

ETHIOPIA: REPORT OF THE OFFICE OF THE SPECIAL PROSECUTOR

The Special Prosecution Process of War Criminals and Human Rights Violators in Ethiopia

(February 1994)

Background

By Proclamation 22/1992, the Transitional Government of Ethiopia (TGE) established the Office of the Special Prosecutor [SPO]. Its mandate is twofold:

- 1. To establish for public knowledge and for posterity a historical record of the abuses of the Mengistu regime.*
- 2. To bring those criminally responsible for human rights violations and/or corruption to justice.*

The mandate is broad and ambitious. Implicit in this mandate is the acceptance by the TGE of their international legal obligations to investigate and bring to justice those involved in human rights crimes. Furthermore, the mandate is also a policy choice regarding how a society can productively deal with past abuses to create a more democratic future. The policy choice made is to expose those involved in abuses and to sanction them. This is [a] rarely available choice to a successor government to an abusive regime, because of political limitations (recent examples include El Salvador, Haiti, Chile and Argentina).

From an international human rights law perspective, the policy decision taken by the TGE is the most desirable and theoretically the most beneficial to the construction of a society based on the rule of law.

The ambitious nature of the decision has both risks and benefits. It is easier to say one is going to do something, than to do something novel and precedent setting well. The mandate has created expectations in the international human rights community, the donor community, and in the Ethiopian community.

The SPO must be juxtaposed with the recently formed UN War Crimes Tribunal. This Tribunal will pull together the most well-respected scholars and practitioners throughout the globe. Their estimated annual operating budget is over 30 million USD. The task facing the SPO and the UN Tribunal are similar in scope and complexity, the financial resources available are not. This does not mean the SPO's task is impossible without a 30 million USD annual budget. It means that efficiency, pragmatism and the involvement of the international community will be necessary for this project to work. The need for the SPO to [draw] upon international scholars and practitioners to the degree possible, to ensure this, is evident.

The Crimes

The regime of Mengistu Haile Mariam was one of the most notorious in recent history. He constructed a highly centralized government, where he presided over every major policy decision made from 1974-1991.

In reality, the SPO has tens times more evidence than needed to successfully prosecute several of the detained and many of the exiles for serious criminal offenses.

The following are cases and areas of repression where the detained are criminally implicated in one or more of the actions:

In November of 1974 the Dergue [the Mengistu government] sat in a General Assembly and discussed the fate of the high government officials from the regime of Haile Selassie. Most of the exofficials of the emperor's government were detained starting in June of 1974. The SPO has the minutes of this meeting. The minutes include information about [which] Dergue members were present at the meeting and the comments they made during the discussions. Each former official's case was brought to the General Assembly for discussion. Each official was discussed separately and an order given on each individual. The decisions were unanimous regarding the 60 ex-officials that were ordered to be executed.

In the days preceeding May Day 1976, the EPRP [Ethiopian People's Revolutionary Party] youth committees were planning a nation-wide protest against the Dergue regime. The day before May Day, the Dergue Campaign Department issued a directive to the Dergue Special Forces to eliminate all those who were planning to participate in the EPRP demonstration. It is important to note that the Dergue Campaign Department was under the direct command of the Dergue Standing Committee[—a] committee chaired by Mengistu Haile Mariam.

On April 30, 1976 hundreds of youths were executed throughout the country. For example, Addis Ababa was divided into 28 zones. On average 15-30 youths were killed in each zone. Hundreds more were killed outside of Addis. In zone (higher) 18, for example, the SPO has proof of 21 youths being executed.

The SPO has proof that all the youths that were killed in this massacre in the Addis Ababa area were taken to the morgue at Menelik Hospital. The government authorities would not allow the victims' families to take their corpse without first paying for the bullets used to kill the victim.

You will all remember the Red Terror was authorized by Proclamation 121 of 1977. It was the largest and best known campaign of systematic violations of fundamental human rights carried out by the Dergue. It resulted in thousands of summary executions, disappearances, and cases of torture between 1976 and 1979.

The SPO has literally hundreds of orders, directives, and reports of summary executions carried out during the Red Terror.

