

ETHIOPIA

WAITING FOR JUSTICE SHORTCOMINGS IN ESTABLISHING THE RULE OF LAW

The Transitional Government of Ethiopia, which assumed power in July 1991, has set itself an ambitious agenda for transforming the political structure of Ethiopia and establishing democracy and human rights. The Transitional Charter, the basic constitutional document adopted at the national conference in Addis Ababa in July, incorporates the Universal Declaration of Human Rights as supreme law. The government, headed by the Ethiopian People's Revolutionary Democratic Front (EPRDF), has promised that human rights and civil liberties will be respected, the press will be free, and the judiciary independent. It has said those accused of crimes committed during the former regime of President Mengistu Haile Mariam will be given a fair trial before an independent court. The government has initiated moves to make Ethiopia signatory to all major international human rights conventions. Free multi-party national elections leading to the adoption of a constitution and the creation of a permanent government are scheduled by the end of 1993. All these developments are welcome and indicate a commitment by the Transitional Government to the highest standards of respect for human rights.

However, serious human rights abuses are still occurring. This newsletter addresses one series of concerns, to do with the arbitrary actions of the EPRDF and other political organizations, and the establishment of a functioning and independent judiciary. Sadly, in Ethiopia today, obtaining justice remains a privilege, not a right.

The Transitional Government came to power after a prolonged and extremely bloody civil war. Its legitimacy rests on the fact that it won absolute military victory over the previous regime, and on its promise of the creation of a restructured and democratic government by the end of 1993.

The Transitional Government faces huge obstacles. The institutions of government, justice and law enforcement were subverted by the former regime. There is no established civil society, and little tradition of democracy. The rural areas are deeply impoverished and heavily militarized. After a long period in which no expression of political identity was permitted, there is currently a resurgence of politicized (and often militarized) ethnicity or nationalism.

Having adopted the highest standards for the respect for human rights, the Transitional Government must be evaluated according to them. This newsletter examines the progress that has been made towards establishing the rule of law and the creation of an independent and fully functional judicial system during the ten months since the Transitional Government assumed power. Africa Watch finds that in significant areas, practice has fallen short of promises.

The Transitional Government has repeatedly claimed that legislation is under preparation to redress many of the shortcomings outlined in this newsletter. On the basis of discussions with members of the government, Africa Watch is confident of these intentions. However, reestablishing the rule of law throughout Ethiopia warrants great urgency. Africa Watch calls upon the Transitional Government of Ethiopia to act immediately to end the arbitrary actions of its servants, and to bring the institutions that appear to act with impunity under a proper legal regime, allowing for judicial recourse for those who believe they have been wronged.

Context of the Liberation and Transition

The former government of President Mengistu Haile Mariam had one of the worst human rights records in the world. It was responsible for the deaths of hundreds of thousands of Ethiopian citizens.¹ The legacy of that regime was a bankrupt economy, a huge army, a country awash with firearms, decay and corruption throughout government and civil institutions, and the absence of any form of free political life.

The Transitional Government demobilized the former army, disbanded the security forces, and suspended the police force. Thousands of officials from the former government, the Workers' Party of Ethiopia (WPE -- the former single party), the army, police and security forces were detained, while their records were scrutinized. Of more than 10,000 who were detained or interned, fewer than 2,000 are currently confirmed as remaining in detention. Most of these will probably face charges arising from their conduct under the former government.

The greatest opportunity and the greatest difficulty is presented by the government's policy of creating a federal state, with each constituent region formed from an ethnically-based constituency. The radical proposal to create twelve self-governing regions and two chartered cities, as the basis for a federal system of government, has generated considerable political debate in Ethiopia. Regionalization requires the construction of a whole new set of governmental, legal and law-enforcement institutions at a regional level. This is one reason why the Transitional Government is unwilling to

¹ See: Africa Watch, Evil Days: 30 Years of War and Famine in Ethiopia, September 1991.

reestablish the previously-existing centralized legal and law-enforcement institutions. The uncertainties caused by the destruction of the old system before the creation of a new one will also undoubtedly delay the creation of stable conditions in the regions.

Regional elections, followed by the establishment of Regional Governments, are scheduled by June at the latest. In common with many other political developments, this is considerably behind the schedule agreed last July.

In the meantime, there has been an upsurge in violence in most parts of the south and center of Ethiopia. This is related to (1) banditry, (2) ethnic conflict, often associated with rights to land, and (3) fighting between the military wings of political organizations. The last element is the most serious, particularly in the east (formerly Harerghe region), where the monthly death toll is running in the hundreds.

