

After Dictatorship

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Instruments of Transitional Justice in Post-Authoritarian
Systems

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Preface

What has to happen after a dictatorship has been overcome? For several decades, lawyers, political scientists and historians in numerous countries have been preoccupied with this question. After the end of the Second World War, this mainly concerned how Germany dealt with National Socialism. However, coming to terms with the past is now an issue worldwide. Under the term ‘transitional justice’, it is no longer exclusively about dictatorships, but also about civil wars, genocides and other politically motivated mass crimes, the legacy of which weighs heavily upon countless societies in Europe, America, Asia or Africa. Whilst the main discussion initially addressed the question of what to do with those responsible for the most serious human rights violations, the focus today is also on compensation for the victims, appropriate commemoration, and institutional reforms to prevent a repetition of similar crimes.

Since February 2020, a project at the University of Würzburg has been looking into the question of which instruments for coming to terms with the past have proven particularly effective over the last decades.¹ In order to determine this, developments in selected countries on several continents are being analysed and compared with each other. The project is based at the Chair of Modern History because coming to terms with dictatorships and civil wars now has a past of its own, which has thus far been insufficiently researched in relation to many countries. It is flanked by a second project dealing with the dictatorships in Spain and Portugal, which ended almost fifty years ago.²

This book presents the first results of this research. At the centre of the volume are seven country analyses prepared by proven experts on processes of ‘transitional justice’. They deal with coming to terms with the past in Albania, Argentina, Ethiopia, Chile, Rwanda, South Africa and Uruguay, whereby all analyses are based on a uniform scheme. The countries were selected in such a way as to permit as many different constellations in dealing with mass crimes to be examined as possible – from the voluntary withdrawal of military rulers in Argentina and Uruguay, via the collapse of a decades-long dictatorship in Albania, to the violent overthrow of the regimes in Ethiopia and Rwanda by armed rebels.

The volume begins with analyses relating to Latin America, which has long been at the centre of research into the area of transitional justice. The political scientist and theologian Veit Strassner examines transitional justice with reference to the military dictatorships in Argentina and Uruguay, while the former Director of the Museum of Memory and Human Rights in Santiago de Chile, Ricardo Brodsky, looks at

¹ Further information on the project can be found on the bilingual website www.after-dictatorship.org.

² See the project description on the website of the Chair of Modern History at the University of Würzburg: <https://www.geschichte.uni-wuerzburg.de/institut/neueste-geschichte/bmbf-projekt>.

how the Pinochet dictatorship in Chile was dealt with. On the African continent, too, 'transitional justice' is illuminated on the basis of three states. Peace and conflict researcher Julia Viebach investigates the topic as regards the genocide in Rwanda; the Research Director of the Centre for the Study of Violence and Reconciliation in Cape Town, Hugo van der Merwe, outlines efforts at reconciliation after the end of apartheid policies in South Africa; and criminal justice expert Tadesse Metekia describes dealing with the Marxist Dergue regime in Ethiopia. The seventh country study is dedicated to a country in Europe that usually receives little attention; namely, Albania, whose coming to terms with its 45 year communist dictatorship is analysed by Jonila Godole, Director of the Institute for Democracy, Media and Culture in Tirana. These country studies are preceded by fundamental reflections on dealing with dictatorships and politically motivated mass crimes from a historical perspective, written by co-editor and historian Peter Hoeres. The volume concludes with a comparative review by the second editor and previous director of the memorial museum located in the former Stasi prison of Berlin-Hohenschönhausen, Hubertus Knabe, in which he elaborates upon which instruments of transitional justice have proven effective under which conditions.

This volume and the research project from which it has emerged would not have been possible without the financial support of the German Federal Ministry for Economic Cooperation and Development (BMZ). The editors are extremely grateful for the generous support and consistently encouraging guidance provided by the Ministry's staff. They also thank the authors of the seven country studies for their committed and qualified participation. Last but not least, the translators of the German-language contributions, Kirsten Kearney and Nicholas Nedzynski, as well as Henning Saßenrath, who undertook the technical supervision of this volume, have made the book's appearance possible through their work.

The editors hope that the studies published here can give new impetus to the discussion on how to deal with dictatorships and serious human rights violations. Even if the world currently seems to be experiencing something of a renaissance of dictatorships following the triumph of democracy in the 1990s, the question as to which instruments of 'transitional justice' are the most effective remains relevant – not least because the legacies of these dictatorships will also have to be reappraised at some point.

Introduction

Peter Hoeres

Historical Perspectives on Transitional Justice

Numerous institutions, organizations and individuals are engaged in the political, cultural, social, and religious reappraisal of dictatorships. These include the successor governments that replace dictatorships, political parties, and civil society organizations such as human rights associations, victims' associations and churches or other religious communities. After the end of the National Socialist and fascist dictatorships in 1945, the collapse of the communist regimes at the end of the 1980s and the fall of numerous dictatorships in Africa, Latin America, and Asia between the mid-1970s and mid-1990s, the challenge was to ensure a peaceful transition to post-dictatorial societies on the one hand, and to come to terms with the overthrown dictatorships, punish the perpetrators and provide satisfaction for the victims on the other. The underlying international circumstances, the historical-cultural contexts, and the preconditions in terms of historical mentalities in this regard were very different. The *memory boom* from the 1970s onwards and the emergence of the paradigm of commemorative culture since the 1990s¹ have also intrinsically motivated academic research to devote more attention to this subject area. What often got lost in this development was the broad historical perspective, was diachronic localization, but also – and this is especially true of the German preoccupation with coming to terms with the Nazi past – the international comparative perspective. As it happens, the German example is surprisingly absent in many cases from recent research on transitional justice.

Forgetting and Remembering

Forgetting is both a curse and a blessing. We forget wedding anniversaries, appointments, and purses. Some people even forget their children on the aeroplane. Old friends, ancestors and our own experiences are also forgotten. In extreme cases, forgetting means the erasure of memory, the non-existence of persons – at least for us. The forgotten deceased and friends are no longer in our world and the world of our interactions. Those who forget themselves and their past in the whirlpool of time and its sensations are in Mephisto's hands, just like Goethe's Faust, who remains the great 'forgetter' to the end.²

However, forgetting is also a blessing. We end disputes by unconsciously and consciously not remembering. Reconciliation, indeed, coping with everyday life

1 Cf. Christoph Cornelißen, 'Erinnerungskulturen, Version: 2.0', in *Docupedia-Zeitgeschichte*, 22 October 2012, accessed 22 March 2022, http://docupedia.de/zg/cornelissen_erinnerungskulturen_v2_de_2012.

2 Quoted in Harald Weinrich, *Lethe. Kunst und Kritik des Vergessens* (Munich: C. H. Beck, 1997), 160.

would be inconceivable otherwise. Forgetting is an anthropological constant and universal. There is not and has never been a people, nation or epoch that did not forget. According to Friedrich Nietzsche, without the ‘art and power of being able to forget’, life is attacked by the ‘historical disease’, identity is relativized, weakened, threatened.³ Memory itself, which lifts us out of the pure fulfilment of the present, is also based on forgetting and presupposes a selection process that, out of the wealth of possible recollections, snatches a few from the jaws of oblivion. This applies to both individual and collective memory. According to the eminent historical theorist, Reinhart Koselleck, the latter is determined by the ‘seven big Ps’: professors, priests, pastors, PR specialists, press representatives, poets, and politicians.⁴ However, those affected by history themselves also contribute to collective memory. In the same fashion, all these groups collaborate in forgetting, whether consciously or unconsciously.

Conscious forgetting can occur as punishment or mercy. Even in antiquity, forgetting was considered a precondition for peace. The decree to forget, following a phase of taking revenge on certain chief culprits, was seen as necessary, especially for internal pacification, after civil wars. An early example of this is the amnesty (ἀμνηστία/*amnēstia* = forgetting) after the so-called rule of the Thirty Tyrants in Athens in 404/403 BC. This amnesty pacified the warring parties following the punishment of the chief culprits responsible for the former reign of terror. Thereby, a successful and momentous pattern for establishing peace was tested, which consisted of forgetting the misdeeds of fellow travellers and accomplices.

In 356 BC, Herostratus set fire to the Temple of Artemis in Ephesus – one of the Seven Wonders of the World – in order to become famous forever. He paid for his thirst for glory not only with his death, but also with a *damnatio memoriae* (condemnation of memory), which the city of Ephesus imposed upon him. However, this did not result in his erasure from memory. Instead, his name and deed have been handed down to the present day. The later Roman *damnatio memoriae*, which was known as *abolitio nominis* at the time, and which e.g., condemned previous emperors to oblivion and decreed corresponding measures for art, likewise ultimately meant not an erasure but a stigmatizing remembrance. The modern form of this can be found in today’s renaming of streets and the annulment of honorary citizenships.

In the Middle Ages, oblivion continued to play a role not only in peace treaties, but also in confession as the forgetting of guilt after its admission, following repentance and penance. In the High and Late Middle Ages, amnesty was a regular part of peace treaties. In the modern era, after confessional and civil wars, amnesties and oblivion were fixed both in France by Henry IV in 1594 and in England by Charles II with the ‘Act of Free and General Pardon, Indemnity and Oblivion’ [sic] passed

³ Friedrich Nietzsche, *Unzeitgemäße Betrachtungen. Zweites Stück: Vom Nutzen und Nachtheil der Historie für das Leben* (Kritische Studienausgabe, vol. 1), ed. Giorgio Colli and Mazzino Montinari (Munich: dtv, 1999), 330.

⁴ Reinhart Koselleck, ‘Gibt es ein kollektives Gedächtnis?’, *Divinatio* 19 (2004), 23–28, 27.

by Parliament in 1660. In each case, instigators or regicides were excepted from the amnesties. After the devastating Thirty Years' War, which had swept gruesomely across Europe, amnesty and 'perpetual oblivion' were also explicitly declared in writing. The Peace of Westphalia states: 'Both sides grant each other perpetual oblivion and amnesty [*perpetua oblivio et amnestia*] of all that has been committed with inimical intent since the beginning of hostilities in any place and in any manner by one or the other party, on either side [...and that everything] be consigned to perpetual oblivion'.⁵ In the eighteenth century, many peace treaties included a so-called oblivion clause; that is, an assurance of forgetting the horrors of war and its consequences. For Kant, amnesty was part of the very concept of a peace settlement.⁶

At the Congress of Vienna, the French Foreign Minister Charles-Maurice de Talleyrand-Périgord, who had served all previous regimes, including Napoleon's, once again sat at the negotiating table on an equal footing. In spite of the bloody revolutionary period and the era of Napoleonic rule, article 11 of the 'Charte constitutionnelle' of 1814 explicitly commanded the following: 'All enquiries into opinions and votes given prior to the restoration of the present government are forbidden. The same oblivion is required from the tribunals and from citizens'.⁷

During the nineteenth century, the oblivion clause declined in importance in European international law. Nevertheless, the institution of amnesty continued to be explicitly or tacitly included in peace treaties up until the Germano-Russian peace settlement of Brest-Litovsk in early 1918. Even after the Second World War, Winston Churchill took up these traditions in his speech in Zurich on 19 September 1946, in which he called for a 'blessed act of oblivion'⁸ after the massacres had been punished. Behind this lay the realization that permanent remembrance always leads to new conflicts, just as the after-effects of the Paris Peace Conference 1919 had shown.⁹

In addition, in the twentieth century, policies such as those under and after Stalin were established to erase the memory of disagreeable personalities. The erasure of Leon Trotsky and Lev Kamenev from the famous photographs of Vladimir Ilyich

5 Art. II IPO, 'Die Westfälischen Friedensverträge vom 24. Oktober 1648. Texte und Übersetzungen', in *Acta Pacis Westphalicae. Supplementa electronica*, 1, accessed 22 March 2022, <http://www.pax-westphalica.de>.

6 Immanuel Kant, *Die Metaphysik der Sitten*, §58, quoted according to the version in Immanuel Kant, *Werke in zwölf Bänden*, vol. 8 (Frankfurt am Main: Suhrkamp, 1977), 471.

7 Dieter Gosewinkel and Johannes Masing (ed.), *Die Verfassungen in Europa 1789–1949* (Munich: C. H. Beck, 2006), 283.

8 Robert Rhodes James (ed.), *Winston S. Churchill: His Complete Speeches 1897–1963, Volume VII. 1943–1949* (New York and London: Chelsea House, 1974), 7381.

9 On this paragraph, see Aleida Assmann, *Formen des Vergessens* (Göttingen: Wallstein, 2016); Christian Meier, *Das Gebot zu vergessen und die Unabweisbarkeit des Erinnerns: Vom öffentlichen Umgang mit schlimmer Vergangenheit* (Munich: Siedler, 2010); Wolfgang Reinhard, 'Geschichte als Delegitimation', *Jahrbuch des Historischen Kollegs* (2002), 27–37; David Rieff, *In Praise of Forgetting: Historical Memory and Its Ironies*, (New Haven and London: Yale University Press, 2017); Helmut Quaritsch, 'Über Bürgerkriegs- und Feind-Amnestien', *Der Staat* 31 (1992), 389–418.

Lenin orating in the square in front of the Bolshoi Theatre in 1920 taken by Grigory Goldstein offers an iconic example of this. The ostracized Trotsky and Kamenev were first erased from the photographs by cropping, then in the 1970s by retouching.¹⁰ Similar methods were used in other communist states. However, those affected by memory can also demand a right to have their past lives forgotten. In the case of former Red Army Faction terrorist Susanne Albrecht, this led to the use of a court photograph of her in a history book being prohibited by court decision and now by law.¹¹ Following a ruling by the European Court of Justice in 2014, the newly proclaimed digital right to be forgotten was implemented. This gives individuals the ability to demand that Google not list links to time-barred websites and reports.¹²

If we take the victims' view, things look different: following the fall of a dictatorship, victims may demand recognition, satisfaction, compensation, and remembrance of their suffering. From this perspective, perpetrators should not go unpunished. They should be deprived of their privileges and ousted from influential positions (lustration). Furthermore, political lessons should be learned, and the victims rehabilitated and recognized. Only then can there be reconciliation and a subsidence of memory. Nonetheless, victims in particular may not necessarily want to be reminded on a daily basis of their suffering and the injustice they experienced.

These different needs and goals have determined the dialectical culture of remembrance since antiquity, which was characterized by the interplay of limited revenge and (restricted) amnesties, the commemoration of the dead and the prohibition of remembrance. The all-round ideologization of the enemy in the First World War broke with this tradition. Indeed, the ostracism of and discrimination against the enemy were made permanent by the peace treaties, which contained implicit attributions of guilt and thereby departed from traditional amnesty clauses: the Treaty of Versailles even provided for the extradition and punishment of the Kaiser and – unilaterally – of war criminals.¹³ Today, the commemoration of the genocides of the twentieth century, of the Holocaust, the Holodomor or the mass murder of the Armenians during the First World War, acts as a collective imperative to prevent the repetition of such atrocities. This kind of command to remember is also applied to other issues, such as the colonial past. However, it does not necessarily follow that

10 Klaus Waschik, 'Wo ist Trotzki? Sowjetische Bildpolitik als Erinnerungskontrolle in den 1930er Jahren', in *Das Jahrhundert der Bilder. Band 1: 1900 bis 1949* ed. Gerhard Paul (Göttingen: Vandenhoeck & Ruprecht, 2009), 252–259.

11 Anonymous, 'Gericht: Kein Foto von Ex-Terroristin', *Der Tagesspiegel*, 27 March 2007, accessed 22 March 2022, <https://www.tagesspiegel.de/gesellschaft/medien/gericht-kein-foto-von-ex-terroristin/827642.html>.

12 Jan Weismantel, *Das 'Recht auf Vergessenwerden' im Internet nach dem 'Google-Urteil' des EuGH. Begleitung eines offenen Prozesses* (Berlin: Duncker & Humblot, 2017).

