

Violence against and using the dead: Ethiopia's Dergue cases

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Abstract

Atrocities that befell Ethiopia during the Dergue regime (1974–91) targeted both the living and the dead. The dead were in fact at the centre of the Dergue's violence. Not only did the regime violate the corpses of its victims, but it used them as a means to perpetrate violence against the living, the complexity of which requires a critical investigation. This article aims at establishing, from the study of Ethiopian law and practice, the factual and legal issues pertinent to the Dergue's violence involving the dead. It also examines the efforts made to establish the truth about this particular form of violence as well as the manner in which those responsible for it were prosecuted and eventually punished.

Key words: Dergue, corpse selling, corpse-watchers, disappeared deceased, mass graves, SPO

Introduction

On 2 September 1974, a council of armed forces, police and territorial army, commonly known as the Dergue,¹ took control of Ethiopia by overthrowing its last emperor, Haileselassie I (r. 1930–74).² The Dergue established a military dictatorship that clung to power for seventeen years and is known for having inflicted a violence that marked a 'special chapter in the history of the peoples of Ethiopia'.³ In 1992, the Transitional Government of Ethiopia – formed in 1991 by a coalition of civilian and military groups that toppled the Dergue – established the Special Prosecutor's Office (SPO) with the dual mandate of bringing to justice members and affiliates of the Dergue and establishing for posterity a historical record of the violence.⁴

In a seventeen-year-long process (1992–2010), the SPO focussed mainly on the prosecution of the Dergue for various offences including political genocide and war crimes. In its landmark 2003 ruling in the *SPO v. Mengistu et al.* case, involving the highest-ranking Dergue officials, the Federal High Court (FHC) found that the Dergue had, *from the beginning*, a plan to destroy opposition groups.⁵ A closer look at the crimes perpetrated by the Dergue reveals that one of the special features of this

plan to destroy was that it also targeted the dead. A survivor of the regime, Original Woldegiorgis, testified on the BBC's *Witness* programme that,

[The Dergue] used to throw the bodies on the streets. That's not only it, they used to ask for the price of the bullet for the people they have killed. [. . .] The shocking part is, after you pay, they never give you the body. No mother whose son or daughter was killed during the Red-Terror [had] the body to bury. They didn't. They took them. They mass buried them, they [threw] them on the streets, you [couldn't] touch the [bodies].⁶

The complex nature of the violence against the dead has largely been uncovered in the prosecution process carried out by the SPO. It indeed revealed that, far from being a collateral consequence of the Dergue's campaign to eliminate opposition groups, the violence both against the dead and against the living by using the dead was central to the regime's *modus operandi* from as early as 1974, the year it came to power, until 1991, the year of its demise.

The objective of this article is to establish the factual and legal issues pertinent to the Dergue's violence against and using the dead. By analysing relevant information recorded in the SPO cases, the article discusses the extent and the nature of the Dergue's violence concerning corpses, the possible motivations behind this violence and the (scope of) response(s) provided through the SPO process.

This reliance on the SPO cases is justified by the fact that only a very few official efforts were in place to exhume the remains of the Dergue's victims. When professional exhumations were conducted, such as those carried out by the Argentine Forensic Anthropology Team (EAAF), they were generally not followed by attempts to identify the corpses. As a result, any analysis on the fate of the dead victims has to rely on the SPO cases, although the cases are generally overlooked by scholars, even more so when it comes to discussing the corpses of victims. In addition, this article uses information collected through key-informant interviews conducted with the SPO prosecutors.

The next section explores the SPO cases to establish the factual aspects of the Dergue's violence involving the dead, as well as the reasons behind this violence, while the subsequent section turns to the responses put in place in terms of exhumation and reburial of the remains of some of the Dergue's victims. The final section concludes the article by discussing the prosecution and punishment of crimes involving the dead and examines both the Ethiopian law and case law with the view to establishing how the SPO and the courts have reacted to the Dergue's violence involving the dead.

The spectrum of the Dergue's violence involving the dead: factual analysis

Although the factual intricacies of the violence have yet to be fully studied, a brief scrutiny of the SPO cases quickly reveals that the aim of the Dergue's violence against the dead was not limited to mistreating corpses. In several instances, most of this

violence was perpetrated with the ulterior motive of grossly infringing upon the rights of the living. Accordingly, the violence took two forms, namely, violence *against* the dead and violence *using* the dead.

Violence against the dead: disappearing the deceased

Once it had taken control of the country, it only took a few months for the Dergue to start exercising violence against the Ethiopian people. Violence against the corpses of its victims began at the same time, thus giving credence to the fact that it was inextricably linked to violence against the living. The Dergue designed its violence in a manner that ensured that the bodies of its victims would disappear by either (i) concealing them in (mass) graves or (ii) leaving them to feed the wild beasts.

Concealment in (mass) graves

The Dergue's relatively peaceful *coup d'état*, described by some as the 'creeping coup',⁷ took a violent turn on 23 November 1974, when the first officially announced mass killing took place.⁸ The victims were fifty-nine officials of the government of the deposed emperor.⁹ This mass execution, which took place in a penitentiary in Addis Ababa, represents not only the start of the violence against the living but also the start of that against the dead.

The bodies of the fifty-nine officials were never returned to their families for proper burial, nor did the Dergue itself lay the bodies to rest in accordance with the relevant traditions of the country or religious rites of the victims. Instead, they were mass-buried in undisclosed locations in the penitentiary.¹⁰ It was later found that the Dergue had a pit dug before their execution, using it as both the execution and the burial site. The execution took place after the victims were made to line up, with their hands tied, at the edge of the pit. Thus, facing the grave, they fell into it under the hail of the more than 393 bullets fired at them.¹¹

Subsequently, the Dergue mysteriously killed the emperor, after having detained him for some time in the imperial palace to talk him into giving back public funds that he had allegedly misappropriated.¹² At the time, it was reported to the public that the eighty-one-year-old emperor had passed away due to illness for which he had been receiving medical treatment provided by the state.¹³ However, no funeral procession was held in his honour. Instead, it turned out that he had been secretly buried inside the palace. As evidenced by the subsequent exhumation of his remains, the Dergue had its presidential office built over the emperor's grave, on the top of which Colonel Mengistu Hailemariam literally sat and ruled the country for seventeen years.¹⁴