The Police Force

A major problem throughout Ethiopia since last July has been the absence of a functioning police force. The former police force, widely recognized as having been corrupt and riddled with security agents and WPE cadres, was suspended *en bloc*. While the traffic police soon resumed their normal duties, the regular police only began to be seen on the streets in March 1992. Some of the policemen had served under the former regime and had in the meantime undergone screening and "rehabilitation"; others were newly-trained cadets of the Police College. According to the head of the Police Commission, 4,000 policemen are currently trained for duty in Addis Ababa (about half new and half former policemen), and a further 10,000 for service in other parts of the country, constituting about one third of the total force required.

Since last year, Ethiopia has witnessed a crime wave. Mengistu's army of over 400,000 men was almost completely demobilized by the end of 1991, but assistance programs to facilitate the ex-soldiers' re-integration into civilian life fell short of need. 27,000 demobilized servicemen returned to Addis Ababa alone. Other former servicemen retained their weapons; others sold or abandoned their weapons when they fled in the face of the victorious advance of the EPRDF. As a result, firearms are readily available, and there is a large pool of unemployed and often frustrated young men willing to use them for immediate gain. In addition, when the EPRDF entered Addis Ababa and other main towns, the prisons were opened and many convicted criminals escaped. Police files indicate that more than 42,000 convicted criminals are at large. Banditry and robbery have been rife.

The Transitional Government's response to the problem of law and order will be discussed below. However, it is imperative that a full police force be reestablished as

soon as is feasible.

Peace and Stability Committees

In the absence of a police force, policing functions have been delegated to the forces of the EPRDF and the Peace and Stability Committees (PSCs). The PSCs were set up in June 1991, to replace the ~~kebeles~~ (neighborhood associations) and farmers' associations of the former government. They are at once the lowest tier of local government and a de facto neighborhood police force. PSC leaders and guards are elected by the community, and armed. In practice, in Addis Ababa at least, they are accountable to the zonal administration of the EPRDF, which has the power to review their decisions and if necessary call for re-elections.

The Peace and Stability Committees have no legal identity, being created only by a directive of the provisional EPRDF administration that held power between the EPRDF victory in May 1991 and the creation of the Transitional Government in July.

The actual power of the PSCs depends on the relationship between an individual PSC and local residents, and the zonal authority of the EPRDF. PSCs frequently arrest suspected criminals, both those caught red-handed and those against whom the PSC has gathered evidence. Those detained may remain in the PSC prison or may be transferred to a police station or to EPRDF custody. Perhaps the most serious problem is that there is no judicial recourse for those detained by PSCs, merely the possibility of informally petitioning the zonal office of the EPRDF.

On occasions, PSC guards have killed or wounded criminal suspects allegedly caught red-handed.

There is an urgent need to define the policing powers and duties of the PSCs by law. They should be given powers of detention only in cases in which the alleged criminal is caught red-handed; otherwise their policing powers should be limited to investigation, after which the matter should be referred to the police. Any detainee held by a PSC should be handed over to the police force as soon as possible, and at the outside within 48 hours. PSC members who are to be allocated policing duties also ought to be given at least rudimentary training as soon as is feasible.

In Tigray and adjoining areas, where there has been a long EPRDF presence, People's Councils are in operation (in Tigray these are known as *baitos*). These are much more institutionalized and have authority over a wider range of matters. However, their jurisdiction and power also needs to be formalized now that the EPRDF is in power.

The role of the PSCs may prove to be limited, as the newly-established Regional

Governments are likely to abolish them and create alternative structures at the same level. However, it is likely that either the Regional Governments will take many months to become established, during which time the PSCs will continue to function, or that the replacement institutions will be very similar in form and function. In either case, it remains essential that the legal status of PSCs or their successors, and procedural restraints on their powers, be codified in law. The Transitional Government or Regional Governments should enact legislation to this effect.

The Role of the EPRDF

The EPRDF army is estimated to number about 120,000-140,000 men and women. The great majority of its members are Tigrayans. The army was mobilized to fight against the former government, as the military wing of a political front, and it remains a highly political army. According to Proclamation 8 of 1992, the EPRDF army is to serve as the State Defence Army for the transitional period. This proclamation followed a series of decisions in August 1991 (that were not made public at the time) which defined the powers of the EPRDF vis-a-vis the armies of the other political organizations, notably the Oromo Liberation Front (OLF).

The fighters of the EPRDF army have not been trained for police duties. They are armed with assault rifles and hand grenades only, and do not possess specialized crowd control equipment. Many of them are unfamiliar with the languages and customs of the areas to which they are posted. However, they have shown remarkable discipline and decency, and are widely respected for having refrained from looting and other wanton abuses against civilians, in contrast to the army of the former government.