13 Peter Hoeres, *Krieg der Philosophen: Die deutsche und die britische Philosophie im Ersten Weltkrieg* (Paderborn: Ferdinand Schöningh, 2004); Peter Hoeres, 'Der Versailler Vertrag: Ein Frieden, der kein Frieden war', *Aus Politik und Zeitgeschichte* 15 (2019), 38–44, accessed 22 March 2022, <https://www.bpb.de/apuz/288788/versailler-vertrag-ein-frieden-der-kein-frieden-war?p=all>.

permanent remembrance will prevent a repetition of atrocities. The numerous wars of recent times, such as those in the Balkans or in the Ukraine, resulted in part from an excess of remembrance rather than a lack of it and make generalizations regarding the pedagogics of memory appear questionable.¹⁴

In most post-dictatorial societies, it is therefore rather an interplay and struggle between the poles of remembrance and reappraisal on the one hand and reconciliation (*reconciliación, riconciliazione*) and forgetting, silence, but also repression and the obscuring of memory on the other, which can still be observed today. The central importance of justice in coming to terms with dictatorships – not for nothing is the generic term ‘transitional justice’ used – appears dialectical with regard to remembering and forgetting. ‘The demand on law has as much to do with forgetting as it has with remembering: paradoxically, if the past is too alive it will never be past, yet, the truth has to be remembered first in order that it can be forgotten.’¹⁵ If the law is applied, the legal institution of amnesty, as with confession, is not about pushing away and suppressing injustice, but first about revealing and naming the injustice. Only then can forgiveness be granted, or punishment be restrained.¹⁶ This is the idea behind the Truth and Reconciliation Commission (TRC) in South Africa, which promised amnesty in return for admissions of guilt.¹⁷ In order to achieve a depoliticization of the past in the long term, and thus to pacify the present, transitional justice must take into account and balance the will to truth and the desire for pacification in equal measure.

Research Perspectives: The German Example in Context

A fixed point in the historiographical preoccupation with coming to terms with dictatorships and governmentally-sanctioned crimes, as well as with the protagonists active in that process of coming to terms with the past and shaping cultures of remembrance, is the German *Vergangenheitsbewältigung* (coming to terms with the past) in relation to the Nazi era. In Germany itself, this discourse was for a long time limited to a kind of navel-gazing directed at the country’s own manifestations of coming to terms with that dictatorship. To this day, the debate remains predominantly stuck at this level.¹⁸ Theodor Adorno’s early critique of *Vergangenheitsbewäl-*

¹⁴ Rieff, *In Praise of Forgetting*, 96.

¹⁵ Emiliós Christodoulidis and Scott Veitch, ‘Introduction’, in *Lethe’s Law. Justice, Law and Ethics in Reconciliation*, ed. Emiliós Christodoulidis and Scott Veitch, (Oxford: Hart Publishing, 2001), ix-xv, x.

¹⁶ See also Quaritsch, ‘Bürgerkriegs Amnestien’.

¹⁷ Cf. the contribution by Hugo van der Merwe in this volume.

¹⁸ Even the new compendium by Magnus Brechtken (ed.), *Aufarbeitung des Nationalsozialismus. Ein Kompendium*, (Göttingen: Wallstein, 2021) confines itself to the history of the German reappraisal

tigung in 1959 triggered a terminological shift to the term *Aufarbeitung* (accounting for the past) and a critical assessment of the way in which Germany had initially dealt with the National Socialist period.¹⁹ The view which came to prevail for a long time, that Nazi crimes had been suppressed in German post-war society as a result of the country being reduced to rubble, the war dead and the forced displacement of the East Germans, has proven to be too crude, bold and simple in the light of ongoing research. Hermann Lübke's assessment of a 'communicative silence'²⁰ applies above all to the private sphere and the non-thematization of Nazi pasts in educational establishments and the workplace, and less to the public treatment of the topic. As early as 1946, the former concentration camp inmate Eugen Kogon published his bestseller *Der SS-Staat (The SS State)* about the concentration camp system, which has gone through no less than 47 editions to date.²¹

Following the Nuremberg Trials and the denazification proceedings, further developments brought the crimes of the National Socialist dictatorship to the attention of journalists and led to corresponding debates in the public arena. These included the Luxembourg Agreement of 1952, which was highly controversial at the time, and, one year later, the trial relating to the massacre perpetrated by the *Waffen-SS* at Oradour-sur-Glane. Even when applied to the 1950s, the assertion that 'silence reigned in West German public life regarding the "Third Reich"' is too sweeping. Hartmut Berghoff correctly writes that this phase cannot be adequately described by either the 'thesis of [psychological] repression or by that of coming to terms with the past'.²³ Berghoff identifies a process of change already present in 1955, which raises the question of how many years the assumed phase of silence lasted after the forced confrontation with Nazi crimes imposed by the Allies. Without question, however, 'Auschwitz' – as the cipher was at the time – i.e., the murder of the European Jews, was not the focal point of remembrance in the 1950s.

of the National Socialist past, with the exception of a brief essay by Arnd Bauerkämper and Christopher Browning's American perspective.

¹⁹ Theodor W. Adorno, 'Was bedeutet: Aufarbeitung der Vergangenheit [1959]', in Theodor W. Adorno, *Gesammelte Schriften*, vol. 10.2 (Frankfurt am Main: Suhrkamp, 1977), 555–572.

²⁰ Hermann Lübke, *Vom Parteigenossen zum Bundesbürger – über beschwiegene und historisierte Vergangenheiten* (Munich: Wilhelm Fink, 2007), 7f.

²¹ Eugen Kogon, *Der SS-Staat: Das System der deutschen Konzentrationslager* (Munich: dtv, 1946), 127.

²² Edgar Wolfrum, 'Nationalsozialismus und Zweiter Weltkrieg: Berichte zur Geschichte der Erinnerung', in *Verbrechen erinnern. Die Auseinandersetzung mit Holocaust und Völkermord*, ed. Volkhard Knigge and Norbert Frei, (Munich: C. H. Beck, 2002), 133–149, 136.

²³ Hartmut Berghoff, 'Zwischen Verdrängung und Aufarbeitung: Die bundesdeutsche Gesellschaft und ihre nationalsozialistische Vergangenheit in den Fünfziger Jahren', *Geschichte in Wissenschaft und Unterricht* 49 (1998), 96–114, 114. The thesis of repression is also opposed by Manfred Kittel, *Die Legende von der 'Zweiten Schuld': Vergangenheitsbewältigung in der Ära Adenauer* (Frankfurt am Main and Berlin: Ullstein, 1993). On the legal and political beginnings of the 'politics of the past', albeit with a different assessment of the topic, see also Norbert Frei, *Vergangenheitspolitik: Die Anfänge der Bundesrepublik und die NS-Vergangenheit* (Munich: Ullstein, 2012).

With the establishment of the 'Central Office of the Land Judicial Authorities for the Investigation of National Socialist Crimes' (*Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen*) in Ludwigsburg in 1958, the Ulm *Einsatzgruppen* trial in the same year, the anti-Semitic daubings and desecrations at the end of the 1950s, in which the Stasi was very probably also involved,²⁴ the Eichmann trial in Jerusalem and the Auschwitz trials at the beginning of the 1960s, the Holocaust, which was referred to as such from 1979 onwards, became increasingly discussed in many of its gruesome details.²⁵ The Institute of Contemporary History, founded in 1949 to research the Nazi period, published its expert reports in 1965 under the title *Anatomie des SS-Staates* (*Anatomy of the SS State*).²⁶ The 1970s represented a 'standstill' in the study of the Holocaust, despite or because of the omnipresence of the term 'fascism'. As Frank Bajohr notes: 'In no decade since 1945 has there been less research into and less published on the Holocaust in Germany than in the 1970s'.²⁷ The cipher '1968' does not, therefore, mark the beginning of the study of Nazi crimes, as is still often claimed, but is rather an interim pause therein.

It was not until the internationally extremely successful American television series *Holocaust*, which was broadcast in numerous countries in 1978/79, that interest in the subject was revived. At the same time, the series marked the beginning of a universalization of the memory of the Holocaust. This is strikingly expressed in the United States Holocaust Memorial Museum, which opened in 1993, and many comparable institutions, as well as in Holocaust memorial days – such as 27 January, the day of the liberation of the Auschwitz concentration camp, which was declared Holocaust Remembrance Day in 1996 in the Federal Republic of Germany and in 2005 by the EU Parliament and the UN General Assembly. At an international conference in Stockholm in the year 2000, the universal focus on the Holocaust was fixed in a declaration by 600 delegates from over 40 countries.²⁸ In Europe, however, just as in other spheres, a gulf is evident between the culture of remembrance represented by the politics of memory in Northern and Western European countries on the one hand and that of post-communist Eastern European states on the other. For the latter – to the irritation of Western Europeans – the experience of communist dictatorships

24 Hubertus Knabe, *Die unterwanderte Republik: Stasi im Westen* (Berlin: Propyläen, 1999), 126–132.

25 Peter Hoeres, *Zeitung für Deutschland: Die Geschichte der FAZ* (Munich and Salzburg: Benevento, 2019), 96–105.

26 Hans Buchheim, *Die SS – Das Herrschaftsinstrument: Befehl und Gehorsam* (*Anatomie des SS-Staates*, vol. 1) (Olten and Freiburg im Breisgau: dtv, 1965); Martin Broszat, Hans-Adolf Jacobsen and Helmut Krausnick, *Konzentrationslager, Kommissarbefehl, Judenverfolgung* (*Anatomie des SS-Staats*, vol. 2) (Olten and Freiburg im Breisgau: dtv, 1965).

27 Frank Bajohr, 'Holocaustforschung – Entwicklungslinien in Deutschland seit 1945', in Brechtken, *Aufarbeitung*, – 142, 132.

28 Jens Kroh, *Transnationale Erinnerung: Der Holocaust im Fokus geschichtspolitischer Initiativen* (Frankfurt am Main: Campus, 2008).

is of as central or at least equal importance to the experience of the German occupation during the Second World War.²⁹

Recent years have witnessed the increasing development of comparative perspectives on transitional justice. The German example has been compared with that of Italy, Japan and other countries, or, at least – and more frequently – juxtaposed with them.³⁰ In addition, transnational influences on processes of coming to terms with the past have been elaborated upon, albeit hitherto far too rarely in historical studies.³¹ At the *Historikertag* in Münster in 2018, a section was devoted to the topic of ‘Divided Memory and Continuity of Elites: Post-totalitarian Societies in Comparison’, which compared the developments in Germany with those in Italy, Russia and China.³² The landscapes of memory in Eastern Europe, which differ greatly from those in Western societies and are always also orientated towards communism and its consequences, have recently attracted particular attention.³³ Transitional justice research, on the other hand, often deals with histories of transformation without explicit reference to Germany’s dual dictatorial past.³⁴ However, an extensive project

29 Arnd Bauerkämper, ‘Transnationale Dimensionen der “Vergangenheitsaufarbeitung”’, in Brechtken, *Aufarbeitung*, 20–37, 31; Ulrike Jureit, ‘Wem gehört der Holocaust?’, in *Gefühlte Opfer: Illusionen der Vergangenheitsbewältigung*, ed. Ulrike Jureit and Carsten Schneider, *Vergangenheitsbewältigung* (Stuttgart: Klett-Cotta, 2010), 95–103.

30 Knigge and Frei (ed.), *Verbrechen erinnern*; Norbert Frei (ed.), *Transnationale Vergangenheitspolitik: Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg* (Göttingen: Wallstein, 2006). The intra-German examination of the Holocaust with a comparison between the Federal Republic and the GDR is described in Jeffrey Herf, *The Jewish Enemy: Nazi Propaganda during World War II and the Holocaust* (Cambridge: Harvard University Press, 2006).

31 Ian Buruma, *Erbschaft der Schuld: Vergangenheitsbewältigung in Deutschland und Japan* (translated by Klaus Binder and Jeremy Gaines. Munich and Vienna: Carl Hanser, 1994); Christoph Cornelißen, Lutz Klinkhammer and Wolfgang Schwentker (eds.), *Erinnerungskulturen: Deutschland, Italien und Japan seit 1945* (Frankfurt am Main: Fischer, 2003); Manfred Kittel: *Nach Nürnberg: ‘Vergangenheitsbewältigung’ in Japan und Westdeutschland 1945 bis 1968* (Munich: De Gruyter Oldenbourg, 2004); Gian Enrico Rusconi, *Deutschland – Italien, Italien – Deutschland: Geschichte einer schwierigen Beziehung von Bismarck bis zu Berlusconi* (translated by Antje Peter. Paderborn: Ferdinand Schöningh, 2006).

32 Maximilian Kutzner, ‘Tagungsbericht: HT 2018: Gespaltene Erinnerung und Elitenkontinuitäten. Posttotalitäre Gesellschaften im Vergleich, 25.09.2018–28.09.2018 Münster’, *H-Soz-Kult*, 2 November 2018, accessed 22 March 2022, www.hsozkult.de/conferencereport/id/tagungsberichte-7923.

33 Carola Lau, *Erinnerungsverwaltung, Vergangenheitspolitik und Erinnerungskultur nach 1989: Institute für nationales Gedenken im östlichen Europa im Vergleich* (Göttingen: Vandenhoeck & Ruprecht, 2017); Jörg Ganzenmüller (ed.), *Recht und Gerechtigkeit: Die strafrechtliche Aufarbeitung von Diktaturen in Europa* (Cologne: C. H. Beck, 2017).

34 Cf., for example, Kira Auer, *Vergangenheitsbewältigung in Ruanda, Kambodscha und Guatemala: Die Implementierung normativer Ansprüche* (Baden-Baden: Nomos, 2014); Veit Straßner, *Die offenen Wunden Lateinamerikas: Vergangenheitspolitik im postautoritären Argentinien, Uruguay und Chile* (Wiesbaden: Verlag für Sozialwissenschaften, 2007) or the articles in the *International Journal of Transitional Justice*, accessed 22 March 2022, <https://academic.oup.com/ijtj/issue/14/3>. However, see also Luc Huyse, *Transitional Justice after War and Dictatorship: Learning from European Experiences 1945–2010. Final Report January 2013* (Brussels: CEGES SOMA, 2013).

on international transitional criminal justice, initiated in 1996 by the Max Planck Institute for Foreign and International Criminal Law and completed in 2012, admittedly included the double dictatorship within Germany's past and the ways in which such things have been dealt with legally.³⁵

From a comparative perspective, it becomes clear that the German approach to the Nazi dictatorship is an exception in terms of intensity and of the scope of public, political, legal, historical, and moral reappraisal that it involves. Here, a German *Sonderweg* is indeed palpable.³⁶ This holds least true in judicial terms, although here, too, there are only case-by-case analogies and comparative cases to permit such a conclusion. The comprehensive, albeit questionable, process of 'denazification' and the verdicts reached at the Nuremberg Trials, as well as in immediately subsequent trials, were followed by investigations and sentences passed by the occupying powers. Of 172,000 people investigated in West Germany/the Federal Republic, a total of 6,656 were sentenced.³⁷ In the GDR, almost 13,000 guilty verdicts were returned against Nazi perpetrators.³⁸

To compare and contrast this with the punishment of another particularly extensive genocide – estimates put the death toll as high as a quarter of the population – in Cambodia, the Extraordinary Chambers in the Courts of Cambodia (ECCC) carried out a total of three sentences in relation the barbaric rule of the Khmer Rouge.³⁹ In China, a public show trial was organized against the so-called 'Gang of Four' for the terrible years of the Cultural Revolution from 1966 to 1976 with its millions of victims. In 1981, the Special Tribunal handed down two death sentences – later commuted to life imprisonment – and substantial prison sentences for the ten people considered to be part of the 'Gang of Four'. Further prosecutions for crimes committed during the Cultural Revolution occurred regionally only in the short period between the end of the Cultural Revolution and the early 1980s. In addition to judicial decisions, individuals were expelled from the party or forced to indulge in self-criticism, although

35 Albin Eser, Ulrich Sieber and [from sub-volume 8 onwards] Jörg Arnold (eds.), *Strafrecht in Reaktion auf Systemunrecht: Vergleichende Einblicke in Transitionsprozesse* (14 vols., Berlin: Duncker & Humblot, 2000–2012).