This violence was not solely directed at persons in leadership positions in the *ancien régime*. 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 among the religious dignitaries executed and clandestinely buried.¹⁵ The former was accused of being a 'reactionary' (pro-Haileselassie regime), while the later was labelled 'anti-revolutionary' as an alleged member of the Oromo Liberation Front (OLF).¹⁶ Buried in the same gravesite were

notable leaders of political opposition groups such as Haile Fida of the All Ethiopian Socialist Movement.¹⁷

This is not to say that the violence was limited to those who had iconic and representative status in the country's religious, social and political clusters. Throughout the country, people from all walks of life were killed and their bodies were buried in hidden (mass) graves, so much so that their exact number is not fully known.¹⁸ Most of the SPO indictments contain the phrase 'killed at an unknown place', thus highlighting the unknowability of the locations of the victims' bodies.¹⁹ In *Mengistu et al.* alone, the SPO listed over 516 victims killed at unknown places.²⁰ Although in places like Kotebe (Addis Ababa),²¹ Gojjam,²² Hawzien,²³ Harargie,²⁴ Gonder²⁵ and Lalibela²⁶ the SPO cases indicate the discovery of (mass) graves with the help of the community, these discoveries generally fell short of identification of the bodies.

As for the burial sites, the Dergue used mainly prison compounds and the outskirts of several towns as concealed graveyards.²⁷ Burial grounds were often identified in advance and, at times, pits were dug with bulldozers to hold large numbers of dead bodies.²⁸ Churchyards were also used to clandestinely bury several victims.²⁹ Cemeteries at St Peter's and St Paul's churches were used as typical sites for this practice in Addis Ababa in the late 1970s.³⁰ There, gravediggers were stationed to dig holes day and night and conceal corpses continuously sent to them from all parts of the city.³¹

Besides the more ostensible reason behind concealing corpses, namely, to hamper future criminal prosecutions by destroying potential evidence, the Dergue's two-fold practice of killing and concealing corpses may also have been prompted by its strategic plan to eliminate political adversaries. Although it might be too simplistic to assume that the process of corpse hiding was always methodical, it would be hasty to assert that it was completely arbitrary. In this regard, closer attention should be paid to the fact that the nature of the violence involving the dead changed as time passed and the political situation evolved.

In the late 1970s, the concealment of corpses was often undertaken after efforts had been made to inform the general public about the violence through public executions, leaving corpses on the streets and, at times, displaying them on national television.³² Besides, the regime used to actively prohibit the victims' families from collecting the corpses of their loved ones for burial.³³ The aim of this seemingly paradoxical practice, i.e. showing the corpses and then concealing them, apparently aimed to shut down political opposition at its source by hiding the corpses as an additional gesture of mercilessness. This becomes clearer when it is seen together with the two-fold practice of corpse dumping and prohibition of mourning, discussed below.

In other cases, when announcing executions and terrorising the public was either not yet or no longer deemed necessary either tactically or politically, the regime silently eliminated its adversaries through clandestine operations. For instance, in penitentiaries, inmates would be called out at night, under the guise of a transfer to another prison. When they were made to dig their intended graves, they were told that the digging was being done in order to build more facilities in the penitentiary,

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such as toilets.³⁴ Several inmates were executed noiselessly, notably by strangulation with knotted ligatures.³⁵

False information was designed to reach the families of inmates. In the provinces, visiting families were told that their loved ones had been transferred to the infamous Meakalawi, the central prison of Addis Ababa.³⁶ Those in Addis Ababa were told that inmates had been transferred to unspecified prisons within and outside the city.³⁷ In Gonder, the code language was that the inmate 'had left for a development work' in another part of the country.³⁸ Although over time the families learned what these responses meant, i.e. that the inmates were no longer alive, the burial sites remained largely concealed.

However, the above-mentioned actions do not cover each and every instance of corpse hiding, and some of the violence against the dead included elements of extreme abhorrence and disrespect towards the victims and their bodies. Symptomatically, it was not rare for the Dergue to treat the corpses of its victims as useless garbage, throwing them into toilets,³⁹ burying them in holes and in mass graves together with the carcasses of street dogs⁴⁰ and livestock (donkeys, sheep, horses, cows and oxen).⁴¹ In most cases, this was done deliberately.⁴² In others, it was due to the difficulty of separating human bodies from those of animals simultaneously massacred by aerial bombing.⁴³

Abandonment and food for beasts

In what may be seen as an absolute disrespect for the dead as well as a desire to silently destroy political opposition, the Dergue also made the corpses of its victims vanish by allowing them to be eaten by wild beasts. To this end, dead bodies were thrown into uninhabited deserts, gorges and rivers where they decayed naturally and disappeared or where, as a consequence, scavenging carnivores might have feasted on them. In more rural areas, the corpses of victims were dumped in all kinds of places, including national parks such as the Nechisar,⁴⁴ major rivers like the Omo,⁴⁵ deserts like Dedessa,⁴⁶ abysses such as the notorious Lima-Limo⁴⁷ and Wachacha,⁴⁸ and other bush areas⁴⁹ and ravines.⁵⁰ At times, corpses were intentionally fed to animals, for instance when they were thrown directly into hyenas' caves.⁵¹

Such violence was not limited to remote parts of the country. In urban areas the bodies of victims were dumped in the streets to ensure that street dogs would eat them.⁵² When bodies were collected from the streets and buried quietly – that is, without the knowledge of the concerned administration – this was viewed as a sign of sympathy towards the victims and, in such instances, some graves were later dismantled by the security forces and the bodies were left to be eaten by hyenas, street dogs and vultures.⁵³

Violence using the dead: suppressing and punishing potential dissent

Besides perpetrating violence against the dead, the Dergue also used the corpses of its victims to terrorise and punish the living and ultimately to perpetrate further violence against detainees and the public at large.