Since the end of May 1991, the EPRDF army has been the *de facto* police force in Ethiopia.

In the early days after the EPRDF takeover of Addis Ababa and the south of the country, "frontier justice" was enforced. Looting suspects were liable to shot on sight, and alleged thieves were sometimes subject to summary execution. In a well-known case, Teka Ahmad, a driver working for the US voluntary agency CARE, was killed. Teka was due to deliver tires and spare parts from Addis Ababa to Dessie, but instead sold his cargo for 80,000 Birr and abandoned his truck. After CARE reported him missing, the EPRDF investigated and located the tires in the Mercato market, Addis Ababa. Teka was traced to his house and admitted the theft. The same evening he was taken to Teklahaimanot Square, in Mercato, and publicly executed.

Such cases have now become much rarer. However, instances of arbitrary search, detention and execution continue. Most of these actions are taken against alleged

criminals. The newspapers contain regular reports of the results of the ongoing crackdown on crime. For example, the Ethiopian Herald of March 12, 1992, carried a report of 850 robbers being arrested in Addis Ababa, of whom 81% confessed and a further 16% refused to confess, despite being presented with evidence for their crimes. Only 3% were released. The papers also detail instances in which reputed criminals were killed while allegedly resisting arrest, and there are regular instances of common criminal suspects wounded or killed while allegedly caught red-handed or trying to escape. Some alleged thieves have been executed while in EPRDF custody; Africa Watch has received unconfirmed reports of a traffic policeman executed after taking a bribe and a bandit in northern Shewa killed following his capture.

Perhaps more worryingly, EPRDF soldiers have also engaged in arbitrary actions against leading members of other political organizations.

On January 18, 1992, two leaders of the Islamic Front for the Liberation of Oromia (IFLO), Sheikh Abdel Rahman Yusuf and Izzeldin Mohamed Ahmed, were killed by the EPRDF in Dire Dawa, eastern Ethiopia. Five others were wounded. The EPRDF claims that the IFLO leaders failed to halt their car at a roadblock and opened fire on the EPRDF guards; the IFLO claims that the incident was a planned ambush, and points to the killing of another of its leaders, Faisal Birru, and the wounding of others, in the previous months by the EPRDF.

In another incident, the chairman of the Sidama Liberation Front, Wolde Amanuel, was fired upon by EPRDF members. His vehicle was destroyed and one person killed.

The Ogaden National Liberation Front (ONLF) has alleged a number of arbitrary actions against its members and supporters. It claims that Mohamed Sheikh Mohamed Iraad, a member of the central committee of the ONLF, was shot dead in Dhagahbur in January 1992 in suspicious circumstances, and that Abdirashid Sulub Anshur, editor of the journal Hayaan was shot and died in Qabridaharre the same month, also in suspicious circumstances. According to reports, 51 supporters of the ONLF have been arbitrarily detained by the EPRDF in seven separate incidents between November 1991 and April 1992; some remain unaccounted for at the time of writing.

The OLF has been the largest target of EPRDF arbitrary actions. The OLF claims that many of its members have been arbitrarily detained by the EPRDF throughout the country. Credible claims by the OLF point to the detention of over 250 members across the country. This excludes 130 members detained in Agaro; after two detainees died on account of hunger and poor conditions, 85 were released.

Kebede Ferissa, the OLF representative in Illubabor, is one of the most senior members to have been detained. Travelling to Arero (Sidamo), an OLF journalist, Asmere

Abdissa was detained, together with his driver, Dachassa. Although a local court in Negele ordered that the two be released, this instruction was disregarded by the local EPRDF commander. Gemachis Dhaba, an OLF commander in Sidamo, was deliberately assassinated by the EPRDF in mid-1991, and at least two commanders in Harerghe have similarly been killed.

It should be noted that some of these actions were taken under considerable provocation, and that other political organizations must be held to the same human rights standards (see below). However, provocation does not justify the EPRDF responding in an abusive manner; as the army of the government, the EPRDF bears the primary obligation to uphold human rights and the rule of law.

There is no normal judicial recourse for those arrested by the EPRDF, which has disregarded court orders on at least one occasion. However, in Addis Ababa, lawyers were able to bring a successful writ of habeas corpus for Tseggai Abiye and two other detained members of the National Democratic Union party. The three NDU leaders were detained in November following a legal demonstration which turned violent, with demonstrators pelting EPRDF guards with stones (the EPRDF did not respond with force). The three leaders were subsequently detained without charge, although it was widely understood that they would be held responsible for the violent behavior of their supporters, in accordance with the provisions of their demonstration permit.² In January, a writ of habeas corpus was brought, naming the Minister of the Interior, and the three were released on bail, pending a court appearance set for March 25.