36 This is also the view taken in Christoph Cornelißen, '„Vergangenheitsbewältigung“ – ein deutscher Sonderweg?', in *Aufarbeitung der Diktatur – Diktat der Aufarbeitung? Normierungsprozesse beim Umgang mit diktatorischer Vergangenheit*, ed. Katrin Hammerstein et. al., (Göttingen: Steiner, 2009), 21–36.

37 Bajohr, 'Holocaustforschung', 128.

38 Andreas Eichmüller, 'Die Strafverfolgung von NS-Verbrechen durch westdeutsche Justizbehörden seit 1945: Eine Zahlenbilanz', *Vierteljahrshefte für Zeitgeschichte* 56 (2008), 621–640; Jörg Echternkamp, 'Die Verfolgung nationalsozialistischer Gewaltverbrechen', accessed 22 March 2022, <https://www.bpb.de/geschichte/deutsche-geschichte/der-zweite-weltkrieg/199413/die-verfolgung-nationalsozialistischer-gewaltverbrechen>.

39 On current developments, see Till Fährnders, 'Khieu Samphan gibt sich ahnungslos', *Frankfurter Allgemeine Zeitung*, 16 August 2021, 8. On transitional justice in Cambodia in general, compare David Chandler, 'Cambodia Deals with its Past: Collective Memory, Demonisation and Induced Amnesia', *Totalitarian Movements and Political Religions* 9 (2008), 355–369.

prosecutions were not brought against large groups of members of the People's Liberation Army. Moreover, wholesale inquiries and administrative punishments were carried out. Between 1976 and 1986, extensive rehabilitation measures were implemented. It must be said, however, that there was no change in the system, but rather a change in political direction, and that criminal law was once again instrumentalized politically. This form of transitional justice can hardly be compared with procedures founded on the rule of law.⁴⁰

In the case of Ethiopia, it is possible to speak of a fairly comprehensive process of transitional justice at the judicial level. Despite this, here, too, a conspicuous decrease can be observed if one looks at the sentences actually carried out. Out of more than 5,000 accused persons, 2,188 had to be tried in absentia. 3,600 people were sentenced, but the majority of the leadership clique centred around the dictator Mengistu had, like himself, absconded abroad. In Ethiopia, unlike Germany, it is striking that only a very rudimentary culture of remembrance has been established in the aftermath of judicial proceedings at authentic sites or via the founding of museums and the erection of monuments. The small 'Red Terror Martyrs Memorial Museum' in Addis Ababa, which opened in 2010, was set up on the initiative of a victims' group and is funded by donations.⁴¹ Today, the African Union resides on the site of the former central prison in a new building financed by the Chinese state. Only a small memorial reminds visitors that thousands of inmates lost their lives here. In 1974, the Dergue regime had 60 members of the royal family and the imperial government murdered at this location.⁴²

After the rather disappointing UN tribunal in neighbouring Tanzania and genocide trials in national courts, transitional justice in Rwanda following the genocide there was anchored in the traditional Lower case 'g' (gacaca) courts. However, these are scarcely compatible with Western ideas of legal procedures conducted in accordance with the rule of law, and they have been criticized by human rights organizations. Nevertheless, they have contributed to speaking the truth about the genocide and to participation at the local level.⁴³

From a transnational perspective, it is furthermore clear that in the wake of the universalization of Holocaust remembrance, accounting for the past as practised in

⁴⁰ Eser et al, *Strafrecht in Reaktion auf Systemunrecht*, vol. 9: Thomas Richter, *China* (Berlin: Duncker & Humblot, 2006); vol. 14: *Transitionsstrafrecht und Vergangenheitspolitik* (Berlin: Duncker & Humblot, 2012), 269–272 and 388f.; Daniel Leese, *Maos langer Schatten: Chinas Umgang mit der Vergangenheit* (Munich: C. H. Beck, 2020), 411–481.

⁴¹ See the contribution by Tadesse Simie Metekia in this volume. Tellingly, the museum does not currently have a website.

⁴² Cf. accessed 22 March 2022, <https://after-dictatorship.org/kontinente/afrika/aethiopien/erinnerungsorte.html>.

⁴³ See the article by Julia Viebach in this volume. On the relevant criticism, see, for instance, Human Rights Watch, *Justice Compromised –: The Legacy of Rwanda's Community-Based Gacaca Courts*, 31 May 2011, accessed 22 March 2022, https://www.hrw.org/sites/default/files/reports/rwanda0511webwcover_0.pdf.

Germany in relation to the Nazi era does not necessarily attract attention as a model, but more frequently as a specific example of transitional justice.⁴⁴ It is sometimes even seen as exemplary, for instance, in China with regard to the period of Japanese occupation, as well as amongst critics of the official commemorative culture in Japan itself.⁴⁵ As far as transitional justice in relation to the GDR is concerned, the Stasi Records Agency and Archive (BStU), founded in 1992, plays a pioneering role for comparable institutions in Eastern Europe.⁴⁶

The historical Paradox of Memory

From a diachronic perspective, a paradox of the history of memory can be identified for the dictatorships of the twentieth century across all countries. To wit: the further back in time these existed, the stronger the desire for reappraisal, for banning the relics of the defunct regimes, for reparations and remembrance.⁴⁷ The intensified preoccupation with the dictatorial past is fostered by a generational change. The fact that those cohorts who supported or had been pillars of the dictatorship are dying off makes it possible for a new generation to raise its voice against the dictatorship without the danger of too much opposition or even a slide into civil war.⁴⁸ The course of coming to terms with the past is influenced and altered by changes in government between post-dictatorial parties and the opposition. This can be observed particularly in Albania, but also in Latin American countries.⁴⁹ The ideal-typical⁵⁰ (i.e., not obligatory) chronological course in many countries runs as follows: when a regime falls, the upper echelons of its leadership are replaced. On the one hand, there is an amnesty for the victims of the previous dictatorship, but on the other hand there is a far-reaching amnesty for the classes supporting the *ancien régime*. This is accompanied by an explicit or implicit *pacto de silencio* or a ‘thick line’,

⁴⁴ Jan Eckel and Claudia Moisel (eds.), *Universalisierung des Holocaust? Erinnerungskultur und Geschichtspolitik in internationaler Perspektive* (Göttingen: Wallstein, 2008); Jureit/Schneider, *Gefühlte Opfer*; Daniel Levy and Natan Sznaider, *Erinnerung im globalen Zeitalter: Der Holocaust* (Frankfurt am Main: Suhrkamp, 2001); Peter Novick, *The Holocaust in American Life* (Boston: Houghton Mifflin Company, 1999).

⁴⁵ Bauerkämper, *Transnationale Dimensionen der ‘Vergangenheitsaufarbeitung’*, 33–35.

⁴⁶ Lau, *Erinnerungsverwaltung, Vergangenheitspolitik und Erinnerungskultur nach 1989*, 20 f.

⁴⁷ Similarly for German society, Hermann Lübke, ‘Der Nationalsozialismus im deutschen Nachkriegsbewusstsein’, *Historische Zeitschrift* 236 (1983), 579–599.

⁴⁸ In view of the millions of former soldiers, some of whom were still returning from Russian captivity, a critical examination of the Wehrmacht was, for instance, scarcely possible in the 1950s.

⁴⁹ Compare the contributions by Jonila Godole, Ricardo Brodsky and Veit Strassner in the present volume.

⁵⁰ On the concept of the ideal type, which aims at a unitary limiting concept whilst eliminating the accidental, cf. Max Weber, ‘Die “Objektivität” sozialwissenschaftlicher und sozialpolitischer Erkenntnis’, *Archiv für Sozialwissenschaft und Sozialpolitik* 19 (1904), 22–87.

as Polish Prime Minister Tadeusz Mazowiecki put it in his 1989 government declaration, drawn between a new government and the past.⁵¹ The overriding goal is to avoid a civil war, or to stabilize the new democratic (or otherwise) rule and achieve national reconciliation. Consolidation is followed by a first major wave of transitional justice with truth commissions and tribunals, as well as compensation for a narrowly defined group, often formerly dismissed state officials or direct victims. In a second wave, a new generation revisits the issues. The dictatorship is judged even more critically and dealt with more decisively. The immunity and amnesty granted previously are partially revoked, remaining monuments are razed to the ground and, if necessary, the body of the former dictator is reburied, as in Spain. Compensation is then extended to other groups such as the relatives of victims, as can also be observed in Latin America.

With regard to the Nazi era, the last major group of victims to receive compensation from Germany were the former forced labourers, most of whom came from Eastern Europe. It was not until the year 2000 that a compensation fund of 10 billion DM was established for them, half of which was contributed by German companies.⁵² In 2009, the German *Bundestag* passed a final bill of rehabilitation concerning convicted 'war traitors' – a measure that would have been unthinkable in the post-war period.

(Inter)disciplinary Approaches

The historical study of coming to terms with dictatorships takes a paradigm of commemorative culture as its starting point. Methodologically, it pursues an individualizing, inductive and archive-supported tack. In doing so, it cannot, on occasion, entirely avoid a teleology of worse-to-better,⁵³ which ignores the reductions in

51 Dominik Trutkowski compares both countries in their respective phases of transformation in his *Die ausgehandelten Revolutionen: Politische Kommunikation in Parlament und Öffentlichkeit beim Umbruch zur Demokratie in Spanien und Polen* (Düsseldorf: Droste, 2021).

52 Cord Pagenstecher, 'Der lange Weg zur Entschädigung', 2 June 2016, accessed 22 March 2022, <https://www.bpb.de/geschichte/nationalsozialismus/ns-zwangsarbeit/227273/der-lange-weg-zur-entschaedigung>.

53 The director of the Obersalzberg Documentation Centre, Sven Keller, provides an example of this, arguing without any trace of critical reflection on his own shock pedagogy, in his contribution 'Er bleibt – aber wie? Der Obersalzberg als Hitler-Ort', in Brechtken, *Aufarbeitung*, 284–316. By contrast, Peter Reichel, in his *Vergangenheitsbewältigung in Deutschland: Die Auseinandersetzung mit der NS-Diktatur von 1945 bis heute* (Munich: Beck'sche Reihe, 2001), rightly warned against describing the history of coming to terms with the past in Germany as a path 'that led from the darkness of questionable silence about the past and the suppression of guilt into the light of an exemplary illumination of the past and a flourishing culture of remembrance. That's just not how it was' (201).

complexity and ahistorical disambiguations of today's culture of remembrance.⁵⁴ By contrast, the political science approach to the topic operates in a typologically-systematizing and deductive fashion with the paradigm of transitional justice. This has come to be understood as encompassing much more than dealing with the experience of dictatorship at a legal level. Namely, the term further embraces extrajudicial punishment, the establishment of truth commissions (as they have been employed particularly in South Africa and the Latin American countries, in some cases several times),⁵⁵ the development of a material culture of remembrance in the form of authentic memorial sites, monuments and museums, the symbolic and material compensation of victims and the lustration of incriminated functionaries.⁵⁶

These political science studies are often situated in current debates about the politics of memory and are critical of the results of official remembrance policy. In other words, they not only take stock in a systematizing and lexical manner,⁵⁷ but also intervene in ongoing political processes.⁵⁸ As is likewise the case in many historical studies, it is often unclear what ideal of successful transitional justice the researchers are working with.⁵⁹ Does it involve the complete prosecution of all perpetrators and an investigation into all details? Is it about a permanent presence in the political and cultural discourse? From a more distanced perspective, one can counter that establishing peace, preventing civil war, and stabilizing the rule of law are already major achievements of transitional societies. From this perspective, coming to terms with the past in a sustainable, lasting, and intensive fashion is essentially a phenomenon of affluence, the preconditions of which are a stable political culture and economic prosperity. To put it bluntly, neither a homeless, starving and traumatized refugee from the Eastern territories of Germany in 1945 nor an Albanian peasant family struggling for subsistence in the transitional period after the fall of the communist dictatorship would have possessed the economic, social and mental prerequisites to be able or willing to initiate a critical culture of remembrance.⁶⁰ A cer-

54 On this, see Peter Hoeres, 'Vom Paradox zur Eindeutigkeit: Der 8. Mai in der westdeutschen Erinnerungskultur', in *Der 8. Mai 1945 im Geschichtsbild der Deutschen und ihrer Nachbarn*, ed. Bernd Heidenreich, Evelyn Brockhoff and Andreas Rödder, (Wiesbaden: Hessische Landeszentrale für politische Bildung, 2016), 47–58.

55 Compare the contributions by Veit Strassner, Ricardo Brodsky and Hugo van der Merwe in the present volume.

56 Susanne Buckley-Zistel, 'Vergangenes Unrecht aufarbeiten: Eine globale Perspektive', *Aus Politik und Zeitgeschichte* 25–26 (2013), accessed 22 March 2022, <https://www.bpb.de/apuz/162889/vergangenes-unrecht-aufarbeiten-eine-globale-perspektive?p=all>.

57 Anja Mihr, Gert Pickel and Susanne Pickel (eds.), *Handbuch Transitional Justice: Aufarbeitung von Unrecht – hin zur Rechtsstaatlichkeit und Demokratie* (Wiesbaden: Springer VS, 2018); Gerhard Werle and Moritz Vormbaum, *Transitional Justice: Vergangenheitsbewältigung durch Recht* (Berlin: Springer Lehrbuch, 2018).

58 In this spirit, compare the mission statement of the *International Journal of Transitional Justice*, accessed 22 March 2022, <https://academic.oup.com/ijtj/pages/About>.

59 On this topic, compare the suggestions made by Hubertus Knabe at the end of this volume.

60 On Albania, compare the article by Jonila Godole in the present volume.

tain consensus in relation to remembrance policy, a shared rejection of the previous dictatorship by relevant parts of society and a simultaneous acceptance of the new system (ideally one founded on the rule of law and democratic principles) are further required in order to be able to deal with the past without endangering political stability.

Transitional justice and the academic study of this phenomenon have been encouraged by the rise of the victim paradigm. The suffering and experiences of the victims of dictatorships increasingly became the focus of attention – and research – towards the end of the twentieth century. Human rights organizations and the human rights discourse in general helped to foster this development.⁶¹

The globally observable boom in the political, journalistic and academic preoccupation with the dictatorships of the twentieth century and their legacies on the one hand, and the marked national focus of much transitional justice research on the other, also lie behind the idea for the project *After Dictatorship: Instruments of Transitional Justice in Former Authoritarian Systems – An International Comparison*, which aims to examine and compare different forms and instruments of coming to terms with the past. In doing so, the project integrates historical and political science-based methods in an interdisciplinary way. This is also evident in the professional provenance of the authors of the country studies on Albania, Argentina, Ethiopia, Chile, Rwanda, South Africa, and Uruguay that follow in this volume. The former separation of historical scholarship from political science along the lines of the thirty-year rule pertaining to the release of archival documents has recently been circumvented by numerous historical studies. This is due to a change in the types of media that constitute the sources and an understanding of contemporary history as a critical prehistory to our present, borrowed from Michel Foucault.⁶² This volume also reaches into the present, for the process of coming to terms with the dictatorships of the twentieth century has not been brought to a close anywhere on the globe – and can hardly be expected to be so.

Coming to terms with dictatorships and state crimes takes time. As a rule, the demands are increasing, and the past is being viewed in an ever-more critical fashion. Seen from a historical perspective, the extensive, highly morally charged form of coming to terms with the past as it is often experienced today tends to constitute an

⁶¹ Cf. Thorsten Bonacker, 'Global Victimhood: On the Charisma of the Victim in Transitional Justice Processes', *World Political Science* 9 (2013), 97–129. This corresponds with the shift from researching the perpetrators to studying the victims in the commemorative culture of the Holocaust and Holocaust research. For a critical perspective on identifying with the victims of the Holocaust, see Jureit/Schneider, *Gefühlte Opfer*.

