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Genocide in Tigray:
**Serious Breaches of
International Law in the
Tigray Conflict, Ethiopia,
and Paths to Accountability**

June 2024



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Foreword

Maintaining a tradition of high-impact research and policy advice, this latest report from the New Lines Institute was prepared by a talented group of international law professionals with expertise in international criminal law and human rights. Distinctive for the breadth and depth of analysis, it has the potential to become a landmark step in the road to accountability for crimes allegedly committed against Tigrayans in the course of the armed conflict that took place in Ethiopia from November 2020 to at least November 2022.

This report situates the credible allegations of crimes against Tigrayans in the context of the Genocide Convention, as well as related doctrines within international criminal law. In doing so, it highlights possible implications for the responsibility of Ethiopia as a State as well as the need for a full criminal investigation. The report convincingly identifies at least a reasonable basis to believe that genocide was committed against Tigrayans as an ethnic group, including through mass killings, the use of starvation, and the destruction of critical infrastructure, as well as countless instances of rape and other acts of sexual violence. By foregrounding the question of genocide, the report opens the door to a fuller understanding of the severity and scale of the harms suffered by victims of this under-reported conflict.

As the New Lines Institute previously explored in its work on crimes allegedly committed in Ukraine, as well as against the Rohingya in Burma/Myanmar and the Uyghur in China, gender-based crime is seldom fully or adequately recognized. Justice for these crimes is rarer still. Tragically, consistent with other credible accounts, this report finds reason to believe that members of the Ethiopian National Defence Force – and associated forces including the Eritrean Defence Forces, the Amhara Special Forces, and related militia groups – weaponized rape and sexual violence not only to drive out and displace Tigrayans from Western Tigray, but also to destroy the Tigrayan group as such. Tigrayan women who were subjected to these horrendous acts are now often destitute and cast out of society. Even if the conflict ended in November 2022, credible allegations persist that rape and sexual violence continued to be committed by the same perpetrator groups in the aftermath.

Recognizing that there is a reasonable basis to believe that genocide was committed against Tigrayans is important not only of itself, but in helping policymakers to formulate an appropriate response. From the perspective of international law, credible allegations of genocide not only trigger potential new routes toward accountability and redress, but also place a new emphasis for members of the international community to consider their obligations to promote such outcomes. From the perspective of victims and affected communities, recognizing that there is reason to believe genocide took place should guide further work in assessing their trauma and working toward meeting their recovery needs.



Significantly, this report points to the first concrete steps that States and the international community should consider taking in order to meet their obligations, and to help promote a just and stable peace in Ethiopia. Most importantly, this requires reinvigorating the process of fact-finding and accountability that has regrettably stalled. This can be done by various means, including in States' bilateral relations, in exercising their rights and fulfilling their obligations under the Genocide Convention, in advocating for an independent criminal investigation, and in exercising universal jurisdiction over suitable cases in accordance with their own applicable law.

Perhaps the most important message of the report, however, is its plea for commitment and consistency in promoting and defending the most basic principles of international law. In a world where one crisis seems to follow hard on the heels of another, States adhering to international law must somehow find means to stay the course. If the international community constantly pivots from one situation to another, justice will never be delivered. Tigray is a case in point. But it is not too late; the opportunity remains to build a solid foundation for justice and accountability in Tigray. States and policymakers should seize upon this report as the impetus to do just that.

Baroness Helena Kennedy KC

Director

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Introduction

Measured by the number of deaths, the Tigray War in Ethiopia is the deadliest armed conflict of the 21st century and one of the bloodiest since the end of the Cold War, claiming the lives of over 400,000 soldiers and up to 300,000 civilians.¹

Despite the intense human suffering, this “forgotten” war has not garnered the international attention it desperately needs. There is an unfortunate sense in which the world is too ready to move on after its initial efforts. The International Commission of Human Rights Experts on Ethiopia has been wound up before concluding its work. The United States, despite recognizing more than half a million deaths in the region and that crimes against humanity and war crimes had been committed there ², have restored financial and economic assistance to the status quo ante bellum. Similarly, the EU has returned to its \$680 million development strategy with the nation despite a lack of accountability for the widespread abuses in the region.

The consequence has been that international efforts to verify serious breaches of international law have not been followed through or adequately supported. Victims will carry with them scarring and abuse from a conflict that, despite an apparent cessation of hostilities in 2022, did not result in a stable peace. Innocent lives continue to be lost, and many millions continue to face food insecurity resulting from the military campaigns. More time must be given not only to investigate and as needed provide accountability for the blockade on humanitarian aid that contributed to the deaths of hundreds of thousands of Tigrayans, but also to investigate and provide accountability for the widely-reported mass murder, rape, forced displacement, physical abuse, and torture which took place, as well as the targeting of key civilian infrastructure such as the healthcare system.

This groundbreaking report from the New Lines Institute for Strategy and Policy aims to fill this vacuum by informing stakeholders of the sheer scale and variety of the alleged criminal conduct; providing a legal analysis of the relevant allegations through the particular lens of the Genocide Convention, and describing pathways to accountability which should be adopted, including measures at both the national and international levels.

The report was prepared by a group of international law professionals, with expertise in fields including international human rights law and international criminal law. While several other reports have reached similar conclusions concerning some of the key factual allegations, the New Lines Institute report is the first to relate these allegations directly to the Genocide Convention and to call for action accordingly.

1 <https://www.ft.com/content/2f385e95-0899-403a-9e3b-ed8c24adf4e7>

2 <https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-the-un-security-council-stakeout-following-a-closed-meeting-on-the-situation-in-ethiopia/>



While the report finds that there is a reasonable basis to believe that all sides (including the Ethiopian and allied forces, and the Tigrayan forces) committed war crimes in the course of the conflict, Ethiopian and allied forces – specifically, members of the Ethiopian National Defense Force, the Eritrean Defense Forces, and the Amhara Special Forces, among other groups – also appear to have committed crimes against humanity against Tigrayans, as well as acts of genocide.

These acts of genocide include killings, the infliction of serious bodily and mental harm, intentional measures to prevent births, and the deliberate infliction of conditions of life calculated to bring about the destruction of Tigrayans. The report finds, furthermore, that certain individuals also appear to have made statements amounting to direct and public incitement to commit genocide.

Irrespective whether this apparent conduct by the Ethiopian and allied forces was committed as part of a plan, or whether it was supported at senior levels, Ethiopia was obliged as a State party to the Genocide Convention to take effective action to prevent the commission of genocidal acts and to punish such acts if they occurred.

As a consequence, the international community is compelled to act, including potentially by States instituting proceedings before the International Court of Justice under Article IX of the Genocide Convention. States and the international community should also take steps to secure an international, impartial, and independent criminal investigation, to exercise universal jurisdiction where practicable and thus to ensure that justice for the numerous human rights violations might finally be had in Tigray.

