

1996

Field Report: War Crimes Trials and the Establishment of a Public Defender's Office in Ethiopia

Peter Bach

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Bach, Peter. "Field Report: War Crimes Trials and the Establishment of a Public Defender's Office in Ethiopia." Human Rights Brief 3, no. 2 (1996): 14-15, 18.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kcley@wcl.american.edu.

FIELD REPORT

War Crimes Trials and the Establishment of a Public Defender's Office in Ethiopia

by Peter Bach

Soon after taking power in 1991, the newly established Transitional Government of Ethiopia (TGE) decided to prosecute former leaders, politicians, and other officials for war crimes allegedly carried out while they were members of the communist/military regime which ruled Ethiopia from 1974 to 1991. This regime, known as the Dergue and headed by Colonel

The swift decision by the TGE to conduct the trials earned it high marks within the international community.

Mengistu Haile Mariam, was suspected of gross violations of human rights during its reign.

The swift decision by the TGE to conduct the trials earned it high marks within the international community. With the passage of time, however, some became concerned by the slow pace of the proceedings. In the summer of 1994, a segment of the international community argued that since these former Dergue officials had remained in prison for three years without having formal charges brought against them, there was a danger that their rights were being violated.

In response, the Special Prosecutor's Office (SPO), established by the TGE to prosecute these alleged war crimes, formally charged a number of detainees in October 1994, and criminal proceedings began soon thereafter. Nevertheless, some representatives of the international community have expressed concern about the slow pace of the trials. There have been many adjournments, some lasting months. In addition, as of late 1995, the vast majority of the detainees remained in prison without ever having been charged.

As one of the poorest nations in the world, Ethiopia rightfully earned the respect of the international community when it initiated trials to prosecute those who might have played a role in the mass killing of civilians for political and military gain. After a long, devastating and painful civil war lasting 17 years, it took considerable commitment from the TGE to allocate scarce resources to initiate these prosecutions. In other parts of the African continent, the historical pattern has been to dispose of one's former enemies without regard to rules of law. Indeed, war crimes trials are rare on the continent. The feeling among many Ethiopian officials that they are being judged by an unreasonable standard when the international community presses for expedient trials is, therefore, an understandable one.

Historical Background

In 1991-92, the TGE arrested Dergue members, military and police personnel, and other state agents suspected of direct involvement or complicity in gross violations of human rights during the Dergue period. An estimated 3,000 persons were imprisoned. The Dergue leader, Colonel Mengistu, escaped to Zimbabwe, where he

As one of the poorest nations in the world, Ethiopia rightfully earned the respect of the international community when it initiated trials to prosecute those who might have played a role in the mass killing of civilians for political and military gain.

responsible for human rights violations during the Dergue regime. After the establishment of the SPO, some of those originally detained on suspicion of human rights violations were released, and some additional suspects were arrested. Today, it is estimated that the SPO has approximately 1,400 persons in custody.

By October 1994, the SPO had indicted 73 former Dergue members, 27 of whom were charged in absentia, including Colonel Mengistu. The defendants were charged on a collective basis with genocide and crimes against humanity, or alternatively, with aggravated homicide. The charges stemmed from, *inter alia*, the killings in 1975 of His Imperial Majesty Haile Selassie and 59 members of his cabinet. The Emperor, who was 83 years old at the time, had been suffocated. The 59 cabinet members were summarily executed in the Central Prison of Addis Ababa, which, ironically, is within viewing distance of the headquarters of the Organization of African Unity (OAU).

The charges of crimes against humanity and genocide were solely based on domestic criminal laws, including the Ethiopian Penal Code of 1957 which, in Part II, Title II, *Offenses Against the Law of Nations*, implements the international prohibition against genocide and crimes against humanity. This decision enabled Ethiopia to avoid the lengthy debate, and resulting delay, involved in establishing an international tribunal such as those created for the Former Yugoslavia and Rwanda.



