# ECLI:NL:RBDHA:2017:16383

| | |
|---|---|
| Instantie | Rechtbank Den Haag |
| Datum uitspraak | 15-12-2017 |
| Datum publicatie | 02-03-2018 |
| Zaaknummer | 09/748013.12 (engelse versie) |
| Rechtsgebieden | Strafrecht |
| Bijzondere kenmerken | Eerste aanleg - meervoudig |
| Inhoudsindicatie | Unofficial English translation ECLI:NL:RBDHA:2017:14782 (09/748013-12) judgment District Court of The Hague, multiple judge panel of the Criminal Court responsible for cases concerning international crimes.<br><br>Based upon the testimony of a number of witnesses and documents received from the Ethiopian authorities and found in the defendants home, the court has established the involvement of the defendant in the arbitrary detention of over 300 persons in cruel and degrading circumstances, the torture of more than 6 persons and the killing of 75 persons. He ordered the detention and killings and did not stop the torture.<br><br>These crimes were committed in the province of Gojjam, in Ethiopia in 1977/1978, during a civil war between the Derg military regime and opposition movements. The defendant was the highest Derg representative in the province of Gojjam and as such responsible for the elimination of any opposition within the province. It was in this context that he had a large group of mainly teenagers arrested, tortured and killed on the pretext of their affiliation with the EPRP, the main opposition movement in Gojjam at the time.<br><br>The court has granted the claims for non-material damages, except for one plaintiff who was not herself a direct victim, but whose brother was killed by order of the defendant. Dutch law does not allow for next of kin to claim non-material damages.<br><br>The court has sentenced the accused to life imprisonment.<br><br>War crimes, elements of crimes, arbitrary deprivation of freedom, detention coditions, torture, killing, use of witness statements. |
| Vindplaatsen | Rechtspraak.nl |

# Uitspraak

**DISTRICT COURT OF THE HAGUE**

Criminal law

Multiple judge panel of the Criminal Court responsible for cases concerning international crimes

Public Prosecutor's office number: 09/748013-12

Date judgment: 15 December 2017

Defended action

**(Promis judgment)** [1]

Based on the indictment and the examination in court the District Court of The Hague has delivered the following judgment in the case of the Prosecutor against the accused:

*[judgment according to the project for improved statement of grounds in criminal judgments]*

[**Eshetu A.]**,

born in [place of birth] on [day of birth] 1954,

residing at [city],

currently detained in the penitentiary institution "Krimpen aan den IJssel" in Krimpen aan den IJssel, the Netherlands.

**Name of the investigation: Merens**

**Structure of the judgment**

The judgment is structured as follows:

## 1 Introduction

### 1.1 Preamble

The accused stands trial for involvement in war crimes, committed in Ethiopia during the period from 1 February 1978 up and until 31 December 1981. War crimes are serious infringements of the humanitarian law of war, which sets out a minimum standard for the treatment of protected persons, to be observed by each of the factions involved in an armed conflict. In this context it does not matter which faction should be labelled as the aggressor in the conflict and it also irrelevant whether the opposite faction has respected the rules of the humanitarian law of war. Any person committing a serious violation of the humanitarian law of war can be criminally prosecuted for this, regardless of the side on which he fought.

The fact that the accused was a member of the Derg, later renamed the *Provisional Military Administrative Council* (hereafter: PMAC), was not up for discussion during the trial. Neither was the existence disputed, of (armed) resistance against the Derg from numerous groups during that period. During the examination in court the accused has brought up a lot about the horrors, the backgrounds and the complexity of the conflict in Ethiopia during that period and the violence he says the Derg were faced with. However in this criminal case the Court will only pass a judgment on the question whether or not the accused can be found guilty of the serious violations of humanitarian law of war mentioned in the indictment and, if so, what would be the eventual punishment he deserves for this. However the Court will explicitly not express an opinion on the question which of the factions should go down in history as the one who had the right on their side.

1.2 The Ethiopian calendar

Ethiopia uses a calendar based on the Coptic calendar, while the western world uses a Gregorian calendar. The Coptic calendar had twelve months of thirty days and a thirteenth month of five or six days, depending on the fact if the year in question is a leap year. Because of the use of these different calendars there is a difference of seven or eight years in which the Gregorian calendar is ahead of the Coptic one. Under the Coptic calendar the New Year starts on the first of September, while this happens on the 11th of September under the Gregorian calendar.

The thirteen Ethiopian months have the following names:

Meskerem (11 September up to 10 October)

Tikimt (11 October up to 9 November)

Hidar (10 November up to l 9 December)

Tahsas (10 December up to 8 January)

Tir (9 January up to 7 February)

Yekatit (8 February up to 9 March)

Megabit (10 March up to 8 April)

Miyazia (9 April up to 8 May)

Ghinbot (9 May up to 7 June)

Sene (8 June up to 7 July)

Hamle (8 July up to 6 August)

Nehassie (7 August up to 5 September)

Pagume (6 September up to 10 September, eventual leap year)

From Meskerem 1 until Tahsas 22 (11 September up to 31 December) the difference is seven years. From Tahsas 23 up to Pagume 5 or 6 (1 January up to 10 September) the difference is eight years. During a leap year the date of 29 February appears in the Gregorian calendar. This coincides under the Gregorian calendar with Yekatit 22. The date 1 March then becomes Yekatit 23. All days under the Coptic calendar move one day until Pagume 6 is reached.

Whenever the dates mentioned in the present judgment are under the Ethiopian calendar this is indicated behind the date (E).

1.3 The spelling of names

There are a lot of names mentioned in the file. These are Ethiopian names which where originally written in the Amharic language. The Court wants to emphasize that in case of a translation of names from one spelling into the other (as in the present case from Amharic into Dutch) the spelling of the names will necessarily be phonetic. The Court has established that some of the names in the Dutch translation of the name lists, are spelled in different ways in the case-file (for

example [person 322] and [person 322, different spelling]) and also that this spelling is sometimes not the same as the spelling used in the witness statements, although the witness does say that he or she recognises the names. For every discrepancy the Court has assessed if this discrepancy can be accounted for by the translation or if there is doubt whether the different spelling actually refers to the same person. For every indication in the judgment that a certain person was mentioned or recognised, the Court has made this assessment and found that the sound of the name was so similar that the discrepancy in spelling could be accounted for by the translation.

### 1.4 References

In this judgment reference will be made to statements during the hearing in court, official reports and other documents in writing. This reference will be made in the following manner in footnotes, where evidence is concerned.

If it concerns a police-report this is always an official report drawn up by one or more criminal investigation officers in compliance with all legal requirements. Therefore the reference will be 'police-report of....'; the dots will state what kind of police-report it concerns (for example a witness interrogation or an armed conflict) and on which page of the criminal case file the reference is made.

Furthermore, in case of an official report of a witness examination the name of the witness will also be mentioned.

If this concerns a witness statement during the hearing in court the reference will be 'statement of the witness, made during the hearing on court on....' the dots will state the date of the court hearing when the statement was made.

If this concerns a document this is always an attachment to an official report of the hearing in court or an official report some other document drawn up by the police or the Prosecution Service. The reference will then be that is stated 'document, being an attachment to document....' the dots will state the number or the attachment/document, the official report or document it is attached to and (if included in the criminal case file) the page of the criminal case file this annex or document can be found. In case the document is literature there will be always a complete reference to the publication, as much as possible according to the guideline for legal authors.

Where documents in the Amharic language are concerned, the Court will always refer to the lists that were translated into Dutch. However the Court will use this translation as evidence that should be evaluated in an interrelated context with the official report of findings of 41 pages in the Amharic language (page 950-955).

When it concerns an official report drawn up by an examining magistrate and with one or more registrars this is always an official report drawn up in compliance with all legal requirements by an examining magistrate of the District Court of The Hague responsible for hearing criminal cases and one or more registrars. When it concerns an official report of an interrogation by an examining magistrate the reference will be 'official report of witness interrogation....by the examining magistrate': the dots will state the name of the witness or the export who was interrogated and the paragraph number of the official report of interrogation where the statement can be found.

When it concerns the report of an expert the reference will be that ' report....' the dots will state the name of the expert and the page of the report.

Besides, there are page numbers between parentheses in several places. These are not evidentiary materials but are intended as a guide for the reader who has a copy of the criminal case file.

This judgment also contains references (mainly in the frames of reference) to literature and case law. These references are made by endnotes. References to literature and case law are made as much as possible according to the guidelines for legal authors.

### 1.5 Use of the English language

Because of the international nature of the charges against the accused the Court frequently uses quotations and terminology in English in this judgment;

## 2 The charge

The accused stands trial for involvement in war crimes allegedly committed in Ethiopia during the period from 1 February 1978 up and until 31 December 1981. These facts are described in the amended indictment, which is attached to this sentence as annex 1.

The charges against the accused are, briefly stated, the following:

*Count 1: Deprivation of freedom and inhuman treatment during the period from 1 February 1978 up and until 31 July 1978.*

The accused allegedly subjected 321 persons in Debre Marcos and/or Metekel to cruel and inhuman treatment, pronounced sentences against them without prior prosecution and trial by an independent court and arbitrarily deprived them of their freedom. This fact was charged in the modes of co-perpetration, deliberately allowing as a superior and complicity.

*Count 2: Torture during the period from 1 February 1978 up and until 1 September 1978.*

The accused allegedly tortured nine persons who were held in detention. This offence is charged in the modes of co-perpetration, deliberately allowing as a superior and complicity.

*Count 3: The killing of 75 persons during the period from 14 August 1978 up and until 17 August 1978.*

The accused allegedly ordered the killing of 75 persons who were imprisoned in Debre Marcos and/or Metekel. This offence is charged in the modes of co-perpetration and incitement.

*Count 4: Deprivation of freedom and inhuman treatment during the period from 1 August 1978 up and until 31 December 1981.*

The accused allegedly subjected 240 persons to cruel and inhuman treatment in Debre Marcos en/or Metekel in a way described as under count 1. This offence was charged in the modes of co-perpetration, deliberately allowing as a superior and complicity.

The war crimes charged to the accused are defined in the articles 8 (old) and 9 (old) of the Dutch Criminal Law in Wartime Act *[Wet Oorlogsstrafrecht]* (hereafter: 'WOS').

## 3 The investigation

### 3.1 The criminal investigation

On 13 June 1998 the Dutch magazine *Vrij Nederland* published an article called: "Oorlogsmisdaden, Ethiopische beul is ondergedoken in Nederland" *["War crimes, Ethiopian executioner hiding in the Netherlands"]* The article said that during the Mengistu regime (Derg regime) in Ethiopia in 1978, a person named [Eshetu A.] had signed lists of names of persons that were executed or sentenced to prison with hard labour (see page 416-420).

The former National Criminal Investigation Service *[Dienst Nationale Recherche]* of the Dutch National Police Force (hereafter: NR), which is now the Team International Crime of the Dutch National Criminal Investigation Service (hereafter: DLR), carried out an investigation on the basis of media publications to see if any other information could be found pointing to the alleged involvement of the accused during the period mentioned in the article.

In a report of *Human Rights Watch* from 1994 called *Ethiopia Reckoning under the Law* reference is made to crimes committed by the Derg-regime:

*"During the Derg period, warfare continued and expanded throughout Ethiopia. The Derg regime continued and intensified the war in Eritrea and also fought a conventional war against Somalia, in 1977-78, when Somalia invaded and claimed the Ogaden region. The Derg also fought against ethnic-based insurgencies in nearly every part of the country– especially Tigrayans in the north, and Oromos and Somalis in the south and east. All of these wars were marked by widespread human rights and humanitarian law abuses against civilians." (…)"These abuses included not only isolated massacres perpetrated by individual military units, but a systematic and general policy of terror and destruction aimed at the civilian population. The government's counter-insurgency measures included mass killings of villagers by the army, the bombing of villages and market towns, killing of livestock, poisoning of wells, and forcible relocation of much of the rural population."* (see p. 465)

When a police officer made a query on the Internet this resulted in two documents in which reference is made to a death sentence in absence of the accused because he was allegedly responsible for the death of a large number of persons during the former regime of Mengistu Haile Mariam. The accused was allegedly a *senior official* during this regime. The referred documents are:

*"IRIN Africa ETHIOPIA: Absent official sentenced to firing squad. A senior official from Mengistu Haile Mariam's former regime was on May 8 (no year) sentenced to death 'in absentia' for the execution of 197 people. Lieutenant* [Eshetu A.] *was serving as a member of the Provisional Military Administrative Council for Gojjam. According to the court, the convict should be executed by firing squad."* (see page 484); and

*"Apanews, Ethiopia-Mengistu-Sentence, 11-1-2007: Former Ethiopian dictator Mengistu Haile Mariam and top officials of his regime were on Thursday sentenced to life imprisonment by an Ethiopian court (…) The court, however, ordered that the death penalty sentences it had previously passed, to remain against four accused, including (…)* [Eshetu A.]*."* (see p. 486)

On 8 October 2009 a public prosecutor of the Dutch National Prosecution Service issued a written request for judicial assistance to the Ethiopian authorities. After this the criminal investigation came to a standstill because the material that was promised during an execution mission, was not provided.

On 3 July 2012 the investigation into possible involvement of the accused was reopened under the working title 'Merens' and the Public Prosecutor sent an official reminder of the request for judicial assistance issued in 2009.

On 12 April 2013 a criminal investigation officer in Addis Abeba received a set of 41 pages in the Amharic language from the hands of mister [person x], [function person x] in Addis Abeba and [person y], [function person y] in Addis Abeba. [person x] and [person y] said that these were copies of documents used in the Ethiopian criminal proceedings against the accused. The criminal investigation officer numbered the pages from 1 to 41 according to the order of the pages upon receipt (see page 907-908 and 910-949).

The texts in the Amharic language were translated into Dutch. In the written translation the page numbers are displayed above the translated text on the right-hand side. (see page 950-955 and 957-1003).

On 24 October 2013, with the authorisation of Mr. [person z], [function person z] Dutch investigation officers were allowed to photograph other parts of the Ethiopian criminal case file against the accused. (see page 1195-1196 and 1198-1371).

These pages of the case documents were translated into Dutch and classified with the aid of an interpreter. In the translation the interpreters have changed the dates in the text to the Gregorian calendar (see page 1372-1376 and 1377-1789).

On 16 July 2012 the file of accused was received from the Dutch Immigration and Naturalisation Service (hereafter: IND) (see page 652-658, 660-664 and 666-885).

On 8 May 2015 the Ethiopian authorities have expressed that they no longer wished to cooperate with the Dutch criminal investigation (see page 94 and 97).

The NR and DLR heard sixteen witnesses in the United States of America, Canada and the Netherlands, who were in the prison in Debre Marcos during the Megistu regime or who are surviving relatives of people who were killed. Also the ex-wife and the son and daughter and some old acquaintances of the accused were heard. The NR also heard [person 328], who was mentioned in the article in the magazine *Vrij Nederland*.

During the investigation against the accused special methods of investigation have been deployed. The telephone of the accused was tapped during several periods of time and in the context of the systematic gathering of information a series of conversations took place between the accused and a police officer who was not recognisable as such, and who worked for the undercover team of the department for shielded operations.

On 29 September 2015, the accused was arrested by order of the public prosecutor of the National Public Prosecutor's Office. Directly after this the house of the accused was searched. During this search, inter alia, photo albums, photos, books, a military identity card, attestations, magazines and distinguishing signs were seized (see pages 210-211 and 224-226). On the same day the accused was taken into police-custody. On 2 October 2015 the examining magistrate placed the accused in pre-trial detention.

After this and parallel to the investigation by the examining magistrate, the DLR continued the criminal investigation. This investigation included, among other things, the interrogation of the accused and an analysis of the seized items and documents that had, in some other way, become available in the course of the investigation.

### 3.2 The investigation by the examining magistrate

On 9 December 2015 the examining-magistrate had pre-trial meeting with the public prosecutors and the defence lawyers, to discuss the wishes for further investigation on which the examining-magistrate had to decide. The records of these pre-trial meetings and the decisions of the

examining-magistrate are in the case-file. The official reports of findings and the actions of the examining magistrate are also in the case-file.

The examining-magistrate appointed Mr. W.C. de Jong, forensic expert in graphology, as expert and instructed him to carry out a forensic graphology examination. He submitted his report on 28 June 2016, and was examined as an expert-witness on 28 June 2016.

After a joint nomination of the Prosecution Service and the Defence the examining magistrate appointed professor G.J. Abbink as expert to report on the different

aspects of the conflict. Professor Abbink was also examined as a witness-expert by the examining magistrate after submitting his report. This examination took place on 8 November 2016.

After the examination of the witness-expert Abbink the Defence requested on 9 November 2016 to appoint a new expert since Abbink, in the opinion of the Defence, had created an appearance of impropriety or bias, because he allegedly commented on the matter of guilt. The Prosecution Service submitted a written response to this request.

In the decision of 14 November 2016, the examining magistrate declined this request because in her opinion it was not in the interest of the investigation to appoint a new expert.

The first preliminary hearing of the trial against the accused took place on 7 January 2016. On that occasion the Court handed over the documents to the examining magistrate 'to do whatever the examining magistrates deems useful and desirable'. During the following preliminary hearings the (progress of the) investigation by the examining magistrate was discussed. During each of those hearings the Court has handed over the documents to the examining magistrate with the same 'open referral'.

Up to mid November 2016 the examining magistrate had examined, besides the experts De Jong and Abbink, a total of eighteen witnesses. Fifteen of the witnesses were Ethiopian witnesses that were victims or surviving relatives of victims of the alleged conduct of the accused. All of these witnesses had also been heard either by the NR or the DLR. During a rogatory commission to the United States of America ten witnesses were heard. Four witnesses were heard in Canada. The [function person y] [person y], witness [person 329] and witness [person 321, different spelling] were heard in the Netherlands. In the Netherlands the examining magistrate also heard the verbalising officer working under number A-3751, who gathered systematic information in the investigation against the accused. Some Ethiopian witnesses were heard in their native language, Amharic, with the aid of an interpreter. Other Ethiopian witnesses were heard in English, also with the aid of an interpreter. All the official records of the examinations present a factual presentation of the interrogation. The person who was quoted in the article in the magazine *Vrij Nederland* indicated that he did not want to be further examined by the examining magistrate after a prolonged hearing by the NR. After hearing the arguments of both parties, and considering the state of the witness and the fact that he was not a direct eyewitness, the examining magistrate decided to cancel the examination. An official report was drawn up to record these actions and findings.

On 15 November 2016 the examining magistrate decided that the investigative activities had been completed and closed the investigation. The examining magistrate submitted a folder containing all documents regarding the investigation carried out by the examining magistrate.

On 16 February 2017 the Court declined a large number of requests for witnesses from the Defence. The case was referred again to the examining magistrate to handle the requests for witnesses that had been granted by the Court.

On 18 April 2017 the examining magistrate examined witness [person 330]. On 25 August 2017

the examining magistrate examined witness [person 319, different spelling] in the United States with the aid of a psychologist. The other assigned witnesses could not be examined. This concerned Mengistu Haile Mariam, some witnesses who were hard to identify and the witness [person 331]. Later, on 30 October the Court rejected the examination of these witnesses, since it was considered unlikely that they would appear at the hearing in court within an acceptable time span.

3.3 3.3 The examination in court

Court hearings - of a preliminary nature - where held on 7 January 2016, 31 March 2016, 28 June 2016, 22 September 2016, 21 November 2016, 9 January 2017, 12 May 2017 and 9 August 2017.

The court hearings dealing with the substance of the case were originally scheduled to start on 21 November 2016. However, on 15 November 2016 the Court was informed that there had been a breach of confidence between the accused and his legal counsellors, and that the accused had now obtained the counsel of Mr. S. Arts and F.J.V.H. Stoffels, lawyers in Breda and Zevenbergen respectively. This led to a delay.

The court hearings dealing with the substance of the case began on 6 February 2017, with the examination of the expert witness Abbink. This examination had the nature of a preliminary hearing to discuss the investigation wishes of the -new- Defence. The decision about these wishes for investigation was communicated at the hearing on 16 February 2017.

The court hearings dealing with the substance of the case were then continued during the continuous hearings of 30 and 31 October, 2, 7, 8, 13, 14, 15, 16 and 17 November 2017.

The investigation was closed at the hearing of 1 December 2017.

Prior to 15 November 2016 the accused had been assisted by his legal counsellors J.J. Eizinga, lawyer in Amerongen, and S. Dogan, lawyer in Utrecht, and from this date onwards he was assisted by the afore mentioned legal counsellors Arts en Stoffels. With the exception of 15 November 2017, the accused has appeared and was heard at court hearings dealing with the substance of the case.

The Court has taken cognizance of the demand of the public prosecutors N.H. Vogelenzang and A.J. van Dooren and of what was put forward by the legal counsellors of the accused and by the accused.

The following aspects of the substance of the case should be mentioned or briefly discussed.

*Challenging of the Court*

After the preliminary hearing of 12 May 2017 the Court was challenged by the accused. The special judiciary panel for challenges of the court *[wrakingskamer]* ruled on 23 June 2017 that the request of the accused was not admissible. The accused lodged an appeal in cassation against this decision. Notwithstanding the ongoing appeal in cassation the Court continued the investigation on the basis that article 515, section five, of the Code of Criminal Procedure determines that there is no legal recourse against decisions on challenging and the Court was therefore not under challenge. In its ruling of 23 June 7 November 2017 the Supreme Court of the Netherlands dismissed the appeal in cassation of the accused as inadmissible for the reason mentioned before.

*Position of the Defence*

From the perspective that the criminal proceedings are void since the Court was supposed to be under challenge before the ruling of the Supreme Court and/or because there was no fair trial, the Defence decided to conduct a partial defence

*Injured parties*

As injured parties have joined [person 332] (sister of [person 4], mentioned as number 4 in the

charges under count 1 and as number 1 in the charges under count 3), [person 321, different spelling] (mentioned as number 321 in the charges under count 1 and number 240 in the charges under count 4), [person 111, different spelling] (mentioned as number 111 in the charges under count 1 and number 30 in the charges under count 4), [person 174, different spelling] (mentioned as number 174 in the charges under count 1 and number 93 in the charges under count 4), [person 315] (mentioned as number 315 in the charges under count 1, under number 7 in the charges under count 2 and under number 234 in the charges under count 4) and [person 316] (mentioned as number 316 in the charges under count 1 and number 235 in the charges under count 4). They have each submitted a claim for compensation of immaterial damages for an amount of € 226,89. G. Sluiter and B. van Straaten, who are both lawyers in Amsterdam, assisted all these persons.

*Right to speak*

[person 332], [person 315], [person 174, different spelling], [person 333] (cousin/nephew of [person 4] afore mentioned and brother to [person 334] who is not mentioned in the indictment) and [person 317] (mentioned as number 317 in the indictment under count 1 and number 236 of the indictment under count 4) exercised their right to speak during the hearing of 2 November 2017. During the same hearing G. Sluiter, exercised the right to speak, as authorised legal counsel, on behalf of [person 111, different spelling] and the afore-mentioned [person 316].

The right to speak was introduced in 2005 in Dutch criminal procedure to allow victims and surviving relatives the possibility to tell the Court what the consequences of the committed criminal offences have been for them. Since then the circle of people and the scope of the right to speak have been extended, the last time on 1 April 2017. For the sake of completeness the Court recalls that article 21a of the Law on International Crimes *[Wet internationale misdrijven]* (hereafter: 'Wim'), entered into force on a April 2012, which determines -insofar as relevant to this case- that in case of criminal persecution for one of the crimes described in the 'WOS', committed before 1 April 1995, the provisions of the Code of Criminal Procedure regarding the victim shall apply. Therefore, the mentioned victims had the right to speak under the provisions of (the current) article 51a, first paragraph opening sentences and under a. and b. juncto, the articles 51c and 51e of the Code of Criminal Procedure.

## 4 The admissibility of the Prosecution Service

### 4.1 Introduction

The Defence argued that the Prosecution Service should be barred from criminal prosecution for several reasons.

Regarding this defence the Court considers that in article 359a of the Code of Criminal Procedure the intended effect of a declaration of inadmissibility is reserved only for exceptional circumstances. This sanction is only appropriate in case of a gross violation of the principles of due process by which intentionally or with huge disregard for the interests of the defendant, his right to a fair trial was violated. (the Zwolsman criterion). This means that it should be established not only that there was a procedural error but also that the interests of the accused have been aversively affected by this error and that the right of the accused to a fair trial has been wronged intentionally or by gross negligence of these interests. In very exceptional cases the Prosecution Service can be barred although they cannot be blamed and the rights of the accused have not actually been violated. This circumstance occurs when the core of the legal order is touched by a gross violation of a fundamental principle such as the right to due process (the Karman criterion).

The Court considers that if the Defence claims that there was a procedural error as referred to in article 359a of the Code of Criminal Procedure, then the Defence should clearly motivate why a presumed procedural error should lead to a (in this case, the ultimate) legal

consequence. Only on such defence the Court is obliged to give a motivated ruling. In the opinion of the Court the Defence failed to provide this. It is hard to discern a structure in the counsel's speech; complaints possibly referring to the (non) admissibility are set out under the heading 'repeated witness requests' and it is hardly possible to identify a clearly substantiated position. The points of criticism rarely convey with sufficient clarity which actual provision is supposed to be infringed, how serious the supposed procedural error is, if this resulted in an actual disadvantage and if so, what this disadvantage is. Therefore the counsel's speech is not substantiated according to the applicable standards and for this reason a dismissal of this claim is to be expected. The claim of infringement of Karman-criterion is not (properly) substantiated and therefore might face the same fate.

However, given the interest of the accused and the importance of this case the Court will respond. The Court interprets the defence regarding the procedural error in the following manner. After the release of the article on the accused the Prosecution Service has been sitting on its hands for too long. According to the Defence this irreparably impaired the rights of the accused. The accused has not, or not timely, been able to interrogate witnesses and has not been able to submit questions regarding the investigation to the Ethiopian authorities. Now the accused is faced with the fact that Ethiopia no longer wishes to cooperate. If the accused had been able to exercise his defence rights on time then the memory of the witnesses might have been less adversely affected or the witnesses might have influenced each other less. By providing selective information to the Canadian authorities the Prosecution Service seriously impaired the possibility to examine a witness in Canada [person 331], which had been allowed by the Court. Because of this the Canadian authorities refused to cooperate in the hearing of this witness by the examining magistrate.

The position of the Defence was, briefly stated, that all these circumstances constitute a serious violation of the principle of due process by which the interests of the accused have been aversively affected and that the right of the accused to a fair trial has been wronged intentionally by or gross negligence of these interests

Alternatively the Defence argues that there is such a gross violation of a fundamental principle of a due process, that this touches the hart of the legal system (Karman criterion). According to the Defence this violation should also lead to a declaration of non-admissibility. The Court understands that the Defence in this context refers to a criminal case file, which is considered unbalanced, one-sided and in which exculpatory investigations have not been included.

4.2 The position of the Prosecution Service

The Prosecution Service argued that nothing indicates an intentional delay of the investigation from the side of the Prosecution Service. According to the Prosecution Service the Defence has rightly pointed out that a lot of time passed between the article in the magazine *Vrij Nederland* and the arrest of the accused. It cannot be established if Ethiopia, should the investigation against the accused have started earlier, would have cooperated in the examining of the witnesses there. It was a decision of the Canadian authorities not to cooperate with the interrogation of [person 331]. The claim that this would be a violation of the Karman criterion has not been substantiated at all. The Prosecution Service concluded that this defence should be rejected.

4.3 The opinion of the Court

The Court observes, together with the Defence and the Prosecution Service that a large period of time has elapsed between the release of the article and the start of the criminal investigation. However, the statement that the police or the Prosecution Service intentionally or by gross negligence of the interests of the accused would have stalled in order to compromise his right to a

fair trial, has not been substantiated or become apparent. The assumption that the Ethiopian authorities would have rendered full cooperation if the investigation had started earlier is based on speculation. Moreover at that time the criminal proceedings against the accused had already started in Ethiopia (the indictment against the accused is dated 23 December 1996). The reasons why the Ethiopian authorities in the end refused to cooperate therefore already existed. The allegation that the Prosecution Service would have sabotaged the possibility to hear this witness by informing the Canadian authorities about the mental condition of the witness [person 331], is based not only on an incorrect account of the comment on this subject of public prosecutor Vogelenzang at the hearing on 30 October 2017, but is also contradicted by the content of the e-mail which the examining magistrate received from the Canadian authorities. This e-mail shows that the Canadian authorities, based on their own investigation and findings, concluded that the witness suffers from PTSS, and for this reason the further execution of the request for judicial assistance was refused. In the opinion of the Court there is therefore no procedural error as referred to in article 359a of the Code of Criminal Procedure.

The Court is of the opinion that sufficient effort was made by the Prosecution Service to make the investigation as wide-ranging as possible by also hearing possibly exculpatory witnesses like the ex-wife and the (former) friends of the accused. The refusal of the Ethiopian authorities at some point in time to allow further investigation in their country is not something that can be held against the Prosecution Service.

Furthermore, the Court has not been able to determine a violation of such a fundamental principle of the right to due process as to touch the hart of the legal system, let alone a gross violation.

Therefore the Court dismisses this defence.

## 5 Applicable law

*Article 8 (old) and 9 (new) of the 'WOS'*

At the time of the facts mentioned in the indictment war crimes were criminalised, inter alia, in article 8 (old) of the 'WOS' and the superior responsibility in article 9 (old) of the 'WOS'. The text of Article 8 (old) and 9 (old) of the 'WOS' was:

Article 8

1. *Anyone who commits a breach in the laws and practices of war shall be liable to a term of imprisonment of not exceeding ten years.*
2. *A term of imprisonment not exceeding ten years shall be imposed:*

*1°. If the act is likely to cause the death or serious bodily harm to another person; 2°. If the act involves inhuman treatment;*

*3°. If the act involves forcing another person to do, omit or tolerate something;*

*4°. If the act involves plundering.*

3. *Death penalty, life imprisonment or a term of imprisonment not exceeding twenty years shall be imposed:*

*1°. If the act results in the death or serious bodily injury to another person or involves rape;*

*2°. If the act involves violence committed jointly and in conjunction with others against one or more persons or violence against a dead, sick or injured person;*

*3°. If the act involves destroying, damaging, rendering unusable or removing, goods, belonging entirely or*

*partially to another person;*

*4°. If the act, referred to in the preceding paragraph under 3° or 4°, is committed in association with others;*

*5°. If the act is an expression of a policy of systematic terror or wrongful actions against the entire population or a specific group thereof;*

*6°. If the act involves breaking a promise, or constitutes a breach of an agreement entered upon with the opposing party as such;*

*7°. If the act involves making improper use of a flag or emblem or the military insignia or the uniform of the opposing party, protected by the laws and customs of war;*

Article 9

*A superior shall be liable to the penalties prescribed for the offences referred to in the preceding article if he intentionally permits the commission of such an offence by a subordinate.*

The possibility of a pecuniary sanction was added to the first, second and third paragraph of article 8 (old) of the 'WOS', by the law of 10 March 1984 (*Official gazette*. 91, Law on classification of pecuniary sanctions and fines). The possibility of the death penalty was removed by the law of 14 June 1990 (*Official gazette*. 369)

As from 1 October 2003 article 8 (old) of the 'WOS' was replaced by the articles 5, 6 and 7 of the 'Wim' and article 9 (old) of the 'WOS' by article 9 of the 'Wim'. This resulted in a change in legislation. According to article 1, second paragraph of the Criminal Code, if there is a change in the legislation after the offence has been committed the most favourable provisions for the accused shall apply. However the re-codification of the 'WOS' to 'Wim' is not due to a changed perception of the legislator of the punishable offences. Neither is a changed perception reflected in the eventual penalty, which in the 'Wim' is not really different from the 'WOS' and has been based on the grounds for an increase in penalty laid down in the 'WOS' .[2] Furthermore, in judgments from this Court and the Court of Appeal of the Hague it has been established many times that article 1, second paragraph of the Criminal Code is not applicable in this context[3]. Of course this is not the case for the afore-mentioned changes in the 'WOS', in which the possibility of a pecuniary sanction was added and the death penalty was removed.

*The term 'the laws and the customs of war'*

The immediate cause for the criminalisation of crimes of war in the 'WOS' in the early fifties were the four Geneva Conventions of 1949 which determine the rules of humanitarian law in times of an armed conflict (hereafter: GC I, GC II, GC III, GC IV). In these conventions the central issues are the different categories of protected persons during an armed conflict. These categories are the wounded and sick in armed forces in the field (GC I), sick and shipwrecked members of armed forces at sea (GC II), on the treatment of prisoners of war (GC III), and civilian persons in time of war (GC IV) respectively [4].

The Geneva conventions fully apply to the international armed conflicts and partially to non-international conflicts. These four conventions contain an article 3, which is the same in all conventions. This is the so-called common article 3 (hereafter: common article 3). The common article 3 contains minimum standards of behaviour which warring parties in a non-international conflict should comply with.

The common article 3 is as follows:

*In the case of armed conflict of a non-international character in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*

*1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded*

*on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*

*a. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*

*b. taking of hostages;*

*c. outrages upon personal dignity, in particular humiliating and degrading treatment;*

*d. the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*

*2. The wounded and sick shall be collected and cared for.*

*An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.*

The four Geneva Conventions were ratified by Ethiopia in 1969.

The Geneva conventions contain the obligation for the member states to penalize and prosecute serious violations of the conventions. The legislator took this as 'an urgent reason to now come to a final legislation'.[5] In article 8 (old) of the 'WOS' the choice was made to refer to 'the laws and customs of war'. The explanatory memorandum sets out that this means:

*"The offence described in article 8, is the act of violating the laws and customs of war. Therefore this provision refers directly to the law of war, not only to the written law of war, laid down in international treaties, but also to the international customary law as far as it refers to war"".* [6]

The text of article 8, first paragraph, (old) of the 'WOS' offers the Court many sources that could be applied, without further specification. For the implementation of the elements of article 8 (old) of the 'WOS' the Court is expected to take account of international law and international justice.[7]

The term 'the laws and customs of war' refers, as mentioned, inter alia, to the four Geneva Conventions mentioned above but also to the Additional Protocols I and II (hereafter: AP I and II) of 8 June 1977.

AP I and AP II fill some gaps in the Geneva Conventions. AP I does this for international armed conflicts, AP II for non-international armed conflicts. The aim of AP II is the (further) improvement of the protection of civilians and others who do not/not longer take part in the armed conflict.

Ethiopia only joined AP I and AP II in 1994, which was after the period mentioned in the indictment.

Finally, international customary law can be used as a reference for the interpretation of the term 'the laws and customs of war'. International customary law relies on two elements: 1) A general state practice and 2) a sense legal obligation (opinus juris). A custom can be accepted as a law if a sufficient number of states participate in a certain practice in a consistent manner (general practice of states) and if they are convinced that these practices are tolerated or required by international law (sense of legal obligation). The practice of states can consist of actions of all state organs, the conclusion of certain treaties, etc. Furthermore, states should not only implement the practice because it is politically appropriate, but because this practice is considered to be either required or allowed by international law. This legal obligation can be reflected in explicit *statements*, protest or reservation. It can be assumed that by concluding a treaty states are able to acknowledge that a certain practice is required or allowed by international law. Decisions of international organisations can also contain indications for the sense of legal obligation of states. This will depend, inter alia, on the content of the resolutions and the condition under which they are accepted. In case of a large number of dissenting votes the opinio juris is not likely to be adopted. The sense of legal obligation also derives from general practice. If there is no explicit proof of a dissenting sense of legal obligation, for example in the form of protest by states, it can be assumed that practice implies sense of legal obligation.[8]

In the following chapter the Court will address, as far as this is relevant, the question which interpretation should be given according to international humanitarian law to the laws and customs of war.

*The elements of war crimes*

Based on the common article 3 and its interpretation in (international) justice, a war crime in a non-international armed conflict, as the accused is charged of committing, requires the following elements: [9]

(1) the existence of a non-international armed conflict on the territory of one of the contracting parties;

(2) the perpetrator has to have knowledge of this armed conflict.

(3) The victims should belong to one of the categories of protected persons referred to in the common article 3; meaning they should be persons who do not participate directly in the hostilities.

(4) There should be a close relationship between the offence and the armed conflict; known as nexus in the (international) literature and law. Criminalization of war crimes is intended to offer protection against offences (closely) related to warfare.

*Necessary steps for evaluating the indictment*

In order to evaluate the indictment the Court will give its position on the existence and the nature of the conflict in Ethiopia and the knowledge of the accused about this in chapter 7. Followed by an overview of the witness statements, documents and expert reports in the case file and an assessment

if they can be used as evidence in chapters 8. and 9. The Court will establish if the events mentioned in the indictment have actually taken place in chapter 10. Then, in chapter 11, the Court will assess if the persons mentioned in the indictment are persons as referred to in article 3. Thereafter the Court will determine in chapter 12. if the established facts constitute actual violations of article 3 and the customary humanitarian law. In chapter 13 the Court will establish if the accused played a part in these facts and, if so, what was his part and thereafter how this eventual part should be qualified. The Court will then give its position on the existence of a nexus in chapter 14. Finally the Court will decide if the established facts constitute a violation of the 'WOS' in chapter 15.

## 6 The history of Ethiopia

The charges against the accused and the decisions of the Court on these matters can not be fully understood without prior knowledge of the political situation in Ethiopia and the history of the country during the period from 1930 to 1974; the reign of emperor Haile Selassie, and during the period from 1974; the period of the revolution.

From the first half of the 1930's emperor Haile Selassie had absolute power in Ethiopia. His reign lasted up to 1974, but was interrupted by the Italian occupation in the years 1936 to 1941.[10] The departure of the Italian occupier in 1941 was followed by the British rule over Ethiopia, which heavily encroached Ethiopian sovereignty. British nationals held key positions in Ethiopian administration.

Eritrea, a former province of Ethiopia used by the Italians as an operational base against Ethiopia, became the stake of the territorial battle between Ethiopia and the United Kingdom.[11]

Eritrea finally became independent from the United Kingdom in 1953 and has since then been joined in an UN-mandated federation with Ethiopia. In this federation Eritrea had its own government and the legislative, executive en legislative powers had been formalised. This democratic experiment was, partly due to the imperial absolutism in Ethiopia, doomed to fail. After dismantling the frail democratic institutions, Etritrea became -again- an Ethiopian province in 1962.

This process contains the roots of the *Eritrean Liberation Movement* (hereafter: ELM), which originated in Sudan and the *Eritrean Liberation Front* (hereafter: ELF) founded in 1960.[12]

From the ELF and some splinter groups later originated the *Eritrean People's Liberation Front* (hereafter: EPLF).

Around 1961 the armed conflict between the ELF and the Ethiopian army flared up, partly because Eritreans realised their civil and political rights were gradually weakened. In 1967 large scale attacks by Ethiopia led to the burning of dozens of Eritrean villages, the killing of ten of thousands of cattle and the flight of tens of thousands of Eritreans to Sudan. The suspicion of cooperating with ELF and EPLF was usually followed by execution. The ELF and the EPLF reacted by plundering villages, taking missionaries as hostages and executing 'collaborators'.[13]

The war with Eritrea was an important factor in the events leading to the revolution in 1974. A much earlier political signal was given by the coup in December 1960 by a group of military from the *Imperial Bodyguard*, who attempted to depose the emperor while he was abroad. The coup failed due to poor preparation and a lack of support and was suffocated after three days.

Although emperor Haile Selassie apparently did not take the coup as a harbinger of more rebellions, the period from 1963 to 1970 saw increased resistance in different parts of the country. The position of the emperor no longer seemed untouchable. Besides the conflict with Eritrea there were civil disturbances among students in Addis Abeba and in several provinces, among which Gojjam, the impoverished peasant population rose up against the new tax laws. Because the Ethiopian society was fragmented by ethnic and physical boundaries and suffered from poverty, insecurity and fear of repression, it took quite some time before the revolution could make its entry.

The years between the military coup and the revolution in 1974 showed a widening gap between the absolutist state on one side and the society on the other. The fact that the imperial regime was able to last until 1974 can possibly be accounted for by the lack of organisation of the different rebellious groups. Nevertheless the student movement did become stronger after the coup, possibly under the influence of the worldwide student movements and of the decolonisation process in African countries.[14]

In 1974 the unrest within the army became more apparent. The Derg was formed in June of the same year, it was intended as a representative of all military units, a sort of military parliament from which the higher ranks were excluded because of their ties with the imperial regime. With the failed coup of 1960 as a warning the Derg at first acted very careful and succeeded to obtain amnesty for political prisoners and exiles, to get a number of high ranking government officials locked up and to achieve broad public support. On 12 September 1974 the Derg made a proclamation in which emperor Haile Selassie was deposed and detained. In the same proclamation the Derg was transformed into the PMAC, the constitution was suspended, parliament dissolved and a ban was announced on strikes and demonstrations. The slogan *People's Government* that was popular before was now changed into *Provisional People's Government*. Besides there were two important leftist movements *Ethiopian People's Revolutionary Party* (hereafter: EPRP) and *All Ethiopian Socialist Movement* (hereafter: Meison). A more aristocratic movement for independence was formed by de *Ethiopian Democratic Union* (hereafter: EDU), founded under the leadership of two members of the deposed emperor Haile Selassie.[15] Rebellious military units and protests by workers were violently repressed. In November 1974 the PMAC announced that they had shot their president, Aman Andom and had executed around sixty persons in custody; some of them high ranking officials of the imperial regime but also members of their own party. [16]

It seems that the seeds of the so-called 'Red Terror', aimed at eliminating political enemies and scaring potential adversaries[17], were planted here for the first time. At the beginning of 1975 the Meison shifted more to the political direction of the PMAC, possibly because of its own rather weak position on the political stage.

In 1975 and 1976 armed EDU-units were active, they controlled a large part of the Gondar region, especially along the border with Sudan.[18] Furthermore, the Derg had to deal with the ELF and EPLF who fought a joined battle against the Ethiopian army.[19] The EPRP and the PLF also had contact with the *Tigray People's Liberation Front* (hereafter: TPLF), a leftist student movement, founded in 1975 that gained more control over the province of Tigray over the following years.[20]

February 1976 is generally considered as the actual beginning of the Red Terror. For the EPRP the Red Terror started at the end of August 1976 when the Derg launched the official destruction campaign against the EPRP, resulting in a mass detention of EPRP members and sympathisers and the execution of some of them. The EPRP fought the Derg with attacks and with her armed wing. After 3 February

1977, the day on which Derg-chairman Terrifi Banti was killed, vice-chairman Mengistu seized total control, became chairman and from that moment on the violence intensified. [21]

Three waves of Red Terror are described: from September 1976 to June 1977, from October 1977 to begin December 1977 and finally from December 77 to March 1978.

The mass killings were partly based on the promise "*for every revolutionary killed, a thousand counter-revolutionaries executed*". By the end of April 1977, anticipating 1 May demonstrations persons suspected of sympathising with the EPRP were killed in large numbers. It was estimated that some thousand children had been killed in Addis Abeba, after which their corpses were left lying in the streets. The families of the death were forbidden to mourn for them. There were also mass arrests of alleged EPRP-supporters. Families who, as was the custom, brought food to the prison should understand that the person was dead when they were sent away and told that they no longer had to bring anything. Although around March 1978 most of the mass killings had ended the detentions and executions continued, especially in the province. [22]

Alleged supporters of the PMAC were forced to admit their membership of the EPRP in public confessions. This happened under threat of death during so-called *exposure meetings*, mass meetings. When a person did not expose himself but was reported by someone else, he would be executed. Students and teachers were arrested during these kinds of meetings in schools. Parents and children were forced to report each other. [23] The writer René Lefort described the period of the Red Terror as follows:

"*History offers few examples of revolutions that have devoured their own children with such viciousness and so much cruelty (…) The revolution swallowed the whole of the young generation of Ethiopian intellectuals, that is literates.*" [24]

The acts mentioned in the indictment allegedly took place during this period.

## 7 The existence and the nature of the conflict

### 7.1 Introduction

The Court has already set out that a war crime committed in a non-international armed conflict, as the accused is charged of, requires the existence of such a conflict on Ethiopian territory during the period mentioned in the indictment.

Therefore the Court needs to examine if there was a non-international armed conflict during the period mentioned in the indictment. Unlike cases about -for example- Ruanda, former Yugoslavia or Afghanistan there is no (ad hoc) tribunal or court, which has considered this question before.

If the court concludes that there was a non-international armed conflict, then it should be considered if the accused had cognizance of this conflict. The court will give an outline of the frame of reference used as a basis for the afore-mentioned considerations in chapter 7.4.

7.2 The position of the Prosecution Service

The Prosecution Service has argued that during the period from February up to August 1978 there was a non-international armed conflict between the Ethiopian government controlled by the Derg and the EPLF/ ELF, EDU and EPRP. Although there were separate groups which each fulfilled the criteria for application of international humanitarian law, all of these groups fought the same government (the Derg) and (during that relevant period of time) and not each other.

7.3 The position of the Defence

The Defence did not take a position regarding the (nature of the) conflict in Ethiopia.

7.4 The frame of reference

In order to establish the existence of an armed conflict during a certain period of time an analyses of the actual situation is required, based on the nature and scope of the combat actions, their purpose and the basis on which the actions take place.[25]

If armed violence between states or long-term armed violence between a state and (an) organised armed group(s) or between such groups has reached a certain level of intensity, the hostilities can be qualified as an international armed conflict respectively a non-international armed conflict.[26]

The Court considers that the offences mentioned in the indictment can be related to the fights that took place between the Derg and the EARP and other (armed) opposition groups and not between the Derg and another state. Hence there is no international armed conflict.

The Court will therefore review the actual situation, especially the nature and the scope of the combat-actions, their purpose and the basis on which the actions were carried out for conformity with the criteria developed in international law for a non-international armed conflict.

*Intensity and organisation*

The definition of a non-international armed conflict has not been laid down in a treaty. The basic criteria result from the common article 3 and article 1 of the AP II, which says "*This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application*"

This definition was developed -and generally accepted - in international jurisprudence, in order to be able to distinguish situations of (rare) violence in internal disorders and tensions of armed conflicts. The *Tadić* case has generally been recognised as authoritative for the definition of, inter alia, a non-international armed conflict. In this case (1) the intensity of the conflict and (2) the organisation of the parties of the conflict were emphasised as the basic criteria of an armed conflict.[27] The criteria from the *Tadić* case have been widely used in international and national case law [28] and have also been further developed by the ICTY, which in the *Boskoski & Tarculovski* case summed up the relevant factors for an objective review of the requirements of 'intensity' and 'organisation'. [29]

As a result of the development in the *Tadić* case law and doctrine the *International Committee of the Red Cross* (hereafter: ICRC) modified her understanding of an armed conflict and concluded in 2008 that non-international armed conflicts *"are protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva Conventions]",* in which the armed confrontation *"must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organization."*[30]

The ICRC defined organised armed groups as groups who *"develop a sufficient degree of military organisation to conduct hostilities on behalf of a party to the conflict, albeit not always the same means, intensity and level of sophistication as State armed forces*".[31]

The *International Criminal Court* (hereafter: ICC) gave the following guidelines in the *Lubanga* case regarding the assessment of the level of organisation of an armed group:

*"When deciding if a body was an organised armed group (for the purpose of determining whether an armed conflict was not of an international character), the following non-exhaustive list of factors is potentially relevant: the force or group's internal hierarchy; the command structure and rules; the extent to which military equipment, including firearms, are available; the force or group's ability to plan military operations and put them into effect; and the extent, seriousness, and intensity of any military involvement*."[32]

To determine of a party to the conflict fulfils the necessary criterion of organisation five groups of factors are relevant, namely factors who:

"1. indicate the presence of a command structure;

2. indicate whether the group can carry out operations in an organised manner;

3. indicate the level of logistics;

4. determine whether an armed group possesses the level of discipline and the ability to implement the basic obligations of common article 3;

5. indicate whether the armed group was able to speak with one voice."[33]

Here again the factors themselves are not essential. [34] What matters is that "'*organized armed groups' must have a sufficient degree of organization, in order to enable them to carry out protracted armed violence*".[35]

To also determine the intensity of the violence, the following factors can be taken into account:

*"the number of civilians forced to flee from the combat zones; the type of weapons used, in particular the use of heavy weapons, and other military equipment, such as tanks and other heavy vehicles; the blocking or besieging of towns and the heavy shelling of these towns; the extent of destruction and the number of casualties caused by the shelling or fighting; the quantity of troops and units deployed; existence and change of frontlines between the parties; the occupation of territory, and towns and villages; the deployment of government forces to the crisis area; closure of roads"'* [36]

Separate acts of violence do not fulfil the minimum requirement for intensity and none of these factors would be in itself decisive. If one of these factors has a low level it can be compensated by another factor with a high level. [37]

*Protracted violence*

Regarding the question if the violence was sufficiently *protracted*, the ICC considered the following in the *Bemba Gombo* case:

*"The Chamber notes that the concept of "protracted conflict" has not been explicitly defined in the jurisprudence of this Court, but has generally been addressed within the framework of assessing the intensity of the conflict. When assessing whether an armed conflict not of an international character was protracted, however, different chambers of this Court emphasised the duration of the violence as a relevant factor. This corresponds to the approach taken by chambers of the ICTY. The Chamber follows*

*this jurisprudence. The Chamber notes the Defence's submission that "if the conflict devolves to the level of riots, internal disturbances or tensions, or isolated or sporadic acts of violence, or if the conflict ceases to be between organized armed groups", the threshold for the existence of a "protracted armed conflict" would cease to be met. The Chamber considers that the intensity and "protracted armed conflict" criteria do not require the violence to be continuous and uninterrupted. Rather, as set out in the first sentence common to Article 8(2)(d) and 8(2)(f), the essential criterion is that it go beyond "isolated or sporadic acts of violence".*[38]

*Until where and when does international humanitarian law apply?*

If the threshold of a non-international armed conflict is reached, international humanitarian law applies and continues to apply for the whole territory which is under control of the parties until a *"peaceful settlement"* is reached. The armed conflict only ends when one of the parties ceases to exist, for example because it is so defeated that re-grouping or continuation of the hostilities is impossible, even in the longer term or if there is a permanent cessation of the armed confrontations without a genuine risk of resumption. [39] The *Appeals Chamber* of the ICTY considered in the *Kunarac* case:

*"There is no necessary correlation between the area where the actual fighting is taking place and the geographical reach of the laws of war. The laws of war apply (….) in the case of internal armed conflicts, the whole territory under the control of a party to the conflict, whether or not actual combat takes place there, and continue to apply (…) in the case of internal armed conflicts, until a peaceful settlement is achieved. A violation of the laws or customs of war may therefore occur at a time when and in a place where no fighting is actually taking place."* [40]

## 7.5 The nature of the conflict in Ethiopia

### 7.5.1 The EPRP and the State

*The EPRP*

A lot of the victims in this case belonged to or were sympathisers of the EPRP.

The EPRP grew out of the student movement and was founded in 1972. From June 1974 the EPRP had a central leadership, a political program and it issued a publication named Democracia. Besides a central leadership the EPRP was organised according to geographical zones. These so-called *inter zonal committees* were given the authority to take independent decisions and a member of the central committee was added to every *inter zonal committee*.[41] The EPRP had an armed wing, the *Ethiopian People's Revolutionary Army* (hereafter: EPRA) commanded by the central committee and guided on an operational level by the *Military Committee*.[42] Besides an army the EPRP had *Urban Armed Wings*, also called *Urban Defence Wings*, which fell under the *Military Committee* in the organisation structure.[43] These *Urban Armed Wings* committed attacks and robberies to obtain weapons, and attacked members of Meison, among whom Mengistu's right hand, and committed a failed attack on Mengistu.[44] Because of their increasing (armed) resistance the EPRP was declared enemy of the revolution by the Derg in September 1976.[45] In 1977 EPRP-members committed attacks and murders. Several *permanent secretaries* of different ministries and around thirty *kebele* leaders were killed by the EPRP.[46]

David and Marina Ottaway describe the situation as follows:

"*The situation had reached the point by February that no Political Bureau Partisan was safe in the streets or even in his office".*[47]

The Uppsala University describes the EPRP as follows:

*"Communist EPRP was mainly active in the mid 1970s, when it engaged in both urban and rural armed opposition, but with a focus on the former. It initiated a campaign of urban guerrilla*

*warfare in September 1976, involving bombings of public buildings and other symbols of state authority as well as assassinations of numerous public officials. The campaign was labelled the White Terror by the government, which in turn countered with what would be known as the Red Terror. During this campaign, government security forces systematically hunted down and killed suspected EPRP members and their supporters. Having been defeated in the towns by late 1977 EPRP's urban component was forced to take refuge with the group's rural component in Tigray and Gonder."* [48]

According to Kiflu Tadesse the EPRA increased in numbers, amounting to around 1500 troops in Tigray and Begedimir in 1977.[49] Also Ghelawdewos Araia speaks of growth of the EPRA at the end of 1977 and the beginning of 1978.[50]

During the last months of 1977 the EPRA caught the 217th *Nebelbal* ("Flame", a counter-resistance group of the Derg[51]) regiment in an ambush in Begedimir in a place called Mayleham, in which officers were taken prisoner and weapons and ammunition were captured.[52] In February 1978 the EPRA carried out actions in Wukro in Tigray in which officers of *Nebelbal* were killed[53]. In July 1978 there was an operation of the EPRA against a military camp of the Derg in the Begedemir area, the camp was destroyed but a lot of EPRA troops were killed.[54] Nonetheless, the number of EPRA members increased again with in influx from urban areas where people were flying from the Red Terror. As a result the EPRA was able to deploy contingents, each of them with their own command structure, in three regions. In December 1978 the *R-3 Command* was still able to launch an attack on Addis Zemen[55]. The EPRP/EPRA was supported, trained and armed by the EPLF (and TPLF)[56] and also received weapons from the ELF.[57] The EPRA also carried out some military actions with the EPLF.[58]

At the hearing in court the accused stated that Gojjam and Gondar were conflict areas during the time he was in Gojjam as representative of the Derg.[59] The EPRP had a large influence and the accused called the EPRP "a indescribably violent organisation in those times" His photo album is full of friends and comrades liquidated by the EPRP[60].