The forced resettlement programme consisted of moving hundreds of thousands of peasants from the north of the country to the south. Originally

dubbed a famine relief programme, we have evidence of the political nature of the relocation. According to non-governmental relief organizations, between 15-20% of those resettled died either in transport or upon arrival in the resettlement camps. Given that 600,000 people were resettled between 1984-1986, about 100,000 people lost their lives due to this governmental policy.

On a Wednesday in June 1988, government Air Forces systematically attacked the market town of Hawzen i Tigray. The bombardment by Mig fighters lasted from dawn to dusk and approximately 2,500 civilian market goers were killed. To prevent anyone from fleeing, Air Force helicopters circled the market town.

The Detained

There are presently 1,200 prisoners suspected for gross human rights violations of whom the majority were detained shortly after the fall of the Mengistu regime in May 1991. The detained are located in three different prisons in and outside Addis Ababa and receive treatment according to international standards.

Understanding that the individuals have been detained for almost 18 months without charge by the time the SPO staff was hired, the SPO immediately began a process to determine the legitimacy of the detention and to release those detainees that may have been detained unjustly or who are implicated in less serious crimes.

The SPO has released on bail approximately 900 of those originally detained by the [Ethiopian People's Revolutionary Democratic Front]. The courts, through *habeas corpus* proceedings, have released another 200 on bail. These first actions of the SPO support the idea that the Office is interested in serving justice with the aim of true national reconciliation. The actions of the courts indicate that the new judiciary is acting with a degree of independence which is unfortunately unfamiliar in Ethiopia.

The SPO has also arrested approximately 220 individuals in the last months. The current detained population is 1,200 people. All detainees presently being held are suspected of serious crimes (e.g. multiple murders).

Even given the rigorous demands of the *habeas corpus* proceedings, the SPO has been attempting extensive planning on how it will successfully fulfill its mandate. Teams have been created, work divided, detailed work-plans created, and needed resources defined.

The Time Schedule

According to one worst case scenario, if we were to try all individuals that we could for murder, given the present capacity, it would take over 20 years! This is true given the myriad of defenses available (e.g. superior order and suspension of existing laws by the previous regime). Certainly, such an extended period is wholly intolerable and unthinkable (a clear violation of the right to a fair and speedy trial).

Our research shows that crimes such as summary executions, forced disappearances, and torture carried out systematically on a wide scale as a matter of state policy constituted flagrant violations of international law, and specially crimes against humanity. These types of violations were clearly established as crimes and in force during the previous regime.

It took the Transitional Government time to begin the process of establishing an independent judiciary and the SPO. Frankly, while both have made progress, neither are where they should be. In August of 1992 the SPO was established by Proclamation. It is important to note that the officials of the SPO were not named until the end of 1992 and most of the Special Prosecutors were not appointed until January of 1993.

November 1993 - February 1994:

Identification of criminals living outside Ethiopia, assemble supporting documents, prepare and submit extradition requests. Where necessary, the SPO will facilitate the creation of extradition treaties with the countries where the potential defendants are living.

Funds for computerization secured from SIDA, the Swedish Aid Agency, SPO staff computer training began during the first week of October (all attorneys and most investigators are already being trained). Computer/database designer has been working on revising the database used in El Salvador for a couple of months and document registration and coding started in the beginning of February.

September - November:

Negotiations with regional administrations regarding the creation of SPO regional offices is ongoing. Recruitment of personnel and deployment is awaiting approval of SPO budget.

Supplemental personnel identify and collect relevant documents. This work is now 80 percent completed.

January - April 1994:

Relevant documents coded for the computer.

February - April 1994:

Coded information entered into computer.

February - April 1994:

Forensic teams have arrived and will do important exhumations (chosen in accord with SPO's priorities) and laboratory work.

Ongoing:

Reception of reports and memorandums from NGO's (e.g. American Bar Association and American law firms, International Human Rights Law Group's research on extradition of human rights criminals when no treaty exists) and academics. Amnesty International, Africa Watch and the International Committee of the Red Cross have all contributed to the work of the SPO.

April 1994:

Computer reports are generated and policy-level decisions can be considered. Ongoing training of SPO staff and judges [who] will try cases on the special nature of these types of cases.