Dr. Azeem Ibrahim OBE

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I. Glossary

AI	Amnesty International
ASF	Amhara Special Forces, regional paramilitary police force
AU	African Union
CA3	Common Article 3 of the Geneva Conventions
CAH	Crimes against humanity
CoHA	Cessation of Hostilities Agreement of 2 November 2022
CRSV	Conflict-related sexual violence
DPH	Civilians taking direct participation in hostilities; constitute legitimate targets during armed conflict
ECRH	Ethiopian Human Rights Commission
EDF	Eritrean Defence Forces
EHRC	Ethiopian Human Rights Commission
ENDF	Ethiopian National Defence Force
EPRDF	Ethiopian People's Revolutionary Democratic Front
Fano	Irregular militia from the Amhara ethnic group
GAM	Global acute malnutrition
GC IV	Fourth Geneva Convention
GBV	Gender-based violence
HRW	Human Rights Watch
ICHREE	International Commission of Human Rights Experts on Ethiopia
ICC	International Criminal Court
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IIMM	Independent Investigative Mechanism for Myanmar
IPC	Integrated Food Security Phase Classification
IDPs	internally displaced persons
JIT	Joint Investigation Team (of the UN OHCHR and EHRC)
LAW	Legal Action Worldwide
MSF	Médecins Sans Frontières
NRC	Norwegian Refugee Council
OCHA	UN Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
OLA	Oromo Liberation Army
PHR	Physicians for Human Rights
SAM	severe acute malnutrition
SC	Security Council of the United Nations
SGBV	Sexual and gender-based violence
TDF	Tigray Defence Forces
TPLF	Tigray People's Liberation Front
TSF	Tigray Special Forces, a regional paramilitary police force
UN	United Nations
UNHRC	UN Human Rights Council
USAID	United States Agency for International Development
WFP	World Food Programme
WHO	World Health Organisation



II. Executive Summary

1. There are multiple, widespread, and credible independent reports that the conduct throughout Ethiopia of the federal Ethiopian National Defence Force (ENDF) on behalf of Ethiopia, the Amhara Special Forces (ASF), and/or militia (Fano) and loyal groups, the Eritrean Defence Forces (EDF), as well as the Tigrayan People's Liberation Front (TPLF), Tigray Defence Forces (TDF) and those loyal to them, have violated international humanitarian law and international human rights law.¹
2. There is **a reasonable basis to believe** that such violations amount to the commission of war crimes and/or crimes against humanity. These include numerous examples of inhumane treatment, such as that prohibited under Common Article 3 of the Geneva Conventions, as well as violations of the requirements of distinction and proportionality in carrying out attacks. Correspondingly, the evidence suggests that Ethiopia has not made adequate efforts to discharge its obligation under customary international law—equally applicable in non-international armed conflicts—to investigate war crimes committed by its nationals or armed forces, or on its territory, and, as appropriate, to prosecute the suspected perpetrators.²
3. This report has considered in particular whether some or all of this conduct potentially amounts to genocide. This is significant because genocide not only occasions individual criminal responsibility, if proven, but also the duties and associated responsibilities of States notably under the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter referred to as 'Genocide Convention') of 1948 (of which Ethiopia was an original signatory and, from 1 July 1949, is a ratified State Party). Likewise, Ethiopia bears corresponding obligations under customary international law.
4. This report concludes that, on the evidence currently available, there is a reasonable basis to believe that members of the ENDF, ASF, and the EDF have committed genocide against Tigrayans.
5. There is a reasonable basis to believe that at least some members of the ENDF or civilian officials associated with the Ethiopian federal government, the ASF or civilian officials associated with affiliated militias or the Amhara regional government, and the EDF possessed the intent to destroy Tigrayans as an ethnic group, in whole or in part, as such.
6. With the intent described in this report, there is a reasonable basis to believe that EDF, ASF, and ENDF members carried out at least four acts constituting the crime of genocide: killing Tigrayans, causing serious bodily or mental harm to Tigrayans, deliberately inflicting conditions of life upon Tigrayans calculated to bring about their destruction, and imposing measures intended to prevent births among Tigrayans.
7. There is a reasonable basis to believe that at least some statements reportedly made on social media by certain individuals also met the requirements for direct and public incitement to genocide, and were again made with the requisite intent.
8. While it may not necessarily be the case that there was a formal plan for any of this conduct to occur, or that senior officials were necessarily involved in these acts, this does not preclude the possibility that these acts may be attributed to Ethiopia, occasioning its responsibility as a State.

1 See notably UN ICHREE, "Report of the International Commission of Human Rights Experts on Ethiopia" (14 September 2023), A/HRC/54/55, Section IX.

2 See ICRC Customary Rules of IHL, Rule 158 (considering it a rule of customary international law, applicable in both international and non-international armed conflicts, that parties have a duty to investigate war crimes allegedly committed on their territory). See also Eritrea-Ethiopia Claims Commission, "[Partial award, prisoners of war, Ethiopia's claim 4, between the Federal Democratic Republic of Ethiopia and the state of Eritrea](#)" (1 July 2003, Eritrea-Ethiopia Claims Commission), The Permanent Court of Arbitration, The Hague, paras. 31–32 (holding that obligations exist under customary international law which are largely similar to the Geneva Conventions, and noting that both Ethiopia and Eritrea agree).



9. Furthermore, even if the genocide took place at a “grassroots” level, and irrespective whether it may be attributed to Ethiopia, there is in any event also a reasonable basis to believe that Ethiopia as a State failed to discharge its responsibility under international law to prevent such acts. This failure contributed to and perpetuated the situation of manifest and serious risk that acts of genocide would occur. Likewise, there is a reasonable basis to believe that Ethiopia has not discharged its responsibility to punish such acts.
10. In any event, and notwithstanding questions of State responsibility, the individuals responsible for the serious acts described above may themselves bear criminal responsibility. Indeed, even if the conduct in question were considered not to meet the requirements of genocide, it is highly likely that it amounts to war crimes and/or crimes against humanity, including offenses of particular gravity and breadth. These include persecution and other inhumane acts as crimes against humanity, and the war crime of starvation by depriving civilians of objects indispensable for their survival.

11. Accordingly, States should:

- 11.1. Recognize that there is at least a reasonable basis to believe that genocide and other related acts were committed in Ethiopia against Tigrayans, and that responsibility for these acts may be attributable to Ethiopia as a State; and**
- 11.2. Recognize that, even if Ethiopia was not responsible for the genocide and other related acts, there is at least a reasonable basis to believe that it failed to prevent or punish such acts committed on its territory;**
- 11.3. Conform their bilateral relations with States, including Ethiopia, to the state of affairs set out above**
- 11.4. Take appropriate action in light of their own obligations under the Genocide Convention, including, as appropriate, instituting proceedings before the International Court of Justice under Article IX;**
- 11.5. Take appropriate action in multilateral fora to secure an international, impartial, and independent criminal investigation of such acts by the International Criminal Court or any other suitable mechanism; and**
- 11.6. Exercise universal jurisdiction, in accordance with applicable domestic law, over individuals implicated in the commission of genocide and other related acts, as well as other core international crimes such as crimes against humanity and war crimes.**



