

THE HORN OF AFRICA CIVIL SOCIETY FORUM REPORT ON TIGRAY



Horn of Africa Civil Society Forum
منبر منظمات المجتمع المدني في القرن الأفريقي

Contents

THE HORN OF AFRICA CIVIL SOCIETY FORUM REPORT ON TIGRAY	0
About the Horn of Africa Civil Society Forum (HoACS Forum)	2
FORUM MEMBERS	2
Report on the Breaches of International Law	3
Executive Summary	3
Methodology and Standard of Proof	11
Context	12
Events occurring before the 4th of November 2020	12
Events occurring after the 4th of November 2020.	14
International Legal Framework Applicable to the Tigray Crisis	17
Major Violations	18
Starvation as a weapon of war	18
Refoulement, Forced Disappearance, Displacement	19
Extrajudicial killings (civilians' killings in controlled areas)	22
Debre Abbay and Bora Selwa on the 5th and 6th of January 2021	22
Hawzen December. 2020	22
Mariam Dengelet the 30th of November 2020	23
Axum, the 19th of November 2020	23
Axum, the 28th of November 2020	23
Mai-Kadra, the 9th of November 2020	24
Execution of former officials and party leaders	24
Murder of a journalist	25
Indiscriminate attacks on civilians and civilian objects	25
Mekelle, the 16th and the 28th of November 2020	25
Humera, the 8th of November 2020	25
Widespread Gender-based-violence (GBV)	26
Illegal Detention and Ethnic-based discrimination	27
Violation of self-determination rights (Imposition of Interim administration, de-facto annexation of territory, the act of aggression by Eritrea)	29
Looting, pillage, destruction, and confiscation of property /Including EFFORT, TPLF property)	30
Destruction of heritages	31
Violations on rights to access to information	32
Forced conscription.	32

Conclusions and recommendations33
 Legal Accountability and responsibility.....33
Actions required.....35
Schedule37
 SIGNED37
Dr Albaqir Mukhtar37

About the Horn of Africa Civil Society Forum (HoACS Forum)

The Horn of Africa Civil Society Forum (HoACS Forum) is a regional network of civil society organisations working together to monitor and expand civic space in the countries in which they operate. Established in March 2016, the HoACS Forum) in response to the diminishing civic space for civil society organisations (CSOs) in the greater HoA region and the repressive legislative environment that characterises almost all the countries represented in the forum: Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, Somaliland, South Sudan, Sudan, and Uganda.

The diminishing civic space and the repressive legislative environment particularly impact those CSOs actively working to promote good governance, respect for human rights, and democracy in their respective countries. A steering committee governs the HoACS Forum made up of representatives of CSOs from each of the countries and hosted by KACE, who acts as a secretariat.

The objectives of the HoACS Forum are to:

- **Undertake advocacy and lobbying activities at national, regional and international levels;**
- **Produce the “Horn of Africa Watch,” a periodic bulletin that provides information on civic space in the region;**
- **Engage in solidarity campaigns with civil society in the region.**

FORUM MEMBERS

1. Awareness (Waey) a cultural and social association;
2. Community Empowerment for Progress Organization (CEPO) (South Sudan);
3. Crisis Action;
4. CSO Reference Group (Kenya);
5. Development Network of Indigenous Voluntary Associations (DENIVA) (Uganda);
6. East and Horn of African Human Rights Defenders Project (EHAHRDP);
7. Eritrean Diaspora in East Africa (EDEA);
8. Eritrean Movement for Democracy and Human Rights (EMDHR);
9. Human Rights Network Uganda (HURINET);
10. International Centre for Not-for-Profit Law (INCL);
11. Kalangala Human Rights Defenders Network (Uganda);
12. Ligue Djiboutienne des Droits Humains (LDDH);
13. Nagaad Network;
14. National Coalition for Human Rights Defenders in Kenya 8. National Sudanese Women’s Alliance (NSWA) (Sudan);

15. Never Again Rwanda;
16. Peace and Human Security Resources (Uganda);
17. Resource Rights Africa (RRA)
18. South Sudan Law Society;
19. Seeds of Peace (Kenya);
20. Somali Family Service (SFS);
21. Sudanese Development Initiative (SUDIA);
22. Witness Somalia.

Report on the Breaches of International Law

Executive Summary

- 1.0 In 2018 Prime Minister (PM) Abiy started a very much welcome peace process with Eritrea. An initiative for which he received the Nobel Peace Prize in 2019. However, it is now clear that the talks between PM Abiy and President Isais were not about peace and normalisation of relationships; they were high-level secret preparations for war against Tigray. A Tigray whose autonomy and whose political elites emerged as mutual enemies requiring removal, especially following the September regional elections¹.
- 2.0 The Horn of Africa Civil Society Forum (HoACS Forum) is gravely concerned about Tigray's war; it is a conflict that has already resulted in the pain and suffering of the thousands of people in Tigray. It has also caused a resurgence of humanitarian access restrictions, freedom of information, and speech. The Eritrean military's involvement means that this is a conflict that has a regional dimension and impact.
- 3.0 It is a brutal conflict implicating armed groups, especially the Eritrean forces and the Amhara militia, in human rights crimes against Tigray's people already reported by Amnesty International², Human Right Watch³, Ethiopian Human Rights Commission⁴, and the international media.
- 4.0 The Major crimes committed since the declaration of war on Tigray on the 4th of November 2020 include:
 - a) Collective punishment;
 - b) Grave atrocities and heavy indiscriminate shelling and aerial bombing of populated areas including using Unmanned Aerial Vehicle (drones);
 - c) Extrajudicial executions of tens of thousands of civilians;
 - d) Denying people to collect corpses of their loved ones and let the hyenas eat corpses;
 - e) Widespread rape and sexual violence against women and girls used as a weapon of war;
 - f) Systematic starvation of people by looting and deliberately destroying food and livelihood sources critical for survival;

¹ Dahir , A. L., & Walsh, D. (2020, November 05). Why Is Ethiopia at War With Itself? *New York Times*. Retrieved February 2021, from <https://www.nytimes.com/2020/11/05/world/africa/ethiopia-tigray-conflict-explained.html>, Marks, S., & Walsh, D. (2021, January 22). On 'Rooftop of Africa,' Ethiopia's Troops Hunt Fugitive Former Rulers. *New York Times*. Retrieved February 2021, from <https://www.nytimes.com/2021/01/22/world/africa/ethiopia-tigray-conflict-abiy.html>

² Amnesty International, 2021 -The Massacre in Axum - <https://www.amnesty.org/en/latest/news/2021/02/ethiopia-eritrean-troops-massacre-of-hundreds-of-axum-civilians-may-amount-to-crime-against-humanity/>

³ x <https://www.hrw.org/news/2021/03/05/ethiopia-eritrean-forces-massacre-tigray-civilians>

⁴<https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Public%20Statement%2C%20Ethiopian%20Human%20Rights%20Commission%2C%20November%202020.pdf>;

https://www.facebook.com/permalink.php?story_fbid=1074841479659418&id=202584253551816

- g) Deliberate and long interruption of basic services: water, electricity, phone, internet and banking and medical emergencies to deny fundamental needs and disrupt communication and support from families, relatives, and friends;
- h) Prohibition of humanitarian access and looting and diversion of aid deliberately to cause mass starvation and famine employed as a weapon of war;
- i) Ethnic profiling, firing from jobs, eviction from rental houses, detention and imprisonment in internment camps of tens of thousands of Tigrayans soldiers in the Ethiopian defence forces, including those in UN peacekeeping missions, wealthy private business owners, those that have been working in Ethiopian Airlines, banks and other public and private companies;
- j) Forcible return and attacks on refugee camps;
- k) The forced disappearance of close to 20,000 Eritrean refugees from Shimlba and Histats and the repeated and pre-planned destruction of the refugee camps;
- l) Annexure of a large swath of Tigray by the Amhara militias & systematic demographic change;
- m) Forcing people to acquire Eritrean ID and barring humanitarian assistance from reaching particularly to the Irob communities in Tigray by the Eritrean forces;
- n) Massive displacement of people, including 67,000 refugees from Tigray and more than 2 million internally displaced persons within Tigray;
- o) The systematic destruction of industries such as Almeda Textile Factory, Addis Pharmaceuticals, Sheba Leather, and Tsemayat Marble Stones;
- p) Systematic destruction and pillage of UNESCO registered and other heritage sites, religious and cultural buildings including in Aksum, Negash, and Debre Damo;
- q) Systematic destruction and looting of public and private service institutions and properties such as universities, hospitals, pharmacies, health centres, schools, hotels, bakery;
- r) The organised looting and unlawful confiscation of the Endowment Fund's properties for Tigray's Rehabilitation (EFFORT). A multi-million - dollar public endowment that belonged to the people and government of Tigray.

5.0 On the 4th of November 2020, Prime Minister Abiy Ahmed appeared on national TV and announced the start of the 'law and order operation in Tigray. He ordered the Ethiopian National Defence Forces (ENDF) — Ethiopia's military to apprehend members and supports of the Tigray Peoples Liberation Front (TPLF) and their supporters, if necessary, by force; hence to fight the Tigray regional paramilitary police and militia loyal to the TPLF. He justified the initiative because the Tigray security forces had attacked the ENDF's Northern Command, based in Mekelle. Since the start of this conflict, the ENDF has relied on the support of special forces and militias from the Amhara region, which borders Tigray and the Eritrean Defence Force.

6.0 The legal status of the Eritrean forces in Tigray is not clear, nor is the command structure under which they are operating⁵. Both the Ethiopian federal government and the Eritrean regime have made contradictory statements about Eritrean soldiers' involvement in Tigray's conflict. In Ethiopia, senior military commanders⁶ and the Tigray interim civilian administration have repeatedly confirmed the Eritrean army presence in the region. These contradictions expose the opaque nature of the federal government's relationship with the Eritrean regime⁷.

7.0 If the federal government of Ethiopia admits to the presence of Eritrean forces in Tigray, the responsibility for Eritrean soldiers' actions will fall on both countries. If Ethiopia denies Eritrean forces presence in Tigray, then their presence is an act of invasion, and it is the Ethiopian government's responsibility to repel such invasion. To acquiesce to the invasion and the associated violations of civilian and refugees human rights by Eritrea is an abdication of the Ethiopian government's responsibility to protect its population and the refugees. It is a severe breach of international law.

⁵ British Broadcasting Corporation World News. (2020, December 28). Tigray crisis: Eritrea's role in Ethiopian conflict. Retrieved February 2021, from <https://www.bbc.com/news/world-africa-55295650>

⁶ <https://www.usnews.com/news/world/articles/2021-01-07/ethiopian-army-official-confirms-eritrean-troops-in-tigray>

⁷ British Broadcasting Corporation World News. (2020, December 28). Tigray crisis: Eritrea's role in Ethiopian conflict. Retrieved February 2021, from <https://www.bbc.com/news/world-africa-55295650>

- 8.0 With the support of the Eritrean army, the federal government and the Amhara regional government have built an intricate web of checkpoints and bureaucratic processes that are impediments to humanitarian assistance.⁸ Reports are emerging that the Amhara regional authority and the Eritrean army are diverting food aid currently stored in facilities under the Amhara regional authority's territorial control, intended for Tigray.
- 9.0 Combined with the blanket blackout of electricity, telephone, banking, and internet services in Tigray, people die of starvation and diseases. Lack of access to money and medicine endangers survival.⁹ The restriction of information is in itself a crime of the state to hide other egregious crimes.
- 10.0 Because of the conflict, more than 67,000 people from Tigray have sought refuge in Sudan. The expectation is that if the war continues, the number of refugees from Tigray in Sudan will reach 200,000¹⁰ As the conflict continues, it has become more and more difficult for the people of Tigray to reach the safety of Sudan; this is because the Amhara militia, the and the Eritrean and Ethiopian military, are blocking their passage and have killed some who have attempted to flee to Sudan. With some two million internally displaced persons, Tigray now represents a significant humanitarian global burden at a time when "humanitarian needs have never been higher."¹¹
- 11.0 The significant presence of Eritrean armed forces is a fact beyond dispute.¹² The new Biden Administration recently requested the withdrawal of Eritrean forces from Tigray.¹³ As already mentioned, the Eritrean military presence means that the conflict is not internal; it is an international and regional conflict with broad implications for the safety and security of the Horn of Africa. The war in Tigray is not a civil war; it is a regional war.
- 12.0 The Eritrean troops are implicated in the military assault on Tigray, killing and the forced repatriation of Eritrean refugees, and burning the Shimelba and Hitsats refugee camps. The United Nations High Commissioner for Refugees (UNHCR) and other human rights organisations have reported that 15,000 to 20,000 Eritrean refugees are missing.¹⁴ The Eritrean military is also responsible for the brutal and ferocious execution of Tigrayan civilians and politicians such as Ethiopia's former Foreign Minister, Seyoum Mesfin.¹⁵ These actions by Eritrea constitute grave violations of jus cogens norms in international law. Ethiopia has also failed to fulfil its duty under international law to protect refugees hosted within its jurisdiction.
- 13.0 The assistance of the Eritrean military and the use of military drones launched and controlled from the UAE/Saudi bases in Assab, built in [violation](#) of the UN arms embargo imposed on Eritrea¹⁶, has increased the number of deaths and internationalised the conflict. The existing satellite images provide evidence of such attacks.
- 14.0 The Somalia Eritrea Monitoring Group report of 2016¹⁷ expressed the view that the: “...**terms of the arms embargo do not allow for such activities, nor are they covered under the terms of possible**

⁸ Egeland, J. (2021, February 01). Statement by Secretary General Jan Egeland: Aid still not reaching Tigray. *Norwegian Refugee Council*. Retrieved February 2021, from <https://www.nrc.no/news/2021/february/statement-on-tigray/>

⁹ Médecins Sans Frontières Ethiopia. (2021, January 11). Ethiopia: MSF provides medical assistance to some of the most affected people in Tigray. *Relief web*. Retrieved February 2021, from <https://reliefweb.int/report/ethiopia/ethiopia-msf-provides-medical-assistance-some-most-affected-people-tigray>

¹⁰<https://www.aljazeera.com/news/2020/11/20/un-says-planning-for-200000-ethiopian-refugees-in-sudan>

¹¹(<https://news.un.org/en/story/2017/10/567532-interview-global-humanitarian-needs-have-never-been-higher-says-un-official>).

¹²<https://www.reuters.com/article/ethiopia-conflict-eritrea-usa-exclusive/exclusive-u-s-says-reports-of-eritrean-troops-in-ethiopias-tigray-are-credible-idUSKBN28L06R>

¹³<https://apnews.com/article/eritrea-coronavirus-pandemic-africa-ethiopia-kenya-83b90a145d271eb39d664726bd5acbe5>

¹⁴ Grandi, F. (2021, February 01). Remarks by the UN High Commissioner for Refugees Filippo Grandi at the press conference in Addis Ababa. *UNHCR*. Retrieved February 2020, from <https://www.unhcr.org/news/press/2021/2/6019584e4/remarks-un-high-commissioner-refugees-filippo-grandi-press-conference-addis.html>

¹⁵ Alex De Waal. (2021, January 14). *In Memoriam: Seyoum Mesfin, Ethiopian Peacemaker and Patriot | African Arguments*

¹⁷ Somalia Eritrea Monitoring Report – S/2016/920 ; https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_920.pdf

¹⁷ Somalia Eritrea Monitoring Report – S/2016/920 ; https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_920.pdf

exemptions thereto.” In November 2018,¹⁸ the Monitoring Group stated that: “...the continuing expansion of United Arab Emirates military base in Assab and maintains that the two-way arms embargo on Eritrea does not allow for military activities by Member States involving the transfer of military materiel and personnel to Eritrean territory.”

- 15.0 The continued presence of the Eritrean military in Tigray impedes much need humanitarian assistance. Hence, an immediate independently monitored and verified permanent withdrawal of all Eritrean forces and Amhara militia from Tigray is necessary for humanitarian aid to reach the vast majority of Tigrayans with extreme needs.
- 16.0 With 2.3 million people in need of emergency aid and a large portion of Tigray classified as an emergency (IPC Phase 4), the region faces a famine catastrophe (IPC Phase 5) and food insecurity.¹⁹ According to the UN Office for Coordination of Humanitarian Affairs (OCHA),²⁰ there are 4.5 million people, accounting for 67% of the region's population, that need assistance.²¹ In Tigray, people have died due to starvation,²² a tactic used to weaken the Tigrayan forces and annihilate its people.²³
- 17.0 The starvation in Tigray is distinct from previous situations of hunger due to natural disasters such as drought. In this case, food insecurity and the denial of access to adequate nutrition and the associated hunger and starvation have been weaponised.²⁴ Starvation as a warfare method encompasses the deliberate deprivation of food through the obstruction of access to humanitarian assistance, markets, destruction of livelihood assets, pillaging, the destruction of harvest, food stores, markets, and the blockage and disruption of access to clean water.
- 18.0 For more than three years, the federal government and Amhara regional state officials have intentionally blocked transportation corridors to Tigray and looted food-loaded tracks intending to deprive Tigray of critical sources of survival.²⁵ Now, the Ethiopian and Eritrean forces have systematically denied people access to basic needs indispensable for their survival in the market, such as food and humanitarian aid.
- 19.0 So far, the Ethiopian government has ignored calls from the international community to provide rapid, unconditional, unfettered, and sustained humanitarian access to all parts of Tigray.²⁶ Despite signing agreements with the federal government, the UN and other humanitarian assessment missions have been

¹⁸ Eritrea Somalia Monitoring report – S/2018/1003. Issued on the 9th of November, 2018, prior to the lifting of the sanctions imposed on Eritrea by UNSC resolution No1907 The UN sanctions were lifted on the 14th of November, 2018;

https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2018_1003.pdf

¹⁹ The IPC Acute Food Insecurity classification rates hunger levels from one to five and provide information to decision-makers by focusing on short-term objectives to prevent, mitigate, or decrease severe food insecurity. See <http://www.ipcinfo.org/ipcinfo-website/ipc-overview-and-classification-system/ipc-acute-food-insecurity-classification/en>.