March 1994:

Three top UN experts arrive to work with SPO and TGE policy-makers to analyze computer generated reports, other evidence, the capacity of the courts and prisons, and the relevant political factors to make recommendations regarding what type of charges and against whom should be brought. Also the French Attorney General is scheduled for a working visit with the SPO.

April - May 1994:

[Drawing] on all inputs, SPO will finalize the legal strategy which has been in development since the creation of the Office. Charges will be filed that, according to our best effort and judgment, will bring justice to the victims, promote the respect for international law and firmly establish the rule of law in Ethiopia.

May:

Trials begin.* Estimated duration of trials: one year.

It Took Time Elsewhere

Ethiopia is not the first country to undertake an extensive investigation in abuses of past regimes. To give an idea of the time-consuming work this represents, we have compiled some experiences from other countries as well as comparative comments.

a. El Salvador

As you will recall under UN mediation and supervision the FMLN rebels and the Salvadoran government entered into a peace accord to end over ten years of fighting. The peace accord included one aspect related to the SPO: the UN Truth Commission. Notably only part of the SPO's mandate.

The Truth Commission was given a mandate to create a definitive historical record of the human rights violations which transpired during the period of the civil war.

This Commission was given six months to complete its work and well over 3 million dollars as well as the support of the UN logistics (as many vehicles as were needed and quick access to relevant UN agencies for support). Note: [The] El Salvador civil war was about 10 years long, it has only about 5 million people, and its land mass is similar to that of Eritrea.

* [Editor's note: The trials actually began in December 1994.]

After the three people to head the Commission were named (which included a leading human rights scholar who was President of the Inter-American Court on Human Rights, the former President of Colombia, and one of Venezuelas leading lawyers/diplomats), they took almost one year to begin their work.

In this time, internationally renowned lawyers, investigators, scientists, and computer experts were recruited and briefed. They were completely oriented before the six months began.

In fact the Commission's extensive infrastructure, including computers, vehicles, and office space, was in place[, as] well as a plan of action. And most importantly, support from the human rights NGO community was discussed and clarified.

Once they officially began to work, everything was in place. Nonetheless, the Commission took nine months and ran well over its \$3 million budget.

The biggest difference between Ethiopia and El Salvador was not the budget (200,000 USD vs. over 3 million [plus] all necessary infrastructure—even though this is definitely a difference worth noting), nor was it the difference in staff (recruited locally v. recruited internationally), but the support of the NGO sector.

The Truth Commission received over 15 volumes of computer generated reports from the NGO's. These reports were a computerized compilation of all the human rights testimonies collected by the leading 2 human rights groups in El Salvador over the past decade. At least 6 local and 3 international NGO's provided vast amounts of support to the Truth Commission. Each had done extensive investigations for over a decade.

In comparison to the type of support received by the SPO from the Ministry of Interior and the Anti-Red Terror Committee, the SPO is very lonely. It has a great burden and little assistance.

Regardless of this vast difference, the SPO will go further. In El Salvador, once the Truth Commission's report was released it blamed over 80% of the human rights violations on the government. The government, which still controlled the Legislative Assembly, immediately passed an amnesty law. Thus, while an official record of the past exists, no one was brought to justice because of the Truth Commission's investigations, even though they had recommended prosecutions be brought in a number of cases.

b. Chile

After more than 16 years of military rule by Pinochet, democracy was restored when Patricio Aylwin was elected president in March 1990. In May of 1990 the President established the Commission on Truth and National Reconciliation.

The Commission's task was to investigate the abuses of the Pinochet regime. Here again, the Commission received extensive support from national and international human rights organizations. The Commission

interviewed more than 4,000 people regarding 3,400 cases. Note: the Commission had no power to compel testimony or initiate prosecutions.

The report was made public in March of 1991. It called for further investigation in 641 cases and the opening of judicial procedures in 230 cases. Given that the military still has a great deal of power in Chile, no successful prosecutions have been made.

The Commission took 11 months. It had resources of the State available for use. It had enormous support from the NGO sector. It, as opposed to the SPO, could focus on its investigations. It had more support from its government and NGO sector than the SPO. Nonetheless, its investigations were partial and did not include government documents. Importantly, no prosecutions came out of their work.

c. Argentina

Within months of the fall of the military junta and the election of Raul Alfonsín as President, he established the National Commission on Disappeared Persons (CONADEP) (early 1984).