Corpse dumping and watching

One of the most common forms of violence perpetrated by the Dergue using the dead was the dumping of corpses on the streets in cities and towns. In *Mengistu et al.* and in *Debela Dinsa Wege et al.* alone, the SPO recorded that the Dergue dumped over 1,416 dead bodies on the alleys and thoroughfares of Addis Ababa.⁵⁴ The corpses of men and women of all age groups were left in the open. In some instances, this included a deaf person⁵⁵ and a pregnant woman.⁵⁶

This practice of corpse dumping was adopted to terrorise the public and instil fear and powerlessness in order to suppress, if not altogether eliminate, political dissent. As if street dumping of dead bodies was not terrifying enough to the population, red-coloured papers, placards and messages were attached to the corpses accusing the victims of having engaged in *anti-unity* and *anti-revolutionary* activities, calling on the Dergue's supporters to 'intensify the Red-terror',⁵⁷ or threatening that 'no one escapes the people',⁵⁸ thereby warning potential opponents of the fate that awaited them *and* justifying the killings by presenting them as actions endorsed by the population.

A closer scrutiny of the SPO cases indicates that street dumping of corpses was largely carried out in the late 1970s, when the Dergue's Red Terror intensified to counter the 'White-Terror', led by the Ethiopian People's Revolutionary Party (EPRP).⁵⁹ It was during this time that the EPRP garnered strong popular support and appeared as a credible threat to the survival of the Dergue's revolution.⁶⁰ It could thus well be that the Dergue wanted to suppress public support for opposition groups by displaying the corpses of the political opponents that it executed as a warning.

However, corpse dumping was practised later on, and as recently as 1989 and 1990.⁶¹ Moreover, unlike what is often perceived to be the case, the violence using the dead targeted not only supporters of the EPRP, but also supporters of numerous other opposition groups that the Dergue had vowed to eliminate.⁶² In what is now known as the Amhara region, where the majority of the violence targeted affiliates of the EPRP, the corpses of alleged members of the Ethiopian Democratic Union were thrown onto the streets.⁶³ In Oromia, this type of violence affected several towns perceived to be harbouring a pro-OLF stance,⁶⁴ including the large towns of Eastern Ethiopia, Dire-Dawa⁶⁵ and Harar.⁶⁶ Tigray towns witnessed similar violence because of their alleged affiliation with either the Eritrean People's Liberation Front or the Tigray Liberation Front.⁶⁷ Similarly, the corpses of political opponents were scattered in the streets of Alaba, Arba-Minchi, Hawassa and Soddo of the then Sidamo and Gamo province.⁶⁸

Corpse dumping was generally not random; rather, it was carried out purposefully and in a manner calculated to deter the general public from supporting and engaging in anti-revolutionary activities. The SPO cases reveal that the corpses of some victims were dumped in places familiar to them, including on the door-steps of their families or at their workplaces, in front of bars where they used to go to for a drink and in public places such as bus stations and open markets.⁶⁹ In some towns, dead bodies were dragged across the streets or suspended from trees so that they

would be seen by as many people as possible.⁷⁰ In Gonder, a dead body was seen hanging in a butcher's shop alongside raw beef on a feast day.⁷¹

Furthermore, the families of victims were not allowed to collect the dead bodies left on the streets for burial. In most cases this was prohibited; and the regime had *corpse-watchers* – civilians and security personnel tasked to observe, prohibit and report any attempt to collect for burial the bodies left on the streets.⁷² As a result, bodies were made to remain outside, sometimes for days, thus leading to their disfigurement.⁷³ This was meant to serve a dual purpose: to ensure that more people saw the corpses and to enforce the prohibition of burial and mourning.

Prohibition of mourning and proper burial

The Dergue often accompanied the street dumping of corpses with the prohibition of mourning and burial. The public was denied the right to bury the dead in accordance with their custom, tradition or religion. The trial transcripts show that a mourning crowd was dispersed by force and that on-going funeral processions were stopped.⁷⁴ The process of enforcing a ban on proper burials exposed communities to horrific acts of violence using the dead. In places like Wolayita, in southern Ethiopia, peasants were forced against their will to dig holes in which executed members of their community were later dumped *en masse*.⁷⁵

In a practice that amounted to corpse selling, the families of the deceased were required by the local administration to pay for the bullets used to kill their loved ones when they reclaimed the bodies for burial. In Sagurie, a town in east-central Oromia, a dead body was sold back to the family for as much as 300 Ethiopian birr (around USD150 at the time, in 1978).⁷⁶ In the majority of cases, however, the regime refused to return the bodies to the families even after receiving payment. Instead, hospitals were heaped with bodies collected from the streets, Minilik II Hospital in Addis Ababa being a significant example in this regard.⁷⁷

Mourning the dead, which was seen as an expression of sympathy to the causes of the victims and which the regime condemned as *anti-unity* and *anti-revolutionary*,⁷⁸ was prohibited throughout the country. The exceptionally difficult nature of this prohibition was that it extended to everyone, irrespective of the mourner's level of acquaintance with the deceased. Parents were not allowed to mourn the deaths of their daughters and sons, and vice versa. Families were not even allowed to mourn alone in the privacy of their own homes, as was notably the case in the then Cheha sub-province of west-central Ethiopia, where the most shocking forms of violence involving the dead were reported.⁷⁹ Informants were assigned to monitor the prohibition of mourning⁸⁰ and people found in violation of this prohibition were arrested and/or severely beaten, sometimes to death.⁸¹

Families were also forbidden to cry out loud and shed tears, even spontaneously, on occasions such as when the bodies of their loved ones were thrown down on their door-steps or in market places, or when they were dragged along and spread out in the dusty streets.⁸² Adherence to the prohibition of mourning had to be shown not only passively, by refraining from mourning, but also actively, by expressing support for the violence against the deceased. In that sense, and as also noted in *Geseges Gebremeskel Ateraga et al.*, the regime required the public to sing and dance, and to

celebrate and revel in the situation that violated each and every acceptable way of treating the dead.⁸³

Going beyond the obvious mental harm caused by this double prohibition, the Dergue also imposed actual physical contact between the population and the corpses of the victims. For instance, in Cheha, bodies were dumped in market places, where market-goers were coerced into walking on them.⁸⁴ Fathers and mothers were forced to step on the dead bodies of their children, and those who resisted were subjected to myriads of physical abuses, including grave bodily injury.⁸⁵

Used as method of mental torture

To implement its plan to destroy political groups, the Dergue had an organisational structure that was designed to surveil, arrest, interrogate, torture and execute.⁸⁶ Torture was rampant and had extreme forms during the Dergue regime. In addition to numerous forms of physical torture, inmates were subjected to acts that could constitute mental torture, such as being called out for false execution.⁸⁷

Furthermore, corpses were used as means of inflicting mental torture on prison inmates. In the torture chambers, inmates were often forced to remove the dead bodies of their former cellmates who has been tortured to death in front of them.⁸⁸ They were also made to line up inside the prison compounds, where the dead bodies of their cellmates were deliberately shown to them by the prison police.⁸⁹ While this was being done, the prisoners were forced to chant songs of victory and celebration.⁹⁰

Exhumation and reburial: the SPO's project ascension?

