of provocation and preparation of outrage against the Constitution, based on the testimonies of two witnesses whose credibility was strongly questioned in Court. The Court, holding an almost diametrically opposite view from the prosecutor's, confusingly even praised the role played by Daniel Bekele and Netsanet Demissie in trying to resolve the political crisis.

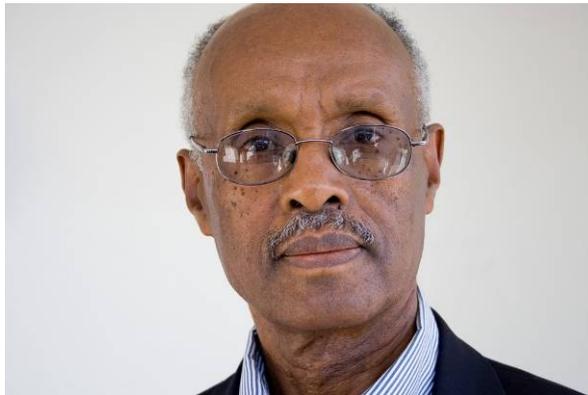
5. OTHER CUD TRIALS

At least 22 other case-files were opened by the Ministry of Justice against several hundred other detainees, of the tens of thousands of suspected government opponents who were arrested in November 2005 in different parts of the country in connection with the demonstrations. Few trials actually commenced. Most defendants, if not all, are reported to have been provisionally or unconditionally released.

The best-known of these trials was that of a CUD Supreme Council member and MP-elect, Kifle Tigeneh, together with 32 others, which was acknowledged by the prosecution to be an “extension” of the main CUD trial and is described in some detail below. One other trial of Daniel Bayissa Hailemariam and 54 others, is also described briefly below, although Amnesty International lacks many details. The aborted trial of a well-known human rights defender, Yalemzawd Bekele, is also described.

Lack of sufficient details precludes analysis of the trial of Berhane Moges, a lawyer for the CUD defendants in the early stages of their trial, who was arrested on February 2006 at a time when dozens of other lawyers offering to defend the CUD were being harassed and threatened by security officers. He was eventually acquitted of major charges similar to those against the CUD leaders but was charged with illegal possession of a weapon and then released on bail. He was finally sentenced to two months’ imprisonment, the period of which he had already been detained.

5.1 TRIAL OF KIFLE TIGENEH AND 32 OTHERS



Kifle Tigeneh ©Private

In a separate but related trial of CUD members and supporters running concurrently with the main CUD trial, Kifle Tigeneh, elected as MP for CUD in Addis Ababa, was charged with the same offences as the other CUD leaders, together with 32 other defendants arrested in November 2005 after the demonstrations started. This “subsidiary” trial continued over the same period of time in a separate court with different prosecutors and judges.

Defendants were represented by defence counsel.⁴⁶ The first defence lawyer fled the country in November 2006 after receiving threats from unidentified phone callers presumed to be linked to the security forces. The defence was then taken over by another lawyer. This trial was at times attended by the same diplomatic and other observers as for the main CUD trial. Only a few relatives of defendants and members of the public were usually able to gain entry due to the limited capacity of the small courtroom.

It differed from the main CUD trial in two ways:

- All defendants pleaded not guilty, were legally represented, and presented a defence;
- At least eight defendants complained to the court that they had been tortured in order to extract confessions. Yet the judges did not open any investigation into their torture allegations, and their statements allegedly made under torture were admitted by the Court as prosecution evidence.

Kifle Tigeneh was arrested in Addis Ababa on 13 December 2005 after being in hiding since the November demonstration. From the start it was indicated that his arrest was linked to that of the main CUD detainees. A court on 28 December 2005 ordered his release as it said there was no evidence to justify his detention; and this was upheld on appeal on 29 December 2005. Yet the police repeatedly refused to release him and asked another court for further remand orders to allow for investigation into serious charges. This was granted in further hearings, where bail was refused, with one judge dissenting.

Kifle Tigeneh was finally charged on 17 March 2006 along with the 32 others, who were mostly unknown to him, with outrages against the Constitution (article 238, Criminal Code), and with genocide (article 269) - some of the same charges as were levelled against the CUD leaders, which carried possible death penalties. They were accused of coordinating and participating in the violence, while a journalist among them from *Hadar* newspaper was accused of inciting these offences through his newspaper.

At their first court hearing, three days after being charged on 17 March 2006, several defendants complained they had been tortured in the Central Investigation Bureau (*Maikelawi*) and showed visible signs of torture injuries.

- Wassihun Alemu said he had been repeatedly beaten and denied food for six days. Beatings left him with hearing difficulties and his hand was broken.
- Captain Getachew Kebede said he had been kicked and beaten all over his body while his head and feet were tied. He had been unable to read the statement he was forced to sign, because his eyes were closed by the beatings and the blood from his nose.
- Mulunesh Mammo said she had been kicked repeatedly, insulted and left outdoors at night in the cold.
- Natnael Mekonnen said he had been stripped naked and beaten and refused food. He could not walk for a month.
- Molla Alemayehu, Solomon Demissie and Kifle Mekonnen said they had been repeatedly beaten.
- Admassu Abebe, a former soldier and war amputee, said he had been beaten with sticks by ten officers and forced to sign a statement.
- Another defendant said he had been tortured with electric shocks.

The judge ordered they be given medical treatment but did not inquire further into the allegations, although they had reportedly named their torturers in court. The judge granted an adjournment for them to arrange legal representation.

TABLE III: LIST OF DEFENDANTS IN TRIAL OF KIFLE TIGENEH AND 32 OTHERS

(*acquitted in May 2007)

	Name	Age	Personal Details
1	Kifle Tigeneh	67	MP-elect, CUD Supreme Council member, businessman
2	Shimelis Assefa*	29	Elected to Addis Ababa City Council, Ethiopian Orthodox Church deacon
3	Girma Zewdu	20	Unemployed school-leaver
4	Goitom Befekadu	21	Unemployed school-leaver
5	Zewde Ayalew	20	Unemployed school-leaver
6	Fantahun Mammo*	43	Unemployed
7	Tihitina Yimer (f)*	27	Owner of dress shop
8	Tsegaye Molla *	24	Unemployed
9	Daniel Argaw*	16	Student, brother of #10
10	Michael Argaw*	19	Student
11	Mekasha Mekonnen*	48	Kiosk vendor
12	Kassahun Aberra*	27	Unemployed
13	Wassihun Alemu*	60	Retired airforce security officer, diabetic, alleged torture
14	Mulunesh Mammo (f)*	39	Housewife, alleged torture
15	Mesfin Wolde	18	Student
16	Yosef Hundessa	18	Student
17	Biruk Alemu	17	Student

18	Solomon Demissie	70	Elected to Addis Ababa City Council, retired army supplies officer, political science graduate, alleged torture
19	Ejigu Gebremikael	50	MP-elect, MP in previous parliament
20	Gebreselassie Retta*	50	Retired police corporal
21	Getachew Kebede*	58	Elected to Addis Ababa City Council, retired army captain, alleged torture
22	Kifle Mekonnen*	60	Retired soldier
23	Adugna Gebre*	64	Retired army corporal
24	Aklilu Legesse	22	Unemployed
25	Natnael Mekonnen	28	Not known, alleged torture
26	Hailu Mengistu*	36	Not known (granted bail)
27	Atnafu Gebreselassie*	60	Retired army corporal
28	Molla Alemayehu*	56	Milk vendor, alleged torture
29	Gidi Abafita	63	Retired army corporal
30	Yimer Birru	53	Elected to Addis Ababa City Council, former soldier (wounded in the Eritrea war), real estate agent
31	Admassu Abebe	50	Former soldier, amputee
32	Yenemengist Getachew*	25	Not known
33	Solomon Aregawi*	20	Journalist on <i>Hadar</i> newspaper (granted bail)

One defendant gave fuller testimony to Amnesty International about her torture:

“On November 9, 2005 I and my sister were arrested at home at 7 am. They chained us and took us to a police station where we were put in separate cells. I found five interrogators in my prison cell. The interrogator started beating me the very moment I entered to the cell. I asked him why he was severely beating me. He sternly told me to keep quiet and continued beating me with a leather-covered metal rod. He then ordered me to stretch my hands up and kneel down. I did what I was told. Then he continued beating me while I knelt down. He invited his friends to join in, as he was tired of torturing me.

"In the meantime I was listening to my sister who was screaming as she was being beaten like me. They rolled me on the floor and beat me with a rubber stick this time. I was asking them, "What is my fault, what did I do?" I begged them to stop the beating me. I told one of them, "You said we need you for some reasons, so why do you beat me?" He said, "You keep quiet." He gave me a punch and snatched my hair and threw me at the wall. The beating continued from 9 am to 1 pm. One of the interrogators demanded I tell him what we did on November 9, 2005. He then left the cell and brought six youths. I was told to talk to the young men and confess what we did. The beating continued. The interrogators insisted I tell them who gave us kerosene to burn rubber tyres during the demonstration. I replied I didn't know.

"Then they hung me up with a rope. I was told that I would not be brought down until I informed them who gave us the kerosene. While I was hanging, I received a punch. Blood came out through my mouth and nose. After some time, they put me in a very cold water container and ordered me to reflect and reveal the "truth". In the meantime my sister fainted. I could not resist looking at my sister lying on the floor unconscious. I admitted a crime which I did not commit to secure the release of my sister.

"The interrogator received me at the gate of my cell and continued torturing me and asking me about kerosene. I confirmed to him that I am a CUD supporter but committed no crime. I confessed to something which I did not do for the sake of my sister. He demanded I sign a paper, which I did. Then he released my sister in the late afternoon. By then I was told to admit what I signed when I appeared in court. Otherwise they warned me, they would put my sister again in jail. At midnight, I was returned to the cell.

"For a month I received painful torture on a daily basis. Because I was beaten severely, I was not allowed to meet my family so as to hide my wounds from them.

"When I appeared in court I made my case to the judge, telling him what had happened. The judge said, "I cannot do anything for you. You obey what they demand you to do."

"I languished in the prison cell at Kaliti for 1 year and 6 months. I cannot explain the verbal abuse, physical and psychological harassment that I have been through. The compound I was in was unsuitable for animals, let alone human beings. The cells were full of rats and snakes were running over the roof besides as well as various terrible insects.

"All the evidence that the prosecutor presented to the court to justify my case was fabricated. The prosecutor tried to force my sister to testify against me but she fled the country. After all these efforts he failed to get any true evidence to justify that I was guilty of charges I was accused of. Finally the court set me free on April 14, 2006 and I was let out from prison on May 1, 2006.

"Even though I was released after 1 year and 6 months in prison, I was under the strict surveillance of the security. There was a rumour that the prosecutor was preparing to appeal to the Supreme Court against the court decision to release me and others. Rather than being brought back to jail, I decided to leave my country.

The trial proceeded intermittently through the rest of 2006 and 2007, with few hearings and long adjournments.⁴⁷ The prosecution submitted documentary evidence, similar to that of the main trial, of CUD statements, and a *Hadar* newspaper article; statements made by defendants, despite their complaints that these were obtained under torture; and evidence of witnesses whose credibility or evidence was dubious or contradictory, or in some cases not even incriminating. For example, Kifle Tigeneh was accused by an EPRDF cadre of calling for

people to “take up their machetes and broken bottles and rise up against the government” at a large public meeting, although no other witness statements were taken from that meeting.

On 14 May 2007, at the end of the prosecution case, the judges acquitted 19 defendants and ruled that 14 had a case to answer on the first charge only, withdrawing the charge of “attempted genocide”, which had already been revised in May 2006 from the original charge of “genocide”. The only supposed evidence for “attempted genocide” (i.e. against the Tigrayan ethnic group) had been a house break-in and theft of a camera from one of the defendants, who (herself a Tigrayan) identified the robbers as Tigrayans.

The trial ended on 31 July 2007. All 14 remaining defendants changed their pleas to guilty in order to benefit from the same pardon as the CUD leaders.

They were convicted on their new guilty pleas. They were sentenced to prison terms ranging from a few years to the heaviest sentence of 17 years for Kifle Tigeneh. They signed the same apology letter as the other CUD officials, were quickly pardoned and released on 18 August 2007, shortly after the release of the CUD leaders. Kifle Tigeneh had been part of the CUD team negotiating with the mediators, where there was an understanding that as his trial was linked to the main trial, it would be dealt with in the same way.

The trial of Kifle Tigeneh and his co-defendants clearly failed to meet the most fundamental principles of fair trial. Some of the concerns raised above about the main CUD trial (section 4) are relevant to this trial as well, in particular in relation to presumption of innocence, burden of proof and admissibility of evidence. Furthermore, the following human rights and standards were also violated:

- Right to liberty: despite two court rulings in December 2006 ordering his release, Kifle Tigeneh was kept in detention. International human rights standards prohibit arbitrary detention (in particular, article 9 of ICCPR and article 6 of the African Charter). The subsequent decision by a different court to deny Kifle Tigeneh bail seemed to be a violation of the right to liberty pending trial.⁴⁸
- Presumption of innocence: at least eight defendants complained to the court that they had been tortured in order to extract confessions. This violates the right to freedom from torture and other cruel, inhuman or degrading treatment as well as the right not to be compelled to testify or confess guilt, which is a fundamental guarantee to protect the principle of presumption of innocence.⁴⁹
- Exclusion of evidence elicited as a result of torture or ill-treatment: the fact that evidence allegedly elicited as a result of torture was admitted and invoked to convict the defendants, without the judge ordering or conducting any inquiry on the allegations, is in violation of international human rights law.⁵⁰

Amnesty International concludes that Kifle Tigeneh and his co-accused did not receive a fair trial. No credible evidence was presented in court that any of them had used or advocated violence. Some of the evidence admitted by the court was allegedly obtained by torture.

5.2 TRIAL OF DANIEL BAYISSA HAILEMARIAM AND 54 OTHERS

Dozens of CUD members and supporters were arrested in Addis Ababa and in the Amhara and Southern Regions in December 2006. They were charged in June 2007 with armed conspiracy – having links with the armed opposition Ethiopian People’s Patriotic Front as well as with diaspora opponents of the government. The leading defendant, Daniel Bayissa Hailemariam, based in the USA, was charged in his absence, as were about 18 others of the 55 named in the charge sheet. 37 of them appeared in court, including several officials or members of the Ethiopian Teachers’ Association (ETA), including Anteneh Getinet, Mekecha Mengistu and Tilahun Ayalew. Many of these prisoners, if not all, were reportedly tortured before being taken to court and were forced to sign confessions. One woman who was five months pregnant reportedly miscarried as a result of torture.

In violation of their right to be presumed innocent, alleged confessions by five of them, at least one of whom had visible facial injuries, were broadcast on state television in late February 2007. The police claimed they were part of a violent conspiracy mounted by the Eritrean government. In a later media interview, the Federal Police Commissioner denied that they had been tortured, saying that torture was illegal in Ethiopia.

Some of those accused were provisionally released in March 2007 but re-arrested in May 2007. In October and December 2007 all were released except for nine whose trial continued in May 2008.

Amnesty International believes that many, if not all of them, were arrested on account of their peaceful opinions. In some cases they were arrested on account of statements made by others as a result of torture or on the basis of other unsubstantiated evidence of an alleged violent conspiracy linking the CUD with the EPPF and the Eritrean government.

While Amnesty International does not have sufficient information to assess the fairness of the whole trial, the reports received are consistent with those of other trials, such as Kifle Tigeneh (see above). These reports indicate that serious violations of the right to fair trial took place; that allegations of torture and ill-treatment were not promptly and independently investigated, and that evidence extracted by torture was admitted in court.

5.3 TRIAL OF YALEMZAWD BEKELE AND TWO OTHERS

Yalemzawd Bekele was a human rights lawyer working for the European Commission (EC) in Addis Ababa as a gender rights officer. She was first arrested on 19 October 2006 in connection with a CUD civil disobedience action. She was released unconditionally after eight days of being held incommunicado in custody.