The Commission's mandate was limited to investigating abuses of the past, focusing on disappearances. [Ten] prominent Argentines served on the Commission; it had an ample staff, and all sectors of the government were ordered to co-operate with it (e.g. even diplomats serving in foreign countries were ordered to take declarations regarding human rights abuses of the past regime).

Importantly in Argentina, like El Salvador, throughout the investigation, the Commission received invaluable assistance from human rights organizations which provided it with personnel assistance, technical resources, extensive documentation, and experience acquired from working under the difficult conditions of military rule.

CONADEP's report was released at the end of November 1984. It documented 8,960 disappearances. CONADEP then submitted over 1,800 cases to the judicial system to investigate the possibility of bringing criminal charges against the military and security forces for human rights violations.

By April of 1985 preliminary jurisdictional issues were resolved and only nine members of the junta were charged in the civilian court with many counts of homicide, torture, and false arrest.

By December of 1985, 5 of the 9 had been convicted. The appeals related to these cases finally ended with a decision from the Supreme Court in December of 1986.

Following the trial of the junta, the public turned its attention to the over 2,000 remaining criminal complaints (filed by individuals). While importantly few were detained, 100s of military personnel faced prosecution.

There were some cases brought to trial in 1986 and 1987 (some were commenced 3 years after the formation of CONADEP), but in the end most prosecutions were prevented by the passage in December 1986 of the "full stop law," (a sort of statute of limitations passed for political reasons/pressure from the military) and in June 1987 of the "due obedience

law" (a law limiting the prosecutions to higher officials passed due to military pressure).

The Argentine case is most similar to that of Ethiopia, in that both investigations and prosecutions were carried out. The dissimilarity is evidenced by the differences in limitations: in Argentina it was political in that the military still had a great deal of power, in Ethiopia the limitations relate more closely to resources.

In Argentina, with huge amounts of NGO support, its investigation period was 11 months. It took 6 months to three years to begin the few prosecutions that were brought after the investigations were completed.

Nonetheless, it is worth quoting from an America's Watch report on the Argentine experience:

For good and for ill, the Argentine experience is an example to the world. The exposure of past abuses in Argentina, and the trials that have taken place, have played a major part in bringing to an end what began some two decades ago in which systematic torture and disappearances characterized military rule in many countries.... The setbacks to the effort to subordinate the armed forces to the rule of law in Argentina have also been felt throughout the region, and elsewhere in the world where Argentina was a beacon of hope following the restoration of democratic government in 1983. Despite these setbacks, we consider that Argentina's example will have a positive impact if its government [will proceed with prosecutions and gradually strengthen its democratic institutions.]

d. Republic of Chad

From 1982-1990, the government of Chad, led by President Hissein Habre, was responsible for gross human rights violations, including arbitrary arrests, secret detention, long-term detention without charge or trial, torture, and extra-judicial executions. In fact, President Hissein ordered the execution of 300 detainees right before he fled the country.

One month following the military victory of the [Patriotic Movement of Salvation] in December, 1990, the Commission of Inquiry was established.

The Commission worked for almost 2 1/2 years, before issuing its report. Its main source of evidence was the interviews of thousands of people. It worked with few resources, and its work was slowed by a lack of vehicles.

While an extensive report was published, no one was brought to trial in Chad, and many human rights reporters have complained the investigations did not go far enough to institutionalize the rule of law.

e. Uganda

Human rights organizations estimate over 800,000 people were killed or disappeared between 1966-1986. In January 1986 the [National Resistance Movement] came to power. Shortly thereafter, the government created the Human Rights Commission.

In May of 1986 the Commission was formed with a mandate to investigate the governmental abuses of the past.

After 5 years, as of May 1991, the Commission had received 1,600 complaints and had interviewed 500 witnesses in 39 of Uganda's 41 districts.

After 7 years, the Commission has conducted a few important public hearings regarding the human rights violations, [but] it has not yet issued its report and no one has been prosecuted because of its work.

While the Ford Foundation has provided a good amount of funding to the Commission, the lack of vehicles and resources has greatly slowed their process.