⁶² Compare the relevant subtitles of Andreas Rödter, *21.0: Eine kurze Geschichte der Gegenwart* (Munich: C. H. Beck, 2015); Philipp Sarasin, 1977. *Eine kurze Geschichte der Gegenwart* (Berlin: Suhrkamp, 2021) and the name of the corresponding series of historical works published by Wallstein, accessed 22 March 2022, <https://www.wallstein-verlag.de/reihen/geschichte-der-gegenwart.html>, in addition to a Swiss blog at <https://geschichtedergegenwart.ch>. The connection to Foucault, however, is not always as clear as it is in Sarasin's case.

exception. Opposing tendencies are also currently making themselves felt, as can be observed in Russia or China. Perpetrators and groups of perpetrators are whitewashed by their alleged achievements, and the victims are then liable to appear as collateral damage caused by modernization or the requirements of war. The expectations placed on transitional justice should thus not be set too high, and the sensitive process of transforming dictatorships should not be made more difficult by exaggerated aspirations. Expectations must further be managed in a way that protects victims from disappointment and at the same time tries to meet realistic demands.

A diachronic and synchronic view of coming to terms with dictatorships is helpful in this respect. Which instruments of transitional justice have been and are being used, how do they function, what generalizations can be made, and where do the political, social, economic and – last but not least – religious contexts frame and influence coming to terms with dictatorships? For example, there are no counterparts to the *gacaca* courts in Rwanda in other countries, while truth commissions and international tribunals have become part of the standard repertoire of transitional justice. By contrast, amnesties and the exchange of functional elites have existed as means of coping with tyranny and changes of rulers since antiquity. In the following, the diversity, but also the constants of the processes involved in overcoming the past will become clear on the basis of seven case studies of transitional justice. At the end of the volume, these will be compared and combined under the guiding question of ‘what is effective?’

Africa

Tadesse Simie Metekia

Ethiopia: The Post-Dergue Transitional Justice Process

Ethiopia, allegedly the oldest independent state in Africa, is back to civil war after almost three decades of relative peace. A war that broke out in northern Ethiopia in November 2020 has not yet ended at the time of writing. The main warring parties, the Tigray People's Liberation Front (TPLF) and the federal government, have not yet agreed to solve their differences amicably. In Ethiopia's west and southern parts, the government has engaged in a sporadic yet protracted armed conflict against the Oromo Liberation Front (OLF).

Armed conflicts, be they are internal or international in nature, are not new in Ethiopia.¹ Ethiopia's political history is marked by dictatorship after dictatorship, whereby new governments come to power by force and rule the country unconstitutionally.² However, the current conflicts have their roots in how Ethiopia handled the 1991 transition from the Dergue, a dictatorial regime that ruled Ethiopia from 1974–1991.³ The TPLF, OLF and the Eritrean People's Liberation Front (EPLF) were the main warring groups that toppled Dergue after a long and bloody civil war – the longest in post-colonial Africa.⁴ While the EPLF declared Eritrea's independence as a new state, the TPLF and OLF, together with other warring and non-warring groups, established a transitional government in Ethiopia in July 1991.⁵

The establishment of a Transitional Government of Ethiopia in 1991 was an unprecedented attempt to address the question of responding to the violence and atrocities perpetrated during the dictatorial regime. Following its establishment, the transitional government adopted various elements of transitional justice. This case study examines the successes and failures of the transitional justice measures adopted in Ethiopia for the first time, following the establishment of the 1991 Transitional Government of Ethiopia.

¹ For details on Ethiopia's history of war, see Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia: Domestic Practice vis-à-vis international standards* (Lieden: Brill, 2021), 308–310.

² According to Tola, '...violence has almost always been the media of government-people relations in Ethiopia. The country's history is filled with numerous pages and chapters of repressions and massacres perpetrated by those in power against the people.'. See B. Tola, *To kill the Generation: The Red Terror in Ethiopia* (Washington DC: Free Ethiopian Press, 1989), 3. Professor Baharu Zewde, a historian, agrees that 'the history of the country is replete with wars and acts of violence'. See B. Zewde, 'The history of the Red Terror: Contexts and Consequences,' in *The Ethiopian Red Terror Trials: Transitional Justice Challenged*, ed. Kjetil Tronvoll et al. (Martlesham: James Currey, 2009), 17–32, 20.

³ For details on the Dergue, see section 1 below.

⁴ See Gebru Tareke, *The Ethiopian Revolution: War in the Horn of Africa* (New Haven: Yale University Press, 2009), 59.

⁵ See Transitional Period Charter of Ethiopia: Proclamation No.1/ 1991, entered into force 22 July 1991.

Section 1 of this case study introduces Ethiopia's experience with the dictatorship regime. It provides the political context behind the establishment and structural operation of Dergue regime and the nature and scope of the violence perpetrated by it. Section 2 appraises the transitional justice measures adopted in post-Dergue Ethiopia. It examines details of the various mechanisms put in place by the Transitional Government of Ethiopia (TGE), 1991–1995, and afterwards by the Federal Government of Ethiopia. Section 3 evaluates whether the post-1991 transitional justice measures adopted in Ethiopia were successful. It identifies and discusses the successes and failures in Ethiopia's efforts to come to terms with its past.

1 The Experience of Dictatorship

In early 1974, armed forces, teachers, students, trade unions and civil servants had started a series of strikes and protests against the Haile Selassie regime.⁶ Gradually, countless groups joined the uprising, demanding that the *ancien régime* put an end to political and economic problems.⁷ Although the popular uprisings were organized by various coordinating committees representing different sections of the rebelling public, a more robust coordinating committee called the Coordinating Committee of the Armed Forces, the Police and the Territorial Army, also called Dergue, was established on 28 June 1974. Dergue, composed of 106 junior officers (majors, NCOs and privates), was founded mainly to arrest the officials of the *ancien régime*.

Although it had despised officials of the Haile Selassie regime and accused them of plundering public property and keeping the public in chains of poverty, Dergue emphasized its allegiance to Emperor and country in July 1974's *Ethiopia Tikdem* – a motto vowing to put Ethiopia first. The motto *Ethiopia Tikdem* (ኢትዮጵያት ቅድሚያ), which means 'Ethiopia First', was first used in the earliest stages of the 1974 revolution as a slogan, according to Shifaw, against the corruption and corrupt officials of the Haile Selassie regime.⁸ Soon, *Ethiopia Tikdem* evolved into a motto that advocated putting the country's interests above and beyond anything or anyone else.⁹

Gradually, however, Dergue had started implementing a series of orchestrated measures aimed at undermining the government and the Emperor's role in the country's political administration, a process commonly referred to as the creeping *coup*

6 Teffera Haile-Selassie, *The Ethiopian Revolution 1974–1991: From a Monarchical Autocracy to a Military Oligarchy* (London: Kegan Paul International, 1997), 30–64; Tesfayde Dinka, *Ethiopia during the Derg Years: An Inside Account* (Los Angeles: Tsehai Publishers, 2016), 28–29.

7 Haile-Selassie, *The Ethiopian Revolution 1974–1991*; Dinka, *Ethiopia during the Derg Years*.

8 It became a caption to a more elaborate manifesto of Dergue issued on 1 November 1974. See Dawit Shifaw, *The Diary of Terror: Ethiopia 1974–1991* (Bloomington: Trafford Publishing, 2012) 16.

9 Shifaw, *The Diary of Terror*.

d'état.¹⁰ The creeping coup achieved its ultimate goal on 12 September 1974. Dergue officially instituted itself as the Provisional Military Government (PMG) of Ethiopia by suspending the Revised Constitution, deposing the emperor and dissolving the Chamber of Deputies and the Senate (Parliament).¹¹

Dergue's ascension to power was accompanied by the establishment of a military court on 12 September 1974 designed, to punish persons who violated a ban on strikes, demonstrations, assemblies, or any form of supposed conspiracy against the *Ethiopia Tikdem* principle.¹² Two months after its establishment, the PMG took a violent turn when it summarily executed 59 senior officials of the Haile Selassie regime on 23 November 1974. Arguably marking, the beginning of persecution that lasted the entire 17 years of Dergue rule, the summary executions were officially announced by Dergue on national television and radio. The following piece discusses the temporal scope of Dergue's persecution. It also examines the political background, ideological justification, structures, extent and forms of persecution, victim groups, perpetrators, and the mechanisms adopted by the Ethiopian people to overcome the persecution.

1.1 Relevant Period

Scholars of the political history of Ethiopia rarely agree on the start date of the violence perpetrated during the Dergue regime. While Bahru Zewde, a professor of Ethiopian history, alleges that the Red Terror started on the day Dergue summarily executed the officials of the Haile Selassie regime,¹³ several others limit the Red Terror to the late 1970s. The main cause for this disagreement apparently lies in the fact that most of the literature on Dergue's violence is specific to the discussion of the Red Terror. The emphasis of the debate is on the question of who shot the first bullet – Dergue or the opposition.¹⁴ Overly concerned with discussing this question, the existing scholarship has shown a near-complete disregard for the period before and after the Red Terror, thereby reducing the temporal scope of Dergue's violence to the late 1970s. Even then, the state of scholarship on the Red Terror is 'burdened

10 Haile-Selassie, *The Ethiopian Revolution 1974–1991*, supra note 9, 30–64; Dinka, *Ethiopia during the Derg Years*, supra note 9, 28–29.

11 See Provisional Military Government Establishment Proclamation No. 1 of 1974, entered into force 12 September 1974.

12 Provisional Military Government Establishment Proclamation No. 1 of 1974, Articles 8 and 9.

13 See Bahru Zewde, 'The history of the Red Terror: Contexts and Consequences', supra note 4.

14 See Melakou Tegegn, 'Mengistu's Red Terror' (2012) 10(3) *African Identities* 249–263; P. Toggia, 'The Revolutionary Endgame of Political Power: The Genealogy of "Red Terror" in Ethiopia', *African Identities* 10(3) (2012): 265–280; Tessema, *Prosecution of Politicide in Ethiopia*, supra note 18, 36–49. For relevant remarks in the case law, see FHC, *SPO vs. Hailu Burrayu Sima et al.*, (Trial Judgment, 31 October 2005), File No. 03119, 86.

with bias, limited scope and a reproduction of the polemics, accusations and justifications of the time', as Jacob Wiebel noted in an essay written in 2012.¹⁵

In what seemed to be an effort to set the record straight, the Special Prosecution Office (the SPO), established pursuant to a law enacted in 1992 (the SPO Proclamation),¹⁶ wrote in its final report to the House of Peoples' Representatives that:

Indisputably, 'Red Terror' refers to 1977/78, where Dergue's atrocious acts reached their climax. Red Terror was a designation given by Dergue to its acts of encroachment. Nonetheless, it is a mistake to think that the *atrocities committed during Dergue occurred only during the Red Terror period* or that the EPRP was the only victim of the Red Terror.¹⁷

Indeed, court records show that Dergue stood trial for crimes committed as recently as 1989 and 1990, over a decade after the Red Terror period ended.¹⁸ The whole Dergue trial, and even the *Mengistu et al.* case, which commentators commonly cite as the main Red Terror trial, was not only about the crimes committed during the Red Terror. In this case, the SPO prosecuted Dergue's top officials for acts of genocide that they allegedly planned and orchestrated between 1974 and 1983.¹⁹ But limiting Dergue's violence to the Red Terror period risks excluding war crimes that occurred during the protracted armed conflicts, which was a situation unrelated to the Red Terror campaign. *Legesse Asfaw et al.* have dealt with war crimes perpetrated in Ethiopia between 1983 and 1988.²⁰

Overall, the entire 17 years of Dergue's rule were marred by systemic and widespread persecution. Some writers have argued that Dergue was an entity established with no propensity for violence but was rather pushed and radicalized into a dicta-

15 See Jacob Wiebel, 'The State of Scholarship on the Ethiopian Red Terror' in ERTDRC, *Documenting the Red Terror: Bearing Witness to Ethiopia's Lost Generations* (Ottawa: ERTDRC North America Inc, 2012) 89–96.

16 See Proclamation Establishing the Office of the Special Prosecutor: Proclamation No. 22/1991, entered into force 8 August 1992. [Hereinafter: the SPO Proclamation].

17 See Special Prosecutor's Office, *Dem Yazele Dossie: Begizeyawi Wotaderawi Dergue Weyem Mengist Abalat Benetsuhan Zegoch Laye Yetefetsem Wenjel Zegeba* (Addis Ababa: Far-East Trading P.L.C., 2010) [Hereinafter: *Dem YazeleDossie*], 122. Translation by the author. The original (Amharic) version reads:

ቀይሽብር 1970 የደርግ የጭፍጨፋ ተግባር ጣሪያ ላይ የደረሰበት ወቅት መገለጫ መሆኑ አይካድም። ቀይሽብር በአንድወቅት የጊዜያዊ ወታደራዊ አስተዳደር ደርግ ወይም መንግስት ለግፍ ተግባር በቀይሽብር ወቅት የተፈጸመው ብቻ ነበር ወይም የቀይሽብር ሠላባ ኢሕአፓ ብቻ ነው ብሎ ማሰብ ስህተት ነው።.

18 See ASC, *SPO vs. DagnenetAyalew et al.*, (Indictment), 23 December 1997, File No. 13/90, 6–9; FHC, *SPO vs. Getahun Zenebe Woldeeslassie et al.*, (Revised Indictment), 16 June 1999, File No. 962/89, 3–7; FHC, *SPO vs. Teshome Kebede et al.*, (Indictment), 23 December 1997, File No. 931/89, 2; FHC, *SPO vs. Tesfaye Belayeneh et al.*, (Indictment), 23 December 1997, File No. 934/89, 2; FHC, *SPO vs. Colonel Tesfaye Woldeeslassie Eshetie et al.*, (Indictment), 8 October 2000, File No. 206/93, 8–9.

19 See FSC, *SPO vs. Colonel Mengistu Hailemariam et al.*, (Revised Indictment of 28 November 1995), File No. 1/87, 11.

20 See FHC, *SPO vs. Legesse Asfaw et al.*, (Trial Judgment), 4 March 2008, File No. 03116.

torship by the civilian left.²¹ However, the Federal High Court of Ethiopia averred that Dergue had prepared to become a dictatorial power even before September 1974. It had organized itself with institutions of repression, some of which were established for the sole purpose of destroying political groups, and some of which were reorganized to intensify the execution of a plan to destroy individuals and groups that would oppose its revolution. The first such institution was the Dergue Campaign and Security Department (DCSD), established at the beginning of July 1974 to prepare and coordinate the armed forces for combat activities.²² The DCSD had a hitsquad²³ and a Daily Situations Follow-up Unit (DSFU).²⁴

What is commonly referred to as Dergue regime comprised two significant administration periods: the Provisional Military Government (PMG), 1974–1987, and the People's Democratic Republic of Ethiopia (PDRE), 1987–1991. The PMG ruled the country by a series of decrees without a constitution. The PDRE was established following the adoption of the socialist constitution in 1987. Essentially, the same members of Dergue who ruled the country during the PMG remained in power after the PDRE was set up.

1.2 Political Background

The 1974 revolution resulted from a stark opposition to the imperial monarchy which, although it had started making efforts to modernize the country after the Second World War, was keeping the country in extreme poverty, with two-thirds of the land controlled by the aristocracy and the church. Nonetheless, Dergue did not have a clear political policy or ideology from its inception. Dergue carried along the *Ethiopia Tikdem* motto for about six months after its establishment, redefining it as a philosophy and then a political ideology. In that sense, the contents of the motto had to evolve with the creeping coup. In November 1974, *Ethiopia Tikdem* was redefined as a more comprehensive philosophy to reflect the beginning of a new era following the ousting of the Emperor and Dergue's assuming control of the entire state power. At that point, the philosophy comprised 11 principles, ranging

21 Messay Kebede, 'The Civilian left and the Radicalization of Dergue,' *Journal of Developing Societies* 24(2) (2008): 159–182.

22 See Kebede, 'The Civilian left and the Radicalization of Dergue,' 6. The department was composed of nine military members including lieutenant Colonel Fisseha Desta.

23 Kebede, 'The Civilian left and the Radicalization of Dergue,' 10. The hit squad was composed of soldiers handpicked from various divisions of the army by order of Colonel Mengistu Hailemariam. The court also noted that the hitsquad and the security unit of the DCSD were often sent on missions to attack anti-revolutionaries, which they carried out in collaboration with the *Kebeles* and the police. Besides, there was no evidence that the hitsquad was established on a short-term basis. In a document prepared in February 1978, it was stated that the hitsquad had been carrying out such an assignment since its establishment.