In other instances, public demonstrations have seen bloodshed. In October, EPRDF forces opened fire on a violent crowd of protesters in Mehal Meda, northern Shewa, who were opposing a change in land policies. According to reports, three were killed and four wounded. A very serious incident occurred on March 25 in Weter, Harerghe. The OLF claims that EPRDF troops opened fire on a demonstration by local Oromo people, killing 92. The EPRDF claims that the demonstration was violent, and its forces were fired upon, and says that 24 were killed and 25 wounded when its forces opened fire. In the following week, a number of demonstrations were held in different parts of the Oromo region to protest this massacre, and on several occasions the protesters were fired upon, and an unknown number were killed or wounded.

The EPRDF army is due to withdraw to barracks before the regional elections, though it will remain to guard major roads, economic installations and international borders. This withdrawal is unlikely to be accomplished totally. Proclamation 8 empowers the central government to intervene, using the EPRDF army, in any regional

² They were finally charged with incitement to violence.

conflict should that be beyond the power of the regional government to contain. The regional government need not request the intervention, and may indeed oppose it. Such cases of intervention, or non-withdrawal to barracks in the coming months, are likely in certain parts of the country such as Harerghe and Borena, where there are serious ongoing clashes between armed factions. The renewed or continued operational presence of the EPRDF, together with the lack of a legal regime in such situations amounts to a *de facto* local state of emergency.

In such circumstances, the current legal vacuum about the powers of the EPRDF in internal conflicts is not satisfactory. It is important that the powers and duties of the EPRDF and its commanders, be defined in law. One possibility would be to declare local states of emergency. It is important that habeas corpus be established, that there be judicial review of all law enforcement actions, and that there be a process for holding abusive security forces accountable.

Other Political Organizations

Other political organizations, notably the OLF, are part of the government (though they often speak and behave like an opposition). These forces have also been responsible for arbitrary actions, including violations of military agreements passed into law since the formation of the Transitional Government.

The EPRDF rarely makes claims for the numbers of its members arbitrarily killed or detained by the forces of other political organizations. However, credible reports indicate that EPRDF soldiers are frequently ambushed or attacked while serving in rural areas of the south and east. One of the few public statements was made by the EPRDF southern region commander, who said on April 17 that OLF forces had encircled EPRDF forces at Mechara and Mechasa, Arsi, and attacked them.³ This version of events has not been independently confirmed.

A series of agreements drawn up during August 1991 restricted the OLF and other organizations to areas more than five kilometers⁴ from main roads. These organizations were also forbidden from conscripting new members to their military wings, trafficking in arms, or recruiting members of the former party, army or security services. These measures were debated in the Council of Representatives, agreed by the organizations, and passed into law. There are reliable reports that the OLF and other organizations are repeatedly violating these agreements. The OLF and IFLO have undoubtedly been

³ BBC, *SWB*, ME 1359, April 20, 1992.

⁴ Alternative versions state ten or fifteen kilometres.

responsible for closing main roads in Harerghe and for planting land mines on secondary roads. They have also held up and detained vehicles and their occupants, and stolen the cargoes. These incidents have included the "hijacking" of vehicles belonging to relief agencies.

Political organizations, including the OLF, have been responsible for arbitrary killings, often on an ethnic or religious basis. According to the results of an investigation by local elders, a series of killings in Arba Guuga, Arsi, during November and December 1991, that claimed the lives of 154 Christians, was in part instigated by cadres of the OLF. Related incidents in neighboring Harerghe around the same time caused over 40 deaths. Recent reports indicate more incidents of ethnically-based violence in Harerghe, including a claim by the Ethiopian News Agency that OLF forces killed 150 civilians, the majority of them ethnic Amhara, near Bedeno, and detained 110 others.⁵ An investigation into this incident has been set up by the Council of Representatives.

The OLF is also reliably reported to have been inciting rural people not to pay taxes, and not to make payments for inputs received from government parastatals, such as for fertilizer.

In anticipation of the regional elections, the armed wings of the political organizations are to report to designated military camps, where their daily needs will be provided for. They will remain armed until the regional governments are established, after which they will have no further function. However, it is likely that most organizations will opt to keep a significant portion of their armies "in the bush" as a reserve force while they await the outcome of the democratization process.

Regionalization and the Police

The Transitional Government plans to hold "snap [i.e quick] elections" to establish provisional elected committees -- sometimes referred to as regional PSCs -- whose sole responsibility is to ensure the requisite conditions of stability so that regional elections can be held before the end of June. As part of this process, the EPRDF and other military organizations are to withdraw to barracks or camps, and the provisional committees are to disarm those with unlicensed guns.