III. Introduction

12. On 4 November 2020, the Ethiopian Prime Minister, Abiy Ahmed, announced that he had launched a “law and order operation” against the “extreme elements” of the Tigray People’s Liberation Front (TPLF). This was allegedly in response to an attack on Ethiopian armed forces which had occurred the previous day.³ However, the ensuing operation by the Ethiopian National Defence Force (ENDF) was not limited to “law enforcement” type action. Rather, given the organisation of the relevant armed groups involved, and the intensity of the hostilities, a non-international armed conflict came into being between Ethiopia and the TPLF, commencing on 4 November 2020 and lasting until at least the *Cessation of Hostilities Agreement* in November 2022.
13. The ENDF acted alongside Ethiopian regional groups such as the Amhara Special Forces (ASF) and similar forces from Afar Region, as well as associated militia. While groups such as the ASF are nominally subordinate to the respective regional government in Ethiopia, and consequently their conduct is not automatically attributable to the ENDF (or otherwise to the State of Ethiopia), an independent expert inquiry has concluded that the ASF worked in coordination and/or in joint operations with the ENDF.⁴ The ENDF was further supported by the Eritrean Defence Forces (EDF).⁵
14. The violence that broke out in November 2020 arose out of a combination of factors: deeply entrenched competition between ethnic groups, a lack of consensus as to what kind of country Ethiopia was to be after imperial rule—and who it was for—and Ethiopia’s history with Eritrea (first as a province, and then as a separate state), which itself led to the Eritrean–Ethiopian War in 1998 that lasted until 2000.⁶ The path away from the most recent conflict will have to reconcile these underlying fault-lines, as well as address the implications of more recent conduct.⁷ Without adequate acknowledgment and redress, there is unlikely to be a successful road toward sustainable peace or reconciliation.
15. Several international non-governmental organizations, such as Amnesty International and Human Rights Watch, and various United Nations bodies, including in collaboration with the Ethiopian Human Rights Commission (EHRC), as well as the International Commission of Human Rights Experts on Ethiopia (ICHREE), have individually and jointly published a range of reports investigating, analysing, and alleging the commission of criminal acts during the Tigray conflict in Ethiopia, including in the regions of Tigray, Amhara,

3 See Office of the Prime Minister of the Federal Democratic Republic of Ethiopia, “The Ongoing Law Enforcement Operations in Tigray: Causes and Objectives,” 14 November 2020. Others contest that such an attack took place, or that it took place in the terms characterized by the Prime Minister: see Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst 2023), pp. 1-3 (stating that the “Ethiopian government and its allies’ occupation and devastation of Tigray in November and December 2020 had been long in the preparation and gestation”; “Close observers knew that the war was coming—and just how devastating it would be”); Kjetil Tronvoll, “The Anatomy of Ethiopia’s Civil War” (2022), 121 *Current History*, p. 163 (“The Tigray administration asserts that the strike was an act of self-defense in response to an operation launched earlier that day, when federal authorities flew in a group of commandos to arrest the regional leadership”).

4 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 91 (concluding “Amhara Special Forces and Afar Special Forces were especially implicated in the conflict”).

5 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 90 (concluding that although further investigations into whether formal agreements for the deployment of EDF troops into Tigray existed are necessary, the Commission could establish that “ENDF and EDF conducted joint operations on the ground, often arriving simultaneously in towns and villages”).

6 Interview by author.

7 See Kjetil Tronvoll, “The Anatomy of Ethiopia’s Civil War” (2022), 121 *Current History*, p. 163 (“[...] the overall conflict in Ethiopia [consists of] four separate civil wars conflated in time and space. These wars have diverse political objectives and involve different belligerent parties, anchored in distinct politico-historical narratives. Each conflict concurrently creates intersecting tactical and strategic alliances among the various combatants”).



and Afar.⁸ While each report has a different temporal and/or geographic scope, most of them conclude that war crimes and crimes against humanity have been committed, by both the ENDF and allied forces (EDF, ASF and the associated Fano militia; and, to a lesser extent but no less serious, by Afar Special Forces) against Tigrayans, and by Tigrayan forces against ethnic Amhara and Afar.⁹

16. None of the reports focusing on crimes allegedly committed against Tigrayans has concluded in express terms that there is a reasonable basis to believe that the crime of genocide was committed—a standard of proof that, while not itself establishing the criminal responsibility of any individual, shows good cause for an international investigation.¹⁰ Yet this is in stark contrast to the analysis conducted by civil society more broadly,¹¹ as well as the views of victims of the conflict. Likewise, the report of the UK All-Party Parliamentary Group (UK APPG) recognized that there is at least “*significant evidence that the various crimes perpetrated by institutional powers of Ethiopia “may amount to genocide,” warranting “further consideration and analysis.”*”¹²
17. Accordingly, this report examines in particular whether there is **a reasonable basis to believe** that genocide in the meaning of Article II of the Genocide Convention, as well as certain related acts under Article III (direct and public incitement to commit genocide), were committed against Tigrayans in the context of the Tigray conflict. With regard to the analysis in light of the Genocide Convention, the focus is on ethnic Tigrayans, including those located in Ethiopia but outside of the Tigray region at the material times, and does not include other persons who are living in Tigray but are of another ethnicity, such as Amhara. Within this context, however, the report also considers related potential violations of international law which constitute or may amount to war crimes and crimes against humanity, focusing in particular on crimes of similar gravity and breadth such as persecution and other inhumane acts as crimes against humanity and the war crime of starvation by depriving civilians of objects indispensable for their survival.

8 See e.g., UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), Amnesty International and Human Rights Watch, “*We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46; UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55; UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3; UK All-Party Parliamentary Group on International Law, Justice, and Accountability, *The Three Horsemen of the War in Tigray: Mass Killings, Sexual Violence, and Starvation* (September 2023). As noted further below, the ICHREE was forced to terminate its work as a result of lobbying by the government of Ethiopia.

9 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 91 (“Ethiopian government forces during the conflict also included Special Forces, which are nominally responsible to each Ethiopian Regional State Government. Amhara Special Forces and Afar Special Forces were especially implicated in the conflict, owing in large part to their physical presence in regions neighbouring Tigray and where Tigray fighters launched offensives, but there are credible reports of the involvement of Special Forces from other Ethiopian regions as well”).

10 For example, the opening of a criminal investigation by the ICC, on the basis of a referral by a State Party or the UN Security Council, is conditioned on the Prosecutor being satisfied that there is a “reasonable basis to believe” that crimes within the jurisdiction of the Court have been committed: ICC Statute, art. 53. This does not imply the criminal responsibility of any particular individual, which is a matter to be determined in the course of the investigation. See also UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 6 (factual information that would “satisfy an objective and ordinarily prudent observer that the incident or pattern of conduct has occurred as described with a reasonable degree of certainty”).

11 Helen Clark, Michael Lapsley, and David Alton, “*The warning signs are there for genocide in Ethiopia: the world must act to prevent it*” (*The Guardian*, 26 November 2021); David Volodzko, “*There’s Genocide in Tigray, but Nobody’s Talking About it*” (*The Nation*, 10 May 2022); United States Holocaust Memorial Museum, “*Museum Warns of Heightened Risk of Genocide and Mass Atrocities in Ethiopia’s Tigray Region*” (25 October 2022); Dr. Ewelina U. Ochab, “*Heightened Risk of Genocide Against Tigrayans in Ethiopia*” (*Forbes*, 26 October 2022); Geoffrey York, “*Recognize genocide in Ethiopia’s Tigray region, experts urge Canadian committee*” (*The Globe and Mail*, 6 November 2022).