In its completion report published in January 2010, the SPO mentioned that it had undertaken what it referred to as 'project ascension',⁹¹ aimed at exhuming and reburying in respected (religious) places the bodies of those killed and improperly buried during the Dergue regime.⁹² Yet, contrary to what the word 'project' seems to suggest, there was no official and organised exhumation effort. Exhumations were carried out informally, by the families of victims and sometimes in collaboration with the Anti-Red-Terror Committee, a private organisation established to give voice to the rights of the Dergue's victims.⁹³ In the absence of official exhumation plans, it was reported that the government had taken action to conduct some of the exhumations after this was urged by victims' families.⁹⁴

Further, most of the notable exhumations were conducted before the SPO had even been established in August 1992. The remains of several victims, including those of the fifty-nine officials executed in 1974, of the emperor and of the patriarch, were exhumed and reburied in early 1992.⁹⁵ Ultimately, and as also indicated in its final report, the SPO was not fully aware of the number of exhumations and reburials, notably because many such activities were carried out individually by victims' families.⁹⁶ Even after it was established, the SPO did not treat exhumations as one of its objectives,⁹⁷ even though one might argue that it should have regarded exhumations followed by identifications as falling within its second mandate,

requiring it to engage in activities essential to 'establish for public knowledge and for posterity a historical record of the human rights violations.'⁹⁸

What the SPO did in relation to exhumations was therefore largely limited to compiling a report on the number of exhumed bodies. Overall, as reported by the SPO, 924 suspected graves were exhumed, of which 199 were empty, while 4,855 bodies were excavated from the remaining 725 graves.⁹⁹ A large proportion of the exhumed bodies came from graves related to the 1988 aerial bombing of market-goers in the town of Hawzien, in northern Ethiopia.¹⁰⁰ None the less, it should be pointed out that the total number of exhumed bodies reported by the SPO is incomplete and is inconsistent with what is recorded in some of its own judgments. For instance, the data recorded in the case of *Melaku Teferra* indicates that 10,000 skulls were excavated from a mass grave around Luza Mariam in Azezo.¹⁰¹ From a nearby grave, 1,400 bodies were exhumed.¹⁰²

Although it is reported that exhumation efforts have uncovered (mass) graves in all corners of the country,¹⁰³ the general outcome was somehow unsatisfactory, to the point that the SPO added a disclaimer to its report, stating that

it is not possible to assert that the project ascension has managed to collect and rebury in religious places each and every body dumped in the bushes of our country. It wasn't possible to exhume and rebury bodies in places inaccessible by vehicles, those thrown into deep water holes, those laying underneath newly built town houses and asphalt roads.¹⁰⁴

In addition to the lack of official attention, two main factors may have limited the success of exhumation efforts: the demanding nature of the task, on the one hand, and the limited access to forensic experts, on the other. The demanding nature of exhumations in the Ethiopian context lies in the fact that there were allegedly a large number of concealed (mass) graves from as early as 1974 and until the downfall of the Dergue in 1991. These factors, together with the length of time that had elapsed since the burials and the fact that the manner of the burials was intended to ensure unknowability may have posed difficulties in discovering the hidden graves.

With respect to access to forensic experts, Ethiopia lacked domestic experts who could help the SPO to exhume and identify human remains. This problem was somehow mitigated when the SPO invited the EAAF, following a financial donation obtained largely from the Carter Center.¹⁰⁵ The EAAF's team, composed of American and Dutch forensic experts, also included the late Dr Clyde Snow, world-renowned expert in forensic anthropology.¹⁰⁶ The EAAF visited Ethiopia four times between 1993 and 2002. The first visit was to conduct a preliminary investigation,¹⁰⁷ while the last one was to testify in the SPO cases.¹⁰⁸ Archaeological excavations and exhumations of dead bodies took place during the second and third missions, in 1994 and 1996, respectively.¹⁰⁹ None the less, given the number of alleged (mass) graves, the EAAF's work may well represent just the tip of the iceberg.

The EAAF exhumed forty-five skeletal remains from mass graves in Kotebe, Butajira and Alaba-Kulito.¹¹⁰ However, its work was aimed more at producing forensic evidence for the SPO than at unearthing and identifying as many human remains

as possible. In Kotebe, where four mass graves were identified in the Dergue's military intelligence compound, only one was opened by the EAAF, apparently because it was presumed to be the one with respect to which the SPO had ante mortem information on the identity of the victims.¹¹¹ Apart from conducting exhumations, the EAAF was also called upon to assist the SPO's war crimes investigation, following which it examined ballistic and explosives fragments recovered from graves in Hawzein.¹¹²

Overall, what the SPO referred to as 'project ascension' did not generally help the families of the victims to know with certainty what had happened to their loved ones, as identifications in the great majority cases were conducted unprofessionally, without the help of forensic anthropologists. Corpses were identified based on eye-witness accounts and traditional methods (such as recognition of clothes and jewellery).¹¹³ Apparently due to a lack of funds, the EAAF conducted an identification process only in the Kotebe case, and discontinued the training of a local forensic team.¹¹⁴

Conclusion: judicial responses in prosecuting and punishing violence involving the dead

Since the entry into force of the 1957 Penal Code, Ethiopian criminal law has comprehensively proscribed violence against the dead.¹¹⁵ Aside from its domestic legislation, Ethiopia is bound by various international treaties, including those governing armed conflicts namely, the 1949 Geneva Conventions and their Additional Protocols I and II, which contain provisions on the treatment of the dead.¹¹⁶