Kemal Bedri, Chief Justice of Ethiopia, and Ann Wilkens, Swedish Ambassador to Ethiopia, sign agreement for funding of Public Defender's Office in October 1994. Canada and The Netherlands were also parties to this agreement.

remains today.

In August 1992, the TGE established a Special Prosecutor's Office, whose main mandate was to prosecute those

Photo courtesy of Peter Bach

continued on next page

Ethiopia, continued from previous page

The Dergue trials were and continue to be held before Ethiopian domestic courts.

Initially, the defendants charged in October 1994 were assigned private defense counsel provided by the courts. The attorneys are paid from funds obtained from the international

So far, all the court hearings have been related to preliminary questions regarding the legal basis for the charges under the Ethiopian Procedural and Penal Codes.

community.

The first group of former Communist Dergue members to be formally charged included twelve who were former high-ranking members of the Dergue. Their first hearing, on November 21, 1994, was conducted over a four-day period. The cases were then adjourned until March 7, 1995, in order for the defense attorneys to discuss the charges with their clients and to prepare their responses. After the responses were presented to the court, the court adjourned until May 23, 1995, to allow the SPO to respond to the defendants' objections.

After the one day court hearing on

The fact that the SPO presented the charges against the defendants on a collective basis has raised some problems.

May 23rd, the Central High Court adjourned again until October 9, 1995. The Court indicated that it needed this time to evaluate the charges presented by the SPO, the defendants' objections, and the SPO's reply to those objections.

So far, all the court hearings have been related to preliminary questions regarding the legal basis for the charges under the Ethiopian Procedural and Penal Codes. No witnesses or other evidence have been presented before the court up to this time.

The fact that the SPO presented the charges against the defendants on a collective basis has raised some prob-

lems. In October 1995, the High Court ordered the SPO to clarify the charges and specify the particular crime or crimes of which each defendant is accused. In the meantime, the remaining suspects, approximately 1,350 detainees, have not been charged and remain in prison. Some of these were arrested back in 1991. The SPO indicated that it would complete investigation and presentation of specific charges against each defendant by the end of 1995, so that everyone in custody would either be charged or released by the end of that period. So far, there are no reports on whether or not this deadline was met.

Establishment of the Public Defender's Office

By late 1993, it became clear to leaders of the Danish section of the International Commission of Jurists (ICJDS) that the much-anticipated Ethiopian war crimes trials would need to establish a mechanism enabling indigent former Dergue officials, who could not afford to pay for private attorneys, to adequately defend themselves, in order to meet international standards for fair and proper trials. Some members of the TGE also shared this view. In January 1994, therefore, ICJDS began working to establish a corps of public defenders in Ethiopia that could assume the task of representing former Dergue members charged with war crimes. Due to the circumstances existing in Ethiopia at the time, the ICJDS had to begin this effort at the ground level.

Given the economic reality in Ethiopia — the average annual income per person is estimated at less than \$150 — it is understandable that the priority of the Ethiopian government

was to first establish an SPO which would investigate and charge the alleged perpetrators of human rights violations and only later consider the problem of providing legal representation for the defendants. It is also not surprising that, in the spring of 1994, few within the government, the judiciary, the SPO, or private attorneys saw the need for establishing a Public Defender's Office (PDO).

From February 1994 to February 1995, however, the PDO expanded from four or five attorneys to approximately 30 attorneys. Fortunately, this expansion was accomplished through cooperation between the Ethiopian authorities, especially the Central Supreme Court, and the international donor community. Some of these new public defenders were graduates from

Given the economic reality in Ethiopia, the priority of the Ethiopian government was to first establish an SPO and only later consider the problem of providing legal representations for the defendants.

the Law School of Addis Ababa University, others were diploma holders, and some had served previously as judges in lower courts. The public defenders' salary was paid, for the most part, by the Ethiopian government. Offices were provided by the Central Supreme and High courts, while four donor countries financed the purchasing of

continued on page 18



Attorneys with the Public Defender's Office take a break from a training session in December 1994.