24 Kebede, 'The Civilian left and the Radicalization of Dergue,' 10.

from giving ‘precedence to the interest of the many’ to the establishment of a ‘government of the people, by the people, for the people’.²⁵

By the end of 1974, Dergue came up with a relatively clear political ideology, i. e. ሐብረተሰባዊነት (*Hibretesebawinet*) or *Ethiopian socialism*. According to Wogderes, a Dergue official who served as Prime Minister of the PDRE, the initial decision to accept and follow socialism as an ideology did not develop with Dergue. It was promoted by the student body of Addis Ababa University, which recognized that the already declared ‘*Ethiopia Tikdem*’ lacked tangible ideological, economic or political grounds. The students rigidly stated that they would not participate in Dergue’s highly needed work campaign in rural Ethiopia²⁶ unless Dergue declared the specific political ideology it intended to follow.²⁷ In fact, by the end of the 1960s or at least by the beginning of the 1970s, ‘Marxism-Leninism had come to be the dominant ideology of the student movements both at home and abroad’.²⁸

Deliberations regarding whether Ethiopia should take Marxist, Leninist, and Maoist socialism as a prototype or come up with a different version of its own dominated the politics of the time. Colonel Mengistu, Major by then, persuaded the administration to establish a committee comprised of various intellectuals to dredge up a solution regarding whether or not to embrace socialism.²⁹

The majority of the members of Dergue were not familiar with the rudiments of ‘scientific’ socialism.³⁰ It is difficult to imagine that the remaining few, including Colonel Mengistu, had an adequate understanding of the concept.³¹ It appears that the majority of Dergue wanted to subscribe to a less confusing ideology that at least con-

25 Haile-Selassie, *The Ethiopian Revolution 1974–1991*, supra note 9, 135–136.

26 For a detailed structure and program regarding the Work Campaign, see Development through Cooperation, Enlighten and Work Campaign Proclamation No. 11/1974. See also Andargachew Tirneh, *The Ethiopian Revolution, 1974–1987: A transformation from aristocratic to a totalitarian autocracy* (Cambridge: Cambridge University Press, 1993), 171, stating that the Campaign was intended to ‘exorcise’ (through education and enlightenment) the rural population of all backwardness such as lack of education, lack of morality and the existing unjust land-tenure system.

27 Fikre-Selassie Wogderes, *Egnana Abyotu [We and the Revolution]* (Los Angeles: Tsehai Publishers, 2014), 158.

28 See, for example, Bahru Zewede, *The Quest for Socialist Utopia: the Ethiopian Student Movement c. 1960–1974* (Addis Ababa: Addis Ababa University Press, 2014), 127–138, 128. See also Paul B. Henze, *Rebels and separatist in Ethiopia: regional resistance to a Marxist Regime* (RAND Corporation, 1985), v–vii.

29 Henze, *Rebels and separatist in Ethiopia*, 159. See also Taffara Deguefe, *Minutes of Ethiopian Century* (Addis Ababa: Shama Books, 2006), 428.

30 Henze, *Rebels and separatist in Ethiopia*, 159.

31 Henze, *Rebels and separatist in Ethiopia*, 159. See also, United States Department of State, *Ethiopia: Radicals Stave off New Challenges* (Bureau of Intelligence and Research, 1976), 4, accessed 27 April 2022, <https://2001-2009.state.gov/documents/organization/67024.pdf>. ‘It is doubtful that he fully comprehends Marxist or Maoist ideology, but some Communist concepts – such as the class struggle, the national bourgeoisie, and imperialism – provide him with a much-needed political formula for Ethiopia’s current stage of development.’.

formed to the principles enshrined in the motto ‘Ethiopia Tikdem’.³² Cognizant of that, Colonel Mengistu explained to the members of Dergue that:

Ethiopian Socialism means ‘Ethiopia Tikdem’. Socialism changes the life of the poor; ensures equality; brings prosperity within a short time; frees our country from poverty and backwardness; exploitation and embezzlement of any sort will not exist; famine and dearth will be eradicated.³³

After members of Dergue accepted Ethiopian socialism as ‘an elaborated form of *Ethiopia Tikdem*’,³⁴ Dergue engaged in simple propaganda to talk the Ethiopian public into supporting its political ideology. Accordingly, it announced Ethiopian socialism as a political ideology stemming from the religious traditions of Christianity and Islam in Ethiopia.³⁵

Gradually, Dergue started clarifying what it actually meant by socialism. On 11 March 1975, Dergue promulgated Proclamation No. 26/1975, which put into place one of the key features of ‘socialism’ in Ethiopia, namely public ownership of the means of production. The law stipulated that those resources crucial for economic development and promoting an essential service to the community be transferred to the government.³⁶

To implement the policies of *Ethiopia Tikdem*, Dergue established the Workers’ Party of Ethiopia (WPE) with the help of party members from socialist countries such as East Germany. Dergue wanted to forge WPE into as the single socialist party that would lead the country.³⁷ Apparently, the regime’s plan was to cultivate a single will for the broad masses and then establish the dictatorship to maintain

³² Tiruneh, however, states that ‘Ethiopian socialism’ appears to have been envisaged by Dergue as a compromise between the demands of the radical left for a Marxist-Leninist programme and those of the interest groups and voices of moderation. See Tiruneh, *The Ethiopian Revolution, 1974–1987*, supra note 29, 88.

³³ Wogderes, *Egnana Abiyotu*, supra note 30, 159–160. Translation by author. The original version reads,

የኢትዮጵያ ሶሻሊዝም ማለት ኢትዮጵያ ትቅደም ማለት ነው። ሶሻሊዝም የድሃውን ሕዝብ ሕይወት ይቀይራል፤ እኩልነትን ያሰፍናል፤ ብልፅግናን በአጭር ጊዜ ያስገኛል፤ አገራችንን ከኋላ፡ ቀርነትናከድህነት ያለቃል፤ ማንናው ምዳይነት ብዝበዛና ምዝበራ አይኖርም፤ ረሃብና እርዛት ይወገዳል።

³⁴ See, for instance, Haile-Selassie, *The Ethiopian Revolution 1974–1991*, supra note 9, 159. According to him, the basic principles were deliberately repeated in the declaration to show that the philosophy of Ethiopia Tikdem was identical in both content and form with Ethiopian Socialism.

³⁵ Such an assertion could be no more than an attempt to win ideological support from the highly religious majority of the Ethiopian population at the time. See Haile-Selassie, *The Ethiopian Revolution 1974–1991*, supra note 9, 151.

³⁶ Proclamation No. 26/1975, Government ownership and control of the Means of production, entered into force 11 March 1975. See idem, preamble para. 2.

³⁷ The official establishment of the Worker’s party took place in 1984 with Mengistu Haile-Mariam as secretary-general.

the status quo.³⁸ As it is natural for the broad masses to lack a single political will, as stated above, Dergue had to put in place a series of measures indispensable to forging a single political party. Nevertheless, the most significant step, which outlawed alternative political views and provided for the inviolability of Ethiopian socialism, was already publicized in November of the same year via the promulgation of the Special Penal Code (SPC). The SPC provided for the punishment of *offences against national progress and public safety and security* as well as *offences against the motto Ethiopia Tikdem*.³⁹ Accordingly, Article 35 indicates that whosoever commits an offence against Ethiopian socialism is punishable by rigorous imprisonment from five to ten years.⁴⁰ The death penalty was provided in more severe cases, where the matter goes beyond exercising a dissenting political view and involves endangering the institution of the PMAC by violence, threats, conspiracy, or other unlawful means.⁴¹

Other measures provided by law, perhaps to assist Dergue in forging a single-will of the broad masses, include: i) the establishment of a political school to politicize and organize the broad masses by providing for education that focuses on scientific socialism;⁴² ii) dissemination of the ideology of Marxism-Leninism in the mass organizations and professional associations established pursuant to proclamation 119/77;⁴³ and iii) imposing upon higher education institutions a mandate to teach, expound and publicize socialism.⁴⁴

1.3 Ideological Justification

The violence during the Dergue regime was arguably based on ideological differences between perpetrators and victims. Dergue labelled its victims as anti-people, anti-revolutionary, anti-socialist imperialist or reactionary forces. However, not all

³⁸ For details on formation of WPE, see R. Warner, 'The Workers' Party of Ethiopia' (A Report Prepared by the Federal Research Division of the Library of Congress under an Interagency Agreement, Washington DC, 12 October 1984) 1–17, accessed 7 June 2022, <https://apps.dtic.mil/sti/pdfs/ADA303418.pdf>.

³⁹ See the SPCP, Article 35, offences Against the Motto Ethiopia Tikdem, which reads: 'Whosoever fails to comply with Proclamations, Decrees, Orders or Regulations promulgated to implement the popular Motto "Ethiopia Tikdem" or hinders compliance therewith by publicly inciting or instigating by word of mouth, in writing or by any other means...'.⁴⁰

⁴⁰ SPCP, Article 35.

⁴¹ See the SPCP, Article 9 regarding outrages against the institution of the PMAC. See also SPCP, Articles 7, 8, 10, and 11.

⁴² Political School Establishment Proclamation No.120/1977, entered into force 14 July 1977.

⁴³ Provisional Office for Mass Organizational Affairs Organization and Operation Improvement Proclamation No.119/1977, entered into force 14 July 1977, Article 8 (11).

⁴⁴ Higher Education Institutions Administration Proclamation No.109/1977, entered into force 13 January 1977, Article 3(1).

victims were members and affiliates of opposition political groups. For instance, ‘the Emperor was assassinated owing to Dergue’s phoney belief that his continued existence might have left the innocent public with a hope that he might reign again’ and thus not because of a specific political ideology.⁴⁵

Most importantly, the major opposition forces targeted by Dergue had carried socialism as a political ideology. The EPRP was a pro-communist organization opposed to Dergue, mainly because the latter was a military force. An organization widely known by its Amharic name MEISON, a socialist party that dubbed itself the All-Ethiopian Socialist Movement, had made a short-term alliance with Dergue with a view to strengthening socialism from inside. These and other opposition groups were believed to have been organized and led by groups of radical intellectuals who had espoused ‘Marxism in the 1960s and devoted themselves to the study of its application in Ethiopia’.⁴⁶ The socialist ideals did not emerge with Dergue, but with student movements of the 1960s.

As far as organizations engaged in an armed conflict with Dergue were concerned, the TPLF was a pro-communist organization that expressly stated its espousal of Albanian style communism. One of the main concerns for the US in 1991 was to make sure that the new forces dropped socialism as an ideology, to which the TPLF agreed at the London Conference of May 1991. In its *no democracy, no cooperation* principle, the US communicated that its support for the TPLF would depend on the latter’s willingness to adhere to democratic principles instead of the socialist ideals it had carried with itself during the armed conflict.

Overall, the urban conflicts portrayed as White Terror vs Red Terror and the armed conflict in more rural areas of the northern, eastern and western parts of the country were carried out between groups that claimed to be standing for socialist principles. As such, there was no fundamental ideological or philosophical difference among the conflicting parties during Dergue regime. Dergue targeted members and affiliates of opposition forces not due to their opposition to its socialist ideals but because they opposed the means and methods by which Dergue tried to implement socialism. As Stefan Brüne, a West-German political analyst who worked in Ethiopia during Dergue, put it, it was Dergue’s

military implementation [of socialism] which provoked the criticism and resistance, not the nationalization of industry but the absence of civil participation in the decision-making process, not the ideas but the dictatorial means with which the regime put them into practice.⁴⁷

Exceptionally, however, there was an ideological difference between Dergue and the groups it referred to as reactionary forces. The reactionaries included those who sup-

⁴⁵ Colonel Mengistu Hailemariam et al. (Appeals Judgment), 71.

⁴⁶ John Markakis, ‘Garrison Socialism: the Case of Ethiopia,’ MERIP Reports, No. 79, 1979.

⁴⁷ Stefan Brüne, ‘Ideology, Government and Development: The People’s Democratic Republic of Ethiopia,’ *Northeast African Studies* 12(2) (1990).

ported the Haile Selassie regime and feudal lords, against whom the students, peasants, and workers began protesting in the 1960s. The reactionaries were believed to be imperialists and indigenous aristocrats who left the country under poverty, despite the fact of industrialization and commercialization was dominated by foreign capital. Nonetheless, as far as the killing of the Emperor was concerned, the label ‘reactionary’ may not be relevant. It appears the Emperor had ultimately agreed to accept the change. He was known to have said, ‘If the revolution is good for the people, then I too support it’.

Notwithstanding the absence of significant ideological differences among the conflicting parties – the perpetrators and the victims – it should be noted that the violence during Dergue was political violence. As summarized by the SPO in its completion report to the House of Peoples, Representatives in 2010,

Dergue did not kill a single boy based on which [ethnic, racial, national or religious] group the boy belonged to or based on the kind of school the boy went to, but only because of the boy’s alleged affiliation to certain political groups such as the EDU [Ethiopian Democratic Union] and the EPRP.⁴⁸

1.4 Structures of Persecution

1.4.1 Structure of Violence: Involving the Entire State Apparatus

On 15 September 1974, Dergue declared itself ‘head of state’ (ርዕሰ ብሔር), using a singular marker to indicate that all Dergue officials held such a status collectively and indivisibly.⁴⁹ Most of the decisions to eliminate members of opposition political groups were considered to have been taken by all members acting as one. Dergue, which had already organized itself into a general assembly, standing committee and sub-committees, established new institutions of violence and restructured the existing ones.

As early as 7 July 1974, Dergue had started giving military directives to destroy unidentified individuals and groups who were countering activities that Dergue was carrying out. This was done under the auspices of the Dergue Campaign and Security Department (DCSD), established at the beginning of July 1974 to prepare and

⁴⁸ Translation by the author. See Ethiopian Television, Documentary: findings of human rights abuse during Red Terror era – Part 1 (ETV Documentary part 2, 2010), accessed 27 April 2022, https://www.youtube.com/watch?v=EsLflpn4xBg&ab_channel=EthiopianTV. See also, for instance, FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, (Revised Indictment), 28 November 1995, File No. 1/87. There was no single charge of genocide on racial, religious, ethnic and national groups. See *Dem Yazele Dossie*, 137.

⁴⁹ See Definitions of Power of Provisional Military Administration Council and of its Chairman, Proclamation No.2 /1974, entered into force 15 September 1974, Articles 2 and 3.

coordinate the armed forces for combat activities.⁵⁰ The DCSD had a hit squad and a Daily Situations Follow-up Unit (DSFU).⁵¹ The Department was later reorganized under Dergue Military Committee (DMC) in February 1975 with a mission to destroy individuals and groups with anti-revolutionary agendas.⁵²

In October 1974, Dergue established the Central Investigation Centre (*Maekalawi*), the administration of which was carried out by high-ranking government officials in collaboration with the Dergue Investigation Team (DIT).⁵³ The latter was established initially to carry out investigations into the already arrested and suspected officials of the *ancien régime*.⁵⁴ Later on, the DIT's investigative power was extended to include members of the defence forces who did not accept Dergue's *Ethiopia Tikdem* motto, as well as persons engaged in activities disruptive to Dergue's policies.⁵⁵

In August 1976, four organizations were added to Dergue's institutions of violence. These were: i) the Information Evaluation and Dissemination Unit (IEDU);⁵⁶ ii) the Public Security Protection Committee (PSPC);⁵⁷ iii) the Revolutionary Information Unit (RIU);⁵⁸ and iv) the Police Force Special Investigation Unit (PFSIU).⁵⁹ These institutions were structured to carry out a coordinated attack against those identified by Dergue as anti-revolution and anti-unity.⁶⁰ The establishment of these institutions of violence meant that Dergue had a whole system set up to destroy opposition political groups.

In the late 1970s, Dergue started reorganizing the institutions of violence to coordinate and intensify the measures it had been taking against anti-revolutionaries. In May 1977, Higher Urban Dwellers Associations (HUDAs) were established by the decision of the Urban Development and Housing Minister.⁶¹ To coordinate its attack

50 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, (Trial Ruling), 23 January 2003, File No.1/87, 6. The department was composed of nine military members, including lieutenant Colonel Fisseha Desta.