The accused also declared that during his stay in Gojjam for the Derg, attacks took place in Gojjam, which were carried out by the EPRP. During his time the EPRP founded a military guerrilla camp in Metekel, in the western part of Gojjam. This was a place of special strategic interest, Not only was the area rich in natural resources, it was also located isolated from the rest of the country and was vulnerable to a seizure of power because of its lack of infrastructure. Furthermore, the area had a long unprotected border with Sudan, which made it easy for the EPRP and the EPLF and the TPLF to obtain supplies and weapons through Sudan[61]. Because of its location the EPRA/EPRP basis was a threat for the entire nation.[62]

During this time there was also heavy fighting in the north, in Eritrea. The only main road from Addis Abeba to the north was through Debre Marcos. De EPRP had blocked this road, so the troops of the Derg could not move to the north. The military unit, which had cleared the road, went to Metekel at the request of the accused to dismantle the basis of the EPRP there.[63] According to the accused this dismantling has been very important to decrease the power of the EPRP in Gojjam. [64]

"*It was really not sure if Ethiopia would remain as an independent country. At the time Ethiopia was caught in an overwhelming swamp of warfare (...), internal warfare by separatists like ELF, EPLF, TPLF and EPRP in northern Ethiopia, TPLF, EPRP and EDU in the centre and the north (Tigray, Gonder, Wollo, Gojjam and north Shoa); EPRP and the saboteurs of TPLF and EPLF in the central areas and the cities"*[65]

*The interim conclusion of the Court*

In view of the afore-mentioned the Court holds the opinion that the EPRP (among which the military wing EPRA and the *Urban Armed Wings*) was a sufficiently organised armed group during the relevant period.

*The State*

The EPRP fought the Derg, the government at the time in Ethiopia. The Derg disposed of the government army, which in the reports over 1974-1977 of the Dutch embassy in Addis Abeba was estimated at 80.000 troops and according to the year-report of 1977-1978 had increased to 400.000 troops. [66] The Derg reacted with violence towards (among others) the EPRP, the so-called Red Terror. As mentioned before the Derg declared the EPRP in 1976 the enemy of the revolution. During a speech in March 1977 Mengistu smashed a bottle of red liquid and said that the contra-revolutionaries would be crushed in the same way.[67] During a meeting on 25 June 1977 he used similar terms:

"*the EPRP, EDU and the Eritrean secessionist reactionary organisations will be crushed*".

Letters and post-telegrams of the Dutch ambassador from October, November and December 1977 speak of armed actions to chase members of the EPRP in Addis Abeba from their hideouts, purges through murders and executions of contra-revolutionaries belonging to the EPRP.

*The conclusion of the Court*

Considering the afore mentioned the Courts finds that during the period mentioned in the indictment there was an armed conflict in Ethiopia which no longer had the character of internal disturbances or tensions, like rebellions, isolated sporadic acts of violence or such actions. On the contrary, there was a protracted and intensive violence. The armed violence took place between the Derg (the government) on one side and the EPRP on the other side. Therefore the Court holds the opinion that in the period mentioned in the indictment there was a non-international armed conflict in the sense in which this expression is used in the humanitarian law of war and that the common article 3 applies to it.

7.5.2 Different warring factions and the State

Even though the conclusion of the Court in itself suffices, the Court wants to point out, in view of the importance of this case, that the way set out by Prosecution Service also leads to the conclusion that there was a non-international armed conflict.

The Court considers that to assess if a in a certain conflict the combat actions between the group(s) involved in the conflict had the required level of intensity to meet criteria for a non-international conflict, it can also be determined under certain conditions, if there are different groups fighting a common enemy. This can only be the case if each one of the parties involved meets the criterion of a sufficient organisational level.

Such a situation may occur if the different groups cooperate on a more than incidental basis in the military field, like the coordination of military actions, but also armament, financing training and offering the possibility of safe passage. The pursuit of a common (temporary) objective might also be relevant.

The Court will then address the question if the EPLF/ELF, the EDU and the TPLF in conjunction with the EPRP in 1978 in Ethiopia fulfilled this requirement.

*De EPRP/EPRA and the EPLF/ELF*

Since 1975 the ELF and the EPLF fought a common battle against the Ethiopian governmental army. Both organisations had chairmen, consultative bodies, political programs and command-units. Between 1975 and 1977 the ELF and the EPLF were in control of the largest part of the Eritrean territory. In this period the number of ELF and EPLF troops was larger than the number of troops of the Ethiopian army.[68] In 1978 the Derg managed to recapture most of the cities from the rebels.[69] Between 1978 and 1986 there were yearly

government offensives against the Eritrean[70]. This also transpires from the statement of the accused at the hearing in court that during his time in Gojjam an army unit was urgently sent to the north of Eritrea because of the fighting over there.[71] From what is considered before and also from the witness statement at the hearing it is plainly apparent that there was a more than incidental cooperation between the EPLF/EFL on one side and the EPRP on the other side. This cooperation concerned all above mentioned areas of cooperation and the combat actions of the EPLF/ELF were in part directed at the objective of the EPRP (the overthrow of the Derg).

*The EPRP/EPRA and the EDU*

The EDU was - as described above - not a regional independence movement but a movement which grew out of the *ancien régime* ousted by the revolution.[72] In 1975 armed units of EDU became active in Gojjam, Gondar and the west of Tigray. At the beginning of 1977 government troops were defeated.[73] From mid 1977 the EDU suffered losses against the Derg in the Gondar region and against the TPLF in Tigray, which had forced back the majority of the EDU-troops over the border in Sudan.[74] At a certain point in time there was some cooperation between the EDU and the EPRA[75], however in the opinion of the Court there are not enough leads to assess if this cooperation was more than occasional.

*The EPRP/EPRA and TPLF*

The TPLF was founded in 1975 and fought from the province of Tigray against the state for social justice and self-determination for all Ethiopians.[76] The accused described a close cooperation between the TPLF and the EPRP, consisting, inter alia, of training and armaments.[77] However the Court considers that - regardless of an eventual temporary cooperation in the sense of the simultaneous fight against the Derg in the province of Tigray-[78] during the time-period which is relevant for the indictment there was no longer any cooperation between both opposing factions [79], on the contrary. In March 1978 the tensions between both factions and the competition between them, already present since 1975, were settled to the military advantage of the TPLF.[80]

*The State*

The Court reiterates what has been considered before regarding the state and adds the following.

According to an article of 2 March 1978 in the *Ethiopia Herald* Mengistu said in a speech in honour of *Adowa Victory Day*:

*"Imperialism and bureaucratic capitalism shall perish! The (…) EPRP and separatist forces shall perish! [. . .]* [81]

*Agence France Press* points out that lieutenant colonel Megistu announced on 16 May 1978 that the long awaited offensive in Eritrea would begin. Different liberation movements were said to be in control of 90% of the territory in Eritrea. There was heavy fighting around the besieged city of Asmara, were 25.000 Ethiopian soldiers were supposedly stuck. From May onwards the Ethiopian air force used the airport in Makalle in the province of Tigray to bomb positions of the ELF and EPLF in Eritrea. Although a large number of the targets that were hit also had a military character, a lot of villages, cities and herds were attacked. [82]

*The conclusion of the Court*

Based on the above, in and interrelated context and on an overall basis, the Court concludes that during the time period mentioned in the indictment there was in Ethiopia (also) a non-international armed conflict between the Derg on one side and the EPRP/ the EPLF and the ELF. The latter fought the same government and in that context they cooperated with sufficient intensity.

Each of the groups mentioned had a sufficient level of organisation. The joint battle against the Derg was protracted and considering the mutual cooperation, had a sufficient level of intensity. The fact that the mentioned groups possibly had their own interests, besides their joint purpose -the fight against the Derg- like the separation of Eritrea, and sometimes also fought each other, is of no relevance.

7.5.3 The knowledge of the armed conflict

Based on the above-mentioned statements of the accused and his documents the Court establishes that he was aware of the armed conflict.

## 8 The witness statements

8.1 Introduction

A large number of the documents in the file are witness statements. As in previous cases regarding international crimes this concerns hearsay statements and statements of eyewitnesses, which may or may not be victims of (parts of the) charged offences. The NR and the DLR have interrogated twenty-eight witnesses in the Netherlands, the United States of America and Canada. The examining magistrate heard eighteen witnesses (some of whom were the same) in these same countries. Since Ethiopia did not want to render judicial assistance it has not been possible to examine witnesses in Ethiopia. The Court however does have copies of a part of the case file used in the Ethiopian proceedings against the accused. This file also includes several witness statements. Neither the Dutch police nor examining-magistrate heard any of these witnesses.

In a case like this the question of the reliability of the witness statements is always an important one. Not only because an eventual judicial finding of facts should be largely based on these statements but also because -more than in ordinary criminal cases- there are possible legal reservations against the statements. They are after all accounts of events that have taken place decades - in this case almost four- ago. Furthermore, witnesses might be traumatised by what they have seen and experienced and their culture and environment are different from ours.[83] This entails that it possibly might be not responsible and/or preferable to use all the witness statements as the evidence. In order to assess this the Court will outline in the next paragraph the frame of reference to be used for the assessment of the reliability of the statements. Then the Court will indicate per witness if the statement (in principle) -or partly- can be used as evidence. Finally the Court will consider the requests for witnesses submitted by the Defence.

8.2 The position of the Prosecution Service

The Prosecution Service has - referring to the jurisprudence in 'WOS' or 'Wim' cases of this Court, the Court of Appeal of The Hague and the Court of Appeal of Den Bosch - taken the position that neither the passing of time, nor the difference in culture, the seriousness of what the witnesses have experienced and their possible traumatisation, reduces the reliability of the statements. In their presentation of the overall evidence the Prosecution Service has used several statements of witnesses questioned by the Dutch police (and the examining-magistrate) all of them considered in an interrelated context. Some witness-statements have not been used, either because they did not contribute to the evidence, or because the statement contained inconsistencies. The Prosecution Service only referred to the witnesses from the Ethiopian criminal case-file in relation to other statements and/or evidence.

8.3 The position of the Defence

The Defence took the view that the witness statements are not reliable enough, due to, inter alia, the passing of time, possible collusion and inconsistencies.

Furthermore, the Defence requested to hear a large number of persons (again) as witness. The list of these requests has been attached to this judgment as annex 2.

## 8.4 The reliability of the witness statements

### 8.4.1 The frame of reference

The Court of The Hague defined a framework to assess the reliability of witness statements. In this framework the following seven features are distinguished:

I: the person of the witness;

II: the realisation of the statement;

III: the review in the light of objective information, obtained from another source;

IV: the consistency of consecutive statements rendered by the witness;

V: the quality of identifications and recognitions;

IV: the consistency of the statements with statements from other witnesses;

VII: the plausibility of the rendered statement(s).[84]

This framework was again used by the Court of The Hague in the case against Yvonne B., even though the quality of the identifications and recognitions was addressed in one of the other points of concern.[85]

In the above mentioned case the Court of Appeal of The Hague has defined the following objective criteria - referring to the considerations regarding the assessment of the reliability of witnesses in the criminal case against Guus K. -:

a: the review in the light of objective information, obtained from other sources;

b: the consistency of the consecutive statements, made by this witness;

c: the consistency of the statements with statements of other witnesses;

d: the plausibility of the content of the rendered statement(s).[86]

The Court of Appeal again applied this framework in the Tamil case.[87]

When applying these criteria in the present case the Court has considered the personality of the witness, how the statement came to be rendered and the quality of identifications and recognition.

Although the assessment frameworks of the Court of Appeal and the District Court in the case against Joseph M. and the subsequent case law do not completely match in terms of structure, they do have the same features.

Below the Court will, - subject to the referred case law, but also in terms of literature- give an outline of the criteria applied for the assessment of the reliability of the witness statements. It should be noted that to assess the reliability of the witness statements they should be considered in an interrelated context. It is also important to note that the mentioned criteria are just points of attention. Consequently this is not a list for which a certain number of checked boxes should lead to the conclusion that the witness is unreliable.

*The person of the witness*

It is possible to imagine circumstances, which might influence the reliability and/or the

credibility of a witness. When assessing the reliability the following points should be taken into account:

a. a) Involvement of the witness in the charged offences

A witness that has been involved in the charged offences might have reasons to render a statement, which is contrary to the truth, for example in order to minimize his or her own role. In the case against Joseph M. the Court saw sufficient reason to examine the statement of an witness with caution, since the witness had a possible motive to render a statement which was incriminating for the accused and it could not be discarded that the witness had tried to minimise his won role /involvement and to shift the responsibility to the accused. [88]

b) Further interests or motives of witnesses to render a statement incriminating to the accused and contrary to the truth

A witness might have interests or motives to render an incriminating statement, which is contrary to the truth (see ' the person of the witness' under a). However there should be specific indications for this, beyond the level of mere speculation or suggestion, especially if the incriminating statement is supported by other incriminating statements.[89] For example the circumstance that the witness belonged to a group, which fell victim to the group to which the accused belonged, is insufficient.[90] On the other hand the Court did consider the reliability of the witness to be at stake in the case of a witness who declared that an accused person was always in the company of this brother that committed offences and therefore the accused person also had to be guilty.[91]

c) Ability of the witnesses to distinguish between what they saw themselves and what they heard from others (*de auditu*)

Science has recognised that is difficult for witnesses who have knowledge from their own observation, to distinguish what they have actually observed themselves from subsequent complements to this observation (*post-hoc*-information) from another source (for example what they have heard from other people) (source-amnesia). Therefore it is important that the statement reflects to what degree the witness is able to make this distinction. If witnesses talk to each other this might lead to *collaborative storytelling* which is a strong degree of social influencing between witnesses, causing their experiences and different interpretations to melt into one common account of what has happened.[92]

d) Disturbing effects due to cultural differences

Due to cultural differences a witness might have difficulty in determining time, space and distance and/or might not be able to orientate himself or herself on the basis of maps, photos and images, and the way in which a witness reacts to (specifically difficult) questions might be influenced. For example in the case of Joseph M. the Court considered that the fact that part of the witnesses from Ruanda were not familiar with floor plans and maps and that some witnesses found it difficult to specifically set out dates, time-paths, distances and space. The Court ruled that this should not lead to negative conclusions regarding the reliability of the witness statements.[93]In the case against Yvonne B. the Defence argued that lying is less problematic within Rwandese society and that the witnesses might render false statements because they wished to contribute to a conviction. The Court did not recognise this as a general defence against the evidence but did find that this calls for caution.[94]

e) The traumatisation of the witness

A traumatised witness is not necessarily a less reliable witness. According to relevant literature memories of central details of a traumatic event are often more accurate and complete the memories of peripheral details of the same event. This is caused by the fact that in the case of such an event the attention focuses on threatening, central details (*weapon focus effect*) and because the boundaries of the traumatic image narrow (*boundary*

*restriction*).[95] This might result in less attention for other peripheral details, like the appearance of the perpetrator.[96]

However in the case against Joseph M. the Court did find that behavioural scientists do not agree on the effects of suppression and that the witness' or victim's account of the traumatic event should be considered with the necessary caution and only in a interrelated context with the other evidence.[97]

Nevertheless traumatisation might also lead the memory of the witness to suppression and dissociation, phenomena that influence the memory and on the perception in a general sense. By careful questioning - specifically questioning without external pressure-, possibly by repeating the questions - these statements can be made accessible. In such a case a witness might remembers new information in every subsequent interrogation. [98]

f) Other factors in the person of the witness

Literature warns for the negative effects, which *acquiescence* (the tendency to answer affirmatively to questions), *compliance* (agreement with supplied information because the witness feels compelled to do so by the social context) and *suggestibility* (accepting information as correct under the assumption that the person who supplies the information will be right) might have on the quality of the statements. An appropriate way of questioning/interrogation might lower these risks.[99]

The fact that a witness was still a child at the time of the events does not necessarily have consequences for the reliability of the statement rendered at a later age. Investigation shows that the memory of children is accurate and that they can talk accurately about events, which have taken place some years ago.[100] Nevertheless the chance of getting an unreliable statement from children and witnesses with a mental disability is higher compared to normally gifted adults. This might be due to the limitations in the memory, higher level of suggestibility, the language comprehension and the ability to think in abstract terms.[101]

The way in which the witness statements are recorded in writing might also make it more difficult to assess the reliability of the witness statements, for example if there is no verbatim transcription. Drafting a statement involves however, in principle, always a transformation process (normative transformation).[102]

*The rendering of the statement*

The way the statement is rendered might influence the reliability of the statement. This could involve the following aspects.

a. a) The way of asking questions, the content of the questions, the attitude and the behaviour of the interrogator

The way the questions are asked and the content of the questions might influence the statement rendered by the witnesses. This might refer to asking closed questions, suggestive questions and confusing questions.[103] If the interrogator pushes for an answer this might lead the witness to feel a social pressure to answer. This might also be culturally determined (see 'The person of the witness' under d).

b) The length of the interrogation

In view of the scope of the events it is not unusual for a witness hearing to take up considerable time. However this involves certain risks. In the case of Joseph M. the Court of Appeal considered that the chance of obtaining reliable information decreases if the interrogations go on for hours.[104] This phenomenon is described in relevant literature as the *output order-effect*.[105]

c) Communication problems between interrogators and witnesses or between interpreter and witnesses

Quite often the assistance of an interpreter is needed for the interrogation of a witness. This might lead to communication problems, but it might also happen that the interpreter gives a wrong translation. Nevertheless eventual misunderstandings between the interrogator and the witnesses, do not necessarily lead to an unreliable statement. If the misunderstandings have been cleared up or are insignificant this does not have to be a problem.[106]

d) Contact between the witness and other witnesses before rendering a statement

Contact between different witnesses prior to the interrogations might lead to source amnesia (see 'The person of the suspect' under c).

e) Guarantees for the interrogation

The Dutch legal system has guarantees for the rendering of witness statements to the police and the examining magistrate, also if this takes place abroad. If a witness has rendered several statements it is therefore preferable -as mentioned before- to use the statement rendered to the examining magistrate or the Dutch police. However in case of statements rendered to others it is difficult to check if there were adequate safeguards and which methodology was used to obtain them. This might lead to the conclusion that it is wiser not to use these statements as evidence or to use them with due caution. [107]

*Review in the light of objective information obtained from other sources regarding the situation on-site*

Objective information might refer to information from forensic research or written sources like documents and reports about the conflict. In the case against Joseph M., inter alia, documents and reports about the genocide in Ruanda in 1994 were used and the actual findings by the ICTR about the armed conflict in Ruanda in 1994 and the ensuing actual events. [108]

Finding of facts in writings and reports based on, inter alia, statements of witnesses and experts and documents might in principle be accepted by the judge, although the Defence has not been able to influence the realisation of thereof.[109]

*Consistency of subsequent statements rendered by the same witness*

When a witness has rendered several statements the consistency of those statements can be assessed, in the case against Joseph M. the Court considered:

*"In order to make an assessment of the accuracy or the memory of the witness and/or the victim the statements they rendered at different times to different (criminal investigation) authorities, should be compared. The level of consistency - regarding the level of similarity between the different statements- is then at stake and this again influences the power of evidence of the statement concerned, especially if this concerns aspects of a statement which are fundamental to the evidence. Although a high level of consistency does not guarantee the accurateness of the statement concerned this is likewise for the opposite"* [110]

Among other factors the person of the witness (see 'The person of the witness' under a to f) and the way in which a statement was rendered (see 'the rendering of the statement' under a to q) can influence the consistency, but this is also applies to the time span between the events and the rendering of the statement.[111]

It is important to consider under what circumstances the identified inconsistencies occur. When this happens at the end of a long interrogation and/if there are symptoms of PTSS, one should be wary of commission errors, which means: incorrect elements in the memory.[112]

Furthermore, in case of possible unreliable statements consideration might be given to the extent in which (certain parts of) the statements are confirmed by other evidence.

Statements containing inconsistencies, discrepancies or contradictions might be excluded from the evidence or the inconsistent part of the statement can be discarded as evidence. However this does not apply to all inconsistent statements, but is only possible in case i) the inconsistencies of the differences relate to an aspect of the statement which should be substantial for the evidence or which otherwise manifestly affect the reliability of the statement as a whole, and ii) if no satisfactory explanation for the discrepancies, inconsistencies or contradictions is to be found.

*The quality of the identifications and recognitions*

Witnesses can identify or recognise the accused person. However these identifications are not necessarily reliable. To assess this the following questions might be asked:

a. a) Did the witness know the accused person?

In principle the recognition by a witness of an acquaintance is significantly more reliable than the identification of an unknown person because the recognition of a person whom the witness has seen only once is far more difficult.[113] This is supposed to be a matter of generally knowledge.[114]

b) What was the distance between the witness and the accused?

The distance between the witness and the accused is an important factor in the observation, combined with the intensity of the light (see hereafter under d). In literature there is dissention about the question from what distance the quality of the observation starts to decline.[115] An investigation from 1996 showed that at a distance of twenty meters, disregarding the intensity of the light, the recognition no longer complied with the lowest limit that was defined in criminal law for diagnostic value.[116] Nevertheless later investigation learned that at a distance of fifteen meters, together with the intensity of the illumination, a less sharp decline was observed, but more of a monotonous change. It was found that for every meter of increased distance the number of correct recognitions declined with 0,60% and the number of incorrect recognitions increased by 0,48%.[117]

c) How long and/or how often did the witness see the accused?

The time-span of the observation (*exposure time)* is important for the storage of it in the memory. When the observation lasts longer it will be better and the trace created in the memory will be more extensive.[118]

d) Was it light or dark?

The intensity of the light influences the observation. A lower intensity of the light, combined with the distance, decreases the diagnostic value of the recognition (see above under b).[119]

e) Are there other factors, which make the observation more or less reliable?

This might refer to the ability of the witness to see the actions of the accused, his weapon or clothes or to describe co-perpetrators.

f) Did the witness see the accused *en face*?

It also matters if the has seen the accused *en face* during the observation, because this benefits the recognition. [120]

g) Is the witness of the same race as the accused?

According to several investigations people are better in recognising someone from their own race and ethnic group than a person from another race or ethnic group. Therefore

recognition is in principle more accurate if the witness is from the same race and ethnicity as the accused.[121]

*Plausibility of the content of the statements*

Finally the plausibility of the statement can be considered. However caution should be observed in this respect, since there is often an extreme context, which might touch on the boundaries of our comprehension.[122]

8.4.2 The admissibility and the reliability of the witness statements in the present case

The Court has applied the above mentioned frame of reference - only where relevant- on all the witness statements in the Dutch criminal case-file. The Court will give a brief outline of its findings per witness. It should be noted that the Court in principle does not question the witnesses' accounts of their personal *experiences*, namely the arrests, tortures and bad detention conditions they have suffered. There are no indications that any of the witnesses has stated contrary to the truth about this. The Court agrees with the Prosecution Service that in general such traumatic experiences are not easily forgotten. Nonetheless there are factors leading to the impossibility to establish, with the required degree of reliability, what the witnesses say they have *seen* and *heard*. Those circumstances might also lead the Court to conclude that part of their statement is not reliable enough to be admitted as evidence. There are also a few statements that, despite the fact that they can be considered as reliable, are not useful enough as evidence because they are for example statements about hearsay or because they relate to events which took place at another time or in another place than the events referred to in the indictment.

In general the Court notes that the mere passing of time does not necessarily make the statements of the witnesses unreliable. The fact that some witnesses have had contact with each other, possibly have read books about the charged offences and have become aware of the criminal proceedings in Ethiopia against the accused can by itself not lead to the conclusion that these statements should be regarded as unreliable. Finally the Court points out that although some witnesses have submitted a claim as injured party, there is no indication that these witnesses have rendered statements which are contrary to the truth for their own personal gain. Such an assumption is contradicted by the very limited amount of the claims.

*[person 328]*

[person 328] came up as a possible witness because he is one of the persons quoted in the earlier mentioned article in *Vrij Nederland*. He was interrogated in October 2012 by the NR in the English language. He has primarily declared about the lists and the letters, which were shown to him during the interview for the article, the structure and the objective of the EPRP and the position and the role of the accused.

The Court establishes that the witness cannot make a statement from his own observation about the charged offences. He has stated that when he visited a friend in Debre Marcos he saw that they were digging large holes on the prison site and that sixty or seventy people were taken from the prison that night and were killed six or seven kilometres from the prison. But the statement does not clarify when this would have happened, but besides it would seem that he only saw that holes were being dug and was aware of the death of the persons from hearsay. Therefore the Court does not consider his statement suitable as evidence.

*[person 333, different spelling]*

[person 333, different spelling] was mentioned by witness [person 328] as a potential witness. In 2013 a preparatory interview was held with him, after which he was interrogated

in 2015 by the DLR and in 2016 by the examining magistrate. The interrogations took place with the aid of an interpreter in the English language.

He is the brother of [person 334], who held a high position in the EPRP and about whom several witnesses stated that he was shot in the beginning of August 1978 just outside of Debre Marcos. The witness has declared mainly about the fate of his brother and the role of the accused.

Since [person 333, different spelling] is not able to declare from his own observations about the charged offences, but only about what he has heard from others - whereby the source is often not mentioned - the Court finds that his statement can not contribute to the evidence.

*[person 319, different spelling]*

[person 319, different spelling] was mentioned by witness [person 333, different spelling] as a potential witness. In 2013 a preparatory interview was held with him, and in 2015 he was interrogated by the DLR. In 2017 he was examined -with the aid of a psychologist because he was said to be traumatised- by the examining magistrate. The interrogations took place with the aid of an interpreter in the English language.

At the time mentioned in the indictment he was around fourteen years old and member of the EPRP. He has declared mainly about the e*xposure meetings* and the role of the accused.

The Court established that [person 319, different spelling] was the only witness to testify that no arrests have taken place during the *exposure meetings* nor that people were brought from there to a camp or a police station. However three years later he declared before the examining magistrate that two people were taken after the *exposure meeting,* although he did not see one of the persons being taken but concluded this. The Court notices however that he still mentions two persons in this last statement, while all other witnesses declare that a lot of people were taken after the *exposure meeting*. Therefore his statement is different from the statements of the other witnesses in one important point.

Besides [person 319, different spelling] declared in all his interrogations about an incident, which took place during the *exposure meeting*, in which someone spit [Eshetu A.] and shouted how good the EPRP was. However the witness has made varying statements about who this person was. During his preparatory interview by the police the he said that this person was his male cousin by marriage, but to the police and then to the examining magistrate he did not mention his cousin but a high ranking EPRP leader whose name he did not know or a boy who had been exposed. The Court finds this difference between the statements all the more striking because one should not expect such an error to be made if it concerns a member of the family.

Because of these contradictions, combined with the circumstance that there are indications of traumatising the Court is not, or not sufficiently, able to establish if [person 319, different spelling] actually saw what he describes or that he possible incorporated stories he heard from other people in his own memory. The Court finds it therefore not justified to use his statement as evidence.

*[person 314]*

[person 314] was mentioned as a potential witness by [person 333]. Two preparatory interviews were held with him and a third exploratory interview in 2014. In 2015 he was interrogated by the DLR and in 2016 by the examining magistrate. The interrogations took place with the aid of an interpreter in the English language.

At the time of the offences mentioned in the indictment he was around twenty years old and he supported the EPRP. He has declared about the *exposure meetings*, his stay in a military camp, followed by a stay in a police-camp and in prison, detention conditions, tortures and

executions. Furthermore, he has rendered an incriminating statement about the presence of the accused the *exposure meetings* and in one of the camps.

The Court finds that the witness has not always declared consistently about what he himself has seen and heard and about what he heard from others. Besides he has declared that every night five or six youths were taken away. No other witness has declared this. He also seems confused about the presence of the accused in Gojjam at the same time as Kassay Aragaw. Furthermore, he has not declared consistently about whether he saw the accused in the police-camp or in the military camp. This gives the Court the impression that the witness unconsciously mixes things up or has not preserved them correctly. The Court finds it therefore not justified to use his statement as evidence.

*[person 316]*

[person 316] was mentioned as a potential witness by [person 314]. In 2015 he was interrogated by the DLR and in 2016 by the examining magistrate. The interrogations took place with the aid of an interpreter in the English language.

At the time of the offences mentioned in the indictment he was around twenty years old and he was a member of the EPRP although he was not very active. He has declared about the *exposure meetings*, and the role of the accused in this respect, his stay in a police-camp and in prison, tortures and executions. Furthermore, he has declared about some incidents in which the accused was involved.

The Court establishes that he has rendered consistent statements about what he has seen and experienced, but added some observations during his interrogation by the examining magistrate. He declared that he had not seen the accused every day in the camp, but he saw him twice in any case. The Court considers his statement to be reliable in principle and usable as evidence. However, the Court does observe that the witness does not always indicate clearly if he saw something himself or if he heard it from someone or concluded it. Therefore parts of his statement should be considered with due caution.

*[person 331]*

[person 331] was mentioned as a potential witness by [person 314]. In May 2015 she was interrogated by the DLR with the aid of an interpreter in the English language. In February 2017 the Court has ordered -upon a request from the Defence- that she should be interrogated as a witness by the examining magistrate. However the Canadian authorities did not give permission for an interrogation by the examining magistrate because [person 331] was allegedly traumatised.

The Court will exclude the statement of [person 331] from the evidence, because the examining magistrate was not able to examine her, due to the refusal of the Canadian authorities and the Defence therefore has not been able to exercise the right to examine her.

*[person 315]*

[person 315] was mentioned as a potential witness by [person 314]. In 2013 two preparatory interviews were held with him, followed by an exploratory interview in 2014. In 2015 he was interrogated by the DLR and in 2016 by the examining magistrate. The interrogations took place with the aid of an interpreter in the English language.

At the time of the facts mentioned in the indictment he was around eighteen years old and he was a member of the youth movement of the EPRP. He has declared specifically about the *exposure meetings*, his stay in a military camp, followed by a stay in a police-camp and in prison, the special interrogators, tortures, executions and the role of the accused.

The Court establishes that [person 315] made a very elaborate and detailed statement.

Those statements are also consistent and to not contain contradictions, except the date of his release, which he sets on May 1978 on one occasion and on June or July 1978 on another. It is the opinion of the Court however that this uncertainty is sufficiently resolved by the certificate of release, which was attached to one of the interrogations, which mentions 21 May 1978 as the date of his release. He resolved eventual uncertainties in his account about the source of the knowledge after being questioned about them. The Court sees no reason to doubt the reliability of the statement of [person 315]. The argument of the Defence that this witness did not put forward any other witnesses is - irrespective if this can be established- insufficient to arrive at a different conclusion. The statement of [person 315] can therefore be used as evidence without any restraint.

*[person 332]*

[person 332] was mentioned as a potential witness by [person 333]. Two preparatory interviews were held with her in 2013 and in 2015 she was interrogated twice by the DLR and in 2016 by the examining magistrate in the United States of America. These interrogations took place with the aid of an interpreter in the English language.

At the time of the offences mentioned in the indictment she did not live in Debre Marcos or in Metekel but in Addis Abeba. Her elder brother [person 4, different spelling] and her younger sister were members of the EPRP. She has specifically declared about what had happened to her brother and male cousin and about executions of prisoners. Furthermore, she declared that she has regular contact with [person 136, different spelling], one of the victims mentioned in the indictment under count 1 and 2, and often talks to her.

The Court establishes that the witness has not personally been present at an *exposure meeting*, or in a police-camp, military camp or prison, she stayed mainly in Addis Abeba and not in Debre Marcos. Regarding her statement about the events, which took place in Debre Marcos her knowledge, is based on what she heard from others. However the source of this knowledge does not always transpire. The Court cannot rule out the fact that [person 332] has obtained this knowledge from her contacts with one or more victims. Regarding what happened to her brother the Court also notices that she has declared that when she visited her brother in the police station she got the impression that her brother had been tortured because he did not stand up and that this was later confirmed by a friend of her brother's. However to the examining magistrate she rendered a different statement, namely that her brother told her that he had been tortured.

In view of the above the Court concludes that the statement of this witness cannot be used as evidence.

*[person 111, different spelling]*

[person 111, different spelling] is mentioned by witness [person 314]. A preparatory interview was held with him and after this he was interrogated by the DLR in 2015. In 2016 was heard by the examining magistrate in the United States of America. The interrogations took place with the aid of an interpreter in the English language.

At the time of the offences mentioned in the indictment he was twenty-nine years old, he worked as a teacher in Debre Marcos and was a member of the EPRP. He has declared about the *exposure meetings*, his stay in a military camp, followed by a stay in a police-camp and in prison, the special interrogators, the detention conditions, tortures the executions of fellow-prisoners and the decision by which he was sentenced to prison. Furthermore, he has rendered very incriminating statements about the role of [Eshetu A.].

The Court establishes that [person 111, different spelling] has made very consistent statements without contradictions and was able to make a very clear distinction between his own knowledge and what he heard from others. Because of his task in the so-called discipline committee the witness was in a position to see a lot. Regarding the role of the

accused he clearly indicates states that there was another person with the name Eshetu, so there does not seem to be a mistaken identity. The Court therefore considers this witness to be very reliable.

*[person 336]*

[person 336] was mentioned as a potential witness by [person 332]. He was then interrogated in 2015 by the DLR in Canada. The interrogation by the DLR took place with the aid of an interpreter in the English language and the interrogation by the examining magistrate with the aid of an interpreter in Amharic.

At the time of the offences mentioned in the indictment he was around twenty-two years old and he was a member of the EPRP. He has declared that he went into hiding in 1978 because the Derg were looking for him. In 1980 he was caught and ended up in a camp in Bahir Dar.

The Court is convinced that [person 336] during the period mentioned in the indictment, or at least during the period that the accused was in Gojjam, was not in Debre Marcos or in Metekel. Therefore his statement about this period can only be based on what he has heard from others, while the witness often did not mention the source of his information. Furthermore, he has declared, after the police showed him lists with a number of names, that this were persons who were killed in May 1978, which is different from what other witnesses have stated. Based on these findings the Court considers his statement not usable as evidence.

*[person 318]*

[person 318] was mentioned as a potential witness by [person 336]. He was interrogated in 2015 by the DLR and in 2016 by the examining magistrate in Canada. The interrogation by the DLR took place with the aid of an interpreter in the English language and the interrogation by the examining magistrate with the aid of an interpreter in Amharic.

At the time of the offences mentioned in the indictment he was around sixteen years old and politically active. He has declared that he was arrested in 1977 in Dangela and after a stay in prison in Dangela was transferred in December 1977 to the prison of Debre Marcos. He was there until April 1978. He also stayed for a short while in the police-camp. He has mainly stated about his stay in prison, the police-camp, the detention conditions, tortures, executions and the decision by which he was finally sentenced to prison.

The Court establishes that the witness made different statements on different subjects. In his statements he does not always seem to be clear about what he has seen, experienced and observed himself and that he heard from others. Besides he is the only witness who stated that a digging machine was used to dig a hole on the prison site. When confronted by the examining magistrate that no other witness had mentioned this he declared that both hands and a machine were used for digging. Also regarding the different groups of persons that were allegedly taken away to be killed the Court can not escape the impression that the witness possibly mixed up different events and that his memories - maybe on account of the passage of time, traumatising or stories of other people - are no longer completely clear.

The Court will therefore not use his statement as evidence.

*[person 320]*

[person 320] was mentioned by someone from the *Ethiopian Community Development Centre* as a potential witness. In 2014 a preparatory interview was held with him, in 2015 he was interrogated by the DLR and in 2016 by the examining magistrate. The interrogations took place with the aid of an interpreter in the English language.

He has declared that he fled from Debre Marcos, was detained in Gondar and returned mid 1979 to Debre Marcos. He was not arrested until June 1979 in Debre Marcos. He was eight months in the police-camp after which he was released.

The Court establishes that [person 320] was therefore not in Gojjam during the same period as the accused. Information about the executions or the role of the accused must therefore - as he himself also declared- be from hearsay. The Court therefore considers the statement of this witness not usable as evidence.

*[person 322, different spelling]*

[person 322, different spelling] was mentioned by witness [person 320] as a potential witness. In 2014 a preparatory interview was held with him, after which he was interrogated in 2015 by the DLR and in 2016 by the examining magistrate. The interrogations took place with the aid of an interpreter in the English language.

The witness was around twenty years old and he supported the EPRP. He has declared about the events at the *exposure meeting*, in Metekel, his detention in Metekel, his transfer to Debre Marcos, stay in the police camp and the prison there, the detention conditions, the interrogators, tortures and executions. He has rendered very incriminating statement about role of the accused regarding the *exposure meeting*, the tortures and the executions.

[person 322, different spelling] has made elaborate statements. However the Court notices that on many points it is impossible to gather what he has declared from his own knowledge and what he heard from others. He is the only witness to testify that every week a group of twenty people were killed with a noose. Furthermore, his subsequent statements also contain several internal contradictions. He declared for example in the preparatory interview that he was tortured but not hoisted to the ceiling, whereas he later testified to the police that he was hoisted to the ceiling during the torturing. He is also inconsistent in his statements about the fact if the *exposure meeting* in Metekel took place before or after his first arrest and is unclear about when he allegedly first saw the accused. Because of all this the Court cannot rule out the possibility that the witness, whether or not due to the passage of time, traumatisation or what he has heard from others, is no longer able to describe what he has seen, heard or experienced. The Court therefore does not consider it justified to use his statement as evidence.

*[person 325, different spelling]*

[person 325, different spelling] was mentioned by witness [person 322, different spelling] as a potential witness. In 2014 a preparatory interview was held with this witness, after which he was interrogated in 2015 by the DLR and in 2016 by the examining magistrate. The interrogations took place with the aid of an interpreter in the English language.

At the time of the offences mentioned in the indictment he was around twenty-four years old He has testified specifically about the *exposure meeting*, his stay in a military camp and then his stay in a police camp, tortures and executions. He has also testified about the role of the accused. He still has contact with [person 322, different spelling] (the Court assumes witness [person 322, different spelling]) and he knows [person 136, different spelling] (the Court assumes [person 136, different spelling], who appears as victim in counts 1, 2 and 4 on the indictment).

The Court notices that the witness seems to render contradictory statements about who was the permanent representative of the Derg in the province of Gojjam. It seems that the witness is mixing up the accused and Kassay Aragaw. When a photo of the accused was shown he mentioned the name of Kassay Aragaw. Besides he testified that already in January 1969 (E) meetings would have been organised people like Eshetu, while the accused at that time had not been to Gojjam. Because of this the Court will not use the statement of [person 325, different spelling] on that point as evidence. Furthermore, the Court also notices contradictions in the statements. He testified in a preparatory interview that he himself had to bury a man who had been tortured six times and was kicked in the genitals (the Court understands that this should be the victim [person 323]), whereas he later testified that the body of the victim was taken to the prison and buried there. Due to all

these circumstances the Court cannot rule out the possibility that the statement of the witness (subconsciously) had been influenced by the passage of time, traumatisation or contact with others. His statement will therefore only be used as evidence where it relates to what has happened to himself.

*[person 313]*

[person 313] was mentioned as a potential witness by [person 320]. In 2014 a preparatory interview was held with him, after which he was interrogated in 2015 by the DLR and in 2016 by the examining magistrate in the United States of America. The interrogations took place with the aid of an interpreter in the English language.

At the time of the offences mentioned in the indictment he was around fifteen years old and although he was not a member of the EPRP he was politically active for it. He has testified about his stay in a police-camp and later in prison, the detention conditions, torturing, executions and the decision by which he was sentenced to prison. About the role of the accused he testified what he heard from others about this.

Person [person 313 ] made statements that are consistent and do not contain contradictions. In the statements a clear distinction is made between what the witness had seen, heard and experienced himself and what he heard from others. In nearly all cases the source of the knowledge is clearly mentioned. In addition the statements are detailed. The witness has stated that although he received kicks and blows with a flat hand but he was much less seriously tortured than others. Besides he did not express an opinion on the question if it was the EPRP or the Derg who started the killing. Finally he mentioned a lot of names of prisoners who were killed or not, which also appear on the lists in the case-file. In conclusion the Court finds that the statement of [person 313] is very reliable and van be used as evidence without any reservation.

*[person 174, different spelling]*

[person 174, different spelling] was mentioned by witness [person 313] as a potential witness. In 2015 he was interrogated by the DLR and in 2016 by the examining magistrate in Canada. The interrogation by the DLR took place with the aid of an interpreter in the English language and the interrogation by the examining magistrate with an Amharic interpreter.

At the time of the offences mentioned in the indictment he was around twenty-two years old and he was part of the youth movement of the EPRP. He has testified about disclosure at an exposure meeting and the role of the accused there, his stay in a military camp and then in a police-camp and in prison, the role of the special interrogators, the detention conditions, tortures, the executions of fellow-prisoners and the final decision by which he was sentenced to prison. By his own account he spoke with other witnesses [person 313] and [person 318] - about the facts.

The Court also established that [person 174, different spelling] has rendered very consistent statements and is able to make a clear distinction between what he has seen, heard and experienced himself and what he heard from others. Therefore the Court considers the witness to be very reliable. The single circumstance that he had contact with co-witnesses and talked with them about the facts does not change this - in view of what was mentioned earlier-. In this respect the Court also takes into account the fact that the statement of the witness is not completely identical to that of his co-witnesses, while this might be expected in a case of collusion or *collaborative storytelling*.

*[person 317, different spelling]*

[person 317, different spelling] was identified by the DLR because he provided additional information for the book of writer Chaneyalew Kassa, who will be mentioned further on.

He was interrogated in 2015 by the DLR and in 2016 by the examining magistrate. The

interrogation by the DR took place with the aid of an interpreter in the English language, and the interrogation by the examining magistrate with the aid of an interpreter in Amharic.

At the time of the offences mentioned in the indictment he was around sixteen years old and active on the youth movement of the EPRP. He has testified mainly about his stay in a police-camp and later in prison, the detention conditions, tortures, executions and the decision by which he was sentenced to prison. He has also testified about the role of the accused, he testified about what he heard from fellow-prisoners and how he himself saw the accused. Some years after the events he recorded data in a notebook. Later on he had contact with other people about, inter alia, the accused.

The Court establishes that this witness has testified with much detail and consistently. When doing so he indicated clearly which information was from his own observation and what he knew from hearsay. The circumstance that he had contact with other people through a blog and has frequently been concerned with the events which occurred at the end of the seventies in Gojjam, does not, in the opinion of the Court, prejudice his reliability. On the contrary the Court finds the circumstance that the witness, since the period mentioned in the indictment, has thought a lot about the events, contributes to keeping the memory up-to-date and thereby makes his statement more reliable. In this respect the Court also takes into consideration that the witness in his corrections of the work of Chaneyalew Kassa shows that he does not unreservedly incorporate stories of others into his own memories. The fact that the witness testified that he saw and recognised the witness from a distance of 150 meter, does not prejudice his reliability. The Court agrees with the Defence that recognition is hardly possible from such a distance but takes account the possibility into account that the witness did not make a correct estimate of the distance. In conclusion the Court considers the statement of [person 317, different spelling] therefore to be reliable and usable as evidence.

*[person 321, different spelling]*

[person 321, different spelling] took contact with the DLR himself after hearing about the investigation through Chaneyalew Kassa. He was interrogated in 2015 by the DLR and in 2016 by the examining magistrate. The interrogations took place with the aid of an interpreter in the English language.

He testified to the DLR that he was arrested in April/May, or during the winter in the months June/July 1971 (E) in Bichena and after was transferred to Debre Marcos one week later. To the examining magistrate he testified that he was arrested in 1970 (E). Furthermore, he has testified about his stay in prison, tortures, detention conditions and executions.

The Court that the witness has rendered varying statements about the moment on which he was arrested and transferred to Debre Marcos, but in view of his further statements about, inter alia [person 324] and [person 4, different spelling] and the *dark rooms*, he obviously made an error in the year/calendar. In the opinion of the Court it is therefore clear that he was brought to Debre Marcos during the period mentioned in the indictment. The rest of his testimony was very consistent and is clear about what he saw himself and what he gathered from hearsay. In this respect he has mentioned the source every time. Finally his testimony is detailed. In conclusion the Court considers the statement of [person 321, different spelling] therefore to be reliable and usable as evidence.

*[person 337]*

[person 337] was interrogated in 2015 in the Dutch language by the DLR. He has testified that he was detained in Gojjam but not in Debre Marcos. His brother however was supposed to have been in prison in Debre Marcos.

In view of the circumstance that this witness cannot testify about the charged offences his statement cannot be used as evidence.

*[person 329]*

[person 329] was probably identified by the DLR because he tried to get in contact with the accused. He was interrogated in 2015 an 2016 by the DLR an in 2016 he was interrogated twice by the examining magistrate. The first interrogation before the examining magistrate had to be stopped because the impression was created that the witness and the interpreter did not understand each other well. Both interrogations before the examining magistrate took place with the aid of an interpreter in the Amharic language.

The witness, who has a so-called 1F status in the Netherlands, has testified that he was a member of the Derg and held a position which was similar to the witness, but in the region of Illubabor. He has stated mainly about the organisation of the Derg, the position of the revolutionary campaign coordinating committee and the position and the powers of the accused.

First of all the Court established that this witness was not able to testify from his own observation about what happened Debre Marcos and Metekel during the period mentioned in the indictment. Besides it should also be noted that this witness by his membership of the Derg and his own position as a representative in another province, possibly has an interest in rendering a statement, which is not completely truthful. Therefore his statement should be considered -when necessary for the evidence - with due caution and only if it is supported by other evidence.

*[person 330]*

[person 330] was interrogated in 2015 and 2016 by the DLR and in 2017 by the examining magistrate. The witness was secretary of the Pomoa (Court: *Provisional Office for Mass Organizations Affairs*) and as such held his office in the palace where also the Derg was located. He has testified specifically about the organisation of the Derg, the meeting of the Derg, which led to the assassination of Atanafu, the role and the reputation of the accused and the position of the provincial representatives.

Also regarding this witness the Court first of all sets out that he was not able to testify from his own memory about what happened in Debre Marcos and Metekel during the period mentioned in the indictment. Besides it should also be noted that this witness has a possible interest to testify not completely truthful and to minimize his own role, because of his membership of the Derg and his own position as secretary. Therefore his statement should be considered -when necessary for the evidence - with due caution and only if it is supported by other evidence.

*[person y]*

[person y] was brought to the attention of the DLR as the [function person y]. In 2016 he was interrogated with an interpreter in the Amharic language by the examining magistrate. He testified about the criminal proceedings in Ethiopia, the nature and the origin of the proof in that case and the position and the role of the suspect.

The Defence and the accused have firmly taken the position that the statement of [person y] should not be used as evidence. The accused argues that this witness must be a high-ranking member of the EPRP and that this is the only way he could have achieved his position as [function person y]. The Court finds that there are no indications for this. Furthermore, the witness has rendered an extensive and detailed statement and nothing shows that he would have testified untruthfully. In the opinion of the Court the fact that he stated that he had no contact with the current regime in Ethiopia about his statement cannot lead to the conclusion that his statement should be considered to be unreliable. Since [person y] currently no longer holds the position of [function person y], but works as a

[current function person y], he is no longer connected to the authorities in Ethiopia. Therefore the Court considers his statement in principle to be reliable. However, the Court points out that the witness is not able to testify from his own observation about the charged offences, but only about the criminal proceedings in Ethiopia and what resulted from these. The Court will therefore use his statement - where necessary- only in an interrelated context with other evidence.

*[person 338], [person 339] en [person 340]*

[person 338], [person 339] and [person 340] were interrogated by the DLR as a consequence of intercepted phone conversations between them and the suspect. In those conversations the accused referred to feelings of guilt.

The Court establishes that none of these witnesses was able to testify anything about the events in Metekel or Debre Marcos. Their statements can therefore not be used as evidence.

*[person 341], [person 342] en [person 343]*

[person 341], [person 342] and [person 343] are the ex-wife and daughter respectively the son and daughter of the accused. In 2015 they were interrogated by the DLR and the three of them have testified to know little or nothing about the conduct of the accused in Gojjam at the end of the seventies.

Since none of these witnesses was able to testify about the events in Metekel or Debre Marcos, it is the opinion of the Court that their statements cannot be used as evidence.

*[person 344] en [person 345]*

[person 344] and [person 345] have both been interrogated by the DLR in 2012. In this interrogation [person 344] testified, inter alia, about his stay in the prison in Debre Marcos, however at the end of his interrogation he indicated that he thought he was being poisoned by his neighbour upstairs. According to neighbourly care he suffers from delusions. *[person 345]* suffers from severe loss of memory.

For these reasons the Court will totally disregard these witnesses.

*The witnesses from the Ethiopian criminal file*

Regarding the witnesses from the Ethiopian criminal file the Court points out that it is not able to establish in what way and under what circumstances these statements were realised. Therefore these statements will only be used as evidence if they are supported by at least two other evidences.

8.5 <u>The witness statements</u>

Below the Court will give a factual presentation of (parts of) the witness statements, which she considers to be reliable and usable enough as evidence. The Court has incorporated complementary information provided by the witnesses in subsequent statements in the factual presentation without further indication. However, eventual differences in subsequent statements have been explicitly mentioned. Prior to the factual representation a reference is made between brackets to the statement the representation is based on. The chapter in which the Court will establish the facts, a specific reference to the parts of the statements that were used will be made.

*[person 111, different spelling]*

[person 111, different spelling] (See p. 2040-2057 with attachments; report of interview [person 111, different spelling], without continuous numbering; official report of interrogation by the

examining magistrate of witness [person 111, different spelling], paragraphs 1-59) has testified that he started to work in 1973/1974 as a teacher in Debre Marcos at the high school. Since university he was active in the student movement and after 1973 he joined the EPRP. His sister and brother ([person 239, different spelling] and [person 346]) were also active in the EPRP and both were later sentenced to three years in prison.

When [Eshetu A.] was transferred to Gojjam the witness heard that he was the representative. Eshetu also sent letters to several offices/stations, signed by him as representative. The witness is sure that he read the letter by which Eshetu was appointed on the notice board. [Eshetu A.] was active in Gojjam for around two years, he was there in 1978 and also in 1977.

In 1977 there was an explosion at the police station in Debre Marcos. This was clearly done by the EPRP, out of revenge for the detention and torture of EPRP-members. The witness believes the squad-commission was the armed wing of the EPRP as from 1977.

The *exposure* campaign of the Derg started in February 1978. There were also people who had changed sides to the Derg and they passed names of EPRP-members. Everybody had to come to the high school to expose themselves. The *exposure meeting* lasted for three days. On the second day they had to form a line and walk through the city in that line, while shouting that the EPRP no longer existed and that they would join the military party. On the third day three hundred people were selected. On the first day Eshetu was present. He was supposed to give a speech on how the *exposure meeting* should take place. The *kadres* and [Eshetu A.] were in charge during the *exposure meetings*. On that day Eshetu had a group of fifteen or sixteen people, who were suspected of lies, taken to prison. The witness saw how Eshetu took the people, brought them to a room and closed the door. After the third day this witness was taken, with three hundred other persons, to a military camp this would be for political orientation. The date when he was taken prisoner was 26 February 1978.

After this new *kadres*, arrived, from a special unit from Addis Abeba, they read the names from the high-ranking members down to the lower ranks. These were between fifty and sixty names. These persons were transferred to a new location

After some weeks the witness went to the police-camp. There were three rooms for interrogation and a room for torture. There was a disciplinary committee for passing information to the authorities of the camp. The witness and other prisoners had to reveal the structure of the EPRP and the number of arms. At their request [person 347] was brought to the military camp because he knew those sorts of things. He said that there was one Uzi in the party. [person 347] became chairman of the disciplinary committee. He was important because of his good contacts with the officials from Addis Abeba. [Eshetu A.] was the leader of the entire region.

The witness was interrogated once. ‘They’ knew everything about him already and he had to tell what he had done since the start of his membership. People were sent on to the torture room if it was thought that they did not tell the truth. The witness, the chairman of the disciplinary committee Chaneyalew and [person 110, different spelling] were appointed to assist. They had to call people to be interrogated. Because of this the witness has heard a lot of what happened in the torture rooms. If somebody held something back he was brought to the torture room. Through the closed door it could be heard how people cried and shouted. Later on they started to put a ball in people's mouths to stop the shouting. The witness saw how people left the torture room; most of them fell over and were unconscious. One person, [person 323], died as a result of the torture. He left the torture room wearing nothing but his briefs and fell and cried for water. The leader of the interrogators did not allow Chaneyalew to give him water. Nobody helped [person 323] because they were afraid. The witness heard that [person 323] had been kicked hard in the groins with a boot and that the testicles of [person 323] were large and that there was blood coming from his penis.

[Eshetu A.] must have been aware that people were being tortured in the police-camp. According

to the witness the special interrogators had to find out everything about the EPRP, by all means, including torture.