²⁰ Famine Early Warning Systems Network. (2021, February 04). Ethiopia Key Message Update: Continued conflict in Tigray coupled with low economic activity, drives Emergency (IPC Phase 4). *Relief web*. Retrieved February 2021, from <https://reliefweb.int/report/ethiopia/ethiopia-key-message-update-continued-conflict-tigray-coupled-low-economic-activity>

²¹ Minutes of Tigray Emergency Coordination Centre of the UN and different Humanitarian Organisations with a presence in Tigray (MSF, Red Cross, CRS, Norwegian Church Aid etc.). The minutes document that several administrators belonging to the Transitional Government of Tigray participated in the meeting.

²² Desta, A. (2021, January 25). Tigray Region Interim Admin Official Admits Death of 13 Due to Lack of Food; says Crisis Scale “Unprecedented” In Region’s History. *Addis Standard*. Retrieved February 2021, from <https://addisstandard.com/news-tigray-region-interim-admin-official-admits-death-of-13-due-to-lack-of-food-says-crisis-scale-unprecedented-in-regions-history/>

²³ D. Akande and E.-C. Gillard, Conflict-induced Food Insecurity and the War Crime of Starvation of Civilians as a method of Warfare: The Underlying Rules of International Humanitarian Law, *J. INT. CRIM. JUST.*, Vol. 17:4, September 2019, pp. 753-79 at p. 765.

²⁴ Alex De Waal, (2020, December 14). Five Reasons Why the UN Security Council Needs to Deal with the Humanitarian Crisis in Ethiopia. *African Arguments*. Retrieved February 2021, from <https://africanarguments.org/2020/12/five-reasons-why-the-un-security-council-needs-to-deal-with-the-humanitarian-crisis-in-ethiopia/>

²⁵ The Reporter. (2019, June 15) “Blocking roads and prohibiting grains from coming to Tigray is a grave crime.” <https://www.thereporterethiopia.com/article/blocking-roads-and-prohibiting-grains-coming-tigray-grave-crime>

²⁶ United Nations News. (2020, December 11). Ethiopia: UN refugee agency calls for ‘unfettered access’ to Tigray. Retrieved February 2021, from <https://news.un.org/en/story/2020/12/1079852>; European Union. (2021, January 15). We need humanitarian access to Tigray as the urgent first step towards peace in Ethiopia. Retrieved February 2021, from https://eeas.europa.eu/delegations/nicaragua/91459/node/91459_nn

- shot at, arrested, and denied access to the Tigray region.²⁷ The head of the European Union in Ethiopia, ICRC²⁸ and the Ethiopian Red Cross confirmed that there is no humanitarian access to 80% of Tigray.²⁹
- 20.0 With the current state of non-cooperation from the Ethiopian government, the international humanitarian community cannot avert a looming IPC Phase 5 food insecurity, thus famine in Tigray. The new phase of the brutal military campaign further exacerbates the situation with more devastation and pillaging, especially of the rural population's livelihood assets such as farming animals, seeds, produce, crops, harvest, and agricultural implements, all necessary for their survival. As the war is likely to be protracted (which is highly likely if there is no immediate international intervention) and the rural communities are dependent on the seasonal rains, which start in May, without their farming equipment or access to fertilisers and seeds, they are not going to be able to plant further aggravating the food security situation in the regions and contributing to a possible widespread famine in most parts of Tigray.
- 21.0 People in Tigray, particularly those living in areas outside the Ethiopian and Eritrean military control, are systematically denied access to objects indispensable for their survival.³⁰ Such actions constitute starvation of civilians; hence, they violate international human rights and humanitarian law prohibiting collective punishment³¹. If supported by evidence of policy intent on these forces, such actions may constitute genocide by rendering conditions on the ground impossible to survive.
- 22.0 According to May 2018, UNSC Resolution 2417, "*using starvation of civilians as a method of warfare may constitute a war crime.*" The resolution strongly urges:
*"States to conduct, in an independent manner, full, prompt, impartial and effective investigations within their jurisdiction into violations of international humanitarian law related to the use of starvation of civilians as a method of warfare, including the unlawful denial of humanitarian assistance to the civilian population in armed conflict, and, where appropriate, to take action against those responsible in accordance with domestic and international law, with a view to reinforcing preventive measures, ensuring accountability and addressing the grievances of victims."*³²
- 23.0 Similarly, on December 18, 2019, the UN General Assembly adopted Resolution 74/149 on the right to food, noting in part that armed conflicts are among the factors causing or exacerbating famine and severe food insecurity, and stressing the obligation of all States and parties to an armed conflict to protect civilians in accordance with international humanitarian law.³³ Finally, in December 2019, the Assembly of States Parties to the International Criminal Court (ICC) amended the Rome Statute of the Court to include civilians' deliberate starvation as a war crime.
- 24.0 The Ethiopian government also allows and facilitates [the annexation of Tigrayan land](#)³⁴ [by both](#) the Amhara regional government and the Eritrean government. This annexation and occupation of territories is a violation of the Geneva Conventions and, in the long term, will cause further ethnic/sectarian divisions in Ethiopia, and it further fuels inter-communal distrust in Ethiopia and Eritrea. Furthermore, the Ethiopian

²⁷ Houeld, K. (2020, December 08). Ethiopia says UN team shot at in Tigray after defying checkpoints. *Reuters*. Retrieved February 2021, from <https://www.reuters.com/article/ethiopia-conflict-idINKBN281M9>

²⁸ <https://www.icrc.org/en/document/operational-update-ethiopia-icrc-concerned-about-humanitarian-situation-rural-areas-tigray>; <https://www.icrc.org/en/document/humanitarian-needs-grow-ethiopia-tigray-region>

²⁹ AFP. (February 10, 2021). Ethiopian Red Cross says 80 percent of Tigray cut off from aid. from <https://www.france24.com/en/live-news/20210210-ethiopian-red-cross-says-80-percent-of-tigray-cut-off-from-aid>

³⁰ International Committee of the Red Cross. (2020, November 06). Ethiopia: ICRC calls for respect of people's lives and property amidst escalating tensions in Tigray and other regions in the country. Retrieved February 2021, from <https://www.icrc.org/en/document/ethiopia-icrc-calls-respect-peoples-lives-and-property-amidst-escalating-tensions-tigray>

³¹ Additional Protocol II, Article 4(2)(b). International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, 2005, Volume I: Rules [hereinafter "ICRC Rules"], at Rule 103. The Appeals Chamber of the Special Court for Sierra Leone addressed this war crime in the *Fofana and Kondewa case*: "The Appeals Chamber emphasises that a 'punishment' for the purposes of the crime of collective punishments is an indiscriminate punishment imposed collectively on persons for omissions or acts for which some or none of them may or may not have been responsible". SCSL-04-14-A, 28 May 2008, at para. 223.

³² UNSC S/RES/2417(2018)

³³ A/RES/74/149 (2019).

³⁴ <https://news.yahoo.com/inside-tigray-town-scarred-ethiopian-121307431.html>

federal government has limited effective administrative control in many parts of Tigray.³⁵ Thus, the Ethiopian federal government has neither the capability nor the desire to ensure humanitarian aid on time to all those in need of assistance.

- 25.0 As part of what may constitute state-led ethnic cleansing, tens of thousands of Tigrayans serving in the security, armed forces, police, and intelligence spheres have been harassed and detained in undisclosed locations. The Ethiopian government has dismissed from their posts Tigrayans working in foreign affairs, civil aviation, banking and other public service posts, and the AU Commission. The Ethiopian government has also purged, arrested and repatriated [peacekeepers of Tigrayan origin from the UN and the African Union peacekeeping missions](#). The UN feared that its repatriated peacekeepers might face torture and execution; however, both the UN and AU are yet to issue an exact and public position on those recalled personnel's whereabouts. Through their prevarication, the UN and the AU may find themselves in violation of the 1951 *non-refoulement* ("no forced return") principle, a bedrock of the asylum system that both institutions have attempted to impose on their member states. These forcible return and detention of Eritrean refugees and countries' failure, including Ethiopia, to protect them constitute a violation of jus cogens norms.
- 26.0 The conflict in Tigray is a civil war in which Eritrea is heavily involved. It is a conflict that has regional consequences with an impact on the negotiations for the Grand Ethiopian Renaissance Dam (GERD); the South Sudan peace process; the Ethiopia Sudan border dispute, the unfinished business of the Eritrea Djibouti border dispute, the Kenya Somalia relationship, the Somalia elections, and security issues and finally the election-related crisis in Ethiopia³⁶. Already we have seen the purge of Tigrayan peacekeepers, the withdrawal of Ethiopian troops from peacekeeping missions in Somalia, South Sudan, and Sudan have double-edged entanglements.³⁷ All events that undermine the region's security and, in Somalia's case, the Ethiopian withdrawal of soldiers from AMISOM leaves security gaps that allow Al Shabaab to threaten the region's security.
- 27.0 So far, the Ethiopian government has avoided the scrutiny of the AU and the UN because PM Abiy has presented the conflict in Tigray as an internal **law and order issues**; therefore, any interference would be an affront to the sovereignty of Ethiopia. However, the Eritrean military's participation means that Tigray's conflict is a regional war where gender-based violence and starvation are weapons of war. As the Ethiopian government has so far failed to prevent or alleviate a situation of great gravity within its territory (such as genocide, crimes against humanity, or war crimes), and as it is a perpetrator of such acts, it cannot avail itself of the principle of state sovereignty and non-intervention. Therefore, the applicable standard in this situation is the "**responsibility to protect**." Article 4 h of the Constitutive Act of the AU provides that the AU has the right to intervene:

*"...in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity..."*³⁸

The Assembly of the Heads of States of the AU agreed to incorporate the right of intervention in their constitutive act in recognition of past failures to intervene to stop massive human rights violations such as the excesses of Idi Amin in Uganda, Bokassa in the Central African Republic, and the Rwanda genocide in 1994³⁹. In response to the international community's failure to respond to the mass atrocities

³⁵ Anna, C., & Edith, L. M. (2121, February 04). UN: Ethiopia may not have control of a large part of Tigray. The Washington Post. Retrieved February 2021, from https://www.washingtonpost.com/world/africa/un-ethiopia-may-not-have-control-of-a-large-part-of-tigray/2021/02/04/8f693356-66f2-11eb-bab8-707f8769d785_story.html

³⁶ <https://www.ethiopia-insight.com/2020/05/18/the-limits-of-legal-solutions/>

³⁷ <https://www.bloomberg.com/news/articles/2020-11-13/ethiopia-withdraws-thousands-of-troops-from-neighboring-somalia>

³⁸ The Constitutive Act of the AU - https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf

³⁹ Kioko. Ben, 2003, - The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention; https://www.icrc.org/en/doc/assets/files/other/irrc_852_kioko.pdf ; Murithi, Tim, 2007 – The responsibility to protect as enshrined in article 4 of the Constitutive Act of the African Union; https://www.researchgate.net/publication/250888812_The_responsibility_to_protect_as_enshrined_in_article_4_of_the_Constitutive_Act_of_the_African_Union

committed in Rwanda and the former Yugoslavia during the 1990s, the Responsibility to Protect (R2P) was unanimously adopted in 2005 by the UN; it has three pillars⁴⁰:

- a. Every state has the Responsibility to Protect its population from four mass atrocity crimes: **genocide, war crimes, crimes against humanity and ethnic cleansing**;
- b. The wider international community has the responsibility to encourage and assist individual states in meeting that responsibility;
- c. If a state is **manifestly failing to protect its population, the international community must be prepared to take appropriate collective action, in a timely and decisive manner in accordance with the UN Charter**.

28.0 The Responsibility to Protect is a recognition by both the AU and the UN that the principles of non-intervention and sovereignty can no longer serve as a shield against **genocide, war crimes, crimes against humanity and ethnic cleansing**. According to the renowned African scholar Francis Deng, should any government in the world “[fail] to discharge [its] responsibility for lack of capacity or will, the international community has the right and the responsibility to intervene.”⁴¹

29.0 The war in Tigray is not an internal conflict. Because the Eritrean military is involved, it is a regional conflict. It is also a war for which there is already evidence of mass atrocity crimes against the population perpetrated by both the Eritrean army, the Amhara militia and the Ethiopian army. Hence, it is a conflict that requires the urgent attention and action of the UNSC. Therefore, Tigray's war cannot be an item under Any Other Business; it must be an item in the UNCS primary agenda. The HoAC Forum strongly urges the UNSC to adopt a Tigray specific resolution that:

- a. Requests the immediate cessation of hostilities by all combatants in Tigray and starts the process of inclusive dialogue with a view of reaching a political solution that can bring sustainable peace and development in Ethiopia;
- b. Imposes punitive measures, including an arms embargo, individual criminal accountability, regional travel bans, and asset freezes on those involved in blocking humanitarian aid and committing mass atrocity crimes (**war crimes, crimes against humanity, ethnic cleansing, and genocide**);
- c. Condemns the mass atrocities (**genocide, war crimes, crimes against humanity and ethnic cleansing**) committed against the people of Tigray by Eritrean and Ethiopian armed forces, the regional special forces, the Amhara militia, the Amhara youth group (FANO),
- d. Establishes an independent mechanism to investigate all crimes of mass atrocities (**genocide, war crimes, crimes against humanity and ethnic cleansing**) and breaches of the Geneva Conventions committed in Tigray.
- e. Refers the cases of mass atrocity crimes to International Criminal Court to investigate the atrocities committed in Tigray, including the invasion of Tigray by Eritrean forces and the use of drones against the people of Tigray;
- f. Establish a mechanism to assist war and rape survivors;
- g. Establish an independent mechanism to prevent prevents further egregious violations of human rights and breaches of international law;
- h. Condemns the invasion and occupation of Tigrayan territories by the Eritrean army;
- i. Establishes a mechanism for the immediate and verifiable removal of all Eritrean military;
- j. Ensures a verifiable and immediate cessation of all forms of hostilities, including military and media wars;
- k. Adopts measures to ensure rapid, unconditional, unfettered, and sustained delivery of humanitarian aid and items essential to survival, including establishing a “lifeline humanitarian corridor” from Sudan to Tigray – a de-militarised route designated for safe passage of humanitarian supplies;

⁴⁰ <https://www.globalr2p.org/what-is-r2p/#:~:text=The%20Responsibility%20to%20Protect%20%E2%80%93%20known,cleansing%20and%20crimes%20against%20humanity.>

⁴¹ (<https://digitalcommons.maclester.edu/cgi/viewcontent.cgi?article=1366&context=macintl>)

- I. Initiate estimation of cost of the war and post-war reconstruction needs by considering the infrastructure destroyed and looted public and private properties and initiating accountability and reparation modalities to Tigray.

30.0 The HoAC Forum also request that the UNSC **resolution on Tigray establish a Commission of Inquiry on Tigray as well as a Peacekeeping mission with the following mandates:**

A. Commission of Inquiry on Tigray Mandate

- a. To investigate the human rights violations and other abuses committed in Tigray;
- b. To investigate the causes underlying the violations;
- c. To make recommendations on the best ways and means to ensure accountability, reconciliation and healing among the Tigrayan population and its neighbours to deter and prevent the occurrence of the violations;
- d. To make recommendations on how to move the peace and reconciliation process forward;
- e. To submit a report within a maximum period of three (3) months.

B. Commission of Inquiry on Tigray Terms of Reference

- a. Establish the immediate and remote causes of the conflict;
- b. Investigate human rights violation and other abuses committed during the conflict by all parties as of November 4 2020;
- c. Compile information based on these investigations and in so doing assist in identifying perpetrators of such violations and abuses with a view of ensuring accountability for those responsible;
- d. Compile information on institutions and processes of lack thereof that may have aided or aggravated the conflict resulting in violations of human rights and other abuses;
- e. Make recommendations to the UNSC of perpetrators to refer to the International Criminal Court;
- f. To examine ways on how to move forward a comprehensive dialogue and political process for peace;
- g. Present a comprehensive written report on the overall situation in Tigray to the UNSC within three (3) months from the commencement of the activities;
- h. Make recommendations based on the investigation on the following:
 - i. Appropriate mechanisms to prevent a recurrence of conflict;
 - ii. Accountability mechanism for gross violations of human rights and other egregious abuses to ensure that those responsible for such abuses are accountable;
 - iii. Referrals to the International Criminal Court;
 - iv. Mechanisms to promote peace and reconciliation;
- i. The Commission of Inquiry may develop additional terms of reference according to its mandate within established UN methodology and best practice.

C. Peacekeeping mission Tigray Mandate

- a. Protection of civilians;
- b. Creating the conditions that are conducive to the delivery of humanitarian assistance field in conjunction with the existing United Nations and other humanitarian relief operations, and it will negotiate, observe, monitor, verify, and report on the:
 - i. Immediate and definitive cessation of hostilities;
 - ii. Total withdrawal of all external forces, including Eritrean armed forces and Amhara special forces and militia from all Tigray parts to their deployment lines before November 4 2020;
 - iii. Negotiation and implement the ceasefire agreement;
 - iv. Rapid, unconditional, unfettered, and sustained and distribution of aid to all parts of Tigray;
- c. Supporting the implementation of cease-fire agreements;

- d. Bring an effective end to the violence, establishing the necessary conditions for the commencement of negotiations.
- f. Assist the Commission of Inquiry on Tigray independent investigation of the human right abuses and the facts and circumstances of the war on Tigray and convening of UN meeting on lasting security and stability arrangements for Tigray;
- g. Assist the Commission of Inquiry to collect, report, and preserve the evidence of and clarify responsibility for alleged grave breaches of the Geneva Conventions, mass atrocity crimes (**genocide, war crimes, crimes against humanity, ethnic cleansing**), including sexual and gender-based violence, and missing Eritrean refugees to end impunity and provide accountability.