The disarming process promises to be hazardous. Ownership of firearms is regarded as a right in most areas of Ethiopia, as well as a necessity on account of the prevalence of banditry and other forms of armed conflict. Many rural people will not surrender their arms peacefully, even to a locally-elected committee.

⁵ BBC, SWB, ME 1359, April 20, 1992.

Following the regional elections, it is planned that each region will establish its own police force. Part of this force will be drawn from the policemen trained by the central Police Commission; others will be recruited locally. Former members of the military wings of political organizations may be recruited to the police. Thereafter, the central Police Commission will have its duties limited to training and supervision.

Grievance Hearing Committees

Grievance Hearing Committees (GHCs) were set up by administrative directive in every workplace in July 1991. Their function was to expose individuals who were responsible for crimes, notably corruption, during the former regime. They assumed powers of dismissal and detention, with the implicit consent of the government. In December, following many complaints of the arbitrariness of the GHCs' actions, and their abuse by individuals with personal grudges to settle, they were placed under the control of a central GHC in the prime minister's office, and their powers formally limited to an investigative role.

Several instances of GHC actions will illustrate their behavior:

- * Two employees of the Hilton Hotel, Addis Ababa, were dismissed and detained on the instructions of a GHC in 1991. They were later released, but the GHC prevented their reinstatement to their former jobs.
- * Three senior employees of the Marine Transport Corporation were detained in September 1991, and released after a writ of habeas corpus was issued on their behalf in February 1992.
- * Four employees from the Housing Administration were detained in September. When a writ of habeas corpus was issued, they were brought before a court, charged, and released on bail in February.

The fact that lawyers have been able to present writs of habeas corpus, which have led to detainees being released, is very encouraging. However, most of the detainees have no access to the legal resources sufficient to enable a writ of habeas corpus to be brought, and none have judicial recourse to challenge the dismissal decisions made.

The government claims that GHCs are transitional in nature and will shortly be redundant. However, their work continues. In addition, there is no process of review for the decisions already made.

It is important that the powers and duties of GHCs be defined by law and subject to oversight. Their powers must be limited to investigation, after which administrative decisions may be made to dismiss individuals, or the police may decide to take up cases

that may warrant criminal prosecution.

Individuals who have been detained on the instructions of GHCs should have immediate judicial recourse. There should be an immediate administrative review of all other GHC decisions, and the reinstatement and/or payment of compensation to individuals who have been wrongly detained or dismissed.

Civil Rights of Former WPE Members

The Transitional Government has branded the WPE as a "criminal institution." It has stigmatized its former members and denied them certain civil and political rights.

Former members of the now-dissolved WPE are denied certain civil rights. These include the right to vote or stand in an election. Rights to travel were denied, but have now been partly restored. WPE members may continue in employment in both the public and private sectors, and may obtain business licenses. Most government departments have continued to employ and even promote former WPE members, and the acting president of Addis Ababa University during 1991-2 was a former party member. In November 1991, the EPRDF instructed the Ministry of Labor to find employment for over 5,000 former employees of the WPE and the related Revolutionary Associations, who had been left without employment on account of the dissolution of their organizations.

The systematic purge of civil servants has so far been limited to a relatively small number of senior officials, most of whom were political appointees anyway. The dismissals include managers of parastatals, vice-ministers and deputy ministers, commissioners and non-career diplomats. No more than about 300 people from a civil service numbering over 200,000 have been dismissed. (The army and security forces have of course been entirely disbanded.)

However, former WPE members have been often singled out for attention by Grievance Committees, and they are to be denied a role in the judiciary (see below).

The government claims that the measures against former party members are a transitional measure, and that the future constitution of Ethiopia, adopted by a democratically-elected assembly, will decide whether to restore the civil rights of these people.

Africa Watch believes that the denial of civil rights to a category of people on sole basis of their membership of the WPE is not justifiable. Former WPE members should be held accountable solely on the basis of individual criminal acts. Africa Watch urges that all civil rights should be restored to former party members in the forthcoming permanent constitution.

The Independence of the Judiciary

Under the Mengistu government, the judiciary continued to operate with a veneer of normality and process, which concealed selective manipulation by the government and WPE.