Captain Eshetu was the commander of the camp; this was a different Eshetu than the representative of the Derg in Gojjam. The torturers came from Addis Abeba and were under the command of this captain Eshetu. Captain Eshetu gave orders to the interrogators. He thinks that [Eshetu A.] asked for political officials from Addis Abeba to conduct the investigation against the EPRP. He needed experienced people. [Eshetu A.] was the leader in the entire region, so who else could have made such a group come over, says the witness.

The witness saw representative [Eshetu A.] once in the camp, when a guard had abused a female prisoner he clipped the military insignia and he sentenced him immediately to two years in prison. Two heavily armed guards escorted him. People who were interrogated got a circle around their names, the ones who were considered to be militants got a red circle. The witness assumed that a red circle meant death because most of the high-ranking EPRP members had a red circle. The lists were brought to the office of the military representative, [Eshetu A.]. The information that the lists were brought to the office of [Eshetu A.] is something he heard from [person 347]. After having received the interrogation reports of the persons whose names had been circled [Eshetu A.] took a decision.

The witness got a prison sentence of three years. Upon arrival they were put right a away in a dark room and they only left in the morning and at night to go to the toilet, The people with a red circle were in a separate dark room. The dark room was a punishment. They were not allowed to have contact with other prisoners. There were four dark rooms, with around sixty people in each room. The witness stayed around three or four days in the dark room. After an attempt to escape the prisoners were chained to other prisoners by the ankles. It was a terrible life because it was very warm, there was no light, they had to relieve themselves in a little container, which then had to be suspended high on the wall. The heat and the smell were unbearable.

After the period in the dark room the witness was in a cell with fifty or sixty persons. For each person there was about one body length of space. There were political and regular prisoners, in separate wings. There were also members of the EDU.

On 12 August 1978 the witness heard that the sentence was three years. The months in 'custody' were not deducted from the sentence. The sentence was imposed and signed by [Eshetu A.]. The shorter sentences were also read out. It was assumed that the group of persons who were not mentioned and also were not present when the sentences were pronounced would be killed. There never was any court involved.

On 15 August 1978 eighty prisoners were killed. Around eight or nine o'clock at night their room was opened. The witness heard from someone that the group was called to come out and that they were chained with their hand behind their backs. He heard the prisoners sing EPRP-songs and heard that the group was taken in the direction of the church. They walked behind the cell of the witness. Later on he heard from Chaneyalew that the ordinary prisoners had helped by taking the bodies of the dead to the grave. Friends had told him that [Eshetu A.] had been present during this event; they heard this from the regular prisoners. The witness heard that [Eshetu A.] had watched everything until the job was done. Chaneyalew had heard that, after a person had been hit on a sensitive spot and was unconscious, he was put on a chair and a rope was put around his neck. Then two persons stood on either side of this person or a member of the special command unit and they pulled the rope tighter until the person did not breath any longer. The regular prisoners put the person in a mass grave, dug by the prisoners with a life sentence, among which [person 348]. They told all of this to Chaneyalew, who told it to the witness, and they also told others. This information seemed to be correct because after hearing them go to the church nobody had heard any shots. The day after, they were not allowed to go to the field were they grew vegetables. The hole with fresh earth around it, which the witness had seen before had

now disappeared. After the killing there were a lot of crows around that place. The hole was closed and covered with cut grass.

Years later a mass grave was discovered there and the bodily remains were returned to the families. This was the last killing the witness has experienced. This first killing he heard about was when sixteen high-ranking EPRP-members were shot, around four kilometres outside the town. These eighty were killed on the prison site to avoid a riot among family members.

The media did not cover the killing of the eighty people. However the media did report for example that certain people were members of the EPRP and had tried something but this 'mass event' was not made public. However the killing did become known in Debre Marcos. When families came to bring food this was rejected.

The witness was released after three years and also received a document for this. The person who read out the letter said that the letter had been received from the office of [Eshetu A.]. [Eshetu A.] decided about the punishment, he was the highest in command. He still has the document of his release at home. Number 11 on the list of names and revolutionary measures or punishments (page 2061) is [person 14, different spelling], the person who *exposed* him. His own name is also on the list (page 2063) followed by the punishment.

*[person 174, different spelling]*

[person 174, different spelling] (see p. 2113-2133 with attachments; official report of witness interrogation by the examining magistrate of [person 174, different spelling], paragraph 1-40) testified that he was a member of the youth movement of the EPRP for two years. He was arrested in February 1970 (E). First a person whose name he does not remember was responsible for the Red Terror in Gojjam, then came [Eshetu A.], in 1970 (E). He does not know when Eshetu left, but he was replaced by Kassay Aragaw.

Eshetu was in charge of the *exposure* campaign. The witness saw him once when he held a speech at a meeting and he was told that this was Eshetu. There were *kadres* present there who said that this man was [Eshetu A.]. At the first day of the *exposure meetings* Eshetu was there, on the second day he was not. Eshetu said that if the people would expose themselves they would not be persecuted. If they would not give themselves up they would be beaten. In his speech [Eshetu A.] mentioned revolutionary measures, he did this as well as the people who worked with him. At the time the witness knew that this meant death, or prison or that your belongings would be taken from you. IF it was said about people that revolutionary measures had been taken against them this usually meant that they had been killed - in detention-. The Red Terror concerned measures without any trial, a summary measure, which could happen on the street.

Eshetu was the chairman of the *revolutionary campaign coordinating committee*, who took all decisions about arresting people, long prison sentences and executions. The witness does not know [Eshetu A.] left Gojjam in 1970. He thinks that this was in the month of Nehase (August/September).

There was a lot of resistance against the Red Terror. A lot of groups were organised, flyers were distributed and sometimes the EPRP killed soldiers. This was done by the *squads.* At one time a grenade was thrown into the police station. As a consequence the Derg took people from their houses at night and early in the morning.

The exposure campaign started around February 1970 (E). Before this time there were house searches, weapons were being taken from people and they searched for party-materials. A lot of people tried to take refuge across the border and some of them managed to do this.

The witness reported himself on the last day of the *exposure meetings*. All of the *exposure meetings* took place on the site of the high school in Debre Marcos and lasted for several days. At the meeting were Eshetu was present he gave a speech and said that the next day would be the last opportunity for disclosure. If anybody did not follow this, the Red Terror would begin and

executions would follow. People came with all kind of different stories, about what they had done and some of them pointed to others. If somebody was pointed at and he denied, he went straight to prison or he admitted the membership. It was impossible to leave during the *exposures*. Armed guards surrounded them. The persons who had been active in the committees or the youth movement were taken to a military camp at the end of the meetings.

Life in the military camp was not bad. Family was allowed to visit. They were there for indoctrination, after about a month they were taken to the police camp. Someone from the EPRP fraction from Addis Abeba had joined the Derg and wanted to cooperate with them. He asked them for the documents they had and he gathered them and he bundled them and put their names on. Then around 100-150 people, among which the witness, were taken to the police-camp. A group of militiamen came to the camp. They were investigators. Six interrogators came from Addis Abeba. They were no longer allowed to have contact with their families. At first there was an interrogation and if they thought that the story was not correct you were taken to the torture room. Of the Derg in the police-camp he only recognised Berhanu, the most important one.

The witness himself was not tortured, but other people left the torture room with swollen faces and blood from hands, feet and body. [person 323] was tortured so heavily that he died as a result.

In April they - the group of the youth movement- were taken to the prison. They were locked up and were only allowed to leave their cells twice a day. At first there was no sentence, but on 29 July 1970 (E) he- and others - got a three-year prison sentence. The names of the persons that were convicted were read out, the Revolutionary Committee took the decision for the conviction. On that same day more than 25 people were taken from a room, chained in pairs. There were taken away while singing and shouting slogans and then executed. This was on 5 August 1978. A military truck took them to a place just outside of Debre Marcos by a military truck, the bodies were returned later. The witness did not observe this himself, but the news was spread. The witness was at that time in cell 5, a *dark room* were he spent around four months.

Nine days later there was another killing. On 14 August 1978 they killed more than eighty people. He heard this from others. This time it happened with ropes. Someone was also taken from the cell of the witness. At that moment the witness was in cell 10. He was able to see outside from that cell. From the cell they were able to see that people from different cells were brought together. From the cell of the witness a boy was taken [person 349], he was tied with his hands behind his back. Sixty persons were taken from the cells 5,6 and 7. Also a boy of around seventeen years old, named [person 11, different spelling], was taken away. From a certain point the witness was no longer able to see it because they rounded a corner. The boy who was taken from the cell of the witness never returned.

They were taken to the hall of the church. He heard that they were killed in the church hall and buried on the prison site. Near the fence a large hole had already been dug and that is where they were buried, so the witness heard. The non-political prisoners had to bring the bodies to the grave. They knew that no weapons were used. The witness did not see that Eshetu was there but he heard that he was.

They were with around thirty-five to forty people in a cell. It was full and you could not walk there. They were cuffed in pairs by the ankles. It was difficult to move around. This was after eight people tried to escape from another cell. Six of them were killed, one is still alive and one has died by now. This is also something he heard. Later on the witness was in a larger cell with fifty or sixty people. People who did not have family shared in the food of the ones who did have families. There was no medical care in the police-camp, wounded were not treated. There was no shower and no toilet; the prisoners relieved themselves on the site. There was tap water, which they received in a bucket. Food was brought by the families of the prisoners, this was left by the door of the *dark rooms*, and when the door opened to go to the toilet they could eat it. Coffee and tea were brought by the families in thermos flasks.

The witness knew around twenty people of the list with 71 names, which was shown to him. He recognised his own name on the other list under number 163. He also recognised three names of the persons who were killed during the attempt to escape. The witness was a 'small fish', because of his limited activity in the youth movement. The group who had been sentenced to three years in prison consisted also of small fish. The witness concluded that the revolutionary campaign committee had his file because of the fact that this committee convicted him. When his sentence was pronounced the name of the leader of the committee was not mentioned. They did know however that he was a member of the Derg.

*[person 315]*

[person 315] (see p. 1991-2005 with attachments en p. 2014-2015 with attachments; 1st, 2nd and 3rd report of interview [person 315], without consecutive numbering; official-report of witness interrogation before the examining magistrate [person 315], paragraph's 1-51) has testified that he became a member of the youth movement of the EPRP when he was sixteen years old and he remained member until he was arrested. He was the chairman of the *kebele* and a member of the *subdistrict cell*.

[Eshetu A.] was the local representative of the Derg in Gojjam. He was an officer, a sergeant or something like that. He had a military title, but technically a lower rank. However he had absolute power in the province of Gojjam, while the civil administrator actually had no power. Eshetu was always surrounded by guards. All persons appointed by the Derg were confidents of Mengistu and appointed because of their violence and cruelty. Eshetu was deputy member of the central committee, but not a full member, and was also presented over the radio as *alternate member* and political representative of the Derg when he first came to Gojjam. Eshetu has been active in Gojjam from around 1977, but the witness does not know when he left.

Eshetu was prosecutor, jury and judge in one. Several times the witness saw how people from the entourage of Eshetu were taken away in a car just like that. Eshetu gave orders to people and people carried out these orders.

Immediately after the appointment of Eshetu a public meeting was held and the witness was obliged to attend. During this meeting the accused, the representative of the Derg, was announced as the speaker and this was the first time the witness saw him. In total he saw him around thirty times. Everywhere there were public meetings [Eshetu A.] spoke. In his speeches Eshetu said what they had to do and that the contra-revolutionaries had to be kept under control. Eshetu also said: "We will take actions, we will eliminate these people".

In February 1978 the *exposure* campaign started, directed only against members of the EPRP. All EPRP-members had to come to the school to expose themselves. The *kebeles* used a megaphone to shout that everyone had to go to the *High School* the next day.

That day the witness was not present at the meeting (to the police he stated that he hid himself that day, in the preparatory interview he said that the first went but later fled when the school was surrounded). Later he heard from a representative of his neighbourhood who went to the meeting that the group of [Eshetu A.], armed with machine-guns surrounded the group of people. At the end of the day the witness heard that [person 350], who was in a cell below him had been taken. Then the witness then did go to the *exposure meeting* because he was scared. On the meeting, which was held on an open field of the *High School*, [person 351] and [person 334, different spelling] exposed themselves as members of the central committee of the EPRP.

It was said that members of the EPRP had to expose themselves and then they would be allowed to return home. The *kadres* said this. The *kadres* made propaganda and had to recruit people. They were present at the *exposure meetings* to scare people. The *kadres* addressed people and said that there would be hell to pay for those who did not join the Derg. If someone else mentioned a name then that person was hit with the butt of a rifle by one of the guards and thrown into a military vehicle, but if someone exposed himself he was not hit.

The witness saw how [person 352] was beaten up before he was taken to the truck because he refused to betray anyone.

The witness then disclosed himself together with two other members of his group on the third day. The people of the accused said that they would be taken to a military camp and later on would be allowed to return home. The witness was not beaten during the *exposure meeting* because he had exposed himself. The witness heard that Eshetu was present on the first day and he himself saw him on the second day. Eshetu was in charge at *exposure meetings*. He looked angry and was intimidating the whole time. He said that anyone who did not expose himself had to suffer the consequences and that anybody that exposed himself could go home. At night he saw that Eshetu gave instructions to his alternates. He was not able to hear what was being said but he saw that they were instructions for the next day. On the third day Eshetu was not present, but [person 413] the leader of the *public organizing group* was in charge.

The witness and the others were brought by truck to the military camp - a concentration camp-, this was located around ten kilometres from the High School, in the South of Debre Marcos. [Eshetu A.] said that they would be checked there. They had to provide an insight into the structure of the EPRP and sing songs in which the EPRP was doomed. The *public organizing group* came around and tried to persuade them to take the side of the Derg. There were three big halls and the witness and the others had to sleep on the floor. There were no sanitary facilities and family members had to provide food and clothing. There were guards in the camp but at the back of the site there was a forest, which was not guarded.

After about then days Eshetu came to the camp with five men en shouted some slogans. The five men stayed and the atmosphere changed. Eshetu said that the men he had with him would take care of them and would carry out the rest of investigation. One of these people was a *petty officer* whose name was [person 400] and who was in charge. One of the men, [person 393, different spelling] started to intimidate, and he identified the names of people in the higher ranks of the EPRP. Then around fifty people were selected and taken to a different location. A few hours later a second group was selected, which included the witness. They were then brought to a police-training camp, some ten kilometres further. The commander in the police-camp was also named Eshetu and he was the leader of the police interrogation team. The witness thinks that these people were from Addis. Later on he heard that they were from the *central investigation criminal group*.

On the day on which [person 323] died the witness saw Eshetu in the police-camp. The witness was outside and had a view to the interrogation rooms. Eshetu was in front of the interrogation rooms, at a distance of around twenty-five to thirty meters from the witness, with one leg on a step and one on the ground. He talked to the interrogators and moved his hands. The witness could detect a relationship of subordination and saw that the interrogator nodded and agreed to what Eshetu said. After some time the accused left and the torturing continued. The witness also saw him the day after the death of [person 323] and again afterwards.

Eshetu came to the police-camp more often. The witness and others saw him talking to the interrogators and it seemed like he was instructing them. It was visible that they were taking orders. It was a one-way communication. The witness was at a distance of twenty meters. The witness does not remember how often he saw this. The interrogations lasted for one month so the witness could say that he saw Eshetu ten to fifteen times in the police-camp. This was partly to assemble the prisoners and to shout at them and partly to give instructions to the interrogators and to observe the process.

The witness and others were placed in three former office spaces. The people who were suspected of being higher up in the structure of the EPRP were separated. The witness was with 23 people in the middle room and if they laid stretched out on the floor their feet touched. The room was only one-third of a room of three and a half by eight. The windows had been closed and blinded and there were heavily armed militiamen for security. After some time the men were moved

to two large rooms and the women to a third room. Then the offices were used as interrogation rooms and the fourth one served as torture room.

Family had to provide food and they shared this with the prisoners who did not have any family nearby. There was no medical care for the sick or the wounded. There was a prisoner, a doctor named Chaneyalew Kassa, who was allowed to keep his first aid kit to give medical attention to the guards and the interrogators. Unseen Chaneyalew Kassa has provided care to the other prisoners.

At a certain moment [person 347], was brought over from the prison after he had been transferred one time before in order to break him psychologically. He was the leader of the EPRP in the provinces of Gojjam and Gondar and was already detained before the *exposure meetings*. In the end [person 347] became an instrument for helping the interrogators at the interrogations.

The interrogators asked questions and if they did not like the answer they tortured. The torturers came from a *central criminal investigations group* from Addis Abeba. They were trained to torture, without compassion. The witness was tortured for fifteen or twenty minutes. He had bare feet and was hit, inter alia, with a batten in with a rusty nail in it, which went through the sole of his foot. This caused an infection. No medical assistance was rendered. After being tortured a prisoner had to help digging a hole intended as a toilet. Some people had been so severely tortured that they lost consciousness. After this they were still forced to dig. The witness has seen that a man was so weakened after being tortured that when he picked up the pickaxe to dig, he fell over on it and wounded his chest. Furthermore, the witness saw how a tortured man - the witness remembers his name [person 323] when the police mention it- lost consciousness when he was hit on the head and was then thrown and rolled on the coarse and sharp gravel soil. The man was hit in the groins with the butt of a Kalashnikov by one of the militiamen and a bayonet was used to mark a cross in the man's back. Then the man had to dig and when a heath officer asked for water for the man the heath officer was hit with a metal bar on the back of his head. Then the man was brought inside and died.

The witness has seen that another man, [person 324, different spelling] had injuries when he left the torture room and was partly unconscious. [person 324, different spelling] was killed together with others. The sister of [person 324, different spelling] [person 136, different spelling] was also forced to say she was a member of the EPLF.

In June/July a group of 25 persons, among whom [person 324, different spelling], were killed some five kilometres north of the *High School*, in Wonka. When those 25 people were brought to the place where they would be killed people from the town walked with the truck. The witness heard this from others. Others were killed in August.

After the torturing and the interrogations a part stayed in the police-camp. The witness was with the group that stayed in the camp. On a Thursday morning in mid-May one of the

representatives came, who said they had to pack their things. Their was uncertainty about the fact if one of the prisoners, a former class mate of the witness named [person 314, different spelling], had to go to prison, but it turned out that he did not. Thereafter they received indoctrination sessions during a couple of weeks. After this they received a certificate and were free to go.

The witness was shown page 1 of the list headed: ‘Persons against whom revolutionary measures were taken'. The witness has testified that he knew the following people on the list, but they were killed: [person 4, different spelling (nr. 1), [person 5, different spelling] (nr. 2), [person 6] (nr. 3), [person 8, different spelling] (nr. 5), [person 9, different spelling] (nr. 6), [person 10, different spelling] (nr. 7), [person 11, different spelling] (nr. 8), [person 14, different spelling] (nr. 11), [person 15, different spelling] (nr. 12), [person 79, different spelling] (nr. 14), [person 18, different spelling] (nr. 17), [person 19, different spelling] (nr. 18), [person 20, different spelling] (nr. 19), [person 21, different spelling] (nr. 20), [person 22, different spelling] (nr. 21), [person 23, different spelling] (nr. 22), [person 27, different spelling] (nr. 26), [person 29, different spelling] (nr. 28),

[person 30] (nr. 29), [person 31, different spelling] (nr. 30), [person 32, different spelling] (nr. 31).

Furthermore, he mentioned the names of [person 23], because he was very close to him in the concentration camp, [person 2], who tried to escape, [person 353], with whom he always ate in the camp. There was also a person named [person 354] in the prison. The told the witness that he had to torture [person 324, different spelling] and his sister but he had not done this. Furthermore, he had a fellow-prisoner named [person 355]. One of the eighty victims was [person 21, different spelling]. The witness heard from the father of this victim that he was told that revolutionary measures were taken against his son. Furthermore, the witness testified about someone called [person 1, different spelling] who was killed when he tried to escape from prison.

*[person 316]*

[person 316] (see p. 2019-2032 with attachments; 1st and 2nd report of interview [person 316], without consecutive numbering; examining magistrate official report of witness interrogation [person 316], paragraphs 1-56) testified that in 1977 he started to work for the Ministry of Education, in the mailroom. Since 1969 (E) he was a member of the EPRP, but he was not very active. His involvement consisted of reading and debating in small groups.

[Eshetu A.] was the local representative of the Derg in Gojjam. The witness knows this because he was there and had a job there. The name and the stamp of [Eshetu A.] were on all kinds of documents that were received at his work. Whenever he saw a letter from [Eshetu A.] the EPRP-members were called anarchists in it. One letter was about the Red Terror, and another one about the fact that everyone had to tell the truth about the EPRP and that everybody had to leave the EPRP and join the Derg. He saw the name and the stamp of [Eshetu A.] on those letters. The witness recognised the stamp of [Eshetu A.] by the name. His signature was also on it. The administrator added an attachment to the letters and forwarded them to the fifty schools in Debre Marcos (comment of the Court: the witness probably means Gojjam).

At the reading the witness testified that everybody in the schools had to know that they had to do what they were asked. The idea was to scare people; everybody had to be afraid. What was in the letter had the force of law. The letter also said that you had to be on the side of the Derg and, "we will enforce the Red Terror". Another letter said that all civil servants had to come to the Tekleimanut School to be addressed. If you did not cooperate with the Derg you would be detained or killed. The letters did not say this, the letters said everybody was obliged to come and those who were not in favour of the Derg were terrorists and had to be punished.

The witness saw [Eshetu A.] the first time during his visit to the Tekleimanut Primary School. Beforehand it had been communicated that everybody from the ministry of education had to come there. The witness knew that it was Eshetu at that school because he had sent the letter about the meeting on the school with all civil servants. He saw [Eshetu A.] in the middle of the crowd of about fifty or fifty-five people, he was shouting. An elder man asked a question and then Eshetu shouted and ordered the *kadres* to take the man outside. He was dressed in a military outfit and was surrounded by *kadres.* Eshetu then raised his clenched fist and shouted down with the anarchists. With this he referred to the EPRP. At that moment the witness was at a distance of around thirty meters. [Eshetu A.] was there to represent the power of the Derg, during a period of two or three years. He thinks that [Eshetu A.] left in 1979/1980. He had a very bad reputation; he was a very bad dictator.

The Derg started to identify members of the EPRP. They told the high school pupils that nothing would happen if they turned themselves in. The witness did not go until the third day, because he heard that he would be killed if his name would be mentioned. Eshetu was not present there. The *kadres* told everybody that you had to disclose yourself, if not you might be very sorry. He did hear Eshetu said at the start of the exposure *meeting* that everybody who did not disclose membership of the EPRP would be killed. Everyone in town talked about this.

Because his friend had disclosed himself and was in the same EPRP cell, there was a large risk that his name would be mentioned. His name was called; he then had to disclose himself and was

asked to mention another member of his cell. The *exposure meetings* lasted from eight o'clock in the morning until five or seven o' clock at night. There were four or five *kadres* sitting behind a table and a number of *kadres* with firearms were standing among the people.

The ones who had to come were selected based on the exposure as a member of the central committee of the EPRP. The interrogators thought that there was somebody missing from the central committee of the EPRP not as much persons as they expected reported themselves.

The witness was brought to the boardroom to outline the structure of the EPRP. During an *exposure meeting* it was said that somebody had heard that they had an Uzi. The *kadres* then wanted to know were this Uzi was and when that was not made clear everybody had to come the office of the director. There were around three hundred people, there were brought to the military camp, guarded by armed *kadres*.

The witness testified that they slept with seventy or eighty persons in one room. Because there was far to little space they had to sleep while sitting. During the day everybody had to appear on a football field and yell slogans. There was one toilet for three hundred people in the camp. The regime became stricter. People were brought from prison to the camp to reveal the structure of the EPRP. They were brought to a room in the camp, where the witness himself has not been. The witness never saw someone from the Derg in the camp. He was there for around seven days. From there he was taken to the police-camp.

There was a prisoner in the police-camp who knew [Eshetu A.] from high school, [person 347], was in the central committee of the EPRP. [person 347] told that Eshetu had investigators brought in from Addis Abeba.

After the names had been registered, the witness was called to the interrogation room. There were three interrogation rooms and a torture room. He had to tell how he had joined the EPRP, what his activities were etcetera. He was neither tortured nor hit and has not been in the torture room. He did know people who were tortured, for [person 323, different spelling], the head of the ministry of education, a high-ranking person. When [person 323] came back he was no longer able to walk, he fell down all the time and a soldier kicked him. He was taken to the cell of amongst others the witness. After about twenty minutes he died. [person 323] look green all over and had swellings over his entire body. [person 326] was also tortured and he had also swellings over his entire body. [person 327] was very severely tortured. The witness heard about tortures that first a ball was put in the mouth, that people were suspended from the ceiling, that bottles of water were attached to the testicles and that nails were pulled out. The torture took place during office hours. If 'they' did not believe you, you were tortured.

During the *exposure meeting* a man [person 327] pointed out another man [person 356] as an EPRP-member. [person 356] ended up in the police-camp. A high-ranking EPRP-member (an acquaintance of [Eshetu A.] from the old days) said about [person 356] that he was not from the EPRP. Eshetu heard this exchange and said that [person 327] should be tortured because he had pointed out a person as a member of the EPRP for no reason.

The witness saw [Eshetu A.] regularly in the camp (to the police he has stated that he saw him every day, at the examining magistrate he stated that he saw him at least twice). [person 347] was not present at those times. He sometimes told what Eshetu said. If you stayed close to him you heard a lot.

It was the same Eshetu he saw at the primary school about which he testified earlier. Whenever he came guards surrounded him. One of the men who were in front of the interrogation rooms told the witness that Eshetu asked about how it went and if there was any new information. As far as he knows Eshetu never killed or tortured someone himself.

The fact that Eshetu killed a lot of people was just common knowledge. Prisoners were divided in groups, some were released after three or four months, others were sentenced to three years in

prison and a third group was killed. Eshetu was the boss and nobody else determined that.

The witness was forced to sing a song for the Derg and after interrogations they were no longer allowed to leave their room. He was in the police-camp for three or three and a half months.

In the mean time a lot of people had been brought to prison. Thereafter he was released and told to live as a good citizen.

Everywhere in Debre Marcos there were slogans put up, which he also heard Eshetu yell, like 'Down with the EPRP'. These texts were also heard on the radio. He heard that Eshetu left and that he showed his successor Kassay Aragew around in Gojjam. Eshetu left after these people had been killed.

The Demses-committee was founded to kill people or to throw them in jail. The witness remembers the names [person 356, different spelling] and [person 4, different spelling]. The committee did what [Eshetu A.] told them, what the top said. [Eshetu A.] ordered who had to be killed.

*[person 313]*

[person 313] (see p. 1921-1935 with attachments; report of interview [person 313], without consecutive numbering; examining magistrate official report of interrogation [person 313], paragraph's 1-36) was not a member of the EPRP, but was active for the EPRP. He was arrested in January/February 1969 (E). He remembers this moment very well because he always received his salary at the beginning of the month but that time he did not. The police were looking for materials, weapons, and pamphlets. The witness was taken to the police station and was transferred after a while to the Changi district prison in Metekel. He was taken together with other to the police camp in Debre Marcos. He assumed they thought he had a high position in the EPRP.

Special interrogators had come from the central area of Addis Abeba. After about a week the witness was interrogated. The other four persons from his cell had said that he was the leader, but he witness said that that depended on the action that was taken. He said that he had only read and distributed pamphlets. The tone of the interrogation was very scary. He heard sounds of people who were tortured and beaten and had to throw up. The interrogators said that if you did not talk this would also happen to you and they left you alone with those sounds and then came back and continued with the questioning. He was not as severely tortured as the others, but they gave him some kicks and blows with an open hand. He saw all kinds of injuries on other people. It could be any part of the body, like arms, which could no longer be used. If the fellow prisoners wanted to carry the wounded they were hit. The witness saw [person 323] when he died. He did not know [person 323], but he heard from others that he was [person 323] and that he had been kicked in the groins. He was dragged outside and separated from the rest of the group.

After a month the witness was transferred to the prison of Debre Marcos. This must have been in the middle of 1977 (the Court understands from the rest of the statement that the witness is referring to 1978). He was in cell 23. There were around fifty or sixty persons in a cell. There were political prisoners, dry or ordinary prisoners and landlords. The dry prisoners were trusted by the police and had more privileges. The political prisoners were on good terms with the dry prisoners and received information from them, also about the persons nobody was allowed to see. These were the ones suspected of having a high position or of violence against the military junta. They were in separate dark rooms on the edge of the site. They went to the toilet early in the morning and received water from a hose through a covered little window and did not have a shower.

[person 357] was a dry prisoner who had made an opening in the wooden fence. Twelve people tried to escape through there. Only one escaped alive. He recognised the name of [person 81, different spelling] as the name of the escaped prisoner. The others were shot on the site.

On 16 August 1970 (E) the witness heard his sentence. He never saw anything on paper. Someone with a megaphone read the sentences from a hill. No date was mentioned when this happened. He received a three-year sentence and the year he had already served did not count.

This made him angry. He cried, just like his friend, when he heard he got sentenced to three years. The older brother of this friend said that they had to stop crying because he was sure that he himself would be killed because his name was not on the list.

The police told him that the committee had passed this sentence. The committee was always the representative of the Derg and this was [Eshetu A.].

In the prison of Debre Marcos the period before the sentences was the worst. They were in a dark cell, could only go to the toilet twice a day, could not shower, were not allowed to receive visitors and the food was thrown inside. Persons who were ill only occasionally received medicines. There was a nurse then. Antibiotics were also given. They also had to dig and they lived in fear. They also took people, groups of twenty persons. After the sentence it became more relaxed. Visitors were allowed and they could leave the cell in the presence of a police officer. There was treatment in case of illness.

After these sentences were read the prisoners had to go to their cells. Ropes were thrown in and the people who had not received a sentence knew that they were going to die, they started to sing songs and shouted: "take us all". But people had been appointed in the cells who tied the ones whose names where mentioned and they were pushed outside. The witness saw that they were assembled that night on the grass field

The witness' best friend, [person 49, different spelling], and [person 70, different spelling], [person 359], [person 48, different spelling], [person 5, different spelling] and [person 360] were taken that night.

The people were assembled and then escorted to the exit. The witness was in the cell and was not able to see of there were high-ranking people among them He only saw armed military, the person who called the names and the person who threw the rope. The man who read the names was a police officer from the prison that worked in the office. The witness was able to see him well from a distance of three or four meter. Armed men wearing special uniforms and carrying machine guns surrounded him. This is why the witness thinks that they were *special forces*. The non-political prisoners who were supposed to have been present during the killing were [person 48, different spelling], [person 361], [person 362] and [person 363] (he was the chairman of the prisoners).

The witness heard about [person 361] and [person 348, different spelling], who stayed in his cell that the man were taken to the church and had to kneel in a line. Then the special forces put ropes around their necks and they were hit in the neck. Then the rope was pulled. [person 361, different spelling] and [person 348, different spelling] told the witness that they carried somebody who was still alive. They also said that Eshetu was present with guards. He was dressed in black and Eshetu checked if everything went as it should. The witness heard from [person 361, different spelling] that Eshetu was present during the killing. He suspects that [person 348, different spelling] does not know what Eshetu looks like. But [person 348, different spelling] did tell that there were people standing on the podium in the church and that people were being killed. The witness knew that [person 361, different spelling] did know Eshetu, because [person 361, different spelling] has more liberties and was allowed to go outside. Besides Eshetu appeared every day in the newspapers. Before [person 361, different spelling] told the witness about what had happened in the Michael's Church, [person 361, different spelling] had not talked about Eshetu. Both [person 361, different spelling] and [person 348, different spelling] have said that there were several people with Eshetu on the podium. Once they were lying they had to be carried to the grave. This was done by the group [person 361, different spelling] was in. [person 348, different spelling] has also told how the killing took place. [person 348, different spelling] was upset the entire day and the witness testified that they insisted he should tell them what had happened. He then told 'what the procedure was like'.

[person 361, different spelling] was a distant relation of a friend of the witness named [person 5, different spelling] who was in one of the dark rooms and through notes which the witness passed to [person 361, different spelling] the witness had contact with [person 5, different spelling]. The next morning [person 361, different spelling] brought the witness among other things the ring of

[person 5, different spelling] to return to his wife, He also told the witness how it had happened and said he would have helped if he had known and would have helped him to escape. The second the other heard. The witness then gave his ring to the wife of [person 5, different spelling].

Of the list (of names of persons against whom revolutionary measures were taken) he recognised [person 4, different spelling], [person 353], [person 6, different spelling], about whom he said that they were killed there, [person 364], [person 48, different spelling], [person 49, different spelling], who was the friend he told about, [person 365], [person 52, different spelling], [person 70, different spelling], [person 69, different spelling]. These people were all in prison with him.

*[person 317]*

[person 317] (see p. 2068-2087 with attachments; examining magistrate official report of witness interrogation [person 317], paragraph 1-47) has testified that he was an active member of the youth movement of the EPRP.

In the spring of 1970 (E) the witness was arrested and detained for a couple of weeks at the police- station in Bahardar. At night the witness and two others were brought to another place and tortured. At a certain moment in time he was brought to Debre Marcos, to the police-camp.

He was in a cell with eighteen people and there were already thirty-five or forty-five prisoners. In the camp he was told that the Derg-investigation team from Addis Abeba had gone and that the local investigators had felt like they were pushed aside by them. The opinion of the prisoners who were already there was that the team from Addis Abeba was brought in by the highest representative of the Derg. When the witness was in the camp [Eshetu A.] was the highest-ranking representative. It was generally known that he had the files, the results of all the interrogations. The sentence came from Eshetu, there was a committee, the *revolution and campaign coordination committee*, led by Eshetu. He was the permanent representative of the Derg in the province of Gojjam, the ultimate authority, the Mengistu of Gojjam. Not a single political case came to trial. During this period there was no court that played any role. The witness has seen Eshetu some time in the Debre Marcos prison at a distance of around hundred or hundred and fifty meters. Others pointed him out. He also read in newspapers about Eshetu, what he did, where he made speeches.

In July 1970 (E) the witness was brought to the prison in Debre Marcos. Around one month later the heard the sentence. The names of a whole group of people were announced and the sentence from that day was two years, He did not have to do hard labour because he was working on the literacy of the non-political prisoners. When the sentence was imposed the name of Eshetu was not mentioned. The witness was asked to make a drawing of the prison. He said that the church was used for the literacy campaign and that there were sixty or seventy prisoners in the four large rooms, they were all chained in pairs, there was something made of metal around their legs. The witness saw this every day when they came back from the toilets. Only the legs were chained together and therefore they had to do everything together. The witness was in cell number 22.

The witness was there with around fifty people in a cell, there was too little space to sleep on your back. There were 50% political prisoners and 50% ordinary criminals, also called wet and dry prisoners. In the witness' cell they were mixed.

There were four very large cells in that prison: they were always locked during the day. There were other political prisoners. They were only allowed to go outside early in the morning and at night they could go to the toilet. On 29 July 1970 (E) the witness and his cellmates had to return to their cells. People started to sing, to shout slogans in which the EPRP was praised and the Derg criticized. After a few minutes the voices faded away.

The next morning the prisoners who remained behind realised that sixteen people had been taken from these four cells and killed. This was the provincial top of the EPRP. The witness testified he heard that these prisoners were loaded in a truck and that they were singing. Their escorts did

not want the public to hear this. They started the killing already during the transport. The killings were executed, as planned, just outside the town, they heard that the bodies were brought back inside the site and then thrown in a hole. These were the first killings the witness experiences after he ended up in jail.

They got these details from the police, who escorted them from the prison. The police talked to the people. They had been there and they also talked to the prisoners. Another source of information was a food-supplier, who had nothing to do with the army. The police told the food supplier that the killing of these people already started during the transport.

Sometimes there was violence when the prisoners stood to close to the exit during the weekend, if they came too close to the fence the police hit the prisoners to make them go back to the buffer-zone. This was on visiting days. The worst violence happened in August, three days after his sentence. The sentences of the other prisoners were read out, including the people in the sealed rooms. But not all of them. Some heard their sentence that day but not all of them. Between 5 and 8 August 1970 (E) there was fear that the worst would happen to them. This was also due to the fact that the dry prisoners had dug a large hole on the prison site. In the night of 8 August 1970 (E), the witness and his cellmates were sent back to their cells earlier then usual, the cells were closed. After some time a group of guards began to take people from their cells. Through the barred windows they saw people coming out with their elbows tied behind their backs. They were taken to the backside of the prison. They called a name at the cell of the witness, but that was not the person. Although the name did not completely match they took him away, tied up. The next morning they knew that something terrible had happened. The first thing the witness did was go to his friend [person 348, different spelling], he was dry prisoner and [person 317] supposed he had helped that night. [person 348, different spelling] was very sad. He said that so many people had been taken to the church and had been killed in the church in the presence of [Eshetu A.]. Every time a prisoner was taken to the church Eshetu asked: "Who is this?" Then the police checked a list. [person 348, different spelling] said that 82 must have died that night, among which a girl. The way in which they were killed was that they tied some kind of rope to the rope with which their hands were tied and a noose around their necks, so that they were strangled by the noose. The next day the belongings of the people who had been killed, like jackets, rings, watches were sold. The prisoners had to carry the bodies and dump them in the mass grave. During the transfer from the church to the mass grave they took possession of the belongings of the bodies. The dry prisoners sold the objects. Some did not care and said it would be a waste to bury these things. [person 348, different spelling] told the witness that he had carried a certain [person 27, different spelling] from the church to the grave. He was very big. Because [person 27, different spelling] was so heavy and so big, the usual technique of strangling did not work and they just left him lying on the ground. [person 27, different spelling] was not dead yet and on the way to the grave [person 27, different spelling] talked to [person 348, different spelling]. Because they knew each other this was very heavy for [person 348, different spelling]. He also had not died yet when [person 348, different spelling] threw him in the hole. [person 348, different spelling] also told that the only women from the women's cell was also strangled and later taken to the mass grave. When they threw her in the mass grave she tried to stand up and climb out of it. The entire group, including Eshetu was already on their way to the mass grave and he asked why did you not finish that one? Then somebody who was standing by him said: "the earth will finish this work, no weapon is needed". [person 348, different spelling] declared this to the witness. The witness also heard it from the other dry prisoners and from the policemen. People were buried alive there. It is correct that if the whole group was standing there and they saw that people were still alive, the work just continued and the grave was filled up with earth. De bodies were almost up to the surface. The witness mentions [person 348, different spelling] so often because he informed him after that night. Afterwards there was more information from police officers. They had also told their family members, who in turn told others. Especially the prisoners from Debre Marcos received a lot of information from relatives.

The witness looked at the list and stated that [person 27, different spelling] was number 26.

Number 44 was the only woman who was killed. She was the one struggling for her life while lying in the grave. Number 41 is the number 18 of the group of the witness. The witness does not know why he was killed. Number 58 was a health worker and his friend was a teacher, he was the one with the confusion about the name, whose names were confused. They were both taken to an empty cell. They spent the night there so Eshetu could find out who was the one who had been given the death sentence. The next day the teacher returned. He said that his friend had been given the death sentence and not he. His friend was killed the next night. It was generally known that Eshetu decided who lived and who died.

*[person 321, different spelling]*

[person 321, different spelling] (see p. 2283-2296 with attachments, examining magistrate official report of witness interrogation [person 321, different spelling], paragraph 1-55 with attachments) testified that during the winter period of June/July (might have been April/ May) 1971 (E) (the Court has considered before that the statement of the witness about 1970 (E) is an apparent error) he was arrested in Bichena and was taken to Debre Marcos after one week. After a few days he was brought to the police camp. His friend went in first and was hit. When he came out he was no longer able to walk and was supported. Then the witness went in. He saw that a man was suspended from the ceiling. This old man was beaten under his feet. When he was brought down he as no longer able to stand on his feet. There were bloodstains everywhere.

He was brought to the prison of Debre Marcos named Demalas. "Dem" means blood and "Melas" means payback, revenge. The prison is at the foot of a hill. There were around fifty prisoners in cell 17, dry and political. The room was around five to six meters. The political prisoners did not have beds. If your family could afford it you had half a mattress. There was an earthenware pot suspended on the top of the wall for if you had to urinate. During the day they could go the toilet, from 18:00 in the evening and at night this was not possible. If the family could afford it they brought food to the prison. From the prison you got food from a barrel, a little pan with a little piece of bread.

Around August, in the winter period, the security became stricter around 12:00. Around 14:00 or 15:00 they heard shouts coming from the *dark rooms*. At a certain moment it became quieter. Around 17:00 they had to return to their rooms, this was earlier then normal. Around 19:00 or 20:00 the voice became louder again. He then saw two persons with a big notebook. They walked past all the cells and called names. When they approached cell 17 their voices could be heard. He saw that a rope was handed to the *cabo* (who was responsible for maintaining the order and not a political prisoner) and the *cabo* had to tie the hands of the person whose name was mentioned behind the back. People were taken from different cells and came out of their cells with their hands ties behind their backs. If a name was called the militaries threw a rope through the window. He heard that the so-called dry prisoners in the cell had to tie the young people. In cell 13 or 14, which was also a *dark room*, were people from Mota. Just one person from that group has survived.

The next day a man was appointed to cell 17 but the witness saw that he came from cell 13 of 14. They asked him why there was so much shouting the day before. The man told that they knew that a large hole was dug behind the church and they thought that it was destined for them. The witness heard from a dry prisoner that he had helped to bury the bodies. The day after the incident the witness saw fresh earth there. He heard that also in 1970(E) a large killing was also supposed to have been committed and the mentions the names

[person 324], [person 4, different spelling] and [person 63, different spelling], he knows his brother. On the lists that were shown to him he recognizes the names of [person 4, different spelling], [person 27, different spelling] and [person 63, different spelling], whose brother he knows. [person 415] was not in the group that was killed when he was in prison.

After two or three months in prison the heard when he was playing basketball that he had been

sentenced to two years in prison with (hard) labour. He did not receive any document stating who imposed that sentence. However the names of [Eshetu A.] and major Kassai Arragaw were mentioned.

[person 366] told him that he was in a *dark room* with [person 9, different spelling] when their sentence was pronounced. [person 9, different spelling] was given the death penalty and Kahasun got three years. They were chained together by the ankles. The accused then said: *"we gave him three years but take him too then he will also get the death penalty".* [person 366] was present when the accused said this.

The witness has testified that the does not know the accused and he never saw him. After his release he found out that the accused was a *fulltime member* of the Derg. He understands now that the accused was in total control of the political activities in that region.

*[person 325, different spelling]*

[person 325, different spelling] (see p. 1949-1965 with attachments; report of interview [person 325, different spelling], without consecutive numbering; official report of witness interrogation by the examining magistrate [person 325, different spelling], paragraph's 1-31) has stated that he, after a stay of two weeks in the military camp, was taken to the police camp, with around fifty other persons. After getting a clear picture of the structure people specialised in obtaining information came from Addis Abeba. The witness has stated that those people from Addis Abeba tortured him once. When he entered a room he saw that there was a wooden beam suspended from the ceiling with a rope hanging across it. After standing on a table he was tied up. His hands and feet where tied behind his back and the rope went passed his mouth. At a certain moment he was hoisted up. He was hanging on the ceiling with his feet and arms behind his back. While he was hanging there one man pushed him through the room, the other hit him with a stick. He got blows on his back, legs and feet. The blows on his feet were the worst. He thinks it lasted between ten and fifteen minutes. The witness calls this method *Wafalala* (phonetic). According to the witness *Wafa* means bird and *lala* means flying. So it means something like flying bird.

8.6 <u>The requests concerning witnesses</u>

*Het examination criterion*

In their plea the Defence made a request to examine (whether or not again) a large number of persons as witnesses. For the requests that were made the Court refers to the overview that was produced and attached to the present judgment as Attachment 2. The witnesses mentioned under 1 to 12 were requested earlier.

Regarding the assessment of the requests the Court wants to point out the following. A request to interrogate a witness should be considered by the Court in the context of the interest of the Defence or the criterion of necessity. A request to which the interest of the Defence applies can only be rejected if the issues about which the witness can testify reasonably can not be of importance to any decision to be made in the criminal proceedings against the accused or rather that it should reasonably be excluded that this witness might be able to testify about the referred issues. Only in that case it can be said that the rejection of the request does not infringe the rights of defence of the accused. This regulation implies on the one hand that reluctance should be observed in rejecting requests to interrogate witnesses. At the same time however the obligation for the Defence is emphasized to properly motivate these requests. A rejection of the request is possible if the request is not, or so poorly motivated, that the Court is not able to examine the request against the criterion of the interest of the Defence. The Defence is therefore required to motivate for every witness that is put forward why the examination of this witness is of importance to any decision to be taken in the criminal proceedings pursuant to article 348 and 350 of the Code of Criminal Procedure.

The criterion of necessity is related to the task and the responsibility of the criminal court to ensure that the investigation is complete. In view of this the Court has been granted the authority to

order witnesses to be summoned if the Court considers this interrogation necessary, disregarding the opinion of the parties in the proceedings. This entails that a motivated, clear and firm request of the Defence to the Court to use its authority to summons witnesses might be rejected because the Court considers itself to be sufficiently informed by the examination in court and therefore finds the requested interrogation not necessary.

To address the question if the interest of the Defence or the criterion of necessity applies the moment on which the request was made should be taken into account.

In its decision of 16 February 2017 the court considered - with the following justification- that on that moment the criterion of necessity already applied:

*"The criminal investigation against the defendant has been in progress for several years. Since the end of 2015 the examining magistrate has directed the investigation. Several requests pursuant to article 182 of the Code of Criminal Procedure have been submitted by the former Defence. As a result of this experts have been appointed and almost twenty witnesses were examined by the examining magistrate in the Netherlands, the United States of America and Canada. The examining magistrate concluded the investigation on 15 November 2016, after finalizing all investigative activities. Shortly afterwards the defendant choose to be assisted by other defence lawyers. As a consequence the court hearings dealing with the substance of the case, which were scheduled to begin on 21 November 2016, could not take place. In order to afford the new defence lawyers the opportunity to submit new requests for investigation the Court held another preliminary hearing on 6 February 2017.*

*The Court finds that - considering the current phase of the proceedings- the criterion of necessity should be applied to a decision about the requests. However in view of the seriousness of the case and the change of the defence lawyers the Court will apply the necessity criterion will such leniency that the outcome will not differ significantly from what would have been reached if the criterion of the interest of the Defence would have been applied"*

The Court is of the opinion that the necessity criterion -with the same motivation- applies also now. However the phase of a lenient application of the necessity criterion has already been finalised, considering the phase of the investigation and the opportunity that was also granted to the current Defence, to submit requests at an earlier stage.

*The witnesses mentioned under 1*

The Court establishes that this is a repeated request. The request is rejected, largely in line with the motivation of the decision of 16 February 2017, for the following reasons.

The Court establishes that the statements of the witnesses were included in the criminal file from Ethiopia. However, with the exception of the witness mentioned under m) they have only testified in a general sense about the accused, or more specifically on points that are not related to charged offences. At the renewal of this request the Defence disputed this and quoted passages to show that the witnesses did render concrete testimony. Nevertheless this does not change the opinion of the Court since the quoted passages refer to general descriptions of the position, the place of residence or the physical appearance of the accused or to incidents that have not been charged to the accused in the present criminal case. The Court considers itself to be sufficiently informed on the general issues and will again reject the request to interrogate the witnesses because of the lack of necessity.

In its decision of 16 February 2017 the Court awarded the request to hear the witness mentioned under m). In the official report of findings of 26 October 2017 the examining magistrate stated that, despite enquiries, there is not enough information available to be able to locate this witness. A request for judicial assistance to Ethiopia, where the witness probably stays is not possible. At the hearing on 30 October 2017 the Court has rejected the request and has decided that, based on the earlier mentioned official report of findings of the examining magistrate, it is very unlikely

that this witness will appear in Court within an acceptable time-span. In its assessment the Court took into account that there is not even the slightest realistic expectation that Ethiopia can or will cooperate in the execution of the request for judicial assistance. The Court finds that at the moment there are no new facts or circumstances, which should lead to a different opinion. The request will therefore be rejected.

*The witnesses mentioned under 2.*

In its decision of 16 February 2017 the Court has rejected the request to examine these witnesses because there was not enough identification information of the witnesses. The former ministry of Security and Justice, department of AIRS, reported that there are no possibilities to trace these witnesses through diplomatic channels or through the Ethiopian authorities, which makes it impossible to approach Ethiopia through Interpol. Enquiry through Interpol in the countries surrounding Ethiopia and by the Dutch liaison in Kenya has had not result because the names of the witnesses offered not enough leads to find them. For the same reason enquiry from the Prosecution Service with a local contact person failed to produce any results. There is nothing to show that these circumstances have changed by now and that any result could be expected from renewed enquiries. The request will therefore be rejected.

*The witnesses mentioned under 3*

The Court has rejected the witnesses mentioned under a), c) and d) in its decision of 16 February 2017 because there is not enough identifying information available. The Court now again rejects these witnesses and refers for the motivation to what has been considered before regarding the witnesses mentioned under 1.

At the time the Court awarded the witness mentioned under b). However the examining magistrate stated in the earlier mentioned official report of findings that it is not possible to locate this witness because there is not enough information available about him. At the Court hearing on 30 October 2017 the request was therefore rejected, because it is very unlikely that this witness will appear in court within an acceptable time-span. Since this is still the case the Court will again reject the request.

*The witnesses mentioned under 4*

The Court awarded the request to examine the persons mentioned under a) and b) in the aforementioned decision of February 2017. [person 319, different spelling] was then interrogated by the examining magistrate on 25 August 2017, while the Defence was present through a videoconference. In view of this circumstance the Court does not consider it necessary to interrogate this witness (again) and rejects the request.

Regarding the person mentioned under b) is request for judicial assistance was made to the Canadian authorities and they have informed that they do not agree with a hearing. At the court hearing on 30 October 2017 the Court decided that because of this the possibility to examine this witness had ended and that the request should therefore by rejected. For this reason the Court will reject the request now also, first of all since it is unlikely that she will be able to appear in court within a reasonable time-span and furthermore because the court decided earlier on in this chapter that the statement of the witness will not be used as evidence and besides does not see the need to examine this witness.

Regarding the witness mentioned under c) the court refers to the reasons for rejection given by the Court on 16 February 2017, implying that this request is based only on speculation, so the Court does not see the need to interrogate the witness.

*The witness mentioned under 5*

Regarding this witness the Court refers to the reasons for rejection given by the Court on 16 February 2017, implying that this request is based only on speculation, so the Court does not see

the need to examine the witness.

*The witnesses mentioned under 6*

In its decision of 16 February 2017 the Court has awarded these witnesses. Nevertheless the examining magistrate informed that the Dutch embassy in Zimbabwe, where the witness Mengistu was said to stay, has repeatedly tried to discuss with the authorities of Zimbabwe if a request for judicial assistance could be made. These authorities however have not agreed to make an appointment. For this reason the examining magistrate was not able to make a request. There is not enough identifying information available from the witness Desta, but he is presumed to stay in Ethiopia. At the hearing in Court on 30 October the Court rejected the request regarding these two witnesses because it is very unlikely that they will be able to appear at the hearing in court within an acceptable time span and there is not even a tiny realistic expectation that Zimbabwe or Ethiopia can or shall cooperate in the execution of a request for judicial assistance. Therefore the Court now again rejects the request for identical reasons.

*The witnesses mentioned under 7*

In its decision of 16 February 2017 the Court has rejected this request, because the questions that the Defence wanted to ask the witness could have been asked during their earlier interrogations before the examining magistrate and in the presence of the former Defence. The questions do not concern new points of view or new developments. According to established case law the interrogation of witnesses, which have already been examined, is not necessary under these circumstances. Therefore the Court now again rejects the request for identical reasons.

*The (expert) witness mentioned under 8*

In its decision of 16 February 2017 the Court has rejected this request, because of the lack of necessity. The Court gave as reason -in short- for this that the supposed errors in deficiencies in the proceedings regarding the Ethiopian criminal cases have not been sustained by the Defence besides it is unclear what an expert on the current regime in Ethiopia might add to an assessment of these proceedings. Besides the Court has reasoned that the Defence has not sustained the assumption that the Ethiopian government would have manipulated documents or that the authorities would have played a role in providing lists in order to get the accused convicted in the Netherlands. Finally the Court considered at the time that it does not need an export to be aware of the need to act with the necessary caution regarding the principle of legitimate expectations. As in the past the Court does not see the need to award this request, so the Court will reject it for identical reasons.

*The (expert) witness mentioned under 9*

In its decision of 16 February 2017 the Court has rejected this request for the reason that it is already sufficiently informed about the aspects that should be taken into account for the assessment of the oral testimony. As in the past the Court will now reject the request for identical reasons.

*The witnesses mentioned under 10.*

Regarding the person mentioned under a) the Court considers that the request to examine him was awarded already in February 2017 and that the witness was then examined on 18 April 2017 by the examining magistrate, in the presence of the current Defence. In view of this fact the Court does not see the need to examine this witness (again).

Regarding the witness mentioned under b) the Court considers that the questions which the Defence wanted to ask the witness could have been asked during his earlier examination by the examining magistrate and in the presence of the former Defence. The questions do not relate to new points of view or new developments. According to established case law the interrogation of witnesses, which have already been examined is not necessary under these circumstances.

Therefore the Court now rejects the request.

