

ETHIOPIA

Open Letter from the Secretary General of Amnesty International to Participants at a Conference in Addis Ababa, 18-22 May 1998, on the Establishment of a Human Rights Commission and Office of Ombudsman

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Dear Conference Participant,

As Secretary General of Amnesty International, I am writing to you with suggestions which you may wish to consider with your own contribution to the establishment of a Human Rights Commission in Ethiopia. Your purpose in attending the conference will naturally be to contribute to the improvement of human rights in Ethiopia. With this in mind, I am sending you some considerations about National Human Rights Commissions in general, some background on the need for such a Commission and Office of Ombudsman in the context of the current human rights situation in Ethiopia, and particular proposals for a National Human Rights Commission in Ethiopia.

Amnesty International, an independent international non-governmental organization, works impartially to prevent and stop human rights violations anywhere in the world and to promote awareness of all human rights and international standards for the protection of fundamental human rights. We seek to work with governments and non-governmental organizations on human rights promotion. We already have contact with Human Rights Commissions in several countries and have developed the proposals which we are presenting here on the basis of the existing international standards for such Commissions as well as our own experience of them. Although we have not been invited to attend this conference, this is our contribution to it.

Human rights are under attack all over the world and international solidarity is vital among those concerned about promoting human rights and combatting violations wherever they occur. I sincerely hope that the many foreign experts, including officials of National Human Rights Commissions, Ombudsmen and academics, and the hundreds of Ethiopian officials and other local participants, will

take their participation in this conference as a long-term commitment to work for human rights in Ethiopia.

National Human Rights Commissions - what can they achieve?

National Human Rights Commissions have been established in recent years in many countries, and the trend is continuing, with support from the Office of the UN High Commissioner for Human Rights and with both interest and some anxiety among non-governmental organizations (NGOs) such as Amnesty International. Official investigatory bodies can play an important role in watching over state activities by government officials, the security forces and the courts. They can also work usefully with NGOs from civil society who campaign for human rights compliance from the authorities. The UN Secretary General, Kofi Annan, said recently: "*The establishment of credible, independent and impartial national human rights institutions can be a significant confidence-building measure, and should be reinforced by the development of indigenous non-governmental human rights organizations and institutions*".¹

However, it must also be recognized that the record of National Human Rights Commissions has been mixed. Some have acted responsibly and worked hard to establish themselves as independent and effective mechanisms for complaints and redress. They have received cooperation from officials and consulted closely and beneficially with both local and international NGOs. But there have been other cases of National Human Rights Commissions which were little more than propaganda appendages of repressive governments. In one particularly bad example, a commission was used to deflect international criticism and to silence local NGO criticism of human rights violations. The authorities took no action on human rights complaints but merely channelled them to a powerless and inactive body. Human rights violations continued to take place with impunity.

The lessons learned and described by you at this conference in respect of Human Rights Commissions in other countries in different political contexts and different human rights situations can be useful for Ethiopia. But it will be equally important, even at this early stage, to assess the factors in Ethiopia which are favourable to or opposed to the successful establishment of an Ethiopian National Human Rights Commission. Then it will be possible to identify what needs to be done, building on positive factors and minimising the negative ones. Support for this process from the international community both before, during and after the

¹Report of the Secretary General to the UN General Assembly on "The causes of conflict and the promotion of durable peace and sustainable development in Africa", 13 April 1998, UN Doc: A/52/871-S/1998/318.

conference event, particularly from you as conference participants and from the western embassies funding the conference, will be important to achieving the aims and objectives that you help set for it.

The creation of a National Human Rights Commission can be an important mechanism for strengthening human rights protection but it can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial, adequately resourced and accessible judiciary. The process should go hand-in-hand with a thorough review of existing legal and other institutions in order to make these more effective instruments of human rights protection. Furthermore, these initiatives should be accompanied by a determined government policy aimed at holding the perpetrators of human rights violations fully accountable, thus ensuring that those who violate human rights cannot do so with impunity.