[T]he scope of investigation in Uganda is similar [to Ethiopia]. Further, [the Commission does] not have a dual mandate. It is not also responsible for bringing gross human rights violators to trial.

f. UN Tribunal on Yugoslavia

War crimes and gross human rights violations have been taking place in former Yugoslavia for the last few years. Thus, it is noteworthy that the Security Council has established a body to investigate and bring to justice those implicated in gross violations of international law.

Many of the complex legal issues this tribunal is struggling with are similar if not the same to those the SPO is dealing with. The UN has pulled together experts from throughout the world to work on this project. Many international and national human rights groups are working to support its work. Further, it is utilizing the extensive UN infrastructure and the expertise of many of its agencies. Beyond that, its first year operating budget is 31 million USD. In terms of resources and support, the difference between the SPO and the Yugoslav tribunal is vast.

It should be noted, that with all the work and money spent to this point by the UN, the SPO is much closer to prosecuting human rights violators.

War Criminals in Exile

Some 300 military officers and civil leaders from the Mengistu regime fled the country when it became clear that the Transitional Government would charge the people responsible for 17 years of abuses and gross human rights violations. The fugitives reside in a variety of countries. Kenya and the United States of America [have] the highest number of fugitive Ethiopian war criminals.

The SPO has investigated the whereabouts of a total of 60 fugitives and started the process of demanding extradition. The most notorious exile is Colonel Mengistu Haile Mariam who was granted political asylum on humanitarian grounds in Zimbabwe in May 1991. Mr. Mengistu's recent political statements to the independent "Sunday Gazette" in Harare has caused strong reactions both from the Zimbabwean and Ethiopian governments. The Zimbabwean Ministry of Foreign Affairs writes in a statement that it "is deeply disturbed by (Mengistu's) political statement to 'The Sunday Gazette' which 'goes against the grain and tenet of his status in Zimbabwe'". The Daily Gazette writes in an editorial that "it's time to send him home".

Three former officers and ministers have sought refuge on the compound of the Italian Embassy in Addis Ababa where they have camped for two years and eight months. A fourth colleague on the compound committed suicide.

Ethiopia is currently in the process of negotiating an extradition treaty with the United States where a total of 14 fugitives have been identified and located.

In one case, three Ethiopian women who were tortured in jail during the Mengistu regime were awarded 500,000 dollars each and punitive damages in a landmark verdict in an Atlanta (US) court in August 1993. The judge said in the verdict that each woman "clearly established her claims of torture" against the defendant, Kelbesse Negewo, who was granted political asylum in the United States in 1987. Mr. Negewo is wanted for several crimes in Ethiopia where he is suspected of overseeing torture and execution of several prisoners during the 1977/78 "Red Terror" campaign.

The SPO is expecting positive support from governments and NGO's in the work with the extraditions.

In the draft extradition requests the SPO has identified some applicable legal principles for the extraditions.

The surrender of fugitives from justice by one independent nation to another on request is based on international comity or reciprocity, or the provisions of an existing treaty of extradition between the two nations or on the duty to extradite for international crimes under conventional international criminal law (a multilateral treaty containing an extradition clause) or under the rules of customary international law.

In the instance of international comity, a government's sense of justice and regard for what is due other states obtains, rather than any absolute rule. In the second instance, the obligation is discharged by the surrender of fugitives charged with the offenses prescribed in the treaty. In the third instance, a number of multilateral conventions on international criminal law establish explicitly the duty to prosecute or extradite (extradition clause). In the last case the duty to extradite stems from customary international law.

Extradition Based on Comity of Nations or Reciprocity

A government may, as a matter of comity, voluntarily exercise the power to surrender a fugitive from justice to the country from which he has fled. And it is said that a nation is under a moral duty to do so if such action is consistent with its own constitution and laws. In some instances a state can request extradition with the assurance that it would reciprocate, even in the absence of an extradition treaty or an extradition clause. On the other hand particular rules of comity, maintained over a long period, may develop into rules of customary law (Ian Brownlie, *Principles of Public International Law*, Clarendon Press, Oxford, 1990, p. 30).