12 See UK All-Party Parliamentary Group on International Law, Justice, and Accountability, *The Three Horsemen of the War in Tigray: Mass Killings, Sexual Violence, and Starvation* (September 2023), p. 76 (emphasis added).



18. Since this report focuses on the alleged victimization of Tigrayans, it does not look into alleged crimes affecting other groups, such as the Irob and Kunama.¹³ However, such allegations likewise warrant further investigation.
19. This report's focus on the potential commission of genocide and related acts against Tigrayans does not imply that Tigrayans themselves—in the form of members of the TPLF, the Tigray Defence Forces (TDF), or the Tigray Special Forces (TSF) (or any allied groups and individuals)—may not themselves also have been responsible for the commission of crimes under international law. Indeed, the report also examines some allegations made against Tigrayan forces. Yet the main focus of the report is to address the narrow question defined above, and without forming any view of wider questions.
20. For similar reasons, while this report concludes that there is a reasonable basis to believe that certain crimes under international law have been committed—and, necessarily, those responsible for such crimes may bear individual criminal responsibility—it does not seek to identify such individuals specifically. Rather, that task should be carried out through an independent criminal investigation, as this report recommends.
21. This report has the following four aims:
 - 1) Re-initiate international engagement with, and attention to, the consequences of the war in Tigray and the prospects for accountability. This remains essential in securing long-term peace in the region. It seeks to achieve this by informing decision-makers concerned with these issues, to equip them in understanding the scope and scale of the conduct requiring investigation, and ultimately to assist them in helping the victims of those crimes;
 - 2) Call for States to take appropriate action in light of their own obligations under the Genocide Convention, including in their own bilateral relations, and as appropriate instituting proceedings before the International Court of Justice under Article IX;
 - 3) Call for an international, impartial, and independent investigation into allegations of genocide and other core international crimes, by the International Criminal Court or any other suitable mechanism; and
 - 4) Call for States to exercise universal jurisdiction, in accordance with applicable domestic law, over individuals implicated in the commission of genocide and other related acts, as well as other core international crimes such as crimes against humanity and war crimes.

¹³ For an overview of the situation of the Irob community, see UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 410-425. There is evidence that Eritrean soldiers continue to block access to Irob (which is both a *woreda* and an ethnicity), and kill and forcibly disappear members of the Irob ethnicity: “‘People are under siege’: why Ethiopia’s war in Tigray isn’t over” (*The Guardian*, 6 August 2023). For an overview of the situation of the Kunama community, see UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 426-428.



22. The report analyzes the available data from the outbreak of the war in Tigray on 4 November 2020 until the *Cessation of Hostilities Agreement* on 2 November 2022. While this is the primary focus of this report, allegations of further crimes following the agreement have also been considered on a case-by-case basis.¹⁴
23. This report is based primarily on desk research, but also includes some information obtained from interviews with persons able to provide first-hand accounts or other relevant details. Desk research involved examining reports from specialized NGOs, governments, and intergovernmental organizations and consulting open-source intelligence (including satellite images, videos, and photographs), as well as academic commentaries, news articles, and blog posts.
24. The examples referred to, and survivors' or witnesses' accounts included, in this report are only the tip of the iceberg. Some of the investigations referred to in this report may have been published without fact-finding on the ground in Tigray. For example, the UN High Commissioner for Human Rights (UN OHCHR) and the International Commission of Human Rights Experts on Ethiopia (ICHREE) were not granted access to investigate allegations of abuses in Tigray, and neither were Amnesty International and Human Rights Watch—withstanding formal requests made to the Government of Ethiopia.¹⁵
25. Consequently, many victims on all sides have not yet been able to tell their stories; many accounts have not been made public. Other accounts could not be verified. Even in these circumstances, however, there exists sufficient evidence to establish a reasonable basis to believe that genocide and other core international crimes were committed in the context of the Tigray conflict. This not only calls for an effective and independent criminal investigation, but also for States to take appropriate action (including the exercise of universal jurisdiction in suitable cases, as well as considering potential action in their bilateral relations including at the ICJ).

14 In June 2023, HRW found that the campaign of ethnic cleansing of Tigrayans by Amhara forces and local authorities in Western Tigray continued even in January 2023, notwithstanding the *Cessation of Hostilities Agreement* on 2 November 2022. Those interviewed by HRW had been detained in towns in Western Tigray, such as Humera, Rawyan, and Adebai, among thousands of other Tigrayans, and were then forcibly expelled; see Human Rights Watch, *Ethiopia: Ethnic Cleansing Persists Under Tigray Truce* (1 June 2023). In August 2023, Physicians for Human Rights determined that Eritrean and Ethiopian soldiers continue a widespread and systematic campaign of rape in Tigray until at least June 2023, see Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023). This suggests not only that the underlying ethnic disputes are far from resolved, but also that the federal government is not enforcing or complying with the terms of the *Cessation of Hostilities Agreement* with disastrous consequences for the conditions and safety of Tigrayans. See also UN ICHREE, "Report of the International Commission of Human Rights Experts on Ethiopia" (14 September 2023), A/HRC/54/55, para. 96 (suggesting that the continuing presence of Eritrean and Amhara forces in Tigray more than 10 months—at the time of writing its report—after the *Cessation of Hostilities Agreement* "strongly indicates a policy of impunity and tolerance of serious violations on the part of the Ethiopian State").

15 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC) / Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), paras. 20-22 (reporting of challenges to undertake work, including harassment and intimidation of staff, Government-imposed restrictions on communication equipment and obstacles to obtain security clearances for travel); UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023) A/HRC/54/CRP.3, paras. 23, 25 ("Lack of access to Ethiopia meant that the vast majority of the Commission's interviews were conducted remotely"; "The Commission regrets that, despite the Council's calls in 2021 and 2022 for unhindered access, it was not able to visit Ethiopia for the purpose of in-country fact-finding. The Commission made repeated requests to the Government for meetings, information, and access to the country to implement its investigative mandate."); Amnesty International and Human Rights Watch, *"We will erase you from this land": Crimes Against Humanity and Ethnic Cleansing in Ethiopia's Western Tigray Zone* (April 2022), p. 11; See also UN ICHREE, "Report of the International Commission of Human Rights Experts on Ethiopia" (14 September 2023), A/HRC/54/55, paras. 5, 10. The UN OHCHR / EHRC Report by the Joint Investigative Team (JIT) was criticized for its approach to including certain incidents and omitting others; see Jan Nyssen, "Webinar: Documenting the Civilian Victims of the Tigray War" (*Every Casualty Counts*, 19 January 2023) (critiquing the JIT for missing more than 90% of major massacres in its reporting, for only working with the Ethiopian government although it was only one of the warring parties, for not interviewing the original, displaced population; suggesting that the general perception is that the report is considered as "whitewashing" for placing the responsibility mainly on Eritrean and Tigrayan forces; highlighting that the ICHREE was not allowed to go on-site, and noting that the Ethiopian government twice attempted to effect de-funding of the Commission at the UN General Assembly, which failed). The JIT was also scrutinized as to its independence and impartiality; according to anonymous sources cited by Associated Press, the Ethiopian commission leader "had tried to downplay the Amharas' guilt in the abuses, while the Tigrayan side was to be highlighted as perpetrators"; see Tim Vanden Bempt, Sofie Annys, Emnet Negash, Robin Ghekiere, and Jan Nyssen, *Tigray: one year of conflict—Casualties of the armed conflict, 2020-2021—Tigray (Ethiopia)* (*Every Casualty Counts*, 2021), p. 9 (also criticized the report by the JIT for a "compulsion to be balanced, confusing it with evenness, resulting in being unbalanced in terms of selection of incidents and thematic violations/crimes investigated. The JIT seems to have fallen prey to 'bothsideism' ignoring the correct attribution").