A National Human Rights Commission for Ethiopia

As you know, a National Human Rights Commission is provided for in the Constitution of Ethiopia, where Article 55.14 on the powers and functions of the House of Peoples' Representatives states that "it shall establish a Human Rights Commission and determine by law its powers and functions". There is no deadline set for when it should be established but it should surely be in place well before campaigning starts for the next elections in 2000.

Your conference, organized by the House of Peoples' Representatives and the Government, sponsored by the Donors Group, is on "International experiences in institutions of human rights protection and ombudsman organizations" in the process of developing laws for their establishment. Most of you will be making presentations about your experiences in National Human Rights Commissions and Ombudsman Offices in a wide range of countries, such as Canada, Argentina, China and South Africa, and taking part in general discussions of modalities for such Commissions. Individual human rights experts have also been invited but several international NGOs which have observed National Human Rights Commissions in action and those who have reported critically on human rights violations in Ethiopia have not been invited -- Amnesty International and Human Rights Watch/Africa, for example. One Ethiopian NGO which has criticised the government, the Ethiopian Human Rights Council, has also not received an invitation.

In my view it is essential that the conference should address the situation as it is in Ethiopia and present guidance for establishing a National Human Rights

Commission which will be consistent with international standards and will meet the local human rights needs. These standards need to be presented very clearly and openly in order for a free and meaningful public debate to take place on draft laws which will be submitted to parliament. We note that within the federal and regional parliaments there are no opposition parties, and there are restrictions on political activities, NGOs and the private press. The government has refused to register the only local NGO which openly reports on human rights violations -- the Ethiopian Human Rights Council -- saying it is a "political organization". It has frozen its bank account containing locally-raised and foreign-donated funds. The organization, formed in 1991, has not been closed down but in March 1998 the Ministry of Justice threatened to prosecute unregistered NGOs. Another human rights NGO, the Human Rights League, which aimed to promote and report on human rights in relation particularly to members of the Oromo "nationality" (or ethnic group), applied for registration in December 1996 but received no reply. Eight of its founding members, including its general secretary, were arrested in November 1997 and are currently in prison, charged with armed conspiracy and links with the armed opposition Oromo Liberation Front (OLF). The League's office was shut down last month.

Work on gender rights and legal rights issues is being done by two other NGOs -- the Ethiopian Women Lawyers Association and Action-Professionals' Association for the People (APAP). Both are now officially registered, although APAP was refused registration for a long time. Since 1991 there have been many other activities to promote a wide range of human rights through workshops and programs established by government agencies, Addis Ababa University and certain NGOs such as these. We suggest that such work should continue in liaison with the Commission but independently of it. For its part, the Commission will need to strike a productive balance between its promotional activities and its monitoring or investigative work in the field of civil and political rights.

Human rights in Ethiopia

In 1991 Ethiopia emerged from a 17-year brutal dictatorship where massive human rights violations and violations of international humanitarian law were committed. The regime was overthrown militarily by the Ethiopian People's Revolutionary Democratic Front (EPRDF), headed by the Tigray People's Liberation Front (TPLF), who have been in power since then. Over 2,000 officials of the former Dergue and Workers Party of Ethiopia (WPE) governments, who were detained in 1991 or later, are currently on trial or about to be tried for genocide and other crimes. Other former

officials, including former Dergue chairman, ex-President Mengistu Haile-Mariam, are being tried *in absentia*.

The terrible events of those years will be brought to the fore during the conference, which has been timed to take place on the eve of the commemoration of the seventh anniversary of the EPRDF victory and the end of the abuses of the Mengistu government. The new government accepted the obligation to bring those responsible for gross violations of human rights under the past government to justice in accordance with international standards and said it was not imposing “victor’s justice”. It promised to try the worst alleged human rights violators in accordance with recognized international standards and through open national courts. The trials are open to international scrutiny. We welcome this commitment and we support the principle of bringing those responsible for grave human rights violations to justice, but Amnesty International opposes the use of the death penalty in all cases.

Since the violations and crimes of the former government are being dealt with through the courts, the future Human Rights Commission will not need to repeat this work. But I would still like to mention our concerns about these trials. One is that they are likely to continue for some more years yet. In the only trial properly under way, the trial of the Dergue military government itself, which began in 1994, the prosecution has so far presented about half of its expected 1000-plus witnesses, to be followed by extensive documentary and recorded evidence. The trials of groups of other former government and party officials and members of the security forces are just starting in federal and regional courts.