51 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 10.

52 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 10.

53 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

54 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 10.

55 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 10.

56 The IEDU was established by order of Colonel Mengistu Hailemariam and had a mandate to track and report persons who could attempt to destabilize Dergue's position of control, its work programs, and its *Ethiopia Tikdem* ideology. FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

57 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11. The PSPC was established to work in collaboration with the DIT and the IEDU and to report the investigation results to Dergue or its chairman.

58 The RIU was empowered to render opinions regarding whether anti-revolutionaries were to be detained, released or subjected to revolutionary measures. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

59 The PFSIU was created within the police force with a power similar to that of the RIU. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

60 FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

61 The reason for the establishment of the HUDAs was, according to the court, to push forward the revolution's offensive. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

against anti-revolutionaries and to ensure the involvement of public and professional organizations in the violence, Dergue established a Revolution Protection Units Coordination Committee (RPUCC).⁶² Efforts were also made to arm the *Kebeles* (the lowest level administrative units) as a part of coordinating ongoing measures against the anti-revolutionaries.⁶³ A counter-anti-revolutionary force was established to remove the enemies of the revolution from schools.⁶⁴ In January and May 1978, orders were issued to ensure that the *Kebeles* and HUDAs carried out interrogations jointly with Dergue investigation units.⁶⁵

In August 1978, the most advanced institution of violence, namely, the Central Revolutionary Investigation Department (CRID), was formed from a merger of the DIT and the PFSIU.⁶⁶ CRID was equipped with modern communication systems, security clearance and a separate hit squad for obliterating anti-revolutionary groups.⁶⁷ It established direct communication with *Kebeles* and HUDAs to carry out its investigations into anti-revolutionaries, thereby strengthening an already centralized investigation system. The intelligence system was further strengthened and organized, particularly after 1978, with the help of the Soviet KGB and the East German State Security Service (Stasi).⁶⁸ Widening this system further, the CRID operated both in Addis Ababa and in the provinces, notably by sending special investigators to the provinces and having detainees transferred from the provinces to its Addis Ababa centre.⁶⁹ As such, this well-thought-through and centralized system of violence was meant to destroy opposition political groups throughout the country.

⁶² Captain Legesse Asfaw worked in the committee and carried out activities such as submitting requests to Dergue for the purpose of arming the coordinating committee. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 15.

⁶³ Dergue supplied weapons, gave training to the *Kebeles* and helped them organize themselves. According to the court, this was done as part of an initial promise made by Dergue to arm the *Kebeles* and HUDAs with the weapons necessary to take revolutionary measures against the anti-revolutionaries. However, the Court did not mention when the promises were made and by whom. In the 1970s, it was discussed in several meetings held by Dergue that *Kebeles* in Addis Ababa had begun killing detainees in local prisons and that dead bodies were seen left on different places and on the streets. The meetings also noted that there was a widespread practice of interrogation accompanied by flogging and beatings, as recorded in the diary of Colonel Tesfaye Woldeselessie (who served as the Chairman of the Information Evaluation and Dissemination Committee). See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 12–15.

⁶⁴ This was carried out under the leadership of Lieutenant Colonel Endale Tessema. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 14.

⁶⁵ The order was given by Lieutenant Colonel Debela Dinsa. See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 16.

⁶⁶ See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

⁶⁷ See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, 11.

⁶⁸ See B. Mesfin, 'The Architecture and Conduct of Intelligence in Ethiopia (1974–1991),' *International Journal of Ethiopian Studies* 5(1) (2010): 39–70.

⁶⁹ The CRID had investigation centers in Addis Ababa city administration, Addis Ababa Police Sprinter Division, Eritrea, and Tigray (Mekelle). See Mesfin, 'The Architecture and Conduct of Intel-

1.4.2 Forms of Violence: Every Measure Necessary

The minutes of 19 November 1976 from Dergue's National Assembly sessions revealed that Dergue reached a decision to destroy groups that had opposing political views to the revolution.⁷⁰ Following this decision, a memo written by the then Chairman of Dergue, Brigadier General Teferi Benti, was dispatched to the provinces and the various offices, including the Special Supreme Court Martial, with orders to take *every measure necessary* to implement Dergue's plan to destroy the enemies of the revolution and reactionaries (አድሃሪዎች).⁷¹ The taking of 'every measure necessary' was reinforced by announcements, orders and campaigns to eliminate the enemies of the revolution.

It was following the assassination of Colonel Atenafu Abate that Colonel Mengistu Hailemariam made a speech known as *Key Shiber Yefafame* ('Let the Red Terror intensify').⁷² In the speech, aired on Ethiopian Radio, Dergue called upon the public to blazon Red Terror in reactionary neighbourhoods, to consider the blocking of anti-revolutionary intrigues its primary job, and to intensify the Red Terror. Dergue also promised to stand with the public in carrying out these activities. At the same time, what Dergue had put in place in September 1977 was the *Netsa Ermija* (free measures). That was a codename denoting the permission given to the local actors (*Kebeles*) to take revolutionary measures (killing anti-revolutionaries) without seeking approval from higher-level government officials⁷³. Later on, an announcement was made by Captain Legesse Asfaw on behalf of Dergue at the Addis Ababa City Council on the occasion of the municipal councillors' oath-taking ceremony in which he pledged on behalf of Dergue to continue the *Netsa Ermija*. He also reassured the *Kebeles* that they would not be held accountable for doing so.⁷⁴

ligence in Ethiopia (1974–1991),' 12. For the SPO case dealing with the CRID special investigators, see FHC, *SPO vs. Teshome Bayyu et al.* (Trial Judgment), 15 January 2009, File No. 07415, 4–5.

⁷⁰ FHC, *SPO vs. Teshome Bayyu et al.* In the Assembly Sessions, a determination was made as to which government organ was responsible for carrying out the decision.

⁷¹ FHC, *SPO vs. Teshome Bayyu et al.*, 8.

⁷² The speech was made following the assassination of Colonel Atenafu Abate. In the speech aired on Ethiopian Radio, Dergue called upon the public to blazon Red Terror in the reactionary neighborhoods, to consider the impeding and halting of anti-revolutionary intrigues its primary job, and to intensify the Red Terror. Dergue also promised that it would stand with the public in carrying out these activities. *Colonel Mengistu Hailemariam et al.*, (Trial Ruling), 8.

⁷³ See Babile Tola, *To Kill the Generation: The Red Terror in Ethiopia* ²(Washington, D.C.: Free Ethiopia Press, 1997), 146.

⁷⁴ *Colonel Mengistu Hailemariam et al.*, (Trial Ruling), supra note 9, 8. Based on evidence obtained from the Ethiopian Radio Organization, an announcement was made by Captain Legesse Asfaw on behalf of Dergue at the Addis Ababa City Council at the municipal councilors' oath-taking ceremony. During the event, the Captain asserted that *Netsa Ermija* had been carried out with cooperation between Dergue and the city administration and promised that the cooperation in this regard would continue. The evidence did not indicate when Dergue's *Netsa Ermija* began; it simply talked of the decision to continue it. According to Tola, however, *Netsa Ermija* was launched in September 1977.

Dergue had planned and carried out anti-revolutionary elimination campaigns on several occasions.⁷⁵ Following a study conducted by the Revolutionary Information Unit (RUI) on the identity of anti-revolutionary groups,⁷⁶ a campaign dubbed 'Hit the Anti-Revolutionaries' and spearheaded by the Dergue Campaign and Security Department (DCSD) was launched in April 1977. This campaign, which involved the collaboration of civilian and military units, was designed to operate intensively day and night until anti-revolutionaries were entirely destroyed.⁷⁷ A recurrent campaign called *ZemechaMentir* (Identify and Eliminate) was carried out frequently by Dergue at different levels to identify and eliminate members of opposition factions.⁷⁸

As to the specific forms of persecutions, it was established in evidence at the court of law that Dergue killed 9,546 people in pursuance of its plan to destroy enemies of the revolution.⁷⁹ This figure includes the Emperor, whom Dergue assassinated on the grounds that his existence might place false hope in the minds and hearts of the general public that he would reign again. Besides, about 10,000 people were massacred during the aerial bombardments in northern Ethiopia, which were considered war crimes against the civilian population.

In addition to unlawful mass incarcerations, the infliction of bodily injuries in the form of acts of torture were not only rampant but took unimaginable forms. Torture techniques such as the *wofelala* were commonly used to obtain confessions or to impose extrajudicial punishment. These caused the victims such severe suffering that some referred to it as 'hell on earth'. This was a method in which a person was placed in an upside-down suspended harness and subjected to a lengthy flogging on the inner part of the foot.

Members of opposition political groups were placed in black sites, dungeons, interrogation rooms and torture chambers under living conditions calculated to result in death. The victims were kept in rooms without sufficient food and air, in a manner

See Babile Tola, *To Kill the Generation: The Red Terror in Ethiopia* ²(Washington, D.C.: Free Ethiopia Press, 1997), 146.

⁷⁵ See also FHC, *SPO vs. Colonel Mengistu Hailemariam et al.*, (Trial Judgment), 11 December 2007, File No. 1/87, 4.

⁷⁶ At this time, those considered enemies of the revolution included EPRP, EDU, Tesfa Le Zewede and its affiliates, members of the ELF, ECOP, youth associations. It was stated in the order document that the campaign was carried out by decision of the Provisional Military Government.

⁷⁷ Colonel Mengistu Hailemariam gave an order to launch a 'Hit the Anti-Revolutionaries' campaign, which was carried out through the collaboration of the armed forces, the police and other civilian bodies such as the *Kebele* revolutionary guards and workers' revolutionary guards. See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 10.

⁷⁸ On October 1977, lieutenant colonel Debela Dinsa gave the order to the *Kebeles* in Addis Ababa. Similarly, on 1 July 1978, Colonel Tesfaye Gebrekidan prepared a procedural guideline based on which the armed forces would be able to identify and eliminate anti-revolutionary forces in the army. *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 10, 14.

⁷⁹ *Dem Yazele Dossie*, Annex, Table II.

that deprived them of proper sleep, and with no access to medical care, and then were left to die in those places after being tortured.⁸⁰

Enforced disappearance was also common. In the post-Dergue investigations, locating the whereabouts of several victims proved challenging. However, there was evidence showing that several individuals were arrested and tortured by the regime at a certain point or that inmates were released from prison but never returned home. Only very few mass graves were exhumed, with even fewer identifications made with the help of forensic teams from Argentina.

What appeared to be a horrifyingly unique way of terrorizing of the public was Dergue's extensive use of the dead (corpses) as a means for perpetrating further violence. Corpses were hauled across and dumped on the streets as families were prohibited from collecting the deceased for burial. Dead bodies were displayed on national television and could be seen hanging in a butcher's shop alongside raw beef on a feast day. Mourning the dead was prohibited all over the country. In some places, market-goers were coerced into walking on the dead bodies left on the streets and market places. Fathers and mothers were forced to step on the dead bodies of their children. Dergue adopted this horrific technique of terrorizing the public and instilling fear and powerlessness in order to suppress, if not altogether eliminate, political dissent. Although common during the Red Terror period, such things were practised as recently as 1989 and 1990.⁸¹

Another form of violence that did not appear during the SPO's court proceedings against Dergue were the so-called 'resettlement' programs, which Dergue adopted under the pretext of a famine relief measure to diffuse perceived and ongoing political opposition. In the words of Dawit Woldegiorgis, a historian,

From the very beginning, resettlement for Mengistu was not a development program but a solution to his social and national security problems. Any dissidents, anyone who created problems or was seen as a security risk, was packed off to a resettlement site. In the minds of the people, resettlement programs were equated with concentration camps.⁸²

1.4.3 The Extent of Persecution: Destroy all Kinds of Opposition

In the 1992 law that established the Special Prosecutor's Office (SPO) to investigate and prosecute Dergue-era crimes, it was stated that the socialist government had perpetrated '*heinous and horrendous criminal acts* which occupy a special chapter in the

⁸⁰ See *Colonel Mengistu Hailemariam et al.* (Revised Indictment), 106–122.

⁸¹ For details, see Tadesse S. Metekia, 'Violence Against and Using the Dead: Ethiopian Dergue Cases,' *Human Remains and Violence* 4(1) (2018): 76–92.

⁸² Dawit Woldegiorgis, *Red Tears: War, Famine and Revolution in Ethiopia* (Trenton: The Red Sea Press, 1989), 285. See also Edmond J. Keller, 'Drought, War, and the Politics of Famine in Ethiopia and Eritrea,' *The Journal of Modern African Studies* 30(4) (1992), 609–624.

history of the people of Ethiopia'⁸³ The regime not only 'deprived the people of Ethiopia of its human and political rights and subjected it to gross oppression', but also 'impoverished the economy of the country by illegally confiscating and destroying the property of the people as well as by misappropriating public and state property.'⁸⁴ In terms of their temporal scope, the acts of persecution lasted for the entire 17 years, as discussed above.

As to the scope of the persecution, it should be noted that the crimes mentioned above were not perpetrated in a protracted manner. They were part of a series of crimes committed over a long period in a widespread and systematic manner, accompanied by a plan to destroy the entire body of opposition political groups. After examining numerous pieces of evidence, Ethiopian courts have concluded that Dergue was established *from the outset* with a plan and intent to destroy opposition political groups, which it carried within itself all along. Such a conclusion resulted from an extensive analysis of factors such as official commands, pronouncements, and campaigns of violence, the establishment and reinforcement of institutions of violence, and direct involvement of state officials in orchestrating and implementing the system of violence.⁸⁵ As such, Dergue's violence has been considered genocide against political groups (politicide).

From a territorial perspective, Dergue did not limit its acts of violence to opposition groups that resided in today's Ethiopia. In addition to extensive measures in what is now known as the State of Eritrea, the violence reached Ethiopian groups in European cities. Dergue's Colonel Tesfaye Woldeselassie, the Chairman of the Information Evaluation and Dissemination Committee, sponsored assassination missions in Italy (Rome) and Germany (Berlin) targeting members and leaders of the opposition political groups in the diaspora.⁸⁶

1.5 Victim Groups

During Dergue regime, tens of thousands of Ethiopia's best-educated were selectively killed; thousands were systematically tortured, injured, jailed or forcefully disappeared. Peasants were starved and forcefully relocated, and hundreds of thousands died because of malnutrition and disease.⁸⁷ Although there is no official statement re-

⁸³ SPO Proclamation, Preamble, para 2. [Emphasis added].

⁸⁴ SPO Proclamation, Preamble, para 2.

⁸⁵ For details, see Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia: Domestic Practice vis-à-vis international standards* (Lieden: Brill, 2021), 272–282.

⁸⁶ See FHC, *SPO vs. Colonel Tesfaye Woldeselassie Eshete*, (Revised Indictment), 09 November 2000, File No. 268/85, 10–11, 28–30.

⁸⁷ See Remy Prouveze and Nadia Brenaz, 'International and domestic prosecutions,' in Cherif Bassiouni (ed.), *The Pursuit of International Criminal Justice, Vol. I: A World Study on Conflicts, Victimization, and Post-Conflict Justice* (Antwerp: Intersentia, 2010), 386–387; See Human Rights Watch, 'Evil

garding the number of victims, some have estimated that Dergue regime took the lives of as many as 725,000 Ethiopians.⁸⁸ Others put the estimate close to 2,000,000.⁸⁹

As for the Red Terror, from 10,000 to 20,000 Ethiopians were killed in Addis Ababa alone.⁹⁰ It is believed that the rest of the provinces saw comparable numbers of fatalities, if not more. The estimate by the EPRDF government put the number of deaths in Addis Ababa at 55,000.⁹¹ According to Tola, the Red Terror took the lives of as many as 150,000 Ethiopians. According to Amnesty International, in just two months between December 1977 and February 1978, about 30,000 people were detained in Addis Ababa alone.⁹² Yet, as noted above, the Red Terror was not the only campaign of violence orchestrated and implemented by Dergue. The Red Terror was itself commonly misperceived as a violence that targeted only the Ethiopian People's Revolutionary Party (EPRP). As such, any hasty reference might amount to furthering the mockery of the other victims, as also cautioned by the SPO.