*The witness mentioned under 11.*

The Court rejected this witness in its decision of 16 February 2017 because the Defence had indicated that they wanted to question her about the position and the stay of the accused in Gojjam or Gondar in 1978, while she had already testified that she knew nothing about this. As in the past the Court will now reject the request because of the lack of necessity.

*The witnesses mentioned under 12.*

In the afore mentioned decision of 16 February 2017 the Court has rejected this request, since there is no identifying information about the witnesses and the request is so undetermined that the Court -now also- will have to reject the request.

*The witnesses mentioned under 13 to 34.*

The Court reject the witnesses mentioned under 13 to 33 because she considers to be sufficiently informed and does not see the need to examine these witnesses, whereby the Court also points out that also in the case of these witnesses the Defence in many cases completely failed to provide sufficient identifying information. .

Regarding the persons mentioned under 13, 16, 17, 18, 22, 23, 24, 26 and 27 the Court additionally finds that the Defence had previously indicated the whish to examine persons regarding (previous) statements of witnesses. However, as the Court has considered earlier in this chapter, these statements will not be used as evidence. Therefore the examination of these witnesses cannot be necessary.

Regarding the persons mentioned under 15 and 21 the Court additionally considers that the questions which the Defence wanted to ask the witnesses could have been asked during their earlier examination by the examining magistrate and in the presence of the former Defence. The questions do not relate to new points of view or new developments. According to established case law the interrogation of witnesses, which have already been examined is not necessary under these circumstances.

Regarding the person mentioned under 34 the Court points out that - contrary to the assertion of the Defence- this person has not been rejected by the Court as a witness. Only in their plea the Defence requested the examination of this witness, so in this case the necessity criterion also applies in full. The Court rejects the request because she considers herself to be sufficiently informed and she need of the examination was not made apparent.

Therefore the Court now rejects the request.

## 9 The written documents and the expert reports

### 9.1 Introduction

Beside the witness statements there are several written document in the file from, inter alia, the Ethiopian criminal file of the accused. Below the Court will mention these written documents and, where necessary, assess their admissibility as evidence. Besides there are two reports from experts in the file and these experts were also examined. In this chapter the Court will also pay attention to these reports.

### 9.2 The position of the Prosecution Service

The Prosecution Service did not contest the evidentiary effect of these expert reports and considered them to be admissible as evidence.

### 9.3 The position of the Defence

The Defence has taken the view that the authenticity of the written documents from the Ethiopian file cannot be established and that a lot of persons could have added stamps and/or signatures allegedly from the accused to the lists in the file.

Regarding the report and the statement of the expert De Jong the Defence has emphasized that this does not allow the conclusion that the examined signatures are from the accused or were placed by him.

Regarding the report and the statements of the expert Abbing, the Defence has taken the position that these cannot be used as evidence. It was argued that Abbink is prejudiced and

can be considered as insufficiently skilled in this field. The Defence requested another witness examination of Abbink if the Court will use his report and statements as evidence.

### 9.4 The file documents

#### 9.4.1 The written documents

*Photographs and a newspaper article*

The accused was presented with a photograph, which was found when his house was searched. The accused has declared that on the back of the photograph is written Ginbot 26 1970 Bahir Dar (see p. 388). The accused recognises himself on this photograph (see p. 278).

The Court established that Ginbot 26 equals 3 June 1978 of the European calendar and that Bahir Dar was in Gojjam.

A newspaper article in the English Ethiopian Daily Herald of 16 June 1978 (see p. 1801) says:

"*Meanwhile in the seven provinces comprising Gojjam region, nearly 45.000 Birr was collected by members of the clergy in the ongoing drive to rush provisions to those deployed along the fronts and relief supplies to victims of aggression. Presenting the cheque for the sum to Comrade Lt. [Eshetu A.], a member of the Provisional Military Administrative Council assigned to the region (…).*"

The Court has no reason to doubt the accurateness of the date on the photograph found in the house of the accused and the newspaper article and finds them admissible as evidence. .

*Proclamation 129*

In this proclamation (see p. 2435-2441) of 27 August 1977, two days after the speech of Mengistu in which the announcement was made that traitors like for example EDU and the EPRP "*shall be exposed (…), brought to their knees and shall be crushed*", a so-called National *Revolutionary Operations Command*, was founded led by Mengistu who was the chairman of the Derg since February 1977. In the structure of the different articles of the proclamation a framework is revealed of the far-reaching powers of the 'council' of this ' command; in the battle against "*reactionary internal and external forces that hate to see a strong and revolutionary Ethiopia.*" (document, i.e. a document attached to document military activities of the EDU, René Lefort, *Ethiopia. A heretical revolution?,* London: Zed Press, 1981, p. 216).

For each region, as for Gojjam, a *Sector Command* (article 7), was established, led by a government appointed president, of which (pursuant to article 10) the representative of the

Derg (PMAC) was the vice-president. In article 12 it was laid down that for every region a *Revolutionary Operations Coordinating Committee* was established, which was presided in the region of Gojjam by the accused. (statement of the accused made at the hearing of 30 October 2017).

According to article 25 any infringement of the proclamation was punished: anybody who disobeyed orders pursuant to the proclamation or who tried to avoid these orders, or who incited somebody else to such disobedience, was liable to a punishment of up to five years in prison and in more serious cases life imprisonment or death penalty.

The text of the proclamation was published in the Negarit Gazeta of 27 August 1977. The Court has no reason to doubt the authenticity of this proclamation and considers it admissible as evidence. The accused has also said he recognizes/knows the proclamation (statement of the accused, rendered at the hearing in court 2 November 2017).

*The Ethiopian documents*

In the file there are documents in the Amharic language (see p. 910-949, with translation on p. 957-1003) received in 2013 from the Ethiopian ministry of justice in the course of the execution of an international request for judicial assistance (see p. 907). These writings have been translated and an official report of findings was made of their content. From the translation of the pages in Amharic the Court concludes that these documents refer to decisions about penalties. Furthermore, these documents contain a signature and the names of the accused (several times) and (stamps with) job descriptions of the accused. The official report reflects a correlation between the different pages and parts. The job descriptions of the accused appear as 'President of the Coordinating Committee of the Revolutionary Campaign of the province of Gojjam' and 'Permanent representative of the Derg in the province of Gojjam' (see p. 1004-1007).

One of these documents is a letter (see p. 922, with translation on p. 970) dated 14 August 1978, signed with the name [Eshetu A.] and a signature, permanent representative of the Derg in the province, directed to the head of the prison of province of Gojjam, Debre Marcos, with as attachment a list of names of persons against who 'revolutionary measures' should be taken (see p. 923-925, with translation on p. 971-973) saying that a confirmation of the execution of the order is expected. There is also an answer to this letter in the documents (see p. 926, with translation on p. 974), dated August 1978, from the head of the prison in the province of Gojjam, directed to [Eshetu A.], permanent Derg representative in the province of Gojjam in which is confirmed that the 'revolutionary measures' have been taken against 73 persons that previously three persons were killed when they escaped from the prison and that one of the prisoners escaped. Besides it has been confirmed that five prisoners are in the prison of Metekel. By order of 16 August 1978 the prison of Metekel was informed that revolutionary measures have to be taken against these five prisoners (see p. 931-933, with translation on p. 979-985), signed with the name [Eshetu A.], permanent Derg representative in the province of Gojjam, and a signature. An answer to this letter is also among these documents. (see p. 927, with translation on p. 975), dated 17 August 1978, from [person 396], directed to [Eshetu A.], permanent Derg representative in the province of Gojjam, which confirms that the written and oral order to take 'revolutionary measures' against the five persons has been executed. Among the documents there is a correspondence (see p. 9848-949, with translation p. 1002-1003) dated August 1978, from the head of the prisons in the province of Gojjam, directed to Lieutenant [Eshetu A.], Permanent Derg representative in the province of Gojjam, that as a consequence of order number 476/11 on 17 August 1978 the revolutionary measure was taken against Tadee Yadtee Kelemu.

Among the documents there are also two lists, one without a date and named Debre Marcos District, 147 indictment, with 211 names (see p. 937-943, with translation on p. 991-997) and one dated August 1978, named Debre Marcos District 2nd round, 147 indictment, with 123 names (see p. 944-947, with translation on p. 998-1001). These lists show for several

names besides ‘revolutionary measures’ also punishments like three years imprisonment with hard labour (see p. 945, with translation on p. 999), two years imprisonment with hard labour (see p. 946, with translation on p. 1000), six months imprisonment with political lessons (see p. 947, with translation on p. 1001). At the bottom of the lists there is a signature and a stamp with the name [Eshetu A.], president of the Revolutionary Coordinating Committee of the province of Gojjam.

The Court will only point out that it was established on the basis of a comparison that the names mentioned in the indictment under the counts 1, 3 and 4 can be found in the Ethiopian documents, with the exception of the numbers 313-321 of count 1 and the numbers 232-240 of count 4. Besides the Ethiopian lists contain some (partly) illegible names, which are not mentioned in the indictment.

Further on in this judgment the Court will give its opinion about the question if the authenticity of the Ethiopian documents can be assumed and if the signature that appears in them is of the accused.

*The Ethiopian criminal judgment*

In a part of the Ethiopian criminal file that was not made available to the investigators there are two letters, which are attributed to the accused in the Ethiopian judgment. One letter is from 16 March 1978 and contains the request to send investigators from the security service from Addis Abeba and the other letter is dated 7 April 1978, containing the order to the financial administration of the province of Gojjam to daily allowance during fifteen days to the investigators (see p. 592, with the translation on p. 608). The Court regards these letters with necessary caution, since she does not dispose of these letters herself.

9.4.2 The expert reports and the examinations of the experts

*The expert report on forensic graphology*

An original diplomatic Ethiopian passport in the name of the accused and an original plastic laminated identity card were submitted to the graphology expert W.C. de Jong, who was appointed by the examining magistrate. He was also provided with the documents in Amharic on page 922 (comment of the Court: translation page 970) and on page 1638 of the case file of the examining magistrate. The Court has established, together with the examining magistrate that this last mentioned page is missing in the final case file. The translation of the missing document can be found in the final case file on page 990, in the case file of the examining magistrate this was page 1692. The diplomatic passport and the military identity card are the documents that had been seized at the house search of the accused on 29 September 2015.

On 4 March 2016 the expert submitted his report (see report De Jong, p. 1-14). The disputed material has been labelled by the expert as X1 and X2, the diplomatic passport that was submitted as material for comparison was labelled by the expert as V1 and the military identity card as V2.

The expert has set out that, because he was provided with copies, some characteristics could not be reliably assessed. Nevertheless, the complexity and the distinctive features of the features that could be assessed in the contested signatures are sufficient to make a judgment on the authorship of the signatures. The contested signatures and the reference signatures have been assessed and compared on different features. The contested signatures show, on all points, good similarities with reference signatures.

The conclusion of the expert report is that the results of the examination are more probable when the contested signatures were from the author of the signatures X1 and X2 are authentic signatures made by the author of the signatures V1 and V2 (hypothesis 1) then when they were from another author and are forgeries (hypothesis 2).

Although the Defence has contested the content of the report the reliability of it as such was not contested. The Court will later refer to the value that will be awarded to the report as evidence.

*The examination of the expert*

The expert was examined on 28 June 2016 by the examining magistrate (see official report of examination of expert-witness De Jong by the examining magistrate, p. 1-8).

The expert has confirmed that it is impossible for him to say with certainty that the contested signatures are not forgeries. From the copies he sees that they are signatures, which have made in a spontaneous and dynamic way and he sees in them no features that signal an imitation.

Another important element is the availability of two signatures, which allows the possibility to look at variations. An imitated signature resembles the example that being used. However two signatures made by the same person are never the same. There are natural variations. Looking at signature Xl a full loop is visible in the upper arch. This full loop is also found in V2. There the signature has a very narrow loop and this is also found in V1. These are natural varieties, which occur. In case of an imitation one does not see such varieties.

The fact that someone is able to write two different kinds of script does not influence the fact if he can evaluate the signature.

The 'good similarities' as discussed in the report, refers to the fact that all relevant features that were found in the disputed signatures can be encountered in the material for comparison. The differences found are not a-typical but are within the range of a natural variation.

When asked further about his conclusion on page 6 about the imitation the expert answers that in his opinion the disputed signatures were made to smooth for an imitation by the free hand. It cannot be completely discarded but it would be an unlikely form of imitation, considering the information he derives from the script.

So the contested signatures are signatures made by the same person as the materials for comparison or they have been imitated. The hypothesis for imitation is not considered to be likely. It is his conclusion that the signatures Xl and X2 are authentic signatures, but cannot establish this with certainty because of the quality of the material for comparison.

*The expert-report of professor dr. G.J. Abbink*

Abbink submitted a report about the political and historical context of the events in Ethiopia during the period 1974-1979 (see report Abbink p. 1-29). In his report he also addressed questions of the former Defence and the Prosecution Service about terms and positions.

After his appointment as expert Abbink, with the consent of the Prosecution Service en de Defence, was provided with the official report made against the accused.

Abbink has explained that his report is (further) based on analyses of the scientific literature and the years of experience in field work in Ethiopia. At the end of his report the expert has expressed himself about the question of guilt.

*The examination of the expert Abbink by the examining magistrate*

Abbink was examined on 8 November 2016 by the examining magistrate (see official report of expert-witness examination Abbink by the examining magistrate, paragraph 1-55). On that occasion he further explained his report.

*The examination of the expert Abbink by the Court*

The Court examined the expert at the hearing of 6 February 2017 (see official report of the hearing in court of 6 February 2017).

On that occasion the Court explicitly asked him about the sources on which he had based his most important findings, since the expert apparently based his conclusions in several sections of the report on classified documents from the criminal-case file and had made several critical comments about the accused and at some point in time even expressed himself about the question if the accused was guilty. The Court has asked the expert to mention his sources when answering the questions of the Court. The expert was unable to answer some of the questions of the Court.

*The opinion of the Court regarding the expert witness Abbink*

The Court will use neither the report nor the statements of Abbink as proof. It is the opinion of the Court that also after the examination of the expert by the examining magistrate and the Court it can not be established if the expert only reported and testified about what he has learned from his science and knowledge, or if he based his findings (in part) on what he read about the accused in the criminal file which was made available to him. Since he also expressed himself about the question of guilt he can no longer be considered objective.

Because the Court will not use the report and the statements of Abbink as evidence the request to examine him will be rejected for lack of necessity.

## 10 Establishing the factual events

### 10.1 Introduction

Count 1 regards the suspicion that during the period from 1 February 1978 up and until 31 July 1978 in Debre Marcos and/or Metekel 321 person mentioned by name in the indictment have been arbitrarily deprived of their freedom. These persons were (then) no longer taking direct part in the hostilities. Against these persons (prison) sentences and/or other measures, which restricted their freedom, would have been pronounced and/or enforced (at *exposure meetings*) without a prior prosecution and/or without having a fair trial. Their houses would have been searched and/or they would have been arrested and/or taken to a police station and/or to a prison. The circumstances under which they were detained were said to have been bas and they would have been deprived of medical care.

Count 2 regards the suspicion that during the period of 1 February 1978 up and until 1 September 1978 in Debre Marcos and/or Metekel nine people were tortured. These persons would have been hit and kicked in the genitals, feet, head and body and hoisted up, tied by hands and feet and hit with sticks against body and feet, whether or not while these persons had a ball or another object in their mouth. As a result of this these persons would have suffered (grievous) bodily injuries. The names of these persons would be [person 322], [person 136, different spelling], [person 323], [person 313, different spelling], [person 324], [person 325, different spelling], [person 315], [person 326] and [person 327]. These persons where (then) also (no longer) taking direct part in the hostilities.

Count 3 regards the suspicion that during the period from 14 August 1978 up and until 17 August 1978 in Debre Marcos en/ of Metekel an attempt against the life and/or acts of physical violence have been committed against 75 persons whose names are mentioned in the indictment and/or against others and/or that these persons have been killed. These persons also no longer participated directly in the hostilities. These persons were allegedly shot or strangled or buried alive.

Count 4 regards the suspicion that during the period from 1 August 1978 up and until 31

December 1981 in Debre Marcos and/or Metekel 240 persons were sentenced without a fair trial that were detained under bad circumstances and with poor medical facilities. These persons also no longer participated directly in the hostilities.

Below the Court will come to the finding of the facts regarding the events based on the witness statements referred to in the previous chapters and other documents

10.2 The finding of facts on the actual events

The Court deems legally and convincingly proved that during the period from 1 February 1978 up and until 31 December 1981 in Gojjam, Ethiopia, the following events took place.

*The exposure meetings*

In the month of February 1978 in the context of the so-called *exposure* campaign of the Derg an *exposure meeting* was held on the high school in Debre Marcos. The *exposure meeting* in Debre Marcos lasted for three days. The purpose of such meetings was to expose members of the EPRP.[123] People were called to come to the school and expose themselves there as EPRP-members. They were informed that if they would expose themselves as EPRP-members nothing would happen to them, but if they did not expose themselves the Red Terror would begin followed by executions.[124]

There were armed *kebele* guards and armed *kadres* present.[125] A large number of people attended the meeting because they were afraid of being mentioned by someone else and exposed themselves as member of the EPRP. Many have also mentioned the names of others.[126] After the meeting around three hundred people were transported, guarded by armed *kadres*, by busses or trucks to the nearby (fifteenth) military camp.[127] This was empty because the military had been sent to the north to fight the EPLF.[128]

*The military camp*

In the military camp stayed around three hundred people in the ages from fifteen to seventy years of age, but mostly people under nineteen years.[129] They slept all together man and women in a large dirty building with three rooms.[130] There was little space and people had to sleep on the floor. [131] There was only one toilet for three hundred people.[132] The family of the prisoners had to bring food and clothes.[133] The prisoners had to attend information meetings, where they were told how good the Derg was and how bad the EPRP and where they had to sing anti-EPRP songs. At first the atmosphere was reasonably good and there was a certain degree of freedom in the camp. It was promised that they would be released after a week of political orientation.[134] Although there were guards not the whole site was guarded, which added to the expectation, created by the earlier promises, that they would be allowed to

return home after the indoctrination.[135] The armed *kadres* informed every time about the structure of the EPRP and their weapons.[136] People who had been arrested before and where in prison were brought to the military camp to reveal the organisation and the military structure of the EPRP and to tell about the weapons of the EPRP. Among these prisoners was a person called [person 347], the highest-ranking leader of the EPRP.[137] Whenever names of people were mentioned who were not detained yet, the *kadres* went into town to arrest them.[138] After around ten days a group of men from a special unit from Addis Abeba were brought in. They were put in charge of the camp, the atmosphere got worse, the regime became much more strict and the security was intensified.[139] One of the members of the special unit from Addis Abeba was a non-commissioned officer from the navy, [person 400]. Another one was called [person 393, different spelling] and one was called [person 414]. The daily management was in the hands of captain Eshetu, but his was a different Eshetu then the accused.[140] On the day they arrived [person 393, different spelling] read out a list of fifty or sixty names of higher ranking EPRP leaders and they were transferred to the police-camp, around ten kilometres away.[141] Thereafter new groups were transferred every time and finally everybody was transferred to the police-camp.[142]

*The police camp*

Initially the first group that had been transferred before was in the office rooms. There where so many people in the room that when they lied on the floor their legs touched. The windows were blocked and blinded. When the rest of the group arrived they were

Transferred to the larger rooms, which in the mean time had been renovated.[143] These were three larger rooms: two for men and one for women.[144] Besides there were four small office spaces, three of which were used as interrogation rooms and one as torture room. [145] People from other parts of Gojjam were also brought to the police-camp in Debre Marcos.[146] Besides the special interrogators fifty or seventy commandos had come to guard the camp.[147] Family visits were no longer permitted.[148] The prisoners were in large groups in a crowded cell and slept on the ground. There was no medical attention for the sick or the wounded.[149] The cells were at a distance of fifty or sixty metres from the interrogation rooms.[150]

Already in the military camp a disciplinary committee had been established among the prisoners. The committee included, among others, [person 111, different spelling], Chaneyalew Kassa and [person 110, different spelling]. In the police-camp the presidency was transferred to [person 347], who had been transferred from the prison at the request of the disciplinary committee to help in giving a complete overview of the EPRP. The disciplinary committee passed information to from the police to the prisoners and vice versa. The committee had to assist the special unit and called the witnesses for interrogation.[151]

In the police-camp the interrogators from Addis Abeba started to interrogate the prisoners. The purpose of the interrogation was to (further) map the structure of the EPRP. Because an EPRP member only knew the person immediately above and under him in the organisation it was necessary to interrogate everyone to get a complete picture. Therefore everybody from the military camp had been brought to the police-camp.[152] In doing so they built on the information, which was already obtained in the military camp.[153] The prisoners had to tell what they had done within the party, what their position was, who was in their EPRP-cell, what their financial contribution had been and if they had possessed or used weapons. Everything was written down and after the interrogation the prisoners had to sign their statement.[154] After the interrogation the names of the prisoners were circled with a colour. In this way the interrogators classified them in groups.[155] Red meant that the person concerned should be killed. This was the case for high-ranking EPRP members, members of the *squads* and the persons who had taken up or purchased weapons.[156]

If the statement of the prisoners was not believed they were brought to the torture room. There they were tortured in different ways.[157] A method which was used more often was tying the arms and legs behind the back and then hoist the body by this rope, after which s stick was used to hit the whole body and the face and especially the feet (called in Amharic: *whofelala*).[158] After some time - to prevent the shouting- a ball, made of cloth was put in the mouth.[159] After the beatings the victims, who were not or barely conscious and hardly able to walk, were forced to dig holes for toilets.[160] Only very few people were not tortured. [161]

A person called [person 323] was so often and so severely mistreated that he finally died in his cell from of his injuries. He had lost consciousness when he was hanging upside -down and was hit. The interrogators then took him down and threw him on the coarse sharp gravel soil in front of the torture room and rolled him over on it. One of the militiamen hit him the butt of a Kalashnikov in his groin and while he lay there a cross was made in his back with a bayonet. The health care official Chaneyalew Kassa who [person 323] wanted to help him and give him water was forbidden to do so. Finally [person 323] was brought back to his cell and died there.[162]

[person 324] and his sister [person 136, different spelling] has to confess that they were members of the EPRP as well as of the EPLF, since their parents were from Eritrea. [person 136, different spelling] and [person 324, different spelling] were hanging from the ceiling in the same room by their arms, which were tied at the back and had to watch how the other was mistreated. When they came out they were no longer able to walk.[163] [person 324, different spelling] was shot on 12

August 1978 and [person 136, different spelling] has lost feeling in her hands until the present day.[164]

[person 313] has testified that he was interrogated in a room next to the torture room. He heard sounds, sighs, people who were being hit and who had to throw up. It was said that this would happen to you if you would not declare. You were then left alone with the sound

of the torturing in the room next door. Then 'they' came back to question you. He has testified that he was also taken to the torture room and that he was kicked and slapped with the flat hand and that he was told he had to think about it and come back tomorrow.[165]

[person 325] has testified that he was hoisted to the ceiling with his hands and feet tied behind his back and that he was pushed through the room while suspended, while he was hit with a stick on his back, legs and feet. The blows on his feet were the worst. It lasted between ten and fifteen minutes.[166]

[person 315] stated that he was hit during fifteen to twenty minutes. For this a batten was used with a rusty nail in it that went through the sole of his foot, 'they' hit with anything they could get their hands on. His feet were swollen for a couple of days because of the infection caused by the rusty nail.[167]

Between the end of April and mid May 1978 the prisoners were transferred in groups to the prison in Debre Marcos.[168] They did not stand trial before a court for this.[169] A number of prisoners were released after a period of political orientation.[170]

*The prison*

The prison in Debre Marcos, nick-named Demelash, was situated at the foot of a hill. On top of the hill was the palace, being the office of the accused.[171] Beside the political prisoners the prison also held ordinary prisoners, who were called 'dry prisoners'. There were also members of the EDU.[172]

In the prison there were ordinary cells and 4 dark cells. There were around sixty people in every dark cell.[173] The higher-ranking members of the EPRP were held here or person who had used violence.[174] The one who had been given a red circle around their names were together in a dark cell.[175] The prisoners in those dark cells were only allowed to go out once in the morning and at night to go to the toilet.[176] They were not allowed to have contact with

other prisoners or with their families.[177] The food was brought by the family, left outside the cell and thrown inside.[178] The prisoners shared it with the ones who had no family. It was very warm in the cells, there was no light and it stank. The prisoners had to relieve themselves in a little container that could be hung on the wall. It was full of people, everybody had around one body-length of space. You were not able to walk anymore then.[179] There was no or insufficient medical care.[180] No information was given to the prisoners prior to their stay in the dark rooms.[181]

No medical care was provided in the ordinary cells.[182] The prisoners were only allowed to receive visitors on Sundays.[183] The toilets were fifty or sixty holes in the ground and you had to screen yourself with a towel for privacy.[184] Also the ordinary cells were so crowded [185] that there was no room to sleep on your back.[186] There were also no beds. The prisoners in the ordinary cells were allowed to go to the toilet during the daytime, but not from 18:00. Then there was an earthenware pot on the wall to urinate in. The food was handed out from a barrel, a little pan with a piece of bread. Family could also bring food to the prison.[187]

Begin July 1978 some prisoners tried to escape from one of the dark cells. At least one of them [person 81, different spelling][188], managed to escape, the others - among which [person 2] and [person 3] - were shot during their attempt.[189] After this attempt the prisoners in the dark rooms were chained in pairs by the ankles.[190]

Around 5 August 1978 the sentence against the first group of political prisoners was read out.

[191]Around 12 August 1978 the sentence against the second group was read out. [192] None of the convicted persons has appeared before a court, their cases were not brought before a court and they did not receive a copy of their sentence.[193] The decisions for the convictions were made based of the information obtained by the special interrogators from Addis Abeba.[194] At first the group was mentioned which had been given a three-year sentence, followed by the ones with shorter sentences. There was also a group that was not mentioned at all. These were the people with a higher-ranking position within the EPRP or the *squads*.[195]

That night a group of some twenty high-ranking EPRP members were taken from their cells and taken in a truck to a place just outside of town. There they were shot, after which their bodies were buried on the prison site.[196] One of the victims was [person 324].[197] The remaining prisoners lived in fear if they or their friends would also be killed and that they were digging their own graves.[198]

On or around 14 August 1978 some people were taken from their cell at the beginning of the evening after which their hands were tied behind their backs.[199] They were brought to a church that was on the prison site. There a rope was put around heir necks, they were hit and strangled with the ropes.[200] The bodies were brought by some dry prisoners who had to help, among others [person 348, different spelling], [person 367] and [person 361, different spelling], to a hole they had dug earlier that week in the ground behind the church and put in there.[201] Two of the victims - a man named [person 27, different spelling] and a woman named [person 45, different spelling] - were not dead when they were put in the hole.[202] Then the hole was closed.[203] And the victims have not been seen since.[204] The following days the families of the victims was told that they no longer had to bring food for the prisoner, from which the family concluded that their relative had died.[205] The fact that these people had indeed been killed is evident not only from the witness statements but also from the letters in the file. In a letter dated 14 August 1978[206] the head of the prisons in the province of Gojjam, Debre Marcos, was ordered to execute 'revolutionary measures' against the eighty people mentioned in the attachment. In a letter of 16 August 1978[207] with attachment, Wedemu Haile, the head of the prison in the province of Gojjam[208], confirms that, in compliance with the order of 14 August 1978 the revolutionary measure has been taken against 73 people. In this letter he also indicates that three people were killed during the referred attempt to escape, that one person has escaped and five people are not detained in Debre Marcos but in the prison of Metekel. A letter from 16 August 1978[209], directed to the prison office in Metekel shows that on this very same day the order was given to take also 'revolutionary measures' against these group of five people. In a letter of 17 August 1978 [210] [person 396] confirms that the order given by letter of 16 August 1978, which was confirmed by phone, to take the ‘revolutionary measure’ against these people has been executed. A correspondence on 17 August 1978 also shows that the order is given to take the 'revolutionary measure' against [person 78] and that this was executed the same day at 12:30. [211] Although in the letter on page 948 regarding [person 78] who is identified as anti-revolutionary, the words 'revolutionary measure' are illegible, in the confirmation to the accused it is reported that the revolutionary measure was taken against that person in compliance with his order.[212]

On behalf of the accused it has been argued that at that time the term 'revolutionary measure' was used for a wide range of measures to promote the revolution. According to the accused it could mean for example planting a tree or the confiscation of goods. It is the opinion of the Court however that all that matters for the present case is the significance of the term 'revolutionary measure' in the letters described above, written between 14 and 16 August 1978, and the Court concludes that in this context it can only refer to the killing of these persons.

The consideration of the Court in this regard is that the attachment to the letter dated 16 August 1978 shows that the revolutionary measure is the punishment imposed on those whom the Derg considered to be “contract killers and members of the EPRP", people who had allegedly committed serious offences against the revolution, had tried to escape and whose presence was a danger to the country.[213] Other persons got sentenced to prison. It is unlikely that the persons accused of the most serious crimes and considered to be a danger to the country and who apparently did not

get a prison sentence, would not be killed. What is more, the persons who were taken from the prison in Debre Marcos and were not seen since according to the overview of the imposed sentences[214] were punished with the 'revolutionary measure'. [person 2] and [person 1, different spelling] also appear in this overview. Behind their names is the comment: "*revolutionary measure was taken when he tried to break open the prison door".* Knowing that they were killed during an attempt to escape, leaves no other option than that 'revolutionary measures' in these letters means to kill. The opinion of the Court is also supported by the statement of the witness [person y] who testified that during the period in which the lists under scrutiny were drawn up, the term "revolutionary measure" meant the death penalty.[215]

This can also be found in a postal telegram of 14 November 1977 from the ambassador in Addis Abeba to the Ministry of Foreign Affairs, which reports the situation in Ethiopia. The ambassador reports that "*yesterday night* (the court understands: 13 November 1977) *a "statement" of the Derg was broadcasted by radio and television in which it was announced that "a revolutionary measure was taken*" (meaning a summary execution in the Derg jargon) against vice-president Lt. Col. Atnafu for crimes against the 'broad mass' of the Ethiopian people".[216]

After 15 August 1978 the remaining prisoners were distributed over all of the cells.[217]

The prisoners in the dark cells were also allowed to go outside during the day and the chains were removed from their ankles after 15 August 1978 .[218] Furthermore, the prisoners were allowed to receive visitors and the sick were treated.[219] Food, although it was bad, was provided for by the prison.[220] The prisoners were released after, or shortly before, serving their different sentences.[221] Some of them served more time than the sentence that had been imposed.[222]

## 11 Protected persons

### 11.1 Introduction

In the previous chapters the Court has explained that during the period of the charged offences there was a non-international armed conflict in Ethiopia and that during that period those persons -in short- have been detained, that violence was used against them and that some of them were killed. In this chapter the Court will address the question if these victims are protected persons as referred to in the common article 3.

### 11.2 The position of the Prosecution Service

The Prosecution Service has argued that it is clear that, at the time the offences were committed none of the victims participated directly in the hostilities and they were therefore protected persons as referred to in the common article 3. They were all in the power of the accused.

### 11.3 The position of the Defence

The Defence has not taken a position regarding this point.

### 11.4 The opinion of the Court

Common article 3 protects every person who is not or no longer actively engaged in the hostilities related to the armed conflict. This provision is also incorporated in international customary law. [223] In practice this means that civilians, warriors who have laid down their arms or warriors who are 'hors de combat', for example because they have been captured or wounded, are protected.

The Court establishes that there is no actual indication that the persons who attended the

*exposure meetings*, were actively engaged in the hostilities between the Derg and the EPRP or one of the groups mentioned before. This is all the more true from the moment the persons were arrested and arrived or stayed in the police-camp, the military camp or in the prison in Debre Marcos or Metekel. The victims therefore belonged to the group of persons to whom the common article 3 and the humanitarian customary law offer protection.

## 12 Violations of the international humanitarian law

### 12.1 Introduction

In chapter 10 the Court came to a finding of facts regarding the offences and circumstances charged under 1,2,3, and 4. In this chapter the Court will define if these facts and circumstances constitute violations of the common article 3 and the international humanitarian customary law.

For this purpose the Court will follow the example of the ICC and use the so-called *Elements of Crimes* as a tool for this assessment. Regarding the charges mentioned under 1 to 4 this means that the Court will give its position on arbitrary deprivation of freedom, the detention conditions and pronouncing the extra-judicial sentences. Regarding the charges under 2 and 3 the Court will consider the prohibition of torture and killing.[224]

### 12.2 The position of the Prosecution Service

*Regarding the charges under 1 and 4*

The starting point for the Prosecution Service is an absolute prohibition of arbitrary deprivation of freedom related to conflicts, which is based on the requirement of a humanitarian treatment in common article 3 and on the international customary law. The Prosecution Service has taken the position that the detentions were lacking valid reasons based on criminal law as well as *imperative reasons for security*. Therefore there is arbitrary deprivation of freedom.

The Prosecution Service has taken the position that this arbitrary deprivation of freedom entails a cruel and inhumane treatment. Besides this case involved inhuman detention conditions and a serious affront to the personal dignity of the prisoners because of these detention conditions.

Finally the Prosecution Service has argued that extra-judicial sentences have been pronounced and executed.

*Regarding the charges under count 2*

The Prosecution Service has taken the position that the violence, which was used during the interrogations of the seven persons mentioned in the indictment, constitutes torture.

*Regarding the charges under 3*

The Prosecution Service has taken the position that there is a violation of the prohibition of the killing as laid down in the common article 3, first paragraph, opening words and under a.

### 12.3 The position of the Defence

The Defence has not taken a position on this point.

### 12.4 The frame of reference

#### 12.4.1 Regarding the charges under 1 and 4

*Arbitrary deprivation of freedom*

Deprivation and limitation of freedom on arbitrary grounds in the context of a non-international armed conflict is contrary to the common article 3, specifically to the central requirement to treat people who are no longer engaged in the hostilities in a humane way.

This requirement applies to all warring parties and 'under all circumstances'. This touches the heart of international humanitarian law.

In this context the Court will align with *Rule 99* of the ICRC: "*Arbitrary deprivation of liberty is prohibited*."[225]

Paragraph 719 of the *ICRC Commentary on the First Geneva Convention* explains it as follows:

*"It is a requirement under customary international law, however, that any detention must not be arbitrary. Therefore, certain grounds and procedures for such detention must be provided."* [226]

In other words a valid reason and a proper procedure are required. For a reason to be valid there should be either an arrest and detention in the context of a criminal procedure in accordance with due process or a detention because of serious security considerations related to the non-international armed conflict. In this last case there should be preventive security considerations in the sense that the detained person should be a security risk for the detaining party in the armed conflict. This can be the case if the person in question was directly engaged in the hostilities or constitutes a genuine threat in any other way. This means that the detention of a whole group of people without a clear or at least plausible security risk is not allowed in the individual case.[227] Furthermore, obtaining information, for example about the organisation of the opposite faction, is not a valid reason for a security detention, unless the person himself constitutes a threat for the detaining party.[228] In a more general sense parties will every time have to find the characteristic balance between the considerations of military need and the considerations of humanity.

By definition there is no valid reason for deprivation of liberty based on extra-judicial punishment, because the common article 3 expressly prohibits imposing extra-judicial punishments. Even if such a punishment would be based on national legislation, the resulting deprivation of liberty is arbitrary and therefore in breach of international humanitarian customary law.

Although the prohibition of arbitrary deprivation of liberty pertains to deprivation of liberty as well as to limitation of liberty, it is possible to make a distinction between these two categories. Deprivation of liberty entails a more serious restriction, usually within a smaller space, than restrictions of the liberty of movement in general. The difference should be considered for every case, whereby factors like type, duration, and way of execution and effects of the measure in restraint of liberty play a role. The specific context matters and the duration is not decisive, which means for example that also a short period at the police station can mean deprivation of liberty. An essential feature of deprivation of liberty is that the person concerned does not have the choice to away. Deprivation of liberty entails both the moment of deprivation of the freedom as well as the continuation of it.

Regarding the question if, already during the period referred to in the indictment, the prohibition of arbitrary deprivation of liberty was part of the international customary law, the Court wants to point out the following.

In the Ethiopian *Penal Code* of 1957, which was in force in 1978, detention of the civil population in (concentration) camps during international as well as non-international conflicts was criminalised (article 282(c)). The *Penal Code* furthermore penalized "*unlawful arrest or detention*" by "*any public servant*" (article 416). This entailed ignoring "*forms and procedures prescribed by law*".

Also outside of Ethiopia it was already considered as unacceptable to deprive people

arbitrarily of their freedom. The International Court of Justice, for example ruled in 1980 (very shortly after the period referred to in the indictment began):

*"Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself incompatible with the principles of the Charter of the United Nations as well as fundamental principles enunciated in the Universal Declaration of Human Rights."* [229]

Considering the above the Court therefore establishes that there can be no doubt about the fact that the prohibition on arbitrary detention was already part of international customary law during the period referred to in the indictment.

*Pronouncement and execution of extrajudicial sentences*

In order to establish the elements of an offence regarding the pronouncement and execution of extrajudicial sentences the Court will follow the course set by the ICRC *Commentary* and in the case law.

Common article 3, first paragraph, under d prohibits the following:

*"the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples".*

This prohibition was further detailed in article 6, second paragraph, of the AP II and in the international customary law. In article 6, second paragraph, of the AP II the requirement is laid down that a Court should have the necessary safeguards of independence and impartiality, to guarantee a fair trial.

For a court to be independent it has to be able to function "*without interference from any other branch of government, especially the executive*".[230] The required impartiality consists of two aspects, the subjective and the objective aspect.

First of all judges are not allowed to make their judgement based on prejudices and personal bias. Furthermore, judges should not be partial by putting the interest of one party first. Besides judges should be impartial from an objective point of view. In other words, the impartiality should be visible for a reasonable observer.[231]

These two aspects of the requirement of impartiality where assumed by the ICTY, inter alia, in the *Furundžija* case[232] and by the ICTR in the A*kayesu* case.[233] In the assessment of the present case the Court will follow this course.

The legal safeguards, recognised by civilized nations as indispensable - as laid down in the common article 3, first paragraph, under d - in *ICC Elements of Crimes* were substituted by the requirement, "*generally recognized as indispensable under international law*".[234] The Court will follow this last interpretation.

Common article 3, first paragraph, under does not provide an explanation about the specific legal safeguards. Article 6 of the AP II does give the minimum requirements for a fair trial that are indispensable in contemporary international law.

These safeguards are the obligation to inform the defendant timely about the charges against him, about his rights and the obligation to provide the defendant with means for his defence, the right of a defendant to be convicted only on the basis of the individual criminal responsibility and the principle of *nullum crimen, nulla poena sine lege*.

Other safeguards are the prohibition to impose a more severe punishment than the punishment which applied when the punishable offence was committed, the presumption of

innocence, the right of the defendant to be present at his trial, the right to remain silent of the defendant and the prohibition of a forced confession and the right of the defendant to be informed of the available legal remedies.[235]

In the opinion of the Court these safeguards can be used to further cover the standard of common article 3, because according to the ICRC this concerns safeguards incorporated in international customary law.[236] However the [list of] safeguards is not exhaustive.[237]

In summary the Court concludes that at least the following safeguards arise from the case law, common article 3 and AP II and the international customary law:

- Failure to comply with the obligation to inform the defendant timely about the charges;
- Failure to respect the rights of the defendant and not providing the means for his defence;
- Failure to respect the right of the defendant to be judged only based on individual criminal responsibility;
- Failure to respect the principle of *nullum crimen, nulla poena sine lege*-principle and the prohibition to impose a more severe punishment than the punishment which applied when the punishable offence was committed ;
- Failure to respect the presumption of innocence;
- Failure to respect the right of the defendant to be present at his trial;
- Failure to respect the right to silence of the defendant and not enforcing the prohibition of a forced confession;
- Failure to apply the right of the defendant to be informed about the available legal remedies.

If one ore more of these elements of an offence regarding the pronouncement and the execution of extrajudicial sentences in a case occur in a case then the afore mentioned essential safeguards of independence and impartiality have not been respected, as a result of which a fair trial can not be guaranteed.

*Cruel and inhumane treatment*

The prohibition of cruel and inhumane treatment in common article 3 is a means to ensure that persons who do not engage in the hostilities are given a humane treatment under all circumstances.[238] Neither the Geneva Conventions nor the Additional Protocols provide a definition of cruel treatment.

In case law a cruel or inhumane treatment is often defined as follows:

*"[treatment] which causes serious mental or physical suffering or constitutes a serious attack upon human dignity, which is equivalent to the offence of inhuman treatment in the framework of the grave breaches provisions of the Geneva Conventions".* [239]

Here also affront of the personal human dignity is mentioned. The Court will come back on this further on in the judgment.

Following the case law of the ICTY and the ICC the Court will not make a distinction between *cruel treatment* as prohibited in common article 3 and *inhuman treatment* as a gross violation of the Geneva conventions.

In order to qualify as a cruel and inhuman treatment, there should be serious physical or mental suffering.[240] For this no special purpose is required.[241]. The question of serious physical or mental suffering should be assessed on a case-by-case basis.[242] In this context both the objective and the subjective circumstances should be considered. Cruel and inhuman treatment can be one isolated action, but can also be the result of a combination or an accumulation of different acts, which separately would not qualify as cruel or inhuman

treatment.[243]

The elements which might be of importance to assess the level of seriousness, are the nature of the conduct or the omission, the context in which the conduct takes place, the duration and/or the repetition of the conduct, the physical, mental and moral consequences of the conduct for the victim, including age, sex and health. There no requirement that the suffering, caused by the cruel treatment is permanent. But it should be serious.[244]

If a conduct has consequences in the long term, this might be of importance to establish the seriousness of the conduct.[245]

Specific acts that are considered as cruel are, inter alia, the lack of proper medical care [246] and inhuman living conditions in a prison,[247] beating,[248] and attempted murder[249].

In the *Limaj* case the ICTY established detention conditions identified as cruel treatment. In this case, inter alia, the following detention conditions have been described. It was very hot in the room. There was no ventilation. There was just a small window and the floor was of concrete. There were excrements on the floor and there was blood. The prisoners were tied or chained, sometimes to other prisoners. The atmosphere and the smell were suffocating. At some point in time the temperature and the smell became unbearable, also because the prisoners had to eat and sleep in this room. The prisoners stayed the entire day in the room and were not allowed to talk to each other. There was not enough room for the prisoners to stretch out. The prisoners had to stay in this room for twenty hours and could not leave. The iron door was locked all the time.

Some days the prisoners did not get any food and some days they got soup and bread. According to the prisoners the food looked like animal food and it was not fit for human consumption. The prisoners slept on a small carpet on the floor. There was no bed linen. There were no sanitary facilities. The prisoners were not allowed to use the toilet, which was outside, but had to use a bucket, which was not regularly emptied. Although there were prisoners with serious injuries, there was no medical care. There was serious mental and physical suffering among the prisoners, which was a grave affront to their personal human dignity.[250]

Regarding the detention conditions the Court also refers to the *Delalić* case.

In this case the ICTY also established the detention conditions and concluded that there was a cruel treatment.

It has been established that the food for the prisoners was insufficient. On hot days the prisoners had to stay in the hangar. The prisoners had to sleep on the bare concrete, against each other and lying on their sides. There was an accumulation of the excrements of the prisoners. There was a shortage of medical facilities and there was a constant mental torment. The prisoners lived in an atmosphere of terror, because they were afraid of being beaten or killed. [251]

The Court has referred only to the detention conditions in case law, which are relevant to assessment of the charges against the accused in the present case. The Court emphasizes that this is not an exhaustive enumeration of the elements of the offence.

*Outrages upon to personal dignity*

The prohibition of outrages upon personal dignity by humiliating and degrading treatment has also been laid down in the common article 3.

This prohibition was reconfirmed in the Additional Protocols and is considered as prevailing international customary law. However neither the Geneva Conventions nor the Additional Protocols give a definition of outrages upon personal dignity [252].

Therefore, the Court will also follow the line set out by previous case-law regarding the outrages upon personal dignity and specifically address the detention conditions.

Regarding the outrages upon personal dignity the ICTY established the following definition in the *Kunarac* case:

*"The accused intentionally committed or participated in an act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity."'* [253]

In other words the outrage can entail deliberately or committing or participating in an act, but also an omission, which causes in general a serious humiliation or otherwise an outrage upon personal dignity.

And also in this assessment no only the subjective criteria, like the sensibility of the victim, should be considered but also the objective criteria related to the seriousness of the act.[254]

Just like cruel or inhuman treatment outrage upon personal dignity can consist of one isolated act, but also be the result of a combination or accumulation of different acts, which separately would not be considered as cruel or inhuman treatment. The Court agrees with what was established by the ICTY in the *Aleksovski* case. In this case the following was considered:

*"The seriousness of an act and its consequences may arise either from the nature of the act per se or from the repetition of an act or from a combination of different acts which, taken individually, would not constitute a crime within the meaning of Article 3 of the Statute. The form, severity and duration of the violence, the intensity and duration of the physical or mental suffering, shall serve as a basis for assessing whether crimes were committed."'* [255]

As established before the humiliation has to be serious, but it is not required that the violation should have permanent consequences. [256] Neither is a special objective required, as is the case for torture.[257]

In the *Kvočka* case the ICTY assumed serious humiliation based on the conditions of the detention. In this case the prisoners were exposed to serious humiliation including bad detention conditions, were forced to perform humiliating acts, forced to relieve themselves in their own clothes or endured prolonged fear of being exposed to physical, mental or sexual violence in the camp. [258]

Here also the Court has only referred to those elements of outrage upon personal dignity by humiliating and degrading treatment, which is relevant to the assessment of the charges against the accused in the present case. The Court emphasizes again that this is not an exhaustive enumeration of elements of the offence.

The afore-mentioned is a limited display of the elements of cruel and inhuman treatment and outrages upon the personal dignity by humiliating and degrading treatment, mentioned case law and literature.

12.4.2 Regarding the charges under count 2

As a frame of reference for the elements of the crime of torture the Court again agrees with the application of the common article 3, since it provides that, in case of a non-international armed conflict, regarding the protected persons, torture is prohibited everywhere and at all times.

The Geneva Conventions do not provide a definition of the term torture, the term is further

defined in literature and in (international) law. The Court points, for example, to the *Greek Case* from 1972, of the European Commission for human rights [259] in which this commission defined torture as "*inhuman treatment, which has a purpose, such as the obtaining of information or concessions, or the infliction of punishment*". *Inhuman treatment* was then defined as "*deliberately causing severe suffering, mental or physical, in the particular situation unjustifiable*".

The elements of the offence of torture have been developed and further defined in the case law of the ICC and the ICTY and in *Rule 90* of the *Customary International Humanitarian Law Database* of the ICRC.

The *Trial Chamber* of the ICTY has outlined, inter alia in the *Furundžija* case, the requirements for torture as follows:

*"(i) consists of the infliction by act or omission of severe pain or suffering, whether physical or mental; in addition*

*(ii) this act or omission must be intentional;*

*(iii) it must be aimed at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person; or at discriminating, on any ground against the victim or a third person;*

*(iv) it must be linked to an armed conflict;*

*(v) at least one of the persons involved in the torture process must be a public official or must at any rate act in a non-private capacity, e.g. as a de facto organ of a State or any other authority-wielding entity."* [260]

In the *Kunarac* case the *Trial Chamber* differentiated the element outlined under (v) by concluding that

*"the presence of a state official or any other authority-wielding person in the torture process is not necessary for the offence to be regarded as torture under international humanitarian law."* [261]

12.4.3 Regarding the charges under count 3

The Court again considers the central prohibition of the common article 3 as the point of departure in this context: regarding the protected persons at all times and everywhere remains prohibited an attempt against the life, especially killing in whatever way. The expression of the prohibition to kill can be found in the case law of the international tribunals.

The Statute of, inter alia, the ICC and the ICTY, also contain a prohibition of this war crime.

The prohibition is laid down as a provision of the international humanitarian customary law in *Rule 89* of the earlier mentioned database of the *ICRC*.

The elements of the crime killing have been laid down as war crime in article 8(2)(c) of the ICC Statute as stated (in summary) below:

"*The perpetrator killed one or more persons, such person or persons were civilians, taking no part in the hostilities, the perpetrator was aware of the circumstances of this status, the conduct took place in the context of and was associated with a non-international armed conflict, the perpetrator was aware of the circumstances that established the existence of an armed conflict*."

12.5 Violations of international humanitarian law in this case

Below the Court will assess if the established factual events constitute violations of the international humanitarian law. For this purpose the aforementioned elements of crimes will be

used.

12.5.1 Regarding the charges under count 1 and 4

*Arbitrary deprivation of liberty and the extrajudicial sentences*

Based on the facts and circumstances established under the previous points the Court comes to the following conclusions regarding the question of deprivation of freedom and, in the affirmative, if this was arbitrary and if extrajudicial sentences have been pronounced and executed.

In the context of a campaign against the EPRP a large number of persons in Debre Marcos have been forced to attend *exposure meetings* on the site of the local school. Those persons participated in the *exposure meetings* under pressure and for fear of serious reprisals. During the meeting people were only allowed to go home at night and had to be back again the next day. There were armed guards on the site to make sure nobody left the site or the school during the day. The Court considers these combined circumstances at least as a restriction of freedom. In the course of the *exposure meetings* several persons were taken away on the spot after exposing themselves as EPRP-member or after they had been exposed as such by others. Most of them, around three hundred people, were taken at the end of the day to the military camp. This Court establishes that this is deprivation of freedom.

The deprivation of freedom was continued for the large majority of the people by the following stay in the police-camp and afterwards in prison. For 236 persons this deprivation of freedom continued also after a 'sentence' had been pronounced against them.

It is the opinion of the Court that from the beginning there were no legally valid reasons for the entire procedure of restriction of freedom during the *exposure meetings* and the deprivation of freedom at the arrests of a large number of the prisoners in the military camp, the police-camp and the prison until the pronouncement of the 'sentences' in August 1978. Besides the intensive anti-EPRP propaganda and political re-education, deprivation of freedom played a central role in the campaign of the Derg to defeat the EPRP once and for all. The entire process of deprivation of freedom was intended to expose the structure of the EPRP and then eliminate its alleged members or keeping them locked up. The identification of the alleged EPRP-member or the persons involved was in many cases based only on the young age of the persons concerned and took place every time in an unlawful way: by false promises, by (serious threat of) violence or death and in a general atmosphere of intimidation. None of them was ever indicted on formal procedural grounds of a specific criminal offence. It is the opinion of the Court that this way of acting is contrary to a deprivation of freedom in the context of a criminal procedure provided by law. The circumstance that young people of the EPRP might have played a part in the violent action in Addis Abeba is not sufficient to deprive a large part he the youth in Gojjam of their freedom. This arbitrariness of the deprivation of freedom alone ensues that this cannot be defined as detention for serious reasons of safety also regarding the non-international conflict.

Furthermore, the Court finds that the deprivation of freedom after the 'sentences' in August 1978 was arbitrary because these 'sentences' were extrajudicial. Measures (prison sentence with hard labour) were issued and executed against the persons concerned without being heard by an (independent) Court and without a fair trial, specifically without being tried by a court with the essential safeguards of independency and impartiality. For example the following safeguards have not been observed:

- The obligation to inform the defendant timely about the charges;
- The right of the defendant to be informed about the available legal remedies;
- The provision of means for the defence of the defendant;
- The right of the defendant to be present at his trial;

- The right to remain silent en the prohibition of a forced confession.

Considering the afore-mentioned the Court concludes that the deprivation of freedom at the *exposure meetings*, in the military camp, in the police-camp and in the prison both prior and after the extrajudicial sentences has been arbitrary. This constitutes therefore a violation of the prohibition under customary law to arbitrary deprivation of freedom. Besides the Court concludes that the arbitrary deprivation of freedom and the pronouncement and execution of extrajudicial sentences are violations of the provisions laid down in the common article 3.

*Conditions of the detention*

Regarding the conditions of the detention the Court considers the following.

Although there was little space in the military camp, a lot of people had to sleep sitting on the ground, family members had to provide food and clothes and there was only one toilet for three hundred people, the persons who had to stay there did not regard life as too bad strictly speaking. Regarding these detention conditions the Court considers that - also in the context of the prevailing standards in those times and in that culture- it is not possible to establish that this constituted a cruel or inhuman treatment and/or an outrage upon the personal dignity of the persons concerned or that they subjected to humiliating and degrading treatment.

However, this is not the case for the conditions in the police-camp. The Court considers that here - besides the cells that were far too small and the absence of (proper) sanitary facilities - several prisoners were severely mistreated. The prisoners were continuously subjected to the screams, and shrieks and cries of the abused persons. The injured fellow-prisoners were put back -without any medical care- in the cells with the other prisoners. Then the other prisoners were prohibited to help them. [person 323] even died in his cell, in the presence of his fellow prisoners. The others lived in constant fear that they could be the next ones to be mistreated and that they would be forced to betray themselves or others. The Court finds that detention under these conditions is a cruel or inhuman treatment and is of the opinion that this was an outrage upon the personal dignity and a humiliating and degrading treatment of the persons concerned.

Also in the prison the conditions before the extrajudicial sentences were pronounced were wretched. There was too little space in the normal cells to sleep lying on the back, there was no privacy in the toilets -holes in the ground- and there was no medical care. There was also growing insecurity among the prisoners about their fate.