Under the Emperor Haile Selassie, the judiciary exercised a considerable degree of independence, excepting cases of political sensitivity. A Judicial Commission was responsible for appointing and disciplining judges. Under the Dergue, this system continued in theory. The government interfered in four main ways. (1) It frequently bypassed the regular judicial system altogether; either it used the notorious special courts or it arbitrarily detained or killed individuals. (2) It intervened in specific cases to ensure that the required verdict was delivered. (3) It threatened judges who showed some signs of independence. (4) The party held a secret list of approved candidates (the nomenklatura) for higher judicial positions, whom it ensured were given the required posts. The 1987 Constitution theoretically changed this system so that judges were elected by the national Shengo (assembly), and served five-year terms co-terminus with the assembly, but in fact this system was not fully introduced before the government fell, and the Judicial Commission continued its work almost unchanged.

The extent of WPE manipulation of the judiciary is a subject of controversy. One view is that the subversion of the judiciary by the WPE was sufficiently systematic to undermine the credibility of the entire system. The opposing view holds that the judiciary was only belatedly and reluctantly drawn into the nomenklatura system, and that the extent and nature of executive interference did not fundamentally affect the operations or credibility of the normal courts.

The Transitional Government has proposed establishing a wholly independent judiciary. The final interpretation of law rests with the Council of Representatives, but neither the executive nor legislature are envisaged as having any role in appointing or dismissing judges, or influencing or deciding specific cases. A new Judicial Commission is to be established, that will recommend the names of judges to the Council of Representatives for ratification. A Bar Association, wholly independent of the government, is also in the process of creation. Independent Ethiopian lawyers have proposed that this should have a role in laying down a code of ethics, and disciplining judges guilty of unethical or unprofessional behavior; a proposal that has been well-received by the government.

Africa Watch welcomes these measures, and urges the Transitional Government to implement them as speedily as is feasible.

The Functioning of the Judiciary

Since May 1991, the judiciary has been functioning at best incompletely. The absence of a functioning police force has deprived the Attorney-General of the basis on which to pursue prosecutions against common criminals. Civil litigation has continued.

As discussed above, the operation of the courts in reviewing decisions made by the EPRDF, PSCs and GHCs has been uneven. Habeas corpus writs have been filed successfully in some cases, while in other instances court orders have been disregarded.

The Transitional Government has proposed to debar all former WPE members from serving as judges. This proposal does not extend to legal work outside the courtroom, and may be reversed in the permanent constitution. This places considerable obstacles in the way of restoring the judicial system to its former functions, because a high proportion of judges were members of the party. In the Supreme Court, 16 of the 33 judges are former party members; in the high courts, about half of the 143 judges are former WPE. Throughout the rest of the judiciary, the proportion is little different.

The government defends its decision on two grounds. One is that the WPE succeeded in subverting the judiciary, and so it is necessary to cleanse the judiciary of its malign influence so as to restore its independence. There is a fear that former party members may also work to undermine the government's efforts, or at least fail to cooperate with them. A second argument is that the fact that a judge was a member of the WPE fatally undermines the public's confidence in that judge's rulings, making it necessary to remove the judge in order to facilitate the smooth working of the courts.

Africa Watch remains unconvinced by the government's claimed reasons for debarring former party members, on the following grounds:

- (1) It is a basic principle of human rights that an individual should be punished on the basis of individual responsibility for his or her actions, and not merely on the basis of membership of a political organization.
- (2) If there are allegations that a certain judge is incompetent or biased, these allegations can be dealt with on an individual basis according to normal procedures. These may include recusing a judge from a particular case in which there is reason to believe he or she may be biased -- for instance former WPE members may be debarred from presiding over the trials of officials of the former regime.
- (3) Debarring former party members will not have the effect of depoliticizing the judiciary, as the act will be seen as politically-motivated by many people.

- (4) Practical considerations: it will be a great impediment to the establishment of a functioning judiciary if about half of the professionally-qualified judges are not to be permitted to serve in court.

Africa Watch therefore urges the Transitional Government to reconsider its proposal to debar all former WPE members from serving as judges. If such a decision is implemented, it should continue in effect only for the transitional period, and should be reversed when the permanent constitution is adopted.

People's Courts

In areas of Ethiopia that were controlled by the EPRDF for some time before the capture of Addis Ababa, such as Tigray and to a lesser extent Wollo and Gonder, an EPRDF-established system of "people's courts" is in operation.