The Duty to Extradite for International Crimes under Conventional and Customary International Criminal Law

A number of conventions on international criminal law establish explicitly the duty to prosecute or extradite. These multilateral conventions also establish that they can be relied upon by states who require a treaty for extradition, and serve as a basis for states who do not require a treaty as a legal basis for extradition. The number of such conventions and the number of signatories therefore warrant the conclusion that the duty to prosecute or extradite for international crimes has become part of *jus cogens*.

It can also be said that although this duty arises under conventional international law, its acceptance by a significant number of states raises it to the level of a general duty under customary international law (M. Cherif Bassiouni, *International Extradition*, Second Revised Edition, Oceana Publications, Inc./London Rome New York, 1987, p. 22).

In this sense, in spite of the fact that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has not been yet ratified by Ethiopia and Zimbabwe, the obligation to extradite established in Article 8 of this Convention, must be considered as a principle of customary international law.

The obligation to extradite persons suspected to be guilty of war crimes and crimes against humanity is clearly stated as a principle of customary international law in General Assembly Resolution 3074 (XXVIII) of 3 December 1973, "Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity". According to this resolution:

5. Persons against whom there is evidence that they have committed war crimes and crimes against humanity shall be subject to trial and, if found guilty, to punishment, as a general rule in the countries in which they committed those crimes. In that connection, States shall co-operate on questions of extraditing such persons....

8. States shall not take any legislative or other measures which may be prejudicial to the international obligations they have assumed in regard to the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.

9. In co-operating with a view to the detection, arrest and extradition of persons against whom there is evidence that they have committed war crimes and crimes against humanity and, if found guilty, their punishment, States shall act in conformity with the provisions of the Charter of the United Nations and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

The following is a listing of the major conventions ratified both by Ethiopia and Zimbabwe that apply to cases related with Mengistu's criminal liability, containing the duty to prosecute or extradite:

Humanitarian Law of Armed Conflict

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick; in the Armed Forces in the field, 12 August 1949
 - Article 49 (duty to search for and prosecute or extradite)
 - Article 50 (recognition as a crime)
- Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949
 - Article 129 (duty to search for and prosecute or extradite)
 - Article 130 (recognition as a crime)
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949
 - Article 146 (duty to search for and prosecute or extradite)
 - Article 147 (recognition as a crime)
- Protocol I Additional to the 1949 Geneva Conventions, 12 December 1977, has been ratified by Zimbabwe (Ethiopia has not yet ratified this treaty)
 - Article 88 (duty to cooperate with other states in the matter of extradition)¹

Prohibition against Genocide

- Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948
 - Articles VI and VII (duty to extradite)
 - Article VII (duty not to apply political offense exception for the purpose of extradition)

Persons Subject to Extradition

For purposes of extradition, a fugitive from justice has been broadly defined as one who commits a crime within a state and then withdraws from its jurisdiction. It has also been defined as one who commits a crime in one state and thereafter leaves it and is found in another. To be a fugitive from justice the accused need only be absent from the demanding state when it seeks to have him answer for the crime, and be found within the jurisdiction of another state. It is not necessary to establish that the accused was indicted before leaving the state, or that he fled in order to avoid prosecution. The mission, motive, or purpose inducing a person accused of being a fugitive from justice to leave the demanding state is immaterial in an extradition proceeding.

¹ N.B. The fight between the Dergue's forces and the Eritrean liberation movements must be assimilated to international armed conflicts, according to Protocol Additional I, Article 1 (4), that applies to armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination. And that is why beyond any doubt the cases related to this conflict are governed by the provisions of the Geneva Conventions cited above. The fact that Protocol Additional has not yet been ratified by Ethiopia is irrelevant concerning the international character of the Eritrean armed conflict against the Dergue's forces. The recognition of the international character of the liberation wars ... is not only related to this Protocol. The international character of these conflicts has been affirmed by several Resolutions from the General Assembly of the United Nations (specially resolutions 2105 (XX), 2621 (XXV) and 3103 (XXVIII)). A supplementary confirmation of this principle is afforded by Article 7 of the United Nations Convention of 10 October 1980.... These principles apply both in Ethiopia and Zimbabwe. On the other hand the Ethiopian Penal Code has incorporated the grave breaches of the Geneva Conventions without any distinction between international and internal armed conflicts (article 282 ff.).