In the *dark rooms,* where the political prisoners were locked up, the detention conditions could be called appalling. There was barely any daylight in de cells. The prisoners in these cells were not allowed -contrary to the other prisoners- to leave their cells during the day and could only use the toilet once in the morning and once in the afternoon. For the rest they had to relieve themselves in a little container hanging on the wall; the heat and the stench were described as unbearable. The prisoners were chained in pairs by the ankles, which made moving and sleeping difficult. There was no medical care. Besides no information was given prior to the stay in a *dark room*. The prisoners were in absolute uncertainty about their fate.

Based on the afore-mentioned facts and circumstances the Court is of the opinion that also the detention conditions in the prison constituted a cruel or inhuman treatment and that was an outrage upon the personal dignity of the prisoners and that they were treated in a humiliating and degrading manner.

Considering the afore-mentioned the Court finds regarding to the detention conditions that there was a violation of international humanitarian law. Nevertheless this is not the case for the detention conditions after the extrajudicial sentences. Indeed the different witness

testimonies do not say a lot about this, besides the fact that the dark cells were no longer used as such after this and that there was more freedom.

Therefore the accused should be acquitted on this part of the count. The same applies to the detention conditions in Metekel, since there is not enough evidence about the circumstances there in the file.

12.5.2 Regarding the charges under count 2

When checking the established events to previously outlined elements of crime, the Court concludes the torture charged to the accused under count 2, meets the criteria as laid down in the common article 3 and further differentiated in the referred case-law. The deliberately inflicted physical and mental suffering intended to force the victims to identify the structure of the opposite faction, specifically the EPRP, and their own role, was so gross and serious that it easily achieves the threshold of torture. This is also the case for the violence that was inflicted upon [person 313] who testified that he only received a kick and a blow, but the Court considers this mistreatment -although in itself less serious- in combination with his young age and the conditions of the detention as described above, has caused him mental suffering that can be qualified as torture.

12.5.3 Regarding the charges under count 3

When checking the established events to the prohibition to kill in any way, as laid down in the common article 3 and the criteria listed in the ICC Statute, the Court concludes that the order to kill persons in the prison, which is charged to the accused meets all the elements outlined previously.

## 13 Establishing the role of the accused

### 13.1 Introduction

In the previous chapters the Court has established that during the period mentioned in the indictment violations of the common article 3 and international humanitarian customary law took place, consisting, inter alia, in arbitrary deprivation of freedom. The Court will now consider if the accused played any role in these violations, and if so, what his role was. In doing so the Court will make a distinction between the establishment of the actual conduct and the legal qualification of it. To establish the actual conduct the Court will again use the witness statements mentioned before in chapter 8. and 9. and in other documents. To assess the legal qualification the Court will outline the framework of reference, the different forms of participation such as co-perpetration, complicity, incitement and the senior responsibility referred to in article 9 (old) of the 'WOS'.

### 13.2 The position of the Prosecution Service

The Prosecution Service has taken the position that the accused participated in the offences charged under count 1, 2, 3 and 4, that he also incited the offences charged under count 3 and 4 and that he permitted the offences charged under count 1,2, and 4 as a superior and is therefore responsible (*superior responsibility*).

### 13.3 The position of the Defence

The Defence has taken the position that - if the charged offences have indeed taken place- the accused had no knowledge of this at all nor could have suspected this and therefore should be

acquitted. Regarding the matter of *superior responsibility* it was argued that there was no *effective control*, since he had no knowledge of the facts.

13.4 The factual establishment of the role of the accused

Based on the witness statements mentioned in chapter 8., based on the statement of the accused at the hearing in court as well as on the written documents and the graphological examination regarding the role of the accused the Court deems that there is legal and convincing proof of the following.

The accused was one of the 120 members of the Derg. There was no other [Eshetu A.] who was a member of the Derg. After a training course in Moscow he was sent around 1976 to Gondar and then to Gojjam, where he was stationed in 1977/1978 as provincial representative of the Derg. He was there - as the only Derg representative - president of the revolutionary coordinating campaign committee.[262] Gojjam was a conflict area; it was unstable because of the attacks of the EPRP.[263]

The accused was present at the *exposure meetings* on several days in February 1978 in Debre Marcos. The accused was in charge there and held a speech in which he spoke about would happen at the *exposure meetings*. He said that the EPRP was destructive for the nation.[264] He persuaded people to expose themselves and other persons present as members of the EPRP, by promising that nothing would happen to them if they would expose themselves and to threaten with death if they would be mentioned by others.[265] The accused ordered (the *kadres*) to take away those who were suspected of lies or had exposed themselves as EPRP members.[266]

The accused brought the men from Addis Abeba as interrogators to the military camp. This conclusion of the Court is partly based on the consideration in the Ethiopian sentence against the accused,[267] in which the two previously mentioned letters of the accused are described; specifically the letter of 16 March 1978 containing a request to send investigators of the security service from Addis Abeba and a letter dated 7 April 1978 in which the financial administration of the province of Gojjam is ordered to pay a daily allowance for fifteen days to the investigators. The content and the date of these letters in conjunction with the content and the date of these letters and the statement of [person 315][268] and other witnesses who testify about the arrival of the interrogators, [269] is considered by the Court as sufficient to substantiate this conclusion.

The accused was also in the police-camp had contact there with the interrogators from Addis Abeba.[270] The accused talked to these interrogators in front of the interrogation room, asked how it went and gave them instructions.[271] After the interrogations the lists with the encircled names of the interrogated persons were brought to the office of the accused and he decided, based on the findings of the interrogators, what punishment would be imposed on the different prisoners.[272]

The Court bases this conclusion on the statements of the different witnesses, who testify that at or after the reading of the prison sentences they were told that the sentence had been signed by the accused and/or the leader of the revolutionary coordinating campaign committee.[273]

Furthermore, the Court took into account that this method is in line with the duties the accused had to perform in his position as representative of the Derg in Gojjam, and as president of the afore-mentioned committee, according to proclamation 129. After all it was one of the tasks of this committee to deal with the anti-revolutionaries and the committee was authorised to punish with imprisonment or death, anyone who did not obey the orders ensuing from this proclamation or tried to evade these orders, or someone who incited someone else to such disobedience. This also matches with what witnesses declare about the way the accused exercised his function, meaning that the accused was the ultimate authority in Gojjam and had complete power.[274] The accused was prosecutor, jury and judge at the same time. He had the power to arrest people, to kill them and to release them. The civil-administrator in the province had no power. [275]

His involvement in these decisions is also evident from the account he rendered of this to the

leaders of the Derg in Addis Abeba, which can be found in the undated lists with names, which were initialled and signed with a signature very much resembling the signatures examined by De Jong[276].

But maybe the most convincing evidence of his involvement in the decision about the fate of the prisoners can be found in the letters directed to the head of the different prisons in Gojjam. These letters, or rather the attachments, contain (lists of) names of the persons against whom revolutionary measures had to be taken.[277] Therefore it is clear that it must have been obvious to the head of the prison that the taking of this measure was the order of the accused.

The accused denied that he signed these letters, but has failed to give a plausible explanation for the signature on the letters.

Regarding the suggestion of the accused that these signatures, at the time, must have been falsified by someone else in Gojjam, the Court considers that this is very unlikely since the reply to these letters, the confirmation of the revolutionary measures, was sent to the office of the accused and, additionally, the previous written order to take revolutionary measures were also given by phone. Moreover the following considerations regarding the other alternative scenario render the falsification at the time implausible.

Regarding the suggestion that the content of the letters and the signatures on the letters were falsified much later at the time of and for the purpose of the criminal proceedings against the accused in Ethiopia the Court considers that the signatures in two of these letters were examined by the graphology expert De Jong as mentioned before in chapter 9.[278] Based on the report of the expert the Court assumes that these letters were signed with the signature of the accused. Although the expert could not completely rule out the possibility that editing is possible, he deemed it very unlikely.[279] The Court agrees with this conclusion since there is no indication for it, but also because the signatures that were used are all different, which renders falsification by editing very unlikely. The Court has no other reasons to doubt the authenticity of the signatures and therefore concludes that the accused signed the letters with names and lists.

Finally the Court points out that the explanation of the accused that he would have left Gojjam already in March 1978 is considered implausible. The afore-mentioned findings indicate that he remained the permanent representative in Gojjam, at least at the time when the lists were signed. In addition there are newspaper articles in the file from June 1978 in which the accused is mentioned as permanent representative in Gojjam.[280]

In conclusion the Court finds that the accused organised *exposure meetings* in Debre Marcos and has been present at these meetings. Besides the accused has been in the military camp as well as in the police-camp. Furthermore, he made special investigators come from Addis Abeba to interrogate the prisoners and he signed orders to keep people prisoners and to kill them.

The Court does not agree with the argument of the Prosecution Service that the accused was present himself during the killing of the prisoners. The Court has mentioned before that the statements of the only witness who says he saw the accused that night in the prison will not be used as evidence because of the many inconsistencies in his statement. Although many other witnesses testify that they heard from other prisoners that the accused was present that night, these are so-called *de auditu* statements and besides it can not be ruled out that the accused was in the end only recognised by just one person. The Court finds this not convincing enough.

## 13.5 The qualification of the role of the accused

### 13.5.1 The frame of reference of co-perpetration, complicity and incitement

With exceptions the general rules of the general (national) criminal law also apply to the prosecution of war crimes (article 91 of the Criminal Code), especially the legislation regarding the participation in criminal offences.[281] Below the Court will outline the different

frames of reference of the different forms of participation mentioned in the charges, which will serve as point of departure for the further assessment.

*Co-perpetration*

The concept of co-perpetration encompasses the following circumstances:

(1) The co-perpetrators cooperate closely (a) and (b) purposely to commit an offence.

(2) The offence has taken place (a) *or* (b) a criminal attempt was been made *or* (c) has been prepared.

For the assessment if there is sufficient close and deliberate cooperation the following criteria should be taken into account:

(1) The co-perpetrators deliberately cooperate to carry out the offence.

(2) The contribution of the co-perpetrator to the offence is of sufficient material and intellectual significance, whereby the following factor might be taken into account (a) the intensity of the cooperation (b) the mutual division of duties (c) the role in the preparation (d) the execution or the handling of the offence (e) the interest or the role of the accused (f) the presence of the accused on important moments (g) the fact that the accused has not withdrawn on an appropriate moment, although this alone will be seldom enough[282]

In extraordinary cases the contribution of the co-perpetrator might have taken place only before or after the offence. However, a small role or the absence of any role in the execution of the offence will have to be compensated in such cases, for example by a large(r) role in the execution of this preparation.[283]

*Complicity*

The concept of complicity encompasses the following circumstances:

(1) The accomplice helps another person or persons (a) in committing an offence (simultaneous complicity *and/or* (b) provides the opportunity, the means or the information to commit an offence (consecutive complicity).

(2) The (oblique) intention of the accused is focused at (a) helping or providing the opportunity, the means or the information *and* (b) on the elements of the offence, but not necessarily on its the specific execution.[284]

(3) The offence to which help is rendered has (a) taken place *or* (b) a criminal attempt to it has been made *or* (c) has been criminally prepared.

The difference between co-perpetration and complicity lies in the fact that the conducts of an accomplice do not have to be of large material or intellectual significance for the offence while this is requirement for a co-perpetrator.

*Incitement*

The concept of incitement encompasses the following circumstances:

(1) The (conditional) intention of the inciter is aimed at (a) the incitement *and* (b) to all elements of the incited offence, but does not necessarily have to be aimed at one specific way to execute the offence.

(2) To execute the offence one or two means of incitement have been used, specifically (a) promise (b) abuse of authority (c) violence, threat and deception (d) opportunity, means and information.

(3) Another person (the person incited) was hereby induced to commit the offence, in other words the inciter has created the 'determination of will' to commit an offence.

(4) The incited offence followed.

(5) The person incited has to be criminally responsible for this offence.

The difference between incitement and co-perpetration lies in the fact that the inciter persuades another person to commit an offence without cooperating in the execution of it, while co-perpetrators commit the offence together. Although some of the means of incitement are also mentioned in the definition of complicity, the difference between forms

The two forms of participation is that in incitement the means are used to persuade another person while the accomplice renders assistance to a person who already had the criminal plan.

13.5.2 The frame of reference for the responsibility as a senior

In article 9 (old) of the 'WOS' the person who deliberately permits a person who is a subordinate to him commits an offence as referred to in article 8 (old) of the 'WOS'. The law does not define when this is the case. The Court is faced with the question if it is possible to align with the figure known as *superior responsibility*, also called *command responsibility* in international law.

The principle in *superior responsibility* is that a superior is supposed to exercise authority and control on the conduct of his subordinates, in order to guarantee that the laws of an armed conflict are being respected.[285] If the superior fails in his supervision, he can be held criminally responsible for the violation of laws by his subordinate.

In order to address the question that was raised the Court considers the following.

Although a large part of the case law on this doctrine dates from after the period mentioned in the indictment, the doctrine has been constantly evolving since the fifties.

The principle of *responsible command* laid down in article 1 of GC IV and the corresponding regulation of 1907 (The Hague regulations on ground warfare) is based on this combination of authority on the one hand and responsibility on the other that are necessary elements for a successful application of the humanitarian law of war.[286]

However, it was not until after the Second World War that actions in breach of *responsible command* were penalized and leaders prosecuted for not preventing and punishing crimes committed by their subordinates.[287]

The doctrine of the superior *responsibility* was laid down in 1977 in article 86 and 87 of the first Additional Protocol to the Geneva Conventions, which incorporated the obligations of the commander as well as the possible consequences under criminal law in case of failure to comply with these obligations. Although no obligations were laid down in AP II comparable to these, it is generally accepted that the doctrine also applies to non-international armed conflicts.[288]

The first penal provision for an effective prosecution based on *superior responsibility* was created in 1993 in the Statute for the ICTY. In 1994 an almost identical provision on *superior responsibility* was laid down in the Statute of the ICTR.

Thereafter, in the Statute of Rome for the foundation of the ICC of 1998, *superior responsibility* was incorporated in article 28 based on the case law of the ICTY and the ICTR.

Even though the codification at the ICTY, ICTR and ICC - and therefore the case law of these tribunals dates from after the period mentioned in the indictment, the Court sees no objection to align with article 9 (old) of the 'WOS' for the interpretation of the doctrine of superior responsibility, which has been developed by these tribunals. *Superior responsibility* is the interpretation under criminal law of the term *responsible command*, which is an intrinsic requirement of the common article 3. In those days a large number of states were parties to the Geneva Conventions, they were ratified by Ethiopia in 1969. The Court sees no indication for the assumption that the doctrine would not be part of customary law at the end of the seventies. To address the question if superior responsibility applies, as referred to in article 9

(old) of the 'WOS', the Court will align with the doctrine van *superior responsibility* within the limitations of article 9 (old) of the 'WOS'. [289] It should be pointed out that the interpretation of the ICC is different from the case law developed by other ad hoc tribunals in some respects. However, in those cases the Court will align as much as possible with the case law of the various ad hoc tribunals.

*Two scenarios*

There are two possible scenarios for *superior responsibility*:

1) the superior knew or had reason to know that a crime would be committed by his subordinate and failed to prevent this crime, or;

2) the superior did not know that the crime would be committed (and he cannot be held responsible for the lack of knowledge), but as soon as he became aware of this fact that was committed he has failed to punish the subordinate or to report this to the competent authorities.

Regarding this second scenario it should be pointed out that this interpretation of *superior responsibility* is outside the range of article 9 (old) of the 'WOS', since in article 9 (old) of the 'WOS' deliberately *admitting* the subordinate to commit an offence is penalized and it is the opinion of the Court that this does not mean 'failing to punish a subordinate.[290]

In order to establish *superior responsibility* within the first scenario the following four cumulative requirements have to be complied with:

(1) The superior exercises effective authority and control over the subordinate in a hierarchical structure

(2) The subordinate commits - in this effective relationship of authority - an offence

(3) The superior knew or had reason to know that a crime was imminent or being committed by his subordinate (*mens rea*)

(4) The superior fails (whether or not deliberately) to take the necessary measures within his power against this.

Below the four cumulative requirements will be discussed.

*The superior exercises effective authority and control over the subordinate in a hierarchical structure*

The term superior is not limited only to the military superior, but might also refer to a civilian leader.[291] Although the ICTR initially took a different position, it later adopted the same line.

In order to establish responsibility based on *superior responsibility* it first has to be established that the defendant, as superior, had effective authority and effective control over his subordinate, who is the offender. Even though the term superior has never been defined, the case law of the ad hoc tribunals distinguishes three elements: a hierarchical relationship, a position of power or authority and effective control.[292]

The necessary hierarchical relationship between the superior and the subordinate does not have to be formal. What matters is if the superior has effective authority.[293] On the other hand, *de jure* authority by itself is not sufficient to establish *superior responsibility.*[294] In conclusion, both in the case of *de jure* and *de facto* authority, to establish *superior responsibility*, it has to be determined that the superior had effective authority over the subordinate and that he exercised this effective authority in a hierarchical authority structure.

In this context effective authority involves the possibility to prevent crimes by subordinates.[295] The fact of having a considerable influence on the conduct of the

subordinate, without having effective control of such conduct is therefore sufficient for a conviction as punishable superior.[296]

It is quite conceivable that a superior might have a high position in the organisation but nevertheless -just because of his high-ranking position- is unable to exercise effective control.[297] It is also possible that there are several superiors having the authority over the subordinate, in which case the *superior responsibility* might apply to all superiors.[298]

*The subordinate commits a crime in the context of this effective relationship of authority*

To arrive at a conviction for *superior responsibility* it has to be established that the subordinate of the superior actually has committed a crime. This was only explicitly confirmed in 2005[299] by the *Trial Chamber* of the ICTY in the *Orić* case.[300]

The crime has to be completely committed by others than the superior. If the superior has participated in the crime his responsibility can no longer be allocated under article 7(3) of the ICTY Statute or article 6(3) of the ICTR Statute.[301]

The subordinate does not necessarily have to be the chief perpetrator of the crime.[302] Nor is identification of the subordinate required. It is sufficient to determine that the perpetrator belonged to a group and that the superior had effective control over this group.[303]

*The superior knew or had reason to know that a crime was imminent or being committed by his subordinates (mens rea)*

To establish the *mens rea* of the superior there has to be conclusive evidence that the superior knew that a crime was imminent or was being committed by his subordinates or that the superior had reason to suspect this.

In the absence of direct evidence for the fact that the superior was aware that his subordinate would commit a crime, there is the possibility to use *circumstantial evidence*. The *Trial Chamber* in the *Čelebići* case provided a list of criteria to establish if a (military) superior actually had the required knowledge:

*"It is, accordingly, the Trial Chamber's view that, in the absence of direct evidence of the superior's knowledge of the offences committed by his subordinates, such knowledge cannot be presumed, but must be established by way of circumstantial evidence. In determining whether a superior, despite pleas to the contrary, in fact must have possessed the requisite knowledge, the Trial Chamber may consider, inter alia, the following indicia, listed by the Commission of Experts in its Final Report:*

*(a) The number of illegal acts;*

*(b) The type of illegal acts;*

*(c) The scope of illegal acts;*

*(d) The time during which the illegal acts occurred;*

*(e) The number and type of troops involved;*

*(f) The logistics involved, if any;*

*(g) The geographical location of the acts;*

*(h) The widespread occurrence of the acts;*

*(i) The tactical tempo of operations;*

*(j) The modus operandi of similar illegal acts;*

*(k) The officers and staff involved;*

*(l) The location of the commander at the time."* [304]

The criterion of actual knowledge of a crime is, according to the case-law of the ad hoc

tribunals, easier satisfied in the case of a *de jure* military superior, then in the case of a *de facto* superior without a formal position of authority or a military superior in an informal structure.[305]

It also suffices to establish that the superior "*had reason to know"*.[306] However the superior has no obligation to know.[307]The ICTY considered the following regarding the interpretation of the criterion in this same case:

*"A showing that a superior had some general information in his possession, which would put him on notice of possible unlawful acts by his subordinates would be sufficient to prove that he "had reason to know". The ICRC Commentary (Additional Protocol I) refers to "reports addressed to (the superior), the tactical situation, the level of training and instruction of subordinate officers and their troops, and their character traits" as potentially constituting the information referred to in Article 86(2) of Additional Protocol I. As to the form of the information available to him, it may be written or oral, and does not need to have the form of specific reports submitted pursuant to a monitoring system. This information does not need to provide specific information about unlawful acts committed or about to be committed. For instance, a military commander who has received information that some of the soldiers under his command have a violent or unstable character, or have been drinking prior to being sent on a mission, may be considered as having the required knowledge.*

*(…)*

*Thus, as correctly held by the Trial Chamber, as the element of knowledge has to be proved in this type of cases, command responsibility is not a form of strict liability. A superior may only be held liable for the acts of his subordinates if it is shown that he "knew or had reason to know" about them. The Appeals Chamber would not describe superior responsibility as a vicarious liability doctrine, insofar as vicarious liability may suggest a form of strict imputed liability*."[308]

*The superior fails (whether or not deliberately) to take the necessary measures within his power against this*

The superior can be expected to take measures within his power to prevent or to repress the conduct of his subordinate. The superior does not have the freedom to choose whether or not to prevent or suppress the conduct of his subordinate.[309] Nor can he repair the failure to prevent by punishing his subordinate afterwards.[310] The superior can only be expected to take the measures, which are actually within his power.[311]

13.5.3 Participation and responsibility in this case

*Regarding the offences charged under count 1 and 4*

In the previous chapters the Court has already established that during the period mentioned in the indictment a large number of people was arrested - inter alia - at exposure *meetings* and was then arbitrarily deprived of their freedom in a military camp, in a police camp and in prison under bad detention conditions. Furthermore, the Court has established that the role of the accused involved, in any case, being present at the *exposure meetings* in Debre Marcos and giving speeches there. In addition the accused has been present in the military camp as well as in the police camp. The sentences, which were finally imposed, were issued by the revolutionary campaign committee, of which the accused was president.

The Court is now faced with the question if the conduct of the accused can be qualified as co-perpetration, intentionally allowing as a superior or complicity to the offences and - for the facts charged under count 4- incitement. Regarding this question the Court considers the following.

During the period mentioned in the indictment the accused was, among other things, responsible for counteracting the resistance of parties like the EPRP, in the context of his

position as permanent representative of the Derg in the province of Gojjam and president of the revolutionary coordinating campaign committee. The *exposure meetings* were a part of this campaign. Therefore the Court assumes that the accused had an initiating and directive role in the planning and realization and of those *exposure meetings*. Moreover the fact that he also had a leading role in this becomes clear from the following circumstances: he spoke at several *exposure meetings*, explained the procedure, by fear persuaded people to expose themselves or others as EPRP member and to gave the order to take them away. Therefore the role of the accused in the *exposure meetings* was very important, because without him they could not have taken place in that way. However, the Court sees more indications of a close and intentional collaboration between the accused and his co-principals. After the *exposure meetings* the accused was also involved in the detention of a large group of (alleged) EPRP-members. The accused has been in the military camp as well as in the police camp several times. He therefore neither withdrew himself at any time from the detention, nor did he intervene in the bad detention conditions. Finally the committee, of which he was the president and in which he had, at least, a directive role, imposed prison sentences upon a large number of prisoners. Again, the detention of the (alleged) EPRP-members by the co-perpetrators (like the prison-guards and the prison directors) would not have taken place without the initial order, the fact that the detention was not made undone and the imposing of sentences by the accused. Therefore the Court finds that there was a close and deliberate collaboration between the accused and his co-principals regarding the actual conducts and acts as charged under count 1 and 4, which results in co-perpetration.

The Court cannot come to a judicial finding of fact on the cumulative/alternative charge of incitement under count 4. The accused has been charged of inciting this fact -the pronouncement and execution of prison sentences and the detention under inhuman detention conditions- in the period from 24 August 1978 up and until 31 December 1981. However, the order of the accused to impose prison sentences with hard labour did not take place during the period mentioned in the indictment but happened already during the first half of August 1978. The Court has not been able to establish that the detention conditions after mid August 1978 continued to be so bad that they could be qualified as inhuman and/or humiliating.

The Court now has to address the question if the accused -as argued by the Prosecution Service- can be held responsible as a superior for the conduct of his subordinates. This question has to be answered in the negative, since the Court has already established that he is a co-perpetrator and that the crimes could not have taken place without him. The charge against the accused is that he in close and intentional collaboration with others played an essential role in the execution of the crime (committing/acting) but not that he culpably failed to intervene in a crime, which was completely committed by others (omission/failing). It is not possible to convict the accused both as a superior as well as a participant for the same criminal acts. The Court will therefore acquit the accused of this charge.

This also applies to the cumulative/alternative charges of complicity, since his role as participant excludes his role as accomplice.

*Regarding the charges under count 2*

Regarding the charges under count 2 the Court has established in the previous chapters that several people have been tortured in Debre Marcos by special interrogators from Addis Abeba. Regarding the role of the accused it has been set forth that he was responsible for bringing the special interrogators to Debre Marcos and that he, as part of his duties, also took care of their payment. The Court has to address the question if there is sufficient evidence to determine that the accused participated in these tortures, intentionally allowed the tortures and/or was an accomplice to this.

Contrary to the Prosecution Service the Court finds that there is not enough legal and convincing evidence to establish that there was a close and intentional collaboration between the accused and the special interrogators aimed at torturing. Even though there is ample evidence in the file that the accused ordered the investigators to interrogate the prisoners to identify the structure of the EPRP, there is insufficient evidence that the accused also ordered to torture the prisoners during the interrogations. The Court will therefore acquit the accused of participating in the tortures.

However, the Court does see grounds to hold the accused responsible as superior. For this the Court first of all points out that the special interrogators who tortured the prisoners were in a relationship of authority. The special interrogators came from Addis Abeba at the request of the accused and he brought them to the prisoners in order to interrogate them. It was also the accused that took care of the payment of the interrogators. In addition to this the witness statements reveal that the authority of the accused over the interrogators was actually effective. Indeed they stated that the accused talked to the interrogators and that they nodded and adopted a respectful attitude towards the accused. The use of violence against the prisoners in the camp was known to the accused or at least, he should have known it. At the time there were large-scale human rights violations in Ethiopia and the accused was aware of this, if only because at a certain moment he had to save a friend from torture. Besides, the special interrogators were very skilled in obtaining the confessions, while this was not to be expected considering the dangers the EPRP-membership involved in those days. Furthermore, the Court completely fails to understand how the accused could have been present in the camp without taking cognisance of what was going on. Several witness have testified about the large scale of the serious mistreatments, screaming and shouting and severely wounded people.

Finally the Court finds that the accused did not intervene to stop the violence while he, as he said himself, could have done so.[312] Thus the accused has failed in his duty as superior. The Court therefore finds that there is legal and convincing evidence for the charge of *superior responsibility*.

The Court acquits the accused on the cumulative/alternative charges of complicity, since the role of the accused as responsible superior excludes his role as accomplice.

*Regarding the charges under count 3*

Previously the Court has established that a large number of people were killed during the period mentioned in the indictment.

The Court now has to address the question if the accused can be identified as a participant and/or inciter of this offence.

It is the opinion of the Court that the decision to kill these people was taken by the accused and that he has ordered this to the head of the prison were the people concerned were detained at that time. Even though the Court has not been able to determine if the accused was present on the night of the executions and the accused also did not personally carry out the executions, this does not prevent a judicial finding of facts concerning co-perpetration. The fact is that the role of the accused is so important that the offence could not have taken place without his approval. Besides it appears from the file that the executions were referred back to the accused and that he even contacted his co-participants if there was a possibly that an executions had not been executed, after which he made sure that it was.

Furthermore, the Court comes to a judicial finding of facts regarding the charge of incitement. The fact is that the accused has used his position to persuade others (like for example the director of the prison and the guards) to carry out the executions, which he ordered. Without the actions of the accused they would not have proceeded to do so.

## 14 The nexus

### 14.1 Introduction

In the previous chapters the Court has established that, during the period mentioned in the indictment, there was a non-international armed conflict that the accused had cognisance of, that there were violations of the common article 3 and international humanitarian customary law on protected persons, and that the accused was responsible for this. Now still remains the question if there was a close relation between the committed offences and the armed conflict. In the present chapter the Court will give its view on this question.

### 14.2 The position of the Prosecution Service

The Prosecution Service has argued that the conflict between the Derg and the EPRP, EPLF, ELF and EDU played an essential role in the decisions of the accused to commit the crimes. The victims were associated with the opposing party and for this reason they had to be detained, treated in an inhumane manner, tortured, punished and killed. Therefore the Prosecution Service is of the opinion the required nexus does exist.

### 14.3 The position of the Defence

The Defence has not taken a position regarding this issue.

### 14.4 The framework of reference

In previous cases this Court, the Court of Appeal of The Hague and the Court of Appeal of Den Bosch have aligned with the case law of the ICTY and the ICTR on the interpretation of the nexus requirement.[313] The *Appeals Chamber* of the ICTY considered the following in the *Kunarac* case:

*"What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict. The Trial Chamber's finding on that point is unimpeachable."* [314]

The *Appeals Chamber* indicates in the *Kunarac* case the following factors, which can be taken into, account to determine if the requirement that the perpetrator acted in *furtherance or under the guise of the armed conflict*:

*"In determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account, inter alia, the following factors: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties."* [315]

In the *Rutaganda* case the court ruled that the function of the nexus-requirement is twofold. First of all it serves to distinguish war crimes from the ordinary crimes. Secondly the nexus requirement is

necessary to rule out purely coincidental or isolated criminal incidents, which are not war crimes in the context of the international laws of war. The referred random or isolated incidents are in sanctioned in principle by national legislation.[316]

14.5 The nexus in this case

In those cases regarding war crimes at the time of the conflict in Ruanda the Court of The Hague and the Court of Appeal in The Hague devoted detailed considerations on the question of whether or not there was a nexus. In the present case there is no need for the Court to dwell on this for such a long time. Based on what has been established before regarding the facts and the role of the accused in them, the Court finds that it has become crystal clear that

the *Kunarac* criteria have been met because:

- The accused was a military and representative of the Derg;
- the victims were protected persons;
- the victims were members of or were associated with the opposite party (parties) in the armed conflict;
- the *exposure meetings* as well as the deprivation of freedom under degrading conditions, and the tortures and the killing and punishing were serving or could serve the purpose of the military campaign of the Derg, specifically the identification followed by the elimination of the alleged opponent(s) in the armed conflict;
- the crimes were committed in the performance of the official duties of the accused, specifically, permanent representative of the Derg.

Therefore the Court concluded that there is a nexus in the present case.

## 15 Violation of the 'WOS'

In the previous chapters the Court has established that there was an ongoing non-international armed conflict in Ethiopia during the period mentioned in the indictment. The accused has cognisance of this conflict. Furthermore, the Court has established that during that period violations have taken place of international humanitarian law and that the accused has been involved in this. The offences charged to the accused and held by the Court to be proved, have all taken place in connection with the armed conflict. The Court concludes that thereby the laws and customs of war of which have been violated by the accused or by persons subordinate to the accused. The accused has also violated article 8 (old) and article 9 (old) of the 'WOS'.

Regarding the facts mentioned under count 1, 2 and 4 the Court has already established that those acts involved inhuman treatment

Regarding the fact mentioned under count 2 the Court has established that this resulted in the death of [person 323] and grievous bodily injury of [person 136, different spelling]. Regarding the fact under count 3 the Court has established that this resulted in the death of 75 persons. These are aggravating circumstances as mentioned in the second and third paragraph of article 8 (old) of the 'WOS'.

Below the Court will consider that besides other aggravating circumstances as mentioned in the second and/or third paragraph of article 8 (old) of the 'WOS' apply. The Court based this conclusion on the witness statements set out in chapter 8. that were used as evidence in chapter 10. and will complement these statements when necessary.

It is the opinion of the Court that the deprivation of freedom, the torturing, killing and imposition of extrajudicial punishments were reflections of a systematic terror of extrajudicial action against a certain part of the population, specifically persons who allegedly belonged to or sympathised with the

EPRP. After all, the offences committed by the accused took place in the context of the Red Terror mentioned several times before: destroying the EPRP and other groups that were considered as contra-revolutionary.

Regarding counts 1 and 2 the Court comes to the conclusion that there is legal and convincing proof for the aggravating circumstance that the actions of the accused were likely to cause death or grievous bodily harm.

Concerning count 1 the Court expressly refers to the statements about the unhygienic detention conditions, which produced the risk of an outbreak of contagious diseases.

Concerning count 2 the Court refers to the previously outlined witness statements [person 325] and [person 315], who testified how seriously they were tortured.

To all counts applies furthermore the aggravating circumstance of a given promise, since all witness statements indicate that the people at the *exposure meetings* were led to believe by the accused and his participants that nothing would happen to them if they only exposed themselves. However, this promise was not kept: the victims paid for it with long-term arbitrary deprivation of liberty and in some cases with death.

The facts mentioned under count 1 and 2 involve forcing someone to do something with joint forces: at the *exposure meetings* people were forced by the accused an/or his participants to expose themselves as EPRP member or to mention the names of others.

Finally it is the opinion of the Court to count 3 applies the aggravating circumstance of the use of violence with joint forces against persons, for besides the persons who actually carried out the killing, this also involved people who had to take the persons who were to be killed from their cells and bring them to church and who had to throw these persons -whether dead or alive- in the grave.

## 16 The (partial) acquittals

The Court rules that the accused should be (partially) acquitted of the facts stated below:

[person 320] has testified that he fled from Debre Marcos in October 1977 and was arrested and detained in June 1979 in Debre Marcos - so, after the accused had left Debre Marcos-. The Court will therefore acquit the accused of the facts charged under count 1 and 4 as far as they refer to [person 320].

The Court will also acquit the accused for the acts charged under count 4 as far as this regards [person 314], [person 315] and [person 316], since they had been already released before 1 August 1978.

Regarding [person 326, different spelling] one witness has testified that he was seriously mistreated and had swellings over his whole body. Nevertheless, the Court agrees with the Public Prosecutor that this does not reveal how [person 326, different spelling] got these injuries, nor why the accused would have knowledge of this physical abuse or injuries, and therefore the accused should be acquitted of the charge under count 2, regarding the charged torture of this victim.

The same applies regarding the torture of [person 327] charged under count 2.

Also regarding the torture of [person 322] the Court considers that there is not enough legal and convincing proof in the file. The statements made by the victim at different times show such

discrepancies on the point of the abuse that the Court will not use this statement as evidence, which leads to the acquittal of the torture of [person 322] charged under count 2.

As already pointed out the Court will acquit the accused of the offence of the accumulated/alternative charge under count 1, allowing as a superior and complicity. Furthermore, the Court already considered that the accused will be acquitted of the accumulated/alternative charge under count 2, co-perpetration and complicity and the accumulated/alternative charge under count 4, incitement, since the charged inciting actions, specifically ordering to impose prison sentences with hard labour to the referred persons and allowing inhuman detention conditions, have not been committed during the period mentioned in the indictment, but during the first half of August 1978. The file does not contain enough evidence that the detention conditions after this period remained so bad that they could be qualified as cruel and/or inhuman and/or degrading.

## 17 The judicial finding of facts

The Court finds -briefly stated- that the following charges against the accused have been proved:

1. that the accused during the period from 1 February 1978 up and until 31 July 1978 in Debre Marcos jointly and in conjunction with others has subjected 320 persons to cruel and inhuman treatment and has deprived them arbitrarily of their freedom
2. that the accused during the period from 1 February 1978 up and until 1 September 1978 in Debre Marcos intentionally admitted that persons who were under his authority tortured at least six people.
3. the accused during the period from 14 August 1978 up and until 17 August 1978 in Debre Marcos and Metekel ordered to kill 75 persons, which order has been executed; by giving this order he killed these persons jointly and in conjunction with others and he incited the killing of these persons.
4. the accused during the period from 1 August 1978 up and until 31 December 1978 jointly and in conjunction with others pronounced and executed a sentence against

236 persons, while these persons had not been given an fair trial by an independent court and he arbitrarily deprived them of their freedom; during the period from 1 August 1978 up and until 15 August 1978 he subjected these persons to cruel and inhuman treatment by detaining them under very appalling conditions.

The complete judicial finding of facts has been attached to this sentence as Annex 3.

## 18 The criminality of the facts stated to be proven

No facts or circumstances have become apparent that would rule out the criminality of the acts. This amounts to the criminal acts mentioned in the decision.

## 19 The criminal responsibility of the accused

The accused is criminally responsible, because no circumstances have become apparent that would rule out his responsibility.

## 20 The sentencing

### 20.1 The demand of the Prosecution Service

The public prosecutor has demanded that the accused shall be sentenced to life imprisonment. It is the opinion of the Prosecution Service that this is the only fitting punishment because of the seriousness of the offences he has committed and the large scale on which they took place. Furthermore, the punishment should clearly express to the victims and the surviving relatives but also to the international community how much the accused is held accountable for his actions and that this severe punishment is the only possible consequence of such serious crimes. According to the Prosecution Service at this moment the sentence of lifelong imprisonment is not in breach of the European Convention on Human Rights and the fundamental freedoms (hereafter: EVRM), in this context the Prosecution Service has referred to the decision of the advisory board on persons with a life sentence which became effective on 1 March 2017, its amendment, which had a retroactive effect as from 1 June 2017, and the conclusion of 5 September 2017 of the Advocate-General at the Netherlands Supreme Court.[317]

### 20.2 The Position of the Defence

The Defence put forward (in the alternative) a plea against the severity of the punishment. Regarding the severity of the punishment the Defence has pointed out that Ethiopia, at the time of the facts, was not a constitutional state but a developing country were a lot of parties were fighting each other. The accused got carried away into this. This should lead to a punishment that is equal to the time spent by the accused in custody. The Court understands that the Defence further argues that a life long sentence is in breach of the EVRM. The argument put forward by the Defence, as the Court understands it, is that the proposal for assessment, laid down in the afore-mentioned decision of the advisory board life sentences does not take into account the right to an independent objective evaluation. In the further alternative the Defence has asked to impose a prison sentence for a limited duration. In the further alternative it was put forward that the punishment should be moderated because the proceedings were not concluded within a reasonable term, not only because the facts date from forty years ago, but also because the proceedings have been suspended for fourteen years on account of the judicial authorities. Besides, the way this case was handled by the media has had an enormous impact on the accused. Not in the least because of the broadcasting of the documentary 'De Oorlogsrecherche' *[the criminal investigators of war]* by the Dutch public broadcasting company.

### 20.3 The opinion of the Court

The sentence stated below is in accordance with the seriousness of the committed offences, the circumstances under which they were committed and based on the personal circumstances of the accused, which became apparent during the trial. In this regard the Court takes the following into account.

During the conflict in Ethiopia the accused committed very serious crimes, specifically war crimes. The accused is, in different forms of participation or responsibility, guilty of arbitrary deprivation of

freedom, detention under inhuman conditions, torture, pronouncing and imposing of extrajudicial prison sentences against a large number of persons and the killing of a large group of people in a horrible way.

The accused robbed his compatriots of their essential rights in a cold and calculating manner: the right to freedom, the right not to be subjected to a cruel and inhuman treatment or not to be tortured and the most essential right: the right to live. With his deeds he caused the victims and their relatives immense suffering The persons who were deprived of their freedom had to miss important moments in their own life and in the lives of their loved ones, like getting a diploma or watching a newborn baby grow up. The persons who were tortured suffered unimaginable pains and some were or marked for life by physical and mental injuries. And those who were killed in a horrible way did not have the chance to say goodbye to their loved ones, who for a very long time were left in uncertainty about their fate. All victims have had to endure mortal fear. The circumstance that a large part of the victims were children under the age of eighteen makes the crimes even more cruel. At the trial several victims and surviving relatives have vividly expressed how much they suffer, even now, because of what the accused did to them.

Besides this immeasurable suffering caused by the accused to the victims and the surviving relatives, his actions also represented a serious breach of the Ethiopian legal order.

Furthermore, the war crimes committed by the accused were serious breaches of the international and therefore also of the Dutch legal order in past and present.

The accused came to the Netherlands, some time after the facts stated to be proven had occurred. He applied for and was granted asylum and was naturalised. By this procedure the accused was made part of Dutch society. In this society there are also people who lived in Ethiopia at that time and have experienced the armed conflict. This is an additional reason why the offences committed by the accused became an issue for the Dutch legal order.

The reason why crimes of war are so serious is that they involve very gross violations of the humanitarian laws of war meant to protect defenceless civilians during an armed conflict.

It goes without saying that for such serious crimes only a very lengthy prison sentence is a fitting sanction.

One of the purposes of the punishment is retaliation for the hurt and grief caused to the victims and their surviving relatives: they have to know how firmly the actions of the accused are being condemned. The accused has to be penalized for his actions.

Furthermore, the severity of the punishment should make clear to the international legal community how much the actions of the accused are being condemned and that they can only result in a very severe punishment. The severity of the punishment should also give a signal to those persons who are planning to commit such serious crimes: general prevention. They should realise that even years after committing serious violations of humanitarian laws of war they can be held accountable and that the punishment will be just as severe at that later time. This is even more true in current times in which many countries are torn apart by internal conflicts. The circumstance that this concerns facts, which took place a long time ago, is therefore not at all considered to the advantage of the accused.

In determining the severity of the punishment the Court has the choice between the maximum temporary prison sentence of twenty years or life imprisonment (applicable at the time and currently still applicable according to the 'WOS'). Anyhow, considering the very serious nature of the offences a prison sentence of less than twenty years is impossible.

In view of the current regulation of conditional release the maximum temporary prison sentence would result in a actual detention of thirteen years and four months, which would mean that the accused, who has been in pre-trial detention for more than two years now, will be a free man

again in eleven years. In view of the previous considerations the Court finds

this completely unacceptable, unless there would be such important contraindications against imposing a life sentence that imposing the maximum temporary prison sentence has to be taken for granted. Even though such a sentence would be too short and incomprehensible to the victims and the (international) legal order, there would no alternative.

Are there contraindications for imposing a life sentence?

The Court did not find these in the person nor in the attitude of the accused during the trial. The fact that the accused is a little older and has no criminal record does not carry weight compared to the seriousness of the crimes.

Also during the period from 1974 up to 1978 the accused could have been aware of the seriousness and the consequences of the events in Ethiopia and the unscrupulous repression of the Derg-regime that he was a part of, against everybody who supported any other group than the Derg. However, the accused did not withdraw from this, on the contrary. The accused has maintained that he was falsely accused of the charged offences, stated by the Court to be proven. While he had mostly remained silent during the preliminary inquiry he made varying statements during the trial about the many incriminating documents and witness accounts or failed to give a plausible explanation. The Court cannot help feeling that till the present day the accused considers the EPRP and its supporters to be responsible for the crimes he has committed.

Finally the Defence has argued that the principle of a reasonable term would not have been respected but the Court does not share this opinion. The reasonable term did not start at the moment the offences were committed, nor on the moment the article in *Vrij Nederland* was published or on the moment the Prosecution Service started a criminal investigation. The reasonable term only started on the moment when on behalf of the Dutch government an action was carried out, because of which the person concerned could reasonably expect that criminal proceedings would be instituted against him for a certain criminal offence. This was on the moment the accused was arrested, specifically on 29 September 2015. Although the present proceedings took more than two years, the nature and the complexity of the case and the course of these proceedings justify this. An additional factor is the fact that the accused very shortly before the originally scheduled trial date, more than a year ago, engaged other lawyers.

The Court finds that imposing a sentence of life imprisonment is not contrary to the prohibition laid down in article 3 of the EVRM, now that since 1 March 2017 the decision of the advisory board on persons with a life sentence has entered into force. This decision created a realistic possibility of a review for person with a life sentence.

In view of the above considerations Court has found no contraindications for imposing the sentence of life imprisonment.

This punishment will therefore be imposed on the accused, since this is the only punishment to do justice to the seriousness of the offences he has committed.

## 21 The claims of the injured parties

### 21.1 Introduction

[person 332], [person 321, different spelling], [person 111, different spelling], [person 174, different spelling], [person 315] en [person 316] have (individually) joined the proceedings as injured party regarding a demand for compensation of damages, each one for an amount of € 226,89. All of them were represented by Mr. G. Sluiter and Mrs. B. van Straaten, both from

Amsterdam.

With a view to an efficient handling of the demands of the injured party, (which had not yet been submitted at the time) the Court called for a preliminary round in writing, without wishing to disregard the final discussion to be held during the trial. The lawyers of the injured parties have submitted the claims timely and furnished with an extensive motivation and *expert opinion* regarding the substantial assessment of the Ethiopian law to be applied to the claim. In the context of the preliminary round in writing the Prosecution Service has informed that they have no remarks about the claims. The Defence has not reacted in the round in writing.

During the hearing in Court on 2 November 2017 Mr. Sluiter has further explained the claims on behalf of the injured parties, after which the Court asked some questions regarding the possibility of a compensation for damages for surviving relatives, eventual prescription and the request for summary execution.

In the closing plea the Prosecution Service demanded that the claims would be awarded, with possibility to give a reaction after taking cognisance of the reaction of the injured parties to the questions of the Court.

The Defence has not expressed an opinion about the claims and when asked has expressed the wish to do this only in rejoinder.

At the hearing in court of 15 November 2017 Mr. Van Straaten answered the questions asked by the Court.

In its rejoinder the Prosecution Service repeated that the demands could be awarded, adding to this regarding to the demand of [person 332] that this should be awarded on the basis of reasonability and fairness, and based on the obligations of the Netherlands ensuing from the International Treaty regarding the protection against forced disappearances. The Prosecution Service further argued that the demands should be declared provisionally enforceable.

Mr. Sluiter, who was present on behalf of the injured parties during the hearing in trial on 16 November 2017, saw no reason to speak again.

In rejoinder the Defence argued that the accused, in case of a conviction would refer to the opinion of the Court regarding the claims.

21.2 <u>The competence of the Court to assess the claims</u>

On 1 April 2012 article 21a of the 'Wim' entered into force.

The referred article has been inserted because it was considered unsatisfactory that, as a consequence of the so-called *Terwee Law* (Law of 23 December 1992 complementary to the Criminal Code, the Code of Criminal Procedural, the Law on a temporary arrangement damage fund for victims of punishable acts, *Stb*. 1993, 29, entered into force on 1 April 1995) the provisions of this law would no apply to offences committed before the date on which this law entered into force. For criminal prosecution of international crimes committed before 1 April 1995 this meant that the victims of international crimes could only submit a claim for a limited amount and that it was impossible for surviving relatives of these victims to join the criminal proceedings as injured party.

Article 21a of the 'Wim' has provided for this and this says:

In case of criminal prosecution for one of the *crimes described in* this law, the law on the execution of the treaty on torture, the law on the execution of the treaty on genocide, or *the Law on war crimes committed before 1 April 1995* (italics by the Court), the provisions of the Code of Criminal Procedure regarding the victim and the injured party apply.

Article 51f of the Code of Criminal Procedure, when relevant in this case, says:

1. The person, who directly has suffered damage because of a criminal act, can join the criminal proceedings regarding his claim for damages.

2. If the person referred to in the first paragraph has died as a result of the criminal act, his heirs can join the proceedings regarding their claim obtained under general title and the persons referred to in article 108, first and second paragraph, of Book 6 of the Civil Code can also join regarding the referred claims.

The Court is therefore competent to rule on the claims.

21.3 The assessment of the claims

*The claim of [person 332]*

[person 332] has submitted a claim for compensation of the immaterial damage she has suffered because of the death of her brother [person 4, different spelling], the so-called affection damage. Even though the claim has not been contested the Court will officially have to examine if her claim is admissible.

The Court does not doubt the fact that the death of her brother and the insecurity about his fate, which lasted for years, has caused [person 332] a lot of grief and pain. In the statement she made during the hearing in court on 2 November 2017 she has vividly expressed what the death of her brother and this insecurity did to her and still does to her. The Court understands that awarding her claim will not make up for or alleviate her grief but it might serve as recognition of her suffering. Although the Court does not want to deny her this recognition, the Court sees legal objections for admitting her claim.

The Court establishes that the brother of [person 332] suffered direct damage from the criminal offence stated to be proven. According to the provision laid down in article 51, second paragraph, of the Criminal Code, it is possible, in case the person who has suffered direct damage because of the offence has died, for the heirs to join the criminal proceedings with their claim under a universal title of succession and the persons, arising from the actions and claims referred to in article 108, first and second paragraph, of Book 6 of the Civil Code. However such claims are about the compensation for material damage. [person 332] claims compensation of the immaterial damage she has suffered. This is not possible under the current legislation. Although there is a proposal for compensation of the so-called affectionate damage being discussed in the First Chamber of Parliament, this is of no avail since the proposal has no force of law. The Supreme Court has ruled several times that the judiciary is not authorised to anticipate a change which might be carried out in this respect by the legislator, by awarding such a compensation. Therefore the Court will not follow the proposal of Mrs. Van Straaten to anticipate on the draft-law.

Regarding the argument of the Prosecution Service that the International Convention for the Protection of all Persons from Enforced Disappearance would lead to granting the claimed immaterial damage of a surviving relative, the Court finds that article 24, fourth and fifth paragraph of this Conventions obliges the Dutch government to take certain measures. However, since these provisions do not have a direct effect, there is no possibility for a criminal court- in the absence of a foundation in national law- to sentence the accused in a criminal case to pay a compensation for immaterial damages to a surviving relative. It is the task of the legislator to determine in what way these obligations should be met.

Therefore the only possible conclusion is that the claim of [person 332] must be rejected. If she wants she can submit her claim to the civil judge. Considering that no defence was presented against the claim there is no reason to convict [person 332] to pay the costs of the proceedings against the accused.

*The claims of [person 111, different spelling], [person 174, different spelling], [person 315], [person 321, different spelling] and [person 316]*

Upon the entry into force of the Law to chance - inter alia - The Code of Criminal Procedure (*Stb*. 2010, no. 1, 30143) to reinforce the position of the victim in the criminal proceedings, article 361, third paragraph of the Code of Criminal Procedure was amended on 1 January 2011. In this legislative amendment the criterion for admissibility of the claim of the injured party, which had been valid since 1 April 1995 was substituted by the criterion if the handling of the claim would

result in a proportionate or disproportionate burden for the criminal proceedings. Notwithstanding the possible application of foreign legislation - more about this later - the Court considers that the handling of the claims does not disproportionately affect this criminal case.

According to article 3, first paragraph, of the Law on conflicts over illegal acts, Ethiopian law applies to the substantial assessment of the claims.

In order to substantiate the claims and the applicable law the counsel of the injured party has added an *expert opinion* of Gebrehiwot Hadush and Abiy Chelkeba, respectively *dean* and *postgraduate programs coordinator* of the *Mekelle University College of law and Governance*. With reference to this *expert opinion* the Defence has argued that the Ethiopian *Civil Code* offers the possibility of the so-called 'intentional responsibility', this means responsibility ensuing from the intentional acts or omission of acts by the defendant. In addition Ethiopian law acknowledges three elements of a wrongful act, which are imperative to establish a wrongful act, specifically: there has to be a basis for responsibility, the victim has suffered damage and there is a causal relation between the damaging act and the damage. Referring to the *expert opinion* the counsel has argued furthermore that the claims of the injured parties have not prescribed according to Ethiopian law, inter alia because the claims have been interrupted by the criminal proceedings in Ethiopia against the accused after which the new term for prescription has started.

The rules of evidence for civil proceedings apply to the assessment of the claim of an injured party. In summary those rules stipulate that the claimant (the injured party) has to furnish all facts necessary for the legal consequence envisaged. Parties war obliged to furnish facts completely and according to the truth The facts, as put forward by the injured parties, have not been disputed by or on behalf of the accused. Based on the rules of evidence for civil proceedings these facts therefore should count between the injured party and the accused as established facts. However a full application of the civil rules might clash with the themes regulated by the Code of Criminal Procedure, especially the right of the defendant to a fair trial. Therefore the Court has checked if the Defence has been sufficiently able to in put up a defence against the claims. In view of what has been considered above about this part of the proceedings the Court concludes that this has indeed been the case.

The Court is of the opinion that the claims of [person 111, different spelling], [person 174, different spelling], [person 315], [person 321, different spelling] and [person 316] as compensation for immaterial damaged can be awarded, since it has been established that the injured parties have suffered damage as a direct consequence of the facts stated as proven under count 1 (against [person 111, different spelling], [person 174, different spelling], [person 315], [person 321, different spelling] and [person 316] ), fact 2 (regarding[person 315]) and 4 (regarding [person 111, different spelling], [person 174, different spelling] and [person 321, different spelling]).

This entails that the accused should be convicted to pay the costs which the injured parties have incurred up to the pronouncement of this sentence in relation to their claims, which costs are assessed by the Court to be nil, up to today and the costs which the injured parties will have to make for the execution of this sentence.

The Court finds that it is not possible to declare the awarding of the claims provisionally enforceable. The criminal court delivers a simultaneous judgment on the claim of the injured party and the criminal case. A criminal sentence is only provisionally enforceable if it has become firm. In this context the Court has considered the interest of the provisions of the Code of Civil Procedure, but finds that the provisions of the Code of Criminal Procedure are decisive to answer the question in what way the civil claim is incorporated in the criminal proceedings. Since the Code of Criminal Procedure does not offer the possibility of provisional enforcement the Court will not proceed to do this.