31.0 The following considerations will guide the appointment of the Commission of Inquiry on Tigray:

- a. A proven track record of independence and impartiality. The background of candidates, their prior public statements or political or other affiliations should not be such that would affect their independence and impartiality or create a perception of bias;
- b. Knowledge and experience in human rights, international humanitarian law, public international law; conflict resolution; transitional justice mechanisms; national reconciliation and healing mechanisms;
- c. Knowledge and experience in human rights fact-finding and investigations principles, standards and methodology, including sexual violence;
- d. Their Commitment to upholding all human rights and ensuring gender equality.

32.0 To ensure the success of the Commission of Inquiry on Tigray's, the UNSC should implement measures that will guarantee the compliance of all the parties to the conflict, including the Eritrean regime. Hence the combatants and, in particular, the Ethiopian and Eritrean state must ensure the:

- a. Adoption of any measures needed for the Commission and its personnel to carry out their functions throughout the national territory with full freedom, independence, and security;
- b. Provision of all information in their possession which is needed by the Commission, or that it requests. They must also facilitate free access for the Commission and its staff to any official archives related to its mandate.
- c. Freedom of the Commission to obtain any information the Commission considers relevant and to use all sources of information which the Commission considers useful and reliable;
- d. Freedom of the Commission to interview, in private, any persons the Commission judges necessary;
- e. Freedom for the Commission to visit any establishment or place at any time; and
- f. Guarantee by the Government of Ethiopia of full respect for the integrity, security, and freedom of witnesses, experts, and any other persons who help the Commission in its work.

Methodology and Standard of Proof

33.0 Factual determinations on specific incidents and patterns of conduct provided the basis for the legal qualification of human rights violations, crimes under the international law and domestic laws of Ethiopia, and, where appropriate, international crimes, including war crimes and crimes against humanity. Some of the facts and associated evidence are retained and stored on a strictly confidential basis. In most instances, there was insufficient information about the crimes committed and the individuals responsible for violations. It is for that reason that further investigation is required. In general, the principle of association and membership applies; hence the military units or armed groups to which individuals belong are identified as responsible.

34.0 Evidence gathered and analysed included reports of eyewitness testimonies from survivors and victims, documents and testimonies from the media, international organisations, the UN and other humanitarian

actors, public and leaked statements from Government officials and opposition officials, and satellite imagery. Various entities, including HOACS Forum, possess evidence.

- 35.0 The HoAC Forum at all times remains to be guided by the principle of “do-no-harm.” HoAC Forum employed safety, security, confidentiality, and witnesses' well-being of witnesses, especially those residing in conflict areas or those within reach of harm. Therefore, most of the information in this document does not require consent and disclosure agreement. For those cases where there is a need for informed consent or where disclosure would lead to identifying sources resulting in harm, HOACS Forum has avoided using the information.

Context

Events occurring before the 4th of November 2020

- 36.0 In 2018, Abiy Ahmed's nomination as the Chair of the Ethiopian People's Revolutionary Democratic Front (EPRDF)⁴²; was followed on the 2nd of April 2018, with his appointment, by the House of Peoples Representative, as the Prime Minister. His instalment as the Prime Minister of Ethiopia ended a period of political crisis that in 2017 and 2018 led to a declaration of a state of emergency. His appointment was, and the reforms he put in place were very welcome by all in the country, including the people of Tigray.⁴³
- 37.0 However, it was not long before the PM started to target Tigrayan leaders in corruption prosecutions and removal from senior posts positions and broadly scapegoat them and their party, the Tigray Peoples Liberation Front (TPLF), for all of the country's woes.⁴⁴The members of other parties, whose official positions equally implicated them of corruption and human rights abuses, were not targeted and were not prosecuted or removed from their posts.
- 38.0 By November 2019, PM Abiy established the Prosperity Party (PP); it replaced the EPRDF and incorporated all the former members of the EPRDF except the TPLF⁴⁵. Unlike the EPRDF, the PP is not a coalition of parties. The PP became the governing party in Ethiopia. Hence, Ethiopia transitioned from a coalition government (i.e., under the EPRDF), where the TPLF played a decisive role in a one-party (i.e., PP) state. The TPLF has consistently opposed replacing the EPRDF with the new party as violating the internal rules of the EPDRF and as being ill-intentioned. Some in the former Oromo Democratic Party (ODP), a sister party in the EPRDF coalition and Abiy's former party were also said to have been worried about the new party's prospect.⁴⁶
- 39.0 Jawar Mohammed described the formation of the centralised PP as a roadblock to the democratisation process in Ethiopia⁴⁷:
- “First, the rushed process and the unwillingness to build an internal census widened the divide within the reformist camp: some rejected the decision while many silently withdrew. Second, the process in which the PP was founded further intensified the tensions with the TPLF, which was contrary to the notion of reintegration that the transaction needed.”*
- Also**
- “...The formation of the PP was accompanied by a sudden ideological shift of the ruling party (now the PP) ...Politically, that clearly signalled shift away from multinational federalism to a centralised state.... Generated a polarising discourse, particularly among the Amhara and Oromo political communities, at a time when narratives that bridged the gap were most needed.”*
- 40.0 On the 9th of July 2018, Eritrea and Ethiopia signed a joint Declaration of Peace followed in September 2018 by the Peace Agreement; this was possible because of PM Abiy's offer to unconditionally accept the decision of the Eritrean Ethiopia Border Commission (EEBC); therefore, agreeing to the hand over to Eritrea of Bademe. Following the signing of these peace documents, telecommunication services, flights,

⁴² EPRDF - a coalition of four regional political parties that run Ethiopia since 1991 Comprising of the Tigray Peoples Liberation Front (TPLF); the Amhara National Democratic Movement (ANDM); Oromo People's Democratic Organisation (OPPDO); Southern People's Democratic Movement (SEPDM)

⁴³ Africanews, [Ethiopia PM visits Tigray region, asked to address conflict with Eritrea |](#) (April 13, 2018))

⁴⁴ Aljazeera [Ethiopia's Tigray conflict explained in 500 words](#) (Nov. 10, 2020)

⁴⁵ BBC News, [Ethiopia's Abiy Ahmed gets a new ruling party - BBC News](#) (22 November 2019)

⁴⁶ Ibid

⁴⁷ <https://addisstandard.com/in-depth-how-ethiopias-transition-to-democracy-derailed-reflections-by-jawar-mohammed/>

and land transport, albeit for a few months, also commenced between the two countries, thus opening a hopeful future.⁴⁸ By November 2018, Ethiopia facilitated the lifting of the UN sanctions⁴⁹ imposed on Eritrea in 2009. In August 2019, PM Abiy received the prestigious Nobel Peace Prize. The Nobel Committee the prize for his efforts toward peace between Ethiopia and Eritrea.⁵⁰

- 41.0 However, Eritrea and Ethiopia's warm relationship was confined to the top leadership, mainly PM Abiy and President Isaias. It was not institutionalised, and it did not reach the grass root people. Therefore, it did not bring much-needed lasting peace or a lasting people-to-people relationship. The process lacked transparency, and in Ethiopia, the peace deal's actual agreement has never been presented to the Parliament, as required under Ethiopian law, much less the people. Equally importantly, people-to-people relations via road transport only lasted a few months. By April 2019, Eritrea closed all the land borders with no explanations.⁵¹
- 42.0 Most significantly, the Eritrean leader, President Isaias Afewerki, continued posing a hostile tone towards Tigrayan leadership even during the height of the relationship and expressed on record that the only way to continue the reform in Ethiopia was to annihilate the TPLF and politically cleanse Ethiopia off the 'ethnic' federal arrangement championed by the TPLF.⁵² He further asserted that Ethiopia's political development directly affects Eritrea and that he would not idly watch as the Ethiopian reform process⁵³ is threatened. PM Abiy did not respond to President Isaias's apparent hostility towards Tigray's regional leaderships or his threatened interference in Ethiopia's internal affairs.
- 43.0 With the onset of COVID -19 in March 2020, the electoral commission announced the indefinite postponement of both the regional and general elections planned for August 2020, sparking protestations and a constitutional crisis.⁵⁴ Despite calls from many political opposition forces in the country for a national dialogue regarding the election, the incumbent government opted to request a constitutional interpretation, which expectedly endorsed the government's choice of postponing the election.⁵⁵ The legality and legitimacy of the decision to delay the elections and the subsequent constitutional interpretation are fiercely contested. The event qualifies as one of the most controversial pre-conflict events in Ethiopia.⁵⁶
- 44.0 The postponement of the general election was unexpectedly understood as also postponing the regional polls. This interpretation has plunged the country into a second constitutional crisis because the Tigray regional administration had already started preparations and was determined to conduct its regional elections. As a result, Tigray rejected the decision and conducted a regional election on September 4, 2020, on its own, following a rejection of its request to the National Electoral Board to facilitate the regional polls.⁵⁷
- 45.0 The federal government considered the election in Tigray as illegal. Accordingly, it cut ties with the regional government and slashed the regional budget⁵⁸. Despite knowing that the region's food security was already severely impacted by the locust invasion⁵⁹ and the Covid-19 pandemic, the federal government, in October, cancelled the SafetyNet Programme that allocated food to one million vulnerable Tigrayans. The combination of economic pressures applied over three years, the cutting of the regional

⁴⁸ BBC [Ethiopia and Eritrea peace agreement](#)

⁴⁹ UNSC Resolution 1907 (2009)

⁵⁰ The Nobel Prize, [Abiy Ahmed Ali – Facts – 2019](#)

⁵¹ Reuters, [Eritrea closes border crossing to Ethiopians, official and residents say](#) (December 28, 2018)

⁵² Ethiopian Insights, [Game over for ethnic federalism: Isaias - Ethiopia Insight](#) (February 12, 2020)

⁵³ Ethiopian Insights, [Game over for ethnic federalism: Isaias - Ethiopia Insight](#) (February 12, 2020)

⁵⁴ New York Times, [Ethiopian Region Holds Local Elections in Defiance of Prime Minister](#)

⁵⁵ [Teklemichael Abebe Sahlemariam, Endalkachew Geremew Council of Constitutional Inquiry verdict: "Because I said so!" Ethiopia Insight](#) (June 22, 2020)

⁵⁶ Ethiopian Insight, [Opposition parties statement on election postponement - Ethiopia Insight](#) (May 4, 2020)

⁵⁷ Reuters, [Ethiopia's Tigray holds regional election in defiance of federal government](#) (September 9, 2020)

⁵⁸ Bloomberg [Ethiopia's Tigray Region Vote Unconstitutional, Lawmakers Say](#) (September 5, 2020); Aljazeera, [Ethiopian parliament votes to cut ties with Tigray region leaders](#) (October 7, 2020)

⁵⁹ UNOCHA, [Desert Locust situation update - 14 October 2020 - Ethiopia | ReliefWeb](#) (October 15, 2020)

budget, and the SafetyNet programme's cancelling are an attempt to use food and food security as a political tool and increasingly as a weapon of war against the people of the Tigray region.⁶⁰

46.0 On the 2nd of November, 2020, Dr Debretsion, the President of Tigray, detailed to reporters that the Federal government was readying itself for a military attack against Tigray. The TPLF also sent letters, signed by Dr Debretsion, to the international community, warning of the coming conflict.⁶¹ These letters to the international community were the last of the TPLF to warn the international community and call for dialogue and international intervention that the regional authorities made before the war.⁶² The TPLF continued to call for dialogue, but at present, the federal government is consistently rebuffing them.⁶³

Events occurring after the 4th of November 2020.

47.0 What caused the conflict and its immediate triggers is subject to fierce debate. The narrative that dominates in the media is that of Prime Minister Abiy's claim that the war's cause is the Tigrayan forces attack of the Ethiopian Northern Command post on the night of the 3rd of November 2020.⁶⁴ The Tigrayan authorities, on the other hand, hold that Abiy sent his commando to arrest political leaders and control the region and that they acted in self-defence.⁶⁵

48.0 In the light of events before the relevant date, however, one can see that preparation were underway for a military attack on the region, which was considered unruly by the federal government. For instance, days before the declaration, there were reports of significant troop movement towards Tigray.⁶⁶ The PM Abiy openly threatened military actions against Tigray on various occasions.⁶⁷ The Federal government's decision to sever all kinds of relationships with the government of the regional state⁶⁸ and the slashing of funding to the region a month before the military operation started in Tigray were all indicators of the heightened tensions.

49.0 As the [Foreign Affairs](#), citing a UN diplomat on the ground, explains that, Abiy's government "...will have difficulty convincing anyone worth their salt that this wasn't pre-planned."⁶⁹ Abiy's briefing of the Parliament on the 30th of November 2020 details the Federal government's two-year preparations for this war.⁷⁰ Further, Abere Adamu, the Chief of Amhara Special Forces operating in Tigray in collaboration with the Ethiopian National Defence Force (ENDF) and now occupying large areas of Tigray, confirmed that the Amhara Special Forces had developed joint battle plans with ENDF before the start of the war.⁷¹ Therefore, one can safely say that this war was planned well in advance of the event of November 4.

50.0 Immediately following the declaration of war, the federal government declared Tigray's regional government illegal and appointed an interim administration.⁷² The plan, therefore, was to militarily

⁶⁰ BBC, [Ethiopia's Tigray crisis: The long, medium, and short story - BBC News](#) (October 17, 2020)

(September 10, 2020); DW [Crisis looms in Ethiopia as elections are postponed](#) (June 16, 2020)

⁶¹ BBC News, [Tigray crisis: Ethiopia orders military response after army base seized](#) (November 4, 2020)

⁶² Among such invitations and calls for dialogue include the following. Addis Standard, [News: Debretsion calls for a national dialogue involving all political parties, nations & nationalities](#) (June 16, 2020) ; BBC Tigrigna, [ዶ/ር ደብረጽዮን ንልዕሊ 70 መራሕተ ሃገራትን ዓለምለካዊ ውድባትን ደብዳቤ ሰዲዶም](#) /Tigray Leader sent a Memorandum to Over 70 heads of States and International Organizations (October 27, 2020)

⁶³ AP News ["Stop the madness," Tigray leader urges Ethiopia's PM](#) (November 30) phone call with the AP calls for constructive dialogue; BBC News [Tigray crisis: Ethiopian Prime Minister Abiy Ahmed rejects peace talks](#) (Nov. 11)

Arab News, [Ethiopia pushes toward Tigray capital, rebuffs African mediation | Arab News](#), 22 November. 2020

Al Jazeera, [No dialogue with TPLF, Ethiopia PM tells AU envoys | Abiy Ahmed News | Al Jazeera](#) (27 November)

⁶⁴ BBC, [Tigrayan forces have attacked a military post \(Nov. 4, 2020\)](#)

⁶⁵ Verfassungsblog, [Ethiopia's Tigray Crisis: A Troubled Federation](#) (November 27, 2020)

⁶⁶ Foreign Policy, [Is Ethiopia Headed for Civil War After Abiy Ahmed's Moves Against the TPLF in Tigray?](#) (November 5, 2020)

⁶⁷ Awol Alo, Civil war in Ethiopia: Who, what, why? (November 5, 2020)

⁶⁸ The African Report, [Ethiopia's parliament votes to sever ties with Tigray region leaders](#) (October 8, 2020)

⁶⁹ Tome Gardner, [Is Ethiopia Headed for Civil War After Abiy Ahmed's Moves Against the TPLF in Tigray? Foreign Policy](#) (November 5, 2020)

⁷⁰ Aljazeera, [Ethiopia's Prime Minister Address Parliament Following Victory in Tigray](#) (YouTube, November 30, 2020)

⁷¹ Addis Standard, [News Analysis: Amhara region police chief reveals how region's police force guided federal steel-clad mechanized forces to join "war" in Tigray](#) (January 4, 2020)

⁷² Aljazeera, [Ethiopian MPs back plan to replace Tigray government](#) (November 7, 2020)

dismiss the newly elected government in Tigray and replace it with appointees accountable to the federal government.⁷³

- 51.0 There are reports that the Eritrean military participated in the conflict as early as the 4th of November 2020, when they entered the town of Gerhusernay in Tigray and started killing civilians.⁷⁴ Within a week into the armed conflict, Tigray's leadership reported Eritrean troops' involvement in the war. Specifically, they related the presence of Eritrean soldiers in West Tigray fighting alongside the Ethiopian forces.⁷⁵
- 52.0 On the 28th of November 2020, with the capture of Mekelle, the regional capital, the Ethiopian government announced that the "Law and Order" operation in Tigray was over.⁷⁶ Irrespective of the Federal government's declarations, the indications are that the conflict is ongoing as the Tigray forces have retreated to rural areas before the fall of Mekelle to avoid urban combat and civilian mass casualties.⁷⁷ This is in line with the fact that the
- 53.0 Since the late hours of the 3rd of November 2020, what is happening in Tigray is a text-book definition of an Armed Conflict. As the International Criminal Tribunal for the Former Yugoslavia authoritatively clarified in the famed *Tadic case*, an armed conflict exists when there is an armed confrontation between two or more states or a "protracted armed violence between governmental authorities and organised armed groups or between such groups within a State."⁷⁸
- 54.0 According to the same decision, as also consolidated in subsequent rulings, protracted armed violence is assessed in terms of both its 'intensity' and the 'organisation' of the parties to a conflict. In light of these, if it goes beyond "internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as provided under the second Additional Protocol to the Geneva Convention, it becomes an armed conflict.
- 55.0 In the conflict at hand, the entire national army is involved with reinforcement from regional state forces, especially from the Amhara region. The Tigrayan armed forces are also well organised.⁷⁹ And the Eritrean military is also involved. Finally, intensive armed confrontation has been ongoing for close to four months, leaving no doubt that this is an armed conflict. The involvement of Eritrea's army is such that this conflict in Tigray is not an internal issue; it is a regional and international conflict.
- 56.0 There is growing evidence that Eritrea has been fighting alongside Abiy's army from the start of the conflict. In addition to the Tigray-based broadcasters reports of the shelling of towns from Eritrean territories and the deployment of Eritrean battalions in Tigray⁸⁰, recorded interviews with captured soldiers confirm the involvement of the Eritrean army in this conflict.⁸¹ International media also broadcast the testimony of witnesses that fled to Sudan, reporting the indiscriminate shelling from Eritrea of their towns in Western Tigray.⁸² The US Government,⁸³ the EU⁸⁴, a senior Eritrean military expert,⁸⁵ and diplomats following the matter⁸⁶ confirmed that Eritrean forces are in Tigray.
- 57.0 Among the officials in Ethiopia, the chief executive officer of the Interim Government in Tigray, Dr Mulu Nega, confirmed not only Eritrea's involvement but also of atrocities they are committing in a meeting