Her first arrest, in October 2006, took place at Moyale town



Yalemzawd Bekele ©Amnesty International

at the Ethiopian border with Kenya, when she tried to cross the border through the official border post. She was arrested on the basis of a police warrant apparently issued earlier in Addis Ababa, but not publicised, in relation to police investigations into a CUD “calendar of civil disobedience” circulating in the city in September 2006. She was taken to court in Moyale, then transferred to Addis Ababa the next day and held in the Central Police Investigation Bureau known as *Maikelawi*. She was not taken to court again but transferred for interrogation on 27 October to the Woreda (District) 8 police station, where over 100 CUD detainees were also being held in connection with the CUD calendar of civil disobedience. Many of them had been tortured there. She was reportedly arrested on the basis of a “confession” extracted under torture by one of these detainees.

Amnesty International issued Urgent Action appeals for her release as a prisoner of conscience and human rights defender who was at risk of torture.⁵¹ She was released by police unharmed and unconditionally on 27 October. However, two EC diplomats who had accompanied her protectively to Moyale were arrested after leaving her and were swiftly deported, which action the EC described as “unacceptable”.

Amnesty International made urgent appeals for another of the “CUD calendar of civil disobedience” detainees, Alemayehu Fantu, owner of a chain of supermarkets, who had been arrested on 5 October 2006. He was reportedly too afraid to report to the court that he had been tortured, although bearing visible signs of torture and not being able to walk properly. He and his fellow-detainees were released shortly afterwards. Amnesty International believes that they were prisoners of conscience.

Yalemzawd Bekele, however, was summoned to appear in court in June 2007, just as the two-year main CUD trial was ending, for police investigations into the CUD calendar of civil disobedience. She was not detained but ordered to appear in court again on 25 October 2007. On that date she was formally charged with attempting to commit “outrages against the Constitution,” like those applied in the main CUD trial, for which the punishment is up to 10 years’ imprisonment. These charges were dropped, without prejudice, before trial.

Alemayehu Fantu was also charged with the same offences, as well as a third person, Adane Shewa, who was arrested previously with Alemayehu Fantu but charged in his absence. Yalemzawd Bekele was granted bail of 5000 birr (about US\$1,000⁵²) without any conditions. Their trial was set for 15 January 2008 when the prosecution was told to present its witnesses, but adjourned to 26 March when the prosecution witnesses did not appear. On 26 March, the prosecution withdrew the charges against the three defendants, but reserved its right to reinstate the case when witnesses were available. They were released and have not to date been summoned for trial.

The CUD “calendar of civil disobedience”, seen by Amnesty International, consisted of a printed calendar of months of the year commencing in September 2006 in the Gregorian Calendar, with the addition of a 14-point call issued by the CUD for non-violent campaigning against the government and ruling party. It called for the boycotting of government or ruling party-owned businesses and institutions and similar activities, none of them involving violence. It did not call for demonstrations and did not result, to Amnesty International’s knowledge, in any known significant opposition action. There may have been other arrests in the same connection.

The charge sheet against Yalemzawd Bekele and her two co-defendants, on the other hand, claimed the calendar called for the overthrow of the government, for obstructing its functions, disturbing the authorities and impeding their functions by creating “fear, insecurity and lack of self-confidence”, and destroying the economy. It also claimed the defendants distributed this allegedly “inflammatory document” and “incited the youth to violence through speeches”.

They were accused of provocation and preparation of offences under article 257 (1) of the Criminal Code, for which the maximum penalty is 10 years’ imprisonment.

Yalemzawd Bekele denied that she or the CUD calendar of civil disobedience advocated violence. Amnesty International was concerned that as a human rights defender she was imprisoned as a prisoner of conscience and at risk of an unfair trial.

6. TREATMENT OF PRISONERS AND PRISON CONDITIONS

6.1 CONDITIONS OF DETENTION FOR DEFENDANTS IN THE MAIN CUD TRIAL

Those arrested in connection to the main CUD trial were all taken to the police Central Investigation Bureau (known as *Maikelawi*) in Addis Ababa. Professor Mesfin Woldemariam was taken from his home where he had been ill in bed for the past three months with a back complaint. He had difficulty walking and while in prison walked with the aid of sticks. He was not allowed to continue his physiotherapy. Serkalem Fasil was seven months pregnant. Neither of them was allowed any special treatment.

CUD leaders went on hunger-strike in November 2005 for several weeks in protest against their continued detention without charge, and Professor Mesfin Woldemariam resumed his hunger strike in January 2006 for two weeks.

When the CUD leaders and other defendants were charged, they were transferred to a prison in Kaliti, a southern suburb of Addis Ababa as the Central Prison was being closed for demolition and sale of its land for re-development to the African Union, whose headquarters overlooked it. They were denied visitors but allowed to send and receive laundry, and receive books, medicines and small items. They were initially allowed access to lawyers but with guards present, and could not receive or pass to their lawyers any correspondence or documents. When the CUD leaders decided not to present a defence, they were not allowed again to see the lawyers who had offered to defend them. On one highly unusual occasion the senior CUD leaders were allowed to meet and speak to the international press while in detention.

When the trial started in May 2006, the court was moved to Kaliti, where the defendants were being held. The court was near the prison, thus reducing the long journey involved from prison to court but making it more difficult for families to visit.

Conditions gradually improved as the trial proceeded and fewer armed police were posted at the court. The presiding judge also gradually became more amenable to attending to the defendants' complaints on prison conditions. However, the prison authorities often delayed implementing or ignored court orders.

Kaliti prison consisted of large zinc-roofed buildings in different compounds. These were alternately hot and cold according to the season, with some of them already overcrowded with long-term political detainees held incommunicado and suspected criminals who had not been tried. Many of these political detainees were suspected of links with the Oromo Liberation Front (OLF). On 3 November 2005 in the course of the election demonstrations, prison guards shot dead at least 19 prisoners in Kaliti prison, claiming they were attempting to escape. CUD detainees heard about the killings and saw blood-stains when they arrived in the prison, as described below by one witness.

The CUD prisoners were split up into different groups in different zones of Kaliti prison and were not allowed to communicate with each other. Within each zone prisoners could move freely during the day, converse and read. They were not allowed correspondence except for short messages checked by guards. At weekends, visitors could register and were allowed in for a group-visit, with a line of prisoners on one side of a low fence, visitors on the other side, and a space of 2-3 metres in-between which was patrolled by guards and across which they could converse or shout without any privacy. On rare occasions, private visits were allowed, for example if a relative visited from abroad. Diplomats and foreign delegations were allowed at times to visit and meet prisoners privately, though this was stopped at particular times.

Conditions varied between overcrowded, dirty and unhygienic dormitories where there were rats and lice, to smaller rooms where the most prominent CUD leaders, and later Daniel Bekele and Netsanet Demissie, were allowed radios, access to a communal television, English-language magazines (but no local newspapers), and they could bring in mattresses and some personal possessions.

Minimal medical treatment was provided in the prison but sick prisoners were taken to the Police Hospital when authorised, although there were often long delays in getting such permission. Hailu Shawel eventually was admitted to hospital for eye surgery by a foreign surgeon specially brought in.

The prisoners attended all court sessions, although most of them were not presenting a defence. They were allowed to address the court on matters of their treatment and conditions. The Court responded, in most cases, by requiring the prison authorities to report back to the court on the measures taken to address the detainees' complaints. Prison authorities sometimes delayed or failed to fully comply with the Court orders, but the court took no action to institute proceedings for contempt of court.

Prisoners were punished at one time for allegedly breaking prison regulations, but punishment seemed to be arbitrary without any proper hearing or right of defence. Muluneh Eyuol, Andualem Arage, Sissay Agane and Eskinder Nega were transferred for several months to a special dark, cold and unhygienic punishment cell at the nearly-closed Central Prison. In the case of Muluneh Eyuol, who was punished twice, it was reportedly because he wore a CUD t-shirt in court and on another occasion because he rejected a US embassy proposal that MPs-elect should take up their seats in parliament as a condition of release. They were locked up 24 hours a day except for two half-hours for washing, to use the toilet and for fresh air and exercise. At other times an open toilet bucket was kept in the cell.

Daniel Bekele and Netsanet Demissie were at first held together in a single cell in Kaliti prison, but later were transferred to solitary confinement in two separate places. They were later suddenly transferred to a communal cell, where conditions were harsh, during their cross-examination of the prosecution's witnesses, which seemed to be a reprisal or punishment. This action of the prison administration was strongly criticized by the presiding judge in court and was quickly remedied.

Berhanu Negga complained that the dirty conditions caused him asthma. He was moved after some delay to a less crowded and cleaner part of the prison.

Serkalem Fasil was not allowed to visit her husband (and media business partner), Eskinder Nega, who was held in a different section of the prison. Only when a delegation of the US-based Committee to Protect Journalists (CPJ) visited the prison in March 2006 did the authorities allow them to meet privately.

Serkalem Fasil was denied appropriate ante-natal care. She was taken to a police hospital to give birth. When her son was born, because of complications he required special-care facilities, but this was only available in another hospital, and the prison authorities refused to allow both mother and baby to be transferred there. Serkalem was quickly returned to Kaliti prison with her baby, with no post-natal facilities provided. After some months breast-feeding her son in prison, she sent him to be cared for at home by her mother.



Serkalim Fasil, Eskinder Nega and their son ©Private

“The Kaliti prison authorities made sure I was uncomfortable. I was assigned to the upper part of a double bunk, which was extremely dangerous for a pregnant woman. Fortunately, the lady assigned to the lower bed voluntarily took the upper deck. As my pregnancy progressed I spent many sleepless and tearful nights. The prison officials were too callously and sadistically contented with my pain to change my sleeping arrangement. The sleeping arrangement was the longest nightmare of my prison experience.

“As to ante-natal care, it did not exist. It was five months before I was allowed to see a specialist and then only because of the intervention of the Prime Minister’s Office at the behest of an American professor who was allowed to see my husband.

“Because of the unusually difficult pregnancy, my blood pressure shot to a soaring level, necessitating my admission to hospital during the late stages of my pregnancy. Three heavily armed male guards and one unarmed female guard were assigned to watch over me at the hospital. At most times no one was allowed to visit me, in effect turning my stay at the hospital into solitary confinement. This was an unexpected and an unhappy turn of events for me because this was when I needed the moral support and comfort of others most. However, the hospital staff were really sympathetic and did all they could to make my stay a comfortable one. I will never forget their kindness. And of course after many months I had a comfortable bed to spend the night in.

“My new-born baby was distinctly underweight at birth. The doctor immediately determined that he should be placed in an incubator. Since there were no incubators in the Police Hospital where I had been admitted, the child was taken to another hospital, the Black Lion Hospital. But hospital regulations required that at least one parent should sign before the placement of a child in an incubator. Despite the pleas of the medical personnel, the prison officials refused to allow one of us to sign the necessary document without express authorization from "higher authorities". The "higher authorities" turned down the request, preventing either parent from signing, and thus the baby was not placed in an incubator that was deemed life-saving for him. In other words, the state sanctioned the death of the child, perhaps hoping that the issue would also die with him, too. The child however survived by the will of God, defying all the medical odds stacked against him. Now, a year and seven months later, though still underweight, his health is superb”.

Another journalist, who had been arrested four times previously, described to Amnesty International his conditions of detention, first in the Maikelawi police investigation centre, then in Kaliti Prison:

“First, I was assigned to a small cell (nine meters square) with 20 people. No space to stand or sleep, air came in a small hole, the size of a finger. No toilet, we used a small barrel for urinating and excretion. Our breath, the stench of the urine and the waste matter suffocated the room. We could hardly breathe. We were allowed to get fresh air for five minutes, otherwise we were locked in a dark room 24 hours. I stayed for two months in this condition without medication, then the door opened, but movement was not allowed. In the meantime the security would come and harass you, if need be, smash you.

“After three months I was transferred to another prison called Kaliti. In my cell there were 400 people. No hole for oxygen. One shower, mostly without water, one toilet had no door and people stand beside you and watch you. There were murderers, thieves, rapists, HIV patients and three madmen in my cell. Reading was unthinkable. Police harassment was rampant. Medication was next to none.”

One woman prisoner in the CUD leaders trial, acquitted and released in April 2007, was arrested for being a CUD youth leader and election observer. Before the November 2005 demonstrations she had avoided arrest but her father was arrested instead and disappeared for four days. She was arrested by security forces on 30 October 2005 and “beaten until I was unconscious”. When her parents were brought to the Woreda II police station later that day before her release, her father was warned that he would “lose her” if she did not cease her political activities. She went into hiding again but was discovered and re-arrested on 10 November. She was taken to first to Maikelawi detention centre and then later to the female section of Kaliti prison. She told Amnesty International what she experienced on arrival:

“Fresh blood and a very bad smell were everywhere in the prison hall, which was made of metal sheets, where we would be sleeping for several months to come. A massacre of prisoners had just taken place right before our arrival at Kaliti. The bodies were buried in the compound outside the prison hall. In order to hide the mass grave, they later built a septic tank with concrete on it, which now is part of the sewage system of the mass toilet for male prisoners. The gruesome scene of newly committed mass murder, especially of OLF [Oromo Liberation Front] suspects, made me believe that death was waiting for me. Were it not fears of potential outrage from the international community and donors, the regime would not hesitate to kill me and my companions. I am sure I would have been one of those to be killed and lie buried in a mass grave.

“In Kaliti, I was denied every single right that I was entitled by the law. I endured all the hardship of prison life. Due to the immense pressure of human rights groups, I was released after 19 months.

“After being released, I was under strong surveillance by security men. My father was told to tell me to stop all my political activity. Worst of all, the prosecutor, not satisfied with my release, was preparing to appeal to the Supreme Court to imminently arrest once again. Therefore, I was forced to leave my dear country.”

With some exceptions mentioned above, defendants in the main CUD trial were not treated differently from other detainees and therefore suffered from the systemic shortcomings of detention facilities in Ethiopia. These included overcrowding, unhygienic conditions, and limited access to specialist medical care.

Of particular concern to Amnesty International was the violation of Serkalem Fasil’s rights as a female prisoner who was pregnant when arrested,⁵³ the denial of ante and post-natal care in violation of her right “to receive humane treatment and respect for their inherent dignity at all times, and in particular during the birth and while caring for their newborn children”,⁵⁴ and the serious risk to her baby’s life by decisions of prison officials over-riding professional medical opinions and warnings.

6.2 TORTURE AND ILL-TREATMENT OF DEFENDANTS IN OTHER TRIALS

Generally the CUD leaders, journalists and civil society activists in the main CUD trial were not tortured during arrest or while in custody. Most were not even interrogated and no statements taken from them by police were introduced into court. However, as in many other political arrests, many other CUD activists were reportedly beaten and tortured and some were made to sign confessions. In addition to the torture complaints made in court by several defendants in the Kifle Tigeneh trial, Amnesty International has received testimony of torture in other trials of CUD activists, one of which is described below.

“Assefa” (not his real name), a student in his early 20s, was arrested in Addis Ababa on 15 December 2006 “because I was a member of CUD, and involved in the elections and CUD protests after the elections”. He was released provisionally after being held for three months and 15 days in Maikelawi prison but not put on trial.

“The conditions were bad. For the whole period of detention, I received one meal a day. I was held in solitary confinement in a dark cell for three months. Then I was moved to another cell with 46 detainees, all of whom were CUD members. We had no beds, just the floor and a plastic sheet to lie on. I was tortured. I was falsely accused of being a member of the Ethiopian People’s Patriotic Front [EPPF].

“The first three days of my detention, I was given no food. After three days, they started interrogating me about the EPPF, asking me to tell them the names, and they repeated this question. This was the first of many incidents of torture in the office of the prison commander.

“My hands were chained together with handcuffs and I was hung from the ceiling by the chain from the handcuffs on a nail in the wall. First I was standing on a table, and then they moved the table away. From evening to morning, I hung from my wrists. They hung a one-litre bottle of cold water from my penis all night. They were telling me that they would kill me and threatened me with a gun. They asked me to work for them. They were accusing me of sending people to Gondar near the Sudan border.