The Court does not have the possibility, whether or not officially, to impose the measure for

compensation of damages mentioned in article 36f of the Code of Criminal Procedure. A measure for the compensation of damages is a criminal law sanction and the principle of legality laid down in article 1 of the Criminal Code does not allow this measure to be imposed for offences committed before the date on which the *Terwee Law* entered into force.

## 22 The applicable law articles

The punishment that will be imposed is based on the articles:

- 47 and 57 of the Criminal Code;
- 8 ( old) and 9 (old) of the 'WOS'.

These rules applied at the time when the acts stated to be proven occurred.

## 23 The decision

The Court:

Declares that there is no legal and convincing proof that the accused has committed the facts charged under count 1 second accumulative/alternative and third accumulative/alternative, second cumulative/alternative and third cumulative/alternative, under 2 first cumulative/alternative and third cumulative/alternative and under 4 second cumulative/alternative and third alternative/cumulative and fourth alternative/cumulative and acquits the accused thereof.

Declares that there is legal and convincing proof that the accused committed the facts charged under count 1 first alternative/cumulative, under 2 two alternative/cumulative, under 3 first alternative/cumulative and second alternative/cumulative and under 4 first alternative/ cumulative charged, as set out briefly before in chapter 17 and completely in annex 3 and that the facts stated to be proven constitute:

Regarding count 1, first alternative/cumulative:

*Co-perpetration of violation of the laws and customs of war, while the fact was likely to cause the death or grievous bodily harm of another person and while the fact involves inhuman treatment, committed several times*

and

*co-perpetration of violation of the laws and customs of war, while the fact entails forcing other persons, jointly and in conjunction with others, while the fact is an expression of a policy of systematic terror or wrongful actions against the whole population or a specific group thereof;*

regarding count 2, the first alternative/cumulative:

*deliberately allowing a subordinate to violate the laws and customs of war while this fact was likely to cause the death or serious bodily injury of another person and while this act involved an inhuman or degrading treatment, committed several times*

and

*deliberately allowing a subordinate to violate the laws and customs of war while this fact was likely to cause the death or serious bodily injury of another person and while this act involved jointly and in conjunction with others forcing other persons to do something and while this act is an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group and while the act is a violation of a given promise, committed several times;*

regarding count 3, first alternative/cumulative:

*co-perpetration of violation of the laws and customs of war, while this fact causes the death of another person and while the act involves violence committed jointly and in conjunction with others against persons or violence against sick and wounded while the act is an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group and while the act is a violation of a given promise, committed several times;*

regarding count 3, second alternative/cumulative:

*inciting co-perpetration of violation of the laws and customs of war, while this fact causes the death of another person and while the act involves violence committed jointly and in conjunction with others against persons or violence against sick and wounded while the act is an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group and while the act is a violation of a given promise, committed several times;*

regarding 4, first alternative/cumulative:

*co-perpetration of violation of the laws and customs of war, while this fact involves an inhuman treatment, committed several times;*

and

*co-perpetration of violation of the laws and customs of war, while this fact is an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group and while the act is a violation of a given promise, committed several times;*

rules that the facts stated as proven are criminal offences and rules that the is accused criminally responsible thereof;

rules that there is inconclusive evidence for other facts than the above-mentioned facts stated as proven and acquits the accused thereof;

Sentences the accused to:

**life imprisonment;**

rules that the claim for damages of the injured party [person 332] is not admissible;

awards the claims for damages of the injured parties [person 111, different spelling], [person 174, different spelling], [person 315], [person 321, different spelling and [person 316] and convicts the accused to pay against a proper proof of discharge to each of them an amount of € 226,89;

also convicts the accused to pay the costs of the proceedings incurred by these injured parties, assessed up to day at nil, and the costs they have to make for the execution of the sentence.

This judgment was delivered by

justice M.T. Renckens, president,

justice E.J. van As, judge,

justice C.I.H. Kerstens-Fockens, judge,

in the presence of M.R. Ekkart and M. Sepmeijer-Kovacevic, registrars,

and pronounced during the public hearing of this court on 15 December 2017.

**Annex 1: De indictment**

**COUNT 1**

**Deprivation of freedom and inhuman treatment from 1 February 1978 up and until 31 July 1978**

1.1 **co-perpetration**

*[the defendant is accused of the fact]*

that he on (one) (or more) point(s) in time during the period from 1 February 1978 up and until 31 July 1978, in any case in 1978, in Debre Marcos and/or Metekel, in the province of Gojjam, or on places in Ethiopia, jointly and in conjunction with another person/other persons,

(every time) violated the laws and the customs of war, while these facts

- resulted in serious physical injury and/or
- involved violence committed with joined forces against persons or violence against death, sick or injured persons and/or
- involved forcing other persons with joined forces to do something, not do to something or to tolerate something and/or
- were expressions of a policy of systematic terror and/or unlawful targeted action against the entire population or a certain population group and/or
- were in breach of a given promise and/or
- were likely to cause the death or serious bodily injury of another person than de defendant;
- involved inhuman treatment,

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the "common" article 3 of the Geneva Conventions of 12 August 1949 and/or

the international humanitarian customary law and/or

(specifically) the prohibition of arbitrary deprivation of freedom in customary international law

in the context of a (non-international) armed conflict on Ethiopian territory, persons who where not/no longer, taking a direct part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. person 1]
2. [ person 2]
3. [ person 3]
4. [ person 4]
5. [ person 5]
6. [ person 6]
7. [ person 7]
8. [ person 8]
9. [ person 9]
10. [ person 10]
11. [ person 11]
12. [ person 12]
13. [ person 13]
14. [ person 14]
15. [ person 15]
16. [ person 16]
17. [ person 17]
18. [ person 18]
19. [ person 19]
20. [ person 20]
21. [ person 21]
22. [ person 22]
23. [ person 23]
24. [ person 24]
25. [ person 25]
26. [ person 26]
27. [ person 27]
28. [ person 28]
29. [ person 29]
30. [ person 30]
31. [ person 31]
32. [ person 32]
33. [ person 33]
34. [ person 34]
35. [ person 35]
36. [ person 36]
37. [ person 37]
38. [ person 38]

39. [ person 39]
40. [ person 40]
41. [ person 41]
42. [ person 42]
43. [ person 43]
44. [ person 44]
45. [ person 45]
46. [ person 46]
47. [ person 47]
48. [ person 48]
49. [ person 49]
50. [ person 50]
51. [ person 51]
52. [ person 52]
53. [ person 53]
54. [ person 54]
55. [ person 55]
56. [ person 56]
57. [ person 57]
58. [ person 58]
59. [ person 59]
60. [ person 60]
61. [ person 61]
62. [ person 62]
63. [ person 63]
64. [ person 64]
65. [ person 65]
66. [ person 66]
67. [ person 67]
68. [ person 68]
69. [ person 69]
70. [ person 70]
71. [ person 71]
72. [ person 72]
73. [ person 73]
74. [ person 74]
75. [ person 75]
76. [ person 76]
77. [ person 78]
78. [ person 78]
79. [ person 79]
80. [ person 80]
81. [ person 81]

82. [ person 82]
83. [ person 83]
84. [ person 84]
85. [ person 85]
86. [ person 86]
87. [ person 87]
88. [ person 88]
89. [ person 89]
90. [ person 90]
91. [ person 91]
92. [ person 92]
93. [ person 93]
94. [ person 94]
95. [ person 95]
96. [ person 96]
97. [ person 97]
98. [ person 98]
99. [ person 99]
100. [person 100]
101. [person 101]
102. [person 102]
103. [person 103]
104. [person 104]
105. [person 105]
106. [person 106]
107. [person 107]
108. [person 108]
109. [person 109]
110. [person 110]
111. [person 111]
112. [person 112]
113. [person 113]
114. [person 114]
115. [person 115]
116. [person 116]
117. [person 117]
118. [person 118]
119. [person 119]
120. [person 120]
121. [person 121]
122. [person 122]
123. [person 123]
124. [person 124]

125. [person 125]
126. [person 126]
127. [person 127]
128. [person 128]
129. [person 129]
130. [person 130]
131. [person 131]
132. [person 132]
133. [person 133]
134. [person 134]
135. [person 135]
136. [person 136]
137. [person 137]
138. [person 138]
139. [person 139]
140. [person 140]
141. [person 141]
142. [person 142]
143. [person 143]
144. [person 144]
145. [person 145]
146. [person 146]
147. [person 147]
148. [person 148]
149. [person 149]
150. [person 150]
151. [person 151]
152. [person 152]
153. [person 153]
154. [person 154]
155. [person 155]
156. [person 156]
157. [person 157]
158. [person 158]
159. [person 159]
160. [person 160]
161. [person 161]
162. [person 162]
163. [person 163]
164. [person 164]
165. [person 165]
166. [person 166]
167. [person 167]

168. [person 168]
169. [person 169]
170. [person 170]
171. [person 171]
172. [person 172]
173. [person 173]
174. [person 174]
175. [person 175]
176. [person 176]
177. [person 177]
178. [person 178]
179. [person 179]
180. [person 180]
181. [person 181]
182. [person 182]
183. [person 183]
184. [person 184]
185. [person 185]
186. [person 186]
187. [person 187]
188. [person 188]
189. [person 189]
190. [person 190]
191. [person 191]
192. [person 192]
193. [person 193]
194. [person 194]
195. [person 195]
196. [person 196]
197. [person 197]
198. [person 198]
199. [person 199]
200. [person 200]
201. [person 201]
202. [person 202]
203. [person 203]
204. [person 204]
205. [person 205]
206. [person 206]
207. [person 207]
208. [person 208]
209. [person 209]
210. [person 210]

211. [person 211]
212. [person 212]
213. [person 213]
214. [person 214]
215. [person 215]
216. [person 216]
217. [person 217]
218. [person 218]
219. [person 219]
220. [person 220]
221. [person 221]
222. [person 222]
223. [person 223]
224. [person 224]
225. [person 225]
226. [person 226]
227. [person 227]
228. [person 228]
229. [person 229]
230. [person 230]
231. [person 231]
232. [person 232]
233. [person 233]
234. [person 234]
235. [person 235]
236. [person 236]
237. [person 237]
238. [person 238]
239. [person 239]
240. [person 240]
241. [person 241]
242. [person 242]
243. [person 243]
244. [person 244]
245. [person 245]
246. [person 246]
247. [person 247]
248. [person 248]
249. [person 249]
250. [person 250]
251. [person 251]
252. [person 252]
253. [person 253]

254. [person 254]
255. [person 255]
256. [person 256]
257. [person 257]
258. [person 258]
259. [person 259]
260. [person 260]
261. [person 261]
262. [person 262]
263. [person 263]
264. [person 264]
265. [person 265]
266. [person 266]
267. [person 267]
268. [person 268]
269. [person 269]
270. [person 270]
271. [person 271]
272. [person 272]
273. [person 273]
274. [person 274]
275. [person 275]
276. [person 276]
277. [person 277]
278. [person 278]
279. [person 279]
280. [person 280]
281. [person 281]
282. [person 282]
283. [person 283]
284. [person 284]
285. [person 285]
286. [person 286]
287. [person 287]
288. [person 288]
289. [person 289]
290. [person 290]
291. [person 291]
292. [person 292]
293. [person 293]
294. [person 294]
295. [person 295]
296. [person 296]

297. [person 297]

298. [person 298]

299. [person 299]

300. [person 300]

301. [person 301]

302. [person 302]

303. [person 303]

304. [person 304]

305. [person 305]

306. [person 306]

307. [person 307]

308. [person 308]

309. [person 309]

310. [person 310]

311. [person 311]

312. [person 312]

313. [person 313]

314. [person 314]

315. [person 315]

316. [person 316]

317. [person 317]

318. [person 318]

319. [person 319]

320. [person 320]

321. [person 321]

and/or one or more other persons

were subjected to cruel and/or inhuman treatment and/or

(several times) outrage was committed upon their personal dignity (and/or) (specifically) the afore-mentioned persons were subjected to humiliating and/or degrading treatment and/or

sentences were pronounced and/or executed against them without prior trial and/or by a duly constituted court offering all the legal guarantees, recognised by civilized peoples as indispensable and/or

were arbitrarily deprived of their freedom

while the referred cruel and/or inhuman treatment and/or outrage upon the personal dignity and/or humiliating and/or degrading treatment and/or pronouncement and/or execution of sentences and/or arbitrary deprivation of freedom consisted in the following conduct displayed by the defendant and/or one or more co-perpetrator(s)

- pronouncement of (prison) sentences against the afore-mentioned person(s) (at exposure meetings) and/or other measures restricting freedom and/or has enforced/ordered to enforce without prior prosecution by an (independent) prosecution agency and or without having had fair trail and/or (specifically) without having been tried by an independent and impartial institutions and /or being informed without delay of the particulars of the offence alleged against them and /or without having been afforded before and during their trial all necessary rights and means of defence and/or contrary to the prohibition of collective punishment and/or contrary to principle of legality and/or without the presumption of innocence and/or without

being afforded the right to be present at their own trial and/or without the right not to testify against themselves and/or without making use of their right to be advised of their judicial and other remedies and of the time-limits within which they may be exercised and/or
- searching/ordering to search the house of the afore-mentioned person(s) and/or arresting/ordering to arrest this person/these persons and taking/ordering to take this person/these persons to a police-station and/or prison and/or
- detaining/ordering to detain the afore-mentioned person(s) in an overcrowded small room and/or in rooms where no or barely any daylight entered and/or without sufficient access to sanitary facilities and/or while the food and/or drinking water they received was bad and/or dirty and/or insufficient and/or they received inadequate medical care.

(art. 8 'WOS' (old) jo. 47 Sr.)

and/or

1.2 **allowing**

the persons who were subordinates to the defendant (like -members of- kadres and/or kebeles and/or police officers and/or guards and/or interrogators) and/or one or more other person (s) jointly and in conjunction with others

on (one) (or more) point(s) in time during the period from 1 February 1978 up and until 31 July 1978, at least in 1978, in Debre Marcos and/or Metekel, in the province of Gojjam, or in places in Ethiopia,

(every time) violated the laws and customs of war, while these facts

- resulted in grievous bodily harm and/or
- involved violence committed jointly and in conjunction with others against persons or violence against sick and wounded
- involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- were an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group
- were in breach of a given promise, committed several times;
- were likely to result in grievous bodily harm of others besides themselves;
- involved inhuman treatment,

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the “common” article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, persons who where not/no longer, taking a direct part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. [person 1]
2. [person 2]
3. [person 3]
4. [ person 4]
5. [ person 5]
6. [ person 6]
7. [ person 7]

8. [ person 8]
9. [ person 9]
10. [ person 10]
11. [ person 11]
12. [ person 12]
13. [ person 13]
14. [ person 14]
15. [ person 15]
16. [ person 16]
17. [ person 17]
18. [ person 18]
19. [ person 19]
20. [ person 20]
21. [ person 21]
22. [ person 22]
23. [ person 23]
24. [ person 24]
25. [ person 25]
26. [ person 26]
27. [ person 27]
28. [ person 28]
29. [ person 29]
30. [ person 30]
31. [ person 31]
32. [ person 32]
33. [ person 33]
34. [ person 34]
35. [ person 35]
36. [ person 36]
37. [ person 37]
38. [ person 38]
39. [ person 39]
40. [ person 40]
41. [ person 41]
42. [ person 42]
43. [ person 43]
44. [ person 44]
45. [ person 45]
46. [ person 46]
47. [ person 47]
48. [ person 48]
49. [ person 49]
50. [ person 50]

51. [ person 51]
52. [ person 52]
53. [ person 53]
54. [ person 54]
55. [ person 55]
56. [ person 56]
57. [ person 57]
58. [ person 58]
59. [ person 59]
60. [ person 60]
61. [ person 61]
62. [ person 62]
63. [ person 63]
64. [ person 64]
65. [ person 65]
66. [ person 66]
67. [ person 67]
68. [ person 68]
69. [ person 69]
70. [ person 70]
71. [ person 71]
72. [ person 72]
73. [ person 73]
74. [ person 74]
75. [ person 75]
76. [ person 76]
77. [ person 77]
78. [ person 78]
79. [ person 79]
80. [ person 80]
81. [ person 81]
82. [ person 82]
83. [ person 83]
84. [ person 84]
85. [ person 85]
86. [ person 86]
87. [ person 87]
88. [ person 88]
89. [ person 89]
90. [ person 90]
91. [ person 91]
92. [ person 92]
93. [ person 93]

94. [ person 94]
95. [ person 95]
96. [ person 96]
97. [ person 97]
98. [ person 98]
99. [ person 99]
100. [person 100]
101. [person 101]
102. [person 102]
103. [person 103]
104. [person 104]
105. [person 105]
106. [person 106]
107. [person 107]
108. [person 108]
109. [person 109]
110. [person 110]
111. [person 111]
112. [person 112]
113. [person 113]
114. [person 114]
115. [person 115]
116. [person 116]
117. [person 117]
118. [person 118]
119. [person 119]
120. [person 120]
121. [person 121]
122. [person 122]
123. [person 123]
124. [person 124]
125. [person 125]
126. [person 126]
127. [person 127]
128. [person 128]
129. [person 129]
130. [person 130]
131. [person 131]
132. [person 132]
133. [person 133]
134. [person 134]
135. [person 135]
136. [person 136]

137. [person 137]
138. [person 138]
139. [person 139]
140. [person 140]
141. [person 141]
142. [person 142]
143. [person 143]
144. [person 144]
145. [person 145]
146. [person 146]
147. [person 147]
148. [person 148]
149. [person 149]
150. [person 150]
151. [person 151]
152. [person 152]
153. [person 153]
154. [person 154]
155. [person 155]
156. [person 156]
157. [person 157]
158. [person 158]
159. [person 159]
160. [person 160]
161. [person 161]
162. [person 162]
163. [person 163]
164. [person 164]
165. [person 165]
166.[person 166]
167. [person 167]
168. [person 168]
169. [person 169]
170. [person 170]
171. [person 171]
172. [person 172]
173. [person 173]
174. [person 174]
175. [person 175]
176. [person 176]
177. [person 177]
178. [person 178]
179. [person 179]

180. [person 180]
181. [person 181]
182. [person 182]
183. [person 183]
184. [person 184]
185. [person 185]
186. [person 186]
187. [person 187]
188. [person 188]
189. [person 189]
190. [person 190]
191. [person 191]
192. [person 192]
193. [person 193]
194. [person 194]
195. [person 195]
196. [person 196]
197. [person 197]
198. [person 198]
199. [person 199]
200. [person 200]
201. [person 201]
202. [person 202]
203. [person 203]
204. [person 204]
205. [person 205]
206. [person 206]
207. [person 207]
208. [person 208]
209. [person 209]
210. [person 210]
211. [person 211]
212. [person 212]
213. [person 213]
214. [person 214]
215. [person 215]
216. [person 216]
217. [person 217]
218. [person 218]
219. [person 219]
220. [person 220]
221. [person 221]
222. [person 222]

223. [person 223]
224. [person 224]
225. [person 225]
226. [person 226]
227. [person 227]
228. [person 228]
229. [person 229]
230. [person 230]
231. [person 231]
232. [person 232]
233. [person 233]
234. [person 234]
235. [person 235]
236. [person 236]
237. [person 237]
238. [person 238]
239. [person 239]
240. [person 240]
241. [person 241]
242. [person 242]
243. [person 243]
244. [person 244]
245. [person 245]
246. [person 246]
247. [person 247]
248. [person 248]
249. [person 249]
250. [person 250]
251. [person 251]
252. [person 252]
253. [person 253]
254. [person 254]
255. [person 255]
256. [person 256]
257. [person 257]
258. [person 258]
259. [person 259]
260. [person 260]
261. [person 261]
262. [person 262]
263. [person 263]
264. [person 264]
265. [person 265]

266. [person 266]
267. [person 267]
268. [person 268]
269. [person 269]
270. [person 270]
271. [person 271]
272. [person 272]
273. [person 273]
274. [person 274]
275. [person 275]
276. [person 276]
277. [person 277]
278. [person 278]
279. [person 279]
280. [person 280]
281. [person 281]
282. [person 282]
283. [person 283]
284. [person 284]
285. [person 285]
286. [person 286]
287. [person 287]
288. [person 288]
289. [person 289]
290. [person 290]
291. [person 291]
292. [person 292]
293. [person 293]
294. [person 294]
295. [person 295]
296. [person 296]
297. [person 297]
298. [person 298]
299. [person 299]
300. [person 300]
301. [person 301]
302. [person 302]
303. [person 303]
304. [person 304]
305. [person 305]
306. [person 306]
307. [person 307]
308. [person 308]

309. [person 309]

310. [person 310]

311. [person 311]

312. [person 312]

313. [person 313]

314. [person 314]

315. [person 315]

316. [person 316]

317. [person 317]

318. [person 318]

319. [person 319]

320. [person 320]

321. [person 321]

and/or one or more other persons

were subjected to cruel and/or inhuman treatment and/or

(several times) outrage was committed upon their personal dignity (and/or) (specifically) the afore-mentioned persons were subjecto to a humiliating and/or degrading treatment and/or

sentences were pronounced and/or executed against them without prior trial and/or by a duly constituted court offering all the legal guarantees, recognised by civilized peoples as indispensable and/or

were arbitrarily robbed them of their freedom

while the referred cruel and/or inhuman treatment and/or outrage upon the personal dignity and/or humiliating and/or degrading treatment and/or pronouncement and/or execution of sentences and/or arbitrary deprivation of freedom consisted in the following conduct displayed by the defendant and/or one or more co-perpetrator(s)

- pronouncement of (prison) sentences against the afore-mentioned person(s) (at exposure meetings) and/or other measures restricting freedom and/or has enforced/ordered to enforce without prior prosecution by an (independent) prosecution agency and or without having had fair trail and/or (specifically) without having been tried by an independent and impartial institutions and /or being informed without delay of the particulars of the offence alleged against them and /or without having been afforded before and during their trial all necessary rights and means of defence and/or contrary to the prohibition of collective punishment and/or contrary to principle of legality and/or without the presumption of innocence and/or without being afforded the right to be present at their own trial and/or without the right not to testify against themselves and/or without making use of their right to be advised of their judicial and other remedies and of the time-limits within which they may be exercised and/or
- searching/ordering to search the house of the afore-mentioned person(s) and/or arresting/ordering to arrest this person/these persons and taking/ordering to take this person/these persons to a police-station and/or prison and/or
- detaining/ordering to detain the afore-mentioned person(s) in an overcrowded small room and/or in rooms where no or barely any daylight entered and/or without sufficient access to sanitary facilities and/or while the food and/or drinking water they received was bad and/or dirty and/or insufficient and/or they received inadequate medical care.

while these facts were (deliberately) allowed by the defendant and/or (specifically) while the defendant did not take or did not take sufficient measures to prevent the afore-mentioned crimes and/or to make them stop and/or to punish them, in his capacity as representative of the Ethiopian government (Derg) in the province of Gojjam, or in places in Ethiopia,

(art. 8 'WOS' (old) jo. 47 Sr.)

and/or

1.3 **complicity**

the head(s) of the prison(s) in Debre Marcos and/or Metekel and/or (the members of) who kadres and/or kebeles and/or police-officers and/or guards and/or interrogators) and/or one or more other person (s) jointly and in conjunction with others

on (one) (or more) point(s) in time during the period from 1 February 1978 up and until 31 July 1978, at least in 1978, in Debre Marcos and/or Metekel, in the province of Gojjam, or in places in Ethiopia,

(every time) violated the laws and customs of war, while these facts

- resulted in grievous bodily harm and/or
- involved violence committed jointly and in conjunction with others against persons or violence against sick and wounded
- involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- were an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group
- were in breach of a given promise, committed several times;
- were likely to result in grievous bodily harm of others besides themselves;
- involved inhuman treatment,

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the "common" article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, persons who where not/no longer, taking a direct part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. [person 1]
2. [person 2]
3. [person 3]
4. [ person 4]
5. [ person 5]
6. [ person 6]
7. [ person 7]
8. [ person 8]
9. [ person 9]
10. [ person 10]
11. [ person 11]
12. [ person 12]
13. [ person 13]
14. [ person 14]
15. [ person 15]

16. [ person 16]
17. [ person 17]
18. [ person 18]
19. [ person 19]
20. [ person 20]
21. [ person 21]
22. [ person 22]
23. [ person 23]
24. [ person 24]
25. [ person 25]
26. [ person 26]
27. [ person 27]
28. [ person 28]
29. [ person 29]
30. [ person 30]
31. [ person 31]
32. [ person 32]
33. [ person 33]
34. [ person 34]
35. [ person 35]
36. [ person 36]
37. [ person 37]
38. [ person 38]
39. [ person 39]
40. [ person 40]
41. [ person 41]
42. [ person 42]
43. [ person 43]
44. [ person 44]
45. [ person 45]
46. [ person 46]
47. [ person 47]
48. [ person 48]
49. [ person 49]
50. [ person 50]
51. [ person 51]
52. [ person 52]
53. [ person 53]
54. [ person 54]
55. [ person 55]
56. [ person 56]
57. [ person 57]
58. [ person 58]

59. [ person 59]
60. [ person 60]
61. [ person 61]
62. [ person 62]
63. [ person 63]
64. [ person 64]
65. [ person 65]
66. [ person 66]
67. [ person 67]
68. [ person 68]
69. [ person 69]
70. [ person 70]
71. [ person 71]
72. [ person 72]
73. [ person 73]
74. [ person 74]
75. [ person 75]
76. [ person 76]
77. [ person 77]
78. [ person 78]
79. [ person 79]
80. [ person 80]
81. [ person 81]
82. [ person 82]
83. [ person 83]
84. [ person 84]
85. [ person 85]
86. [ person 86]
87. [ person 87]
88. [ person 88]
89. [ person 89]
90. [ person 90]
91. [ person 91]
92. [ person 92]
93. [ person 93]
94. [ person 94]
95. [ person 95]
96. [ person 96]
97. [ person 97]
98. [ person 98]
99. [ person 99]
100. [person 100]
101. [person 101]

102. [person 102]
103. [person 103]
104. [person 104]
105. [person 105]
106. [person 106]
107. [person 107]
108. [person 108]
109. [person 109]
110. [person 110]
111. [person 111]
112. [person 112]
113. [person 113]
114. [person 114]
115. [person 115]
116. [person 116]
117. [person 117]
118. [person 118]
119. [person 119]
120. [person 120]
121. [person 121]
122. [person 122]
123. [person 123]
124. [person 124]
125. [person 125]
126. [person 126]
127. [person 127]
128. [person 128]
129. [person 129]
130. [person 130]
131. [person 131]
132. [person 132]
133. [person 133]
134. [person 134]
135. [person 135]
136. [person 136]
137. [person 137]
138. [person 138]
139. [person 139]
140. [person 140]
141. [person 141]
142. [person 142]
143. [person 143]
144. [person 144]

145. [person 145]
146. [person 146]
147. [person 147]
148. [person 148]
149. [person 149]
150. [person 150]
151. [person 151]
152. [person 152]
153. [person 153]
154. [person 154]
155. [person 155]
156. [person 156]
157. [person 157]
158. [person 158]
159. [person 159]
160. [person 160]
161. [person 161]
162. [person 162]
163. [person 163]
164. [person 164]
165. [person 165]
166. [person 166]
167. [person 167]
168. [person 168]
169. [person 169]
170. [person 170]
171. [person 171]
172. [person 172]
173. [person 173]
174. [person 174]
175. [person 175]
176. [person 176]
177. [person 177]
178. [person 178]
179. [person 179]
180. [person 180]
181. [person 181]
182. [person 182]
183. [person 183]
184. [person 184]
185. [person 185]
186. [person 186]
187. [person 187]

188. [person 188]
189. [person 189]
190. [person 190]
191. [person 191]
192. [person 192]
193. [person 193]
194. [person 194]
195. [person 195]
196. [person 196]
197. [person 197]
198. [person 198]
199. [person 199]
200. [person 200]
201. [person 201]
202. [person 202]
203. [person 203]
204. [person 204]
205. [person 205]
206. [person 206]
207. [person 207]
208. [person 208]
209. [person 209]
210. [person 210]
211. [person 211]
212. [person 212]
213. [person 213]
214. [person 214]
215. [person 215]
216. [person 216]
217. [person 217]
218. [person 218]
219. [person 219]
220. [person 220]
221. [person 221]
222. [person 222]
223. [person 223]
224. person 224]
225. [person 225]
226. [person 226]
227. [person 227]
228. [person 228]
229. [person 229]
230. [person 230]

231. [person 231]
232. [person 232]
233. [person 233]
234. [person 234]
235. [person 235]
236. [person 236]
237. [person 237]
238. [person 238]
239. [person 239]
240. [person 240]
241. [person 241]
242. [person 242]
243. [person 243]
244. [person 244]
245. [person 245]
246. [person 246]
247. [person 247]
248. [person 248]
249. [person 249]
250. [person 250]
251. [person 251]
252. [person 252]
253. [person 253]
254. [person 254]
255. [person 255]
256. [person 256]
257. [person 257]
258. [person 258]
259. [person 259]
260. [person 260]
261. [person 261]
262. [person 262]
263. [person 263]
264. [person 264]
265. [person 265]
266. [person 266]
267. [person 267]
268. [person 268]
269. [person 269]
270. [person 270]
271. [person 271]
272. [person 272]
273. [person 273]

274. [person 274]
275. [person 275]
276. [person 276]
277. [person 277]
278. [person 278]
279. [person 279]
280. [person 280]
281. [person 281]
282. [person 282]
283. [person 283]
284. [person 284]
285. [person 285]
286. [person 286]
287. [person 287]
288. [person 288]
289. [person 289]
290. [person 290]
291. [person 291]
292. [person 292]
293. [person 293]
294. [person 294]
295. [person 295]
296. [person 296]
297. [person 297]
298. [person 298]
299. [person 299]
300. [person 300]
301. [person 301]
302. [person 302]
303. [person 303]
304. [person 304]
305. [person 305]
306. [person 306]
307. [person 307]
308. [person 308]
309. [person 309]
310. [person 310]
311. [person 311]
312. [person 312]
313. [person 313]
314. [person 314]
315. [person 315]
316. [person 316]

317. [person 317]

318. [person 318]

319. [person 319]

320. [person 320]

321. [person 321]

and/or one or more other persons

were subjected by the defendant to cruel and/or inhuman treatment and/or

(several times) outrage was committed upon their personal dignity (and/or) (specifically) the afore-mentioned persons were subjecto to a humiliating and/or degrading treatment and/or

sentences were pronounced and/or executed against them without prior trial and/or by a duly constituted court offering all the legal guarantees, recognised by civilized peoples as indispensable and/or

were arbitrarily robbed of their freedom

while the referred cruel and/or inhuman treatment and/or outrage upon the personal dignity and/or humiliating and/or degrading treatment and/or pronouncement and/or execution of sentences and/or arbitrary deprivation of freedom consisted in the following conduct displayed by the defendant and/or one or more co-perpetrator(s)

- pronouncement of (prison) sentences against the afore-mentioned person(s) (at exposure meetings) and/or other measures restricting freedom and/or has enforced/ordered to enforce without prior prosecution by an (independent) prosecution agency and or without having had fair trail and/or (specifically) without having been tried by an independent and impartial institutions and /or being informed without delay of the particulars of the offence alleged against them and /or without having been afforded before and during their trial all necessary rights and means of defence and/or contrary to the prohibition of collective punishment and/or contrary to principle of legality and/or without the presumption of innocence and/or without being afforded the right to be present at their own trial and/or without the right not to testify against themselves and/or without making use of their right to be advised of their judicial and other remedies and of the time-limits within which they may be exercised and/or
- searching/ordering to search the house of the afore-mentioned person(s) and/or arresting/ordering to arrest this person/these persons and taking/ordering to take this person/these persons to a police-station and/or prison and/or
- detaining/ordering to detain the afore-mentioned person(s) in an overcrowded small room and/or in rooms where no or barely any daylight entered and/or without sufficient access to sanitary facilities and/or while the food and/or drinking water they received was bad and/or dirty and/or insufficient and/or they received inadequate medical care.

During the period from 1 February 1978 up and until 31 July 1978, at least in 1978 in Debre Marcos and/or Metekel, in the province of Gojjam, or in places in Ethiopia, the defendant has deliberately aided and or provided the opportunity and/or the means and/or the information, to commit the afore-mentioned crimes since the defendant then and there deliberately

- several times, or at least once, led or at least attended a so-called (exposure) meeting and/or

- ordered the arrest of the afore-mentioned person(s) and/or

- put the afore-mentioned person(s) at the disposal of the head(s) of the prison(s) in Debre Marcos and/or Metekel and/or (members of kadres and/or kebeles and/or police officers and/or guards and/or interrogators and one or more other person(s) and/or

- maintained the inhuman conditions in the prison(s) in Debre Marcos and/or Metekel

(art. 8 'WOS' (old) jo. 48 Sr.)

**COUNT 2**

**Torture**

2.1 **co-perpetration**

*[the defendant is accused of the fact]*

that he on one (or more) points in time during the period from 1 February 1978 up and until 1 September 1978, at least in 1978 in Debre Marcos and/or Metekel, in the province of Gojjam, or in places in Ethiopia,

jointly and in conjunction with (an)other person(s),

(every time) violated the laws and customs of war while these facts

- resulted in death and/or grievous bodily harm and/or
- involved violence committed jointly and in conjunction with others against persons or violence against sick and wounded
- involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- were an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group
- were in breach of a given promise, committed several times and/or
- were likely to result in grievous bodily harm of others besides themselves;
- involved inhuman treatment,

these facts committed then and there were (every time) contrary to

the provisions laid down in the "common" article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, persons who where not/no longer, taking a direct part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. [person 322]
2. [person 136, different spelling]
3. [person 323]
4. [person 313, different spelling]
5. [person 324]
6. [person 325]
7. [person 315]
8. [person 326]
9. [person 327]

and/or one or more (other) person(s)

were tortured (several times)

While this torture consisted in the fact that the defendant and/or one or more of his co-perpetrator(s) for the purpose of obtaining information and/or a confession and/or to punish and/or intimidate and/or force the afore-mentioned person(s) to do something or to refrain from doing something and/or for some reason based on discrimination.

-several times, or at least once (every time) kicked and/or hit the afore-mentioned person(s) in the genital(s) and/or the (bare) feet and/or the head and/or the body and/or

-several times, or at least once (every time) tied the feet and hands of the afore-mentioned persons together and/or then hoisted them and/or then hit the afore-mentioned person(s) with sticks, or with a (hard) object against the face and/or the body and/or

-several times, or at least once (every time) tied the feet and hands of the afore-mentioned persons together and/or then hoisted them and/or then hit the afore-mentioned person(s) with sticks, or with a (hard) object against the (bare) feet and/or against the body of those afore-mentioned person(s) while one or more afore-mentioned person(s) had a ball in their

mouth, while the afore-mentioned persons were detained as a result of which the afore-mentioned person(s) have suffered serious pain and/or (serious) bodily injury

(art. 8 'WOS' (old) jo. 47 Sr.)

an/or

2.2 **allowing**

the persons who were subordinates to the defendant (like -members of- kadres and/or kebeles and/or police officers and/or guards and/or interrogators) and/or one or more other person (s) jointly and in conjunction with others

on (one) (or more) point(s) in time during the period from 1 February 1978 up and until 31 July 1978, at least in 1978, in Debre Marcos and/or Metekel, in the province of Gojjam, or in places in Ethiopia,

(every time) violated the laws and customs of war, while these facts

- resulted in grievous bodily harm and/or
- involved violence committed jointly and in conjunction with others against persons or violence against sick and wounded
- involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- were an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group
- were in breach of a given promise, committed several times;
- were likely to result in grievous bodily harm of others besides themselves;
- involved inhuman treatment,

these acts committed then and there were (every time) contrary to

the provisions laid down in the “common” article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, persons who were not/no longer, taking a direct part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. [person 322]
2. [person 136, different spelling]
3. [person 323]
4. [person 313, different spelling]
5. [person 324]
6. [person 325]
7. [person 315]
8. [person 326]
9. [person 327]

and/or one or more others

- were tortured (several times)

while this torture consisted in the fact that the defendant and/or one or more of his co-perpetrator(s) for the purpose of obtaining information and/or a confession and/or to punish and/or intimidate and/or force the afore-mentioned person(s) to do something or to refrain from doing something and/or for some reason based on discrimination.

-several times, or at least once (every time) kicked and/or hit the afore-mentioned person(s) in the genital(s) and/or the (bare) feet and/or the head and/or the body and/or

-several times, or at least once (every time) tied the feet and hands of the afore-mentioned persons together and/or then hoisted them and/or then hit the afore-mentioned person(s) with sticks, or with a (hard) object against the face and/or the body and/or

-several times, or at least once (every time) tied the feet and hands of the afore-mentioned persons together and/or then hoisted them and/or then hit the afore-mentioned person(s) with sticks, or with a (hard) object against the (bare) feet and/or against the body of those afore-mentioned person(s) while one or more afore-mentioned person(s) had a ball in their

mouth, while the afore-mentioned persons were detained as a result of which the afore-mentioned person(s) have suffered serious pain and/or (serious) bodily injury

while these acts were (deliberately) allowed by the defendant and/or (specifically) while the defendant did not take or did not take sufficient measures to prevent the afore-mentioned crimes and/or to make them stop and/or to punish them, in his capacity as representative of the Ethiopian government (Derg), on one /on more points in time during the period from 1 February 1978 up and until September 1978 in Debre Marcos and/or Metekel in the province of Gojjam, or in places in Ethiopia

(art. 8 jo. 9 'WOS' (old))

and/or

2.3 **complicity**

persons who were subordinates to the defendant (like -members of- kadres and/or kebeles and/or police officers and/or guards and/or interrogators) and/or one or more other person (s) jointly and in conjunction with others

on (one) (or more) point(s) in time during the period from 1 February 1978 up and until 31 July 1978, at least in 1978, in Debre Marcos and/or Metekel, in the province of Gojjam, or in places in Ethiopia,

(every time) violated the laws and customs of war, while these facts

- resulted in grievous bodily harm and/or
- involved violence committed jointly and in conjunction with others against persons or violence against sick and wounded
- involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- were an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group
- were in breach of a given promise, committed several times;
- were likely to result in grievous bodily harm of others besides themselves;
- involved inhuman treatment,

these facts committed then and there were (every time) contrary to

the provisions laid down in the “common” article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, persons who were not/no longer, taking a direct part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. [person 322]
2. [person 136, different spelling]
3. [person 323]
4. [person 313, different spelling]
5. [person 324]
6. [person 325]
7. [person 315]
8. [person 326]
9. [person 327]

and/or one or more others

- were tortured (several times)

while this torture consisted in the fact that (members) of the kadres and/or kebeles and/or police-officers and/or guards and/or interrogators for the purpose of obtaining information and/or a confession and/or to punish and/or intimidate and/or force the afore-mentioned person(s) to do something or to refrain from doing something and/or for some reason based on discrimination.

-several times, or at least once (every time) kicked and/or hit the afore-mentioned person(s) in the genital(s) and/or the (bare) feet and/or the head and/or the body and/or

-several times, or at least once (every time) tied the feet and hands of the afore-mentioned persons together and/or then hoisted them and/or then hit the afore-mentioned person(s) with sticks, or with a (hard) object against the face and/or the body and/or

-several times, or at least once (every time) tied the feet and hands of the afore-mentioned persons together and/or then hoisted them and/or then hit the afore-mentioned person(s) with sticks, or with a (hard) object against the (bare) feet and/or against the body of those afore-mentioned person(s) while one or more afore-mentioned person(s) had a ball in their

mouth, while the afore-mentioned persons were detained as a result of which the afore-mentioned person(s) have suffered serious pain and/or (serious) bodily injury

while the defendant was (every time) deliberately aiding or providing the opportunity and/or the means and/or the information,

by bringing interrogators from Addis Abeba to the police-camp and/or the prison of Debre Marcos and/or

putting the afore-mentioned person(s) at the disposal of the head(s) of the prison(s) in Debre Marcos and/or Metekel and/or (members of kadres and/or kebeles and/or police officers and/or guards and/or interrogators and one or more other person(s)

on one /on more points in time during the period from 1 February 1978 up and until September 1978 in Debre Marcos and/or Metekel in the province of Gojjam, or in places in Ethiopia

**COUNT 3**

**Killing on 14 August 1978 up and until 17 August 1978**

3.1 **co-perpetration**

*[the defendant is accused of the fact]*

that he on one (or more) points in time during the period from 14 August 1978 up and until 17 August 1978, at least in 1978 in Debre Marcos and/or Metekel, in the province of Gojjam, or in places in Ethiopia,

jointly and in conjunction with (an)other person(s),

(every time) violated the laws and customs of war while these facts

- resulted in death and/or grievous bodily harm and/or
- involved violence committed jointly and in conjunction with others against persons or violence against sick and wounded
- involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- were an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group
- were in breach of a given promise, committed several times and/or
- were likely to result in grievous bodily harm of others besides themselves;

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the "common" article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, persons who where not/no longer, taking a direct part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. [person 4]
2. [person 5]
3. [person 6]
4. [person 7]
5. [person 8]
6. [person 9]
7. [person 10]
8. [person 11]
9. [person 12]
10. [person 13]
11. [person 14]
12. [person 15]
13. [person 16]
14. [person 17]
15. [person 18]
16. [person 19]
17. [person 20]
18. [person 21]
19. [person 22]
20. [person 23]
21. [person 24]
22. [person 25]
23. [person 26]
24. [person 27]

25. [person 28]
26. [person 29]
27. [person 30]
28. [person 31]
29. [person 32]
30. [person 33]
31. [person 34]
32. [person 35]
33. [person 36]
34. [person 37]
35. [person 38]
36. [person 39]
37. [person 40]
38. [person 41]
39. [person 42]
40. [person 43]
41. [person 44]
42. [person 45]
43. [person 46]
44. [person 47]
45. [person 48]
46. [person 49]
47. [person 50]
48. [person 51]
49. [person 52]
50. [person 53]
51. [person 54]
52. [person 55]
53. [person 56]
54. [person 57]
55. [person 58]
56. [person 59]
57. [person 60]
58. [person 61]
59. [person 62]
60. [person 63]
61. [person 64]
62. [person 65]
63. [person 66]
64. [person 67]
65. [person 68]
66. [person 69]
67. [person 70]
68. [person 71]
69. [person 72]
70. [person 73]
71. [person 74]
72. [person 75]
73. [person 76]
74. [person 77]
75. [person 78]

and/or one or more (other) person(s)

( (several times) an attack was committed on their lives and/or physical violence was used against them (and/or) (specifically) the afore-mentioned persons were killed.

While these attack(s) against life and/or physical violence and/or killing consisted in the fact that the defendant and one or more of his co-perpetrator(s)

-several times or at least once shot (a) bullet(s) in the body and/or the head of the afore-mentioned person(s) with (a) fire-arm(s) and/or strangled the afore-mentioned person(s) and/or made this/these person(s) suffocate with (a) rope(s), or an object and/or buried the afore-mentioned person(s) or applied/performed one or more other acts of violence on this/these person(s)

as a result which the afore mentioned person(s) died

(art. 8 'WOS' (old) jo. 47 Sr.)

and/or

3.2 **Incitement**

That [person 412] and/or [person 396] and/or guards and/or one or more other person(s) jointly and in conjunction

On one (or more) points in time during the period from 14 August 1978 at least in 1978, in Debre Marcos and/or Metekel, in the province of Gojjam, or in Ethiopia,

(every time) violated the laws and customs of war while these facts

- resulted in death and/or grievous bodily harm and/or
- involved violence committed jointly and in conjunction with others against persons or violence against sick and wounded
- involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- were an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group
- were in breach of a given promise, committed several times and/or
- were likely to result in grievous bodily harm of others besides themselves;
- involved inhuman treatment,

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the "common" article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, persons who where not/no longer, taking a direct part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. [person 4]
2. [person 5]
3. [person 6]
4. [person 7]
5. [person 8]
6. [person 9]
7. [person 10]
8. [person 11]
9. [person 12]
10. [person 13]
11. [person 14]

12. [person 15]
13. [person 16]
14. [person 17]
15. [person 18]
16. [person 19]
17. [person 20]
18. [person 21]
19. [person 22]
20. [person 23]
21. [person 24]
22. [person 25]
23. [person 26]
24. [person 27]
25. [person 28]
26. [person 29]
27. [person 30]
28. [person 31]
29. [person 32]
30. [person 33]
31. [person 34]
32. [person 35]
33. [person 36]
34. [person 37]
35. [person 38]
36. [person 39]
37. [person 40]
38. [person 41]
39. [person 42]
40. [person 43]
41. [person 44]
42. [person 45]
43. [person 46]
44. [person 47]
45. [person 48]
46. [person 49]
47. [person 50]
48. [person 51]
49. [person 52]
50. [person 53]
51. [person 54]
52. [person 55]
53. [person 56]
54. [person 57]
55. [person 58]
56. [person 59]
57. [person 60]
58. [person 61]
59. [person 62]
60. [person 63]
61. [person 64]
62. [person 65]
63. [person 66]
64. [person 67]
65. [person 68]
66. [person 69]

67. [person 70]
68. [person 71]
69. [person 72]
70. [person 73]
71. [person 74]
72. [person 75]
73. [person 76]
74. [person 77]
75. [person 78]

and/or one or more (other) person(s)

( (several times) an attack was committed on the life and/or physical violence was used against them (and/or) (specifically) the afore-mentioned persons were killed.

While these attack(s) against life and/or physical violence and/or killing consisted in the fact that the defendant and one or more of his co-perpetrator(s)

-several times or at least once shot (a) bullet(s) in the body and/or the head of the afore-mentioned person(s) with (a) fire-arm(s) and/or strangled the afore-mentioned person(s) and/or made this/these person(s) suffocate with (a) rope(s), or an object and/or buried the afore-mentioned person(s) or applied/performed one or more other acts of violence on this/these person(s)

as a result which the afore mentioned person(s) died

while the defendant jointly and in conjunction with (an) other(s)

person(s),

on one (or more) points in time during the period from 14 August 1978 up and until 17 August 1978, at least in 1978, in Debre Marcos and/or Metekel, in the province of Gojjam, or in Ethiopia,

deliberately incited these crimes by promising gifts, abuse of authority, threat of violence, deception and/or by providing the opportunity, the means or the information,\while he (using his position as representative of the Ethiopian government (Derg) in the province of Gojjam)

then and there

- gave the order in writing and/or by phone to kill or to have the afore-mentioned person(s) killed (revolutionary measures)

(art. 8 'WOS' (old) jo. 47 Sr.)

**COUNT 4**

**Deprivation of liberty and inhuman treatment from 1 August 1978 up and until 31 December 1981**

4.1 **co-perpetration**

*[the defendant is accused of the fact]*

that he on one (or more) points in time during the period from 1 February 1978 up and until 1 September 1978, at least in 1978 in Debre Marcos and/or Metekel, in the province of Gojjam, or in places in Ethiopia,

jointly and in conjunction with (an)other person(s),

(every time) violated the laws and customs of war while these facts,

- resulted in death and/or grievous bodily harm and/or
- involved violence committed jointly and in conjunction with others against persons or violence against sick and wounded
- involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- were an expression of a policy of systematic terror and an unlawful targeted action against the

entire population or a certain population group
- were in breach of a given promise, committed several times and/or were likely to result in grievous bodily harm of others besides themselves;
- involved inhuman treatment,

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the "common" article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, persons who where not/no longer, taking a direct part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. person 82]
2. [ person 83]
3. [ person 84]
4. [ person 85]
5. [ person 86]
6. [ person 87]
7. [ person 88]
8. [ person 89]
9. [ person 90]
10. [ person 91]
11. [ person 92]
12. [ person 93]
13. [ person 94]
14. [ person 95]
15. [ person 96]
16. [ person 97]
17. [ person 98]
18. [ person 99]
19. [ person 100]
20. [ person 101]
21. [ person 102]
22. [ person 103]
23. [ person 104]
24. [ person 105]
25. [ person 106]
26. [ person 107]
27. [ person 108]
28. [ person 109]
29. [ person 110]

30. [ person 111]
31. [ person 112]
32. [ person 113]
33. [ person 114]
34. [ person 115]
35. [ person 116]
36. [ person 117]
37. [ person 118]
38. [ person 119]
39. [ person 120]
40. [ person 121]
41. [ person 122]
42. [ person 123]
43. [ person 124]
44. [ person 125]
45. [ person 126]
46. [ person 127]
47. [ person 128]
48. [ person 129]
49. [ person 130]
50. [ person 131]
51. [ person 132]
52. [ person 133]
53. [ person 134]
54. [ person 135]
55. [ person 136]
56. [ person 137]
57. [ person 138]
58. [ person 139]
59. [ person 140]
60. [ person 141]
61. [ person 142]
62. [ person 143]
63. [ person 144]
64. [ person 145]
65. [ person 146]
66. [ person 147]
67. [ person 148]
68. [ person 149]
69. [ person 150]
70. [ person 151]
71. [ person 152]
72. [ person 153]

73. [ person 154]
74. [ person 155]
75. [ person 156]
76. [ person 157]
77. [ person 158]
78. [ person 159]
79. [ person 160]
80. [ person 161]
81. [ person 162]
82. [ person 163]
83. [ person 164]
84. [ person 165]
85. [ person 166]
86. [ person 167]
87. [ person 168]
88. [ person 169]
89. [ person 170]
90. [ person 171]
91. [ person 172]
92. [ person 173]
93. [ person 174]
94. [ person 175]
95. [ person 176]
96. [ person 177]
97. [ person 178]
98. [ person 179]
99. [ person 180]
100. [person 181]
101. [person 182]
102. [person 183]
103. [person 184]
104. [person 185]
105. [person 186]
106. [person 187]
107. [person 188]
108. [person 189]
109. [person 190]
110. [person 191]
111. [person 192]
112. [person 193]
113. [person 194]
114. [person 195]
115. [person 196]

116. [person 197]
117. [person 198]
118. [person 199]
119. [person 200]
120. [person 201]
121. [person 202]
122. [person 203]
123. [person 204]
124. [person 205]
125. [person 206]
126. [person 207]
127. [person 208]
128. [person 209]
129. [person 210]
130. [person 211]
131. [person 212]
132. [person 213]
133. [person 214]
134. [person 215]
135. [person 216]
136. [person 217]
137. [person 218]
138. [person 219]
139. [person 220]
140. [person 221]
141. [person 222]
142. [person 223]
143. [person 224]
144. [person 225]
145. [person 226]
146. [person 227]
147. [person 228]
148. [person 229]
149. [person 230]
150. [person 231]
151. [person 232]
152. [person 233]
153. [person 234]
154. [person 235]
155. [person 236]
156. [person 237]
157. [person 238]
158. [person 239]

159. [person 240]
160. [person 241]
161. [person 242]
162. [person 243]
163. [person 244]
164. [person 245]
165. [person 247]
167. [person 248]
168. [person 250]
170. [person 251]
171. [person 252]
172. [person 253]
173. [person 254]
174. [person 255]
175. [person 256]
176. [person 257]
177. [person 258]
178. [person 259]
179. [person 260]
180. [person 261]
181. [person 262]
182. [person 263]
183. [person 264]
184. [person 265]
185. [person 266]
186. [person 267]
187. [person 268]
188. [person 269]
189. [person 270]
190. [person 271]
191. [person 272]
192. [person 273]
193. [person 274]
194. [person 275]
195. [person 276]
196. [person 277]
197. [person 278]
198. [person 279]
199. [person 280]
200. [person 281]
201. [person 282]
202. [person 283]
203. [person 284]

204. [person 285]

205. [person 286]

206. [person 287]

207. [person 288]

208. [person 289]

209. [person 290]

210. [person 291]

211. [person 292]

212. [person 293]

213. [person 294]

214. [person 295]

215. [person 296]

216. [person 297]

217. [person 298]

218. [person 299]

219. [person 300]

220. [person 301]

221. [person 302]

222. [person 303]

223. [person 304]

224. [person 305]

225. [person 306]

226. [person 307]

227. [person 308]

228. [person 309]

229. [person 310]

230. [person 311]

231. [person 312]

232. [person 313]

233. [person 314]

234. [person 315]

235. [person 316]

236. [person 317]

237. [person 318]

238. [person 319]

239. [person 320]

240. [person 321]

and/or one or more other persons

were subjected to cruel and/or inhuman treatment and/or

(several times) outrage was committed upon their personal dignity (and/or) (specifically) the afore-mentioned persons were subjected to a humiliating and/or degrading treatment and/or

sentences were pronounced and/or executed against them without prior trial and/or by a duly constituted court offering all the legal guarantees, recognised by civilized peoples as indispensable and/or

were arbitrarily deprived them of their freedom

while the referred cruel and/or inhuman treatment and/or outrage upon the personal dignity and/or humiliating and/or degrading treatment and/or pronouncement and/or execution of sentences and/or arbitrary deprivation of freedom consisted in the following conduct displayed by the defendant and/or one or more co-perpetrator(s)

- pronouncement of (prison) sentences against the afore-mentioned person(s) (at exposure meetings) and/or other measures restricting freedom and/or has enforced/ordered to enforce without prior prosecution by an (independent) prosecution agency and or without having had fair trail and/or (specifically) without having been tried by an independent and impartial institutions and /or being informed without delay of the particulars of the offence alleged against them and /or without having been afforded before and during their trial all necessary rights and means of defence and/or contrary to the prohibition of collective punishment and/or contrary to principle of legality and/or without the presumption of innocence and/or without being afforded the right to be present at their own trial and/or without the right not to testify against themselves and/or without making use of their right to be advised of their judicial and other remedies and of the time-limits within which they may be exercised and/or
- detaining the afore-mentioned person(s) in overcrowded small rooms, which were too small, and/or in rooms where no or barely any daylight entered and/or without sufficient access to sanitary facilities and/or while the food and/or drinking water they received was bad and/or dirty and/or insufficient and/or they received inadequate medical care.