⁷³ France 24, [Ethiopia MPs back state of emergency in Tigray amid military campaign](#) (November 5, 2020)

⁷⁴ <https://www.eepa.be/wp-content/uploads/2020/11/Situation-Report-EEPA-Horn-No.-89-22-February-2021.pdf>

⁷⁵ Reuters, [Ethiopia's Tigray conflict worsens, refugees flee to Sudan](#) (November 10, 2020)

⁷⁶ Aljazeera, [Ethiopia PM says Tigray operation over after army seizes Mekelle](#) (November 29, 2020)

⁷⁷ **Dragana Jovanovic**, [Ethiopia declares victory in fight over Tigray region, but guerrilla warfare likely to continue, ABC News](#) (November 29, 2020)

⁷⁸ ICTY *The Prosecutor v. Dusko Tadić, Appeals Chamber, Decision 2 October 1995, Para 70 0*

⁷⁹ Human Rights Watch [Q&A: Conflict in Ethiopia and International Law](#) (November 25, 2020)

⁸⁰ Tigray Television, News, Available at <https://www.youtube.com/watch?v=JsixsGCxc2k> (November 15, 2020)

⁸¹ Tigray Television, News, Available at <https://www.youtube.com/watch?v=5wf-ng35t> (November 23, 2020)

⁸² VOA, [Survivor of Ethiopian Fighting Warns 'People Will Slowly Start to Die'](#) (November 21, 2020), The Guardian ['Slaughtered like chickens': Eritrea heavily involved in Tigray conflict, say eyewitnesses | Conflict and arms](#) (December 21, 2020)

⁸³ Reuters, [Exclusive: U.S. thinks Eritrea has joined Ethiopian war, diplomats say | Reuters](#) (December 8, 2020)

⁸⁴ France24, [EU calls for withdrawal of Eritrean troops from Ethiopia's Tigray region - Eye on Africa](#) (February 9, 2021)

⁸⁵ Mesfin Hagos, [Eritrea's Role in Ethiopia's Conflict and the Fate of Eritrean Refugees in Ethiopia | African Arguments](#) (December 4, 2020)

⁸⁶ The Guardian, [Diplomats back claims Eritrean troops have joined Ethiopia conflict \(December 8, 2020\)](#)

he held with the residents in Wukro.⁸⁷ Another official validation came out from the interim mayor of Mekelle.⁸⁸ In a recent video broadcasted from an area in Tigray under the Ethiopian military's control, a general, admitted that Eritrean forces are in Tigray that they are uninvited and labelled them as unwanted guests.⁸⁹ Most importantly, overwhelming eyewitnesses reports confirm the deployment of Eritrean soldiers in many parts of Tigray.

58.0 During the Parliamentary session of the 23rd of March 2021, PM Abiy admitted the Eritrean military's presence in Tigray. However, he was careful to limit their involvement to border areas. PM Abiy also acknowledged the commitment of serious crimes in Tigray.⁹⁰

59.0 The involvement of the Eritrean military in the Tigray conflict affects the legal status of the war. Matters are complicated because both PM Abiy⁹¹ and the Eritrean⁹² government continue to deny the presence or the involvement of the Eritrean army. Such denial excludes the conventional intervention of foreign forces into an otherwise non-international armed conflict. Human Rights Watch⁹³ reports that the Eritrean forces in Tigray seem to align with ENDF. But the Ethiopian and Eritrean governments do not want to make their connection public. However, under international law, the inviting country's consent is a crucial requirement for an intervention not to amount an occupation and, therefore, render the Tigray war an international armed conflict.⁹⁴ The denial of the PM Abiy and President Isais means that it is difficult to imply consent for the Eritrean army's involvement in Tigray. Therefore, in light of the statement from the Ethiopian general, Eritrea is either:

- a. An occupying power – and the Federal government is either not wanting to defend Tigray or is not in a position to do so. In this case, the war is an international armed conflict because of the ongoing confrontation between Eritrean forces and the Tigrayan forces.
- b. A mercenary force - the denial of Eritrean officials as to their soldiers' presence in Tigray, strengthens this possibility.

60.0 Irrespective of PM, Abiy's assertions that the war is a "law and order operation" ⁹⁵, and the vehement denials by both the Ethiopian and Eritrean regime as to the Eritrean army's involvement, under international humanitarian norms, the way parties characterise a situation does not determine its legal nature. Therefore, in law, the way Prime Minister Abiy's administration wants to name the conflict does not matter. It is the actual situation on the ground that matters.

61.0 Beyond the legal implications, the clandestine presence of Eritrean forces is a fertile ground for illegality. In line with these observations and recording the mounting evidence of Eritrean involvement in Tigray, [the Economist](#) rightly concludes that the Eritrean military's presence will make it harder to bring peace to Tigray.⁹⁶

⁸⁷ Fana TV, [ግዚያዊ ምምሕር ክልል ትግራይ ምስ ነበርቲ ከተማ ውቕሮ ገዛበሮ ዘተ - YouTube](#) (December 23, 2020)

⁸⁸ Addis Standard, [News: Mekelle city interim mayor admits presence and participation of Eritrean forces in Tigray conflict](#) (January 4, 2020)

⁸⁹ Reuters, [Ethiopian general says Eritrean troops entered Tigray - video clip](#) (January 7, 2021)

⁹⁰ <https://www.aljazeera.com/news/2021/3/23/ethiopia-pm-abiy-ahmed-says-atrocities-committed-in-tigray>; <https://www.bbc.com/news/world-africa-56497168>

⁹¹ Africa News, ['Complete lie': Ethiopia denies Eritrean army's involvement in Tigray](#) (December 11, 2020); Addis Standard, [News: Foreign Ministry Spokesperson contradicts army commander, Mekelle interim mayor & Rights Commission report on Eritrean forces involvement in armed conflict in Tigray](#) (January 21, 2021)

⁹² BBC, [Tigray crisis: Eritrea's role in Ethiopian conflict](#) (December 28, 2020)

⁹³ <https://www.hrw.org/news/2021/03/05/ethiopia-eritrean-forces-massacre-tigray-civilians>

⁹⁴ T. Ferraro and L. Cameron, 'Article 2: Application of the Convention', ICRC, Commentary on the First Geneva Convention, 2016, §259; M. Milanovic and V. Hadzi-Vidanovic, 'A Taxonomy of Armed Conflict' in N. White, C. Henderson (eds), Research Handbook on International Conflict and Security Law, Edward Elgar, 2012, p 36, available at SSRN; D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmshurst (ed), International Law and the Classification of Conflicts, Oxford University Press, 2012, pp 44, 59, available at SSRN; S. Vité, 'Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations', 91 International Review of the Red Cross 873 (2009) 73.

⁹⁵ CNN, [Concern of outright war in Ethiopia grows as PM presses military offensive](#) (November 9, 2020)

⁹⁶ The Economist, [War in the Horn - Evidence mounts that Eritrean forces are in Ethiopia | Middle East & Africa](#) (January 2, 2021)

International Legal Framework Applicable to the Tigray Crisis

International Convention and treaties that Ethiopia ⁹⁷ and Eritrea ⁹⁸ are parties to	Treaties and Conventions that Ethiopia ⁹⁹ is a party to
<ul style="list-style-type: none"> ➤ The Four Geneva Conventions of 1949 ➤ Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction. ➤ Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Anti-Personnel Mines and on their Destruction. ➤ Convention for the Protection of Cultural Property in the Event of Armed Conflict ➤ African Charter on Human and Peoples' Rights ➤ African Charter on the Rights and Welfare of the Child ➤ Constitutive Act of the African Union ➤ Convention against Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment ➤ International Convention on Civil and Political Rights ➤ Convention on the Elimination of All Forms of Discrimination Against Women ➤ International Convention on the Elimination of All Forms of Racial Discrimination ➤ International Convention on Economic, Social and Cultural Rights ➤ Convention on the Rights of the Child 	<ul style="list-style-type: none"> ➤ The Three Additional Protocols to the Geneva Conventions of 1977 and 2005 ➤ Convention on the Prevention and Punishment of Genocide ➤ African Charter on Democracy, Election and Governance ➤ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ➤ OAU Convention on the Elimination of Mercenaries in Africa ➤ OAU Convention Governing the Specific Aspects of Refugees in Africa ➤ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa ➤ UN Convention Relating to the Status of Refugees and its Protocol.

62.0 In addition to treaty laws, most treaty international humanitarian norms have crystallised into customary rules. The ICRC has articulated these¹⁰⁰ into 161 Rules, covering all International Humanitarian Law (IHL) violations included in this report. For this report's purpose, it is worth emphasising that these rules equally apply regardless of the armed conflict classification at the time.¹⁰¹

⁹⁷ OHRHC, Ratification Status for Ethiopia, [Treaty bodies Treaties \(ohchr.org\)](https://www.ohchr.org/en/treaty-bodies-treaties); ICRC, IHL Treaties Status Determination for Ethiopia [Treaties, States parties, and Commentaries - Ethiopia \(icrc.org\)](https://www.icrc.org/en/treaties-states-parties-and-commentaries-ethiopia); OAU and AU, [OAU/AU Treaties, Conventions, Protocols & Charters | African Union](https://www.oau.int/en/treaties-conventions-protocols-and-charters)

⁹⁸ OHRHC, Ratification Status for Eritrea: [Treaty bodies Treaties \(ohchr.org\)](https://www.ohchr.org/en/treaty-bodies-treaties); ICRC, IHL Treaties Status of Ratification for Eritrea, [Treaties, States parties, and Commentaries - Eritrea \(icrc.org\)](https://www.icrc.org/en/treaties-states-parties-and-commentaries-eritrea)

⁹⁹ Ratification Status for the instruments are available at the following links: [37077-sl-PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA.pdf \(au.int\)](https://www.africanunion.org/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE'S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf); [36846-sl-AFRICAN UNION CONVENTION FOR THE PROTECTION AND ASSISTANCE OF INTERNALLY DISPLACED PERSONS IN AFRICA \(KAMPALA CONVENTION\).pdf \(au.int\)](https://www.africanunion.org/36846-sl-AFRICAN%20UNION%20CONVENTION%20FOR%20THE%20PROTECTION%20AND%20ASSISTANCE%20OF%20INTERNALLY%20DISPLACED%20PERSONS%20IN%20AFRICA%20(KAMPALA%20CONVENTION).pdf), [37287-sl-oau-convention for the elimination of mercenary in africa 1.pdf](https://www.africanunion.org/37287-sl-oau-convention-for-the-elimination-of-mercenary-in-africa-1.pdf), [37077-sl-PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA.pdf \(au.int\)](https://www.africanunion.org/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE'S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf)

¹⁰⁰ Jean-Marie Henckerts and Louise Doswald Beck, Customary International Humanitarian Law, Volume I: Rules, Cambridge University Press (ICRC, 2005)

¹⁰¹ See Emily Crawford, Unequal before the Law: The Case for the Elimination of the Distinction between International and Non-international Armed Conflicts, 20 Leiden Journal of International Law 441, 457 (2007).

Major Violations

Starvation as a weapon of war

- 63.0 The initial UN assessment of the humanitarian situation in Tigray reported that 2.3 million people needed humanitarian assistance¹⁰². UNOCHA describes the humanitarian crisis as:
“...dire, with prevailing insecurity and violence impacting the civilian population, forced displacement, and widespread looting of public infrastructure and private property. Safe and unimpeded humanitarian access to people in need remains an issue with few partners operational on the ground and very limited assistance provided.”¹⁰³
A more recent UNOCHA snapshot on Tigray reports that 4 million people in Tigray require food aid¹⁰⁴.
- 64.0 Tigray faces a looming famine ‘Catastrophe’ (IPC Phase 5) food insecurity.¹⁰⁵ In Tigray, people have died due to starvation.¹⁰⁶ There is no humanitarian access to approximately 80 % of Tigray.¹⁰⁷ Denial of humanitarian access and the associated hunger/starvation of the population is weaponised to weaken the Tigrayan population.¹⁰⁸ People in Tigray, particularly those living in areas outside the Ethiopian and Eritrean forces' control, are systematically denied access to critical, indispensable life-saving services.¹⁰⁹ At the start of the conflict, the Ethiopian government closed all the banks in Tigray. The National bank has subsequently suspended access to all bank accounts opened in the region. This closure of all banking services affects not only people in Tigray; it also impacts people living outside Tigray but with bank accounts in Tigray. The Ethiopian government offered no plausible formal explanation for this action.
- 65.0 The deliberate impediment of humanitarian access, including the barriers to food access that affect millions in Tigray, together with the widespread gender-based violence, may constitute acts of genocide. Deliberately blocking people from accessing food, clean water, and medicine endangers life conditions and is a considered crime against humanity under the Rome Statute.
- 66.0 International Humanitarian and Human Rights agencies and the UN report that despite the Ethiopian government affirmation to the contrary, there is no free humanitarian access to Tigray. The Ethiopian government has ignored calls from the international community to provide rapid, unconditional, unfettered, and sustained humanitarian access to all parts of Tigray.¹¹⁰ However, the arbitrary denial of Humanitarian access to Tigray continues. Despite signing the agreement with the Government, the UN and other assessment teams have been shot at, arrested, and denied access despite holding permits.¹¹¹ Sixteen (16) UN agencies and twenty-five (25) NGOs have applied for humanitarian access. However,

¹⁰² <https://www.reuters.com/article/uk-ethiopia-conflict-idUSKBN29D1XF>

¹⁰³ https://reliefweb.int/sites/reliefweb.int/files/resources/ocha_access_210120_snapshot_tigray02.pdf

¹⁰⁴ https://reliefweb.int/sites/reliefweb.int/files/resources/ocha_access_210120_snapshot_tigray02.pdf

¹⁰⁵ The IPC Acute Food Insecurity classification rates hunger levels from one to five and provide information to decision-makers by focusing on short-term objectives to prevent, mitigate, or decrease severe food insecurity. See <http://www.ipcinfo.org/ipcinfo-website/ipc-overview-and-classification-system/ipc-acute-food-insecurity-classification/en>.

¹⁰⁶ Desta, A. (2021, January 25). Tigray Region Interim Admin Official Admits Death of 13 Due to Lack of Food; says Crisis Scale “Unprecedented” In Region’s History. *Addis Standard*. Retrieved February 2021, from <https://addisstandard.com/news-tigray-region-interim-admin-official-admits-death-of-13-due-to-lack-of-food-says-crisis-scale-unprecedented-in-regions-history/>

¹⁰⁷ AFP. (February 10, 2021). Ethiopian Red Cross says 80 percent of Tigray cut off from aid. from <https://www.france24.com/en/live-news/20210210-ethiopian-red-cross-says-80-percent-of-tigray-cut-off-from-aid>

¹⁰⁸ D. Akande and E.-C. Gillard, Conflict-induced Food Insecurity and the War Crime of Starvation of Civilians as a method of Warfare: The Underlying Rules of International Humanitarian Law, *J. INT. CRIM. JUST.*, Vol. 17:4, September 2019, pp. 753-79 at p. 765.

¹⁰⁹ International Committee of the Red Cross. (2020, November 06). Ethiopia: ICRC calls for respect of people’s lives and property amidst escalating tensions in Tigray and other regions in the country. Retrieved February 2021, from <https://www.icrc.org/en/document/ethiopia-icrc-calls-respect-peoples-lives-and-property-amidst-escalating-tensions-tigray>

¹¹⁰ United Nations News. (2020, December 11). Ethiopia: UN refugee agency calls for ‘unfettered access’ to Tigray. Retrieved February 2021, from <https://news.un.org/en/story/2020/12/1079852>; European Union. (2021, January 15). We need humanitarian access to Tigray as the urgent first step towards peace in Ethiopia. Retrieved February 2021, from https://eeas.europa.eu/delegations/nicaragua/91459/node/91459_nn

¹¹¹ Houeild, K. (2020, December 08). Ethiopia says UN team shot at in Tigray after defying checkpoints. *Reuters*. Retrieved February 2021, from <https://www.reuters.com/article/ethiopia-conflict-idINKBN281M9>

so far, the Ethiopian government only allowed the movement of provisions stored in Mekelle's warehouses.¹¹² There are also newly emerging reports alleging the possibility of the diversion of humanitarian aid by Eritrean forces, Amhara regional state militia, and other forces.¹¹³ Combined with the blanket blackout of electricity, telephone, banking, and internet services in Tigray, people die of starvation and disease; lack of access to money and medicine endangers their lives and ability to survive.¹¹⁴ The restriction of information is in itself a crime of the state to hide other egregious crimes. Thus, the Ethiopian federal government has neither the capability nor the desire to ensure timely humanitarian aid in Tigray.