"I was screaming from 10 pm till midnight, shouting "help me" and in pain. I passed out for some time during the night. In the morning at around 6 am, they brought me down. They put a hood over my head as the security officers didn't want people to see me. Afterwards, they put me in a dark room for three days. My wrists were swollen, my nails were bleeding and I had cuts to my leg that I wasn't aware of receiving during the night.

"After three days, they took me to the investigation office. They chained my feet together and then beat me with large square pieces of wood, on the back, the backside and the head. Six people beat me from six pm till one in the morning. They were also slapping my ears until my vision was distorted. They were saying "Tell me truthfully, are you a member of EPPF, tell me the EPPF members". I said to them, "I don't know".

"I vomited while they were torturing me, and couldn't control myself, and I lost control of my bodily functions.

"I was tortured about 30 times. Some times I spent the night in the office, handcuffed to the table. I was hung up from the wrist all night seven times, and three times they hung a water bottle from my penis.

"I was forced to lean against the wall, either with my arms handcuffed behind my back, or spread out. I was forced to lean with my head against the wall for two or three hours, giving me a headache and my nose bled. I couldn't feel my hands. I was dizzy.

"Sometimes they put me in "number eight", a painful posture with my hands and legs cuffed below my legs, with a stick passed between the cuffs. They questioned me and beat me for three or four hours. This happened to me on two separate occasions. Every time, they told me if I didn't tell them the truth, they would kill me. Whenever they took me from my cell, I thought they were going to kill me.

"I was questioned three times with a prisoner called "Tesfaye" [not his real name]. This happened three days in a row, about 20 days after I was arrested. I met him for the first time inside the prison, but the police accused us of knowing each other before. The first time we were tortured together, they hung him from his wrists, and put me in a "number eight". We were kept like this the whole night. The questioners were four but other police come in and went out.

"The second day, they hung him up again, and forced me to lean against the wall for five hours. They accused him of writing leaflets calling for a strike in the name of EPPF.

"The third time we were tortured together, we were both hung from our wrists for the whole night. I said we didn't know each other. After that day, "Tesfaye" became sick. He didn't eat, he didn't drink, he vomited when he ate. They didn't take him for medical treatment. Two months after the torture, he was released and his family took him to Ras Desta Hospital, but after three days he died. This was two days after I was released. I don't know what the hospital stated as the cause of death.

"Three days after I was released, I was called by the interrogators, and they asked me to work for them, that they will pay me, and I will give them some people's names. They called me six times. I went to the village where my family lived for 20 days, and then returned to Addis Ababa.

"The police came to my house to arrest me, but didn't know what I looked like, so I managed to escape and fled the country."

The testimony of “Assefa” and other cases mentioned in this report suggests that torture and other ill-treatment was used against a considerable number of individuals arrested in connection with the 2005 demonstrations. Prosecutors and judges failed to promptly and effectively investigate complaints and reports of torture and ill-treatment. Victims, including defendants who were put on trial, have had no access to an effective complaint mechanism, remedy or reparation.⁵⁵

7. MEDIATION AND PARDON

Following international concern and shock at the June 2005 demonstration killings and mass arrests by the security forces, diplomatic and civil society initiatives commenced to seek to resolve the crisis. Over the next few months the USA and other embassies met with CUD leaders (who had not at that time been detained) to persuade them to accept the election results. This failed, and the CUD went ahead with a further demonstration set for November 2005, leading to the killings, arrests and trial described above.

As the trial proceeded in mid-2006, a new informal mediation process emerged.⁵⁶ It was developed by the director of Prison Fellowship, a recognized prison welfare NGO connected to a protestant church, and the process was headed by a respected US-based Ethiopian academic, Professor Ephraim Isaac, and included other prominent Ethiopians with no political affiliations. Known as the “Elders”, they held numerous private meetings in prison with a CUD negotiating team, and separately with a senior EPRDF team with close access to the Prime Minister.

Months before April 2007 when the court judged that virtually all the CUD leaders had “a case to answer”, a draft letter was reportedly being considered by both sides (CUD and EPRDF) for joint signature in which both would acknowledge some responsibility for the demonstration violence and would agree to participate in the democratic process and abide by the Constitution. Divergent views reportedly emerged within and between both sides. By mid-2007 the mediators brought the CUD leaders in prison a letter to sign addressed to the Prime Minister in which they apologized for their “mistakes”, committed themselves “not in the future to engage in a similar activity” and to “respect the Constitution”, and asked for forgiveness. They were told they would be pardoned if they signed the letter. There was reportedly a proposal for the EPRDF to sign a similar or joint letter and for the trial then to be stopped, which was dropped. It is not clear if it was dropped at the demand of the EPRDF or government.

The procedure to grant pardon is contained in Proclamation no.395/2004 issued on 17 April 2004 in accordance with the presidential power to grant pardon (articles 71(7) and 55(1) of the Constitution). The Proclamation states that a pardon may be granted to a convicted and sentenced prisoner, conditionally or unconditionally, on the recommendation of a Pardon Board chaired by the Minister of Justice. A pardon may be revoked by the Board, and the person returned to prison to serve their sentence if the condition has been broken, with a written statement of grounds being provided for the person within 20 days, to which they should submit a reply.

It was reportedly a difficult process for the detainees to agree the text of an apology letter which would be accepted and lead to pardon. The individual CUD leaders eventually signed an apology letter on 22 June 2007, six days after they were convicted and sentenced. Some days later they were all released and the apology letter was published by the government (Table IV).

The “apology letter” was also offered for signature to all other defendants in the same trial

(including the journalists, who were not members of the CUD) and to defendants in the trial of Kifle Tigeneh and others. It was made clear by the authorities that the pardon was dependant on the defendants withdrawing their defence, pleading guilty and being convicted and sentenced. The alternative to signing the apology letter was likely conviction after a long-drawn-out trial and serving a long prison sentence. The journalists, Kifle Tigeneh and most of their co-defendants complied and signed the letter.⁵⁷ They were quickly released.

Daniel Bekele and Netsanet Demissie initially refused to sign the apology letter, saying they were innocent of the charges and that signing a virtual confession of guilt for crimes they did not commit would be against the values they stood for. They therefore proceeded with their defence. However, both Daniel Bekele and Netsanet Demissie subsequently signed the apology letter after they were found guilty, and were then quickly released.

The Prime Minister later clarified that the pardon removed the whole sentence, including the deprivation of political rights.⁵⁸ He later pointed out in parliament that the pardon was conditional and those who violated the terms of the pardon would be re-arrested and made to serve their sentence.

The authoritative text of the apology letter was in Amharic, the language of the negotiations. An English translation was published on a pro-government website.⁵⁹ There were questions about the quality of this translation and ambiguity about the precise nature of the “apology” and the “mistakes” admitted. A re-translation of the apology letter by Amnesty International is contained in Table V. The first part of the letter was not precisely an admission of culpability for a crime that a court would recognize. The second part of the letter, which amounted to conditions for pardon, committed the applicant to respect the Constitution and government authority, in other words, to carry out their activities in line with the law and peacefully.

TABLE IV: PARDON APPLICATION LETTER WITH TRANSLATION

A. AMHARIC TEXT

ቀን: ሰኔ 15 ቀን 1999 ዓ.ም.

ለክቡር አቶ መለስ ዜናዊ
 የኢ.ፌ.ዲ.ሪ ጠቅላይ ሚኒስትር
አዲስ አበባ

እኛ ስማችን ከዚህ በታች የተጠቀሰው የቅንጅት ለእንደነትና ለዲሞክራሲ መሪዎችና አባላት ምርጫ 1997 ዓ.ም ተከትሎ በተፈጠረው አለመግባባት ሕገ መንግስቱ ከሚፈቅደው ውጪ በሕገ መንግስቱ የተደራጁ የመንግስት አካላትን ለመለወጥ ያደረግነው ሙከራ ስህተት መሆኑን አምነን ተቀብለናል። ለተፈጸመው ስህተትም ኃላፊነቱን በግልና በጋራ እንወስዳለን። ለወደፊቱም በእንደዚህ ዓይነት ተግባር እንደማንሳተፍና ሕገ-መንግስቱን የማክበርና የማስከበር ዜግነታዊ ግዴታችንን በአግባቡ እንደምንወጣ፣ በሕገ-መንግስቱ የተደራጁ የመንግስት አካላት ስልጣንና ተግባር ተቀብለንና አክብረን እንደምንንቀሳቀስ እናረጋግጣለን።

የኢትዮጵያ መንግስትና ሕዝብ በፈጸምነው ስህተት መፀፀታችንን ተንንዝብው በአገራችን ባህል መሰረት ለፈጸምነው ስህተት ይቅርታ እንዲያደርጉልን በአክብሮት እንጠይቃለን።

- | | | |
|--------------------|-----------------|-----------------|
| 1. <u>ጆሀን ገሰ</u> | <u>ጆሀን ገሰ</u> | <u>15/10/99</u> |
| 2. <u>መላክ አዳኤ</u> | <u>ገደሙኒካል</u> | <u>15/10/99</u> |
| 3. <u>ብርሃኑ ገብረ</u> | <u>ገብረ</u> | <u>15/10/99</u> |
| 4. <u>ሌብረት ገብረ</u> | <u>ሌብረት ገብረ</u> | <u>15/10/99</u> |
| 5. <u>ገብረ ገብረ</u> | <u>ገብረ</u> | <u>15/10/99</u> |

B. ENGLISH TRANSLATION

22 June 2007

To: His Excellency Meles Zenawi, Prime Minister of the Federal Democratic Republic of Ethiopia, Addis Ababa

"We the undersigned, who are the leaders and members of the Coalition for Unity and Democracy (Kinjit), take responsibility for the misunderstanding that took place in the wake of the May 2005 elections. We believe and accept that our attempt to change governmental organs instituted in accordance with the Constitution, by unconstitutional means, was a mistake. We collectively and individually take responsibility for that mistake. We hereby give an assurance that we will not in the future engage in a similar activity and that we will fulfil the obligation we have as citizens to respect the Constitution and to ensure that others do the same. In future, our activity will be in full acceptance of and respect for the authority and activity of governmental organs.

"We respectfully ask the Ethiopian Government and people to recognize our sincere regret, and in accordance with our country's tradition to forgive us and accept our sincere apology."

The pardon process was advanced as a means of resolving a political crisis in a reconciliatory manner. The mediation process focused on the pardon procedure and establishing the conditions of pardon which would result in the release of the defendants who were on trial. It could only legally apply if the defendants were convicted and sentenced by a court.

The apology letter was signed voluntarily, but it is questionable whether this was under duress, given the circumstances and fears of the potential signatories, and the evident pressure on some of them to withdraw their defence and plead guilty.

The conditions of the pardon did not in theory seem notably oppressive, on the best interpretation, although it was feared to be so by several of the defendants. It did not seem to restrict peaceful opposition political activities, or expression or publication of opinion, or civil society activism.

In examining the actual implementation of the pardon to date, Amnesty International was concerned by the re-arrest on 26 December 2008 of a leading defendant, Birtukan Mideksa, who by then had become the leader of the Union for Democracy and Justice Party (UDJP), on the grounds that she allegedly broke the pardon conditions. It appears she was arrested because of a statement she made in Sweden in late 2008, denying that she had applied for presidential pardon under the terms of the pardon proclamation referring to convicted prisoners, but saying she had signed the apology letter for the Elders for the sake of reconciliation. She was returned to Kaliti prison and went on hunger strike in protest at her re-arrest. Amnesty International appealed for her release as a prisoner of conscience, imprisoned solely on account of peacefully expressing her opinions.⁶⁰

The Minister of Justice was later reported as saying her pardon was revoked and her life

sentence was re-instated. She was initially refused access to legal counsel to enable her to appeal to a court regarding the technical procedures for revoking the pardon and the grounds for the revocation of pardon. She was subsequently granted sporadic access to a lawyer, while being kept in solitary confinement. What legal means she had to challenge her re-arrest, the revocation of her pardon or her sentence remained unclear, with some indications by Ethiopian officials that a second pardon might be possible.

On 6th October 2010 Birtukan Mideksa was released, after once again requesting a pardon. The conditions that led to her release were not clear. It is believed that mediation may again have taken place to negotiate her release. Whilst imprisoned, Birtukan's case had gained a high profile internationally, and many in the international community had challenged the Ethiopian government on her continued detention.

8. COMMISSION OF INQUIRY INTO THE DEMONSTRATION VIOLENCE

This section is about a Commission of Inquiry which was set up by parliament shortly after the November 2005 demonstration killings to investigate them separately from the arrests and impending trial of CUD leaders and others.

In November 2005 the Police Commissioner presented a report to parliament which stated that nearly 200 people had been killed in the violence of June and November 2005. Parliament established an independent Commission of Inquiry into the violence. Its terms of reference according to Proclamation no.478/2005 were related to the violence on 8 June and 1-10 November 2005 in Addis Ababa and from 14 to 16 November in Addis Ababa and the Oromia, Amhara and Southern Regions. The Commission's set tasks were to examine whether excessive force was used by law enforcement institutions, whether human rights had been violated, and to investigate loss of life and destruction of property.

Ten commissioners were appointed by the parliament and they began their investigations in January 2006. The commissioners included judges, faith leaders, civil servants, academics and NGO officials. The Commission was chaired by the President of the Southern Region Supreme Court. A secretariat was established to service it.

The Commission received training in international human rights instruments which Ethiopia had ratified, as well as on the UN Basic Principles of the use of Force and Firearms by Law Enforcement Officials, conflict resolution, and national legal standards on the use of force. It developed a methodology for investigation which included media publicity, examining hospital and police records including autopsies and photographs, taking testimonies in public and in private, obtaining evidence from the traditional funeral associations in Addis Ababa (known as Idda, which deal with virtually all burials), visiting prisons and interviewing prisoners, on-site visits to places where people were killed, meeting government and opposition leaders, and interviewing police, army and prisons officers and NGOs.

On 3 July 2006 the Commission met in Awassa in the Southern Region to discuss its findings. The Commission found⁶¹ that 193 civilians had been killed (including 19 previously arrested criminal prisoners killed by guards at Kaliti prison on 3 November) and six police officers; that 763 civilians and 71 police had been wounded (including 99 women and 65 riot police); and that property worth just over half a million US dollars had been damaged, including several public buses and some government property. Most of the civilians were killed by bullets fired by police officers, backed up by soldiers. 30,000 people were detained, most of whom were beaten by police.

The majority of the commissioners found that police had used excessive force in dealing with the demonstrations. They intended to deliver their report to parliament on 7 July 2006 but parliament was closed the day before. The Commission chair said they were called to meet the Prime Minister before they presented their report. The Commission chair stated that the Prime Minister told them to reconsider their decision in consideration of definitions of

excessive force and their terms of reference. Subsequently the chair and the vice-chair of the Commission (also a judge) fled the country, saying they had received threats and feared for their lives.

In October 2006 the remaining eight commissioners presented a report to parliament which acknowledged the same statistics of deaths, wounded and property destruction, but reversed the July decision on the use of excessive force. It concluded, “[t]he action taken by the security forces to control the violence was a legal and necessary step to protect the nascent system of government and to stop the country from descending into a worse crisis and possibly never-ending violent upheaval. The issue of proportionality cannot be seen outside these realities.”

The government has not published any of the evidence collected by the Commission but has kept all the Commission’s materials secret. There is therefore no full and detailed published account of the incidents of violence investigated and compiled by the Commission. The CUD had called for peaceful demonstrations but CUD officials were not among the demonstrators or the dead, who were mostly unemployed youth. The demonstrations (called “riots” by the Commission) reportedly started as peaceful civil disobedience and shouting of slogans against the government, ruling party and security forces but ended up with violence against armed riot police (who were backed up in the June incident by a special army unit) and damage to property.

On account of a lack of narrative based on witness statements about events at numerous different places in the city, it remains unclear to Amnesty International who or which side started the violence, or at what point the security forces first employed lethal force. Demonstrators chanted slogans, blocked roads, burnt wood and tyres, threw stones at police and damaged public buses and buildings, but according to the Commission of Inquiry had no firearms. Many of those killed were shot in the forehead, indicating a shoot-to-kill policy which was disproportionate and excessive in the circumstances.