Further, and even though Ethiopia is not a party to the Rome Statute of the International Criminal Court (ICC), which protects the dead from outrages against personal dignity,¹¹⁷ its legislation none the less contains a similar provision. Under Article 287 of the 1957 Penal Code (PC) (now Article 275 of the 2004 Criminal Code¹¹⁸), which deals with the treatment of the dead *in time of war and contrary to public international law and humanitarian conventions*, it is a punishable criminal offence to order or commit an act of mutilation or violence against a dead enemy on the battlefield. The importance of the nexus to armed conflict is perhaps more visible when it comes to punishment and sentencing. When committed in peace time, such acts are punishable with simple imprisonment¹¹⁹ or a fine. When committed in war time, however, they could carry the death penalty.¹²⁰

Still, the SPO has not prosecuted violence using the dead. With respect to violence against the dead, the SPO cases are largely silent, except in the case of *Gesege Gebremeskele Ateraga et al.*, where the indictment contained separate charges regarding 'outrage on the repose and dignity of the dead' in violation of Article 487 of the PC.¹²¹ None the less, the SPO cases have recorded violence involving the dead through the extensive use in the indictments of the phrase 'killed at unknown places'. The use of this phrase was also a ground for preliminary objection, raised by the defendants, that it rendered the indictment vague in a manner that would diminish their right to adequately defend themselves.¹²² However, courts considered the indictments to be sufficiently clear, given: (i) the complexity of

the SPO cases, (ii) the length of time elapsed since the crimes were perpetrated and, most importantly, (iii) that details would be established in evidence during the trial.¹²³

Notwithstanding, no forensic evidence was presented by the SPO to establish the whereabouts of the deceased, except in *Tesfaye Woldesellassie Eshetie et al.*¹²⁴ In this case, experts from the EAAF testified during the trial by displaying eleven skeletons, positively identified out of the thirty bodies exhumed from the Kotebe gravesite.¹²⁵ It was reported that ‘this trial was the *first* time that physical evidence from forensic anthropology and archaeology was displayed *in a local courtroom*’.¹²⁶ Beyond establishing the identity of the deceased, the EAAF explained to the court the causes and circumstances of the deaths of all of the thirty victims.¹²⁷

It is, however, not fully clear how much probative value was attached to the EAAF’s testimony. The court simply stated that ‘the experts attested that their finding is beyond reasonable scientific doubt and convincing’, without clearly indicating whether it actually agreed with their assertion.¹²⁸ Therefore, as far as murder victims were concerned, the Dergue trials have largely dealt with what can be characterised as the cases of ‘*disappeared deceased*’, which, unlike the case of *disappeared persons*, whose fate is unknown, refers to dead persons whose bodies have never been found.

It was at the sentencing stage that Ethiopian courts paid considerable attention to the Dergue’s violence involving the dead. At this stage, the violence was cited as an aggravating factor in determining punishment, to the extent that several defendants were sentenced to death.¹²⁹ In this regard, the most important sentencing judgments of the Federal Supreme Court (FSC) are to be found in *Eshetu Shenkutie et al.* and *Mengistu et al.*¹³⁰ In these cases, the FSC invoked the existence of violence involving the dead in order to impose a total of nineteen death sentences (one in the former case and eighteen in the latter) instead of life sentences imposed by the lower court (FHC).¹³¹

Yet, this does not mean that the sentencing phase of the SPO cases has captured the full context of the Dergue’s violence involving the dead. In fact, Ethiopian courts took this violence into account only when defendants had already been found guilty of the main offences such as aggravated murder, genocide or war crimes. For instance, in *Desta Awulachew Legesse et al.*, where the FHC acquitted two corpse-watchers due to their lack of intent to destroy political groups, neither the prohibition of mourning nor corpse-watching was regarded per se as a criminal offence.¹³² Even in the case of *Geseges Gebremeskel Ateraga*, where a specific charge of outrage on the safe keeping and dignity of the dead was included, the FHC considered it only as an aggravating factor for punishment, thereby discounting the discrete status of the violence as a punishable criminal offence.¹³³

Notwithstanding, it is noteworthy that some courts have attempted to highlight and contextualise the Dergue’s violence against the dead, although finding the right expression was apparently not easy, even for the judges. Court records indicate that judges have struggled to describe the nature and extent of the violence, as it resulted in suffering that has defeated words and imagination. In *Eshetu Alemu*, the FHC asserted that the violence was a ‘savagery that struck the foundations of humanity’.¹³⁴

People were made to 'languish in a misery and terror that will never be removed from the mind', as stated in *Gesege Gebremeskel Ateraga*.¹³⁵

In a more detailed form, the FHC stated in *Melaku Teferra* that the violence involving the dead was 'a misery rained upon the people'.¹³⁶ It noted that the situations caused suffering, albeit silent. In the court's expression, society was forced into 'crying on the inside'.¹³⁷ It also noted that, even if silent, the suffering was not without severe medical consequences. It caused madness, with mothers becoming mentally unstable.¹³⁸ Pregnant mothers were terrified, and shocked into pre-term labour and premature delivery.¹³⁹ Tellingly, as the court recorded, in the outskirts of Gonder, in a place called Azezo where people were executed and buried in mass graves, a person refused to eat a vegetable in a restaurant, uttering with a moan: 'I don't eat the cabbage from Azezo garden. It is a sin for it has grown on human blood, not with rain.'¹⁴⁰