67.0 With the current state of non-cooperation from the Ethiopian government, it will be impossible for the International Community to avert a looming IPC Phase 5 catastrophic food insecurity and famine in Tigray.¹¹⁵ This situation is made worse by the new phases of a brutal scorched-earth military campaign, pillaging properties and assets, such as farm animals, farming tools, seeds, fertilisers and crops, indispensable for the rural populations' survival. If the war is protracted (which is highly likely), with the overwhelming agricultural communities dependent on seasonal rains, any delay in preparations such as access to seeds and fertilisers for the next harvest would mean indirect inducement of widespread famine in many parts of Tigray.

68.0 These hindrances are also contrary to customary International Humanitarian Law (IHL), which requires parties to the conflict to: *“allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.”*¹¹⁶ All parties to an armed conflict are under a legal obligation to facilitate unimpeded humanitarian access.¹¹⁷ Article 18(2) of Additional Protocol II to the Geneva Conventions¹¹⁸ applies to Tigray's war. It provides that:

*“If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.”*¹¹⁹

Refoulement, Forced Disappearance, Displacement

69.0 Since the 4th of November 2020, the war on Tigray waged caused a dire humanitarian crisis, including 2.3 million people in need of humanitarian assistance, the displacement of more than two (2) million people, including 67,000 refugees, the secondary displacement of thousands of Eritrean refugees, and. The United Nations High Commissioner for Refugees (UNHCR) and other human rights organisations have reported that 15,000-20,000 Eritrean refugees are missing.¹²⁰ With some approximately two (2)

¹¹² <https://www.eepa.be/wp-content/uploads/2020/11/Situation-Report-EEPA-Horn-No.-77-05-February-2021-1.pdf>

¹¹³ Egeland, J. (2021, February 01). Statement by Secretary General Jan Egeland: Aid still not reaching Tigray. *Norwegian Refugee Council*. Retrieved February 2021, from <https://www.nrc.no/news/2021/february/statement-on-tigray/>

¹¹⁴ Médecins Sans Frontières Ethiopia. (2021, January 11). Ethiopia: MSF provides medical assistance to some of the most affected people in Tigray. *Reliefweb*. Retrieved February 2021, from <https://reliefweb.int/report/ethiopia/ethiopia-msf-provides-medical-assistance-some-most-affected-people-tigray>

¹¹⁵ <https://fews.net/east-africa/ethiopia/key-message-update/january-2021>

¹¹⁶ ICRC Rule 55.

¹¹⁷ See also paras. 90-91, *supra*.

¹¹⁸ Treaties, State parties, and Commentaries – Additional Protocol(II) to the Geneva Convention, 1977; Article 18 Relief societies and relief actions

¹¹⁹ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, at Art. 18(2).

¹²⁰ Grandi, F. (2021, February 01). Remarks by the UN High Commissioner for Refugees Filippo Grandi at the press conference in Addis Ababa. *UNHCR*. Retrieved February 2020, from <https://www.unhcr.org/news/press/2021/2/6019584e4/remarks-un-high-commissioner-refugees-filippo-grand-i-press-conference-addis.html>

million internally displaced persons, Tigray now represents a significant humanitarian global burden at a time when "humanitarian needs have never been higher."¹²¹

- 70.0 Regarding the 98,000 Eritrean refugees, reports show that two refugee camps and close to 20,000 face starvation, missing, or have been displaced.¹²² These actions by Eritrea would constitute the gravest breaches of violation of *jus cogens*¹²³ norms in international law. Ethiopia has also failed to fulfil its duty under international law to protect refugees hosted within its jurisdiction.
- 71.0 There are approximately 67,000 refugees from Tigray in Sudan. The expectation is that the number of Tigrayan refugees in Sudan will increase to 200,000 irrespective of the Ethiopian and Eritrean military and Amhara efforts to prevent Tigrayan civilians from reaching Sudan's safety.
- 72.0 The Ethiopian government allows the Amhara militia and the Eritrean army [to annex and occupy disputed Tigrayan land](#).¹²⁴ These military actions from Amhara and Eritrea have led to forcible transfer and displacement of the population.¹²⁵ Like millions of residences in Tigray, IDPs face arbitrary killing, summary execution, and arbitrary detention in towns. The annexation of territories occupied during a war is not only a violation of the Geneva Conventions, but it will also displace populations from the border areas. These actions of displacement and forced issuance of ID taken by the Eritrean and Ethiopian forces and Amhara regional state may constitute a transfer of population refers to the internal displacement of people as IDPs.¹²⁶ Forcibly transfer the civilian population of occupied territory¹²⁷ and transfer parts of their civilian population into a territory they occupy are violations of International Humanitarian Law (IHL).¹²⁸ It has specific provisions related to displacement. As per Article 7 of the Rome Statute, arbitrary displacement constitutes a crime against humanity, 'forcible transfer of population' defined as "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."
- 73.0 Consequently, deportation and forcible transfer is a crime against humanity.¹²⁹ Similarly, Article 8 (2) (a) of the Rome Statute provides that displacement may constitute war crimes.¹³⁰ Article 8 (2) (a) (vii) stipulates that "unlawful deportation or transfer or unlawful confinement" are war crimes. Also, Article 8(2) (e) (viii) states that "ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand" is a war crime. The Rome Statute makes this abundantly clear that displacement could form a crime against humanity and a war crime in a different circumstance.
- 74.0 Ethiopia is State Party to the Kampala Convention, which requires State Parties to ensure that effective remedies are made available to IDPs.¹³¹ The duty to protect IDPs from starvation implies refraining from any act that could lead to famine and the provision of food, water, and other relief operations to

¹²¹ <https://news.un.org/en/story/2017/10/567532-interview-global-humanitarian-needs-have-never-been-higher-says-un-official>

¹²² Grandi, F. (2021, February 01). Remarks by the UN High Commissioner for Refugees Filippo Grandi at the press conference in Addis Ababa. *UNHCR*. Retrieved February 2020, from <https://www.unhcr.org/news/press/2021/2/6019584e4/remarks-un-high-commissioner-refugees-filippo-grandi-press-conference-addis.html>

¹²³ Some of these rules are *Jus Cogens* norms that are "rules of customary law which cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary rule of contrary effect."¹²³ *Jus Cogens* norms are to be fully observed all the time.¹²³

¹²⁴ <https://news.yahoo.com/inside-tigray-town-scarred-ethiopian-121307431.html>

¹²⁵ <https://www.nytimes.com/2021/02/26/world/middleeast/ethiopia-tigray-ethnic-cleansing.html>

¹²⁶ Mehari Taddelle Maru,

¹²⁷ ICRC 'List of Customary Rules of International Humanitarian Law' (n 763).

¹²⁸ *ibid.*

¹²⁹ Article 7 (1) (d) and Article 7(2) (d) of the Rome Statute of the International Criminal Court, document A/CONF.183/9, adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of the ICC, at Rome, adopted on 17 July 1998, entered into force on 1 July 2002.

¹³⁰ the Rome Statute of the International Criminal Court, document A/CONF.183/9, adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of the ICC, at Rome, adopted on 17 July 1998, entered into force on 1 July 2002.

¹³¹ Article 12 of the Kampala Convention.

avert any starvation.¹³² Thus, State Parties (SPs) are required to protect IDPs from hunger through appropriate provision of aid, ensuring aid workers' security, and safeguarding humanitarian assistance from attacks, diversions, or delays.¹³³ The Ethiopian government is responsible for IDPs' safety and well-being; consequently, it is responsible for ensuring that IDPs receive the assistance required to "live in satisfactory conditions of safety, dignity, and security."¹³⁴ The Ethiopian government is also for ensuring IDP accessibility to the market, jobs, land, and other social services such as education and health need. However, the living conditions of IDPs in Tigray is one of the worst in Africa.

- 75.0 In the same vein, Article 70 (2) of Protocol I of the Geneva Convention state that parties in conflict need to facilitate assistance destined to areas and populations controlled by them and adverse parties. State Parties also must refrain from impeding the provision of humanitarian aid. More importantly, for assistance to be effective, they must ensure the security of aid workers, aid materials, and resources deployed on behalf of the needy. According to the UN World Food Programme (WFP), State Parties that deny humanitarian access populations potentially violate adequate food and water rights. In certain circumstances, such states may also be guilty of war crimes, crimes against humanity, or even the crime of genocide.
- 76.0 The same laws apply to the starvation of the civilian population, including IDPs and Refugees, as a warfare method constitutes actual crimes against humanity or war crimes.¹³⁵ IDPs' starvation and indiscriminate attacks on civilians may constitute collective punishment that violates International Humanitarian Law (IHL).¹³⁶ The Geneva Convention Protocol II states similar obligations on SPs and parties to International Armed Conflict (IAC) and Non-International Armed Conflict (NIAC).¹³⁷; this also includes the destruction of objects indispensable to the IDPs' survival. Indeed, Principle 10 (2) (b) of the GPID specifies that starvation employed as a combat and war method forms crime against humanity and war crimes.¹³⁸ Any attack or acts of terrorism on civilians and their means of survival and livelihood, including relief workers, vital installations, humanitarian aid, and peacekeepers, constitutes a war crime.¹³⁹
- 77.0 The UN and other agencies' Tigray report reveals grave breaches of the Geneva Conventions and other international humanitarian law violations. International law has made abundantly clear that such actions constitute starvation of civilians violating rules prohibiting collective punishment.¹⁴⁰ In December 2019, the Assembly of States Parties to the International Criminal Court amended the Rome Statute of the Court to include civilians' starvation as a war crime in non-international armed conflicts. According to

¹³² See for example Article 9 (1) (e), Article 7 (5) (c) of the Kampala Convention.

¹³³ Article 9 (1) (e) of the Kampala Convention.

¹³⁴ Article 9 (2) (a) of the Kampala Convention.

¹³⁵ Article 7 (2) (b) of the Rome Statute states that "[e]xtermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population" is a form of crime against humanity. Article 8 (2) (b) (xxv) of the Rome Statute also states that War Crimes include "[i]ntentionally" using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions".

¹³⁶ Rule 53, ICRC 'List of Customary Rules of International Humanitarian Law' (n 763).

¹³⁷ Protocol Additional to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S 609, entered into force 7 December 1978.

¹³⁸ Principle 10 of GPID, United Nations Commission on Human Rights, 'Addendum: Guiding Principles on Internal Displacement, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39', (11 April 1998) UN Doc E/CN.4/1998/53/Add.2, available from <http://www.un-documents.net/gpid.htm> (accessed October 2009) (emphasis supplied); see also General Comment No 12, CESCR; Doc. E/C.12/1999/5, 12 May 1999, available from <http://www2.ohchr.org/english/bodies/cescr/> (accessed 12 November 2010).

¹³⁹ Article 8 (2) (b) (iii) of the Rome Statute states that "[i]ntentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict" is a form of War Crimes.

¹⁴⁰ Additional Protocol II, Article 4(2)(b). International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, 2005, Volume I: Rules [hereinafter "ICRC Rules"], at Rule 103. The Appeals Chamber of the Special Court for Sierra Leone addressed this war crime in the *Fofana and Kondewa case*: "The Appeals Chamber emphasises that a 'punishment' for the purposes of the crime of collective punishments is an indiscriminate punishment imposed collectively on persons for omissions or acts for which some or none of them may or may not have been responsible". SCSL-04-14-A, 28 May 2008, at para. 223.

May 2018, UNSC Resolution 2417 "using starvation of civilians as a method of warfare may constitute a war crime" and strongly urged "States to conduct, in an independent manner, full, prompt, impartial and effective investigations within their jurisdiction into violations of international humanitarian law related to the use of starvation of civilians as a method of warfare, including the unlawful denial of humanitarian assistance to the civilian population in armed conflict, and, where appropriate, to take action against those responsible as per domestic and international law, to reinforce preventive measures, ensure accountability and addressing the grievances of victims."¹⁴¹ Similarly, on the 18th of December 2019, the UN General Assembly adopted Resolution 74/149 on the right to food, noting in part that armed conflicts are among the factors causing or exacerbating famine and severe food insecurity, and stressing the obligation of all States and parties to an armed conflict to protect civilians in accordance with international humanitarian law.¹⁴²

Extrajudicial killings (civilians' killings in controlled areas)

- 78.0 Life is the most fundamental right of individuals. The right to life is protected by several treaties, in particular: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the Geneva Conventions (1949), the European Convention on Human Rights (1950), the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights (1981). The right to life has the status of customary international law¹⁴³. As such, states must promote and protect the right to life and prosecute any person who violates the right to life, regardless of their ratification of a specific treaty body that guarantees the right to life.
- 79.0 Extrajudicial executions referring to the killing by the state of individuals without prior judicial judgment violate the right to life. In the context of an armed conflict, extrajudicial executions constitute a war crime, and in specific contexts, it may amount to genocide and crime against humanity¹⁴⁴.

Debre Abbay and Bora Selwa on the 5th and 6th of January 2021

- 80.0 On the 5th and 6th of January 2021, more than 20 civilians were executed in the Debre Abbay massacre.¹⁴⁵ Debre Abbay is a 14th Century monastery of the Ethiopian Orthodox Church located at the edge of the Tekeze River's canyon in Tigray. And, on January 10 2021, 100 people were extrajudicially killed.¹⁴⁶in Bora Selwa.

Hawzen December. 2020

- 81.0 Hawzen is a municipality town in the eastern zone of Tigray Regional State. A deadly airstrike had hit Hawzen in 1988 by the former military government led by Mengistu Hailemariam that killed 2500 civilians. This same city suffered other atrocities by the end of December 2020, this time by Eritrean soldiers fighting along with the ENDF against Tigray's fugitive regional government. Zenebu, a Tigrayan US citizen and a health care worker, said: "*..Eritrean soldiers went house to house seeking out and killing Tigrayan men and boys, some as young as 7, and did not allow their burials*".

¹⁴¹ UNSC S/RES/2417(2018)

¹⁴² A/RES/74/149 (2019).

¹⁴³ Meron, Theodor, (1989), "Human rights and humanitarian norms as customary law", Oxford, pp.94-95; UN Comm'n H.R., Report on the Human Rights Situation in Iran by Special Representative Reynaldo Galindo Pohl, UN Doc. E/CN.4/1987/23 (January 28, 1987), paras. 4-5; Richard B. Lillich, 'Civil Rights', in: Theodor Meron (ed.), Human Rights in International Law: Legal and Policy Issues, 2nd repr., Oxford 1984, pp. 115-170; Wet, E.D. (2004), " the prohibition of torture as an international norm of jus cogens and its implications for national and customary law", European journal of international law, vol.15.no.1, pp.97-121

¹⁴⁴ <https://trialinternational.org/topics-post/extrajudicial-executions/#section-2>

¹⁴⁵ <https://www.telegraph.co.uk/news/2021/02/19/should-have-finished-survivors-ethiopian-army-implicated-brutal/>

¹⁴⁶ <https://www.tghat.com/2021/01/12/massacres-in-bora-selewa-and-debre-abay/>

82.0 In an interview with AP, Zenebu said that she stumbled over dead bodies, which the neighbours identified were 70 civilians from Hawzen. She told the AP, *“the ground was strewn with beer bottles, cigarettes, and other trash, and I could not tell the difference between human and animal bodies.”*¹⁴⁷

Mariam Dengelet the 30th of November 2020

83.0 Mariam Dengelet is a mountainous village in the municipality of Beledso in the district of Saes Tsaeda Emba, Adigrat, Edaga Hamus, Eastern Zone of Tigray.¹⁴⁸ The annual holiday of the Church (Saint Mary’s Day) takes place on the 30th of November 2020 (21 Hidar geez calendar). At this time, the people from Eastern Tigray go to the Church of St Mary on pilgrimage. On the morning of Saint Mary’s Day, the 30th of November, the Church celebrations were going on as usual when suddenly Eritrean soldiers came to the village, shooting whoever they found in their way. Then they surrounded the Church, and, in a short time, they killed 80 people, including priests, elders, women, and children. They also killed a merchant who had come to Mariam Dengelet seeking shelter and safety for himself and his family from the shelling and bombardment in Adigrat was killed together with his 21-year-old son and his sister.¹⁴⁹

Axum, the 19th of November 2020

84.0 Before the Axum massacre on the 28th and 29th of November, the ENDF and the Eritrean army bombed the city¹⁵⁰. Witnesses who spoke to Amnesty International reported that: “shells landed on streets and civilian buildings, killing and injuring residents”¹⁵¹. According to the witnesses, there was no armed resistance in the city, indicating that the shelling was intended to terrorise the people.

Axum, the 28th of November 2020

85.0 Axum is one of the four world ancient civilisations and an entry point for the spread of Christianity and Islam in Ethiopia. The biblical Ark of Covenant, a sacred golden chest first mentioned in the book of Exodus that carried the ten commandments, parts of the holy scriptures, Aaron’s rod, and a pot of manna, is believed to be housed in a Chappell inside the Maryam Tsion compound, in which only a monk, appointed as Guardian, may see it.

86.0 On the 19th of November 2020, after shelling the city of Axum and killing many residents¹⁵², Ethiopian and Eritrean soldiers arrived in the town and stayed for almost a week. They killed civilians, looted government offices, and destroyed a famous private hotel called Brana International Hotel¹⁵³. However, the deadliest atrocities occurred on the 28th and the 29th of November 2020, when Eritrean soldiers returned to Axum with trucks and tanks to first attack a small group of local militias fighting Eritreans in the Mai Koho mountain connected to the city.

87.0 Unarmed young men in Axum went out to the street and reportedly stood up in support of the Tigray militia. The Eritrean soldiers responded with brutal force, moving from house to house, killing the civilians they found in the streets and the Church. The Eritrean soldiers did not stop terrorising the people even after the atrocities; they shot at the people who sought to remove bodies from the street¹⁵⁴.