The Commission reported that the police, who employed tear-gas as well as live rounds, were ill-trained for the purpose and out-numbered. In some cases at least, there was evidently no threat to life when police shot dead women and children outside any scene of confrontational violence.

Many questions about the outcome of the Commission remain unanswered. On the positive side, as acknowledged by the commissioners who fled, it seems that the Commission’s investigations were conducted effectively and impartially and that valuable and sufficient evidence was collected, although with some limitations due to lack of full cooperation from the security forces or other officials. Yet the outcome was most unsatisfactory, with improper interference from the authorities, as well as a failure of transparency about the evidence. This led to the security forces being given blanket impunity for the use of lethal force on a large scale and without distinction of particular incidents.

As regards the trial of CUD leaders and others accused of instigating the violence, no mention was made of the Commission of Inquiry by the prosecution at any point during the trial or by the judges. The prosecution sought to establish that the defendants were to be blamed for instigating the violence but at no point mentioned that the overwhelming

proportion of the violence and killings of citizens was committed by the security forces, nor did the judges. In the Kifle Tigeneh trial, the prosecution claimed the Commission of Inquiry was not relevant to the trial on the grounds that the Commission was solely concerned with the question whether or not the security forces had used excessive force.

9. DEATH PENALTY

All the charges against CUD leaders, journalists and civil society activists carried possible death sentences if the offence was considered by the court to be aggravated by special circumstances. The prosecutor specifically and repeatedly demanded death sentences for all those convicted of capital offences, including by appealing against the non-imposition of the death penalty in sentencing.

In the sentencing of those convicted, the court did not impose any death sentence. The Prime Minister had said before the trial that there would be no death sentences.

10. SUMMARY OF CONCLUSIONS

Amnesty International's conclusions on the fairness of the main CUD and other trials as well as other human rights concerns mentioned in this report are collected and summarized below. Recommendations arising from these conclusions are set out in the next and final section.

10.1 RIGHT TO FAIR TRIAL

The Ethiopian Constitution (1995) guarantees the right to fair trial (Chapter 3, "Fundamental Rights and Freedoms", Part One on "Human Rights") and the independence of the judiciary (article 79). It specifies that these rights and freedoms "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" (article 13 (2)). Constitutional rights and freedoms include:

- Prohibition of arbitrary arrest (article 17 (2))
- Prompt information to be provided on the reasons for arrest and any charge (article 19 (1))
- Arrested persons to be taken to court within 48 hours (article 19 (3))
- Right to public trial by an ordinary court within a reasonable time after being charged (with exceptions for trials in closed court, not applied in this trial) (article 20 (1))
- Right to legal counsel of own choice or legal representation at state expense (article 20 (5))
- Right of appeal to the competent court against a court order or judgment (article 20 (6)).

Articles 9 and 14 of the ICCPR, to which Ethiopia is a state party, provide for the right to freedom from arbitrary arrest and detention, the right to be presumed innocent and other fair trial guarantees. Several UN non-treaty standards, such as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, as well as General Comment 32 of the Human Rights Committee, further define the scope of the right to fair trial.

The right to a fair trial is also guaranteed in article 7 of the African Charter, to which Ethiopia is a party. The African Commission on Human and Peoples' Rights has extensively interpreted the scope of this and other provisions of the Charter in its Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

THE MAIN CUD TRIAL

In the main CUD trial, Amnesty International notes that some of the procedural elements of fair trial were met - the trial was held in public and before a normal civilian court; the right to legal defence was allowed at the start, although some defendants chose not to defend; the

right to appeal to a higher court was allowed. Some trial observers were allowed but the bar on Amnesty International's trial observers in July 2007, when the defence case began, cast doubt on the proclaimed openness of the trial.

However, essential elements of fair trial were disregarded, in particular:

- The presumption of innocence was not respected, in so far as the Court automatically convicted defendants in June 2007 on the basis of a *prima facie* ruling, rather than proof of guilt beyond reasonable doubt.
- Admissibility of evidence was unregulated and at the discretion of the Court, a discretion the Court did not utilize to ensure evidence that was false or immaterial was excluded.
- The right to present a defence was denied to several defendants by the Court's ruling on 11 June 2007, despite the fact that several defendants had expressed interest in defending themselves and withdrawing their previous refusal to present a defence as a consequence of the Court's ruling of April 2007 that the prosecution had made a *prima facie* case against them.
- The right to adequate time and facilities to prepare a defence was hampered by the Court's ruling against advance disclosure of prosecution witnesses and the lack of confidentiality in communication between defendants and their lawyers.
- The right to access to a legal representative was denied to defendants who refused to present a defence.
- Defendants were charged and sentenced for crimes such as "outrages against the Constitution" that are vaguely defined in the Criminal Code, in contrast with the principle of legality, which requires that criminal law be formulated sufficiently clearly and precisely to allow individuals to know what constitutes a crime. As a result, the Court failed to distinguish acts of peaceful criticism or civil disobedience from incitement to violence and/or violent opposition, thereby criminalizing legitimate exercise of the right to freedom of expression and association.

With regards to human rights defenders Daniel Bekele and Netsanet Demissie, the prosecution failed to present any evidence of inciting violence or other criminal activity and the judges convicted them on the basis of the testimonies of two witnesses whose credibility was questionable.

Amnesty International concludes that the trial was unfair according to applicable international and regional standards. Amnesty International finds that the principal defendants (that is, the CUD leaders, journalists and civil society activists) and the majority – if not all – of the other defendants were prisoners of conscience, as the prosecutor failed to establish that they advocated or participated in violence.

THE TRIAL OF KIFLE TIGENEH AND OTHERS

This trial, which took place parallel to the main CUD trial, was held in a public and ordinary civilian court with defence representation allowed and the right of appeal. The key concerns on the fairness of the trial were as follows:

- Right to liberty: despite two court rulings (in December 2006) ordering his release, Kifle Tigeneh was kept in detention.
- Presumption of innocence: at least eight defendants complained to the court that they had been tortured in order to extract a confession. This violated their right to freedom from torture and other cruel, inhuman or degrading treatment, as well as the right not to be compelled to testify or confess guilt.
- Exclusion of evidence elicited as a result of torture or ill-treatment: the fact that evidence allegedly elicited as a result of torture was admitted and invoked to convict the defendants, without the judge ordering or conducting any inquiry on the allegations, is in violation of international human rights law.

There was uncritical acceptance by the judges of questionable – and what would normally be inadmissible - prosecution evidence and pressure was placed on defendants to withdraw their defence and plead guilty in order to enter the pardon process.

Nothing emerged during the trial to suggest that the defendants incited violence. Amnesty International concludes that they were prisoners of conscience arrested and tried solely for peacefully exercising their right to freedom of expression, association and assembly. The trial was unfair according to applicable international and regional standards.

OTHER RELATED ARRESTS AND TRIALS

With regard to the limited information available on other arrests, detentions and trials following the 2005 demonstrations, Amnesty International concludes as follows:

- Yalemzawd Bekele, whose charges were later dropped, was detained and faced trial solely for her peaceful exercise of the right to freedom of expression.
- Amnesty International considers that most, if not all, of the defendants in the case-file of Daniel Bayissa Hailemariam and 54 others were detained solely for their peaceful exercise of the right to freedom of expression.
- Tens of thousands of people were detained arbitrarily in June and November 2005 without being taken to court within the prescribed 48 hour period and many were not taken to court at all. Therefore, no evidence was presented that they had committed recognizable criminal offences. Many might have been prisoners of conscience.

THE PARDON PROCESS

Amnesty International welcomes the fact that the mediation efforts led to the release of prisoners of conscience who might otherwise have been imprisoned in poor conditions for almost the rest of their lives, even if not sentenced to death as the prosecutor demanded.

Amnesty International remains concerned about the following aspects of the pardon process:

- The peculiar concurrence of the trial and the political pardon process which raised questions about whether, or to what extent, the outcome of the trial was affected by political considerations.
- Although negotiated with a small group of CUD leaders, the apology letter seemed to have been virtually imposed on all other defendants, including those who were presenting a defence.
- The pardons did not resolve the problem of the unfairness of the trial and the convictions of prisoners of conscience.

10.2 RIGHT TO FREEDOM OF EXPRESSION, ASSEMBLY AND ASSOCIATION

The Ethiopian Constitution guarantees the right to freedom of “thought, opinion and expression” (Chapter 3, Part Two entitled “Democratic Rights”):

- Everyone has the right “to hold opinions without interference” (article 29 (1)) and the right to freedom of expression (article 29 (2)).
- Freedom of the press and other mass media ... is guaranteed (article 29 (3)), including freedom to “seek, receive and impart information and ideas of all kinds... which are essential to the functioning of a democratic order” and “regardless of frontiers”, “prohibition of any form of censorship” and “access to information of public interest” (article 29).
- These rights can be limited only through laws which are “guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed” (article 29 (6)).
- Everyone has the right “to assemble and to demonstrate together with others peaceably and unarmed, and to petition”. Appropriate regulations can be made in the interest of public convenience, the protection of democratic rights and peace (article 30 (1)).
- Everyone has the right “to freedom of association for any cause or purpose. Organizations formed in violation of appropriate laws or to illegally subvert the constitutional order or which promote such activities are prohibited” (article 31).

Political parties require registration by the National Election Board. Prior to the new Charities and Societies Proclamation, NGOs required registration by the Ministry of Justice, but this is now the responsibility of the new Charities and Societies Agency.

Articles 19, 21 and 22 of the ICCPR recognize, respectively, the right to freedom of expression, of peaceful assembly and association. Any restrictions on these rights must be provided by law, and should be necessary and proportional.

In similar fashion, the above rights are guaranteed by articles 9, 10 and 11 of the African Charter.

The evidence presented by the prosecution did not prove any advocacy of violence by the CUD leaders, journalists or civil society activists. On the contrary, most of the prosecution evidence confirmed that their criticisms of the authorities and their calls to their supporters were consistently non-violent. The prosecution did not succeed in presenting any documentary, video, audio or witness evidence that they incited violence. The prosecution's only supposed evidence of incitement of violence was through witnesses whose credibility was dubious and whose testimonies were often inconsistent, though mostly accepted uncritically by the judges.

The demonstrations in June and November 2005 quickly became violent. Serious criminal offences, including killing of seven police officers and damage to government and private property, were committed by demonstrators, mostly unemployed youth. Apart from this trial which grouped the most prominent opposition party leaders, journalists and civil society activists in the country (who had not been present in the demonstrations) with some unemployed youth, there appear to have been virtually no other trials taking place of individuals arrested at the time or accused of specific acts of violence. Although thousands were arrested and detained, few were tried.

On the basis of the trials and the general political context described above, Amnesty International concludes that the defendants were arrested and put on trial on account of the non-violent exercise of their right to freedom of expression and other peaceful political activities. Criticisms of the government, ruling party and the National Election Board cannot be taken as attempts to overthrow the government or the Constitution by violent means. Calling for non-violent civil disobedience cannot be equated with incitement to violence. There are thus serious deficiencies in provisions of the Criminal Code of Ethiopia, including those used in the trials, which are so broad that they can be taken by a court to criminalize the exercise of the rights to freedom of expression, opinion and association in violation of the Constitution as well as international and regional human rights standards.

With regard to the trial of journalists, Ethiopia's constitution guarantees "freedom of the press and mass media." However, in practice the Press Law (1992) violated international standards of freedom of expression. Hundreds of journalists of the private media have been arrested, tried and convicted under this law, and also under later legislation relating to the media in the 2005 Criminal Code, in trials which were systematically unfair. A new press law, the Mass Media and Access to Information Proclamation, was passed by parliament in December 2008. It includes prohibitive restrictions on registration, access to information, and strict penalties for violations, including the impoundment of media materials and harsh fines.

The grounds for the charges against the journalists on trial were that in general they reflected the views of the opposition leaders. About half of them were acquitted, while the remainder were convicted. None was alleged to be a member of the political opposition or proved to have incited violence or participated in it.

Amnesty International concludes that the convicted journalists received an unfair trial and were convicted on account of exercising the right to freedom of expression. Publication of criticisms of the government, ruling party and the National Election Board cannot be taken as attempts to overthrow the government or the Constitution by violent means. They were

prisoners of conscience and their arrests, trial and convictions constituted attacks on the freedom of the media.

Amnesty International consequently confirms its initial assessment at the beginning of the trial that the principal defendants, and possibly all the defendants in the trials examined above, were prisoners of conscience, who were imprisoned solely for exercising their right to freedom of expression and on account of their non-violent political activities.

10.3 RIGHTS OF HUMAN RIGHTS DEFENDERS

The UN Declaration on Human Rights Defenders⁶² adopted by the UN General Assembly on 9 December 1998 recognizes the right of everyone to promote and protect human rights, by explicitly stating, in its article 1, that:

“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”

The African Commission on Human and Peoples' Rights has also recognized the importance of the work of human rights defenders and the need for states to ensure they are afforded the necessary protection and guarantees to allow them to carry out their activities without fear of harassment or other human rights violations or abuses.

The three civil society activists on trial were prominent human rights defenders, against whom there was no evidence of inciting violence, or even of membership of or alignment with an opposition party.

Kassahun Kebede, who was acquitted for lack of sufficient evidence in April 2007, was a regional official of the Ethiopian Teachers Association (ETA), which has been under constant threat from the government for many years, and which, on 8 February 2008, lost its appeal to the Supreme Court against a High Court order to hand over its assets to a pro-government organization established under the same name. Amnesty International considers that Kassahun Kebede was a prisoner of conscience, arrested and put on trial simply on account of his peaceful activities with the ETA, in particular because of the ETA's criticisms over the elections.

Daniel Bekele worked for the Ethiopian chapter of the international development agency ActionAid, while Netsanet Demissie founded and led the Organisation for Social Justice in Ethiopia (OSJE), a forum of NGOs which became involved in monitoring the elections. Both men are highly regarded human rights lawyers and had also been involved in anti-poverty campaigns.

Amnesty International considers that their trial was unfair and that they were unfairly convicted, with no credible evidence against them. It concludes they were prisoners of conscience, arrested, tried and imprisoned on account of exercising their right to defend human rights, working through their open and registered NGOs. Their trial and conviction had a chilling effect on human rights defenders and civil society organizations within Ethiopia, in a context where the government was at the same time preparing a much more restrictive law on NGOs, which was promulgated in January 2009.⁶³

The prosecution's demand for the heaviest sentences, including death sentences, its appeal against the withdrawal of the charges, appeared to deliver a threatening message to human rights defenders.

10.4 TREATMENT OF PRISONERS

The Ethiopian Constitution prohibits cruel, inhuman or degrading treatment or punishment (article 18). It affirms the right of prisoners to "treatment respecting their human dignity" and allows communications with relatives, friends, religious councilors [sic], medical doctors and legal counsel (article 21). Although not specifying "torture" here or elsewhere, the Constitution declares the inadmissibility in court of evidence obtained by "coercion" (article 19 (5)).

International human rights law prohibits torture and other ill-treatment in all circumstances. Ethiopia, as a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, is under an obligation to take effective steps to prohibit, prevent and punish acts of torture or ill-treatment, and to provide victims with reparations.

Article 10 of the International Covenant on Civil and Political Rights states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."⁶⁴

The UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provide the comprehensive standards on conditions of detention, ranging from the provision of adequate food, clothing, access to medical care, standards of accommodation and hygiene to standards and procedure for discipline and punishment.⁶⁵

Amnesty International's concerns about the treatment of prisoners are as follows:

- At least eight defendants in the Kifle Tigeneh trial, and several defendants in the Daniel Bayissa Hailemariam trial, were evidently tortured and suffered severe injuries. While the judges in the former case correctly ordered the prison authorities to provide the victims with medical treatment and implicitly accepted their complaints of torture, this was refused by the prison authorities. The judges' failure to order an investigation of the torture allegations and institute a "trial within a trial" prevented bringing alleged torturers (some of whom were named in the court) to justice. This thereby denied justice and redress to the victims, in contravention of Ethiopia's obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- In the initial period when the accused in the main CUD trial were held in the *Maikelawi* police centre, conditions were poor. Conditions in many parts of the Kaliti prison, where they were held during the trial, amounted to cruel, inhuman and degrading treatment or punishment although the main CUD defendants were mostly held in better zones of the prison. Treatment of prisoners failed to meet many of the international standards set out notably in the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

- The treatment of a pregnant female prisoner, Serkalem Fasil, a journalist and media proprietor, was inexcusably harsh, including denial of ante-natal and post-natal medical care and adequate medical treatment for her new-born baby that amounted to violations of their right to health. No action was taken by the court to examine or improve her treatment, or punish prison officials responsible for serious gender-based human rights violations against her.
- Some prisoners were allegedly beaten when they were arrested, and some were ill-treated when moved to punishment cells.
- Prison punishment was conducted through an unfair and arbitrary prison disciplinary procedure in contravention of international standards, such as the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- On several occasions the court's orders to the prison authorities to address defendants' complaints about their treatment and conditions were ignored or only implemented after some delays. The court failed to institute proceedings against the prison officials responsible for this serious contempt of court.