Foreign Support

The international community has been convinced that the SPO can work as an important catalyst for the creation of a just justice system in Ethiopia. Most important donors presently view the SPO as the best opportunity to improve the judicial system. Most are contemplating or have recently committed to provide financial and technical assistance. About 6/8 of the SPO's financial proposal has been covered and a possibility exists that it will be completely funded.

The following is a list of secured donations to this point:

- Sweden 403,000 USD (computerization, both equipment and necessary supplemental personnel)
- U.S./Carter Center 200,000 USD (two phases of the forensic experts, resident international legal consultant, and money for Argentine prosecutor)
- Norway 100,000 USD and two Norwegian experts
- The Netherlands 50,000 USD
- Canada 40,000 USD and assistance toward one public relations consultant/expert
- Denmark In-kind experts for 1-4 months

The reputation of the SPO among the donor community has greatly improved over the last 5 months. The donors are still concerned that the detainees remain in jail without charge, but their focus is now on how they can contribute positively to the process, so that the SPO can reach its potential and truly contribute to the transition.

The process of requesting and receiving international assistance will, and has, augmented the donors' expectations that the process meet international standards. They will not accept proceedings that do not meet international standards after having waited so long and provided financial resources. They are committing financial resources because they believe the plan included in the proposal is viable and workable.

Even if donor countries confirmed their support several months ago, funds have only recently become available because of foreign exchange restrictions and internal, bureaucratic problems. Such problems have severely delayed the prosecution process.

NGO Support

The expectation of the international human rights community is twofold. On one hand, they believe the SPO presents a unique opportunity for the development of human rights law; a project worth supporting. On the other hand, they are watchdog organizations which bring to light violations of a government. The fact that a week after the detainees were picked up by the EPRDF forces, the TGE was violating the rights of the detainees by failing

to charge them, has created a difficult contradiction for the human rights community.... Most have resolved this contradiction—as did the International Human Rights Law Group in its recent report—by stating that the TGE has already clearly and excessively violated the rights of the detainees (e.g. the SPO was not even established for a year and half after they were originally detained), but the verdict is not yet out on the process.

Basically, the delay has made the international community skeptical about the desire and the ability of the TGE/SPO to meet international standards. A half-baked process that contains many defects will not be tolerated. Less than full and complete compliance with international standards will not be tolerated given the delay.

This means that when proceedings begin, there will be extensive scrutiny. For example, if proceedings were to begin today, the result would be far from the international standards expected. The SPO and the courts are wholly unprepared to withstand the type of scrutiny that will accompany the proceedings.

To this point, the international human rights community participation has been limited. Presently, the SPO is poised to integrate respected members of this community in the process.

The Ethiopian Legal System

Ethiopia follows the continental legal system. Most of the codes in use today were influenced by French, Swiss and other followers of that legal system. [These codes] (Civil code, Criminal Code, Commercial Code,...) were produced with the intent of following an international trend. Nevertheless, customary and religious rules were given great importance in the process of codification. The *Fetha Neguest* (Law of Kings), a law based on religion and used by kings before the reign of Haile Selassie I had great influence on the present legal instruments.

Attempts to incorporate international laws were also made....

Organization of Judicial System

With the recent establishment of National/Regional self-government (in accordance with the National/Regional Self-government Establishment Proclamation No 7/1992), Ethiopia has: Three levels of courts in each Nation/Region (courts of the National/Regional self-government) and three levels of courts of the central government (central courts).

According to Article 7 of Proclamation No. 40/1993, "central courts" means the central supreme court, the central high court or the central first instance court established under Article 3 of the Proclamation.

To each of the three levels of central courts, we find "parallel" courts of National/Regional self-government.

Position of SPO

When "jurisdiction of criminal cases" is concerned and in particular to those cases related with the SPO, Article 6 of Proclamation No. 40/1993 states that "the central courts shall have penal jurisdiction over the following on the basis of the provisions of penal laws," among which sub-article 27 provides for "offences falling under the competence of the SPO as indicated under the Special Prosecutor's Office Establishment Proclamation No 22/1992."