One may divide victims of Dergue into two broad categories based on political ideology or form of opposition. Based on the former, Dergue victims were referred to by their perpetrators as reactionaries and anti-revolutionaries. Reactionaries were feudal landlords, officials and individuals who supported the Haile Selassie regime for either political, religious or social status. 'Anti-revolutionaries' was a term used by Dergue to refer to all kinds of groups that were opposed to the military revolution and how Dergue was implementing socialism in Ethiopia.

Based on their forms of opposition, Dergue's victims could be categorized as either warring or non-warring groups. With the OLF and the TPLF being the pioneers in taking up arms against Dergue, the civil war that took 17 years involved several warring groups. The groups referred to themselves as liberation fronts or people's democratic organizations and most of them were established to fight against injustices on

Days: 30 Years of War and Famine in Ethiopia' (Report of African Watch, September 1991) 1, accessed 20 September 2020, <https://www.hrw.org/sites/default/files/reports/Ethiopia919.pdf>. [Hereinafter: Thirty Years of Evil Days]; Yves Santamaria, 'Afro communism: Ethiopia, Angola, and Mozambique,' in Mark Kramer et al. (ed.), *The Black Book of Communism: Crimes, Terror, Repression* (Cambridge: Harvard University Press, 1999) 683–704.

⁸⁸ According to African Watch Report, 500,000 'famine deaths' occurred between just 1982 and 1986, while the regime caused between 225,000 and 317,000 deaths through human rights violations. See Human Rights Watch, 'Evil Days: 30 Years of War and Famine in Ethiopia' (Report of African Watch, September 1991), accessed September 30, 2020, <https://www.hrw.org/sites/default/files/reports/Ethiopia919.pdf>, 172.

⁸⁹ See Paulo Milkias, 'Mengistu Haile Mariam: Profile of a Dictator,' *Ethiopian Review* 4(1) (1994): 57–59, 57.

⁹⁰ Human Rights Watch, 'Evil Days: 30 Years of War and Famine in Ethiopia,' *supra* note 88.

⁹¹ See Bahru Zewde, 'The history of the Red Terror: Contexts and Consequences,' in Kjetil Tronvoll et al. (eds.), *The Ethiopian Red Terror Trials: Transitional Justice Challenged* (Martlesham: James Currey, 2009), 17–32, 30.

⁹² Amnesty International (AI). 1978. 'Human Rights Violations in Ethiopia', accessed 30 September 2020, <https://www.amnesty.org/download/Documents/204000/afr250101978en.pdf>, 8.

behalf of their respective ethnic groups. Non-warring groups included mainly the EPRP and MEISON. The EPRP, known for its White Terror, a violent campaign aimed at assassinating Dergue and MEISON officials, had a short-lived armed wing that used to be known as the Ethiopian People's Revolutionary Army (EPLA).

It is noteworthy that Dergue was indiscriminate in terms of identifying opposition groups it targeted for persecution. As Ethiopian courts have unanimously concluded in Dergue trials, the persecution during Dergue regime targeted *all* (ሁሉንም) political opposition groups, that is, each one of the numerous political opposition groups.⁹³ The violence was more indiscriminate in the sense that it did not spare those who were less active and had no direct involvement in the opposition, such as religious dignitaries. For example, Abune Tewoflos Woldemariam, the patriarch of the Ethiopian Orthodox Church, and Gudina Tumsa, a priest and general secretary of the Ethiopian Evangelical Church Mekane Yesus, were executed on the allegation that the former was a 'reactionary' (pro-Haile Selassie regime) and the latter 'anti-revolutionary' (as an alleged member of the OLF).

1.6 Those Responsible

Over 5,000 officials, members and affiliates of Dergue regime were identified as responsible for crimes committed between 1974 and 1991. Not all of these individuals had held a position of authority in Dergue administration (the government, the party, or mass organizations). In addition to policymakers and field commanders, private individuals were responsible for atrocities. The violence reached its height by involving a large number of people referred to as personal informants, associates, chauffeurs,⁹⁴ 'cooperating individuals',⁹⁵ or 'progressive individuals'.⁹⁶

Colonel Mengistu Hailemariam, the chairman of the PMG, the president of the PDRE and the commander-in-chief of the armed forces, was by all standards the most responsible person. He announced the Red Terror and called for its intensification – not to mention that he oversaw the whole system of persecution through the country both in- and outside of the context of armed conflict. In one of the examples

⁹³ See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 5; *Colonel Mengistu Hailemariam et al.* (Appeals Judgment), 70.

⁹⁴ See *Dem Yazele Dossie*, 137. See also FHC, *SPO vs. Teshome Ashenie* (Indictment, 29 June 2000), File No. 1937/1992, 1; FHC, *SPO vs. Ademasu Amare et al.* (Revised Indictment), 7 July 1998, File No. 654/1989, 3; see in particular defendant number 16.

⁹⁵ See e.g. defendants number 28, 54, 117, 140, 141, and 142 in FHC, *SPO vs. Gesegesse Gebremeskel Aterega et al.*, (Indictment), 23 December 1996, File No. 03099/1989, 4–5, 12, 14. Several defendants were prosecuted as cooperating individuals in SNNPRS SC, *SPO vs. Mekonnen Gelan et al.*, (Revised Indictment, 22 May 2001), File No. 1338/97, 1–20. See the details of defendants number 132, 138, and 152 in OSC, *SPO vs. Brigadier General Tedela Desta et al.* (Revised Indictment, 10 October 1999), File No. OSC 1/1989, 13–14.

⁹⁶ See defendants number 41 and 46 in *Gesegesse Gebremeskel Aterega et al.* (Indictment), 5.

that depict his mercilessness, Mengistu had his presidential palace built over the Emperor's grave, on top of which he literally sat and ruled the country for 17 years.

On top of giving orders, initiating and organizing campaigns, and making public announcements concerning the elimination of members and affiliates of political opposition groups, Dergue higher officials were responsible for arming *Kebele* administrations,⁹⁷ supervising prisons,⁹⁸ and running the CRID.⁹⁹ Even more, they directly and regularly participated in deciding measures to be taken against anti-revolutionaries. In particular, officials at National and Public Security Affairs (NPSA) /ሀገርናሕዝብደህንነት-ዳይሃሌወች/ were responsible for rendering the final decision on the fate of anti-revolutionaries.¹⁰⁰

The usual procedure was well-oiled and followed pre-determined steps. After receiving investigation results from the Director of the DIT, the NPSA officials (such as Lieutenant Colonels Kassahun Tafesse and Teka Tulu) had the power to send their final decisions to the DIT or directly to the DCSD.¹⁰¹ Their decisions often contained death sentences, usually coded in phrases such as “take a revolutionary measure, move them to the district, take them across, join them with Jesus, and send them with any transport available”.¹⁰²

An alternative procedure was also available: NPSA officials could pass on their decisions to the general secretary of Dergue, Captain Fikreselassie Wogederesse, or the deputy general secretary, Lieutenant Colonel Fisseha Desta.¹⁰³ The two could either change or approve the decisions and send them back to NPSA officials with instructions to notify the DCSD.¹⁰⁴ In 1971, when the CRID replaced the DIT and the PFSIU, both the usual and the alternative procedures were maintained.¹⁰⁵

Regional governors, most of whom were permanent members of Dergue, were the key players in intensifying the persecution during the regime. They had either their own special forces to take counter-revolutionary measures or had the liberty to invite special investigators from the CRID's central office to undertake torture and execu-

97 The list of officials included: Captain Fikreselassie Wegderess, Colonel Tesfaye Gebrekidane, Colonel Demessie Duressa, Letenal Colonel Fesseha Desta. See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 13.

98 According to documentary evidence produced by the SPO in this regard, the prison administration committee included Major Kassaye Aragaw, *meto-aleqa* Petros Gebre, *miktelmeto-aleqa* Aragaw Yimer, Major Dejene Wolde Agegnehu, *miktelmeto-aleqa* Fesseha Andeto and others. See *Dem Yazele Dossie*.

99 The CRID used as its office an off-site location, Prince Asarat Kassa's villa, and was run by Lieutenant-Colonel Fisseha Desta. See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 11.

100 See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 12.

101 See *Colonel Mengistu Hailemariam et al.* (Trial Ruling), 13.

102 Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia: Domestic Practice vis-à-vis international standards* (Lieden: Brill, 2021), 281.

103 Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia*, 281.

104 Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia*, 281.

105 Tadesse S. Metekia, *Prosecution of Core Crimes in Ethiopia*, 281.

tions. The most monstrous of all was Melaku Teferra, governor of the Gonder province, followed, arguably, by Gesges Gebremeskel Ateraga, the governor of the then Cheha district in west-central Ethiopia. The two had, in the words of the Federal Supreme and High Courts of Ethiopia, an ‘addiction to killing’ (የመግደል ስህ). Melaku Teferra, responsible for killing 971 people, left behind a uniquely horrifying memory. In a poignant depiction of the scale of his mercilessness in detaining, killing, and forcefully conscripting their sons into the army, mothers in the Gonder province of northern Ethiopia had poetized him as:

MelakuTeferra, God’s younger brother;
pardon my son, and I would not bear another.¹⁰⁶

Concerning the armed conflict, 23 military officers ranging from major to brigadier general, most of whom were air force pilots trained to conduct airstrikes, were held responsible. This included Captain Legesse Asfaw, a permanent member of Dergue and a decorated military captain in charge of military operations in the northern part of the country, the then Tigray region. He had special powers that made him even superior to the Ministry of Defense as far as military operations in Tigray were concerned.¹⁰⁷

1.7 Places of Persecution

As is commonly the case with repressive regimes, the greatest commonplace of repression during Dergue were the prisons. In Addis Ababa, the most notorious ones were the central prison, Kerchele, and the central investigation centre, Meakelawi. Kerchale had a separate wing that was known as Alem-Bekagn, an infamous incarceration and torture chamber. During the Red Terror, Dergue converted *Kebeles* and Higher Urban Dwellers Associations into investigation and detention centres. It was the establishment of the National Revolutionary Operations Command pursuant to Proclamation No.129 of 1977 that had in effect transformed all government offices into detention centres by empowering government offices at all levels to identify and detain anti-revolutionary and anti-unity forces for up to six months just on the ground of suspicion of involvement in anti-revolutionary, anti-unit, or anti-operations acts.¹⁰⁸

106 Translation by the author. The original (Amharic) lyrics read:

መላኩ ተፈራ የግዜር ታናሽ ወንድም
ያዛሬን ማርሰኝ የነገን አልወልድም

107 For details, see Metekia, *Prosecution of Core Crimes in Ethiopia*.

108 National Revolutionary Operation Command Proclamation, Proclamation No. 129 of 1977, entered into force 27 August 1977.

The provision of *Netsa Ermija*, free measures, created numerous killing squads across the country where *Kebeles*, factories, and schoolyards became places of persecution by revolutionary guards. Military camps and command were also notorious places of persecution where civilians were arrested, detained and tortured. Several military compounds were later on found to be mass graveyards. Similarly, Dergue used compounds of security and intelligence departments not as just places of detention and torture but also of killing and mass burial.

Offline locations of persecution were common too. In Addis Ababa, private mansions and villas became torture chambers. Victims arrived at the locations blindfolded. Some of these locations were known by Dergue security forces by code names such as the *Setan Bet* (Satan House) and Bermuda.¹⁰⁹

It was also common for executions to take place in strictly official sites. Between 1976 and 1978, about 70 dead bodies were collected from the *Arat-Kilo* Palace (presidential Palace) on a daily basis and dumped into mass graves.¹¹⁰ The Emperor was murdered in the presidential palace, and, as discovered in the early 1990s and mentioned above, Colonel Mengistu Hailemariam had his office built literally over the grave of the Emperor.¹¹¹

Also, streets and marketplaces were places of persecution. Victims were beaten and killed on the streets and in marketplaces. Such was especially the case in the context of Dergue's violence against the Ethiopian public. As recorded in the cases of *Mengistu et al.* and in *Debela Dinsa Wege et al.* alone, the SPO recorded that Dergue dumped and dragged over 1,416 dead bodies on and across the streets of Addis Ababa.¹¹² Bodies were left on the streets and watched by government agents and informants so that friends and family members would not collect them. Spread throughout every town in the country, this practice was meant to terrorize the public. Linked to this form of violence was the use of national television as a means to terrorize even the wider public. Dead bodies were purposely displayed on TV so that Ethiopians would be terrified and refrain from engaging in activities opposed to Dergue.

1.8 The Form in which the Regime was Overcome

Ethiopians and Eritreans struggled against Dergue's military regime by violent means that involved armed and non-armed activities. The situation during the period of the Red Terror has been commonly understood as a violent struggle among the ruling and opposition groups, notably through its colloquial Amharic reference *Tennege* (ጥንጥጥ). The most notable non-armed struggle against Dergue came from the

¹⁰⁹ See *Dem YazeleDossie*, 69–71.

¹¹⁰ See *Dem YazeleDossie*, 13.

¹¹¹ *Mengistu et al.* (Appeals Judgment of 26 May 2008), Federal Supreme Court, File No. 30181, 95.

¹¹² For details, see Tadesse S. Metekia, "Violence Against and Using the Dead: Ethiopian Dergue Cases", *Remains and Violence* 4(1) (2018): 76–92.

EPRP, which after a brief period of relatively peaceful protest, launched the so-called White Terror – a sporadic campaign of assassination that targeted members and allies of Dergue. As known by its other labels, such as ‘urban guerrilla warfare’, the assassinations and terrorizations were carried out in the cities, mainly in Addis Ababa.¹¹³

For the armed struggle which lasted the entire 17 years of Dergue, various armed groups engaged in a protracted and lengthy civil war which brought about Dergue’s complete defeat in 1991.¹¹⁴ Of the liberation fronts, the Eritrean Peoples’ Liberation Front (successor to the Eritrean Liberation Front (ELF)) was the first to embark on the long journey of what could be characterized as a war of liberation, which ended in 1991 with the creation of the independent State of Eritrea. The Tigray Liberation Front (TPLF), which started an armed struggle in 1975 from the northern part of the country, was later joined by other groups and formed the Ethiopian Peoples’ Revolutionary Democratic Front (EPRDF), which succeeded in overthrowing Dergue in May 1991.¹¹⁵ In the East, the Oromo Liberation Front (OLF) had fought Dergue mainly in eastern Ethiopia until it was forced to re-establish itself in the western part of the country.¹¹⁶ Other groups, such as the Ethiopian Democratic Union (EDU) and the Ethiopian Peoples’ Revolutionary Army (EPRA), the armed wing of the Ethiopian Peoples’ Revolutionary Party (EPRP), were involved in relatively less significant armed conflicts in the 1970s.¹¹⁷

2 Transitional Justice

2.1 Political and Institutional Changes

Unlike conflicts in many other places, the Ethiopian civil war ended in 1991 with a total defeat of Dergue, leaving the incoming powers with unfettered discretion to es-

113 As opposed to the armed struggle of the peasants simultaneously carried out in the rural parts of the country, the White Terror was not an armed struggle and, as it is generally understood, had no connection to the armed conflicts and thus to actions that could potentially constitute war crimes.

114 See Tareke, *The Ethiopian Revolution*, supra note 7, 59.

115 See Aregawi Berhe, *A Political History of the Tigray People’s Liberation Front (1975–1991): Revolt, Ideology and Mobilisation in Ethiopia* (PhD Dissertation, Vrije Universiteit Amsterdam, 2009), 313–345.

116 Martin Plaut, ‘Ethiopia’s Oromo Liberation Front,’ *Review of African Political Economy* 33(109) (2006): 587–593; Andargachew Tiruneh, *The Ethiopian Revolution 1974–1987: A Transformation from an Aristocratic to a Totalitarian Autocracy* (Cambridge: Cambridge University Press, 1992), 366–367.