(art. 8 'WOS' (old) jo. 47 Sr.)

and/or

4.2 **Incitement**

the head(s) of the prison(s) in Debre Marcos and/or Metekel and/or (the members of) who kadres and/or kebeles and/or police-officers and/or guards and/or interrogators) and/or one or more other person (s) jointly and in conjunction with others

on (one) (or more) point(s) in time during the period from 1 August 1978 up and until 31 December 1981, at least in 1978, in Debre Marcos and/or Metekel, in the province of Gojjam, or in Ethiopia,

(every time) violated the laws and customs of war, while these facts

- resulted in grievous bodily harm and/or
- involved violence committed jointly and in conjunction with others against persons or violence against sick and wounded
- involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- were an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group
- were in breach of a given promise, committed several times;
- were likely to result in grievous bodily harm of others besides themselves;
- involved inhuman treatment,

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the “common” article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, committed the several offences against persons who where not/no longer, taking a direct part in the hostilities, including

members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. person 82]
2. [ person 83]
3. [ person 84]
4. [ person 85]
5. [ person 86]
6. [ person 87]
7. [ person 88]
8. [ person 89]
9. [ person 90]
10. [ person 91]
11. [ person 92]
12. [ person 93]
13. [ person 94]
14. [ person 95]
15. [ person 96]
16. [ person 97]
17. [ person 98]
18. [ person 99]
19. [ person 100]
20. [ person 101]
21. [ person 102]
22. [ person 103]
23. [ person 104]
24. [ person 105]
25. [ person 106]
26. [ person 107]
27. [ person 108]
28. [ person 109]
29. [ person 110]
30. [ person 111]
31. [ person 112]
32. [ person 113]
33. [ person 114]
34. [ person 115]
35. [ person 116]
36. [ person 117]
37. [ person 118]
38. [ person 119]
39. [ person 120]
40. [ person 121]
41. [ person 122]

42. [ person 123]
43. [ person 124]
44. [ person 125]
45. [ person 126]
46. [ person 127]
47. [ person 128]
48. [ person 129]
49. [ person 130]
50. [ person 131]
51. [ person 132]
52. [ person 133]
53. [ person 134]
54. [ person 135]
55. [ person 136]
56. [ person 137]
57. [ person 138]
58. [ person 139]
59. [ person 140]
60. [ person 141]
61. [ person 142]
62. [ person 143]
63. [ person 144]
64. [ person 145]
65. [ person 146]
66. [ person 147]
67. [ person 148]
68. [ person 149]
69. [ person 150]
70. [ person 151]
71. [ person 152]
72. [ person 153]
73. [ person 154]
74. [ person 155]
75. [ person 156]
76. [ person 157]
77. [ person 158]
78. [ person 159]
79. [ person 160]
80. [ person 161]
81. [ person 162]
82. [ person 163]
83. [ person 164]
84. [ person 165]

85. [ person 166]
86. [ person 167]
87. [ person 168]
88. [ person 169]
89. [ person 170]
90. [ person 171]
91. [ person 172]
92. [ person 173]
93. [ person 174]
94. [ person 175]
95. [ person 176]
96. [ person 177]
97. [ person 178]
98. [ person 179]
99. [ person 180]
100. [person 181]
101. [person 182]
102. [person 183]
103. [person 184]
104. [person 185]
105. [person 186]
106. [person 187]
107. [person 188]
108. [person 189]
109. [person 190]
110. [person 191]
111. [person 192]
112. [person 193]
113. [person 194]
114. [person 195]
115. [person 196]
116. [person 197]
117. [person 198]
118. [person 199]
119. [person 200]
120. [person 201]
121. [person 202]
122. [person 203]
123. [person 204]
124. [person 205]
125. [person 206]
126. [person 207]
127. [person 208]

128. [person 209]
129. [person 210]
130. [person 211]
131. [person 212]
132. [person 213]
133. [person 214]
134. [person 215]
135. [person 216]
136. [person 217]
137. [person 218]
138. [person 219]
139. [person 220]
140. [person 221]
141. [person 222]
142. [person 223]
143. [person 224]
144. [person 225]
145. [person 226]
146. [person 227]
147. [person 228]
148. [person 229]
149. [person 230]
150. [person 231]
151. [person 232]
152. [person 233]
153. [person 234]
154. [person 235]
155. [person 236]
156. [person 237]
157. [person 238]
158. [person 239]
159. [person 240]
160. [person 241]
161. [person 242]
162. [person 243]
163. [person 244]
164. [person 245]
165. [person 246]
166. [person 247]
167. [person 248]
168. [person 249]
169. [person 250]
170. [person 251]

171. [person 252]
172. [person 253]
173. [person 254]
174. [person 255]
175. [person 256]
176. [person 257]
177. [person 258]
178. [person 259]
179. [person 260]
180. [person 261]
181. [person 262]
182. [person 263]
183. [person 264]
184. [person 265]
185. [person 266]
186. [person 267]
187. [person 268]
188. [person 269]
189. [person 270]
190. [person 271]
191. [person 272]
192. [person 273]
193. [person 274]
194. [person 275]
195. [person 276]
196. [person 277]
197. [person 278]
198. [person 279]
199. [person 280]
200. [person 281]
201. [person 282]
202. [person 283]
203. [person 284]
204. [person 285]
205. [person 286]
206. [person 287]
207. [person 288]
208. [person 289]
209. [person 290]
210. [person 291]
211. [person 292]
212. [person 293]
213. [person 294]

214. [person 295]

215. [person 296]

216. [person 297]

217. [person 298]

218. [person 299]

219. [person 300]

220. [person 301]

221. [person 302]

222. [person 303]

223. [person 304]

224. [person 305]

225. [person 306]

226. [person 307]

227. [person 308]

228. [person 309]

229. [person 310]

230. [person 311]

231. [person 312]

232. [person 313]

233. [person 314]

234. [person 315]

235. [person 316]

236. [person 317]

237. [person 318]

238. [person 319]

239. [person 320]

240. [person 321]

and/or one or more other persons

were subjected to cruel and/or inhuman treatment and/or

(several times) outrage was committed upon their personal dignity (and/or) (specifically) the afore-mentioned persons were subjected to a humiliating and/or degrading treatment and/or

sentences were pronounced and/or executed against them without prior trial and/or by a duly constituted court offering all the legal guarantees, recognised by civilized peoples as indispensable and/or

were arbitrarily deprived of their freedom

while the referred cruel and/or inhuman treatment and/or outrage upon the personal dignity and/or humiliating and/or degrading treatment and/or pronouncement and/or execution of sentences and/or arbitrary deprivation of freedom consisted in the following conduct displayed by the defendant and/or one or more co-perpetrator(s)

- pronouncement of (prison) sentences against the afore-mentioned person(s) (at exposure meetings) and/or other measures restricting freedom and/or has enforced/ordered to enforce without prior prosecution by an (independent) prosecution agency and or without having had fair trail and/or (specifically) without having been tried by an independent and impartial institutions and /or being informed without delay of the particulars of the offence alleged against them and /or without having been afforded before and during their trial all necessary

rights and means of defence and/or contrary to the prohibition of collective punishment and/or contrary to principle of legality and/or without the presumption of innocence and/or without being afforded the right to be present at their own trial and/or without the right not to testify against themselves and/or without making use of their right to be advised of their judicial and other remedies and of the time-limits within which they may be exercised and/or

- detaining the afore-mentioned person(s) in overcrowded small rooms, which were too small, and/or in rooms where no or barely any daylight entered and/or without sufficient access to sanitary facilities and/or while the food and/or drinking water they received was bad and/or dirty and/or insufficient and/or they received inadequate medical care.

while the defendant jointly and in conjunction with (an) other(s)

person(s),

on one (or more) points in time during the period from 14 August 1978 up and until 17 August 1978, at least in 1978, in Debre Marcos and/or Metekel, in the province of Gojjam, or in Ethiopia,

deliberately incited these crimes by promising gifts, abuse of authority, threat of violence, deception and/or by providing the opportunity, the means or the information,\while he (using his position as representative of the Ethiopian government (Derg) in the province of Gojjam)

then and there

- ordered to impose or to enforce prison sentences and/or others measures (hard labour) on the afore-mentioned person(s)

- maintained the inhuman conditions in the prison(s) in Debre Marcos and/or Metekel writing and/or by phone to kill or to have the afore-mentioned person(s) killed (revolutionary measures)

(art. 8 'WOS' (old) jo. 47 Sr.)

and/or

4.3 **allowing**

that persons subordinate to the defendant (like the head(s) of the prison(s) in Debre Marcos and/or Metekel and/or (the members of) who kadres and/or kebeles and/or police-officers and/or guards and/or interrogators) and/or one or more other person (s) jointly and in conjunction with others

on (one) (or more) point(s) in time during the period from 1 August 1978 up and until 31 December 1981, at least in 1978, in Debre Marcos and/or Metekel, in the province of Gojjam, or in Ethiopia,

(every time) violated the laws and customs of war, while these facts

- resulted in grievous bodily harm and/or
- involved violence committed jointly and in conjunction with others against persons or violence against sick and wounded
- involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- were an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group
- were in breach of a given promise, committed several times;
- were likely to result in grievous bodily harm of others besides themselves;
- involved inhuman treatment,

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the “common” article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, persons who where not/no longer, taking a direct part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. person 82]
2. [ person 83]
3. [ person 84]
4. [ person 85]
5. [ person 86]
6. [ person 87]
7. [ person 88]
8. [ person 89]
9. [ person 90]
10. [ person 91]
11. [ person 92]
12. [ person 93]
13. [ person 94]
14. [ person 95]
15. [ person 96]
16. [ person 97]
17. [ person 98]
18. [ person 99]
19. [ person 100]
20. [ person 101]
21. [ person 102]
22. [ person 103]
23. [ person 104]
24. [ person 105]
25. [ person 106]
26. [ person 107]
27. [ person 108]
28. [ person 109]
29. [ person 110]
30. [ person 111]
31. [ person 112]
32. [ person 113]
33. [ person 114]
34. [ person 115]
35. [ person 116]
36. [ person 117]
37. [ person 118]
38. [ person 119]
39. [ person 120]

40. [ person 121]
41. [ person 122]
42. [ person 123]
43. [ person 124]
44. [ person 125]
45. [ person 126]
46. [ person 127]
47. [ person 128]
48. [ person 129]
49. [ person 130]
50. [ person 131]
51. [ person 132]
52. [ person 133]
53. [ person 134]
54. [ person 135]
55. [ person 136]
56. [ person 137]
57. [ person 138]
58. [ person 139]
59. [ person 140]
60. [ person 141]
61. [ person 142]
62. [ person 143]
63. [ person 144]
64. [ person 145]
65. [ person 146]
66. [ person 147]
67. [ person 148]
68. [ person 149]
69. [ person 150]
70. [ person 151]
71. [ person 152]
72. [ person 153]
73. [ person 154]
74. [ person 155]
75. [ person 156]
76. [ person 157]
77. [ person 158]
78. [ person 159]
79. [ person 160]
80. [ person 161]
81. [ person 162]
82. [ person 163]

83. [ person 164]
84. [ person 165]
85. [ person 166]
86. [ person 167]
87. [ person 168]
88. [ person 169]
89. [ person 170]
90. [ person 171]
91. [ person 172]
92. [ person 173]
93. [ person 174]
94. [ person 175]
95. [ person 176]
96. [ person 177]
97. [ person 178]
98. [ person 179]
99. [ person 180]
100. [person 181]
101. [person 182]
102. [person 183]
103. [person 184]
104. [person 185]
105. [person 186]
106. [person 187]
107. [person 188]
108. [person 189]
109. [person 190]
110. [person 191]
111. [person 192]
112. [person 193]
113. [person 194]
114. [person 195]
115. [person 196]
116. [person 197]
117. [person 198]
118. [person 199]
119. [person 200]
120. [person 201]
121. [person 202]
122. [person 203]
123. [person 204]
124. [person 205]
125. [person 206]

126. [person 207]
127. [person 208]
128. [person 209]
129. [person 210]
130. [person 211]
131. [person 212]
132. [person 213]
133. [person 214]
134. [person 215]
135. [person 216]
136. [person 217]
137. [person 218]
138. [person 219]
139. [person 220]
140. [person 221]
141. [person 222]
142. [person 223]
143. [person 224]
144. [person 225]
145. [person 226]
146. [person 227]
147. [person 228]
148. [person 229]
149. [person 230]
150. [person 231]
151. [person 232]
152. [person 233]
153. [person 234]
154. [person 235]
155. [person 236]
156. [person 237]
157. [person 238]
158. [person 239]
159. [person 240]
160. [person 241]
161. [person 242]
162. [person 243]
163. [person 244]
164. [person 245]
165. [person 246]
166. [person 247]
167. [person 248]
168. [person 249]

169. [person 250]
170. [person 251]
171. [person 253]
172. [person 254]
173. [person 255]
174. [person 255]
175. [person 256]
176. [person 257]
177. [person 258]
178. [person 259]
179. [person 260]
180. [person 261]
181. [person 262]
182. [person 263]
183. [person 264]
184. [person 265]
185. [person 266]
186. [person 267]
187. [person 268]
188. [person 269]
189. [person 270]
190. [person 271]
191. [person 272]
192. [person 273]
193. [person 274]
194. [person 275]
195. [person 276]
196. [person 277]
197. [person 278]
198. [person 279]
199. [person 280]
200. [person 281]
201. [person 282]
202. [person 283]
203. [person 284]
204. [person 285]
205. [person 286]
206. [person 287]
207. [person 288]
208. [person 289]
209. [person 290]
210. [person 291]
211. [person 292]

212. [person 293]

213. [person 294]

214. [person 295]

215. [person 296]

216. [person 297]

217. [person 298]

218. [person 299]

219. [person 300]

220. [person 301]

221. [person 302]

222. [person 303]

223. [person 304]

224. [person 305]

225. [person 306]

226. [person 307]

227. [person 308]

228. [person 309]

229. [person 310]

230. [person 311]

231. [person 312]

232. [person 313]

233. [person 314]

234. [person 315]

235. [person 316]

236. [person 317]

237. [person 318]

238. [person 319]

239. [person 320]

240. [person 321]

and/or one or more other persons

were subjected to cruel and/or inhuman treatment and/or

(several times) outrage was comitted upon their personal dignity (and/or) (specifically) the afore-mentioned persons were to a humiliating and/or degrading treatment and/or

sentences were pronounced and/or executed against them without prior trial and/or by a duly constituted court offering all the legal guarantees, recognised by civilized peoples as indispensable and/or

were arbitrarily deprived them of their freedom

while the referred cruel and/or inhuman treatment and/or outrage upon the personal dignity and/or humiliating and/or degrading treatment and/or pronouncement and/or execution of sentences and/or arbitrary deprivation of freedom consisted in the following conduct displayed by the defendant and/or one or more co-perpetrator(s)

- pronouncement of (prison) sentences against the afore-mentioned person(s) (at exposure meetings) and/or other measures restricting freedom and/or has enforced/ordered to enforce without prior prosecution by an (independent) prosecution agency and or without having had

fair trail and/or (specifically) without having been tried by an independent and impartial institutions and /or being informed without delay of the particulars of the offence alleged against them and /or without having been afforded before and during their trial all necessary rights and means of defence and/or contrary to the prohibition of collective punishment and/or contrary to principle of legality and/or without the presumption of innocence and/or without being afforded the right to be present at their own trial and/or without the right not to testify against themselves and/or without making use of their right to be advised of their judicial and other remedies and of the time-limits within which they may be exercised and/or

- detaining the afore-mentioned person(s) in overcrowded small rooms, which were too small, and/or in rooms where no or barely any daylight entered and/or without sufficient access to sanitary facilities and/or while the food and/or drinking water they received was bad and/or dirty and/or insufficient and/or they received inadequate medical care.

while these acts were (deliberately) allowed by the defendant and/or (specifically) while the defendant did not take or did not take sufficient measures to prevent the afore-mentioned crimes and/or to make them stop and/or to punish them, in his capacity as representative of the Ethiopian government (Derg) in the province of Gojjam, or in places in Ethiopia

(art. 8 jo. 9 'WOS' (old))

and/or

4.4 **complicity**

the head(s) of the prison(s) in Debre Marcos and/or Metekel and/or (the members of) who kadres and/or kebeles and/or police-officers and/or guards and/or interrogators) and/or one or more other person (s) jointly and in conjunction with others

on (one) (or more) point(s) in time during the period from 1 August 1978 up and until 31 December 1981, at least in 1978, in Debre Marcos and/or Metekel, in the province of Gojjam, or in Ethiopia,

(every time) violated the laws and customs of war, while

- those acts resulted in grievous bodily harm and/or
- those acts involved violence committed jointly and in conjunction with others against persons or violence against sick and wounded
- while those acts involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- while those acts were e an expression of a policy of systematic terror and an unlawful targeted action against the entire population or a certain population group
- and while the act is a violation of a given promise, committed several times;
- while those acts were likely to result in grievous bodily harm of others besides themselves;
- involved an inhuman treatment,

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the “common” article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, persons who where not/no longer, taking a direct part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, specifically

1. person 82]
2. [ person 83]

3. [ person 84]
4. [ person 85]
5. [ person 86]
6. [ person 87]
7. [ person 88]
8. [ person 89]
9. [ person 90]
10. [ person 91]
11. [ person 92]
12. [ person 93]
13. [ person 94]
14. [ person 95]
15. [ person 96]
16. [ person 97]
17. [ person 98]
18. [ person 99]
19. [ person 100]
20. [ person 101]
21. [ person 102]
22. [ person 103]
23. [ person 104]
24. [ person 105]
25. [ person 106]
26. [ person 107]
27. [ person 108]
28. [ person 109]
29. [ person 110]
30. [ person 111]
31. [ person 112]
32. [ person 113]
33. [ person 114]
34. [ person 115]
35. [ person 116]
36. [ person 117]
37. [ person 118]
38. [ person 119]
39. [ person 120]
40. [ person 121]
41. [ person 122]
42. [ person 123]
43. [ person 124]
44. [ person 125]
45. [ person 126]

46. [ person 127]
47. [ person 128]
48. [ person 129]
49. [ person 130]
50. [ person 131]
51. [ person 132]
52. [ person 133]
53. [ person 134]
54. [ person 135]
55. [ person 136]
56. [ person 137]
57. [ person 138]
58. [ person 139]
59. [ person 140]
60. [ person 141]
61. [ person 142]
62. [ person 143]
63. [ person 144]
64. [ person 145]
65. [ person 146]
66. [ person 147]
67. [ person 148]
68. [ person 149]
69. [ person 150]
70. [ person 151]
71. [ person 152]
72. [ person 153]
73. [ person 154]
74. [ person 155]
75. [ person 156]
76. [ person 157]
77. [ person 158]
78. [ person 159]
79. [ person 160]
80. [ person 161]
81. [ person 162]
82. person 163]
83. [ person 164]
84. [ person 165]
85. [ person 166]
86. [ person 167]
87. [ person 168]
88. [ person 169]

89. [ person 170]
90. [ person 171]
91. [ person 172]
92. [ person 173]
93. [ person 174]
94. [ person 175]
95. [ person 176]
96. [ person 177]
97. [ person 178]
98. [ person 179]
99. [ person 180]
100. [person 181]
101. [person 182]
102. [person 183]
103. [person 184]
104. [person 185]
105. [person 186]
106. [person 187]
107. [person 188]
108. [person 189]
109. [person 190]
110. [person 191]
111. [person 192]
112. [person 193]
113. [person 194]
114. [person 195]
115. [person 196]
116. [person 197]
117. [person 198]
118. [person 199]
119. [person 200]
120. [person 201]
121. [person 202]
122. [person 203]
123. [person 204]
124. [person 205]
125. [person 206]
126. [person 207]
127. [person 208]
128. [person 209]
129. [person 210]
130. [person 211]
131. [person 212]

132. [person 213]
133. [person 214]
134. [person 215]
135. [person 216]
136. [person 217]
137. [person 218]
138. [person 219]
139. [person 220]
140. [person 221]
141. [person 222]
142. [person 223]
143. [person 224]
144. [person 225]
145. [person 226]
146. [person 227]
147. [person 228]
148. [person 229]
149. [person 230]
150. [person 231]
151. [person 232]
152. [person 233]
153. [person 234]
154. [person 235]
155. [person 236]
156. [person 237]
157. [person 238]
158. [person 239]
159. [person 240]
160. [person 241]
161. [person 242]
162. [person 243]
163. [person 244]
164. [person 245]
165. [person 246]
166. [person 247]
167. [person 248]
168. [person 249]
169. [person 250]
170. [person 251]
171. [person 252]
172. [person 253]
173. [person 254]
174. [person 255]

175. [person 256]
176. [person 257]
177. [person 258]
178. [person 259]
179. [person 260]
180. [person 261]
181. [person 262]
182. [person 263]
183. [person 264]
184. [person 265]
185. [person 266]
186. [person 267]
187. [person 268]
188. [person 269]
189. [person 270]
190. [person 271]
191. [person 272]
192. [person 273]
193. [person 274]
194. [person 275]
195. [person 276]
196. [person 277]
197. [person 278]
198. [person 279]
199. [person 280]
200. [person 281]
201. [person 282]
202. [person 283]
203. [person 284]
204. [person 285]
205. [person 286]
206. [person 287]
207. [person 288]
208. [person 289]
209. [person 290]
210. [person 291]
211. [person 292]
212. [person 293]
213. [person 294]
214. [person 295]
215. [person 296]
216. [person 297]
217. [person 298]

218. [person 299]

219. [person 300]

220. [person 301]

221. [person 302]

222. [person 303]

223. [person 304]

224. [person 305]

225. [person 306]

226. [person 307]

227. [person 308]

228. [person 309]

229. [person 310]

230. [person 311]

231. [person 312]

232. [person 313]

233. [person 314]

234. [person 315]

235. [person 316]

236. [person 317]

237. [person 318]

238. [person 319]

239. [person 320]

240. [person 321]

and/or one or more other persons

were subjected to cruel and/or inhuman treatment and/or

(several times) outrage was committed upon their personal dignity (and/or) (specifically) the afore-mentioned were persons to a humiliating and/or degrading treatment and/or

sentences were pronounced and/or executed against them without prior trial and/or by a duly constituted court offering all the legal guarantees, recognised by civilized peoples as indispensable and/or

were arbitrarily deprived of their freedom

while the referred cruel and/or inhuman treatment and/or outrage upon the personal dignity and/or humiliating and/or degrading treatment and/or pronouncement and/or execution of sentences and/or arbitrary deprivation of freedom consisted in the following conduct displayed by the defendant and/or one or more co-perpetrator(s)

- pronouncement of (prison) sentences against the afore-mentioned person(s) (at exposure meetings) and/or other measures restricting freedom and/or has enforced/ordered to enforce without prior prosecution by an (independent) prosecution agency and or without having had fair trail and/or (specifically) without having been tried by an independent and impartial institutions and /or being informed without delay of the particulars of the offence alleged against them and /or without having been afforded before and during their trial all necessary rights and means of defence and/or contrary to the prohibition of collective punishment and/or contrary to principle of legality and/or without the presumption of innocence and/or without being afforded the right to be present at their own trial and/or without the right not to testify against themselves and/or without making use of their right to be advised of their judicial and other remedies and of the time-limits within which they may be exercised and/or

- detaining the afore-mentioned person(s) in overcrowded small rooms, which were too small, and/or in rooms where no or barely any daylight entered and/or without sufficient access to sanitary facilities and/or while the food and/or drinking water they received was bad and/or dirty and/or insufficient and/or they received inadequate medical care.

During the period from 24 August 1978 up and until 31 December 1981, in Debre Marcos and/or Metekel, in the province of Gojjam, or in places in Ethiopia, the defendant and his co-perpetrators jointly and in conjunction have

deliberately aided and or provided the opportunity and/or the means and/or the information, to commit the afore-mentioned crimes since the defendant then and there deliberately

- put the afore-mentioned person(s) at the disposal of the head(s) of the prison(s) in Debre Marcos and/or Metekel and/or (members of kadres and/or kebeles and/or police officers and/or guards and/or interrogators and one or more other person(s) and/or

- maintained the inhuman conditions in the prison(s) in Debre Marcos and/or Metekel

(art. 8 'WOS' (old) jo. 48 Sr.)

**Annex 2: The witness requests**

The following requests (some of which have been submitted before) were put forward in the counsel's speech:

1.The examining, as witnesses, of all persons mentioned in the Ethiopian case-file, including:

a. a) [person 368];

b) [person 369];

c) [person 370];

d) [person 371];

e) [person 372];

f) [person 373];

g) [person 374];

h) [person 375];

i. i) [person 376];

j) [person 377];

k) [person 378];

1) [person 379];

m) Sergeant 1st class [person 380];

n) [person 381];

o) [person 382];

p) [person 383];

q) [person 384];

r) [person 385]

s) [person 386];

t) [person 387];

u) [person 388];

v) [person 389];

2. the examining as a witness of:

a. a) [person 390];

b) [person 391];

c) [person 392];

d) [person 393];

e) [person 394]

f) [person 395];

g) [person 396];

3. the examining as a witness of:

a. a) '[person 397]' (police commander;

b) 'Kassa Ragaw' or 'Kassay Aragaw' (successor of the accused);

c) Investigators police camp '[person 398]' and '

major [person 399];

d) [person 400] ('petty officer');

4. the examining as a witness of:

a. a) [person 319, different spelling];

b) [person 331];

c) [person 401];

5. the examining as a witness of a family-member of Kenfe Gebre Medihmen;

6. the examining as a witness of:

a. a) Mengistu Haile Mariam;

b) Fisseha Desta;

7. the further examining as a witness of the following persons:

a. a) [person 333];

b) [person 320];

c) [person 332];

d) [person 317];

e) [person 336, different spelling];

f) [person 318];

8. the appointment and examination of an expert on the current regime in Ethiopia;

9. the appointment and examination of an expert on possible influencing of the witnesses and the probative value of their memories and their statements, namely professor P.

van Koppen;

10. the examining as a witness of:

a. a) [person 330]

b) [person 329];

11. the examining as a witness of [person 341];

12. the examining as a witness of all 'anonymous' witnesses mentioned in the file

13. the examining as a witness of the mother of [person 333];

14. the examining as a witness of [person 111, different spelling];

15. the examining as a witness of [person 314];

16. the examining as a witness of [person 402];

17. the examining as a witness of:
a. a) [person 403];
b) [person 404];

18. the examining as a witness of kadres;

19. the examining as a witness of[person 405];

20. the examining as a witness of the female cousin of [person 316];

21. the examining as a witness of [person 316];

22. the examining as a witness of the family member of [person 320];

23. the examining as a witness of [person 406];

24. the examining as a witness of the family member of [person 320];

25. the examining as a witness of the friend of [person 313];

26. the examining as a witness of:
a. a) the mother of [person 325];
b) the aunt of [person 325];

27. the examining as a witness of:
a. a) the mother of [person 407];
b) the aunt of [person 407];

28. the examining as a witness of:
a. a) [person 348, different spelling];
b) [person 361, different spelling]

29. the examining as a witness of:
a. a) [person 408];
b) [person 409];
c) [person 410];
d) [person 411];

30. the examining as a witness of the female friend of [person 341];

31. the examining as witnesses of the guards:

32. the examining as a witness of: [person 412];

33. the examining of Judith Neurink as a witness.

The Defence has primarily requested to strike out as evidence the report of the expert Abbink. Alternatively it was requested to re-examine Abbink.

**Annex 3: The judicial finding of fact**

**COUNT 1**

*[the Court finds that there is legal and convincing proof]*

that he during the period from 1 February 1978 up and until 31 July 1978, in Debre Marcos, in the province of Gojjam, jointly and in conjunction with others,

(every time) violated the laws and customs of war, while those facts

- involved forcing other persons with joined forces to do something, and/or
- were expressions of a policy of systematic terror and/or unlawful targeted action against a certain *population group* and/or
- involved violations of given promises and/or
- were likely to cause the death or serious bodily injury of another person than de defendant *and/or*
- involved an inhuman treatment,

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the "common" article 3 of the Geneva Conventions of 12 August 1949 and/or

the international humanitarian customary law and/or

(specifically) the prohibition of arbitrary deprivation of liberty in customary international law

in the context of a (non-international) armed conflict on Ethiopian territory, committed the several offences against persons who where not/no longer, taking a direct part in the hostilities, specifically civilians and those placed hors de combat by detention, specifically

1. person 1]
2. [ person 2]
3. [ person 3]
4. [ person 4]
5. [ person 5]
6. [ person 6]
7. [ person 7]
8. [ person 8]
9. [ person 9]
10. [ person 10]
11. [ person 11]
12. [ person 12]
13. [ person 13]
14. [ person 14]
15. [ person 15]
16. [ person 16]
17. [ person 17]
18. [ person 18]

19. [ person 19]
20. [ person 20]
21. [ person 21]
22. [ person 22]
23. [ person 23]
24. [ person 24]
25. [ person 25]
26. [ person 26]
27. [ person 27]
28. [ person 28]
29. [ person 29]
30. [ person 30]
31. [ person 31]
32. [ person 32]
33. [ person 33]
34. [ person 34]
35. [ person 35]
36. [ person 36]
37. [ person 37]
38. [ person 38]
39. [ person 39]
40. [ person 40]
41. [ person 41]
42. [ person 42]
43. [ person 43]
44. [ person 44]
45. [ person 45]
46. [ person 46]
47. [ person 47]
48. [ person 48]
49. [ person 49]
50. [ person 50]
51. [ person 51]
52. [ person 52]
53. [ person 53]
54. [ person 54]
55. [ person 55]
56. [ person 56]
57. [ person 57]
58. [ person 58]
59. [ person 59]
60. [ person 60]
61. [ person 61]

62. [ person 62]
63. [ person 63]
64. [ person 64]
65. [ person 65]
66. [ person 66]
67. [ person 67]
68. [ person 68]
69. [ person 69]
70. [ person 70]
71. [ person 71]
72. [ person 72]
73. [ person 73]
74. [ person 74]
75. [ person 75]
76. [ person 76]
77. [ person 78]
78. [ person 78]
79. [ person 79]
80. [ person 80]
81. [ person 81]
82. [ person 82]
83. [ person 83]
84. [ person 84]
85. [ person 85]
86. [ person 86]
87. [ person 87]
88. [ person 88]
89. [ person 89]
90. [ person 90]
91. [ person 91]
92. [ person 92]
93. [ person 93]
94. [ person 94]
95. [ person 95]
96. [ person 96]
97. [ person 97]
98. [ person 98]
99. [ person 99]
100. [person 100]
101. [person 101]
102. [person 102]
103. [person 103]
104. [person 104]

105. [person 105]
106. [person 106]
107. [person 107]
108. [person 108]
109. [person 109]
110. [person 110]
111. [person 111]
112. [person 112]
113. [person 113]
114. [person 114]
115. [person 115]
116. [person 116]
117. [person 117]
118. [person 118]
119. [person 119]
120. [person 120]
121. [person 121]
122. [person 122]
123. [person 123]
124. [person 124]
125. [person 125]
126. [person 126]
127. [person 127]
128. [person 128]
129. [person 129]
130. [person 130]
131. [person 131]
132. [person 132]
133. [person 133]
134. [person 134]
135. [person 135]
136. [person 136]
137. [person 137]
138. [person 138]
139. [person 139]
140. [person 140]
141. [person 141]
142. [person 142]
143. [person 143]
144. [person 144]
145. [person 145]
146. [person 146]
147. [person 147]

148. [person 148]
149. [person 149]
150. [person 150]
151. [person 151]
152. [person 152]
153. [person 153]
154. [person 154]
155. [person 155]
156. [person 156]
157. [person 157]
158. [person 158]
159. [person 159]
160. [person 160]
161. [person 161]
162. [person 162]
163. [person 163]
164. [person 164]
165. [person 165]
166. [person 166]
167. [person 167]
168. [person 168]
169. [person 169]
170. [person 170]
171. [person 171]
172. [person 172]
173. [person 173]
174. [person 174]
175. [person 175]
176. [person 176]
177. [person 177]
178. [person 178]
179. [person 179]
180. [person 180]
181. [person 181]
182. [person 182]
183. [person 183]
184. [person 184]
185. [person 185]
186. [person 186]
187. [person 187]
188. [person 188]
189. [person 189]
190. [person 190]

191. [person 191]
192. [person 192]
193. [person 193]
194. [person 194]
195. [person 195]
196. [person 196]
197. [person 197]
198. [person 198]
199. [person 199]
200. [person 200]
201. [person 201]
202. [person 202]
203. [person 203]
204. [person 204]
205. [person 205]
206. [person 206]
207. [person 207]
208. [person 208]
209. [person 209]
210. [person 210]
211. [person 211]
212. [person 212]
213. [person 213]
214. [person 214]
215. [person 215]
216. [person 216]
217. [person 217]
218. [person 218]
219. [person 219]
220. [person 220]
221. [person 221]
222. [person 222]
223. [person 223]
224. [person 224]
225. [person 225]
226. [person 226]
227. [person 227]
228. [person 228]
229. [person 229]
230. [person 230]
231. [person 231]
232. [person 232]
233. [person 233]

234. [person 234]
235. [person 235]
236. [person 236]
237. [person 237]
238. [person 238]
239. [person 239]
240. [person 240]
241. [person 241]
242. [person 242]
243. [person 243]
244. [person 244]
245. [person 245]
246. [person 246]
247. [person 247]
248. [person 248]
249. [person 249]
250. [person 250]
251. [person 251]
252. [person 252]
253. [person 253]
254. [person 254]
255. [person 255]
256. [person 256]
257. [person 257]
258. [person 258]
259. [person 259]
260. [person 260]
261. [person 261]
262. [person 262]
263. [person 263]
264. [person 264]
265. [person 265]
266. [person 266]
267. [person 267]
268. [person 268]
269. [person 269]
270. [person 270]
271. [person 271]
272. [person 272]
273. [person 273]
274. [person 274]
275. [person 275]
276. [person 276]

277. [person 277]
278. [person 278]
279. [person 279]
280. [person 280]
281. [person 281]
282. [person 282]
283. [person 283]
284. [person 284]
285. [person 285]
286. [person 286]
287. [person 287]
288. [person 288]
289. [person 289]
290. [person 290]
291. [person 291]
292. [person 292]
293. [person 293]
294. [person 294]
295. [person 295]
296. [person 296]
297. [person 297]
298. [person 298]
299. [person 299]
300. [person 300]
301. [person 301]
302. [person 302]
303. [person 303]
304. [person 304]
305. [person 305]
306. [person 306]
307. [person 307]
308. [person 308]
309. [person 309]
310. [person 310]
311. [person 311]
312. [person 312]
313. [person 313]
314. [person 314]
315. [person 315]
316. [person 316]
317. [person 317]
318. [person 318]
319. [person 319]

321. [person 321]

were subjected to cruel and/or inhuman treatment and/or

(several times) outrage was committed upon their personal dignity (and/or) (specifically) the afore-mentioned persons were subject to a humiliating and/or degrading treatment and/or

were arbitrarily deprived of their freedom

while the referred cruel and/or inhuman treatment and/or outrage upon the personal dignity and/or humiliating and/or degrading and/or arbitrary deprivation of freedom consisted in the following conduct displayed by the defendant and/or one or more co-perpetrator(s)

- pronouncing and enforcement/ordering enforcement of measures restricting freedom against the afore-mentioned person(s) (at exposure meetings) without having been informed without delay of the particulars of the offence alleged against them and /or without having been afforded before and during their trial all necessary rights and means of defence and/or contrary to the prohibition of collective punishment, without the right not to testify against themselves and/or
- arresting/ordering to arrest this person/these persons and taking/ordering to take this person/these persons to a police-station and/or prison and/or
- detaining/ordering to detain the afore-mentioned person(s) in an overcrowded small room and/or in rooms where no or barely any daylight entered and/or without sufficient access to sanitary facilities and/or while the food and/or drinking water they received was bad and/or dirty and/or insufficient and/or they received inadequate medical care.

(art. 8 'WOS' (old) jo. 47 Sr.)

and/or

**COUNT 2**

2.2 **allowing**

the persons who were subordinates to the defendant (like police officers and/or guards and/or interrogators), jointly and in conjunction with others

during the period from 1 February 1978 up and until 31 July 1978, in Debre Marcos, in the province of *Gojjam*,

(every time) violated the laws and customs of war, while these facts

- resulted in grievous bodily harm and/or
- involved jointly and in conjunction with others forcing other persons to do something, not to do something or to tolerate something and/or
- were e an expression of a policy of systematic terror and an unlawful targeted action against a certain *population group*
- are in violation of a given promise, committed several times;
- were likely to result in grievous bodily harm of others besides themselves;
- involved an inhuman treatment,

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the "common" article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, persons who where not/no longer, taking a direct part in the hostilities, specifically civilians placed hors de combat by sickness, wounds, detention, or any other cause, specifically

2. [ person 136, different spelling]

3. [ person 323]

4. [ person 313, different spelling]

5. [ person 324]

6. [ person 325]

7. [ person 315]

and other persons

- were tortured (several times)

while this torture consisted in the fact that the defendant and/or one or more of his co-perpetrator(s) for the purpose of obtaining information and/or a confession and/or to intimidate and/or force the afore-mentioned person(s) to do something.

-several times, kicked and/or hit the afore-mentioned persons in the genital(s) and/or the (bare) feet and/or the head and/or the body and/or

-several times, tied the feet and hands of the afore-mentioned persons together and/or then hoisted them and/or then hit the afore-mentioned person(s) with sticks, or with a (hard) object against the face and/or the body and/or *against the bare feet* of the afore mentioned persons.

- while the afore-mentioned persons were detained

while these acts were (deliberately) allowed by the defendant and/or (specifically) while the defendant did not take measures to prevent the afore-mentioned crimes and/or to make them stop, in his capacity as representative of the Ethiopian government (Derg), during the period from 1 February 1978 up and until September 1978 in Debre Marcos in the province of *Gojjam*,

and/or

**COUNT 3**

during the period from 14 August 1978 up and until 17 August 1978, in Debre Marcos, in the province of *Gojjam*,

jointly and in conjunction with other persons,

(every time) violated the laws and customs of war while these facts

- resulted in death and/or
- involved violence committed jointly and in conjunction with others against persons
- were an expression of a policy of systematic terror and an unlawful targeted action against a certain *population group* and/or
- and involved violations of given promises

this conduct displayed by the accused, *jointly and in conjunction with others*, then and there was (every time) contrary to

the provisions laid down in the "common" article 3 of the Geneva Conventions of 12 August 1949

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, committed the several offences against persons who where (at that time) not, taking a direct part in the hostilities,

especially civilians and those placed hors de combat specifically

1. [person 4]
2. [person 5]
3. [person 6]
4. [person 7]
5. [person 8]
6. [person 9]
7. [person 10]
8. [person 11]
9. [person 12]
10. [person 13]
11. [person 14]
12. [person 15]
13. [person 16]
14. [person 17]
15. [person 18]
16. [person 19]
17. [person 20]
18. [person 21]
19. [person 22]
20. [person 23]
21. [person 24]
22. [person 25]
23. [person 26]
24. [person 27]
25. [person 28]
26. [person 29]
27. [person 30]
28. [person 31]
29. [person 32]
30. [person 33]
31. [person 34]
32. [person 35]
33. [person 36]
34. [person 37]
35. [person 38]
36. [person 39]
37. [person 40]
38. [person 41]
39. [person 42]
40. [person 43]
41. [person 44]
42. [person 45]
43. [person 46]
44. [person 47]
45. [person 48]
46. [person 49]
47. [person 50]
48. [person 51]
49. [person 52]
50. [person 53]
51. [person 54]
52. [person 55]
53. [person 56]

54. [person 57]
55. [person 58]
56. [person 59]
57. [person 60]
58. [person 61]
59. [person 62]
60. [person 63]
61. [person 64]
62. [person 65]
63. [person 66]
64. [person 67]
65. [person 68]
66. [person 69]
67. [person 70]
68. [person 71]
69. [person 72]
70. [person 73]
71. [person 74]
72. [person 75]
73. [person 76]
74. [person 77]
75. [person 78]

and other persons

the afore-mentioned persons were killed.

While this killing consisted in the fact that the defendant and his co-perpetrator(s)

- strangled the afore-mentioned persons and/or made these persons suffocate with ropes, and/or buried the afore-mentioned persons *alive* or applied/performed one or more other acts of violence on these persons as a result which the afore mentioned persons have died

and

That [person 412] and/or [person 396] and/or guards and/or one or more other person(s) jointly and in conjunction, during the period from 14 August 1978 at least in 1978, in Debre Marcos and Metekel, in the province of *Gojjam*, or in Ethiopia,

(every time) violated the laws and customs of war while these facts

- resulted in death and/or
- involved violence committed jointly and in conjunction with others against persons and/or
- were an expression of a policy of systematic terror and an unlawful targeted action against a certain *population group* and/or
- and involved a violation of a given promise

this conduct displayed then and there was (every time) contrary to

the provisions laid down in the "common" article 3 of the Geneva Conventions of 12 August 1949

in the context of a (non-international) armed conflict on Ethiopian territory, persons who were, at that time not taking a direct part in the hostilities, (specifically civilians) or persons placed hors de combat by detention, or any other cause, specifically

1. [person 4]
2. [person 5]
3. [person 6]

4. [person 7]
5. [person 8]
6. [person 9]
7. [person 10]
8. [person 11]
9. [person 12]
10. [person 13]
11. [person 14]
12. [person 15]
13. [person 16]
14. [person 17]
15. [person 18]
16. [person 19]
17. [person 20]
18. [person 21]
19. [person 22]
20. [person 23]
21. [person 24]
22. [person 25]
23. [person 26]
24. [person 27]
25. [person 28]
26. [person 29]
27. [person 30]
28. [person 31]
29. [person 32]
30. [person 33]
31. [person 34]
32. [person 35]
33. [person 36]
34. [person 37]
35. [person 38]
36. [person 39]
37. [person 40]
38. [person 41]
39. [person 42]
40. [person 43]
41. [person 44]
42. [person 45]
43. [person 46]
44. [person 47]
45. [person 48]
46. [person 49]
47. [person 50]
48. [person 51]
49. [person 52]
50. [person 53]
51. [person 54]
52. [person 55]
53. [person 56]
54. [person 57]
55. [person 58]
56. [person 59]
57. [person 60]
58. [person 61]

59. [person 62]
60. [person 63]
61. [person 64]
62. [person 65]
63. [person 66]
64. [person 67]
65. [person 68]
66. [person 69]
67. [person 70]
68. [person 71]
69. [person 72]
70. [person 73]
71. [person 74]
72. [person 75]
73. [person 76]
74. [person 77]
75. [person 78]

and other persons

the afore-mentioned persons were killed.

While this killing consisted in the fact that they strangled the afore-mentioned person(s) and/or made this/these person(s) suffocate with rope(s), and/or buried the afore-mentioned persons *alive* and/or applied/performed one or more other acts of violence on this/these person(s)

as a result which the afore mentioned person(s) have died

while the defendant during the period from 14 August 1978 up and until 17 August 1978, in Debre Marcos and Metekel, in the province of *Gojjam*,

deliberately incited these crimes by abuse of authority, since he (using his position as representative of the Ethiopian government (Derg) in the province of *Gojjam*)

then and there

- gave the order in writing and/or by phone to kill or to have the afore-mentioned person(s) killed (revolutionary measures)

**COUNT 4**

During the period from 1 August 1978 up and until 31 December 1981, in Debre Marcos in the province of *Gojjam*, or in places in Ethiopia,

jointly and in conjunction with other persons,

(every time) violated the laws and customs of war while these facts

- were an expression of a policy of systematic terror and/or an unlawful targeted action against a certain *population group* and/or
- were in breach of a given promise and/or
- involved inhuman treatment,

these acts committed then and there were (every time) contrary to

the provisions laid down in the "common" article 3 of the Geneva Conventions of 12 August 1949 and/or

customary international humanitarian law and/or

(specifically) the prohibition of arbitrary deprivation of liberty under customary international humanitarian law.

in the context of a (non-international) armed conflict on Ethiopian territory, committed the several

offences against persons who where not/no longer, taking a direct part in the hostilities specifically civilians, and/or persons placed hors de combat by detention, specifically

1. person 82]
2. [ person 83]
3. [ person 84]
4. [ person 85]
5. [ person 86]
6. [ person 87]
7. [ person 88]
8. [ person 89]
9. [ person 90]
10. [ person 91]
11. [ person 92]
12. [ person 93]
13. [ person 94]
14. [ person 95]
15. [ person 96]
16. [ person 97]
17. [ person 98]
18. [ person 99]
19. [ person 100]
20. [ person 101]
21. [ person 102]
22. [ person 103]
23. [ person 104]
24. [ person 105]
25. [ person 106]
26. [ person 107]
27. [ person 108]
28. [ person 109]
29. [ person 110]
30. [ person 111]
31. [ person 112]
32. [ person 113]
33. [ person 114]
34. [ person 115]
35. [ person 116]
36. [ person 117]
37. [ person 118]
38. [ person 119]
39. [ person 120]
40. [ person 121]
41. [ person 122]

42. [ person 123]
43. [ person 124]
44. [ person 125]
45. [ person 126]
46. [ person 127]
47. [ person 128]
48. [ person 129]
49. [ person 130]
50. [ person 131]
51. [ person 132]
52. [ person 133]
53. [ person 134]
54. [ person 135]
55. [ person 136]
56. [ person 137]
57. [ person 138]
58. [ person 139]
59. [ person 140]
60. [ person 141]
61. [ person 142]
62. [ person 143]
63. [ person 144]
64. [ person 145]
65. [ person 146]
66. [ person 147]
67. [ person 148]
68. [ person 149]
69. [ person 150]
70. [ person 151]
71. [ person 152]
72. [ person 153]
73. [ person 154]
74. [ person 155]
75. [ person 156]
76. [ person 157]
77. [ person 158]
78. [ person 159]
79. [ person 160]
80. [ person 161]
81. [ person 162]
82. [ person 163]
83. [ person 164]
84. [ person 165]

85. [ person 166]
86. [ person 167]
87. [ person 168]
88. [ person 169]
89. [ person 170]
90. [ person 171]
91. [ person 172]
92. [ person 173]
93. [ person 174]
94. [ person 175]
95. [ person 176]
96. [ person 177]
97. [ person 178]
98. [ person 179]
99. [ person 180]
100. [person 181]
101. [person 182]
102. [person 183]
103. [person 184]
104. [person 185]
105. [person 186]
106. [person 187]
107. [person 188]
108. [person 189]
109. [person 190]
110. [person 191]
111. [person 192]
112. [person 193]
113. [person 194]
114. [person 195]
115. [person 196]
116. [person 197]
117. [person 198]
118. [person 199]
119. [person 200]
120. [person 201]
121. [person 202]
122. [person 203]
123. [person 204]
124. [person 205]
125. [person 206]
126. [person 207]
127. [person 208]

128. [person 209]
129. [person 210]
130. [person 211]
131. [person 212]
132. [person 213]
133. [person 214]
134. [person 215]
135. [person 216]
136. [person 217]
137. [person 218]
138. [person 219]
139. [person 220]
140. [person 221]
141. [person 222]
142. [person 223]
143. [person 224]
144. [person 225]
145. [person 226]
146. [person 227]
147. [person 228]
148. [person 229]
149. [person 230]
150. [person 231]
151. [person 232]
152. [person 233]
153. [person 234]
154. [person 235]
155. [person 236]
156. [person 237]
157. [person 238]
158. [person 239]
159. [person 240]
160. [person 241]
161. [person 242]
162. [person 243]
163. [person 244]
164. [person 245]
165. [person 247]
167. [person 248]
168. [person 250]
170. [person 251]
171. [person 252]
172. [person 253]

173. [person 254]
174. [person 255]
175. [person 256]
176. [person 257]
177. [person 258]
178. [person 259]
179. [person 260]
180. [person 261]
181. [person 262]
182. [person 263]
183. [person 264]
184. [person 265]
185. [person 266]
186. [person 267]
187. [person 268]
188. [person 269]
189. [person 270]
190. [person 271]
191. [person 272]
192. [person 273]
193. [person 274]
194. [person 275]
195. [person 276]
196. [person 277]
197. [person 278]
198. [person 279]
199. [person 280]
200. [person 281]
201. [person 282]
202. [person 283]
203. [person 284]
204. [person 285]
205. [person 286]
206. [person 287]
207. [person 288]
208. [person 289]
209. [person 290]
210. [person 291]
211. [person 292]
212. [person 293]
213. [person 294]
214. [person 295]
215. [person 296]

216. [person 297]

217. [person 298]

218. [person 299]

219. [person 300]

220. [person 301]

221. [person 302]

222. [person 303]

223. [person 304]

224. [person 305]

225. [person 306]

226. [person 307]

227. [person 308]

228. [person 309]

229. [person 310]

230. [person 311]

231. [person 312]

232. [person 313]

233. [person 314]

236. [person 315]

237. [person 318]

238. [person 319]

240. [person 321]

and

were subjected to cruel and/or inhuman treatment and/or

(several times) outrage was committed upon their personal dignity (and/or) (specifically) the afore-mentioned persons were subjecto to a humiliating and/or degrading treatment and/or

sentences were pronounced and/or executed against them without prior trial and/or by a duly constituted court offering all the legal guarantees, recognised by civilized peoples as indispensable and/or

were arbitrarily deprived of their freedom

while the referred cruel and/or inhuman treatment and/or outrage upon the personal dignity and/or humiliating and/or degrading treatment and/or pronouncement and/or execution of sentences and/or arbitrary deprivation of freedom consisted in the following conduct displayed by the defendant and/or one or more co-perpetrator(s)

- pronouncement of (prison) sentences against the afore-mentioned person(s) (at exposure meetings) and/or other measures restricting freedom and/or has enforced/ordered to enforce without prior prosecution by an (independent) prosecution agency and or without having had fair trail and/or (specifically) without having been tried by an independent and impartial institutions and
- detaining the afore-mentioned persons in overcrowded small rooms, which were too small, and/or in rooms where no or barely any daylight entered and/or without sufficient access to sanitary facilities and/or while the food and/or drinking water they received was bad and/or dirty and/or insufficient and/or they received inadequate medical care.

Typos, spelling errors, and apparent omissions in the indictment, if any, have been corrected in the text of this judicial finding of facts. According to the proceedings in court this has not damaged the

right of the accused to a fair trial.

**Annex 4: The endnotes (literature & case law)**

---

[1] The attached enclosures form part of this judgment.

[2] *Parliamentary papers II*, session year 2001/02, 28 337, no. 3, p. 10 (MvT, legal history of the *'Wim'*).

[3] See for instance Court of The Hague 14 October 2005, ECLI:NL:RBSGR:2005:AU4347; District Court of The Hague 23 September 2005, ECLI:NL:RBSGR:2005:AU8685; Court of Appeal The Hague 9 May 2008, ECLI:NL:GHSGR:2007:BA4676.

[4] Geneva Convention for the Relief of the Wounded and Sick in Armies in the Field of 12 August 1949, *Trb.* 1951, 72; Geneva convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea of 12 August 1949, *Trb.* 1951, 73; Geneva Convention Relative to the Treatment of Prisoners of War 12 August 1949, *Trb.* 1951, 74; Geneva Convention relative to the Protection of Civilian Persons in Time of War, *Trb.* 1951, 75.

[5] *Parliamentary papers II*, session year 1950/51, 22 58, no. 3, p. 8 (MvT, legislative history of the 'WOS').

[6] *Parliamentary papers II*, session year 1950/51, 22 58, no. 3, p. 9 (MvT, legislative history of the 'WOS'); see also *Parliamentary papers II*, session year 2001/02, 28 337, no. 3. p. 10 (Explanatory Memorandum, legislative history of the 'Wim').

[7] See also *Parliamentary papers II*, session year 2001/02, 28 337, no. 3, p. 6 (Explanatory Memorandum, legislative history of the 'Wim').

[8] P.A. Nollkaemper, *Kern van het internationaal publiekrecht*, The Hague: Boom Juridische uitgevers, 2009, p. 180-188.

[9] See also District Court of The Hague 23 March 2009, ECLI:NL:RBSGR:2009:BI2444.

[10] Bahru Zewde, *A History of Modern Ethiopia 1855-1991,* Oxford: James Currey Ltd, 2001, p. 137-148.

[11] Bahru Zewde, *A History of Modern Ethiopia 1855-1991,* Oxford: James Currey Ltd, 2001, p. 179-181.

[12] Gebru Tareke, *The Ethiopian Revolution. War in the Horn of Africa,* New Haven: Yale University Press, 2009, p. 57-59.

[13] Africa Watch, *30 Years of War and Famine in Ethiopia,* (report of September 1991), New York, Washington, Los Angeles and London: Human Rights Watch, 1991, p. 39-48.

[14] Gebru Tareke, *The Ethiopian Revolution. War in the Horn of Africa*, publisher New York: Yale University Press, 2009, p. 11-15 and 25-26.