Sentencing System

It should be noted that the Ethiopian Penal Code allows for consecutive sentencing,

• First Degree Homicide:	Life imprisonment or death
• Second Degree Homicide:	5-25 years imprisonment
• Homicide by Negligence:	Not to exceed 5 years
• Grave Willful Injury:	1-10 years
• Common Willful Injury:	Not less than 6 months
• Exposure of Life of Another:	3 months to 3 years
• Failure to Lend Aid:	Not to exceed 6 months
• Unlawful Arrest or Detention:	Not to exceed 5 years
• Abuse of Power:	Not to exceed 5 years
• Genocide; Crimes against Humanity	5 years to life, or death
• War Crimes against the Civilian Population:	5 years to life, or death
• War Crimes against Wounded:	5 years to life, or death
• War Crimes against Prisoners and Interned Persons:	5 years to life, or death
• Use of Illegal Means of Combat:	Not less than 3 months; in grave cases, 3 years to life or death

And under the "Special Penal Code" of Mengistu:

• Abuse of Authority:	3 - 15 years
• Failure to Supervise:	Not to exceed 3 years
• Unlawful Arrest or Detention:	Not to exceed 5 years
• Jeopardizing Defence/Famine:	10 years to life

The Courts and Public Defence

The Special Prosecutor's Office has, together with the courts, taken an initiative to establish a Public Defender Office in Ethiopia. It is estimated that at least half of the detained have no economic resources to hire a defence lawyer. The details related to an eventual Public Defender Office (PDO) are not clear yet, but a Danish expert is working with the courts and Ethiopian lawyers to establish a system giving each defendant the right to his or her own legal council. The expert is hired by the International Commission of Jurists and financed by the Danish Aid Agency DANIDA.

None of the former regimes have had a public defence system. During the reign of Emperor Haile Selassie, lawyers who happened to be present in the courts were asked to take on the defence of some defendants without a fee.

To establish a system which will not only work during the [tenure of the SPO] but also function after the trials, the PDO is dependent on international, financial support. In this connection, a proposal for financing of the PDO over a period of two years is presented to the donors.

At the same time, an extensive training programme is carried out for the courts. Also the courts have received international, financial support to make them able to take on the immense workload expected when trials start in May. Two international consultants are hired to do both training and organizational work together with the Central Supreme Court.

The Computerization Process

The SPO computerization process consists of the following 4 phases:

1. Government document collection
2. Analysis of detainee interviews, victim and witness testimonies, and government documents
- 3a. Entry of the documents' analysis into the database
- 3b. Scanning (creating an electronic image) selected documents, both for security and for the historical record
- 4a. Reports to help prosecutors to prepare their cases
- 4b. Reports for the historical record

The first phase of the work is almost complete. We have organized the paper archives so that the second phase, analysis, will be possible while maintaining a strict control over the 250,000 plus pages of government documents now in the SPO. The prosecutors themselves will do the data analysis, possibly with assistance from others whom they will train.

Analysis consists of reducing the documents to their structural elements, for example, by enumerating all the individuals mentioned in a given document according to the ways they are mentioned. These analyses will be passed to the data entry staff, who will enter the enumerated information into the database. Particularly important documents (as so judged by the prosecutors) will be scanned. Since scanned images require a great deal of computer space, we will archive the scanned images to compact disks....

The most important aspect of any database system, of course, is the reports that can be generated from it. The fourth phase of the SPO computerization project involves designing reports. The priority will be to generate reports that will support the prosecutors' work....

It should be noted that the computerization will:

1. Create a good historical record of the *documentable* abuses of the Mengistu regime.
2. In regard to the higher officials, demonstrate systematic (pattern and practices) abuses linked to them through the political or military structure. This information will be extremely helpful—perhaps

essential—to support charges against high officials who were responsible for creating and implementing the system of repression.

3. Define according to the documents available who the most notorious violators are. This will allow the SPO [to] rationally classify offenders and thereby to focus murder (where the burden of proof is the highest) charges on those most culpable and lesser charges on the others.
4. And last but certainly not least, it will create the first group of prosecutors and investigators that are computer literate in the country. Computer training is an essential component of our plan and is already being implemented. Training will provide our SPO staff members functional skills with Amharic and English word processing (e.g. using the computer to create court documents and memorandums) and in the use of our specialized database of human rights violations. This will be a clear contribution to the infrastructure of our justice system.