Notes

- 1 The term 'Dergue' is derived from Geez (and Amharic) and literally means 'committee/council'.
- 2 See Provisional Military Government Establishment Proclamation: Proclamation No. 1/1974 *entered into force* 12 September 1974.
- 3 See Proclamation Establishing the Office of the Special Prosecutor: Proclamation No. 22/1991, *entered into force* 8 August 1992, preamble, para 1 (hereinafter the SPO Proclamation).
- 4 *Ibid.*, preamble, para 5.
- 5 See *SPO v. Colonel Mengistu Hailemariam et al.* (Ruling of 21 January 2003), FHC, File No. 1/87, pp. 5–16 (hereinafter *Mengistu et al.*).
- 6 Witness, 'Ethiopia's Red Terror', BBC World Service, available at www.bbc.co.uk/programmes/p04yvlht, accessed 9 July 2017.
- 7 See A. Tiruneh, *The Ethiopian Revolution 1974–1987: A Transformation from an Aristocratic to a Totalitarian Autocracy* (Cambridge, Cambridge University Press, 1993), pp. 64–81.
- 8 *Mengistu et al.* (Revised Indictment of 27 November 1996), pp. 7–9.
- 9 *Ibid.*
- 10 *Ibid.*
- 11 See 'Dem Yazele Dossie' (Special Prosecutor's Office, Final Report, 2010), pp. 187–8.
- 12 *Ibid.*
- 13 *Ibid.*, p. 238.
- 14 *Mengistu et al.* (Appeals Judgment of 26 May 2008), Federal Supreme Court, File No. 30181, p. 95.
- 15 'Dem Yazele Dossie', pp. 284–96.
- 16 *Mengistu et al.* (Revised Indictment of 27 November 1996), p. 46.
- 17 'Dem Yazele Dossie', pp. 284–96.
- 18 *Ibid.*, pp. 434, 437.
- 19 See below.

- 20 *Mengistu et al.* (Revised Indictment of 27 November 1996), pp. 60–95.
- 21 ‘Dem Yazele Dossie’, pp. 393–40.
- 22 *Ibid.*, pp. 344–5.
- 23 *SPO v. Legesse Asfaw et al.* (Sentencing Judgment of 4 April 2008), FHC, File No. 03116, p. 12.
- 24 See *SPO v. Mulatu Negash et al.* (Indictment of 8 February 2000), FHC, File No. 649/89, pp. 2–4; *SPO v. Solomon Negussie et al.* (Indictment of 8 December 1999), Harari Supreme Court, File No. 3/90, p. 36.
- 25 See *SPO v. Melaku Teferra* (Judgment of 11 November 2006), FHC, File No. 03112, p. 38 (hereinafter *Melaku*).
- 26 See *SPO v. Kebede Kibret* (Sentencing Judgment of 14 November 1999), FHC, File No. 917/89, p. 93.
- 27 See Conclusion below.
- 28 ‘Dem Yazele Dossie’, 368–72.
- 29 *Ibid.*, pp. 258, 262–3.
- 30 *Ibid.*, pp. 262–3.
- 31 *Ibid.*
- 32 See below.
- 33 *Ibid.*
- 34 See *SPO v. Eshetu Alemu* (Judgment of 3 May 2000), FHC, File No. 921/89, p. 10; *SPO v. Getaneh Jembere et al.* (Judgment of 16 August 2005), Amhara Supreme Court, File No. 764/94, p. 49.
- 35 ‘Dem Yazele Dossie’, p. 235.
- 36 *Ibid.*
- 37 *Ibid.*
- 38 *Melaku* (Judgment of 11 November 2006), p. 40.
- 39 See *SPO v. Getachew Tekeba* (Indictment of 23 December 1996), FHC, File No. 914/89, p. 3.
- 40 See *SPO v. Nega Tewelde Beyene et al.* (Indictment of 23 December 1996), Amhara Supreme Court, File No. 27/90, p. 6; *Melaku* (Judgment of 11 November 2006), p. 38.
- 41 *SPO v. Legesse Asfaw et al.* (Sentencing Judgment of 4 April 2008), p. 12.
- 42 See *SPO v. Nega Tewelde Beyene et al.* (Indictment of 23 December 1996), p. 6.
- 43 *SPO v. Legesse Asfaw et al.* (Sentencing Judgment of 4 April 2008), p. 12.
- 44 See *SPO v. Mekonnen Gelan et al.* (Indictment of 21 May 2000), SNNPR Supreme Court, File No. 2647/90, p. 25; *SPO v. Mengistu Woldeagegnehu et al.* (Indictment of 21 May 2000), SNNPR Supreme Court, File No. 1404/93, p. 6.
- 45 *SPO v. Eshetu Shenkutie* (Appeals Judgment of 23 March 2007), Federal Supreme Court, File No. 314/89, pp. 23–4; *Melaku* (Judgment of 11 November 2006), p. 38.
- 46 *SPO v. Abera Gobena et al.* (Indictment of 10 October 1999), p. 4.
- 47 *SPO v. Abera Ayalew et al.* (Indictment of 13 September 1999), Amhara Supreme Court, File No. 16/90, p. 20.
- 48 *SPO v. Asamenew Ayele et al.* (Indictment of 9 March 1998), p. 20.
- 49 *Mengistu et al.* (Appeals Judgment of 26 May 2008), p. 95.
- 50 *SPO v. Petros Gebrie et al.* (Indictment of 7 April 2000), p. 8.