Photo courtesy of Peter Bach

MASTER OF LAWS

Degree Program in International Legal Studies at the Washington College of Law

Washington DC

This one year practice-oriented degree program enables graduates of U.S. and foreign law schools to engage in advanced research and to specialize in:

- International Protection of Human Rights
- International Environmental Law
- International Organizations
- International Business

The Program, which is taught by experts and leading practitioners, takes maximum advantage of the unique resources — international organizations and financial institutions, non-governmental organizations, federal agencies and research facilities available only in Washington, DC

For more information, please write to:

Interim Dir. Robert K. Goldman
American University
Washington College of Law
International Legal Studies
Program

4801 Massachusetts Avenue, NW
Washington, DC 20016-8181
Fax Number: (202) 274-4116

Ethiopia, continued from page 15

office equipment and running costs.

The PDO likely will come to play an important role in the continuing war crimes trials. It is anticipated that the SPO soon will present new charges against the 1,350 detainees that remain. In addition, the PDO currently is involved in the defense of approximately 300 Oromo Liberation Front (OLF) detainees. Some are charged with genocide, others with armed uprising against the government. The OLF was originally part of the TGE but later withdrew its support due to political differences. These cases are being conducted before a division of the Central High Court residing in Ziway, approximately 160 km (100 mi) southeast of Addis Ababa. The PDO also represents approximately 30 clients affiliated with the All Amharic Peoples Organization (AAPO), the majority of whom are charged with armed uprising against the government. Finally, the PDO handles a number of ordinary homicide cases.

The PDO is organized as an entity under the Central Supreme Court and headed by a Chief Public Defender and a Deputy Public Defender. To date, no legislation has been enacted to establish the legal foundation for the work of the PDO. Consequently, the exact mandate, structure and organization is not instituted by law.

Opponents of the PDO claim that a



Judges of the Regional High Court in Inda Silase, northern Ethiopia, review cases. Despite lack of resources — for example, each three-judge panel shares one copy of the applicable Code — the judges display an admirably professional attitude.

proper defense cannot be provided unless the PDO gains independence from the judiciary and is established as an autonomous institution. Proponents, however, argue that the Supreme Court can oversee the techni-

cal and organizational aspects of the PDO without compromising the work of public defenders in representing their clients. Additionally, it may prove difficult to provide private attorneys for defendants in these war crimes trials because of insufficient funds. Also, such expenditures tax Ethiopia economically and deplete it of attorneys needed for other serious cases unrelated to the civil war. Furthermore, some Ethiopians feel that the state does not have any obligation to provide former Dergue officials with legal counsel, and that the individual charged or held in detention must resolve the issue of legal representation for himself.

Conclusion

Which viewpoint will prevail is less important, perhaps, than appreciating the magnitude of institution-building exemplified by the creation of the PDO in Ethiopia. Establishing such an organization can be wrought with complications, especially when the donor countries and the recipient country do not have identical expectations as to the task of the new institution, the speed with which it should be developed, and the path that will best lead to its institutionalization.

Donor countries cannot, and probably should not, expect to model the PDO after Western or European standards. On the other hand, without a legislative basis to structure and organize the institutions, it becomes very difficult for the donor countries to justify continued economic and educational support. This is especially true when taxpayer money is spent under the banner of "Human Rights and Democracy," because donor nations must account to their domestic constituents about how their money is being spent abroad.

It is still too early to evaluate the outcome of Ethiopia's war crimes trials. It is even less clear what impact, if any, the trials will have on other African countries now facing the task of judging their own elite accused of genocide and crimes against humanity. We can only hope

that the Ethiopian experience will provide these nations and the donor community with some positive lessons, as well as highlighting some pitfalls to avoid. ☉

Photo courtesy of Peter Bach