10.5 INTERNATIONAL STANDARDS FOR COMMISSIONS OF INQUIRY

The establishment of the parliamentary Commission of Inquiry into the demonstration killings was appropriate both in terms of the Ethiopian Constitution and international standards. The Commission was reportedly well-prepared for its work through training specially arranged on the international standards applicable. It collected a large amount of relevant documentary and witness evidence from the public without evident reprisals to informants, although it failed to obtain evidence from members of the security forces or government officials.

Amnesty International considers that the threats obliging the two most senior commissioners to flee the country and the subsequent reversal of the Commission's original conclusions on the question of excessive force by the security forces, represented acts of political interference by the government in the decision-making and independence of the Commission. The purpose appears to have been to exonerate the security forces and responsible officials, though the Commission's reporting on the casualties was retained. The Commission's report failed to make recommendations based on international standards on the police use of lethal force and policing of demonstrations which turned violent.

It is important in any future inquiries into possible excessive use of force by the security forces to apply the legal framework of international human rights law, and examine allegations of possible excessive use of force in light of international standards on the use of force and firearms by law enforcement officials, including the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and the Model Protocol for a Legal Investigation of Extra-Legal, Arbitrary and Summary Executions (known as the "Minnesota Protocol").

According to these standards, the inquiries should establish possible individual responsibility and deficiencies in security operations. The inquiries should draw lessons for the future, in particular about the need to ensure that security forces are equipped with non-lethal weapons

and are given proper training on law enforcement and crowd control that would allow them to respond appropriately and proportionately to any similar situations that they may face in the future. The inquiries must be independent of the forces concerned and their findings must be made public. Recommendations should be made, in the event of findings of unlawful killings or other crimes, for bringing to justice the perpetrators in conditions of fair trial without the application of the death penalty.

In addition, full reparations should be provided, in the form of restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition, to those injured, and to the families of those killed, as a result of any excessive use of force.

10.6 DEATH PENALTY

Ethiopia retains the death penalty in law. The Constitution allows the President to commute death sentences to life imprisonment except for crimes against humanity, which may not be commuted or pardoned (article 28).

The death penalty is optional for a wide range of political offences and homicide where the offence is aggravated. It has been sparingly applied by courts. Statistics are not published by the government. Dozens of people have been on death row for several years awaiting the outcome of judicial appeals or petitions for presidential clemency. Courts continue to impose death sentences in aggravated homicide cases or cases of political violence.

In the "Red Terror" trials of former government officials, several former officials were condemned to death, including some in their absence. In 2006 all 19 members of the former Dergue government, including former President Mengistu Hailemariam in his absence, who had been convicted of genocide and mass murder, were sentenced to life imprisonment instead of the death penalty demanded by the prosecution. The prosecution appealed for the death penalty to be imposed instead, and in May 2008 this was upheld by the Supreme Court and all 19 were condemned to death.

There have been only two known court-imposed executions since the overthrow of the Dergue in 1991, including one in 2007.

The legal provisions for death sentences on political charges display the same flaws as other articles of the Criminal Code such as were used in the CUD trials, in that they fail to distinguish non-violent dissent from violent acts. The consequence in the CUD trials was that prisoners of conscience and human rights defenders faced possible death sentences, although none was imposed.

Amnesty International welcomes Ethiopia's vote at the UN General Assembly, reversing its earlier vote, in favour of a resolution on a moratorium on executions adopted by the UN General Assembly on 18 December 2007, calling on states that still maintain the death penalty "to establish a moratorium on executions with a view to abolishing the death penalty".

International human rights law limits the use of the death penalty, pending its abolition, to the most serious offences involving direct acts of violence. There is widespread abhorrence at the threat to use the death penalty against human rights defenders and prisoners of conscience.

Amnesty International opposes the death penalty as a violation of the right to life and as the ultimate cruel, inhuman and degrading punishment. It campaigns for the abolition of the death penalty worldwide. Many Ethiopian NGOs also oppose the death penalty and have campaigned for its abolition.

10.7 PARDON

It is impossible in assessing the fairness of the trial to avoid addressing also the question of the relation between the trial and the question of the impartiality and independence of the court on the one hand, and the political mediation and pardon process on the other hand. Did it mean that the fairness or unfairness of the trial did not matter but was compensated in either case by the pardon of those convicted?

The pardon, though, was conditional and left those pardoned at risk of future re-imprisonment without re-trial if their words or actions were interpreted by the authorities, with few legal safeguards, as constituting re-offending against the same laws and breaking of the pardon conditions. The re-arrest of Birtukan Mideksa on 26 December 2008 for allegedly breaking the conditions of her pardon illustrated the reality of this risk to all the defendants. The revocation of Birtukan's pardon meant that the positive impact of the pardon process for respect for human rights and freedom of expression was weakened. Furthermore, in March 2010 the Federal Supreme Court upheld the fines imposed, in the 2007 ruling, on the four publishing houses, over-turning an earlier decision of the High Court that the fines were encompassed in and therefore nullified by the terms of the pardon. These rulings demonstrated that the terms of the pardon process remain subject to interpretation, leaving those pardoned at risk of further repercussions.

Amnesty International welcomed the release of prisoners of conscience, even though it was conditional, and even though the organization had called for their unconditional release. At the same time however, it retains its concerns about the fairness of the trial. Its conclusions set out above lead on to its recommendations about improving access to fair trial and justice in the country. Amnesty International would find it acceptable that pardon (or an amnesty) could be the best available and most immediate remedy for a violation of human rights, providing it did not obscure the violation or lead to a further violation of human rights.

11. DEVELOPMENTS SINCE THE TRIAL

For the individuals and organizations involved in the trial and for many others, there were further consequences in the following year and a trend towards greater repression against government opponents, journalists, civil society organizations and human rights defenders.

After the CUD leaders' release in July 2007, several of them travelled abroad to meet their diaspora supporters in the USA and other countries. Most returned to Ethiopia to resume their opposition political activities. Some of those acquitted fled the country and applied for asylum, fearing re-arrest when the prosecution appealed against the acquittals.⁶⁶

The former CUD coalition was internally split, and was also refused registration and in effect banned by the National Election Board, which had some new members. While the parliament still contained some former CUD members now registered as the CUD Party, others after their release formed new parties, for example the Unity for Democracy and Justice Party (UDJP), which was officially registered. Some other released CUD leaders formed a new party in exile.⁶⁷

Local elections were held in April 2008 to *kebele* councils (urban and rural neighbourhood associations), Addis Ababa City Council and the vacant parliamentary seats won by CUD candidates who boycotted the parliament. The elections were boycotted by most opposition parties, resulting in ruling party candidates and allied parties taking nearly all the seats. Some opposition candidates had their meetings obstructed, were harassed or briefly detained, such as UDJP leader Birtukan Mideksa in January and leaders of the opposition UEDF coalition and one of its member parties, the Oromo Federal Democratic Movement (OFDM), in February, but the National Election Board and police took no action.

The nature of the pardon granted to defendants was also put in doubt by the re-arrest of Birtukan Mideksa in December 2008 on the grounds that she had broken the conditions of pardon by making a statement in Sweden criticizing the pardon process. Upon return to Addis Ababa, Birtukan Mideksa was informed by law enforcement authorities that she had several days to retract what government officials considered to be a public denial of her pardon request. When she refused to do so, she was arrested and placed in solitary confinement. Ministry of Justice officials confirmed that her pardon had been revoked and her original life sentence reinstated.

In October 2010 Birtukan Mideksa was released, after once again requesting and being granted an official pardon.

For the journalists involved in the trial, the situation is bleak. Their newspapers were shut down, and although some other private media which had not been accused of being pro-CUD were allowed licenses and still continued to publish, few banned media, including some 13 newspapers, have been allowed to re-open. Serkalem Fasil, Eskinder Nega and Sisay Agena, former publishers of Ethiopia's largest circulation independent newspapers, who had been detained with CUD members, have been denied licences to open new newspapers.

In 2007 fines were imposed against four independent publishing houses, as well as the editors of the publications being sentenced to life in prison, but these rulings were also overturned by the presidential pardon. However, the government continued to pursue the collection of the fines through the judicial system. In February 2009 the High Court ruled that the 2007 presidential pardon also covered the fines. The government appealed to the Federal Supreme Court. In March 2010 the Federal Supreme Court reinstated the fines, and ordered the publishing houses to pay fines ranging from 15,000 to 120,000 Birr (US\$900-\$7,250).⁶⁸ The largest fine – 120,000 Birr – was reported to be the largest fine ever imposed against journalists in Ethiopia. In response to the publishing houses' owners' inability to pay the fine, the government requested that their assets be frozen by the High Court.⁶⁹

A new press law, the Mass Media and Access to Information Proclamation, was passed by parliament in December 2008. This legislation presents cause for concern over requirements of registration, limits to access to information, and strict penalties, including impoundment and fines for offenses including "defamation." Previous drafts had been criticized by the international community as introducing more restrictions on freedom of the media than the previous Press Law and the revised Penal Code.

For international and local NGOs, and the civil society activists involved in the trial, the situation continues to be very disturbing. A new Charities and Societies Proclamation was passed by parliament on 6 January 2009, which imposed harsh new restrictions on civil society organizations and NGOs:

- Local NGOs working on human rights and democracy issues are barred from receiving more than 10% of their income from foreign sources (whether from international organizations or Ethiopian diaspora sources).
- International and foreign NGOs based in Ethiopia are barred from working on a wide range of human rights and democracy issues, including equality of nationalities [ethnic groups] and peoples, gender equality, equality of religions, children's rights, disability rights, conflict resolution and reconciliation, or promotion of justice and law enforcement, without special permission.
- A Charities and Societies Agency is established with broad discretionary power over NGOs, allowing government surveillance and interference in the management and operations of NGOs.
- Severe criminal penalties can be imposed, including fines and imprisonment, for violations of these provisions and even minor administrative breaches of the law.

This law puts at serious risk the human rights-related activities of international NGOs in Ethiopia, as well as local NGOs and human rights defenders, such as the Ethiopian Human Rights Council and the Organization for Social Justice in Ethiopia.

General elections took place again in May 2010. The EPRDF and a small coalition of affiliated parties won 99.6 per cent of parliamentary seats. An opposition coalition, Medrek, the Forum for Democratic Dialogue in Ethiopia, accused the government of electoral fraud

and called for a re-run. The National Electoral Board rejected the call and a subsequent appeal to the Federal Supreme Court was dismissed.

The build-up to the elections was punctuated by incidents of political violence. Medrek reported in February 2010 that its members were being prevented from registering as candidates by armed men. Opposition parties said that their members were harassed, beaten and detained by the EPRDF in the build-up to the elections.

The National Electoral Board introduced a press code which restricted journalistic activities during the elections, including a ban on interviews with voters, candidates and observers on election day.

The final report of the EU Election Observation Mission stated that the elections fell short of international commitments. The findings highlighted the lack of a level playing field for all contesting parties; violations of freedom of expression, assembly and movement of opposition party members; misuse of state resources by the ruling party; and a lack of independent media coverage.

12. RECOMMENDATIONS

Amnesty International's recommendations to the Government of Ethiopia and the international community are based on its conclusions set out above about the CUD trials and related human rights issues.

To the Government of Ethiopia

Amnesty International makes the following recommendations aimed at improving access to justice in the future, particularly in difficult political contexts such as occurred over the 2005 elections. Justice sector reform is already in process⁷⁰ but much more needs to be done, in light of the violations detailed above in the CUD arrests and trials, to secure protection of basic human rights and avoid any repetition of these violations.

Important political decisions need to be made by the government to move faster towards addressing issues of fair trial, the independence and impartiality of the judiciary, and strengthening the rule of law, in accordance with the provisions contained in the Ethiopian Constitution and in relevant international and regional human rights treaties to which Ethiopia is a party, notably the ICCPR and African Charter.

Fair trial

- Much more effort needs to be made by the authorities towards ensuring that the justice system can in the future deliver a fair trial before an independent and competent judiciary in political cases such as these. The public should be able to have confidence in the judiciary and justice system so that situations do not recur where defendants decline to present a defence to the court because they believe they will not receive a fair trial.
- The Criminal Code should be reviewed to ensure that crimes threatening the security of the state or other provisions do not criminalize the right to freedom of expression, association and assembly, as guaranteed by the Constitution and international human rights treaties.
- Some of the crimes, in particular relating to crimes against the state, are ill-defined in the Penal Code and should be revised in line with the principle of legality, Ethiopia's Constitution and international and regional human rights treaties.
- The Criminal Procedure Code should be reviewed to bring it fully in line with international standards of fair trial, including by establishing clear rules on admissibility of evidence, standards and burden of proof, advance disclosure of witnesses, right to present a defence, confidential consultation with legal counsel, inadmissibility of evidence obtained by torture and other cruel, inhuman or degrading treatment or punishment, and obligations of judges to thoroughly investigate allegations of torture and other ill-treatment and bring perpetrators to justice.
- Judges, prosecutors, police and prison officials should be fully trained in human rights law, with particular focus on the international standards of fair trial and the human rights of detainees.

- Greater powers should be afforded to judges to enforce their orders to the Prison Administration on providing humane treatment of prisoners and acceptable prison conditions.
- Prisoners of conscience who have been unfairly convicted should have their convictions unconditionally pardoned, and should receive restitution for the period they spent in jail.

Freedom of expression, assembly and association

- No-one should be arrested, detained, charged, tried, convicted or sentenced on account of the peaceful exercise of their right to freedom of expression, association and assembly, as guaranteed by the Constitution and international and regional treaties ratified by Ethiopia.
- All current trials or investigations into people suspected or accused solely on account of the peaceful exercise of their right to freedom of expression, association and assembly should be ended and anyone detained on such charges should be immediately and unconditionally released.
- The Criminal Code should be amended so that any restrictions on these rights strictly conform to those specified in international human rights law. The vague and wide-ranging articles on “outrage against the Constitution or the constitutional order” and “obstruction of the exercise of constitutional power” should be amended to ensure that they do not penalize the legitimate exercise of the right to freedom of expression, association and assembly. Pending such legal reform, these charges should not be utilized by the Ministry of Justice in prosecutions, particularly in cases of peaceful opposition to or criticism of the government, or against human rights defenders.
- No journalist or media personnel should be arrested, charged, tried, convicted or imprisoned, or their media organization banned or punished with a fine, on account of exercising their right of freedom of the media guaranteed by the Constitution and international and regional treaties ratified by Ethiopia
- The government should end the legal harassment and persecution of journalists and media who publish reports or opinion critical of the government or public officials.
- Restrictions on freedom of expression in the Criminal Code, the “Freedom of the Press” Act (1992) and a new Press Law, the Mass Media and Access to Information Proclamation (2008) that do not conform to rights of freedom of expression specified in international human rights law should be removed. Pending such legal reform, charges that criminalize legitimate exercise of the right to freedom of expression should not be used. The development of professional media standards and protection of the reputations of individuals needs be accomplished in full conformity with international and regional human rights standards.