[15] Chr. Clapham, *Transformation and Continuity in Revolutionary Ethiopia,* New York, Port Chester, Melbourne, Sidney: Cambridge University Press, 1988, p. 58.

[16] Bahru Zewde, *A History of Modern Ethiopia 1855-1991*, Oxford: James Currey Ltd, 2001, p. 233-240.

[17] Gebru Tareke, 'The red terror in Ethiopia', *SAGE Journals of Developing Societies* 2008, vol. 24(2), p. 194.

[18] Africa Watch, *30 Years of War and Famine in Ethiopia,* (report of September 1991), New York, Washington, Los Angeles and London: Human Rights Watch, 1991, p. 62.

[19] Africa Watch, *30 Years of War and Famine in Ethiopia,* (report of September 1991), New York, Washington, Los Angeles and London: Human Rights Watch, 1991, p. 10, 40-41 and 49-50.

[20] Chr. Clapham, *Transformation and Continuity in Revolutionary Ethiopia*, New York, Port Chester, Melbourne, Sidney: Cambridge University Press, 1988, p. 60

[21] Bahru Zewde, *The History of the Red Terror, African Issues*, The Ethiopian Red Terror Trials, 2009, p. 23-27.

[22] Africa Watch, *30 Years of War and Famine in Ethiopia,* (report of September 1991), New York, Washington, Los Angeles and London: Human Rights Watch, 1991, p. 102-110.

[23] Babile Tola, *To kill a generation, The red terror in Ethiopia,* Washington: The Free Ethiopian Press, 1989, p. 156-157.

[24] René Lefort, *Ethiopia. An heretical revolution?,* London: Zed Books, 1983, p. 257.

[25] René Lefort, *Ethiopia. An heretical revolution?,* London: Zed Books, 1983, p. 257.

[26] *Parliamentary papers II*, session year 2001/02, 28 337, no. 3, p. 12 (MvT, legislative history of the 'Wim').

[27] International Law Association, *Final Report on the Meaning of Armed Conflict in International Law*, (The Hague Conference), 2010, p. 15; see also ICTY, *Prosecutor v. Tadić*, IT-94-1-T, Opinion and Trial Chamber Judgement, 7 May 1997, paragraph. 562; ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Appeals Chamber Judgment, 17 December 2004, paragraph 341.

[28] See for example ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, 2 September 1998, Trial Chamber Judgment, paragraph 603, 619-627; ICC, *Prosecutor v. Lubanga Dyilo*, 01/04-01/06, Trial Chamber Judgement, 14 March 2012, paragraph 533-538; Inter-American Commission on Human Rights, *Juan Carlos Abella v Argentina*, case 11.137, 18 November 1997, paragraph 149-151, 155; European Commission for Democracy Through Law, *Opinion on the International Legal Obligations of Council of Europe Member States in Respect of Secret Detention Facilities and Inter-State Transport of Prisoners*, 17 March 2006, Op. no. 363/2005, CDL-AD (2006)009.

[29] See, inter alia, ICTY*, Prosecutor v. Limaj et al.*, paragraph 85-90; ICTY, *Prosecutor v. Milošević*, IT-02-54-T, Decision on Motion for Judgment of Acquittal Under Rule 98 bis*,* 16 June 2004, paragraph 23-24; ICTY, *Prosecutor v. Haradinaj*, Trial Chamber Judgment, IT-04-84-T, 3 April 2008, paragraph 49 en 60; ICTY, *Prosecutor v. Boskoski & Tarculovski*, IT-04-82-T, Trial Chamber Judgement, 10 July 2008, paragraph 196.

[30] International Committee of the Red Cross (ICRC), *How is the Term 'Armed Conflict' Defined in International Humanitarian Law?,* (opinion paper March 2008), p. 5.; or see *Prosecutor v Mucić et al*, Case No. IT-96-21-T, Judgment Trial Chamber, 16 November 1998, paragraph 184.

[31] International Committee of the Red Cross (ICRC), *Interpretive Guidance on Direct Participation in Hostilities under International Humanitarian Law,* Genève: International Committee of the Red Cross, 2009, p. 27, 32.

[32] ICC, *Prosescutor v. Lubanga,* Trial Chamber Judgement, 14 March 2012, paragraph 537.

[33] International Law Association, *Final Report on the Meaning of Armed Conflict in International Law*, (The Hague Conference), 2010, p. 21 en 29; ICTY, *Prosecutor v. Milošević*, IT-02-54-T, Decision on Motion for Judgment of Acquittal Under Rule 98 bis, 16 June 2004, paragraph 23-25.

[34] ICTY, *Prosecutor v. Haradinaj*, IT-04-84-T, Trial Chamber Judgment, 3 April 2008, paragraph 60.

[35] ICC, *Prosecutor v. Lubanga,* Trial Chamber Judgment, 14 March 2012, para. 536.

[36] ICTY, *Prosecutor v. Boskoski & Tarculovski*, IT-04-82-T, Trial Chamber Judgment, 10 July 2008, paragraph 177; International Law Association, *Final Report on the Meaning of Armed Conflict in International Law*, (The Hague Conference), 2010, p. 21.

[37] International Law Association, *Final Report on the Meaning of Armed Conflict in International Law*, (The Hague Conference), 2010, p. 30; IACHR, *Abella v Argentina*, (n 129), ; ICTY, *Prosecutor v Ramush Haradinaj*, IT-04-84-T, Trial Chamber Judgment, 3 April 2008, paragraph 49.

[38] ICC, *Prosecutor v. Bemba Gombo,* ICC-01/05-01/08, Trial Chamber Judgement, 21 March 2016, paragraph 139 and 140.

[39] International Committee of the Red Cross (ICRC), *Commentary on the First Geneva Convention*, Cambridge: Cambridge University Press, 2016, p. 175-176 (paragraph 489 en 491).

[40] ICTY, *Prosecutor v. Kunarac et al.,* IT-96-23 en IT-96-23/1-A, Appeals Chamber Judgement, 12 June 2002, paragraph 57.

[41] Official report of armed conflict, p. 8 with footnotes 30-32.

[42] Official report of armed conflict, p. 9; document, specifically annex 6 to official report of armed conflict and annex to document military activities of EPRP, Kiflu Tadesse, *The Generation Part II. Ethiopia*

*Transformation and Conflict. The History of the Ethiopian People's Revolutionary Party*, Lanham, New York, Oxford: University Press of America, 1998, p. 377-379.

[43] Document, i.e. annex 6 to official report of armed conflict and annex to document military activities of the EPRP, Kiflu Tadesse, *The Generation Part II. Ethiopia Transformation and Conflict. The History of the Ethiopian People's Revolutionary Party*, Lanham, New York, Oxford: University Press of America, 1998, p. 148-151.

[44] Document, i.e. annex 6 to official report of armed conflict and annex to document military activities of the EPRP, Kiflu Tadesse, *The Generation Part II. Ethiopia Transformation and Conflict. The History of the Ethiopian People's Revolutionary Party*, Lanham, New York, Oxford: University Press of America, 1998, p. 154-156.

[45] Document, i.e. military activities of the EPRP, p. 10.

[46] Document, i.e. annex 1 to official report of armed conflict, Code messages Foreign Affairs (general official notice Dutch Embassy in Addis Abeba nr. 702/166 of 21 March 1977), not numbered.

[47] Document, i.e. annex 2 to official report of armed conflict, Marina & David Ottaway, *Ethiopia Empire in Revolution*, New York, London: Africana Publishing Company, 1978, p. 146.

[48] Uppsala Conflict Database.

[49] Document, i.e. annex 6 to official report of armed conflict and annex to document military activities of the EPRP, Kiflu Tadesse, *The Generation Part II. Ethiopia Transformation and Conflict. The History of the Ethiopian People's Revolutionary Party*, Lanham, New York, Oxford: University Press of America, 1998, p. 372-373.

[50] Document, i.e. annex to document military activities of the EPRP, Ghelwdos Araia, *Ethiopia. The political economy of transition*, New York: University Press of America, 1995, p. 124.

[51] Document, i.e. annex to document military activities of the EPRP, Gabru Tareke, *The Ethiopian revolution. War in the Horn of Africa*, New York: Yale University Press, 2009, p. 118.

[52] Document, i.e. annex 6 to official report of armed conflict and annex to document military activities of the EPRP, Kiflu Tadesse, *The Generation Part II. Ethiopia Transformation and Conflict. The History of the Ethiopian People's Revolutionary Party*, Lanham, New York, Oxford: University Press of America, 1998, p. 420.

[53] Document, i.e. annex 6 official report of armed conflict and annex to document military activities of the EPRP, Kiflu Tadesse, *The Generation Part II. Ethiopia Transformation and Conflict. The History of the Ethiopian People's Revolutionary Party*, Lanham, New York, Oxford: University Press of America, 1998, p. 382.

[54] Document, i.e. annex 6 to official report of armed conflict and annex to document military activities of the EPRP, Kiflu Tadesse, *The Generation Part II. Ethiopia Transformation and Conflict. The History of the Ethiopian People's Revolutionary Party*, Lanham, New York, Oxford: University Press of America, 1998, p. 420.

[55] Document, i.e. military activities of the EPRP, p.18-19, document, i.e. annex 6 to official report of armed conflict and annex to document military activities of the EPRP, Kiflu Tadesse, *The Generation Part II. Ethiopia Transformation and Conflict. The History of the Ethiopian People's Revolutionary Party*, Lanham, New York, Oxford: University Press of America, 1998, p. 419, 426 and 431.

[56] Document, i.e. annex J to official report of court hearing of 14 November 2017, part 1: my reaction and answer, p.18.

[57] Official report of military activities of the EPRP, p.4, 6, 10 and 18.

[58] Document, i.e. annex 6 to official report of armed conflict and annex to document military activities of the EPRP, Kiflu Tadesse, *The Generation Part II. Ethiopia Transformation and Conflict. The History of the Ethiopian People's Revolutionary Party*, Lanham, New York, Oxford: University Press of America, 1998, p. 254-256.

[59] Statement of the accused, made at the court hearing of 30 October 2017.

[60] Statement of the accused, made at the court hearing on 30 October 2017.

[61] Document, i.e. annex J to the official report of the court hearing of 14 November 2017, part 1: my reaction and answer, p.19

[62] Statement of the accused, made at the court hearing of 2 November 2017.

[63] Statement of the accused, made at the court hearing of 31 October 2017.

[64] Statement of the accused, made at the court hearing of 2 November 2017.

[65] Document, i.e. annex J to the official report of the court hearing of 14 November 2017, part 1: my reaction and answer, p.11-12.

[66] Document, i.e. annex 1, to official report of armed conflict, Code messages Foreign Affairs, (year report Ethiopia 1974-1977 of 17 May 1978, page 30, and year report Ethiopia 1977-1978 of 26 March 1980, page 79), unnumbered. 27 Observation by the court of an image during the closing arguments of the Prosecution Service at the hearing in court on 7 November 2017.

[67] 28 Document, i.e. annex 1 to official report of armed conflict, Code messages Foreign Affairs, (following letter Dutch ambassador in Addis Abeba nr. 1561/385 of 27 June 1977), unnumbered. 29 Document, i.e. annex 1 to official report of armed conflict, Code messages Foreign Affairs (Year-report Ethiopia 1974-1977), unnumbered.

[68] Official report of armed conflict, p. 12; Document, i.e. annex 4 to official report of armed conflict, Africa Watch, *30 Years of War and Famine in Ethiopia*, Report of September 1991, p. 10, 40-41 and 49-50; annex 1 to official report of armed conflict of official report of armed conflict, i.e. Code messages Foreign Affairs (message of the Dutch embassy in Addis Abeba, nr. 1446/392 of 18 June 1976), unnumbered.

[69] Document, i.e. annex 3 to official report of witness interrogation [person 328], print Uppsala Conflict Database, p. 542; official report of armed conflict, p. 28-32.

[70] Document, i.e. annex 3 to the official report of witness interrogation [person 328], print Uppsala Conflict Database, p. 542.

[71] Statement of the accused, made at the court hearing of 31 October 2017.

[72] Document, i.e. annex 3 to official report of witness interrogation [person 328], print Uppsala Conflict Database, p. 536.

[73] Document, i.e. military activities of the EDU, p. 3 en 7; document, i.e. annex to document military activities of the EDU, Nelson & Kaplan, *Ethiopia, A Country Study*, Washington: U.S. Government Printing Office 1981, p. 272.

[74] Document, i.e. annex 3 to official report of witness interrogation [person 328], print Uppsala Conflict Database, p. 537.

[75] Document, i.e. annex 6 to official report of armed conflict and annex to document military activities of the EPRP, Kiflu Tadesse, *The Generation Part II. Ethiopia Transformation and Conflict. The History of the Ethiopian People's Revolutionary Party*, Lanham, New York, Oxford: University Press of America, 1998, p. 435-436.

[76] Document, i.e. annex 3 to official report of witness interrogation [person 328], print Uppsala Conflict Database, p. 536.

[77] Document, i.e. annex J to official report of the court hearing of 14 November 2017, part 1: my reaction and answer, p. 18.

[78] Document, i.e. military activities of the EPRP, p. 425.

[79] Document, i.e. annex 3 to official report of witness interrogation [person 328], print Uppsala Conflict Database, p.537.

[80] Document, i.e. annex 3 to official report of witness interrogation [person 328], print Uppsala Conflict Database, p. 537.

[81] Official report of armed conflict, p. 26-27.

[82] Official report of armed conflict, p. 29.

[83] See also G. Best, *Fair and Accurate Fact-Finding in Dutch Atrocity Crimes Cases* (doctoral thesis Amsterdam University), 2016.

[84] District Court of The Hague 23 March 2009, ECLI:NL:RBSGR:2009:BI244, under chapter 6.

[85] District Court of The Hague 1 March 2013, ECLI:NL:RBDHA:2013:BZ4929, under chapter 8 punt 13.

[86] Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under chapter 9.

[87] Court of Appeal The Hague 30 April 2015, ECLI:NL:GHDHA:2015:1082, under 9.2.

[88] District Court of The Hague 23 March 2009, ECLI:NL:RBSGR:2009:BI244, under chapter 9 points 156, 157 and 159.

[89] See District Court of The Hague 1 March 2013, ECLI:NL:RBDHA:2013:BZ4929, under chapter 9, points 5 up to 15; Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.3.

[90] Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.3.

[91] District Court of The Hague 23 March 2009, ECLI:NL:RBSGR:2009:BI244, under chapter 9 point 183.

[92] I. Wessel & G. Wolters, 'Het geheugen van getuigen'*[The memory of witnesses],* in P.J. van Koppen a.o. (ed.), *Reizen met mijn rechter: psychologie van het recht [Travels with my judge: psychology of law]*, Deventer: Kluwer, 2010, p. 465.

[93] District Court of The Hague, 1 March 2013, ECLI:NL:RBDHA:2013:BZ4929, under chapter 10 points 64 and 65.

[94] District Court of The Hague, 1 March 2013, ECLI:NL:RBDHA:2013:BZ4929, under point 9.

[95] I. Candel, H. Merkelbach en I. Wessel, 'Traumatisch herinneren' *[Traumatic memories],* in P.J. van Koppen, D.J. Hessing, H.L.G.J. Merkelbach and H.F.M. Crombag (ed), 'Het Recht van Binnen' *[The Law from the inside]*, 'Psychologie van het Recht' (2002) *[legal pyschology]*, p. 509.

[96] Wessels & G. Wolters, 'The memory of witnesses', in P.J. van Koppen, D.J. Hessing, H.L.G.J. Merkelbach and H.F.M. Crombag (red), *[The Law from the inside]*, 'Psychologie van het Recht' (2002) *[legal pyschology]*, (2002), p. 458.

[97] Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.1.

[98] Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.1.

[99] M.J. Dubelaar, *Betrouwbaar getuigenbewijs: Totstandkoming en waardering van strafrechtelijke getuigenverklaringen in perspectief [Reliable evidence: Realisation and appreciation of witness statements in criminal proceedings in perspective]* (doctoral thesis Leiden University), Deventer: Kluwer, 2014, p. 155-156.

[100] E. Rassin en P.J. van Koppen, The examination of children in vice cases, in P.J. van Koppen, D.J. Hessing, H.L.G.J. Merkelbach and H.F.M. Crombag (ed), *[The Law from the inside]*, 'Psychologie van het Recht' (2002) *[legal pyschology]*, (2002), p. 509.

[101] J. van der Sleen & M. Heestermans, 'Verstandelijke beperking en verhoor'*[Mental disability and examination]* , in P.J. van Koppen a.o. (ed.), *Reizen met mijn rechter: psychologie van het recht,* Deventer: Kluwer, 2010, p. 614 en E. Rassin en P.J. van Koppen, 'Het kind als slachtoffer van een zedendelict: bewijsperikelen' *[The child as victim of a sexual offence; evidence problems],* in P.J. van Koppen a.o. (ed.), *Reizen met mijn rechter: psychologie van het recht,* Deventer: Kluwer, 2010, p. 585.

[102] M.J. Dubelaar, *Betrouwbaar getuigenbewijs: Totstandkoming en waardering van strafrechtelijke getuigenverklaringen in perspectief* (doctoral thesis Leiden University), Deventer: Kluwer, 2014, p. 158.

[103] See for example Court of Appeal of The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.3.

[104] Court of Appeal of The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.3.

[105] See I. Candel, H. Merkelbach & I. Wessel, 'Traumatic Memories', in: P.J. van Koppen e.a. (red.), Reizen met mijn rechter: psychologie van het recht, Deventer: Kluwer, 2010, p. 473.

[106] Court of Appeal Of The Hague 2 april 2016, ECLI:NLGHDHA:2015:747, under 10.2.1.1.3.

[107] See for example Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.4 ad b.; Court of Appeal of The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.4 ad b.; Court of Appeal of The Hague 30 april 2015, ECLI:NL:GHDHA:2015:1082, under 9.2.

[108] Court of Appeal of The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.4 ad a.

[109] District Court of The Hague 23 March 2009, ECLI:NL:RBSGR:2009:BI244, under chapter 6 point 27.

[110] Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.4 ad b.

[111] Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.4 ad c.

[112] Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.4 ad b.

[113] See p.J. van Koppen & R. Horselenberg, 'Identification'*[Identification*, in P.J. van Koppen a.o. (red.), *Routes van het recht [Routes of Law]*, Deventer: Kluwer, 2017, p. 287.

[114] Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.3.

[115] P.J. van Koppen & R. Horselenberg, 'Identificatie'*[Identification],* in P.J. van Koppen a.o. (ed.), *Routes van het recht [routes of law]*, Deventer: Kluwer, 2017, p. 295.

[116] W.A. Wagenaar & J.H. of the Schrier, Face recognition as a function of distance and illuminator: A practical tool for use in the courtroom, *Psychology, Crime and Law, 2*, p. 321-332,

[117] J.M. Lampinen, W.B. Erickson, K.N. Moore & A. Hittson, Effect of distance on face recognition: Implications for eyewitness identification, *Pyschological Bulletin Review, 21*, p. 1489-1494.

[118] P.J. van Koppen & W.A. Wagenaar, 'Herkennen van gezichten'*[recognizing faces],* in P.J. van Koppen e.a. (red.), *Reizen met mijn rechter: psychologie van het recht*, Deventer: Kluwer, 2010, p. 277;

[119] See p.J. van Koppen & R. Horselenberg, 'Identificatie', in P.J. van Koppen e.a. (red.), *Routes van het recht*, Deventer: Kluwer, 2017, p. 295.

[120] See p.J. van Koppen & R. Horselenberg, 'Identificatie', in P.J. van Koppen e.a. (red.), *Routes van het recht*, Deventer: Kluwer, 2017, p. 295-296.

[121] See p.J. van Koppen & R. Horselenberg, 'Identificatie', in P.J. van Koppen e.a. (red.), *Routes van het recht*, Deventer: Kluwer, 2017, p. 296-298.

[122] Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 9.4 ad d.

[123] Official report of witness examination [person 111, different spelling], p. 2044; official report of witness examination [person 111, different spelling] by the examining magistrate, paragraph 4; official report of witness examination [person 174, different spelling], p. 2115; official report of witness examination [person 315], p. 1994; official report of witness examination [person 315] by the examining magistrate, paragraph 5.

[124] Official report of witness examination [person 174, different spelling], p. 2118; official report of witness examination [person 315], p. 1995.

[125] Official report of witness interrogation [person 174, different spelling], p. 2120; official report of witness interrogation [person 315], p. 1995; official report of witness interrogation [person 111, different spelling], p. 2046.

[126] Official report of witness interrogation [person 316], p. 2023; official report of witness interrogation [person 316] by the examining magistrate, paragraph 14 en 15; official report of witness interrogation [person 111, different spelling], p. 2046; official report of witness interrogation [person 174, different spelling], p. 2118; official report of witness interrogation [person 315], p. 1995; official report of witness interrogation [person 315] by the examining magistrate, paragraph 5.

[127] Official report of witness interrogation [person 111, different spelling], p. 2046; official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 8; official report of witness interrogation [person 174, different spelling], p. 2119; official report of witness interrogation [person 174, different spelling] by the examining magistrate, paragraph 11; official report of witness interrogation [person 315], p. 1996; official report of witness interrogation [person 315] by the examining magistrate, paragraph 9; official report of witness interrogation [person 316], p. 2025.

[128] Official report of witness interrogation [person 111, different spelling], p. 2056.

[129] Official report of witness interrogation [person 316], p. 2025; official report of witness interrogation [person 111, different spelling], p. 2046.

[130] Official report of witness interrogation [person 111, different spelling], p. 2046.

[131] Official report of witness interrogation [person 315], p. 1997; official report of witness interrogation [person 316], p. 2025.

[132] Official report of witness interrogation [person 316], p. 2025-2026.

[133] Official report of witness interrogation [person 315], p. 1997.

[134] Official report of witness interrogation [person 111, different spelling], p. 2047.

[135] Official report of witness interrogation [person 174, different spelling], p. 2119; official report of witness interrogation [person 315], p. 1997.

[136] Official report of witness interrogation [person 315], p. 1997; official report of witness interrogation [person 316] p. 2026; official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 9.

[137] Official report of witness interrogation [person 316] p. 2026; official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 9 en 11.

[138] Official report of witness interrogation [person 316] p. 2026, official report of witness interrogation [person 321, different spelling], p. 2287.

[139] Official report of witness interrogation [person 315], p. 1997; official report of witness interrogation [person 315] by the examining magistrate, paragraph 10.

[140] Official report of witness interrogation [person 111, different spelling], p. 2047 en 2049; official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 13 en 19; official report of witness interrogation [person 315], p. 1998; official report of witness interrogation [person 315] by the examining magistrate, paragraph 32; official report of witness interrogation [person 174, different spelling], p. 2121 en 2123; official report of witness interrogation [person 174, different spelling] by the examining magistrate, paragraph 11.

[141] Official report of witness interrogation [person 111, different spelling] p. 2047; official report of witness interrogation [person 315], p. 1998.

[142] Official report of witness interrogation [person 315] p. 1998; official report of witness interrogation [person 316], p. 2026; official report of witness interrogation [person 111, different spelling], p. 2047; official report of witness interrogation [person 174, different spelling], p. 2122.

[143] Official report of witness interrogation [person 315], p. 1998; official report of witness interrogation [person 315] by the examining magistrate, paragraph 13-15.

[144] Official report of witness interrogation [person 111, different spelling], p. 2047.

[145] Official report of witness interrogation [person 111, different spelling], p. 2047; official report of witness interrogation [person 315], p. 1998; official report of witness interrogation [person 316], p. 2026.

[146] Official report of witness interrogation [person 313], p. 1924; official report of witness interrogation [person 321, different spelling], p. 2288.

[147] Official report of witness interrogation [person 316] p. 2026; official report of witness interrogation [person 315] by the examining magistrate, paragraph 15.

[148] Official report of witness interrogation [person 174, different spelling], p. 2123.

[149] Official report of witness interrogation [person 313] by the examining magistrate, paragraph 25.

[150] Official report of witness interrogation [person 174, different spelling], p. 2123.

[151] Official report of witness interrogation [person 111, different spelling], p. 2048; official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 10 en 11; Document, specifically attachment to official report of findings regarding the purchase of the book "Demelash", Chanyelew Kassa, *Demelash,* published in Amharic, publisher unknown, with translation in Dutch, p. 2844.

[152] Official report of witness interrogation [person 111, different spelling], p. 2048; Document, specifically attachment to official report of findings regarding the purchase of the book "Demelash", Chanyelew Kassa, *Demelash,* published in Amharic, publisher unknown, with translation in Dutch, p. 2845.

[153] Official report of witness interrogation [person 111, different spelling], p. 2048; official report of witness interrogation [person 174, different spelling], p. 2122.

[154] Official report of witness interrogation [person 111, different spelling], p. 2048; official report of witness interrogation [person 174, different spelling], p. 2123.

[155] Official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 15; official report of witness interrogation [person 174, different spelling], p. 2125.

[156] Official report of witness interrogation [person 111, different spelling], p. 2050.

[157] Official report of witness interrogation [person 174, different spelling], p. 2124; official report of witness interrogation [person 313], p. 1924; Document, specifically attachment to official report of findings regarding the purchase of the book "Demelash", Chanyelew Kassa, *Demelash,* published in Amharic, publisher unknown, with translation in Dutch, p. 2849.

[158] Official report of findings visual material, p. 2699-2700; official report of witness interrogation [person 321, different spelling], p. 2288; official report of witness examination [person 325], p. 1958.

[159] Official report of witness interrogation [person 111, different spelling], p. 2049; official report of witness interrogation [person 316], p. 2027; Document, specifically attachment to official report of findings regarding the purchase of the book "Demelash", Chanyelew Kassa, *Demelash,* published in Amharic, publisher unknown, with translation in Dutch, p. 2856.

[160] Official report of witness interrogation [person 315], p. 1998; official report of witness interrogation [person 315] by the examining magistrate, paragraph 17.

[161] Official report of witness interrogation [person 174, different spelling], p. 2124; Document, specifically attachment to official report of findings regarding the purchase of the book "Demelash", Chanyelew Kassa, *Demelash,* published in Amharic, publisher unknown, with translation in Dutch, p. 2849.

[162] Official report of witness interrogation [person 315], p. 1999; official report of witness interrogation [person 111, different spelling], p. 2049; official report of witness interrogation [person 316], p. 2027; official report of witness interrogation [person 174, different spelling], p. 2124; official report of witness interrogation [person 313], p. 1926; specifically attachment to official report of findings regarding the purchase of the book "Demelash", Chanyelew Kassa, *Demelash,* published in Amharic, publisher unknown, with translation in Dutch, p. 2858.

[163] Official report of witness interrogation [person 315] by the examining magistrate, paragraph 17.

[164] Official report of findings visual material, p. 2706.

[165] Official report of witness interrogation [person 313], p. 1925.

[166] Official report of witness interrogation [person 325], p. 1958.

[167] Official report of witness interrogation [person 315], p. 1998.

[168] Official report of witness interrogation [person 111, different spelling], p. 2051.

[169] Official report of witness interrogation [person 174, different spelling], p. 2125.

[170] Official report of witness interrogation [person 315], p. 1999; official report of witness interrogation [person 111, different spelling] p. 2051; official report of witness interrogation [person 316], p. 2028.

[171] Official report of witness interrogation [person 111, different spelling] p. 2051; official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 17; official report of witness interrogation [person 317], p. 2078; official report of witness interrogation [person 317] by the examining magistrate, paragraph 31; official report of witness interrogation [person 321, different spelling], p. 2290; Document, i.e. annex to official report of findings regarding purchase of book "Demelash", Chanyelew Kassa, *Demelash,* published in Amharic, publisher unknown, p. 2713.

[172] Official report of witness interrogation [person 111, different spelling], p. 2053-2054; official report of witness interrogation [person 174, different spelling], p. 2128; official report of witness interrogation [person 313], p. 1927; official report of witness interrogation [person 317], p. 2079.

[173] Official report of witness interrogation [person 111, different spelling] p. 2052; official report of

witness interrogation [person 313], p. 1927; official report of witness interrogation [person 317], p. 2078.

[174] Official report of witness interrogation [person 313], p. 1931.

[175] Official report of witness interrogation [person 111, different spelling], p. 2052.

[176] Official report of witness interrogation [person 317], p. 2077.

[177] Official report of witness interrogation [person 313] by the examining magistrate, paragraph 27.

[178] Official report of witness interrogation [person 313] by the examining magistrate, paragraph 27.

[179] Official report of witness interrogation [person 111, different spelling], p. 2052; official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 51; official report of witness interrogation [person 174, different spelling], p. 2128.

[180] Official report of witness interrogation [person 313] by the examining magistrate, paragraph 7.

[181] Official report of witness interrogation [person 111, different spelling], p. 2052.

[182] Official report of witness interrogation [person 313] by the examining magistrate, paragraph 33.

[183] Official report of witness interrogation [person 313] by the examining magistrate, paragraph 32.

[184] Official report of witness interrogation [person 317], p. 2078.

[185] Official report of witness interrogation [person 321, different spelling], p. 2290.

[186] Official report of witness interrogation [person 317] p. 2078.

[187] Official report of witness interrogation [person 321, different spelling] by the examining magistrate, paragraph 48 en 49.

[188] Official report of witness interrogation [person 111, different spelling], p. 2052;

[189] Official report of witness interrogation [person 111, different spelling], p. 2052; official report of witness interrogation [person 315] by the examining magistrate, paragraph 38; official report of witness examination [person 174, different spelling], p. 2128; official report of witness interrogation [person 313], p. 1927; official report of witness examination [person 174, different spelling] by the examining magistrate, paragraph 22; Document, specifically attachment 1 to official report of findings , translation of 41 pages of text in Amharic, (written communication of 16 august 1978 of the head of the prison in the province of Gojjam to [Eshetu A.]), p. 974 and 978.

[190] 112 Official report of witness interrogation [person 111, different spelling], p. 2052; official report of witness interrogation [person 174, different spelling], p. 2128; official report of witness interrogation [person 317], p. 2078. 113 Official report of witness interrogation [person 174, different spelling], p. 2126; official report of witness interrogation [person 317], p. 2079; document, i.e. attachment 1 to official report of findings translation of 41 pages of text in Amharic, translation of 41 pages Amharic text, (list with the name of the location Debre Marcos and the summing up of names and which measures were taken against them), p. 991-997.

[191] 114 Official report of witness interrogation [person 111, different spelling], p. 2053; official report of witness interrogation [person 313], p. 1932; Document, i.e. annex 1 to report of findings translation of 41 pages of text in Amharic, translation of 41 pages of text in Amharic (list with the name of the locality Debre Marcos 2nd round and the summing up of names and which measures were taken against them), p. 998-1000.

[192] 115 Official report of witness interrogation [person 111, different spelling], p. 2053; official report of witness interrogation [person 313], p. 1928 en 1932; official report of witness interrogation [person 313] by the examining magistrate, paragraph 3; official report of witness interrogation [person 321, different spelling], p. 2291.

[193] 116 Official report of witness interrogation [person 313] by the examining magistrate, paragraph 3.

[194] 117Official report of witness interrogation [person 111, different spelling], p. 2053.

[195] 118 Official report of witness interrogation [person 111, different spelling], p. 2055; Official report of witness interrogation [person 315] by the examining magistrate, paragraph 41-42; Official report of witness interrogation [person 174, different spelling], p. 2126; Official report of witness interrogation [person 317], p. 2077-2078; Official report of witness interrogation [person 317] by the examining

magistrate, paragraph 35.

196 119 Official report of witness interrogation [person 315]. p. 1999 en 2003; Official report of witness interrogation [person 321, different spelling], p. 2293; Document, i.e. annex 1 to official report of findings translation of 41 pages of text in Amharic, (list with the name of the place Debre Marcos and the summing up of the names of persons and the indication which measures were taken against them) p. 991.

197 120 Official report of witness interrogation [person 313] by the examining magistrate, paragraph 35.

198 121 Official report of witness interrogation [person 313], p. 1928; Official report of witness interrogation [person 317], p. 2079; Official report of witness interrogation [person 321, different spelling], p. 2291.

199 122 Official report of witness interrogation [person 111, different spelling] of the examining magistrate, paragraph 41; Official report of witness interrogation [person 174, different spelling], p. 2126; Official report of witness interrogation [person 313], p. 1928-1929; Official report of witness interrogation [person 317], p. 2080; Official report of witness interrogation [person 321, different spelling], p. 2292.

200 123 Official report of witness interrogation [person 111, different spelling], p. 2054; Official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 41; Official report of witness interrogation [person 174, different spelling], p. 2127; Official report of witness interrogation [person 313], p. 1928; Official report of witness interrogation [person 317], p. 2079; Official report of witness interrogation [person 317] by the examining magistrate, paragraph 26-29.

201 124 Official report of witness interrogation [person 313], p. 1929; Official report of witness interrogation [person 317], p. 2080-2081.

202 125 Official report of witness interrogation [person 111, different spelling] p. 2054; Official report of witness interrogation [person 321, different spelling], p. 2292; Official report of witness interrogation [person 321, different spelling] by the examining magistrate, paragraph 22.

203 126 Official report of witness interrogation [person 174, different spelling], p. 2127.

204 127 Official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 56.

205 128 Document, i.e. annex 1 to official report of findings translation of 41 pages of text in Amharic, (written order of 14 August 1978 to the head of the prisons of the province of Gojjam, Debre Marcos [Eshetu A.], concerning the revolutionary measures to be taken against eighty persons and the order to confirm that the order was executed), p. 970-973

206 129 Document, i.e. annex 1 to official report of findings translation of 41 pages of text in Amharic, (written communication of 16 August 1978 to the head of the prison in the province of Gojjam to [Eshetu A.] regarding the execution of the order of 14 August 1978 and the written confirmation of 17 August 1978 of [person 396] to [Eshetu A.] regarding the execution of the revolutionary punishment against five persons on 16 August 1978), p. 974-978.

207 130 Official report of witness interrogation [person 321, different spelling], p. 2290

208 131 Document, i.e. annex 1 to official report of findings translation of 41 pages of text in Amharic, (written communication of 16 August 1978 from [Eshetu A.] to the main administration of the prisons of Debre Marcos), p. 979-990.

209 132 Document, i.e. annex 1 to official report of findings translation of 41 pages of text in Amharic, (written communication of 16 August 1978 of [Eshetu A.] to the main administration of the prisons of Debre Marcos), p. 975.

210 133 Document, i.e. annex 1 to official report of findings translation of 41 pages of text in Amharic, (written communication of 17 August 1978 of [Eshetu A.] to the head of the prison/head of the police), p. 979-990; Document, i.e. annex 1 to official report of findings translation of 41 pages of text in Amharic, (written communication of 17 August 1978 to the head of the administration of the prison /

police station of the province of Gojjam to [Eshetu A.] regarding a revolutionary measure against [person 78]), p. 1003.

[211] 134 Document, i.e. annex 1 to official report of findings 41 pages text in Amharic, translation of 41 pages of text in Amharic (written notification dated 17 August 1978 of the head of the prison/police-station administration of the province of Gojjam), p. 1003.

[212] 135 Document, i.e. annex 1 to official report of findings translation of 41 pages of text in Amharic, (written notification dated 17 August 1978 of [Eshetu A.] to the authorities of the prison police-station), p. 990.

[213] 136Document, i.e. annex 1 to official report of findings translation of 41 pages of text in Amharic, (list with the name of the locality of Debre Marcos and the summing up of the names of the persons and the indication which measures were taken against them), p. 991-1001.

[214] 137 Document, i.e. annex 1 to official report of findings of 41 pages of text in Amharic (written notification dated 17 August 1978 of Tadelselassie Desta to [Eshetu A.] regarding the enforcement of the revolutionary punishment against five persons on 16 August 1978), p. 978.

[215] 138 Official report of witness examination of [person y] by the examining magistrate, paragraph 28. 139 Document, i.e. annex 1 to official report of armed conflict, Code messages Foreign Affairs postal telegram of 14 November 1977 of the Dutch Ambassador in Addis Abeba to the Ministry of Foreign Affairs), unnumbered .

[216] 140 Official report of witness interrogation [person 111, different spelling], p. 2055

[217] 141 Official report of witness interrogation [person 111, different spelling], p. 2052; Official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 52.

[218] 142 Official report of witness interrogation [person 313] by the examining magistrate, paragraph 32.

[219] 143 Official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 52.

[220] 144 Official report of witness interrogation [person 111, different spelling], p. 2055; Official report of witness interrogation [person 174, different spelling], p. 2129; Official report of witness interrogation [person 313] by the examining magistrate, paragraph 12 en 18.

[221] 145 Official report of witness interrogation [person 174, different spelling] p. 2129; Official report of witness interrogation [person 317] by the examining magistrate, paragraph 44.

[222] 145 Official report of witness interrogation [person 174, different spelling] p. 2129; Official report of witness interrogation [person 317] by the examining magistrate, paragraph 44.

[223] Court of Appeal The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686, under 16.1.

[224] *Parliamentary papers I*, session year 2002/03, 28 337, no. 108b (MvA, legislative history of the 'Wim').

[225] International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law. Volume I: Rules*, Cambridge: Cambridge University Press, 2005, p. 344-352.

[226] International Committee of the Red Cross (ICRC), *Commentary on the First Geneva Convention*, Cambridge: Cambridge University Press, 2016, p. 246 (paragraph 719).

[227] International Committee of the Red Cross (ICRC), *Commentary on the Fourth Geneva Convention*, Cambridge: Cambridge University Press, 1952, p. 257-258.

[228] See also International Committee of the Red Cross (ICRC), *Internment in Armed Conflict: Basic Rules and Challenges*, (opinion paper November 2014), p. 9.

[229] International Court of Justice, United States of America v. Iran (Case concerning United States diplomatic and consular staff in Teheran), 24 May 1980, paragraph 91.

[230] International Committee of the Red Cross (ICRC), *Commentary on the First Geneva Convention*, Cambridge: Cambridge University Press, 2016, p. 231, paragraph 680.

[231] International Committee of the Red Cross (ICRC), *Commentary on the First Geneva Convention*, Cambridge: Cambridge University Press, 2016, p. 231, paragraph 681.

[232] ICTY, *Prosecutor v. Furundžija*, IT-95-17/1-A, Appeals Chamber Judgement, 21 July 2000, paragraph 189-191.

[233] ICTR, *Prosecutor v. Akayesu,* ICTR-96-4-A, Appeals Chamber Judgement, 1 June 2011, paragraph 203-207.

[234] ICC Elements of Crimes, 2002, article 8(2)(c)(iv).

[235] International Committee of the Red Cross (ICRC), *Commentary on the First Geneva Convention*, Cambridge: Cambridge University Press, 2016, p. 233, paragraph 685.

[236] International Committee of the Red Cross (ICRC), *Commentary on the First Geneva Convention*, Cambridge: Cambridge University Press, 2016, p. 232 paragraph 684.

[237] International Committee of the Red Cross (ICRC), *Commentary on the First Geneva Convention*, Cambridge: Cambridge University Press, 2016, p. 235, paragraph 688.

[238] ICTY, *Prosecutor v. Tadić*, IT-94-1-T, Trial Chamber Opinion and Judgement, 7 May 1997, paragraph 723.

[239] ICTY, *Prosecutor v. Delalić*, IT-96-21-T, Judgement Trial Chamber, 16 November 1998, paragraph 551.

[240] ICTY, *Prosecutor v. Naletilić and Martinović,* IT-98-34-T, Trial Chamber Judgement, paragraph 369.

[241] International Committee of the Red Cross (ICRC), *Commentary on the First Geneva Convention*, Cambridge: Cambridge University Press, 2016, p. 212, paragraph 618.

[242] ICTY, *Prosecutor v. Limaj*, IT-03-66-T, Trial Chamber II Judgement, 30 November 2005, paragraph 232.

[243] International Committee of the Red Cross (ICRC), *Commentary on the First Geneva Convention*, Cambridge: Cambridge University Press, 2016, p. 212-213, paragraph 619.

[244] ICTY, *Prosecutor v. Krnojelac,* IT-97-25-T, Trial Chamber Judgement, 15 March 2002, paragraph 131.

[245] ICTY, *Prosecutor v. Vasiljević*, IT-98-32-T, Trial Chamber Judgement, 29 November 2002, paragraph 235.

[246] ICTY, *Prosecutor v. Mrkšić,* IT-95-13/1-T, Trial Chamber Judgement, 27 September 2007, paragraph 517.

[247] ICTY, *Prosecutor v. Delalić*, IT-96-21-T, Trial Chamber Judgement, 16 November 1998, paragraph 554-558 en 1112-1119.

[248] ICTY, *Prosecutor v. Jelisić*, IT-95-10-T, Trail Chamber Judgement, 14 December 1999, paragraph 42-45.

[249] ICTY, *Prosecutor v. Vasiljević,* IT-99-32-T, Trial Chamber Judgement, 29 November 2002, paragraph 239.

[250] ICTY, *Prosecutor v. Limaj*, IT-03-66-T, Trial Chamber Judgement, 30 November 2005, paragraph 285-289.

[251] ICTY, *Prosecutor v. Delalić*, IT-96-21-T, Trial Chamber Judgement, 16 November 1998, paragraph 1112-1119.

[252] International Committee of the Red Cross (ICRC), *Commentary on the First Geneva Convention*, Cambridge: Cambridge University Press, 2016, p. 226-227, paragraph 663-664.

[253] ICTY, *Prosecutor v. Kunarac et al.,* IT-96-23-T en IT-96-23/1-T, Trial Chamber Judgement, 22 February 2001, paragraph 514.

[254] ICTY, *Prosecutor v. Kunarac et al.,* IT-96-23-T en IT-96-23/1-T, Trial Chamber Judgement, 22 February 2001, paragraph 504.

[255] ICTY, *Prosecutor v. Aleksovski,* IT-95-14/1-T, Trial Chamber Judgement, 25 June 1999, paragraph 57.

[256] ICTY, *Prosecutor v. Kunarac et al.,* IT-96-23-T en IT-96-23/1-T, Trial Chamber Judgement, 22 February 2001, paragraph 501.

[257] ICTY, *Prosecutor v. Kvočka,* IT-98-30/1-T, Trial Chamber Judgement, 2 November 2001, paragraph 226.

[258] ICTY, *Prosecutor v. Kvočka,* IT-98-30/1-T, Trial Chamber Judgement, 2 November 2001, paragraph 173.

[259] European Convention on Human Rights, *Yearbook of the European Convention on Human Rights, volume 12 (1969)*, Brill | Nijhoff, 1971, p. 186.

[260] ICTY, *Prosecutor v. Furundžija,* Trial Chamber Judgement, IT-95-17/1-T, 10 December 1998, paragraph 162.

[261] ICTY, *Prosecutor v. Kunarac et al.,* Trial Chamber Judgement, IT-96-23-T en IT-96-23/1-T, 22 February 2001.

[262] Statement of the accused, made at the court hearing of 30 October 2017; document, i.e. annex J to official report of the court hearing of 14 November 2017, part 1: my reaction and answer, p. 55.

[263] Statement of the accused, made at the court hearing of 31 October 2017.

[264] Official report of witness interrogation [person 111, different spelling], p. 2045; official report of witness interrogation [person 174, different spelling], p. 2115.

[265] Official report of witness interrogation [person 111, different spelling], p. 2045; official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 25; Official report of witness interrogation [person 174, different spelling], p. 2118; Official report of witness interrogation [person 174, different spelling] by the examining magistrate, paragraph 5-6 en 24-26; Official report of witness interrogation [person 315], p. 1996-1997; Official report of witness interrogation [person 315] by the examining magistrate, paragraph 5 en 7.

[266] Official report of witness interrogation [person 111, different spelling], p. 2045; Official report of witness interrogation [person 315] by the examining magistrate, paragraph 8.

[267] Document, i.e. annex 1 to official report of findings translation of pages with handwritten text in Amharic, Ethiopian sentence 921/89 against [Eshetu A.], p. 608.

[268] Official report of witness interrogation [person 315], p. 1997; Official report of witness interrogation [person 315] by the examining magistrate, paragraph 10 en 11.

[269] Official report of witness interrogation [person 111, different spelling p. 2047; Official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 13.

[270] Official report of witness interrogation [person 315], p. 1998; Official report of witness interrogation [person 315] by the examining magistrate, paragraph 13; Official report of witness interrogation [person 316], p. 2027; Official report of witness interrogation [person 316] by the examining magistrate, paragraph 35; Official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 25; Document, i.e. annex to official report of findings regarding the purchase of the book "Demelash", Chanyelew Kassa, *Demelash,* published in Amharic, publisher unknown, with translation in Dutch, p. 2846.

[271] Official report of witness interrogation [person 315], p. 1999; Official report of witness interrogation [person 316], p. 2027.

[272] Official report of witness interrogation [person 111, different spelling], p. 2051; Official report of witness interrogation [person 317], p. 2075-2076.

[273] Official report of witness interrogation [person 111, different spelling], p. 2053; Official report of witness interrogation [person 111, different spelling] by the examining magistrate, paragraph 20-21; Official report of witness interrogation [person 313], p. 1928; Official report of witness interrogation [person 317], p. 2078, Official report of witness interrogation [person 317] by the examining magistrate paragraph 23 en 24.

[274] Official report of witness interrogation [person 317], p. 2076.

[275] Official report of witness interrogation [person 315], p. 1994 en 2002.

[276] Document, i.e. annex 1 to official report of findings translation of 41 pages of text in Amharic, (list with the name of the locality of Debre Marcos and the summing up of the names of the persons and the indication which measures were taken against them and the list with the name of the place Debre Marcos 2nd Round and the summing up of the names of persons and the indication which measures were taken against them), p. 991-1001; report De Jong, p. 1-14.

[277] Document, i.e. annex 1 to official report of findings translation of 41 pages of text in Amharic, (written order dated 14 August 1978 of [Eshetu A.] to the head of the prisons of the province of Gojjam regarding the revolutionary measures to be taken against eighty persons and the order to confirm that the order had been carried out and the written communication of 16 August 1978 of [Eshetu A.] to the main administration of the prisons of Debre Marcos regarding the revolutionary measures to be taken against five persons and the written communication of 17 August 1978 to the head of the prisons/police of [Eshetu A.]), p. 970, 979 en 1002.

[278] Report De Jong, p. 1-13.

[279] Report De Jong, p. 12 and official report of interrogation of expert witness De Jong by the examining magistrate, p. 7.

[280] Document, i.e. annex to official report of findings Ethiopian Herald 16 June 1978, a newspaper article, p. 1801.

[281] See District Court of The Hague, 23 December 2005, ECLI:NL:RBSGR:2005:AV6353; *Parliamentary papers II*, 2001/02, 28 337, no. 3, page 29 (, legislative history 'Wim').

[282] The Netherlands High Court 22 September 2009, ECLI:NL:HR:2009:BK3356; The Netherlands High Court 29 September 2015, ECLI:NL:HR:2015:2886.

[283] The Netherlands High Court 2 December 2014, ECLI:NL:HR:2014:3474, r.o. 3.2.3.

[284] The Netherlands High Court 4 March 2008, ECLI:NL:HR:2008:BC0780.

[285] ICTY, *Prosecutor v. Mucić et al. (Čelebići)*, Trial Chamber Judgement, IT-96-21-T, 16 November 1998, paragraph 340.

[286] The Netherlands High Court 8 November 2011, ECLI:NL:HR:2011:BR6598.

[287] G. Mettraux, *The law of command responsibility,* Oxford: Oxford University Press, 2009, p. 5; R. Värk, 'Superior Responsibility', *ENDC Proceedings* 2012-15 , p. 144-145.

[288] ICTY, *Prosecutor v. Hadžihasanović & Kubura*, Trial Chamber Judgement, IT-01-47-T, 15 March 2006; ICTY, *Prosecutor v. Hadžihasanović & Kubura*, Appeals Chamber Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, IT-01-47-A, 16 July 2003; ICC, *Prosecutor v. Bemba Gombo,* Pre-Trial Chamber II, Decision Pursuant to Article 61 (7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor against Bemba Gombo, ICC-01/05-01/08, 15 June 2009, paragraph 234; ICC, *Prosecutor v. Lubanga Dyilo,* Pre-Trial Chamber I, Decision on the confirmation of charges, ICC-01/04-01/06, 29 January 2007, paragraph 233. J.J. Arends, 'De toepassing van command responsibility in niet-internationaal gewapende conflicten'. Command responsibility als strafrechtelijk voortvloeisel uit responsible command'. *[The application of command responsibility in non-international armed conflicts. Command responsibility as consequence under criminal law of responsible command]* , *MRT 2013*, afl. 5, p 167; R. Värk, ' Superior Responsibility', *ENDC Proceedings* 2012-15, p. 151.

[289] see also The Netherlands High Court 8 November 2011, ECLI:NL:HR:2011:BR6598, r.o. 2.4.1.

[290] Court of Appeal The Hague 17 July 2009, ECLI:NL: GHSGR:2009:BJ2796, r.o. 132.

[291] ICTY, *Prosecutor v. Mucić et al. (Čelebići),* Trial Chamber Judgement, IT-96-21-T, 16 November 1998, paragraph 356; see also C. Meloni, *Command Responsibility in International Criminal Law,* The Hague: T.M.C. Asser Press, 2010, p. 93.

[292] C. Meloni, *Command Responsibility in International Criminal Law,* The Hague: T.M.C. Asser Press, 2010, p. 85.

[293] ICTY, *Prosecutor v. Mucić et al. (Čelebići)*, Trial Chamber Judgement, IT-96-21-T, 16 November 1998, paragraph 197.

[294] ICTY, *Prosecutor v. Orić*, Appeals Chamber Judgement, IT-03-68-A, 3 July 2008, paragraph 91.

[295] ICTY, *Prosecutor v. Mucić et al. (Čelebići)*, Appeals Chamber Judgement, IT-96-21-A, 20 February 2001, paragraph 257.

[296] ICTY, *Prosecutor v. Mucić et al. (Čelebići)*, Appeals Chamber Judgement, IT-96-21-A, 20 February 2001, paragraph 266.

[297] Y. Dinstein, *Command Responsibility*, Oxford Public International Law, Oxford University Press, 2015, p. 3.

[298] ICTY, *Prosecutor v. Aleskovski*, Trial Chamber Judgement, IT-95-14/1-T, 25 June 1999, paragraph 10.

[299] C. Meloni, *Command Responsibility in International Criminal Law,* The Hague: T.M.C. Asser Press, 2010, p. 85.

[300] ICTY, *Prosecutor v. Orić*, Trial Chamber Judgement, IT-03-68-T, 30 June 2006, paragraph 294.

[301] C. Meloni, *Command Responsibility in International Criminal Law,* The Hague: T.M.C. Asser Press, 2010, p. 85.

[302] ICTY, *Prosecutor v. Orić*, Trial Chamber Judgement, IT-03-68-T, 30 June 2006, paragraph 296.

[303] ICTY, *Prosecutor v. Hadžihasanović & Kubura*, Trial Chamber Judgement, IT-01-47-T, 15 March 2006, paragraph 90.

[304] ICTY, *Prosecutor v. Mucić et al. (Čelebići)*, Trial Chamber Judgement, IT-96-21-T, 16 November 1998, paragraph 386.

[305] ICTY, *Prosecutor v. Kordić & Čerkez*, Trial Chamber Judgement, IT- 95014/2-T, 26 February 2001, paragraph 428.

[306] ICTY, *Prosecutor v. Mucić et al. (Čelebići),* Appeals Chamber Judgement, IT-96-21-A, 20 February 2001, paragraph 241.

[307] ICTY, *Prosecutor v. Mucić et al. (Čelebići)*, Appeals Chamber Judgement, IT-96-21-A, 20 February 2001, paragraph 226.

[308] ICTY, *Prosecutor v. Mucić et al. (Čelebići),* Appeals Chamber Judgement, IT-96-21-A, 20 February 2001, paragraph 238-239.

[309] ICTY, *Prosecutor v. Hadžihasanović & Kubura*, Appeals Chamber Judgement, IT-01-47-A, 22 April 2008, paragraph 259.

[310] ICTY, *Prosecutor v. Blaskić*, Trial Chamber Judgement, T-95-14-T, 3 March 2000, paragraph 336.

[311] ICTY, *Prosecutor v. Mucić et al. (Čelebići),* Trial Chamber Judgement, IT-96-21-T, 16 November 1998, paragraph 395.

[312] Statement of the accused made at the hearing in court on 31 October 2017.

[313] District court of The Hague of 23 March 2009, ECLI:NL:RBSGR:BI2444 (Joseph M.); Court of Appeal The Hague van 7 July 2011, ECLI:NL:GHSGR:2011:BR0686 (Joseph M.); Rechtbank The Hague van 1 March 2013, ECLI:RBDHA:2013:BZ4292 (Yvonne B.); Court of Appeal Den Bosch of 21 April 2017, ECLI:NL:2017:1760 (Guus K.).

[314] ICTY, *Prosecutor v. Kunarac,* Appeals Chamber Judgement, IT-96-23 en IT-96-23/1, 12 June 2002, paragraph 57 and 58.

[315] ICTY, *Prosecutor v. Kunarac,* Appeals Chamber Judgment, IT-96-23 en IT-96-23/1, 12 June 2002, paragraph 59.

[316] ICTR, *Prosecutor v. Rutaganda,* Appeals Chamber Judgment, ICTR-96-3-A, 26 May 2003, paragraph 570.

[317] Conclusion advocate-general mr. A.J. Machielse of 5 September 2017, ECLI:NL:PHR:2017:874.