Another concern is that all defendants face the death penalty, which is retained in the laws and Constitution and which the government supports. As you will be aware, the UN, as well as Amnesty International and many other human rights organizations, severely criticized the executions of a number of individuals found guilty of genocide in Rwanda last month, not only because several trials were flawed but also because the death penalty is itself a violation of human rights -- the right to life and the right not to be subjected to cruel, inhuman and degrading punishment. We have not so far had any positive reaction from the Ethiopian authorities to our appeals not to use the death penalty in these trials.

The third area of concern is about the fairness of the trials, which we are monitoring in relation to international standards. Although the trials are in open court and defendants have legal representation and the right of appeal, defendants have been denied the internationally-recognized right of confidential access to legal counsel.

The message of the Dergue trials was supposed to be that in contrast to the apparent impunity which had previously prevailed, human rights violators would henceforth be brought to justice. I have to say that sadly this has not been the case. Many human rights violations have been committed since 1991 with impunity. These violations include widespread detentions without charge or trial, torture, "disappearances", extrajudicial executions, and trials of government opponents about which there are serious doubts as to their fairness.² These are indeed the key issues for the future Human Rights Commission to address. The context of many of the violations is conflict with armed opposition groups in several regions but neither the fact of armed conflict nor abuses by opposition groups can justify violations which have occurred. The violations have been serious and persistent, although they have not been on the scale of the worst period of the Dergue's "Red Terror" campaign in 1977-78 or abuses in the war zones where the Mengistu forces were fighting the TPLF, the allied Eritrean People's Liberation Front (EPLF, which now forms the government of the independent state of Eritrea), the OLF (which left the new government coalition in 1992 and is now fighting the present government), and other groups.

There has, in short, been accountability for the past and for officials of the past government, but not for the present and for the situation under the succeeding and present government. The consequence has been that this failure of accountability has jeopardised the success of the Dergue trials in respect of learning the lessons of the past and not repeating the abuses.

Standards for National Human Rights Commissions and their relevance to Ethiopia

²See in particular "*Ethiopia: Accountability past and present - human rights in transition*", Amnesty International, April 1995 (AI Index: AFR 25/6/95), "*Ethiopia: Human rights trials and delayed justice - the case of Olympic gold medallist Mammo Wolde and hundreds of other uncharged detainees*", Amnesty International, July 1996 (AFR 25/11/96), and "*Ethiopia - The curtailment of rights*", Human Rights Watch/Africa, December 1997.

International standards for national human rights institutions were established in 1993 and are known as the “*Paris Principles*”.³ These constitute the basic minimum guidelines for the establishment of a National Human Rights Commission and identify the following responsibilities for such institutions:

- to submit recommendations, proposals and reports on any matter relating to human rights to the government, parliament and any other competent body;
- to promote conformity of national law and practice with international human rights standards;
- to encourage ratification and implementation of international human rights standards;
- to contribute to the reporting procedure under international instruments;
- to assist in formulating and executing human rights teaching and research programmes and to increase public awareness of human rights through information and education;
- to cooperate with the UN, regional institutions and national institutions of other countries.

Amnesty International recommends the following standards as essential elements for consideration in the establishment and functioning of a National Human Rights Commission in Ethiopia:

1. Mandate and composition of the Commission

- *The Commission should be independent from government and its Charter should reflect this. The Commission should be established by law in accordance with the Constitution.*
- *The Commission should consist of men and women known for their integrity and impartiality who shall decide matters before them on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences*

³The Paris Principles, adopted in Paris, France, were endorsed by the UN Commission on Human Rights (resolution 1992/54) and by the UN General Assembly (resolution 48/134 of 20 December 1993). They are published in the UN Centre for Human Rights’ Professional Training Series no.4, “National Human Rights Institutions”, 1995.

from any quarter or for any reason. Its members should be independent of the government or any other outside influence, should be impartial, should personally have a good human rights record and proven expertise and competence in the field of protecting and promoting human rights, and should be drawn from a variety of different backgrounds, including relevant professional groups and the non-governmental sector.