117 These groups were more active in what was referred to as the White Terror than in the armed struggle. Their less intense armed struggle did not last long, as both groups were defeated by the TPLF by the end of the 1970s. See Tareke, *The Ethiopian Revolution*, supra note 7, 86–88; Tiruneh, *The Ethiopian Revolution 1974–1987*, 213–214.

establish a new political order. Dergue's defeat was announced in May 1991 in the middle of the US-brokered London Peace Talks, where representatives of the government and rebel forces (EPLF, OLF and TPLF) convened to discuss the Ethiopian transition. The London Peace Talks were the only multi-party peace talks during the lengthy civil war and ones that were possible only following the end of the Cold War and the withdrawal of Soviet military advisers from Ethiopia. However, it was concluded without significant agreement, except that the EPRDF would convene a follow-up conference in Addis Ababa no later than 1 July 1991 to discuss the details of the transitional period.

Within a month after defeating and ousting Dergue and detaining thousands of its members and affiliates in June 1991, the EPRDF (a group headed by the TPLF) dissolved the entire military and security apparatus of the past regime. Within a very short time, the EPRDF, together with the EPLF and the OLF, demobilized the whole army of Dergue. Dergue officials were told to surrender within 48 Hours on 30 May 1991. By the end of June 1991, TGE issued directives to abolish the Ministry of Defence, the Ministry of Interior, and the WPE and associations formed by it.

Consequently, a Peace and Democracy Transitional conference of Ethiopia was convened in Addis Ababa from 1 to 5 July 1991. The conference adopted the Transitional Period Charter as drafted,¹¹⁸ and a Transitional Period Council of Representatives was formed, allocating the majority of its seats to the EPRDF. Most important was that the conference approved the establishment of the Transitional Government of Ethiopia (TGE), which was given a legal force by the Transitional Period Charter for the initial period of no more than two and half years.

The charter, which became the supreme law of the land (an interim constitution) for the duration of the transitional period,¹¹⁹ marked a significant departure from the Dergue regime in various respects. It provided that freedom, equal rights and self-determination of all peoples be the guiding principles of political, economic and social life as Ethiopia was starting a new chapter of restructuring itself democratically. It was indeed a clean slate where the previous regime was removed altogether, as the establishment of the TGE meant the dissolution of the WPE, the suspension of the PDRE Constitution of 1987 and, most importantly, the end of socialism as a political ideology.

Upon the promises of the Transitional Period Charter, a Constitutional Commission was set up in 1993 to prepare a draft constitution. Accordingly, four years after the establishment of the TGE, the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution), the most comprehensive in the country's constitutional history, came into force on 21 August 1995 by significantly improving the promises of

118 Transitional Period Charter of Ethiopia: Proclamation No. 1/1991, entered into force 22 July 1991, Article 6, accessed 20 March 2021, <http://www.ethcriminalawnetwork.com/system/files/The%20Transitional%20Period%20Charter%20of%20Ethiopia.pdf>.

119 Transitional Period Charter of Ethiopia: Proclamation No. 1/1991, Article 18.

the Transitional Period Charter.¹²⁰ The constitution, together with Proclamation No. 2 of 1995, officially established a Federal Democratic Republic of Ethiopia (FDRE) as opposed to Dergue's unitary state structure. The constitution adopted multinational federalism and structured the country into nine autonomous regional governments with guarantees of self-determination. It also included a most controversial opt-out clause, i.e. the right to secession from the federation (Article 39 of the constitution).

With the coming into force of the 1995 constitution, the FDRE became, at least theoretically, the exact opposite of the PDRE in the sense that it was, unlike its predecessor, founded upon a multi-party system, equal state recognition of all Ethiopian languages, a parliamentary system of government, a comprehensive list of human and democratic rights, and an independent National Election Board to conduct in an impartial manner free and fair elections in federal and state constituencies.

The constitution also provided for the establishment of several institutions vital for building democratic culture by disconnecting the system from its repressive past. The most significant development was a Human Rights Commission, a move believed to be a result of policy influence from the US, which had emerged as the important economic and political ally of the post-Dergue government in Ethiopia. The Ethiopian Human Rights Commission (EHRC) was formally established five years later by the House of Peoples' Representatives with objectives ranging from creating public awareness about human rights to ensuring corrective measures when human rights violations occurred.¹²¹ In the same year, the Institution of the Ombudsman was established by Proclamation No. 211/2000 to protect citizens from problems arising from executive maladministration.

After undertaking a lengthy Civil Service Reform Programme (started in 1994) that identified, among other things, a lack of coherent strategy and laws for ensuring ethical standards, and after conducting a corruption survey, the Federal Ethics and Anti-Corruption Commission was established in 2001 by law number 235/2001 with a mandate to prevent and prosecute acts of corruption and impropriety. The establishment of these human rights institutions was meant to complement the underdeveloped judicial sector in promoting respect for human rights and good governance. In that respect, the country has adopted several reforms to ensure the effectiveness and independence of the judiciary. The creation of an independent judiciary was already envisaged by the Transitional Period Charter (Article 9), and elaborate provisions were included in the FDRE Constitution (Articles 78–81).

As for the actual elections, the TGE held local elections in May 1992 following some 'snapelections' in April 1992, a process that installed EPRDF representatives

120 The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, entered into force 21 August 1995.

121 Proclamation No 210/2000, Ethiopian Human Rights Commission Establishment Proclamation, Article 5.

at all levels.¹²² Election disputes deepened the misgivings between the EPRDF-TPLF and the OLF and ultimately resulted in the latter withdrawing from the TGE on 23 June 1992. A more competitive nationwide election was held in May 2000, in which the EPRDF emerged victorious, despite allegations of widespread election fraud. In May 2005, Ethiopia held elections which, although reportedly marred by irregularities, were considered relatively peaceful and were arguably the closest to genuine elections the country has ever experienced.¹²³ Nonetheless, a post-election crisis was triggered in early June 2005 when the Coalition for Unity and Democracy (CUD), the second largest opposition coalition at that time,¹²⁴ refused to accept the results that declared a narrow victory for the ruling party, the EPRDF, alleging electoral manipulation. In turn, the EPRDF accused the CUD of conspiring to overthrow the government by force and rejected reports of international observers, which largely confirmed the CUD's claims. Violence ensued and both sides contributed in varying degrees to the loss of life and property that accrued from the beginning of June until the end of November 2005. Since then, the EPRDF has persistently declared itself the landslide winner in elections, held in 2010 and 2015.

2.2 Prosecution

In the beginning, the TGE did not take any significant steps aimed at responding to past crimes. In particular, an independent investigation into Dergue-era violence, which could have been carried out by setting up specialized bodies such as a commission of inquiry, never occurred. The silence was unexpectedly broken on 8 August 1992, when the TGE established the Office of the Special Prosecutor (SPO) to prosecute crimes committed during the Dergue regime. The relevant part of the proclamation announced the decision to prosecute in the following terms:

[I]n view of the fact that the historical mission of the Ethiopian People's Revolutionary Democratic Front [EPRDF] has been accomplished, it is essential that higher officials of the WPE [Workers Party of Ethiopia] and members of the security and armed forces who have been detained at the time of the EPRDF assumed control of the country and thereafter and who are suspected of having committed offences, as well as representatives of urban dwellers associations

¹²² Lovise Aalen et al., *Ethiopian since Dergue: A decade of democratic pretension and performance* (Zed Books: London, 2002), 30–32.

¹²³ See for example, Anders Wijkman, *European Parliament Delegation to Observe Federal and Regional Parliamentary Elections in Ethiopia: A Report, 12–17 May 2005* (June 2005), Annex C, 1, accessed 28 March 2019, http://www.europarl.europa.eu/intcoop/election_observation/missions/2004–2009/20051505_ethiopia.pdf. See also Human Rights Watch, 'World Report 2006: Ethiopia, Events of 2005', 1, accessed 29 September 2019, <https://www.hrw.org/world-report/2006/country-chapters/ethiopia>.

¹²⁴ The CUD (ቅንጅት (Kinjit) in Amharic) was a coalition 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).

and peasant associations, and other persons who have associated with the commission of said offenses, must be brought to trial.¹²⁵

It was not immediately clear why the TGE decided to prosecute Dergue. In a manner that mirrored the TGE's decision to prosecute, the FDRE Constitution prohibited the possibility of granting amnesty for gross human rights violations. Article 28 of the constitution reads:

Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as *genocide*, summary executions, forcible disappearances or torture shall not be barred by statute of limitations. Such offences *may not be commuted by amnesty* or pardon of the legislature or any other state organ.¹²⁶

By prosecuting Dergue and outlawing amnesty for gross human rights violations in its constitution, Ethiopia wanted to establish a new political order that disassociated it from its past and the experiences of some countries in Africa and Latin America. As highlighted in the *travaux préparatoires* of the constitution, the Constitutional Commission discussed in 1993 and 1994 that:

[I]n some countries in Africa and Latin America a culture of impunity has developed in which dictator governments remain unaccountable for the atrocities they perpetrated against their own people, which encourages a recurrence of similar atrocities. It was also stated during the transitional period that amnesty should not be granted in relation to offences involving violations of human rights.¹²⁷

The SPO's prosecution of Dergue-era crimes took almost two decades, from 1992 to 2010. Including the Federal Supreme Court, which had served as the court of appeal, Dergue trials were conducted by seven courts all over Ethiopia. The Federal High Court was the one that oversaw the most critical cases, such as the cases of *Colonel Mengistu et al.* and *Captain Legesse Asfaw et al.* Five other regional supreme courts (in Oromia, Amhara, Tigray, Harari, and SNNPRs) have adjudicated various crimes committed during Dergue regime.

¹²⁵ Wijkman, *European Parliament Delegation to Observe Federal and Regional Parliamentary Elections in Ethiopia*, Preamble, para. 4.

¹²⁶ The Constitution of FDRE, Article 28(1) [Emphasis added].

¹²⁷ The discussion did not mention the specific countries to which it was referring. See 'The Minutes of the 84th Ordinary Session of the Constitutional Committee (24 February 1994)' in The Constitutional Commission, 'Minutes, Vol. II: Ordinary Sessions No. 51 – No. 88 held from 2 November 1993 to 3 April 1994' (Addis Ababa: FDRE House of Federations, Unpublished), 199. Translation by the author. The original (Amharic) version reads:

የሚለውበኢትዮጵያሁኔታአንዲሁምበአፍሪካበላቲንአሜሪካሀገሮችአምባገነንግዢዎችበህዝብላይግፍከፈጸሙበኋላበሰሩትወንጀልተጠያቂሳይሆኑየሚቆሩበትሁኔታአየተለመደናለተመሳሳይድርጊትየሚጋብዝመሆኑንበሽግግርሩወቅትምሰብአዊመብትንከተመለከተለተሰሩወንጀሎችምሀረትየማይሰጥመሆኑትገልጿል።

The SPO prosecuted both international and domestic crimes. As for *international crimes*, the SPO identified: i) the crime of genocide under Article 281 of the Penal Code,¹²⁸ ii) war crimes against the civilian population pursuant to Article 282 of the Penal Code,¹²⁹ and iii) provocation and preparation to commit, permit or support acts that constitute genocide and war crimes in violation of Article 286 of the Penal Code.¹³⁰ By genocide, the SPO referred to genocide against political groups, something often coined by social scientists as *politicide*.¹³¹

The *domestic crimes*, on the other hand, included: murder (Article 522 of the Penal Code),¹³² grave wilful injury (Article 538 of the Penal Code),¹³³ unlawful arrest or detention (Article 416 of the Penal Code),¹³⁴ abuse of power (Article 414 of the Penal Code),¹³⁵ aggravated property damage (Article 654 of the Penal Code),¹³⁶ and rape (Article 589 of the Penal Code).¹³⁷ In the large majority of its cases, the SPO prosecuted domestic crimes mainly as alternative charges to genocide. There were also instances in which it prosecuted domestic crimes as independent and additional charges.¹³⁸ Yet some SPO cases have dealt exclusively with purely domestic crimes committed with no apparent political motivation and without any connection to genocide or war crimes.

By the time Dergue trials were completed in 2010, 5,119 individuals had been indicted, out of which 3,583 were convicted and punished (Tab. 1). Nonetheless, it should be noted here that many officials and affiliates of the Dergue regime were not punished, because they had already managed to leave the country. Given that extradition efforts were unsuccessful for several reasons, Ethiopian courts had to proceed with a huge number of in absentia trials. 2,188 of 5,119 defendants were tried in their absence.¹³⁹ Out of the 73 high-ranking Dergue officials prosecuted in *Mengistu et al.*, 20 were prosecuted in absentia, including Colonel Mengistu Hailemariam, who

128 *Colonel Mengistu Hailemariam et al.* (Revised Indictment), supra note 87, 7–8.

129 See FHC, *SPO vs. Legesse Asfaw et al.* (Indictment), 3 May 2001, File No. 03116.

130 Provocation and preparation to commit, permit or support acts of genocide was the first ever charge brought by the SPO against Dergue officials (106 individuals). See *Colonel Mengistu Hailemariam et al.*, (Revised Indictment), Count 1.

131 See B. Harff and T. R. Gurr, 'Victims of the State: Genocides, Politicides and Group Repression since 1945,' *International Review of Victimology* 1(1) (1989): 23–41.

132 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Revised Indictment), 87.

133 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Revised Indictment), 87.

134 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Revised Indictment), 87.

135 See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Revised Indictment), 87.

136 See, for instance, OSC, *SPO vs. Brigadier General Tedela Desta et al.* (Initial Indictment), 20 September 1999, File No. 28/85.

137 See the Special Prosecution Office, 'Annual Report to the House of Peoples' Representatives of Ethiopia' (Addis Ababa, 04 February 2010), 10. [Hereinafter: SPO's Annual Report to the HPR (2010)].

138 See SPO's Annual Report to the HPR (2010). For example, counts 210 (unlawful arrest and detention) and 211 (abuse of power) were independent charges as ordinary crimes.

139 See *Dem Yazele Dossie*, 444.

fled to Zimbabwe a week before the total downfall of his regime.¹⁴⁰ Of the 23 defendants in war crimes trials (*Capitaine Legesse Asfaw et al.*), only five were present in court.

Tab. 1: Summary of number of persons indicted, convicted, and acquitted in Dergue trials

Persons indicted	convicted	acquitted	convicted in absentia	acquitted in absentia	Overall conviction rate
	3,583	1,536	1,308	880	69.9%
Sentences imposed					
	Death	Life	15 to 25 years	≤ 15 years	Minimum Sentence
5,119	52	182	921	2,028	2 years

According to the FDRE Constitution and the criminal code, the death penalty is reserved for serious/grave criminal offences, and its pronouncement depends on the individual circumstances of the offender. Of the death sentences, 18 were pronounced by the Federal Supreme Court against members of Dergue's Standing Committee, the regime's highest executive organ, and Colonel Mengistu Hailemariam.¹⁴¹ Also, Legesse Asfaw was sentenced to death for ordering the indiscriminate bombing of undefended localities and towns in 1983 and 1988, resulting in the death of more than 10,000 civilians in Chila, Wukro, and Hawzien. Nonetheless, none of the 52 convicts in Dergue trials was executed. Although Ethiopia is not an abolitionist state, it seems to have limited the enforcement of death sentences to offences in which the perpetrators were top-ranking military or government (Ethiopian or foreign) officials.¹⁴²

In connection to criminal prosecutions, it is worth noting that the TGE felt compelled to establish the SPO as the only transitional justice institution and ensure a process that chose prosecution as the only official means of responding to past abuses. The reason for this was not so clear. Various factors were mentioned on different occasions to explain the TGE's motivations in bringing all Dergue officials to justice. As discussed further below, some of the alleged factors included the TGE's conviction to uphold an international obligation to prosecute atrocity crimes, the TGE's desire to drive political legitimacy, and Dergue's total defeat.

¹⁴⁰ See FHC, *SPO vs. Colonel Mengistu Hailemariam et al.* (Trial Judgment), 77.

¹⁴¹ See *Colonel Mengistu Hailemariam et al.* (Appeals Judgment), 95.

¹⁴² See Tadesse S. Metekia, 'Punishing Core Crimes in Ethiopia', 160–190.