Human rights defenders

- The government should also explicitly recognize, respect, protect and promote the rights of human rights defenders as set out in international and regional standards as well as the Constitution.
- No human rights defender should be threatened, arrested, charged, tried, convicted or imprisoned, or their organization banned or punished with a fine, on account of exercising

the right to defend human rights as guaranteed by the Constitution and proclaimed by international and regional standards protecting the legitimate role of human rights defenders.

- The government should take effective steps to ensure that human rights defenders are able to carry out their work without fear of harassment, threats of and/or violence by security forces, other government officials, or other individuals. Governments have a positive obligation to protect human rights defenders.
- The government should repeal provisions of the new Charities and Societies Proclamation which restrict human rights activities carried out by non-governmental organizations, both local and international, and which in effect prohibit and criminalize much of the work of human rights defenders and severely restrict humanitarian organizations.

Treatment of prisoners

- The government should publicly declare that no arrested person should be tortured or subjected to other cruel, inhuman or degrading treatment or punishment, and ensure this is fully implemented by police and security agencies.
- Any allegation of torture or other ill-treatment of a detainee must be thoroughly, effectively, impartially and promptly investigated through a “trial within a trial”, and, should there be enough admissible evidence, suspected perpetrators must be tried in a fair trial in accordance with international standards, with no possibility of the death penalty.
- Disciplinary prison measures which constitute torture or other cruel, inhuman or degrading treatment or punishment must be banned, and proper mechanisms observed to ensure that disciplinary measures are not imposed arbitrarily or unfairly.
- The courts should enforce the laws requiring that any arrested person is brought before a court within 48 hours and is informed of the reasons for arrest, and that their families are promptly informed of their whereabouts in custody.
- The authority of the Courts over the Prison Administration should be legally confirmed and any prison officials disobeying court orders should be brought to justice for contempt of court.
- Reforms of the prison system should be undertaken on issues where there are incompatibilities with the Constitution and deficiencies in relation to recognized international and regional treaties and standards.
- The human rights of prisoners and other persons deprived of their liberty as spelled out in the international human rights treaties and standards (such as the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles of the Protection of All Persons Under Any Form of Detention or Imprisonment) must be respected, including minimum standards of prison care in respect of basic hygiene, overcrowding and healthcare, and treatment of women prisoners.
- The government should extend access to prisons (and other places of detention) and prisoners (and other persons deprived of their liberty), such as that already granted to the

Prison Fellowship NGO, to other appropriate non-governmental bodies and also to international humanitarian agencies such as the International Committee of the Red Cross (ICRC), which although long operative in Ethiopia was reportedly not allowed access to people imprisoned in relation to the 2005 election demonstrations, allow such bodies to independently inspect and monitor prison conditions, and consider their recommendations on prison improvements and humanitarian assistance to prisoners.

Commissions of Inquiry

- Since commissions of inquiry are a key mechanism for checking abuse of power and violations of human rights, as Ethiopia's Constitution recognizes, and on account of the need to create confidence in any future commission of inquiry as a consequence of the serious failure described above, the government should ensure full compliance in the future with international standards for commissions of inquiry, as set out in section 10.5 above.
- Commissions of inquiry should be given clear and comprehensive terms of reference and guarantees of independence from political interference and safety in their investigations and reporting of findings.

Death penalty

- The Government should take concrete and measurable steps towards abolishing the death penalty, and, in the meanwhile, impose a moratorium on executions, in line with the UN General Assembly resolution in December 2007.
- As a first step towards abolition, the government and parliament should review the articles in the Criminal Code relating to the death penalty to ensure that it is only applied to the most serious crimes involving commission of violent acts.

International and regional human rights mechanisms

Ethiopia should ratify without delay and reservations:

- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment;
- The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty;

In addition, in order to signify commitment to fulfilling its obligations to human rights treaties and mechanisms of the UN and African Union, Ethiopia should invite the following international representatives to visit the country and hold talks with the government and other interested parties:

- The UN and African Commission Special Rapporteurs on freedom of expression
- The UN Special Rapporteur on Human Rights Defenders and the African Commission's Rapporteur on Human Rights Defenders
- The UN Special Rapporteur on independence of judges and lawyers

- The UN Working Group on Arbitrary Detention
- The UN Special Rapporteur on Torture

Human rights access and dialogue

- The government should allow full access to international trial observers and human rights organizations such as Amnesty International and not deny visas to their representatives. It should accept the principle of all countries being open to human rights scrutiny.
- It should be willing and ready to engage internationally as well as locally in dialogue about human rights.

To the international community

Amnesty International calls on the United Nations, European Union, African Union, governments having close political and economic relations with Ethiopia, and multilateral aid donors such as the World Bank and other international financial institutions, all of which have made commitments and developed policies for including respect for human rights in their aid and political relations, to take the following measures to seek to improve protection of human rights in Ethiopia:

- Encourage the Government of Ethiopia to respect, protect and fulfil human rights in Ethiopia, including the right to freedom of expression, assembly and association; to end impunity for human rights violations and promote a culture of human rights and openness to the international human rights community.
- Provide assistance to the Government for reforming the administration of justice, particularly through: supporting and/or providing training of judges, prosecutors and lawyers in international human rights standards on the rule of law and fair trial; providing technical assistance in reforming the Criminal Code and Code of Criminal Procedure in conformity with international human rights standards; and establishing effective and independent judicial institutions which can provide redress and reparations to victims of human rights violations or their families.
- Ensure that human rights issues figure prominently in mediation and conflict-resolution activities.
- Promote freedom of expression and the media through supporting and advocating for the protection and respect of the human rights of journalists, including the rights to seek, receive and publish information and ideas, and providing professional training for journalists.
- Closely monitor the implementation of the Charities and Societies Proclamation and carry out dialogue with the Government of Ethiopia to amend the most egregious provisions of the law, including but not limited to prohibitive restrictions on foreign funding to local organizations carrying out human rights activities.
- Support human rights defenders and protect them when they are at risk of having their own human rights violated, especially through the measures and actions set out in the

European Union's Guidelines on Human Rights Defenders⁷¹

- Support civil society activities in the areas of human rights monitoring, election education and observation, legal reform and prison welfare, and press for the right to engage in social activism and peaceful public awareness-raising without restrictions on their registration and activities which are in contravention of international human rights standards.
- Oppose the use of the death penalty and executions, promote a moratorium on executions, and encourage the government to take steps towards the abolition of the death penalty.
- Provide international refugee protection and safety in their own and other countries for Ethiopian asylum-seekers at risk of persecution, arbitrary detention, unfair trial, torture or other ill-treatment if forcibly returned to Ethiopia.

ANNEX

List of defendants in the main CUD trial with details

	Name	Party/ Organisation	Personal Details	Charges	Judgement
A. CUD Leaders					
1	Hailu Shawel	AEUP/CUD	President of CUD, MP-elect, civil engineering consultant	1,2,3,5,6,7	Acquitted of 6,7 in April 2007, convicted of 1,2,3,5 in June 2007, pardoned
2	Abayneh Berhanu	AEUP/CUD	CUD Supreme Council, MP-elect, businessperson	1,2,3,5,6,7	Acquitted of 6,7 in April 2007, convicted of 1,2,3,5 in June 2007, pardoned
3	Getachew Mengiste	AEUP/CUD	CUD Supreme Council, MP-elect, former army major	1,2,3,5,6,7	Acquitted of 6,7 in April 2007, convicted of 1,2,3,5 in June 2007, pardoned
4	Gizachew Shiferaw	AEUP/CUD	CUD Supreme Council, MP-elect, university lecturer, civil engineer	1,2,3,5,6,7	Acquitted of 3,6,7 in April 2007, convicted of 1,2,5 in June 2007, pardoned

5	Hailu Araya	UEDP-Medhin/CUD	CUD Supreme Council, MP-elect, former editor of Press Digest, academic, PhD linguistics	1,2,3,5,6,7	Acquitted of 3,6,7 in April 2007, convicted of 1,2,5 in June 2007, pardoned
6	Muluneh Eyuol	EDL/CUD	CUD secretary general, economic consultant	1,2,3,5,6,7	Acquitted of 3,6,7 in April 2007, convicted of 1,2,5 in June 2007, pardoned
7	Sileshi Tena	EDL/CUD	CUD Supreme Council	1,2,3,5,6,7	Acquitted of 3,6,7 in April 2007, convicted of 1,2,5 in June 2007, pardoned
8	Berhanu Negga	Rainbow/CUD	CUD Supreme Council, CUD PR officer, AA City Council and Mayor-elect, academic, PhD	1,2,3,5,6,7	Acquitted of 3,6,7 in April 2007, convicted of 1,2,5 in June 2007, pardoned
9	Befekadu Degife	Rainbow/CUD	CUD Supreme Council, MP-elect, academic, PhD, former IMF, UN and World Bank economic consultant	1,2,3,5,6,7	Acquitted of 3,6,7 in April 2007, convicted of 1,2,5 in June 2007, pardoned

10	Mesfin Woldemariam	Rainbow/CUD	CUD Advisor, former president of Ethiopian Human Rights Council, retired university professor	1,2,3,5,6,7	Acquitted of 2,3,5,6,7 in April 2007, convicted of 1 in June 2007, pardoned
11	Yakob Hailemariam	Rainbow/CUD	CUD Supreme Council, MP-elect, lawyer, academic (ex-USA), UN genocide tribunal prosecutor, former UN mediator Nigeria/Cameroon	1,2,3,5,6,7	Acquitted of 3,6,7 in April 2007, convicted of 1,2,5 in June 2007, pardoned
12	Birtukan Mideksa (f)	Rainbow/CUD	CUD Vice-President, lawyer, former judge	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted of 1,2 in June 2007, pardoned
13	Aschalew Ketema	AEUP/CUD	CUD Supreme Council, businessman	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted of 1,2 in June 2007, pardoned
14	Tadiwos Bogale	AEUP/CUD	CUD Supreme Council, PhD	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted of 1,2 in June 2007, pardoned

15	Gebretsadik Heilemariam	AEUP/CUD	CUD Supreme Council, former UN employee	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted of 1,2 in June 2007, pardoned
16	Assefa Habtewold	AEUP/CUD	CUD Supreme Council, former Ministry of Foreign Affairs employee	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted of 1, 2 in June 2007, pardoned.
17	Biruk Kebede	AEUP/CUD	CUD Supreme Council, management consultant	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted of 1,2 in June 2007, pardoned
18	Mesfin Aman *	AEUP/CUD	Abroad at the time, CUD Supreme Council, UNMEE staff	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted of 1,2 in June 2007, pardoned
19	Tamirat Tarekegn	UEDP-Medhin/CUD	CUD Supreme Council	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted 1,2 in June 2007, pardoned
20	Andualem Arage	UEDP-Medhin/CUD	CUD Supreme Council	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted of 1,2 in June 2007, pardoned

21	Nigist Gebrehiwot (f)	Rainbow/CUD	CUD Supreme Council, secretary	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted of 1,2 in June 2007, pardoned
22	Debebe Eshetu	Rainbow/CUD	CUD Supreme Council, artist and theatre professional	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted of 1,2 in June 2007, pardoned
23	Yeneneh Mulatu	Rainbow/CUD	CUD Supreme Council lawyer	1,2,3,5,6,7	Acquitted of 3,5,6,7 in April 2007, convicted of 1,2 in June 2007, pardoned
24	Mamushet Amare	AEUP/CUD	CUD Supreme Council	1,2,3,5,6,7	Acquitted of 2,5,6,7 in April 2007, convicted of 1,3 in June 2007, pardoned
25	Sileshi Andarge	AEUP/CUD	Journalist, CUD Supreme Council	1,2,3,5,6,7	Acquitted in April 2007
26	Alemayehu Yeneneh	AEUP/CUD	Former army lieutenant	1,2,3,5,6,7	Acquitted of 2,3,5,6,7 in April 2007, convicted of 1 in June 2007, pardoned.
27	Habtamu Gebrehiwot	AEUP/CUD		1,2,3,5,6,7	Acquitted in April 2007

28	Asrat Tase	UEDP-Medhin/ CUD		1,2,3,5,6,7	Acquitted in April 2007
29	Bedru Adem	Rainbow/CUD	MP-elect, former MP	1,2,3,5,6,7	Acquitted of 2,3,5,6,7 in April 2007, convicted of 1 in June 2007, pardoned
30	Tamiru Gulilat	AEUP/CUD	Former army colonel	1,2,3,5,6,7	Acquitted of 2,3,5,6,7 in April 2007, convicted of 1 in June 2007, pardoned
31	Bekele Girma	AEUP/ CUD		1,2,3,5,6,7	Acquitted in April 2007
32	Wondwossen Tsege	AEUP/ CUD		1,2,3,5,6,7	Acquitted of 2,3,5,6,7 in April 2007, convicted of 1 in June 2007, pardoned
33	Anteneh Mulugeta	UEDP-Medhin/CUD	Lawyer, AA city council-elect, former judge	1,2,3,5,6,7	Acquitted of 2,3,5,6,7 in April 2007, convicted of 1 in June 2007, pardoned
34	Melaku Fantaye	UEDP-Medhin/CUD		1,2,3,5,6,7	Acquitted of 2,3,5,6,7 in April 2007, convicted of charge 1 in June 2007, pardoned.
35	Tadiwos Beyene	Rainbow/CUD	IT professional (AAU, Black Lion Hospital)	1,2,3,5,6,7	Acquitted in April 2007

36	Girma Amare	UEDP-Medhin/CUD	Former army lieutenant	1,2,3,5,6,7	Acquitted of 2,3,5,6,7 in April 2007, convicted of 1 in June 2007, pardoned
37	Alemayehu Mesele	Rainbow/CUD		1,2,3,5,6,7	Acquitted in April 2007
38	Seblework Tadesse (f)	Rainbow/CUD		1,2,3,5,6,7	Acquitted in April 2007
39	Eskinder Nega		Journalist, husband of #77	1,2,3,5,6,7	Acquitted in April 2007
B. Exiles Tried in Absence					
40	Andargachew Tsige		Abroad (UK), former Mayor of Addis Ababa	1	Convicted in June 2007
41	Negede Gobezie		Abroad (Belgium), exile opposition leader (Me'isone), PhD	1	Acquitted in April 2007
42	Solomon Bekele		Abroad (USA), businessman	1	Acquitted in April 2007
43	Kiflu Tadesse		Abroad (USA), writer	1	Acquitted in April 2007
44	Berhane Mewa		Abroad (USA), businessman, former head of Chamber of Commerce, former journalist	1	Acquitted in April 2007

45	Mammo Muchie		Abroad (Denmark), academic, PhD	1	Acquitted in April 2007
46	Abraha Belay		Abroad (USA), Ethiomedia website editor	1	Acquitted in April 2007
47	Getachew Haile		Abroad (USA), academic	1	Acquitted in April 2007
48	Yared Tibebe		Abroad (USA)	1	Acquitted in April 2007
49	Mirchaw Sinshaw		Abroad (USA), journalist	1	Acquitted in April 2007
50	Tamagne Beyene		Abroad (USA), comedian	1	Acquitted in April 2007
51	Elias Kifle		Abroad (USA), Ethiopian Review website publisher/editor	1	Convicted in June 2007
52	Dawit Kebede		Abroad (USA), journalist	1	Acquitted in April 2007
53	Lishan Gizaw		Abroad (Germany), medical doctor	1	Acquitted in April 2007
54	Niguse Mengesha	Voice of America (VOA) radio station, USA	Abroad (USA), Voice of America (VOA) journalist		Discharged in 2006
55	Addisu Abebe	VOA	Abroad (USA), VOA journalist		Discharged in 2006
56	Solomon Kifle	VOA	Abroad (USA), VOA journalist		Discharged in 2006
57	Tizita Belachew (f)	VOA	Abroad (USA), VOA journalist		Discharged in 2006

58	Adanech Fissehaye (f)	VOA	Abroad (USA), VOA journalist		Discharged in 2006
59	Kassa Kebede		Abroad (USA), former Dergue official and diplomat		Discharged in 2006
60	Moges Woldemariam		Abroad (USA), academic, PhD	1	Acquitted in April 2007
61	Fasil Belete		Abroad (USA)	1	Acquitted in April 2007
62	Aregawi Berhe		Abroad (USA), exile opposition leader (TAND)	1	Acquitted in April 2007
63	Solomon Tekaligne		Abroad (USA), singer	1	Acquitted in April 2007
64	Isayas Lisanu		Abroad (USA), journalist		Discharged in 2006
65	Tefera Zewdie		Abroad (USA), businessman		Discharged in 2006
66	Kefalegn Mammo		Abroad (Holland), former EFJA president	1	Acquitted in April 2007
67	Tilahun Maru		Abroad (Holland)		Discharged in 2006
68	Assefa Negash		Abroad (Holland), medical doctor	1	Acquitted in April 2007
69	Getachew Garedeu		Abroad (Germany)	1	Acquitted in April 2007

C. Journalists					
70	Fasil Publishing and Advertising	<i>Addis Zena</i> newspaper		1,5,7	Acquitted of 5,7 in April 2007, convicted of 1 in June 2007, fined
71	Fasil Yenealem	<i>Addis Zena</i> newspaper	General manager and owner	1,5,7	Acquitted in April 2007
72	Wossenseged Gabrekidan	<i>Addis Zena</i> newspaper	Editor-in-Chief	1,5,7	Acquitted of 5,7 in April 2007, convicted of 1 in June 2007, pardoned
73	Sisay Publishing and Advertising Enterprise	<i>Ethiop</i> newspaper		1,5,7	Acquitted of 5,7 in April 2007, convicted of 1 in June 2007, fined
74	Sisay Agena	<i>Ethiop</i> newspaper	General manager and owner	1,5,7	Acquitted April 2007
75	Andualem Ayele	<i>Ethiop</i> newspaper	Editor-in-Chief	1,5,7	Acquitted of 5,7 April 2007, convicted of 1 in June 2007, pardoned
76	Serkalem Publishing Enterprise	<i>Asqual, Menelik</i> and <i>Satenaw</i> newspapers		1,5,7	Acquitted of 5, 7, April 2007, convicted of 1 in June 2007, fined.