IV. Background on the conflict in Tigray

A. Historical and contemporary challenges as triggers of the Tigray War

26. Ethiopia, landlocked in the Horn of Africa, is Africa's oldest existing independent State. Its population is the second largest on the African continent.
27. Tigray, a regional state in the north of Ethiopia, with Mekelle as the regional capital, is home to 97 percent ethnic Tigrayans, as well as a few minority groups such as ethnic Irob and Kunama peoples. Major population centers within Tigray, with majority Tigrayan populations, include Mekelle, Adwa, Axum, Adigrat, and Shire;¹⁶ but a significant community of Tigrayans also resides in Ethiopia's capital, Addis Ababa.¹⁷ Overall, ethnic Tigrayans are said to make up approximately 6 percent of Ethiopia's population of around 120 million people, and constitute one of more than 90 different ethnicities and nationalities.¹⁸ Tigrayans are majority Orthodox Christian, with a small minority of Muslims.
28. The official language of Tigray is Tigrinya, which is the same as the language spoken in most of highland Eritrea.¹⁹ Tigrinya is also one of the official languages of Ethiopia and the *lingua franca* of Eritrea. It was an agreement between Ethiopian Emperor Menelik and Italian colonizers which had split these ethnic groups apart.²⁰
29. The outbreak of the conflict in November 2020 is a direct consequence of a "constitutional dispute and power struggle"²¹ between the federal government under Prime Minister Abiy Ahmed and the leaders of Tigray's regional government, the TPLF.
30. From 1991 until 2018, Ethiopia was ruled by the Ethiopian People's Revolutionary Democratic Front (EPRDF), a four-party coalition, in which the TPLF was dominant. While formally granting ethnic groups autonomy and organizing the country along ethnic lines, the EPRDF repressed dissent and civic freedoms. This led to tensions along ethnic lines and antipathy toward the TPLF and Tigray.²²
31. After the resignation of Ethiopia's previous prime minister in February 2018, Abiy Ahmed was elected prime minister by Ethiopia's House of People's Representatives in April of the same year, and normalized relations with Eritrea.
32. In December 2019, the Prosperity Party replaced the EPRDF coalition, which Abiy Ahmed abolished earlier;²³ the Prosperity Party was an idea proposed by Abiy Ahmed to streamline the decision-making structure. This was opposed by the TPLF, which decided not to join.²⁴ Serious political turbulence ensued.

¹⁶ Omna Tigray, "Tigray Overview."

¹⁷ Ministry of Foreign Affairs of the Netherlands, Directorate for Sub-Saharan Africa Country of Origin Information Reports Section, *Thematic Country of Origin Information Report on Tigray 2021* (August 2021), p. 42.

¹⁸ Dawit Endeshaw and Katharine Houreld, "Deadly Detention" (*Reuters*, 17 June 2022).

¹⁹ See also Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), fn. iii (citations omitted).

²⁰ Michael Woldemariam, *Insurgent Fragmentation in the Horn of Africa: Rebellion and Its Discontents* (Cambridge University Press, 2018), p. 185.

²¹ William Davison, Jane Esberg, and Alessandro Accorsi, "What Facebook Does (and Doesn't) Have to Do with Ethiopia's Ethnic Violence" (*International Crisis Group*, 25 April 2023).

²² Amnesty International, "I don't know if they realized I was a person": Rape and other Sexual Violence in the Conflict in Tigray, Ethiopia (11 August 2021), AFR 25/4569/2021, p. 9.

²³ Kjetil Tronvoll, "The Anatomy of Ethiopia's Civil War" (2022), 121 *Current History*, p. 165.

²⁴ Abrud Rahman Alfa Shaban, "Ethiopia's Ruling Coalition Moves to Merge into Single Party" (*AfricaNews*, 17 November 2019).



33. Achievements by the TPLF as part of the ruling coalition, some of which were significant, were downplayed or discredited. “[E]thnically and politically isolated,” the TPLF was an ideal “scapegoat.”²⁵ The rift between the TPLF and the new government was exacerbated by the federal government’s decision in September 2020 to postpone elections due to the Covid-19 pandemic, which was rejected by the TPLF.²⁶
34. Consequently, “the TPLF regional administration unilaterally conducted a regional election in Tigray in September 2020, in which it was declared winner of all regional parliament seats except one.”²⁷ This was declared null and void by the federal parliament, which stopped communications with and froze the transfer of funds to the regional government.²⁸ In a possible tit-for-tat exchange, a senior official with the TPLF, Getachew Reda, rejected the federal appointment of a brigadier general for the ENDF’s northern division based in Tigray.²⁹
35. Some suggest that the war had been in preparation since the Ethiopia-Eritrea Peace Deal in 2018, following the power transition from the EPRDF to the Prosperity Party, which excluded the TPLF leadership from power.³⁰ The deal was never published but seems to have been a precursor for Eritrea entering Tigray directly from their border.³¹
36. Immediately upon the outbreak of the conflict, the entire Tigray region was put under a blackout, disrupting power supplies, communications (including via road, air, and telecommunications), and impacting banking and various other necessities of daily life.³² This meant that Tigrayans were at once cut off from the wider world and from each other, and that families and friends could not notify each other about their safety. According to one report, the power was shut off even a week before the fighting, which prevented people from recording the various crimes that ensued because mobile phones had by then run out of battery power.³³
37. In addition, the TPLF—and Tigray as a whole—had a long-running “territorial dispute” with respect to Western Tigray,³⁴ and on which basis Amhara forces had entered the Tigray region to assert ownership of the territory. As a consequence, Amhara regional forces and militia fought against the TPLF and

25 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 152.

26 Simon Marks and Abdi Latif Dahir, “Ethiopian Region Holds Local Elections in Defiance of Prime Minister” (*New York Times*, 10 September 2020). See also Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), pp. 182-185.

27 Amnesty International, “*I don’t know if they realized I was a person*: Rape and other Sexual Violence in the Conflict in Tigray, Ethiopia” (11 August 2021), AFR 25/4569/2021, p. 10.

28 Amnesty International, “*I don’t know if they realized I was a person*: Rape and other Sexual Violence in the Conflict in Tigray, Ethiopia” (11 August 2021), AFR 25/4569/2021, p. 10; Kjetil Tronvoll, “The Anatomy of Ethiopia’s Civil War” (2022), 121 *Current History*, p. 165.