The functioning of the people's courts gives rise to a number of human rights worries. These include:

- * Lack of independence; judges may be elected and dismissed by the relevant People's Councils at any time; appointment is based largely on character, though legal training may be one factor in an election. The regional supreme court in Tigray is chaired by a member of the EPRDF.
- * In some cases, which are deemed to involve the whole community, the trial takes place before the assembled people, who are able to decide on the verdict and the sentence.
- * Lack of expertise of the judges, who may be ignorant of the law or the rules of procedure. This gives rise to highly variable standards between one court and the next.
- * Related to the above, there is often an absence of presumption of innocence. A verdict may be delivered based partly on the defendant's character or previous record, or may be based on the balance of evidence rather than the establishment of guilt beyond a reasonable doubt.
- * No right to counsel. Rather than choosing his or her own counsel, the defendant must depend on an assessment of the case made by a court official who purports to act as both prosecutor and defense attorney.
- * Summary trials may be held, without giving the defendant sufficient time to

prepare a defense.

- * Arbitrary sentencing policies may be followed, including the immediate imposition of sentences of corporal punishment such as flogging.
- * Rights of appeal may be restricted. In theory, there is a right of appeal to a higher people's court, but it is unclear whether defendants are informed of this right.
- * Some cases have been documented of summary execution following conviction in a people's court. For instance, according to Addis Zemen of October 13, 1991, a people's court in Debre Tabor (Gonder) had earlier that week sentenced a man to death for the murder of a young teenage girl. The man was captured, tried, convicted and executed in the same day.

For all their shortcomings, the people's courts in northern Ethiopia are reported to be popular among the people at large. This popularity does not of course excuse any abuses associated with the people's courts, or lessen the need for their reform.

A delegation from the Ministry of Justice in Addis Ababa visited Tigray in mid-1991 to evaluate the judicial system set up by the EPRDF, and criticized it largely along the lines discussed. The delegation recommended that professional judges be brought in to staff the courts from district level upwards, or that professional and lay judges sit side by side in the courts. Africa Watch endorses these recommendations, and also urges that other shortcomings be addressed directly.

Regionalization and the Judiciary

Regionalization presents the judiciary with a number of challenges. One of these is the technical task of training judges to be legally competent in the vernacular languages that will be the working languages of the regional courts, and the regional law codes that will be established.

While the Transitional Charter, by including the Universal Declaration of Human Rights, implicitly endorses the independence of the judiciary, and the draft proclamation for the federal judiciary explicitly states this principle, it is not clear how binding this provision will be on regional judiciaries. The Proclamation on the establishment of regions and regional governments leaves this matter open. Articles 28-30 of Proclamation No 7 of 1992 merely mention that the appointment of judges, the judicial administration and the jurisdiction of courts will be determined in later laws, to be issued by central and regional governments. Article 15(n) of the Proclamation enumerates as one of the powers of the National/Regional Councils "to appoint the judges of the National/Regional Self Government." It is unclear whether steps will be taken to ensure the independence of the

judiciary -- such as sufficiently lengthy tenure of office and restrictions on the dismissal of sitting judges -- and whether fundamental due process rights will be guaranteed. This may leave room, for instance, for the unchanged continuation of the people's courts system in the north, and the creation of judicial systems dependent on the executive or legislature in other regions.

One specific worry may arise in overwhelmingly Islamic regions, such as the Afar and Somali regions. It is likely that these regions will vote to adopt elements of Islamic law (*sharia*), and may even decide to base the entire regional judicial system on Islamic principles. Depending on how these principles are interpreted, such a decision might lead to a number of human rights problems, such as the prohibition on apostasy (renouncing Islam), the denial of full civil rights to women and non-Moslems, and the institution of the *hudud* punishments such as amputation of limbs for theft.⁶

Trials of Former Officials

According to information provided by the Transitional Government, the Ethiopian Human Rights Council, and other sources, there are between 1,700 and 2,000 detainees who served in senior positions under the former government. A much larger number of detainees has been released following screening. None of the detainees has yet been charged. The government has announced the creation of the office of a Special Prosecutor to bring charges against those detainees believed to be guilty of serious crimes or corruption, but at the time of writing this announcement has not been legally gazetted, nor has the office been filled.

According to the draft of the proclamation, issued on February 3,⁷ it is clear that the court is to be a special division of the regular court system, set up specifically for the purpose of trying these detainees. It will not be a "special court" as such. Normal procedures will be followed, with certain exceptions as a lifting on the requirement to produce a body or a doctor's certificate to prove that an individual is dead. Certain defenses will be prohibited, such as acting according to the statutes of the WPE or the instructions of its leaders.

Full guarantees of the defendants' rights are said to be provided, though the preamble to the draft proclamation dwells at length on the need for punishing the guilty, rather than stressing the need for justice for the accused. Similarly, although the office of

⁶ For Africa Watch's critique of the Islamic penal code adopted in Sudan, see [News from Africa Watch](#), "Sudan: New Islamic Penal Code Violates Basic Human Rights," April 9, 1991.