- The method of selection of its members should be fair and transparent and should afford all necessary guarantees of their independence and broad representation of relevant sections of the society. Commission members should serve in their individual capacity and should be able to serve the Commission effectively. The terms of their appointment, tenure and removal should be clearly specified and laid down in the Charter and should afford the strongest possible guarantees of competence, impartiality and independence.
- The Commission should be mandated to monitor and report on compliance with and implementation of relevant international human rights standards, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (to which Ethiopia is a party), the UN Convention against Torture (which Ethiopia has also ratified⁴), as well as the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms for Law Enforcement officials, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Principles on the Effective Prevention and

⁴By virtue of article 9.4 of the Constitution, these are automatically incorporated into Ethiopian law.

Investigation of Extra-Legal, Arbitrary or Summary Executions, the UN Declaration on the Protection of All Persons from Enforced Disappearances, the UN Basic Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers and the UN Guidelines on the Role of Prosecutors.

- *The Commission should be mandated to review the effectiveness of existing legislation and/or administrative provisions in protecting human rights and should be able to make recommendations for the amendment of such legislation or the introduction of new legislation as necessary. The Commission should also examine bills and proposals for new legislation put forward by the government or parliament to verify their conformity with international human rights standards and to ensure the state's compliance with the above international human rights instruments.*
- *The scope of the Commission's concerns should be principally and clearly defined in terms of state obligations under international human rights law. Its time and resources should not be deflected by the examination of cases which should be dealt with under the ordinary criminal justice system or by other state institutions.*
- *The Commission should have precisely-defined powers to investigate on its own initiative situations and cases of reported human rights violations and to set clear priorities for its work in accordance with the seriousness of the violations reported to it. Priority should be given to alleged violations of the right to life and security of the person, the right not to be tortured (rights from which no derogation can be made by any government under any circumstances), as well as the right not to be arbitrarily arrested or detained.*

- *The Commission should be directed to establish effective cooperation with both international and local NGOs with first-hand information about reports of human rights violations.*
- *The Commission should also have the powers to conduct wide-ranging national inquiries on human rights concerns of fundamental importance to the nation.*
- *It is recommended that initially the Commission conduct a critical analysis of the factors which have contributed to the persistence of human rights violations within the national territory since 1991, including the failure of existing institutions and legal mechanisms to provide adequate human rights protection and prevent impunity. Recommendations for legal and institutional reform to halt violations may be proposed on the basis of the findings of the study.*
- *The Commission should be authorized to investigate the conduct of all branches of the security forces throughout the national territory. To do this effectively, the Commission should have adequate facilities to conduct thorough investigations which are independent of the security forces.*

2. Facilities, powers and investigative methodology of the Commission

- *The Commission should be provided with all necessary human and material resources and sufficient financial independence to examine, thoroughly, effectively, speedily and throughout the country, the evidence and other case material concerning specific allegations of violations reported to it.*
- *The Commission should have its own investigative machinery and should have access to expert assistance whenever required to verify alleged violations. It should have adequate facilities to carry out*

on-the-spot investigations. The Commission should have immediate and unhindered access to all places where detained persons are held or are suspected to be held. Officials must be instructed to cooperate with the Commission's investigations.

- The Commission should have powers to initiate investigations on its own initiative. It should be able to receive communications not only from the complainants themselves but also, if they themselves are unable or prevented from doing so, from lawyers, relatives or others acting on their behalf, including non-governmental groups. Investigations initiated by the Commission should be adequately publicized, especially at the regional and local levels, to enable and encourage witnesses to come forward to testify.
- The Commission should have powers to compel the attendance of witnesses, including members of the security forces, and the production of documents, including police, prisons and court records.
- The Commission should have full and effective powers to protect witnesses, lawyers, its own staff, complainants, and their families, from reprisal and to guarantee their safety. This might include the suspension or transfer of officials - without prejudice pending completion of investigations - to other duties where they would have no power over witnesses or complainants. Victims or their relatives or legal representatives should have access to all relevant information and documents relating to the investigation and be granted all necessary facilities to present evidence. The Commission should be able to provide financial assistance to witnesses enabling them to travel and be accommodated in order to present their evidence before the Commission.
- The Commission should work in an open and transparent way, with its hearings generally open to the public. Private hearings should be an

exceptional measure and be resorted to only in specific pre-established circumstances.