77	Serkalem Fasil (f)	<i>Asqual</i> , <i>Menilik</i> and <i>Satenaw</i> newspapers	General manager and owner, wife of #39	1,5,7	Acquitted April 2007
78	Wonakseged Zeleke	<i>Asqual</i> newspaper	Editor-in-Chief	1,5,7	Acquitted of 5,7 April 2007, convicted of 1 in June 2007, pardoned
79	Zelalem Gebre*	<i>Menelik</i> newspaper	Editor-in-Chief	1,5,7	Acquitted of 5,7 in April 2007, convicted of 1 in June 2007, pardoned
80	Dereje Habtewold	<i>Netsanet</i> newspapers	Deputy Editor-in-Chief	1,5,7	Acquitted in April 2007
81	Nardos Meaza	<i>Satenaw</i> newspaper	Editor-in-Chief	1,5,7	Acquitted in April 2007
82	Dawit Fasil	<i>Satenaw</i> newspaper	Deputy Editor-in-Chief, brother of #77	1,5,7	Acquitted of 5,7 in April 2007, convicted of charge 1 in June 2007, pardoned
83	Zekarias Publishing Enterprise	<i>Netsanet</i> newspaper		1,5,7	Acquitted of 5,7 in April 2007, convicted of charge 1 in June 2007, fined
84	Zekarias Tesfaye	<i>Netsanet</i> newspaper	Manager and owner	1,5,7	Acquitted in April 2007
85	Abiy Gizaw*	<i>Netsanet</i> newspaper	Editor-in-chief	1,5,7	Acquitted of 5,7 in April 2007,

					convicted of 1 in June 2007, pardoned
86	Abay Publishing Enterprise	<i>Abay</i> newspaper	General manager and owner	1,5,7	Acquitted in April 2007
87	Mesfin Tesfaye	<i>Abay</i> newspaper	Editor-in-Chief,	1,5,7	Acquitted of 7 in April 2007, convicted of 1,5 in June 2007, pardoned
88	Aregawi Publishing and Advertising Enterprise	<i>Hadar</i> newspaper		1,5,7	Acquitted in April 2007
89	Dawit Kebede	<i>Hadar</i> newspaper	Editor-in-Chief	1,5,7	Acquitted of 5,7 in April 2007, convicted of 1 in June 2007, pardoned
90	Feleke Tibebu	<i>Hadar</i> newspaper	Deputy Editor-in-Chief	1,5,7	Acquitted in April 2007
D. Civil Society					
91	Taye Woldesmiate *	Ethiopian Teachers Association (ETA)	Abroad at the time (USA), President of ETA, academic, PhD	1	Acquitted in April 2007
92	Kassahun Kebede	Ethiopian Teachers Association (ETA)	Executive committee member of ETA regional committee	1	Acquitted in April 2007

93	Kifle Mulat *	Ethiopian Free Press Journalists Association (EFJA)	Abroad at the time, President of the EFJA, newspaper publisher and journalist	1	Acquitted in April 2007
94	Daniel Bekele	ActionAid Ethiopia	Policy Director, lawyer	1	Convicted in December 2007, sentenced to 30 months, pardoned
95	Netsanet Demissie	Organization for Social Justice in Ethiopia (OSJE)	Executive Director and founder of OSJE, lawyer	1	Convicted in December 2007, sentenced to 30 months, pardoned
E. Other CUD Officials or supporters					
96	Mesfin Debessa	UEDP-Medhin/ CUD		1,2,3,7	Acquitted of 2,3,7 in April 2007, convicted of 1 in June 2007, pardoned
97	Berhanu Alemayehu*		Abroad at the time	1,2,3,7	Acquitted of 2,3,7 in April 2007, convicted, convicted of 1 in June 2007, pardoned

98	Wedneh Jedi	UEDP- Medhin/ CUD		1,2,3,7	Acquitted of 2,3,7 in April 2007, convicted of 1 in June 2007, pardoned
99	Wondimu Dessaiegn	UEDP- Medhin/CUD			Discharged in 2006
100	Solomon Abebe	UEDP- Medhin/CUD			Discharged in 2006
101	Menbere Cherinet (f)	UEDP- Medhin/CUD			Discharged in 2006
102	Abraham Abiyu				Discharged in 2006
103	Zinash Moges (f)				Discharged in 2006
104	Biniyam Tadesse				Discharged in 2006
105	Fikadu Debesa				Discharged in 2006
106	Kebnesh Habte (f)				Discharged in 2006
107	Taye Getachew			1,2,3,7	Acquitted in April 2007
108	Eyob Bekele			1,2,3,7	Acquitted in April 2007
109	Mohamed Seman			1,2,3,7	Acquitted in April 2007
110	Kassa Tadesse			1,2,3,7	Acquitted in April

					2007
111	Fekadu Assefa			1,2,3,7	Acquitted in April 2007
112	Melaku Ouncha			1,2,3,7	Acquitted of 2,3,7 in April 2007, convicted of 1 in June 2007, pardoned
113	Abiyot Wakjira			1,2,3,7	Acquitted of 2,3,7 in April 2007, convicted of 1 in June 2007, pardoned
114	Minale Gebre			1,2,3,7	Acquitted in April 2007
115	Mebratu Kebede			1,2,3,7	Acquitted of 2,3,7 in April 2007, , convicted of 1 in June 2007, pardoned
116	Gezahegn Tesfaye			1,2,3,7	Acquitted in April 2007
117	Daniel Berihun			1,2,3,7	Acquitted of 2,3,7 in April 2007, convicted of 1 in June 2007, pardoned

118	Kidist Bekele (f)			1,2,3,7	Acquitted of 2,3,7 in April 2007, ,convicted of 1 in June 2007, pardoned
119	Tesfaye Ganta			1,2,3,7	Acquitted in April 2007
120	Teferi Berhe				Discharged in 2006
F. Other CUD Members					
121	Gebremedhin Teferi				Discharged in 2006
122	Tesfaye Tariku	AEUP/CUD	AEUP executive committee member	1,2,3,7	Acquitted of 2,7 April 2006, convicted of 1,3 in June2007, pardoned
123	Walta Nigus	AEUP/CUD		1,2,3,7	Acquitted of 2,3,7 April 2007, convicted of 1 in June 2007, pardoned
124	Mulu Gashu	AEUP/CUD		1,2,3,7	Acquitted of 2,3,7 April 2007, convicted of 1 in June 2007, pardoned

125	Anteneh Getnet			1,2,3,7	Acquitted in April 2007
126	Wedneh Temesgen	AEUP/CUD		1,2,3,7	Acquitted in April 2007
127	Wondimeneh Dessalegne	AEUP/CUD		1,2,3,7	Acquitted in April 2007
G. CUD Parties					
128	All Ethiopia Unity Party	AEUP/CUD		1,2,3,5,6,7	Acquitted in April 2007
129	UEDP-Medhin	UEDP-Medhin/ CUD		1,2,3,5,6,7	Acquitted in April 2007
130	Ethiopian Democratic League	EDL/CUD		1,2,3,5,6,7	Acquitted in April 2007
131	Rainbow	Rainbow/ CUD		1,2,3,5,6,7	Acquitted in April 2007

Notes:

The Coalition for Unity and Democracy (CUD - *Kinjit* or *Kinijit* in Amharic), consisted of four parties: the All Ethiopia Unity Party (AEUP), the Ethiopian Democratic League (EDL), the United Ethiopian Democratic Party-Medhin (UEDP-Medhin), and the Rainbow Party (Movement for Democracy and Social Justice, *Kestedemena* in Amharic)

* Indicates charged in their absence

ENDNOTES

1 For information on Amnesty International's concerns about other human rights issues in Ethiopia, see

<http://www.amnesty.org/en/region/ethiopia>

2 Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights to be respected and protected in every country of the world by government and also by armed groups and non-state actors. Its mission is to conduct research impartially and take action to prevent and end grave abuses of all human rights – civil, political, social, cultural and economic. It is independent of any government, political ideology, economic interest or religion. It does not either support or oppose any government or political group.

3 Ethiopia: Prisoners of Conscience on trial for treason: opposition party leaders, human rights defenders and journalists, May 2006 (AI Index: AFR 25/013/2006).

4 This was the first fully contested election since 1991.

5 Ethiopia: The 15 May 2005 elections and human rights – recommendations to the government, election observers and political parties, AI Index: AFR 25/002/2005, April 2005.

6 BBC World News, 16 May 2005.

7 IRIN UN news agency, 30 August 2005.

8 The report of a Commission of Inquiry said 193 demonstrators had been killed and 763 wounded – see Section 7. The initial police report to parliament announced much lower numbers.

9 On 16 October 2005 Daniel Bekele had been severely beaten by unidentified armed thugs who warned him not to criticise the government. The police did not investigate the assault.

10 The new dissident CUD MPs were recognized by the National Election Board as representing a new party, the Coalition for Unity and Democracy Party (CUDP), and the former CUD whose leaders were in prison was de-recognized.

11 http://eeas.europa.eu/human_rights/election_observation/ethiopia/final_report_en.pdf

12 This revised version of the 1957 Penal Code was promulgated in 2004 but only signed into effect by the President on 9 May 2005, six days before the election.

13 Nine defendants were members-elect of the national parliament and two of the Addis Ababa City Council, including some of the above

14 See section 8 on the Commission of Inquiry account of these events, which gave different figures of deaths and injuries of people, who were mostly shot by the security forces.

15 The EPPF was reported to have a small fighting force in northern Ethiopia.

16 This definition of genocide is wider than the international definition. The only previous recent example of the use of

this charge in Ethiopia was against officials of the pre-1991 Dergue government who were responsible for mass murder, thousands of disappearances and systematic torture.

17 Tigray Region on the Eritrean border is the home area of the Tigrayan “nationality” (or ethnic group) and Prime Minister Meles Zenawi’s Tigray People’s Liberation Front (TPLF), which defeated the former Dergue government of Mengistu Hailemariam in 1991 and is now the dominant party in the ruling EPRDF coalition.

18 The interpretation was said to be often of poor quality and parts of the verbal exchanges in court were missed.

19 Due to the unavailability of the EU trial observation report and the Lawyers Without Borders report, this report by Amnesty International is the only full account and analysis of the trial on public record.

20 www.lawyerswithoutborders.org

21 www.actionaid.org.uk

22 Yet early on in the trial on 15 May 2006, the presiding judge was reported to have remarked that three out of every four videotapes presented by the prosecutor were not related to the charges.

23 These refer to the “Orange Revolution” in Ukraine, when mass peaceful public protests in 2004 and 2005 against electoral fraud in the presidential elections led to a re-vote and victory for opposition candidate Viktor Yushchenko, and the “Rose Revolution” in Georgia in November 2003, when mass anti-government peaceful protests followed parliamentary elections that were widely condemned as rigged, ultimately resulting in the resignation of President Eduard Shevardnadze and new elections in January 2004, won by opposition leader Mikheil Saakashvili.

24 See section 8 on the parliamentary Commission of Inquiry.

25 This includes voting in elections and standing for public office.

26 These amounts are calculated using the rate of exchange at the time that the fines were imposed in 2007

27 Whoever, with the object of committing or supporting any of the acts provided under Articles 238-242,246-252:

(a) publicly provokes them by word of mouth, images or writings; or

(b) conspires towards, plans or urges the formation of, a band or group with other persons, whether within or outside the country; or

(c) joins such band or group, adheres to its schemes or obeys its instructions; or

(d) enters into relations or establishes- secret communication with a foreign government, political party, organization or agent; or

(e) launches or disseminates, systematically and with premeditation, by word of mouth, images or writings, inaccurate, hateful or subversive information or insinuations calculated to demoralize the public and to undermine its confidence or its will to resist,

28 This is sometimes confusingly called “parole” although it is unconditional and not monitored.

29 Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law, as stated in Article 14(2) of the ICCPR and Article 7(1(b)) of the African Charter.

30 Human Rights Committee General Comment No 32 states: "The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle."
(paragraph 30)

31 As expressed by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions: "defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence." (UN Doc. A/51/457, paragraph 111)

32 "PM warns voters of Rwanda-style bloodshed", Reuters, 6 May 2005.

33 Under the Criminal Procedure Code, judges can change the charge at the stage of giving judgment.

34 Article 20(5) of the 1994 Constitution: "Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible." Article 31 of the Criminal Procedure Code: "1. No police officer or person in authority shall offer or use or make or cause to be offered, made or used any inducement, threat, promise or any other improper method to any person examined by the police." Article 35 (2) of the Criminal Procedure Code "No court shall record any such statement or confession unless, upon questioning the person making it, it ascertains that such person voluntarily makes such statement or confession."

35 Article 26 of the Ethiopian Constitution protects the right to privacy, including the right not to be subjected to "searches of his home, person or property, or the seizure of any property under his personal possession." Article 32 of the Criminal Procedure Code provides that no premises may be searched without a search warrant, while article 422 of the Criminal Code criminalizes the abuse of the right of search or seizure by public officials.

36 See article 14(3(e)) of the International Covenant on Civil and Political Rights.

37 See section above and endnote 32.

38 It seemed thereby, and in certain government statements, that the authorities were intent on blaming the violence and deaths on the CUD for allegedly inciting violence.

39 Article 148 of the Criminal Procedure Code (Final addresses) provides:

"1. After the evidence for the defence has been concluded the prosecutor may address the court on questions of law and fact.

2. The accused or his advocate shall then address the court on questions of law and fact. He shall always have the last word.

3. Where there are more than one accused the presiding judge shall decide in which order the accused or their advocates shall address the court."

40 It has been surmised by some that they had “no intention to present a defence” as a political policy in line with their original position. However, there is no evidence to support this belief and no defendant has confirmed it. This argument cannot therefore be used to condone what happened.

41 Article 14(3(b)) of the ICCPR.

42 Human Rights Committee, General Comment No 32 on the right to equality before courts and tribunals and to fair trial, paragraph 33.

43 Principle 8 of the Basic Principles on the Role of Lawyers clearly states that: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."