29 AFP, “Ethiopia’s Tigray blocks general’s appointment in blow to Abiy” (Al Jazeera, 30 October 2020).

30 Jan Nyssen, “Webinar: Documenting the Civilian Victims of the Tigray War” (*Every Casualty Counts*, 19 January 2023). It was, for example, argued that the TPLF constitutes a threat to Prime Minister Abiy’s political and personal ambitions, that Prime Minister Abiy “remained highly suspicious of any Tigrayan presence in government and in the upper ranks of the military and security services,” and that Prime Minister Abiy “appeared to believe that conflict was inevitable from the time he became prime minister”; see Anthony Shaw, “Ethiopia at War,” in Eritrea Focus and Oslo Analytica, *The Tigray War and Regional Implications: Volume I* (2021), pp. 16-72, at p. 51 (Pseudonym of a long-term consultant in Addis Ababa and observer of politics of Ethiopia and the Horn of Africa). In relation to the underlying conflict between Tigray and the Amhara, see Kjetil Tronvoll, “The Anatomy of Ethiopia’s Civil War” (2022), 121 *Current History*, p. 167 (arguing that “When the war broke out in November 2020, it became clear that Amhara regional special forces and militia had been preparing for a long time. The offensive in western Tigray was mostly carried out by Amhara forces, motivated by the cause to reclaim the ‘lost territories’ of the three districts of Welkait, Tsegede, and Setit-Humera”).

31 Jan Nyssen, “Webinar: Documenting the Civilian Victims of the Tigray War” (*Every Casualty Counts*, 19 January 2023).

32 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 23 (“From late June 2021, the Federal Government cut off the region completely, and services did not resume until after the COHA, though at the time of writing (September 2023) they have not been fully restored”).

33 Will Brown, “After the bombs they attacked with knives, claim Ethiopians fleeing peace prize winner’s war” (*Telegraph*, 23 November 2020).

34 William Davison, Jane Esberg, and Alessandro Accorsi, “What Facebook Does (and Doesn’t) Have to Do with Ethiopia’s Ethnic Violence” (*International Crisis Group*, 25 April 2023). See Kjetil Tronvoll, “The Anatomy of Ethiopia’s Civil War” (2022), 121 *Current History*, p. 166 (“The Amhara territorial claims to areas currently within the Tigray [Regional State] are based on pre-1991 borders demarcating predominantly Amharic-speaking administrative regions”). In 1991, the interim constitution (Transitional Period Charter) was drawn up; and the federal constitution became effective in August 1995 and is still in force today; see Christophe Van der Beken, “Ethiopia: Constitutional Protection of Ethnic Minorities at Regional Level” (2007), 20 *Afrika Focus* 105, p. 107.



associated forces on the side of the federal government and later the conflict also spilled over into the neighbouring Amhara region.³⁵

B. Timeline of the conflict

38. As noted above, the conflict is widely considered to have been triggered on or about 3 November. The ensuing conflict can be roughly divided in four phases: the first spanning the beginning of the conflict on late 3rd, early 4th November 2020 until June 2021; the second from July 2021 until the end of 2022; the third from January 2022 until August 2022; and the fourth from 24 August 2022 until the signing of the *Cessation of Hostilities Agreement* between the TPLF and the Ethiopian government on 2 November 2022. For the purpose of this report, it is not necessary to determine whether the Agreement in fact successfully brought the conflict to an end, but evidence to the contrary has been used as evidence for the questions considered in this report.
39. In the first phase, fighting occurred throughout Tigray—initially (from November to December 2020) with a focus on the far Western area (around Humera), Sheraro, and Axum, and then (from January to February 2021) with a southern trajectory. In this trajectory, violence first peaked in intensity around central and eastern Tigray, and then in the south.³⁶ The TPLF had lost control of Mekelle in December 2020, having suffered heavy casualties.³⁷
40. The second phase began in July 2021, when Tigrayan forces started their counter-offensive against the Ethiopian government and its allied forces, including by re-capturing Tigray's capital Mekelle.³⁸ The phase was marked by incursions on the part of the Tigrayan forces in the Afar and Amhara regions, at one point approaching Addis Ababa.³⁹ In August 2021, the TPLF struck an alliance with the Oromo Liberation Army,⁴⁰ while the federal authorities enlisted paramilitaries from Ethiopia's other nine regions in a mass recruitment.⁴¹ Federal forces then counterattacked and pushed the TPLF back toward Tigray.⁴² This phase of the conflict ended "when the federal counterattack stopped at the Tigrayan border, though western Tigray remained under the control of Amhara regional authorities."⁴³
41. The third phase was marked by a slowdown of active fighting since Tigrayan forces were halted on their march toward Addis Ababa.⁴⁴ The humanitarian crisis, however, worsened due to the continuation of the federal government's blockade of humanitarian aid. The TPLF and the Ethiopian government purportedly agreed to cease hostilities on 25 March 2022, after the government announced an indefinite truce on 24 March, to allow humanitarian access.⁴⁵

35 While this report generally uses the acronym 'TPLF' or 'Tigrayan forces' to refer to conduct by Tigrayan fighters, some sources may use other terms. These are reproduced in quotation marks as necessary.

36 Sofie Annys, Tim Vanden Bempt, Emmet Negash, et al., *Tigray: Atlas of the humanitarian situation* (Version 2.2, University of Ghent, December 2021), p. 44.

37 Jason Burke, "Young men take up arms in northern Ethiopia as atrocities fuel insurgency" (*The Guardian*, 8 March 2021).

38 CrisisWatch, *Tracking Worldwide Conflict: July 2021* (*International Crisis Group*, 4 Aug 2021).

39 William Davison, "The Dangerous Expansion of Ethiopia's Tigray War" (*International Crisis Group*, 30 July 2021); Sofie Annys, Tim Vanden Bempt, Emmet Negash, et al., *Tigray: Atlas of the humanitarian situation* (Version 2.2, University of Ghent, December 2021), p. 43; Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 20 (citations omitted).

40 Edith M Lederer, "UN Security Council calls for end to Ethiopia hostilities" (*Associated Press*, 6 November 2021).

41 William Davison, "The Dangerous Expansion of Ethiopia's Tigray War" (*International Crisis Group*, 30 July 2021).

42 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 20 (citations omitted).

43 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 20 (citations omitted).

44 Declan Walsh and Abdi Latif Dahir, "Why Is Ethiopia at War With Itself?" (*New York Times*, 16 March 2022); Bobby Ghosh, "The World's Deadliest War Isn't in Ukraine, but in Ethiopia" (*Bloomberg*, 22 March 2022).

45 AFP, "Ethiopia: Tigray rebels agree 'cessation of hostilities' after government truce" (*The Guardian*, 25 March 2022).