- 51 *SPO v. Asamenew Ayele et al.* (Indictment of 9 March 1998), p. 20; *SPO v. Geseges Gebremeskel Ateraga et al.* (Sentencing Judgment of 24 February 2006), FHC, File No. 03099, p. 52 (hereinafter *Geseges et al.*); *SPO v. Feyissa Seboka et al.* (Indictment of 23 December 1996), FHC, File No. 934/89, p. 6; *SPO v. Tadesse Tegene et al.* (Indictment of 3 October 2003), Harari Supreme Court, File No. 5/95, p. 23; *SPO v. Tesfaye Belayeneh et al.* (Indictment of 23 December 1996), FHC, File No. 256/89, p. 12; *SPO v. Teshome Ashinie et al.* (Indictment of 23 June 1992), FHC, File No. 1937/92, p. 22.
- 52 See *Melaku* (Judgment of 11 November 2006), p. 37.
- 53 *Geseges et al.* (Indictment of 21 March 1996), FHC, File No. 03099, p. 20.
- 54 *Mengistu et al.* (Revised Indictment of 27 November 1996), pp. 95–9; *SPO v. Debela Dinsa Wege et al.* (Indictment of 9 November 2000), FHC, File No. 912/89, pp. 5–32.
- 55 See *SPO v. Getachew Tekēba* (Indictment of 23 December 1996), p. 3.
- 56 See *SPO v. Eshetu Shenkutie* (Appeals Judgment of 23 March 2007), pp. 23–4.
- 57 *SPO v. Gebremedehen Berga Barosa et al.* (Indictment of 23 December 1996), FHC, File No. 646/89, pp. 12,14; *SPO v. Elias Tsegaye et al.* (Ruling of 25 November 2000), FHC, File No. 632/89, p. 300.
- 58 *SPO v. Yekunoamelake Gebremariam et al.* (Indictment of 27 December 1999), p. 4.
- 59 ‘Dem Yazele Dossie’, pp. 107–23.
- 60 *Ibid.*
- 61 See *SPO v. Teshome Kebede et al.* (Indictment of 23 December 1996), FHC, File No. 931/89, pp. 1–2; *SPO v. Tesfaye Belayeneh et al.* (Indictment of 23 December 1996), FHC, File No. 934/89, p. 2.
- 62 For a general remark, see ‘Dem Yazele Dossie’ p. 122.
- 63 Affected towns include towns such as Bahir-Dar, Debre-Berehane, Debre-Markos, Dessie, Gonder and Robit. See *Mengistu et al.* (SPO Revised Indictment of 27 November 1996), pp. 90–1; *SPO v. Abera Ayalew et al.* (Indictment of 13 September 1999), pp. 15–17; ‘Dem Yazelew Dossie’ p. 340.
- 64 The following towns can be mentioned: Abomsa, Adama, Assella, Bishoftu, Fiche, Gimbi, Golocha, Iteyya, Jajju, Jimma, Keksa, Mojo, Negelle-Borena, Nekemte, Tumuga, as well as in several towns of the now East and West Harargie zone. See *SPO v. Getahun Zenebe Woldeeslassie et al.* (Revised Indictment of 16 June 1999) FHC, File No. 962/89, pp. 4–5; *SPO v. Ketema Desta Zemedu et al.* (Indictment of 7 December 1999), Oromia Supreme Court, File No. 21/92, p. 10; *SPO v. Sahele Birre et al.* (Indictment of 16 November 1999), Oromia Supreme Court, File No. 17/92, pp. 4–5; *SPO v. Aberra Gobena et al.* (Indictment of 10 October 1999), Oromia Supreme Court File No. 5/92, p. 4; *SPO v. Debebe Hurrissie et al.* (Indictment of 16 November 1999), Oromia Supreme Court, File No. 2/89, p. 20; *SPO v. Hailu Iticha et al.* (Indictment of 20 June 2001), Harari Supreme Court, File No. 4/93/1(00124), p. 7; *SPO v. Girma Sisay Mengesha et al.* (Indictment of 23 December 1996), Harari Supreme Court, File No. 5/90, pp. 37, 40.
- 65 *SPO v. Girma Sisay Mengesha et al.* (Indictment of 23 December 1996), p. 3.
- 66 *SPO v. Solomon Negussie et al.* (Indictment of 8 December 1999), p. 22.

- 67 In this regard, one can mention towns such as Adigrat, Adwa, Aksum, Indebeguna, Maychew, Mehonie Mekelle, Shire and Wukuro. For the relevant SPO cases seen by Tigray Supreme Court, see *SPO v. Aseffa Belaye Gezahegn et al.* (Indictment of 27 December 1999), File No. 6/92, p. 5; *SPO v. Teferra Woldetensaie et al.* (SPO Indictment of 27 December 1999), File No. 1/92, pp. 3,4,15; *SPO v. Dejen Tessema et al.* (Indictment of 27 December 1999), File No. 2/92, pp. 4–8; *SPO v. Desta Tsegaye et al.* (Indictment of 20 September 1999), File No. 1/94, pp. 2–5; *SPO v. Tekleberehane Negash et al.* (Indictment of 22 February 1999), File No. 1/91, pp. 5–8; *SPO v. Debaikew Kebede Kehassay et al.* (Indictment of 27 December 1999), File No. 7/92, pp. 5–8; *SPO v. Yekunoamelake Gebremariam et al.* (Indictment of 27 December 1999), File No. 5/96, pp. 4–9; *SPO v. Yirga Geberehiwot et al.* (Indictment of 27 December 1999), File No. 5/92, pp. 4–8.
- 68 *SPO v. Petros Gebrie et al.* (Indictment of 7 April 2000), p. 8.
- 69 See *SPO v. Asamenew Ayele et al.* (Indictment of 9 March 1998), FHC, File No. 1132/90, p. 19; *SPO v. Desta Awulachew Legesse* (Ruling of 3 January 2002), FHC, File No. 650/89, pp. 11–13; *SPO v. Eshetu Shenkutie* (Appeals Judgment of 23 March 2007), pp. 23–4; *Melaku* (Judgment of 11 November 2006), pp. 36–8.
- 70 *SPO v. Teferra Woldetensaie et al.* (Indictment of 27 December 1999), pp. 3–4, 15; *SPO v. Nega Tewelde Beyene et al.* (Indictment of 23 December 1996), p. 6.
- 71 See *Melaku* (Judgment of 11 November 2006), p. 39.
- 72 See *SPO v. Desta Awulachew Legesse* (Ruling of 3 January 2002), p. 13; *SPO v. Abera Ayalew et al.* (Judgment of 6 October 2006), p. 30.
- 73 *SPO v. Nega Tewelde Beyene et al.* (Indictment of 23 December 1996), p. 6.
- 74 *Geseges et al.* (Indictment of 21 March 1996), p. 120.
- 75 *SPO v. Petros Gebrie et al.* (Indictment of 7 April 2000), p. 11.
- 76 See *SPO v. Debebe Hurrissie et al.* (Indictment of 16 November 1999), p. 23.
- 77 *Mengistu et al.* (Revised Indictment of 27 November 1996), pp. 83–4.
- 78 See National Revolutionary Operations Command Proclamation: Proclamation No. 129/1977, Preamble, para 2.
- 79 *Geseges et al.* (Sentencing Judgment of 24 February 2006), p. 52.
- 80 *Ibid.*
- 81 *Ibid.* See also, *SPO v. Asazenew Bayissa et al.* (Indictment of 23 December 1996), FHC, File No. 643/1989, p. 64.
- 82 *SPO v. Ketema Desta Zemedu et al.* (Indictment of 6 December 1999), p. 10; *SPO v. Teferra Woldetensaie et al.* (Indictment of 27 December 1999), p. 15.
- 83 *Geseges et al.* (Indictment of 21 March 1996), p. 52; *Melaku* (Judgment of 11 November 2006), pp. 36–7.
- 84 *Geseges et al.* (Sentencing Judgment of 24 February 2006), p. 52.
- 85 *Ibid.*, p. 53.
- 86 See *SPO v. Debela Dinsa Wege et al.* (Sentencing Judgment of 11 August 2004), FHC, File No. 912/89, pp. 7–6.
- 87 ‘Dem Yazele Dossie’, pp. 279.
- 88 *Ibid.*, p. 278.
- 89 *Melaku* (Judgment of 11 November 2006), p. 37.
- 90 *Ibid.*, p. 38.