⁷ Reproduced in FBIS-AFR, February 5, 1992.

the special prosecutor is described as independent, the law does not define that independence. It remains unclear, for instance, whether the ultimate decision to prosecute an individual will rest with the special prosecutor or with the prime minister. These give rise to concerns that the trials may be partly orchestrated to obtain convictions, and to distract the populace from present difficulties by dwelling on the horrors of the past. Africa Watch therefore urges the Transitional Government to reiterate its commitment to principles of the presumption of innocence until proven guilty, the independence of the court, and other fundamental principles of due process of law.

The establishment of the court for trying these detainees has been delayed for several months longer than the government originally promised. There are undoubtedly people who are not guilty of serious crimes who are still kept in detention without charge. However, the treatment of these detainees remains extremely good by international standards. Though physical conditions in the detention centers varies, and includes some overcrowding and some instances of inadequate diet, Africa Watch has received no accounts of physical abuse of the detainees. Visits by family members and delegates of the International Committee of the Red Cross are allowed.

Given the importance of ensuring accountability for past crimes, Africa Watch believes that it is extremely important that those guilty of gross abuses of human rights under the former regime be brought to trial. We understand the complexity of building cases against the accused under the current extraordinary circumstances. But we are also concerned about undue delay in bringing defendants to trial while they remain in prison. We would therefore be troubled if the government were to fall further behind on its declared schedule of beginning legal proceedings in the next two months.

Conclusions and Recommendations

One year ago, there were widespread fears that the fall of the Mengistu government would plunge Ethiopia into complete anarchy, with the only prospect of a return to any form of law and order being the reestablishment of a military dictatorship. These fears have not been realized, and the transitional period has so far seen progress towards the creation of accountable institutions of government and respect for human rights. However, it is currently uncertain whether the level of commitment to human rights will be equal to the enormous challenges in the country, with continuing strife and lawlessness. There are ominous signs of a trend towards authoritarian rule and disregard for basic human rights and the rule of law.

Africa Watch applauds the Transitional Government's commitments to basic human rights, democratic governance and the rule of law, and recognizes the very real progress that has been made in all of these areas.

However, Africa Watch is also concerned about serious shortcomings in several areas, and calls upon the Transitional Government to do the following:

- * Reestablish an active duty police force as soon as is feasible.
- * Regulate by law the powers and duties of the Peace and Stability Committees and People's Councils, insofar as they are to continue to exercise a policing role. Those detained by PSCs should be handed over to the police to be charged promptly.
- * Regulate by law the powers and duties of the EPRDF fighters. If they are to continue to perform a regular policing role, their actions must be subject to judicial recourse. In addition, when the EPRDF army is mandated to intervene in an internal conflict its powers and duties must be clarified in the law. Under no circumstances must the actions of the EPRDF army be considered to be above the law. All extra-judicial executions by members of the EPRDF should be stopped at once.
- * Grievance Hearing Committees must have their activities regulated by law, and their decisions subjected to judicial review.
- * Former members of the WPE should have their civil and political rights restored as soon as is feasible, and certainly when the transitional period comes to its end.
- * Former WPE members should not be debarred, as a category, from serving in the judiciary.
- * People's courts should be reformed so as to act more in line with proper judicial procedures, especially at the higher levels. No people's courts should be empowered to pass death sentences. All people's courts decisions should be subject to judicial review.
- * The independence of regional judiciaries, and their adherence to norms of due process and respect for basic human rights, should be ensured in legislation.
- * Concerning the trials of officials of the former government, the Transitional Government should reiterate its commitment to the basic principles of the presumption of innocence, the independence of the court, and other elements of basic due process.

Most of the other political organizations, notably the OLF, are members of the Transitional Government. They, too, are obliged to conform with the laws they have agreed to. They must also stop acting in an arbitrary manner, killing and detaining

civilians and seizing their property.

Africa Watch is a non-governmental organization created in May 1988 to monitor human rights practices in Africa and to promote respect for internationally recognized standards. Its Chairman is William Carmichael and the Vice-Chair is Alice Brown. Its Executive Director is Rakiya Omaar; its Associate Director is Alex de Waal; Janet Fleischman and Karen Sorensen are Research Associates; Barbara Baker, Ben Penglase and Urmi Shah are Associates.

Africa Watch is part of Human Rights Watch, an organization that also encompasses Americas Watch, Asia Watch, Helsinki Watch and Middle East Watch. The Chairman of Human Rights Watch is Robert L. Bernstein. Aryeh Neier is Executive Director of Human Rights Watch, the Deputy Director is Kenneth Roth; Holly Burkhalter is Washington Director and Susan Osnos is Press Director.