¹⁴⁷ Cara Anaa. Associated Press. (2021, January 26). Witnesses: Eritrean soldiers loot, kill in Ethiopia Tigray. From <https://abcnews.go.com/International/wireStory/witnesses-eritrean-soldiers-loot-kill-ethiopias-tigray-75464873>

¹⁴⁸ <https://www.cnn.com/2021/02/26/africa/ethiopia-tigray-dengelat-massacre-intl/index.html>

¹⁴⁹ Anonymous written testimony submitted.

¹⁵⁰ AI news briefing, Supra note 130.

¹⁵¹ Ibid

¹⁵² Getu Mak, “personal account of the massacre of Aksum”. An account of the testimony by Getu Mak is available https://www.tghat.com/2021/02/13/what-happened-in-aksum-my-personal-account/?fbclid=IwAR1q-zz_C9mK-PONBb_vHSa7_gI3kK-OxDWVJIXrsxs2UevTaIZMoqOJG9E. Witnesses who spoke to Amnesty international also confirm the shelling of city of Axum by the joint Ethiopian and Eritrean armies. The report of AI can be accessed from <https://www.amnesty.org/download/Documents/AFR2537302021ENGLISH.PDF>

¹⁵³ Getu Mak

¹⁵⁴ Ibid

- 88.0 Amnesty International reports that the massacre in Axum is one of the deadliest atrocities documented so far in Tigray's conflict¹⁵⁵. In the detailed report, Amnesty International concluded that the Eritrean military's killing in Axum was coordinated and systematic and intended to terrorise the population into submission. The people who spoke to Amnesty International provided the names of more than 200 people killed in Aksum; other witnesses reported the burial of 450 people in the church of Mariam Tsiyon¹⁵⁶. A deacon who spoke to the associated press (AP) said that "he believed that 800 people were killed at the church and around the city and that thousands in Axum have died in all"¹⁵⁷.
- 89.0 The mass detentions and the threat to resume wanton killings in the event of any resistance is evidence of the Eritrean military's intention to terrorise the population. The deadly indiscriminate shelling of Axum and the massacre that followed, the extrajudicial executions in other parts of Tigray and the widespread looting of the property may amount to war crimes as well as crimes against humanity"¹⁵⁸.

Mai-Kadra, the 9th of November 2020

- 90.0 Home to up to 45000 people, Mai-Kadra is a small town in Tigray's regional government's Western zonal administration, near the Sudanese border. On the 9th of November 2020, the ENDF, supported by the Amhara militia, took control of the town. On the following day, State TV reported the massacre of up to 600 civilians in Mai-Khadra, claiming that the deceased were ethnic Amhara and that forces loyal to the Tigray government carried out the killings.
- 91.0 PM Abiy said that the fighters backing the TPLF went on the rampage after federal troops had "liberated" the western part of Tigray, "brutally" killing innocent civilians in Mai-Kadra. Three days later, Amnesty International said it had confirmed that "score, and likely hundreds, of people, were stabbed or hacked to death in Mai-Kadra on the 9th of November 2020"¹⁵⁹. At the start of the conflict, Amnesty International could not confirm who was responsible for the Mai Kadra massacre. Still, it reported that witnesses stated that forces loyal to the Tigray People's liberation front (TPLF) were responsible for the mass killings¹⁶⁰. On the other hand, many survivors sheltered in Sudan have reported to journalists and human rights organisations that they saw Amhara militia and Fano, an Amhara armed youth group, indiscriminately killing Tigrayan ethnic in Mai-Kadra and its vicinities¹⁶¹. Amid the divergent accounts, TPLF leader Debretsion Gebremichael has dismissed the accusations of his force's involvement as "baseless" and insisted on an investigation by an international body. The UN High Commissioner Michelle Bachelet said, "if confirmed as having been deliberately carried out by a party to the current fighting, these killings of civilians would of course amount to war crimes, and these must be an independent investigation and full accountability for what has happened."¹⁶²

Execution of former officials and party leaders

- 92.0 On the 14th of January 2021, the Ethiopian defence spokesperson confirmed that former Minister of Foreign Affairs Seyoum Mesfin, and another two top TPLF officials, namely Abay Tsehaye and Asmelash Woldesslassie, were killed after they resisted to surrender. The spokesperson said they

¹⁵⁵ "The massacre in Axum" Amnesty International news briefing, (25 Feb.2021). From

<https://www.amnesty.org/download/Documents/AFR2537302021ENGLISH.PDF>

¹⁵⁶ <https://apnews.com/article/witnesses-recall-massacre-axum-ethiopia-fa1b531fea069aed6768409bd1d20bfa>

¹⁵⁷ <https://apnews.com/article/witnesses-recall-massacre-axum-ethiopia-fa1b531fea069aed6768409bd1d20bfa>

¹⁵⁸ Ibid

¹⁵⁹ <https://www.amnesty.org/en/latest/news/2020/11/ethiopia-investigation-reveals-evidence-that-scores-of-civilians-were-killed-in-massacre-in-tigray-state/>

¹⁶⁰ Ibid

¹⁶¹ See https://www.npr.org/2020/12/28/950886248/hundreds-of-civilians-killed-with-machetes-and-axes-in-ethiopiantown?utm_campaign=storyshare&utm_source=twitter.com&utm_medium=social&t=1609380917255&t=1612224904092; <https://www.middleeasteye.net/news/ethiopia-tigray-unrest-refugees-sudan-escape>; https://www.youtube.com/watch?v=hfuGqI5_Yo; <https://www.mprnews.org/story/2020/12/13/npr-i-have-lost-everything-ethiopian-refugees-flee-for-their-lives>

¹⁶² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26501&LangID=E>

were killed during a joint operation but did not specify when that happened. Mr Abay Tsehaye had recently undergone cardiac surgery. Mr Asmelash Woldesslassie was blind and had lost his left hand during the 1998 Eritrean airstrike in Mekelle in a place called Ayder, making it hard to grasp that these former officials resisted surrender to the army.

Murder of a journalist

93.0 In the evening of the 19th of January 2021, Dawit, a journalist with the state-owned broadcaster Tigray TV, and his friend and a lawyer, Bereket Berhe, were shot dead by a gunman while they were driving near Dawit's home, in front of the office of the UNICEF, in Mekelle, the capital of the Tigray state¹⁶³. On the following day, Mr Amanuel, owner of Geez Stream media and core member of the Tigray interim government, claimed responsibility stating, in his Facebook page, that the Ethiopian army has acted against Dawit and his friend because they were distributing TPLF papers to the youth.

Indiscriminate attacks on civilians and civilian objects

94.0 In Tigray, there is indiscriminate shelling and targeting of civilians and civilian infrastructure. On the 11th of February 2021, the Horn of Africa Human Rights Watch director reported that “at the war’s start, Ethiopian federal forces fired artillery into Tigray’s urban areas in an apparently indiscriminate manner that was bound to cause civilians casualties and property damage”¹⁶⁴. Below are examples of the indiscriminate attacks on civilians and civilian objects corroborated with testimonies who spoke to rights organisations and journalists.

Mekelle, the 16th and the 28th of November 2020

95.0 Mekelle is the capital of the regional state of Tigray and home to up to 500,000 people. On the morning of the 16th of November 2020, the Ethiopian government bombed a school and St George’s Church in the capital city of Tigray, Mekelle, killing two people and wounding many. On the 22nd of November 2020, an army spokesperson threatened the residents to save themselves, saying “no mercy this time”, in which former American Ambassador Susan Rice immediately reacted, characterising the statement of the army spokesperson as a war crime¹⁶⁵. A week later, on the 28th of November 2020, the ENDF captured Mekelle and claimed no civilian casualties. However, Dr Fasika Amdesellaise, the interim health bureau head, spoke to the VOA about the bombardment of Mekelle with heavy artillery on the day the ENDF captured it. The doctor said, “I witnessed 40 wounded and 22 dead people on arrival.” “He explained that the victims were people of all ages, including children and the elderly. He also remembered that three days after the ENDF took control of the city, the electricity was cut.”¹⁶⁶

Humera, the 8th of November 2020

96.0 On the 9th of December 2020, the UN High Commissioner for Human Rights, Michelle Bachellet, reported that the UN had received indiscriminate aerial and artillery attacks of civilians and civilian infrastructure in Humera Shire, Aksum, Abi Adi, and Mekelle. The Tigray Region suffers from the deliberate and indiscriminate airstrikes and shelling of vital infrastructures such as the Tekeze hydropower dam and the Welkait Sugar Factory and facilities in major cities in Tigray.

¹⁶³ <https://www.reuters.com/article/uk-ethiopia-conflict-journalist-idUSKBN29Q21I>

¹⁶⁴ “Ethiopia: Unlawful shelling of Tigray urban areas”. From <https://www.hrw.org/news/2021/02/11/ethiopia-unlawful-shelling-tigray-urban>
[areas#:~:text=\(Nairobi\)%20%E2%80%93%20Ethiopian%20federal%20forces,Human%20Rights%20Watch%20said%20today.&text=As%20of%20February%202021%2C%20many,fuel%2C%20water%2C%20and%20medicines.](https://www.hrw.org/news/2021/02/11/ethiopia-unlawful-shelling-tigray-urban)

¹⁶⁵ <https://apnews.com/article/africa-ethiopia-international-law-kenya-95ab65c5942bff98e68826f93d74920f>

¹⁶⁶ <https://meketetigray.uk/2020/12/25/tigray-region-interim-health-bureau-head-admits-civilian-deaths-in-battle-to-capture-mekelle-looting-of-hospitals-and-university/>

97.0 Tigrayan refugees from Humera, a town in Western Tigray close to the border with Sudan, reported that they were attacked by Eritrea's heavy artillery. On the 4th of December 2020, during an interview with the BBC, Dr Tewedros Tefera, who worked at the main hospital in Humera, reported that in Humera, 15 people died, and 75 people were wounded as the result of the shelling which came from both the Ethiopian army from the East and the Eritrean forces from the North¹⁶⁷.

Widespread Gender-based-violence (GBV)

98.0 Humanitarian law and human rights law prohibit all forms of sexual violence at all times and against anyone. Further, international criminal law provides for the individual criminal responsibility of sexual crimes' perpetrators.¹⁶⁸ Sadly, sexual violence is prevalent, particularly during armed conflict.¹⁶⁹ Sexual violence, including rape, is often used as a "deliberate strategy of warfare that aims at destabilising the enemy forces by humiliating men, women, and children."¹⁷⁰ Therefore, as a military strategy, sexual violence is accompanied by killings, looting, and property destruction.¹⁷¹ Yet, sexual violence is not an unavoidable consequence of armed conflict. Like any other violations, gender-based violence can be prevented through national, international legal and policy frameworks.

99.0 There is evidence of rape from Humera, Adigrat, Wukro, and Mekelle cities. A 25-year-old woman sheltered at the Hamdayet refugee camp in Sudan told Reuters that rape has been endemic in Humera and its vicinities by the Ethiopian soldiers and Amhara Fano. She said a soldier told her: "Choose - I kill you or rape you"¹⁷². A women's activist based in Mekelle who made it to Kenya in early January 2021 has testified that there is a widespread rape in Mekelle and other towns in Tigray by the invading forces¹⁷³.

100.0 In a video circulated on social media, unidentified women from Mekelle said that she had been beaten and raped by a group of three Ethiopian soldiers. An eyewitness also informed the HOACS FORUM that Eritrean soldiers raped four women from Adigrat. According to the same witness, the victim of rape could not receive the medical assistance that they need, as a movement was dangerous, and that the hospital was not operational.

101.0 On the 15th of February 2021, an 18-year-old girl recounted how an Ethiopian soldier shot her grandfather after refusing the soldier's order to rape his granddaughter and how she lost her hand resisting rape.¹⁷⁴ She has been in hospital for two months.

102.0 First-hand accounts of the rape story of a mother of two published on the 11th of February 2021 also indicated the use of rape as a weapon of war. The fifteen (15) Eritrean soldiers who gang-raped the twenty-seven (27)-year-old woman kept her prisoner in a small room, separated from her two children and her sister, for two weeks.¹⁷⁵ Mehrawit told the journalists that when she and her sister arrived at

¹⁶⁷ <https://www.bbc.com/news/world-africa-55236354>

¹⁶⁸ <https://www.icrc.org/en/what-we-do/sexual-violence>

¹⁶⁹ The two ad hoc International Criminal Tribunals for the former Yugoslavia and for Rwanda (ICTY and ICTR) allowed the international community to acknowledge that sexual violence including rape should be punished, and that individuals shall bear criminal responsibility for their commission. In the Kunarac case, the ICTY found that rape can also constitute a crime against humanity in certain circumstances. In the Akayesu case, the ICTR found that rape and sexual violence can "constitute genocide in the same way as any other act as long as they [are] committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such"

¹⁷⁰ See, among many others, Dara Kay Cohen, Amelia Hoover Green and Elisabeth Jean Wood, "Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward", Special Report of the United States Institute of Peace, No. 323, February 2013, p. 6, available at: www.usip.org/sites/default/files/wartime%20sexual%20violence.pdf; Patrick Chiroro, Gerd Bohner, G. Tendayi Viki and Christopher Jarvis, "Rape Myth Acceptance and Rape Proclivity: Expected Dominance Versus Expected Arousal in Acquaintance-Rape Situations", *Journal of Interpersonal Violence*, Vol. 19, No. 4, 2004, pp. 427–442.

¹⁷¹ <https://www.icrc.org/en/what-we-do/sexual-violence>

¹⁷² https://www.reuters.com/article/us-ethiopia-conflict-rape-idUSKBN29R2HV?fbclid=IwAR3OXVql87AS82L4rQIGONPrgoM-xwa3ULnGKK6vxcVuBdlQyeGe96_dgbI

¹⁷³ <https://www.youtube.com/watch?v=A2mc0wVwPbU>.

¹⁷⁴ BBC. (2021, February 16). Ethiopia's Tigray Crisis: "I lost my hand when a soldier tried to rape me." from <https://www.bbc.com/news/world-africa-55832711>

¹⁷⁵ Lucy Kassa & Shashank Bengali. (2021, February 11). A rape survivor's story emerges from a remote African war. from <https://www.latimes.com/world-nation/story/2021-02-11/troops-accused-of-mass-rape-in-ethiopia-tigray-conflict>

the Eritreans' makeshift camp, they saw eight (8) other Tigrayan women prisoners. That day, five soldiers took turns raping her. Another day, they brought her sister to her room and made Mehrawit watch as they raped her sister.¹⁷⁶

- 103.0 On the 21st of January 2021, the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, Ms Pramila Patten, stated growing concerns and increasing incidents of mass rape in Tigray. According to Ms Patten, there are grave allegations of rape in Tigray, especially in Mekelle. The UN has heard that military elements force women to trade sex for essential commodities (food, water, toiletries). And that there is an increased demand for contraceptives. In addition to forcing women into prostitution, Ms Patten reported serious allegations that men are forced to rape family members under threat of violence. Ms Patten also said that the UN is receiving numerous reports of increased gender-based violence in the Eritrean refugee camps. Approximately 5000 Eritrean refugees have made their way to Shire and are sleeping rough to avoid abuse¹⁷⁷. Even the Ethiopian Government-sponsored Ethiopian Human Rights Commission has reported the sexual violence based on a severely limited investigation.¹⁷⁸ In rare government acknowledgement, the Ethiopian government minister for women has also admitted Tigray's sexual and gender violence.¹⁷⁹
- 104.0 A priest who made it out from Adigrat to Mekelle recently speaks a horrifying account of the sexual violence committed in Adigrat¹⁸⁰. "It's not just the rape – it's the way it is done. I know of a father who was tied up to a chair with a rope between his lips, forced to watch as five Eritrean soldiers took turns to rape his 12-year-old daughter. They are even forcing fathers, brothers, and uncles to rape their children and relatives and killing them for refusing – what Tigrayan will rape his family member?! They rape pregnant women. We are also hearing accounts of Eritrean forces killing women and raping their corpses after. It's difficult to find one-time rape victims, even those who have been raped again. I know these are unconscionable and horrifying to the human mind; I am telling you as a priest – but this is what they are doing. To them, this is the law."

Illegal Detention and Ethnic-based discrimination

- 105.0 Outside Tigray detaining Tigrayans for no reason other than their ethnic identity is rampant, widespread, and has reached the hallmark of what the Nazis did to the Jews some seventy-eight (78) years ago in Germany. In Addis Ababa, Ethiopia alone, some sixty thousand Tigrayans are so far methodically targeted solely based on who they are. Based on numerous credible reports, the ordeal begins typically with machine-gun-wielding police forcing themselves into a Tigrayan's house early in the morning, when most occupants are still in bed¹⁸¹ to search the house without any search warrant follows. They ransack the house, slash mattresses and sofas, empty drawers and kitchen cabinets, pouring all of their contents onto the floor¹⁸². In the end, regardless of whether the search has unearthed anything remotely incriminating, members of the household, already perturbed and traumatized by the sudden invasion of their dwelling by alien forces, are hauled away to an unknown place for indefinite detention, with the possibility of being killed extrajudicially always hovering over their heads.
- 106.0 A New York Times article of the 12th of December 2020 chronicles few incidents that give a taste of the nature of the trial and tribulation that Tigrayans are going through in Ethiopia at the moment. According to the news article, about a dozen security men totting machine guns barged into

¹⁷⁶ Ibid

¹⁷⁷ <https://www.un.org/sexualviolenceinconflict/press-release/united-nations-special-representative-of-the-secretary-general-on-sexual-violence-in-conflict-ms-pramila-patten-urges-all-parties-to-prohibit-the-use-of-sexual-violence-and-cease-hostilities-in-the/>

¹⁷⁸ <https://addisstandard.com/news-ethiopian-rights-commissions-latest-report-on-tigray-sheds-light-on-sexual-violence-child-causalities/>

¹⁷⁹ <https://apnews.com/article/kenya-ethiopia-sexual-assault-crime-0b3c5d965f2b14e5ce247f5744c6a325>

¹⁸⁰ <https://eritreahub.org/the-horrors-of-the-tigray-war-eyewitness-accounts?fbclid=IwAR1AvoeOu-hOjzW-zns7mHabFdOBIX9dHUFOMsudCUBHcaTC9It41L2nreU>

¹⁸¹ <https://www.nytimes.com/2020/12/12/world/africa/Ethiopia-Tigray-ethnic.html>

¹⁸² <https://www.nytimes.com/2020/12/12/world/africa/Ethiopia-Tigray-ethnic.html>

Lisanework Desta's house¹⁸³. Soon they turned his home topsy-turvy, vainly looking for incriminating evidence. According to a phone video recorded and Mr Lisanework's daughter's pictures, they even looked inside a clay coffee pot for God knows what¹⁸⁴. Luckily, Mr Lisanework was not taken away. Still, another half Tigrayan, identified in the news article as Mr Sharon—a 35-year-old manager of an accounting firm—said that his house in Addis Ababa was also raided in a similar rough way by heavily armed policemen who tore open his mattress and couch and smashed his washing machine. Mr Sharon, a few days later, after helping his sister, who likewise suffered through the ordeal of such a raid, went missing, and his whereabouts remains unknown.¹⁸⁵

107.0 Such stories across cities and towns of Ethiopia are abounding. Everywhere Tigrayans are being looked at as criminals worthy of discrimination, detention, search, seizure, and killing. What makes the danger extremely grave is that the perpetrator committing these heartless, cruel acts with cold calculation is the government itself. When the government, having lost all control, legal and moral, is killing its people.