3. Reporting and follow-up action

- The Commission should prepare regular reports documenting all the complaints it has received, together with the action taken in each case, as well as an account of all its other activities for the promotion and protection of human rights. The Commission's methodology and the results of its investigations, together with official reports, including *post mortem* and other expert reports as well as police and court or prison records, should in each case be published in full and in an easily accessible and comprehensible form. The Commission's reports should be presented periodically to representative national and regional bodies, as well as to the general public.
- The results of the Commission's investigations should be referred to appropriate judicial bodies without delay. The Public Prosecutor should open criminal investigations against anyone whom the Commission finds may have been responsible for committing human rights violations or for ordering, encouraging or permitting them, and if evidence warrants should seek an indictment. The government should ensure that any prosecutions for human rights-related offences are brought by authorities which are distinctly independent from the security forces or other bodies allegedly implicated in the human rights violations.
- The Commission should have powers to ensure that superior officers are held accountable for acts committed under their authority and it should be mandated to closely follow subsequent legal proceedings in the case, by monitoring trials, or if necessary appearing before the

court to make legal submissions to press for appropriate legal action to be taken within a reasonable time.

- The Commission should have powers to ensure effective remedies, including interim measures to protect the life and safety of an individual and free medical treatment where necessary; it should ensure that full and prompt compensation is paid, together with other measures of redress and rehabilitation for victims in cases it has taken up in which members of the security forces are found to have perpetrated human rights violations.
- The Government should undertake an obligation to respond, within a reasonable time, to the case-specific as well as the more general findings, conclusions and recommendations made by the Commission. The government's response and actions should be made public.

Amnesty International's appeal and pledge

Our appeal to Conference Participants

1. We ask you to press for the Human Rights Commission to be formed in accordance with the recognized international standards set out above and in conformity with the UN's Paris Principles.
2. We request you to make a long-term commitment to follow closely the work of forming the Commission and the work of the Commission when it is formed. We hope you will encourage the Commission to meet its obligations so that it can speedily become an effective mechanism for protection of human rights.
3. We urge you to press for immediate human rights improvements by the authorities, including the release of prisoners of conscience and human rights defenders currently in prison, so as to ensure that the process of forming the Commission is not an excuse for inaction. In particular, we ask you to appeal to the Ethiopian authorities for the release of eight founding-members of the Human Rights League

whom Amnesty International considers to be prisoners of conscience,⁵ and journalists from the private press who are detained as prisoners of conscience on account of publishing articles critical of the government.⁶

Our pledge

1. Amnesty International will cooperate with the Commission when it is established, and, if requested, will offer its suggestions for its establishment. We will be willing to send representatives to Ethiopia to meet with the Commission, as well as with government officials, to discuss human rights issues.
2. We will submit proposals to the Commission for human rights promotion on the basis of our international experience and the relevant international human rights standards, and we will submit cases and situations of violations to the Commission to act on.
3. We will support positive actions by the Commission but we will also consider it our duty to make any appropriate comment if we consider that the Commission is failing its mandate.

Yours sincerely,

Pierre Sané
Secretary General, Amnesty International

⁵The detained Human Rights League members are: Garuma Bekelle, Human Rights League general secretary (journalist), Beyene Abdi (HRL vice-chair, retired Supreme Court judge), Addisu Beyene (general secretary of the officially-registered Oromo Relief Association), Beyene Belissa (telecommunications manager), Hussein Abdi (former Ministry of Foreign Affairs official), Haji Sahlu Kafte (former Supreme Council for Islamic Affairs member), Gabissa Lemessa (Save the Children Fund accountant), Tilahun Hirpasa (former teacher).

⁶“*Ethiopia: Journalists in prison - press freedom under attack*”, Amnesty International, April 1998 (AFR 25/10/98).