42. The fourth and final phase saw new fighting erupt near the Tigrayan border on 24 August 2022, in breach of the cease-fire.⁴⁶ The TPLF and the Ethiopian government each blamed the other.⁴⁷ Beginning on 11 September 2022, Tigray's regional government—which is composed of leading figures of the TPLF—announced its stance on a peaceful resolution of the conflict, calling for a cessation of hostilities,⁴⁸ and offered an “immediate and mutually agreed cessation of hostilities.”⁴⁹ However, the Ethiopian government and Eritrea continued their military pursuits: deploying heavy weaponry in Eritrea along the Tigrayan border;⁵⁰ launching a full-scale offensive against Tigray, with heavy fighting reported in several places along the border;⁵¹ and seizing control of Shire,⁵² Alamata, and Korem.⁵³ Upon reiterating their readiness for a cessation of hostilities, the TPLF demanded that Eritrea withdraw from Tigray; eventually the warring parties, except Eritrea, met in South Africa for African Union–led peace talks.⁵⁴
43. On 2 November 2022, the Ethiopian federal government and TPLF formally agreed to cease hostilities;⁵⁵ yet concerns over imminent breaches of the agreement⁵⁶ were realized when reports of human rights violations surfaced. These included looting and mass detentions in Tigray,⁵⁷ the bombing of Abi Adi by the EDF on 5 November 2022, and heavy fighting between Tigrayan forces and Eritrean and Amhara forces, respectively, in Zalambessa and Adigrat, and in Chercher.⁵⁸
44. Indeed, the ICHREE found that even after the *Cessation of Hostilities Agreement*, EDF soldiers remained in Tigray and continued to commit criminal acts, including sexual and gender-based crimes, at times “not far” from the ENDF.⁵⁹ The Ethiopian government was found to have “failed in its legal duty to protect its population from violations by a foreign army [the EDF], or by Amhara militia present in the areas of Western and Southern Tigray.”⁶⁰

46 Rachel Chason, “Fighting erupts near Tigray border, dashing hopes of peace in Ethiopia” (*Washington Post*, 24 August 2022).

47 Rachel Chason, “Fighting erupts near Tigray border, dashing hopes of peace in Ethiopia” (*Washington Post*, 24 August 2022).

48 *Tweet by Tigray External Affairs Office*, 11 September 2022; Alex de Waal, “Tigray announces cessation of hostilities, but Abiy remains silent” (*Responsible Statecraft*, 13 September 2022).

49 Alex de Waal, “Tigray announces cessation of hostilities, but Abiy remains silent” (*Responsible Statecraft*, 13 September 2022).

50 *Tweet by Christiaan Triebert*, 28 September 2022.

51 Al Jazeera, “Tigrayan forces accuse Eritrea of launching offensive” (20 September 2022). Open source satellite imagery shows heavy military activity; *see Tweet by Christiaan Triebert*, 28 September 2022. On 26 September, imagery show troop formations and four tanks in Shiraro in Tigray; *see Tweet by Christiaan Triebert*, 28 September 2022. The area had been captured by Eritrean and Ethiopian forces; *see Tweet by Christiaan Triebert*, 28 September 2022. Artillery in fighting position was visible also; *see Tweet by Christiaan Triebert*, 28 September 2022.

52 Katharine Houreld, “Ethiopian soldiers take strategic city in Tigray amid civilian exodus” (*Washington Post*, 17 October 2022).

53 *Tweet by FDRE Government Communication Service*, 18 October 2022.

54 Crisis Watch, *Digest Ethiopia: October 2022*.

55 Alexander Winning and Tim Cocks, “Parties to war in Ethiopia’s Tigray region agree to stop fighting” (*Reuters*, 2 November 2022).

56 Samuel Ayele Bekalo, “More questions than answers for Ethiopia’s peace agreement” (*LSE Blog*, 15 November 2022).

57 Rodney Muhumuza, “Kidnappings, looting cited in Ethiopia’s Tigray after truce” (*AP News*, 27 November 2022).

58 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 360.

59 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, paras. 2, 46.

60 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 2.



V. Findings on Genocide

45. Consistent with the concerns noted by a number of other experts, this report examines the legal and factual basis for allegations of genocide committed against Tigrayans in Ethiopia in the relevant period. For example, in discussing allegations of rape, the ICHREE found that, as concerns rapes, “attackers expressed an intent to render the victims infertile by permanently destroying their sexual and reproductive health” and that “the rapes were often accompanied by dehumanising language that suggested an *intent to destroy* Tigrayan ethnicity.”⁶¹ Such an intent is characteristic of genocide. Likewise, the UK APPG identified what it considered to be “significant evidence” of the commission of evidence against the Tigrayans.⁶²

A. Summary of the Law on Genocide

46. Coined as a new term following the Holocaust, “genocide” describes the destruction (*caedo*, Latin for act of killing) of a group (Greek *genos* meaning race, people). It is defined in public international law primarily in the Convention on the Prevention and Punishment of the Crime of Genocide, which imposes obligations upon States, as well as in the statutes of the international criminal tribunals for Rwanda and the former Yugoslavia, and of the International Criminal Court (ICC). These latter instruments illustrate the existence of individual responsibility for genocide, directly under customary international (criminal) law. These forms of responsibility are separate and distinct.

1. Public International Law

47. In resolution 96 (I), in 1946, the UN General Assembly declared genocide to be a crime under international law. Two years later, on 9 December 1948, States adopted the Genocide Convention in recognition that “at all periods of history genocide has inflicted great losses on humanity” and that “international co-operation is required” to liberate humanity “from such an odious scourge.”⁶³ This statement remains no less true today.
48. Ethiopia was one of the first States to sign the Genocide Convention, on 11 December 1948, and promptly ratified it on 1 July 1949. It entered no relevant declarations or reservations.
49. Article I of the Genocide Convention reiterates that “genocide, whether committed in time of peace or in time of war, is a crime under international law” and obliges the Contracting Parties to prevent and to punish this crime. Article II defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
- (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;
 - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group.”

61 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, para. 62. (emphasis added)

62 UK All-Party Parliamentary Group on International Law, Justice, and Accountability, *The Three Horsemen of the War in Tigray: Mass Killings, Sexual Violence, and Starvation* (September 2023), p. 76.

63 Genocide Convention, Preamble. See also ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 142.



50. This definition is regarded not only as customary international law but also as a peremptory norm (*jus cogens*).⁶⁴ As further explained below, the crime of genocide under international criminal law—for example, as defined in Article 6 of the Rome Statute of the International Criminal Court, as well as in customary international law—replicates this definition verbatim.
51. Article III of the Genocide Convention prohibits the following conduct:
- (a) Genocide;
 - (b) Conspiracy to commit genocide;
 - (c) Direct and public incitement to commit genocide;
 - (d) Attempt to commit genocide;
 - (e) Complicity in genocide.