108.0 Ethnic profiling of Tigrayans has extended to removing their posts and the arrest of Tigrayan officers serving in the military and police forces¹⁸⁶. Tigrayan peacekeepers serving in South Sudan and Somalia have also become the target of ethnic profiling. According to a Foreign Policy article of the 23rd of November 2020, the Ethiopian government forced Tigrayans peacekeepers to return to Addis Ababa, Ethiopia, where "... it is feared they may face torture or even execution..."¹⁸⁷ According to the article, a diplomatic source revealed that the Ethiopian government had recalled as many as forty (40) Tigrayan officers and soldiers from the Somalia peacekeeping mission responsible, among other things, for fighting Al-Shabaab militants.¹⁸⁸

109.0 As part of the government's scorched earth campaign of weeding out Tigrayans, a senior Tigrayan military attaché who was in charge of Ethiopia's mission at the UN was also removed from his job, less than three months after he assumed his post. He was not the only Tigrayan diplomat dismissed from his position. The Ethiopian government has fired Tigrayan diplomats from different foreign embassies, and international organizations followed. In the Amhara region, according to *Reuters*, a local police chief came to the United Nations World Food Program and demanded a list of Tigrayan who work there. According to the police chief, they had a mandate to "...identify ethnic Tigrayans from all government agencies and NGO's"¹⁸⁹.

110.0 We estimate that the Ethiopian government has dismissed approximately two hundred (200) Tigrayans from Ethiopian Airlines, a Star Alliance member and the largest airline in Africa. According to the *Guardian*,¹⁹⁰ pilots, caterers, technicians security guards were asked for their airline badges and were told not to return to work. A Tigrayan employee, who did not give his real name to the *Guardian* for fear of reprisal, recounts that security officials treated him like a "foreign enemy." They took over his workplace and told him not to come back¹⁹¹.

111.0 The collective dismissal of Tigrayans from Ethiopian Airlines is not an isolated incident; it is part of a larger, systemic pattern of harassment, detention, and discrimination targeting Tigrayans. Ethio Telecom and other federal government security agencies have also fired Tigrayans because of their ethnicity. Such discrimination and dismissal from one's work begun immediately after PM Abiy Ahmed assumed the premiership in April 2018. Following the declaration of war, the mania of dislocating

¹⁸³ <https://www.nytimes.com/2020/12/12/world/africa/Ethiopia-Tigray-ethnic.html>

¹⁸⁴ <https://www.nytimes.com/2020/12/12/world/africa/Ethiopia-Tigray-ethnic.html>

¹⁸⁵ <https://www.nytimes.com/2020/12/12/world/africa/Ethiopia-Tigray-ethnic.html>

¹⁸⁶ https://www.africa-confidential.com/article/id/13154/Citadel_falls_but_the_war_goes_on

¹⁸⁷ <https://foreignpolicy.com/2020/11/23/un-ethiopia-purging-tigrayan-officers-peacekeeping-missions/>

¹⁸⁸ <https://foreignpolicy.com/2020/11/23/un-ethiopia-purging-tigrayan-officers-peacekeeping-missions/>

¹⁸⁹ https://www.africa-confidential.com/article/id/13154/Citadel_falls_but_the_war_goes_on

¹⁹⁰ <https://www.telegraph.co.uk/news/2020/12/04/ethiopia-airlines-accused-ethnic-profiling-civil-war-tigray/#:~:text=Ethiopia%20Airlines%20accused%20of%20ethnic%20profiling%20over%20civil%20war%20with%20Tigray,-Sources%20say%20pilots&text=Staff%20at%20Africa's%20largest%20airline,employees%20have%20told%20the%20Telegraph.>

¹⁹¹ <https://www.telegraph.co.uk/news/2020/12/04/ethiopia-airlines-accused-ethnic-profiling-civil-war-tigray/#:~:text=Ethiopia%20Airlines%20accused%20of%20ethnic%20profiling%20over%20civil%20war%20with%20Tigray,-Sources%20say%20pilots&text=Staff%20at%20Africa's%20largest%20airline,employees%20have%20told%20the%20Telegraph.>

¹⁹¹ <https://www.telegraph.co.uk/news/2020/12/04/ethiopia-airlines-accused-ethnic-profiling-civil-war-tigray/#:~:text=Ethiopia%20Airlines%20accused%20of%20ethnic%20profiling%20over%20civil%20war%20with%20Tigray,-Sources%20say%20pilots&text=Staff%20at%20Africa's%20largest%20airline,employees%20have%20told%20the%20Telegraph.>

¹⁹¹ <https://www.telegraph.co.uk/news/2020/12/04/ethiopia-airlines-accused-ethnic-profiling-civil-war-tigray/#:~:text=Ethiopia%20Airlines%20accused%20of%20ethnic%20profiling%20over%20civil%20war%20with%20Tigray,-Sources%20say%20pilots&text=Staff%20at%20Africa's%20largest%20airline,employees%20have%20told%20the%20Telegraph.>

Tigrayans from their jobs reached a crescendo. After expelling Tigrayans ruthlessly from any federal posts and institutions, Abiy Ahmed went after Tigrayans in regional and international organizations; and later on, private companies and businesses followed the government's example and begun to expel or suspend ethnic Tigrayans from their work, plunging Tigrayans and their family into a deeper financial quagmire.

- 112.0 As part of terrorizing and economically strangulating Tigrayans, the National Bank of Ethiopia issued a decree to freeze Tigrayan bank accounts. The accounts of people across Ethiopia who opened their bank account in Tigray were frozen. Therefore, they cannot withdraw or transfer money. While the decree intended to squeeze and shackle Tigrayans economically, many former non-Tigrayan students and other Ethiopians who, for different reasons, opened their bank account in Tigray have suffered collateral damage. Within Tigray, the closure of the entire banking system happened on the 4th of November 2021.¹⁹²
- 113.0 Young and old Tigrayans have been prevented from boarding international flights out of Ethiopia purely based on their ethnicity; and suffered the embarrassment and shame that goes with being extracted from a line as if you are a terrorist or a dangerous criminal.¹⁹³
- 114.0 A story featured in *The Telegraph* narrated the drama of a Tigrayan passenger who was asked, by the airport security, for his kebele identification card. The card, among other biographic information, contains the ethnic identity of the cardholder. When they saw that he is ethnic Tigrayan, security prevented him from boarding the flight. His friends, who hail from a different ethnic group, were allowed to board the flight without any problems.¹⁹⁴
- 115.0 The travel restrictions imposed on Tigrayans are not an isolated case; it is a formal government policy duly enforced by the state's intelligence and security forces. Hundreds of Tigrayans fall victim to this racist policy that the government is implementing zealously. The travel restriction applies to Tigrayans that are permanent residents of the US and European countries. An example of this is Ms Semhal Meles, the eldest daughter of former Prime Minister Meles Zenawi; despite holding a valid passport, visa and ticket, Ms Semhal Melles was prevented from travelling internationally. At the time of the incident, Ms Meles, I remarked, "...[m]y dual crime, it seems, is being born into a political family with a Tigrayan identity."¹⁹⁵

Violation of self-determination rights (Imposition of Interim administration, de-facto annexation of territory, the act of aggression by Eritrea)

- 116.0 The war in Tigray has multiple dimensions, one of which is land grabbing. After the Ethiopian and Eritrean forces occupied Western and Southern Tigray, the Amhara expansionist clique, who have always claimed ownership of a large swath of land in the Southern and Western part of Tigray—in a winner takes all mentality—immediately got busy uprooting the previous administrative structure¹⁹⁶.
- 117.0 The Amhara administration has installed huge billboards loudly proclaiming territories in the Western Tigray as Amhara territories. In such areas, people are forced to receive identification cards that attribute to them a different ethnic identity than the true one¹⁹⁷. The Amhara have annexed towns such as *Alamata* and *Humera*; these towns are part of Tigray's regional state. In fact, in September 2020, there was a state-wide election, and TPLF, having won more than 90% of the votes, was given the

¹⁹² <https://www.tghat.com/2020/11/20/ethiopia-deactivates-all-bank-accounts-opened-in-tigray/>

¹⁹³ <https://www.telegraph.co.uk/news/2020/12/04/ethiopia-airlines-accused-ethnic-profiling-civil-war-tigray/#:~:text=Ethiopia%20Airlines%20accused%20of%20ethnic%20profiling%20over%20civil%20war%20with%20Tigray,-Sources%20say%20pilots&text=Staff%20at%20Africa's%20largest%20airline,employees%20have%20told%20the%20Telegraph.>

¹⁹⁴ <https://www.telegraph.co.uk/news/2020/12/04/ethiopia-airlines-accused-ethnic-profiling-civil-war-tigray/#:~:text=Ethiopia%20Airlines%20accused%20of%20ethnic%20profiling%20over%20civil%20war%20with%20Tigray,-Sources%20say%20pilots&text=Staff%20at%20Africa's%20largest%20airline,employees%20have%20told%20the%20Telegraph.>

¹⁹⁵ <https://www.ft.com/content/ddfbac87-540b-4fb7-a813-29d7b3c8812f>

¹⁹⁶ <https://www.tghat.com/2020/12/02/the-war-on-tigray-massacres-of-tigrayans-in-western-tigray-that-isunder-amhara-occupation/>

¹⁹⁷ <https://www.tghat.com/2020/12/02/the-war-on-tigray-massacres-of-tigrayans-in-western-tigray-that-isunder-amhara-occupation/>

mandate to administer them. At the heart of the Ethiopian Constitution lies a state's inviolable right to handle its affairs and self-administer itself. For the Amhara to uproot the previously elected administrators and hoist their administration on the people is a clear and gross violation of the people's right to self-administer themselves.

- 118.0 Similarly, in the North and North-western Tigray, the Eritrean troops are annexing Tigray. In Tigray towns, especially around *Sheraro*, the marauding Eritrean army has hoisted the Eritrean flag in a show of their desire to administer them. North of *Adigrat*, the Eritrean military has begun dispensing identification cards to the residents, imposing an alien ethnic identity on the people.¹⁹⁸
- 119.0 The conflict also affected Eritrean refugees hosted in Tigray. According to the UNHCR, Eritrean refugee camps hosting around 100,000, and some refugees fled to Sudan seeking asylum¹⁹⁹. The UN also reported the killings and abduction of many refugees back to Eritrea. The Eritrean refugee says that the attack came from Eritrean forces²⁰⁰. The Eritrean military has attacked Eritrean refugees living as refugees in Ethiopia. Hence, PM Abiy administration is in contravention of the fundamental commitments Ethiopia assumed under international law.

Looting, pillage, destruction, and confiscation of property /Including EFFORT, TPLF property)

- 120.0 Ever since the Ethiopian National Defence Force (ENDF), along with the Amhara State Militia and the Eritrean²⁰¹ army, waged war on Tigray, there have been credible and consistent reports of looting of anything of value; wanton destruction of private and public property; and confiscation of Tigray's public endowments, including Endowment Fund for the Rehabilitation of Tigray ("EFFORT") and assets that belonged to the TPLF, the ruling political party in Tigray, without due process.
- 121.0 Indiscriminate bombing of heavily populated cities, towns, civilian targets, public infrastructures, including hospitals, factories, learning institutions, airports, interstate highways and bridges, and private residential homes, was reported.²⁰² Among the widely recognizable public properties looted and destroyed were: Mekelle University and Hospital (Ayder Campus),²⁰³ Mesfin Industrial Engineering PLC, and Dedebit Microfinance. Major cities, such as Mekelle, Aksum, Adigrat, Shire, Mekhoni, Tembien Abiy-Adi, Hagere-Selam, Zalambesa, Awdwa, and other small towns were shelled and bombed.²⁰⁴ The Eritrean soldiers in Tigray are pillaging, looting,²⁰⁵ destroying infrastructures,²⁰⁶ burning farms.²⁰⁷ The war on Tigray started soon after the harvest; the Ethiopian and-Eritrean soldiers have torched field, and any crop that survived the worst locust infestation in a generation.²⁰⁸
- 122.0 International Humanitarian Law (IHL) prohibits "...the destruction or seizure of enemy property unless imperatively demanded by the necessities of war".²⁰⁹ Article 23(g) of the 1907 Hague Regulations and Article 33 of the Geneva Convention (IV) Relative on the Protection of Civilians in Time of War prohibits pillage and reprisals against protected persons' property.
- 123.0 Article 51 and 53 of the Geneva Convention (IV)concerning Occupied Territory Protection of Civilians in Time of War prohibit the conscription or forced labour of civilians and the destruction of private

¹⁹⁸ <https://www.tghat.com/2020/12/02/the-war-on-tigray-massacres-of-tigravans-in-western-tigray-that-isunder-amhara-occupation/>

¹⁹⁹ https://donate.unhcr.org/int/ethiopia-emergency/~my-donation?gclid=CjwKCAiAudD_BRBXEiwAudakX8uKLS_7zv1_IZWHb6bUIQVwgutQaIFXPrNPefWixH8o8hg5RDph6xoCuK0QAvD_BwE&gclidsrc=aw.ds

²⁰⁰ <https://www.aljazeera.com/news/2020/12/11/disturbing-un-says-safety-of-eritrean-refugees-greatly-at-risk>

²⁰¹ <https://www.bloomberg.com/news/articles/2020-12-11/u-s-urges-withdrawal-of-eritrean-troops-from-ethiopia>

²⁰² <https://apnews.com/article/abiy-ahmed-ethiopia-airstrikes-tigray-7a392abc35ea28ecc6566dece1264733>

²⁰³ <https://www.theglobeandmail.com/world/article-refugee-camps-are-torched-and-hospitals-looted-as-starvation-looms-in/>

²⁰⁴ <https://www.google.com/amp/s/www.bbc.com/news/amp/world-africa-55111061>

²⁰⁵ <https://www.google.com/amp/s/www.africanews.com/amp/2021/01/27/us-says-eritrean-forces-looting-killing-young-men-in-ethiopia-s-tigray/>

²⁰⁶ <https://www.google.com/amp/s/www.chron.com/news/amp/Witnesses-Eritrean-soldiers-loot-kill-in-15895168.php>

²⁰⁷ <https://sites.tufts.edu/reinventingpeace/2020/12/23/who-will-call-out-eritreas-war-crimes-in-tigray/>

²⁰⁸ *Ibid*

²⁰⁹ For more see https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule50

property except where “rendered absolutely necessary by military operations”.²¹⁰ Article 46 of the Hague Regulations prohibits confiscation, and Article 47 forbids pillaging by military authorities in occupied territory. Customary international law rule re-inforced the position by banning the acquisition of territory through the use of force.²¹¹

- 124.0 EFFORT is a multi-million-dollar public endowment that belonged to the people and government of Tigray.²¹² One of the arbitrary measures the Ethiopian government has taken against Tigray was the confiscation of EFFORT without due process. Under Ethiopian Constitution,²¹³ regarding Conduct, Accountability, and Transparency of Government, accused persons, be it in civil or criminal matters, have the right to be heard and have a proper hearing in a court of law before being deprived of any life liberty, or property. The Ethiopian Federal Government initiated a court case to confiscate EFFORT and TPLF assets²¹⁴ while at the same time waging war against the Tigray Regional Government and its ruling political party TPLF. So, the Tigray Regional Government and its leading party, TPLF, were not served the legal documents properly and were never given any reasonable opportunity to present their case and defend the civil asset forfeiture proceeding, making the judicial process highly political (a clear departure from international legal instruments and legal regimes to which Ethiopia is a signatory party).
- 125.0 When it comes to protecting against war-time seizure and confiscation of "enemy's" property and assets without due process, International Humanitarian Law (IHL) already sets a clear precedent. International law and norms do not support the unjust confiscation, reprisal, and pillage of 'enemy' asset and property.²¹⁵

Destruction of heritages

- 126.0 Another considerable loss Tigray suffered during this war is destruction, damage, and loss of magnificent religious buildings, libraries, paintings, and artefacts, such as the Al-Nejashi Mosque²¹⁶ in Wukro, the Cherkos Church in Zalambessa,²¹⁷ and the fabled and ancient treasure the Ark of the Covenant which believed to have been stolen and taken to Tana Lake Monasteries for alleged "safety reasons." However, the allegation is not yet fully confirmed. Axum Zion Churchgoers the massacre²¹⁸ of the people who tried to protect the Church and the Ark housed in the Church²¹⁹. Overall, some ancient treasures have been shelled, bombed, and looted,²²⁰ and the Rome Statute makes destruction and looting of such legacies a war crime.²²¹
- 127.0 Under the international legal regime, well-established case laws argue that intentional destruction destroys cultural and religious heritage is a punishable war crime. Recently, the "Pre-Trial Chamber of the International Criminal Court confirmed certain charges concerning the war crime of intentionally directing attacks against buildings dedicated to religion and historical monuments under article 8(2)(e)(iv) of the Rome Statute."²²² To satisfy the burden of proof in “intentional destruction of religious and cultural heritages” cases, the moving party needs to demonstrate a nexus between the destruction

²¹⁰ <https://ihl-databases.icrc.org/ihl/WebART/380-600058>

²¹¹ James Thuo Gathil, Commerce, Conquest, and Wartime Confiscation, Brooklyn Journal of International Law, Volume 31 | Issue 3, 2006, page 12

²¹² https://en.m.wikipedia.org/wiki/Endowment_Fund_for_the_Rehabilitation_of_Tigray

²¹³ Article 20 (2),(3); Article 12 of the Ethiopian Federal Democratic Republic Constitution (1995)

²¹⁴ <https://www.google.com/amp/s/www.bloombergquint.com/amp/politics/ethiopia-freezes-assets-of-fund-accused-of-backing-war-in-tigray>

²¹⁵ *Ibid*, note 10

²¹⁶ <https://www.middleeasteye.net/news/ethiopia-tigray-nejashi-mosque-conflict-damage>

²¹⁷ <https://eritreahub.org/ethiopia-unique-religious-heritage-suffers-tragic-damaged-in-the-tigray-war>

²¹⁸ https://en.m.wikipedia.org/wiki/Maryam_Ts%27iyon_massacre

²¹⁹ <https://www.indcatholicnews.com/news/41387>

²²⁰ <https://youtu.be/ijTGZoLLYkE>;

²²¹ Article 8(2)(b)(iv) of the Rome Statute

²²² <https://casebook.icrc.org/case-study/mali-accountability-destruction-cultural-heritage>

to an armed conflict. In the matter at hand, by the time these historical, religious, and cultural heritages were attacked and looted, Tigray was under intense military attack, or there was an armed conflict.