44 The African Commission on Human and Peoples' Rights has stated that "the prosecution shall provide the defence with the names of the witnesses it intends to call at trial within a reasonable time prior to trial which allows the defendant sufficient time to prepare his or her defence." (African Commission, Principles and Guidelines on Fair Trial and Legal Assistance in Africa)

45 That is, equal treatment by the court of prosecution and defence.

46 In practice, Kefle Tigeneh's defence lawyer defended all the others too.

47 Amnesty International did not observe this trial but other observers attended at times, although there was no Amharic-English interpretation.

48 Article 9(3) of the ICCPR states: "it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment."

49 Prohibition of torture and cruel, inhuman or degrading treatment or punishment is a fundamental guarantee recognized, inter alia, in article 7 of the ICCPR and in the article 5 of the African Charter. The right not to be compelled to testify or confess guilt is specifically recognized in article 14(3(g)) of the ICCPR.

50 See in particular article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Ethiopia is a state party. International standards demand that whenever there is an allegation that a statement was elicited as a result of torture, other ill-treatment or duress, the judge should hold a separate hearing before the evidence is admitted at the trial. If it is determined that the statement was not made voluntarily, then it must be excluded from all proceedings, except proceedings brought against those accused of torture or ill-treatment.

51 AI Index: AFR 25/033/2006, UA 282/06, 19 October 2006

52 This amount is based on the rate of exchange at the time that bail was set in 2007.

53 There is a growing consensus that there should be a presumption against detention of pregnant women except in the most extreme circumstances (for an overview, see “Women in Prison: A commentary on the UN standard minimum rules

for the treatment of prisoners”, published by the Quaker United Nations Office in June 2008.)

54 Human Rights Committee General Comment No 28 on equality of rights between men and women.

55 See section 10.5 for a further analysis of Ethiopia’s obligations under international human rights law.

56 This account is compiled from interviews with released prisoners and others, but is incomplete on account of the confidential nature of the negotiations, their complexity, and a silence imposed by the authorities.

57 It appears that most defendants did not formally apply for pardon by completing a pardon application form, but the signed apology letters were evidently taken as applications to the President and/or Pardon Board for pardon.

58 It seemed that the record of conviction had also been removed and would not constitute a ground for prohibiting anyone from standing for election.

59 www.ajgaforum.com

60 Ethiopia: Urgent Action on Arbitrary Detention/Torture or other ill-treatment - Birtukan Mideksa (AFR 25/003/2009)

61 This information was obtained by Amnesty International from members of the Commission who fled the country, and reported also in testimony to US Congress in a special hearing by the chair of the Commission, Frehiwot Samuel, on 16 November 2006, in which he referred to the unpublished original report of the Commission. See www.qalitiqalkidan/commission.org.

62 Its full title is, The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Rights and Fundamental Freedoms.

63 See section 2.1.

64 Similarly, the UN Standard Minimum Rules for the Treatment of Prisoners state that: “The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.”

65 The Human Rights Committee has also stated that “[C]ertain minimum standards regarding the conditions of detention must be observed regardless of a State party’s level of development. These include, in accordance with rules 10, 12, 17, 19 and 20 of the Standard Minimum Rules for the Treatment of Prisoners, minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing which shall be in no manner degrading or humiliating, provision of a separate bed and provision of food of nutritional value adequate for health and strength. It should be noted that these are minimum requirements which the Committee considers should always be observed, even if economic or budgetary considerations may make compliance with these obligations difficult.” (see *Albert Womah Mukong v. Cameroon*, 21 July 1994, para. 9.3.)

66 Even though the prosecution later withdrew its appeals, it is still possible they could be arrested if forced to return to Ethiopia.

67 This party, called Ginbot 7 (named after the Amharic date of the May 2005 elections), said it would use “all means” (undefined) to oppose the government, whereas the UDJP committed itself to non-violent and constitutional methods of opposition.

68 Serkalem Publishing: 120,000 birr; Sisay Publishing: 100,000 birr; Zekarias Publishing: 60,000 birr; Fasil Publishing: 15,000 birr.

69 This action had not been taken at time of writing.

70 Federal Democratic Republic of Ethiopia: Comprehensive justice system reform programme, baseline consultant study report, Ministry of Capacity Building, March 2005, published by the Centre for International Legal Cooperation, University of Leiden, PO Box 65, 2300 AB Leiden, The Netherlands.

71 European Union Guidelines on Human Rights Defenders,
<http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>

ADDENDUM

This addendum acknowledges comments made by the government of Ethiopia in response to the content of this report and acknowledges the findings of the EU Trial Observation, which were not available to Amnesty International during the drafting of this report.

Amnesty International sent the text of this report to the Government of Ethiopia in June 2009, with a request for its response and comments. Government officials made oral comments on the report to Amnesty International delegates during meetings in Addis Ababa in September 2009.

As indicated in the report, the European Union appointed an international trial observer to monitor the conduct of the trial of *Engineer Hailu Shawel and others*. The final copy of the trial observer's report has never been made public. Amnesty International obtained a confidential copy of the report from the Ethiopian Government in late 2009 – after the drafting of Amnesty International's own report.

RESPONSE OF THE ETHIOPIAN GOVERNMENT

In September 2009 Mr Bereket Simon, Minister of the Government's Communications Affairs Bureau, made oral comments on this report on behalf of the Government of Ethiopia. The Minister stated that the report contained factual errors. It was proposed that the specific errors would be enumerated in separate communications to Amnesty International.

The government stated that the report did not meet recognized standards for trial observations, citing particularly Amnesty International delegates' limited presence at the trial proceedings and the fact that Amnesty International had not been accredited [by the government] to observe the trial.

The government objected to Amnesty International's portrayal of the defendants as having been targeted for peaceful dissent, and objected to Amnesty International's use of the term 'prisoners of conscience.' The government stated that the defendants were not imprisoned for dissent; they had incited the public in an attempt to topple the government and were found guilty. The defendants had been involved in violent activities, including the throwing of weapons during street actions, and arrests had taken place because it was necessary for the government to contain the violence.

In relation to the mediation process and the pardon (see section 7) the Minister stated that there was no mediation initiative. Although discussions took place between the defendants and the Elders, the government did not participate in the discussions, and these had no impact on the pardons – which took place according to judicial procedures. The Minister said that the defendants who were convicted had been pardoned because they had acknowledged their responsibility for the violence, admitted they had made mistakes, and applied for pardon, which was granted by the President.

AMNESTY INTERNATIONAL'S RESPONSE TO THE GOVERNMENT'S COMMENTS

The additional information offered to Amnesty International by the government to correct alleged factual errors in the report was not received; therefore Amnesty International has proceeded with publishing the report without any changes.

With regard to the guilt of the defendants and their categorization as prisoners of conscience, Amnesty International considered the defendants as prisoners of conscience after they were first arrested in 2005, based on the belief that they had not used or advocated the use of violence. The number of concerns with the fairness of the trial reinforced this appraisal, but was not the basis of it.

With regards to the mediation process and the pardons, Amnesty International received information on the pardon procedures from reliable sources who were party to the negotiations. This information – as laid out in section 7 – differs from the government's account of the process. No further evidence was received from the government to contradict Amnesty International's information.

Central to the government's refutation of Amnesty International's analysis was the fact that the EU trial observation report found the trial to be fair. This is addressed in Amnesty International's concluding comments below.

Finally, Amnesty International has come under criticism from the government of Ethiopia and other parties for writing this report without having attended the trial *in toto*. This report is based on the collection of significant amounts of information from a wide range of sources. Furthermore, the general account of the trial, and many of the key issues and concerns with the main trial highlighted in this report concur with information and concerns raised in the EU report.

EU TRIAL OBSERVATION REPORT

The President of the European Union Heads of Mission in Ethiopia commissioned an international trial observer to observe the trial of *Engineer Hailu Shawel and others*. The EU Observation mission and report mandate did not cover other CUD trials.¹

The 19-page report was based on continuous attendance at the trial by an independent international lawyer. The EU observer gave attention to the Ethiopian constitutional and legal system and criminal trial practise, also taking into account international human rights treaties which Ethiopia has ratified, and international customary law and practise, with references to the European Convention for the Protection of Human Rights and the International Commission of Jurists publication "Legal Standards for Fair Trial."

In drawing a general assessment of the trial in terms of due process the EU report quotes the International Commission of Jurists Trial Observation Manual that the right to a fair trial is constituted by a set of distinct rights, and lists some of those rights, including equality before the law, public hearing and the right to be tried without delay. The report then concludes that on balance, those conditions were met,

"In the opinion of the observer, the Court, throughout the trial, acted in an impartial manner despite the major difficulty posed by the attitude of the majority of the defendants who refused to recognise its authority and consequently refused to defend themselves, thus jeopardising some of their fundamental rights.² The Court also scrupulously strove to apply the law and to justify its ruling and judgements by a reference to constitutional or legal provisions. All in all therefore it can be said that the above conditions required to regard this trial as a fair trial were met."

However, the report then immediately goes on to enunciate "serious weaknesses" that were noted, under four headings:

The independence of the judiciary: The report notes some "limiting factors" influencing the independence of the judiciary, including working conditions and remuneration of judges. However, the report states that there was no evidence to show that political interference affected the conduct of the trial.

The charges brought against the accused: The report observed that due to the nature of the charges and the resultant denial of bail, many of the accused were in detention for a long period of time, which was in contravention of international standards, but which the Court "was unable to alter". The report states that this "raised doubts regarding the fairness of the trial as a whole."

Procedural flaws affecting due process: The report stated that considering that bail was never granted to any of the accused, the excessive duration of the whole trial process "could almost be regarded as an unjustifiable delay (resulting in) serious prejudice to the extent that no fair trial be held."

The incidental impact of the pardon process: The EU report stated that, while considering the pardon as "irrelevant when assessing the nature of the trial proceedings", it noted that the pardon process caused some confusion, as those who were found guilty but pardoned were freed, whilst those who defended themselves (Daniel Bekele and Netsanet Demissie) remained in jail.

In many cases the EU report provided justifications for the existence or occurrence of the weaknesses, for example stating that the court was unable to deal with a large volume of work resulting in significant delays in the trial; and stated that many of these issues could be remedied by legislative reform.

In addition to these 'serious weaknesses' noted, a substantial part of the EU report provides an account of the trial proceedings in consideration of some key tenets of due process, highlighting many areas of concern. Main findings of the report included, *inter alia*:

The charges: The EU report observed that all the charges were "fairly general and complex" and that this could potentially have been in breach of the Criminal Procedure Code which proscribes that "(every charge... shall contain) the time and place of the offence and, where appropriate, the person against whom or the property in respect of which the offence was committed" (Art. 111(c), CPC).

Consistent with Amnesty International's analysis, the EU report concluded that the first charge – outrage against the Constitution was very difficult to establish because the "link(s) between particular items of evidence and the nature of the alleged crime was often far from evident and tangible."

Evidence: The EU report also raised concerns in relation to both video and other evidence and that links between the evidence, the defendants and the charges were not established. In an assessment of the video evidence submitted by the prosecution the EU report concluded that "there was no direct incitation to violence in the video or audio tapes."

The EU report also highlighted a massive document produced by the prosecution entitled Public Prosecutor Additional Documentary Evidences, Explanations', which, the report states "was presumably to clarify the link(s) between the evidence, the accused and the alleged offences." According to the EU report, this document fell short, in many cases, of "providing the stringent proof of guilt usually required in criminal matters... e.g. some documents allegedly implicating defendants were not signed, or their origin was uncertain, or were photocopies of originals, or were documents (minutes of meetings) whose relation to the defendant(s) was not clearly established." However, the report notes, in the cases of a small number of the defendants there was some evidence which "on the face of it, directly implicated them in some of the charges."

Admissibility and probative value of evidence: The EU report provided an overall analysis of the evidence presented by witnesses for the prosecution and concluded that the relevance of the facts reported by the witnesses to the charges and the defendants was far from established. For example many witnesses, in giving their evidence, did not cite any of the defendants. The EU report concluded therefore that much of the evidence was circumstantial and fell short of international standards on witness evidence.

In addition to the concerns outlined above relating to due process in the trial, a large proportion of the EU Observation report highlights what it called "major legal problems facing the court" - relating to the legal and procedural frameworks within which the trial took place. The report cites "the lack of any law of evidence" as a "major obstacle to the smooth running of the trial", notes the "inadequacy of the law in regard to bail", and the "absence of a law of evidence", which means there is no legal definition of what is admissible or pertinent, and the Court is left to decide on these matters. In this case, this took a very long time as the court had to decide in relation to each piece of evidence. The report concludes that this process is "detrimental to the good administration of justice, especially when the accused, as in this case, are denied bail."

The EU report also casts doubt on the validity of the guilty verdict handed down to Daniel Bekele and Netsanet Demissie. The report noted the difficulty of assessing what criteria was used by the Court to reach a guilty verdict, and concluded that in relation to the conviction of Daniel Bekele and Netsanet Demissie, the decision of the Court "could hardly have been reached "beyond reasonable doubt"".

In relation to potential breaches of essential media freedoms in the prosecution of journalists and publishing houses the EU observer highlighted a number of areas of concern and areas where clarity was lacking, concluding that the court's approach to freedom of the press "is potentially dangerous as it could be used to restrict the very freedom it intends to protect."

The EU report also expresses concerns over the charges of conspiracy levelled at Professor Mesfin Woldemariam and members of the CUD Supreme Council – questioning the “wide interpretation” the Court gave to article 38 of the Criminal Code on criminal conspiracy.

The EU report concluded with a number of specific recommendations which it said were intended to address the legal and procedural defects and weaknesses which were highlighted in the report in relation to the CUD trial.

CONCLUDING COMMENTS – AMNESTY INTERNATIONAL

The issues highlighted in the report of the EU Trial Observation are consistent with many of the points of concern Amnesty International raises with regards to the main CUD trial, including the vague and general nature of the charges, the admissibility and probative value of evidence, standards of proof, and the excessive length of the trial. Amnesty International also concurs with the EU observer’s analysis of the wider problems and concerns with the administration of justice in Ethiopia. The serious “legal and procedural defects and weaknesses” reported by the EU were substantive as well as procedural, and had an impact on the final court verdict.

The section of the Trial Observation Manual on the right to a fair trial that was quoted by the EU report goes on to say “the list of specific guarantees is not an exhaustive list. In some situations an additional guarantee not listed might be considered necessary in order to guarantee the right to fair trial.”³ Amnesty International believes that in addition to the aspects of trial proceedings covered in the EU report, other aspects of the arrests and trials must be taken into consideration in drawing conclusions on the fairness of the trial, particularly the concurrence of the trial and the political pardon process.

Amnesty International therefore maintains its finding that the trial did not sufficiently meet recognised international standards of fair trial.

1 The terms of reference of the agreement concerning the trial observation between the EU Heads of Mission and the Ethiopian Government were contained in an annex to the EU report that was not made available to Amnesty International.

2 Amnesty International comment: refusal to defend him or herself does not in principle jeopardize a defendant’s right to a fair trial, though in practice it can impact on this right.

3 International Commission of Jurists, Trial Observation Manual, p24.



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JUSTICE UNDER FIRE

TRIALS OF OPPOSITION LEADERS, JOURNALISTS AND HUMAN RIGHTS DEFENDERS IN ETHIOPIA

Scores of opposition party leaders, journalists and human rights defenders faced possible death sentences when they were put on trial in Addis Ababa in May 2006. They were accused of inciting violence during post-election demonstrations in 2005 in which some 180 demonstrators and six police officers were killed.

Most defendants boycotted their trials, which ended in June 2007, although the trial of two civil society activists who presented a defence continued until March 2008. Most defendants were convicted and sentenced to lengthy prison terms. Shortly after their convictions, they were pardoned and released, following a mediation process which led to their signing a “letter of apology”. They had been imprisoned for more than 18 months.

Amnesty International concluded that the defendants were prisoners of conscience and the trials were largely unfair.

Human rights in Ethiopia have since been further restricted by repressive new legislation, limiting the ability of the media, political parties and non-governmental organizations to function.

Amnesty International calls on the Ethiopian government to reform the country’s laws and judicial system to improve access to justice, ensure fair trials and guarantee freedom of expression, assembly and association. Human rights defenders and journalists should be able to conduct their legitimate activities freely and without fear of prosecution.

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