- 91 'Dem Yazele Dossie', p. 434.
- 92 *Ibid.*
- 93 Interview with Mr. Yosef Kiros, the Chief-deputy SPO, conducted 11 November 2017.
- 94 J. Perlez, 'Ethiopia Finds Remains of Emperor', *New York Times*, 18 February 1992, www.nytimes.com/1992/02/18/world/ethiopia-finds-remains-of-emperor.html, accessed 16 November 2017.
- 95 *Ibid.*
- 96 'Dem Yazele Dossie' pp. 434, 437.
- 97 Interview with Mr Yosef Kiros, the Chief-deputy SPO, conducted 11 November 2017.
- 98 The SPO Proclamation, preamble, para 5.
- 99 *Ibid.* p. 437.
- 100 *Ibid.*
- 101 See *Melaku* (Judgment of 11 November 2006), p. 39.
- 102 *Ibid.*
- 103 *Ibid.*, p. 435.
- 104 *Ibid.*, p. 437.
- 105 For other funders, see EAAF, '1996–97 Biannual Report', p. 78.
- 106 *Ibid.*, p. 80.
- 107 See EAAF, '2002 Annual Report: Ethiopia', p. 68, <http://eaaf.typepad.com/pdf/2002/08Ethiopia.pdf>, accessed 20 June 2017.
- 108 See below.
- 109 See EAAF, '1996–97 Biannual Report', p. 119.
- 110 'Dem Yazele Dossie', pp. 393–432.
- 111 *Ibid.*, p. 395.
- 112 EAAF, '1994–95 Annual Report: Ethiopia', pp. 118–19, http://eaaf.typepad.com/ar_1994_1995/Ethiopia_AR_1994.pdf, accessed 29 December 2017.
- 113 'Dem Yazele Dossie', pp. 294–6.
- 114 EAAF, '1996–97 Biannual Report: Ethiopia', p. 81.
- 115 The Penal Code of the Empire of Ethiopia of 1957, Proclamation No. 158/1957, Extraordinary Issue No. 1, of 1957 of the Negarit Gazeta, 23 July 1957, *entered into force* 5 May 1958, Articles 287, 487, 574, 588, 633, 792, 795.
- 116 See Geneva Convention II, Article 15; Geneva Convention III, Article 18; Geneva Convention IV, Article 16; Additional Protocol I, Articles 34(1); Additional Protocol II, Article 8.
- 117 Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, *entered into force* 1 July 2002, Article 8(2)(b)(xxi), footnote 49.
- 118 The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004 *entered into force* 9 May 2005 (hereinafter the FDRE Criminal Code).
- 119 Simple imprisonment (from 10 days to 3 years) 'is a sentence applicable to offences of a not serious nature committed by persons who are not a serious danger to a society'. See the Penal Code of 1957, Art., 105.
- 120 The Penal Code of 1957, Article 287; FDRE Criminal Code, Article 275.

- 121 *Geseges et al.* (Indictment of 21 March 1996), pp. 138–9.
- 122 See for instance, *Mengistu et al.* (Ruling of 10 October 1995), p. 110; *SPO v. Dagnenet Ayalew et al.* (Ruling of 17 January 2000), Amhara Supreme Court, File No. 13/90, pp. 45–6; *SPO v. Demetse Gebremedeheh et al.* (Ruling of 5 January 2000), Amhara Supreme Court, File No. 25/90, pp. 74–7.
- 123 See *Mengistu et al.* (Ruling of 10 October 1995), p. 110.
- 124 *SPO v. Tesfaye Woldesellassie Eshetie et al.* (Ruling of 11 January 2003), FHC, File No. 206/90, p. 35.
- 125 *Ibid.* However, the EAAF’s report indicates that thirteen bodies were identified from the Kotebe site. See EAAF, ‘2002 Annual Report: Ethiopia’, p. 71.
- 126 EAAF, ‘2002 Annual Report: Ethiopia’, p. 66. Emphasis added.
- 127 *SPO v. Tesfaye Woldesellassie Eshetie et al.* (Ruling of 11 January 2003), p. 35.
- 128 *Ibid.*
- 129 *SPO v. Eshetu Alemu* (Sentencing Judgment of 8 May 2000), p. 12; *Melaku* (Judgment of 11 November 2006) p. 39; *Geseges et al.* (Sentencing Judgment of 24 February 2006), p. 43; *SPO v. Kebede Kibret* (Sentencing Judgment of 14 November 1999), p. 93; See *SPO v. Getachew Tekèba* (Indictment of 23 December 1996), p. 53.
- 130 *SPO v. Eshetu Shenkutie* (Appeals Judgment of 23 March 2007), pp. 108–11; *Mengistu et al.* (Appeals Judgment of 26 May 2008), pp. 95–6.
- 131 *Ibid.*
- 132 *SPO v. Desta Awulachew Legesse* (Ruling of 3 January 2002) p. 11.
- 133 *Geseges et al.* (Sentencing Judgment of 24 February 2006), p. 43.
- 134 *SPO v. Eshetu Alemu* (Sentencing Judgment of 8 May 2000), p. 3.
- 135 *Geseges et al.* (Sentencing Judgment of 24 February 2006), p. 52.
- 136 See *Melaku* (Judgment of 11 November 2006), p. 39.
- 137 *Ibid.*
- 138 *Ibid.*
- 139 *Ibid.*
- 140 *Ibid.*, p. 40. Translated by the author from the original Amharic text.