

THE POLITICS OF PARDON AND ITS IMPLICATIONS

By Kaleb M. Feb 03, 2012

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If you are like me who cannot sleep without good dose of news from Ethiopia you have most probably heard the about state pardons on the news in the last two or three years. Even some of the worst offenders in our history have benefited from the pardon negotiated by the ever relentless 'Yager Shimagles'. Who said, *God may forgive you but not me*. Certainly, many Ethiopian have said it. The list of the beneficiaries of pardons from the Ethiopian government is growing long; Dergue officials, CUD leaders, a singer, journalists and possibly the convicted Swedish journalists, etc.

Normally, pardon is a nice word and emotes in us a new beginning and forgiveness. It is surely one of the best sides of human beings. Who can say he/she doesn't need a new beginning at some juncture of her/his life?

However, as much as I am proud of EPRDF's struggle and achievements as an Ethiopian, I am troubled with the trend of using pardon so much so often that it is nearly being institutionalized like the *Zufan Chilot*. This has almost become a standard procedure that many actually see it coming in the case of the convicted Swedish journalists and others.

For those of us who have not heard about *Zufan chiltot*, it was the final judicial tribunal during the reign of Atse Haileselassie. An Ethiopian who has exhausted the regular appellate levels of the court system can still take his case to the *Zufan Chilot*. The *Zufan chilot*, whose ultimate judge is, of course, the King of Kings, can reverse the decision of the court. Since the system was an absolute monarchy, the king was really the king of the lives of Ethiopians under the sun or under God. There is no way that the decision of a judge could not be revised by the King at will under such system. Although this was used in certain selected cases, it gave the appearance that the real fountain of justice was the '*Tsehayu Negus*'. It was inconceivable for the King to leave the administration of justice altogether to nameless judges.

Generally, pardon is supposed to be used very rarely by the Head of the Executive Branch or Head State. Its purpose, at least as far as I can understand it, is for certain few cases where the punishment and the offense mismatch and often considers the rehabilitation of the offender after serving in prison.

For those who live in the United Sates, you may recall how the Governor of Mississippi recently was scolded by the public(or the press?) for pardoning dangerous criminals. Bill Clinton is not remembered well for pardoning a convicted spy for personal reasons. On the other hand,

President Bush II refused to pardon Dick Cheney's former advisor, who was convicted for perjury. Even the most hardened liberal might have found something to admire about the ex-President. Imagine how the public would feel if every sensitive case was settled by pardon presently . (This is not to suggest that the American justice system is not without its own ills. But that is another topic for another day and for Americans.)

You can see that pardon in Ethiopia was granted in recent years even if the offenders have just started serving their sentence. CUD leaders only served about 20 months of their life sentence, the Swedish journalist, if they are pardoned, will have served only months. (By the way I am not unhappy that CUD leaders were pardoned in case you are missing my point here)

It seems that if you are convicted in Ethiopia and if you have the right profile, you can say to the judge who is sentencing you, *'go ahead give me your life sentence or 15 years, eventually it is at the hands the Master in the palace'*. Something is wrong here; either the judges are misinterpreting the law or the executive branch does not trust the judges to decide and settle such cases.

I believe the issue goes down to the basic idea of justice. Inherently, we don't want to put our fate at the hands of individuals but in certain fair principles on which the society has agreed upon. Hence, the meaningful parlance, *'Behige Amlak'*. Who wants to change this to *" Behige Haileseallsie or EPRDF'*?

So that is why we train people in these rules called laws and empower them to decide conflicts according to these principles. We call these individuals with robes judges. But why do we prefer judges than executive officials to settle our conflicts? It is simply because we have the chance to argue and present our evidences and challenge our adversaries in courts. If the cases was left to a Prime Minister or King, we will not have those opportunities.

We weaken the court system at our peril. At the critical moment when we are victims of the excess of the government and the bigotry of individuals, the abstract principles and the constitution by themselves cannot protect us. It is the institutions like the courts which we have to build painstakingly we can depend upon to stand for us. Of course, like any human institutions, the courts will need checks and balances(appointments and discipline by the parliament for example).

For a political force like the EPRDF, consumed rightly, by urgent development issues, it is very easy to prefer political will at the expense of legality. It is easy to associate courts with excessive litigation in some western countries, liken them with the culture of *'mugit'* in Feudal Ethiopia, or to look at the courts as obstacles to executive expediency. But there is no substitution to building an independent judicial system even for a developmental state.

So my concern is, as you can see, not really the limited issue of pardon but the usurping of judicial power and how we are getting used to it. The apparent comfort of the executive branch to intervene with the axe of pardon at every issue it deemed important is dangerous. Certainly, EPRDF wants Ethiopians to have faith in the principles enshrined in the Constitution and laws issued according to the Constitution, not on individual officials. The only way to do that is by cultivating an independent judicial system and to respect its decisions even if sometimes the decisions may appear wrong.