Violations on rights to access to information

- 128.0 After the Ethiopian Federal Government launched a military attack against Tigray, the Federal Government restricted internet and telephone services throughout Tigray²²³ to conceal the possible atrocities and war crimes from the global community's eyes. "The government of Ethiopia has again shut down the internet," access and "mobile network, fixed-line internet, and landline telephony have been cut in Tigray, as PM declares a state of emergency and orders military intervention against Tigray People's Liberation Front."²²⁴
- 129.0 The communication blackout in Tigray didn't only hide the grave human rights violations and humanitarian crisis but also hindered intentional aid groups' ability to access Tigray and provide much-needed aid timely and efficiently.²²⁵ While the restriction on access to information is a clear departure from Tigrayan's inherent right to information, journalists that exposed or presumed to reveal the atrocities in Tigray were also targeted, in violation of statutory protection accorded to journalists (Article 4 A (4) of the Third Geneva Convention and Article 79 of Additional Protocol I provide that journalists are entitled to all rights and protections granted to civilians in international armed conflicts). Journalist Dawit Kebede Araya was one of the many Tigrayan journalists who were victims of the attack against journalists. Dawit was assassinated for an alleged "curfew violation" just days after he released from jail.²²⁶

Forced conscription.

- 130.0 ***They are Making Us into Slaves, Not Educating Us: How indefinite Conscription Restricts Young Peoples' Rights, Access to Education in Eritrea, is the heading of the report by Human Rights Watch (2019)***²²⁷. The report concludes that National Service is the root cause of Eritrean youths' exodus, despite the considerable risks involved in the fleeing. Conscripts are recruited at the end of grade 11 and complete their high school (i.e., grade 12) at the Sawa Military Training Camp²²⁸. National Service is a combination of military training and civil service.
- 131.0 ***Conscripts are required to serve for*** an indefinite period, under conditions that the UN Commission of Inquiry as to Human Rights in Eritrea (2015)²²⁹ described as forced labour. The same Commission also found that the Eritrean Government is potentially guilty of crimes against humanity and recommended referral to the International Criminal Court (ICC). There are reports of the sexual abuse of women soldiers in the Eritrean army.²³⁰
- 132.0 The abusive and brutal Eritrean system of National Service has created an army used to brutality. That doesn't hesitate to employ cruelty as leeway to express the deeply embedded anger and despair. Hence, the Eritrean military attacked Eritrean refugees camps; it killed Eritrean refugees in Shimeleba and Histats refugee camps. It also extorted, forcibly repatriated, abducted, and conscripted refugees to fight in the current war²³¹ in violation of the Geneva Convention relating to the Status of Refugees.²³²

²²³ <https://netblocks.org/reports/internet-disrupted-in-ethiopia-as-conflict-breaks-out-in-tigray-region-eBOQYV8Z>

²²⁴ <https://www.business-humanrights.org/en/latest-news/ethiopia-jakenn-publishing-urges-govt-says-current-internet-shutdown-threats-access-to-information-on-ongoing-conflict-in-tigray-region/>

²²⁵ <https://www.google.com/amp/s/www.bloomberg.com/amp/news/articles/2020-12-22/u-n-urges-ethiopia-to-grant-aid-agencies-access-to-tigray>

²²⁶ <https://www.google.com/amp/s/cpi.org/2021/01/reporter-dawit-kebede-araya-shot-and-killed-in-ethiopia/amp/>

²²⁷ <https://www.hrw.org/report/2019/08/08/they-are-making-us-slaves-not-educating-us/how-indefinite-conscription-restricts#>

²²⁸ *Ibid*

²²⁹ A/HRC/29/CRP.1 - <https://www.ohchr.org/EN/HRBodies/HRC/ColEritrea/Pages/ReportColEritrea.aspx>

²³⁰ <https://vm.tiktok.com/ZMJE1hJSa/>

²³¹ <https://www.google.com/amp/s/mobile.reuters.com/article/amp/idUKKBN28L2IF>

²³² The Geneva Convention Relating to the Status of Refugees (1951), Article 31

- 133.0 Also, we note that the UN High Commissioner for Human Rights reports that: “..there are reports of forced recruitment of Tigrayan youth to fight against their communities.²³³ Tigrayan elder witnessed innocent Tigray civilians being "slaughtering like chickens" by the occupying Eritrean soldiers.²³⁴
- 134.0 Despite the signing of a peace agreement with Ethiopia in September 2018 and the lifting of United Nations sanctions in November 2018, the Eritrean government maintained a high level of militarisation and is presently forcibly rounding up Eritrean youth for the war in Tigray.
- 135.0 We also note a growing public outcry in Somalia because of the secret deployment of Somali soldiers trained in Eritrea in the Tigray war in Ethiopia.²³⁵ Somali mothers are demanding that President Farmaajo explains the whereabouts of their children allegedly lured for a lucrative " security guard" job for the Qatar 2022 World Cup preparation." Credible resources report that the Somali recruits were trained in Eritrea and deployed to fight in Tigray. Recently, the Somali Parliament Foreign Relations Committee also demanded an explanation from Farmaajo on the military trainees' whereabouts.²³⁶
- 136.0 International Humanitarian Law regulates deceptive and forcible conscription of soldiers in two situations: (1) the prohibition on compelling Protected persons to serve in the hostile armed forces under the law of IAC and (2) the absolute prohibition on incorporating children into armed forces or group (see Sections IV(i) and IV (ii))
- 137.0 International Humanitarian Law (IHL)- Article 3 of the Geneva Convention applies to all parties to a conflict (including non-state actors).²³⁷ Here, however, (1) the Eritrean soldiers don't have any legal ground to recruit Tigray civilians for any purpose because a foreign country cannot invoke the equality of belligerents principle to justify forced conscription of occupied region's civilians, and (2) the Ethiopian government too cannot invoke 'equality of belligerents legal theory to force civilians to fight their family members; the war against Tigray is an unprovoked civil war where the federal government waged war on one of its regions.
- 138.0 Forcible recruitment is regulated by the International Humanitarian Law (IHL). Firstly, the International Humanitarian Law (IHL) explicitly prohibits forcible recruitment of Protected persons under the law of International Armed Conflict due to the distressing and dishonourable nature of forcing persons to participate in military operations against their own country"²³⁸ The Ethiopian government's forcible recruitment of Tigrayans to fight against Tigray is a classic example of forcing persons to participate in military operations against their own country and people.

Conclusions and recommendations

Legal Accountability and responsibility

- 139.0 In conclusion, there is a reasonable basis to believe that the following egregious violations of human rights and international human rights law have occurred in Tigray:
- a) Looming mass famine and starvation employed as a weapon of war;
 - b) Grave atrocities and heavy indiscriminate artillery shelling, aerial and drone bombardment of populated areas leading to the killing of tens of thousands of civilians in Aksum, Humera, Mai Kadra, Debre Abay, Dongulat, Hagre Selam;
 - c) Widespread rape and gender-based sexual violence against girls and women as a weapon of war;

²³³ <https://www.voanews.com/africa/un-chief-seeks-immediate-aid-access-ethiopia-tigray>

²³⁴ <https://www.google.com/amp/s/amp.theguardian.com/global-development/2020/dec/21/slaughtered-like-chickens-eritrea-heavily-involved-in-tigray-conflict-say-eyewitnesses>

²³⁵ <https://www.facebook.com/723521087/posts/10157781415416088/>

²³⁶ https://www.hiiraan.com/news4/2021/Jan/181418/somali_parliament_demands_farmaajo_comes_clean_on_somalis_fighting_in_tigray_war.aspx?utm_source=hiiraan&utm_medium=SomaliNewsUpdateFront

²³⁷ https://www.icrc.org/en/doc/assets/files/other/irrc_863_clapham.pdf

²³⁸ Diakonia Lebanon International Humanitarian Law Resource Desk, Forcible Recruitment of Adults by Non-State Armed Groups in Non-International Armed Conflict, Global International Humanitarian Law Centre, May 2019

- d) The forced disappearance of close to 20,000 Eritrean refugees from Shimelba and Histats and the repeated and pre-planned destruction of the refugee camps;
- e) There are 4. million people in Tigray who are food insecure and need humanitarian support;
- f) Systematic starvation of people by destroying livelihood sources critical for survival;
- g) Massive displacement of people, including 67,000 refugees from Tigray and more than 2 million internally displaced persons within Tigray;
- h) Annexure of a large swath of Tigray by the Amhara militias;
- i) Prohibition of humanitarian access and looting and diversion aid;
- j) The systematic destruction of industries such as Almeda Textile Factory, Addis Pharmaceuticals, Sheba Leather, and Tsemayat Marble Stones;
- k) Systematic destruction and pillage of UNESCO registered and other heritage sites, religious and cultural buildings including in Aksum, Negash, and Debre Damo;
- l) Systematic destruction and looting of public and private service institutions and properties such as universities, health centres, schools, bakery;
- m) The invasion of Tigray by many Eritrean forces and the use of external forces, including drones that attacked regional security and police forces, merit further investigation to determine if they have led to civilian killings and the destruction of prosperities.

140.0 Ensuring the accountability and punishment of criminals responsible for the arbitrary displacement and crimes against Internally Displaced Person (IDPs) is part of the International Humanitarian Law and Human Rights law; hence, it is the duty of the UN member states, the UN Security Council, the UN Human Rights Council. Accountability, therefore, refers not only to ensuring the respect and fulfilment of the human rights of IDPs, as stipulated under the Kampala Convention. It also requires that State Parties (SP), the UN, the AU fulfil their protective, supervisory, and prosecutorial duties.

141.0 The Kampala Convention Article 3(1) (g) states that State Parties shall: “*Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law...*”. And Article 3(1) (h) states that State Parties shall: “*Ensure the accountability of the non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts...*”. Therefore, members of armed groups, security personnel, managers and executive bodies, and boards of directors of companies could be held criminally accountable under the Kampala Convention.²³⁹

142.0 The African Charter on Human and Peoples’ Rights (The Banjul Charter) is the primary human rights instrument of Africa; it also provides for the rights and protection of IDP ²⁴⁰ Article 1 of the Banjul Charter states that the AU Member States must respect, protect, and fulfil the rights specified in the Charter. The forced internal displacement of populations is a violation of several AU instruments, including the Banjul Charter, the Constitutive Act, and other AU conventions.²⁴¹ Article 12 (1) of the Banjul Charter protects the right of movement and residence.²⁴² It specifies, “[e]very individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.”²⁴³

143.0 The acts of arbitrary displacement entail the criminal responsibility of individuals involved in forcibly displacing people. Article 3(1) (g) of the Kampala Convention reasserts the responsibility of individuals for their acts of arbitrary displacements as stipulated under the Banjul Charter, the Rome Statute of the International Criminal Court (ICC), International Humanitarian Law (IHL), and Human Rights Law (HRL). Article 4 (6) of the Kampala Convention requires State Parties to “declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.”

²³⁹ See Article 7 (4), Article 9, Article 5 (11), Article 15 (2), Article 2 (f) of the Kampala Convention; Article 3(1) (h) of the Kampala Convention

²⁴⁰ OAU ‘Resolution on African (Banjul) Charter on Human and Peoples’ Rights’, OAU/Doc. Cab/Leg/67/3 Rev. 5, 21 I.L.M. 58 (1982)

²⁴¹ *ibid.*

²⁴² *ibid.*

²⁴³ Article 12 (1) of the Banjul Charter, African (Banjul) Charter on Human and Peoples’ Rights, OAU/Doc. Cab/Leg/67/3 Rev. 5, 21 I.L.M. 58 (1982)

144.0 The International Humanitarian Law (IHL) Rules 157-161 require State Parties to investigate and prosecute war crimes. All of the participants in a conflict are also required to cooperate in the investigation of war crimes. Rules 151-156 establish individuals and their commanders' criminal liability for failure to comply with International Humanitarian Law. The Rules also stipulate that obedience to superior's orders is not a defence of a war crime. Because of this, International Humanitarian Law (IHL) requires State Parties to educate their populations, security, and military forces as to the requirement of the International Humanitarian Law (IHL).²⁴⁴

Actions required.

- 145.0 For these reasons, the HoAC Forum on the 9th of November 2020 appealed to the AU and IGAD to stop the conflict in Tigray and de-escalate the situation and encourage the warring parties to engage in inclusive political dialogue. Since then, the war has escalated, and so have the human rights abuses. Therefore, HoAC Forum requests that the UNSC include the situation in Tigray as one of the regular (primary) agenda items and adopt a resolution that:
- a) Condemns the invasion and reports of atrocities committed against Tigray by Eritrean and Ethiopian armed forces, regional special forces, Amhara militia, and any unnecessary and disproportionate militarisation of Tigray;
 - b) Establishes a mechanism for immediate and verifiable removal of all Eritrean forces;
 - c) Establish a mechanism for inclusive dialogue and political solutions for sustainable peace and development in Ethiopia;
 - d) Ensures a verifiable and immediate cessation of all forms of hostilities, including military and media wars;
 - e) Investigate grave breaches of the Geneva Conventions and other violations of international humanitarian and human rights law committed in Tigray, particularly the practice of "ethnic cleansing";
 - f) Investigate the use of drones in the war in Tigray.
 - g) Impose punitive measures, including individual criminal accountability, regional travel bans, and asset freezes on those involved in blocking humanitarian aid and committing crimes;
 - h) Hold those responsible accountable for any war crimes, crimes against humanity, and the crime of genocide.
 - i) Prevent further egregious violations of human rights and breaches of international law;
 - j) Adopts measures to ensure rapid, unconditional, unfettered, and sustained delivery of humanitarian aid and items essential to survival, including establishing a "lifeline humanitarian corridor" from Sudan to Tigray - a de-militarised route designated for safe passage of humanitarian supplies.
- 146.0 The HoAC Forum also requests that the UNSC, as a matter of urgency, appoint a Commission of Inquiry on Tigray to, among other things (See sections 30-33 of this document) to bring an effective end to the violence and creates the conditions for the commencement of inclusive negotiations for peace.
- 147.0 The HoAC Forum also humbly request that the UNSC resolution include specific directions to the Ethiopian and Eritrean governments to:
- a. Adopt any measures needed to facilitate the Commission of Inquiry's work and its personnel to both in Ethiopia and Eritrea with complete freedom, independence, and security;
 - b. Provide all information in their possession which the Commission requested or is otherwise needed for it to carry out its mandate;
 - c. Facilitate the free access of the Commission and its staff to any official archives related to its mandate;

²⁴⁴ ICRC 'List of Customary Rules of International Humanitarian Law' (n 763).

- d. Facilitate the free access of the Commission and its staff to interview, in private, any persons the Commission judges necessary;
- e. Facilitate the Commission's access to any establishment or location at any time; and
- f. Guarantee by the full respect for the integrity, security, and freedom of witnesses, experts, and any other persons who helped the Commission in its work.

Schedule

1. List of civilians killed <https://www.tghat.com/victim-list/>
2. List of properties and heritage sites destroyed and looted <https://www.tghat.com/destroyed/>
3. List of videos – 134 videos available on request
4. List of pictures and screenshots- 765 available on request

Description	Total
List of identified civilian victims by name	1789
Photos of civilian victims	160
List of destroyed infrastructures and heritages	28
Photo of destroyed infrastructures and heritages	38
Videos of destroyed infrastructures	9
+	52
Total list of videos (ethnic profiling, signs of genocide, terror)	

SIGNED



Horn of Africa Civil Society Forum
منبر منظمات المجتمع المدني في القرن الأفريقي

Dr Albaqir Mukhtar
Chair Horn of Africa Civil Society Forum