2. International Criminal Law

52. Notwithstanding the potential responsibility of States under the Genocide Convention,⁶⁵ and the characterization therein of genocide as a crime, the Convention does not itself provide directly for the criminal responsibility of individuals.⁶⁶ Instead, this is the domain of criminal law, either of States (which may potentially exercise universal jurisdiction over the crime of genocide) or of any international courts or tribunals with jurisdiction over the relevant conduct, as envisaged in Article VI of the Convention.
53. Genocide not only occasions the responsibility of States, as described above, but also the (criminal) responsibility of individuals, both as a matter of customary international law and treaty law, as well as potentially under the domestic laws of States enacted in accordance with the Genocide Convention.
54. For example, where this was provided in their Statutes,⁶⁷ *ad hoc* tribunals applying customary international law have exercised jurisdiction over genocide defined in accordance with the Genocide Convention.⁶⁸

⁶⁴ See e.g. ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 161. See also ICJ, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion of 28 May 1951, ICJ Reports, p. 15, at p. 23 (considering that the Genocide Convention serves “to confirm and endorse the most elementary principles of morality”); ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 495; ICTR, *Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgment, 6 December 1999, para. 46; ICTY, *Prosecutor v. Jelišić*, IT-95-10-T, Judgment, 14 December 1999, para. 60.

⁶⁵ See ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, paras. 171-174.

⁶⁶ ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 170. See further ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, p. 3, para. 129.

⁶⁷ For example, tribunals such as the Special Court for Sierra Leone (SCSL) and the Kosovo Specialist Chambers (KSC) were not granted jurisdiction over the crime of genocide—presumably on the basis of their founders’ view that this crime was not relevant to the circumstances in which they would operate. Likewise, the Special Tribunal for Lebanon (STL) was only mandated to exercise jurisdiction over crimes under Lebanese domestic law: STL Statute, art. 2.

⁶⁸ See e.g. ICTY Statute, art. 4(2) (“Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group”), 4(3) (“The following acts shall be punishable: (a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to commit genocide; (e) complicity in genocide”); ICTR Statute, art. 2. While differently phrased, the law establishing the Extraordinary Chambers in the Courts of Cambodia (ECCC) likewise established jurisdiction over genocide as defined in the Genocide Convention: ECCC Law, art. 4.



The ICC is likewise vested with jurisdiction over the crime of genocide, which is defined in its founding instrument (the Rome Statute) in very similar terms to customary international law.⁶⁹

55. While the International Court of Justice (ICJ) is the ultimate arbiter of the meaning of the Genocide Convention—and as such is not bound by the interpretations of States or international criminal tribunals in interpreting the provisions of the Convention—the jurisprudence of international tribunals is regarded as highly relevant and persuasive, given that these are professional courts interpreting the same text.
56. Considering the jurisprudence both of the ICJ, and of international criminal tribunals together, it can be said that the crime of genocide therefore requires proof beyond reasonable doubt at least of the following elements:
 - The victim(s) belonged to a particular national, ethnical, racial, or religious group;
 - The perpetrator intentionally committed one or more of the five prohibited acts of genocide, namely—
 - ▶ Killing one or more members of that group,
 - ▶ Causing serious bodily or mental harm to one or more members of that group,
 - ▶ Deliberately inflicting conditions of life on one or more members of that group calculated to bring about their physical destruction,
 - ▶ Imposing measures intended to prevent births upon one or more members of that group,
 - ▶ Forcibly transferring one or more children of that group to another group;
 - The perpetrator committed the act(s) above with the intent to destroy, in whole or part, that national, ethnical, racial, or religious group, as such.⁷⁰

B. Tigrayans as a “Protected Group”

57. The object and purpose of the crime of genocide—and indeed of the Genocide Convention itself, as explained above—is the physical protection of certain kinds of human groups, in order to ensure their survival among the human population. Thus, it is essential to establishing the crime of genocide that the person(s) victimized actually belong to a protected group, and that the genocidal intent relates to that group.⁷¹
58. The Genocide Convention is explicit that it only applies to the protection of four targeted groups: those which are national, ethnic, racial, or religious. As the ICJ has recalled, these groups “must have particular

⁶⁹ ICC Statute, art. 6. For prosecutions under the Rome Statute, such as at the ICC, it is also necessary to prove beyond reasonable doubt that the perpetrator’s conduct took place in the context of a manifest pattern of similar conduct directed against that national, ethnical, racial, or religious group, or was conduct that could itself effect its destruction. However, it is not necessary that the pattern is already firmly entrenched—the Introduction to Article 6 of the ICC’s *Elements of Crimes* further specifies that this requirement is also satisfied where the perpetrator performs “the initial acts in an emerging pattern.” This requirement is not derived directly from the Genocide Convention, and so could potentially be considered purely as a threshold jurisdictional requirement for the ICC. Yet in practice it is unlikely to be difficult to meet, and is consistent with the object of the Genocide Convention in repressing conduct which could actually lead or has led to the destruction of a protected group.

⁷⁰ While the International Criminal Court also requires proof that alleged genocidal conduct took place in the context of a manifest pattern of similar conduct, or could itself effect the destruction of the protected group in whole or in part, it is unique in imposing this requirement which does not have a counterpart either in the Genocide Convention or in the jurisprudence of international criminal tribunals applying customary international law.

⁷¹ ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 182. Protected groups are national, ethnic, racial, or religious groups. In practice there may be questions whether a given collection of persons constitutes a national, ethnic, racial, or religious group at all, or which of these qualifications is most appropriate. See ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 792 (“[M]ost cases [...] focused on the object and purpose of the Genocide Convention and favoured a case-by-case assessment of whether a specific group was protected. In the absence of generally accepted and precise definitions of the protected groups, [...] ‘[e]ach of these concepts must be assessed in the light of a particular political, social, and cultural context’. [...] This accords with the object and purpose of the Genocide Convention”).



positive characteristics—national, ethnical, racial, or religious”—and cannot be defined by the mere “lack of them.”⁷² In other words, the group must have a “particular distinct identity.”⁷³

59. The assessment whether a group constitutes a national, ethnic, racial, or religious group—and which of these characterizations is most appropriate—is to be carried out on the facts of each case.⁷⁴ While subjective considerations may be relevant in this analysis, they are of themselves insufficient—the identification of objective characteristics is consistent with the purpose of the Genocide Convention, which was to protect relatively stable and permanent groups.⁷⁵
60. Ethiopia-based Tigrayans are an ethnic group, and therefore constitute a “protected group” within the meaning of Article II of the Genocide Convention,⁷⁶ and customary international law. Tigrayans not only self-identify as an ethnic group,⁷⁷ but also meet objective criteria for definition as an “ethnic group.”⁷⁸ Notably, for example, while the “Tigrayan community is not homogeneous,”⁷⁹ members share a common language (Tigrinya) and culture (including physical characteristics, such as “two small parallel scars next to the eye, often on the temple”).⁸⁰ Furthermore, the Tigrayan ethnicity is stated on their national identity card,⁸¹ with a view to ensuring access to certain benefits reserved for them.⁸² Even the delineation of the regional borders for the purpose of the 1994 Constitution was largely based on ethnic lines, including in Tigray, resulting in ‘ethnic federalism’.⁸³

C. Summary of conclusions

61. For the reasons described in detail below, there is a reasonable basis to believe that members of the ENDF, the ASF, and the EDF all committed genocide against Tigrayans. This does not mean that there was necessarily a formal plan for this to occur, or that senior officials were necessarily involved in these acts.
62. There is a reasonable basis to believe that at least some members of the ENDF or civilian officials associated with the Ethiopian federal government, as well as members of the ASF or civilian officials

72 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, paras. 193-197.

73 ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 793.

74 ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 792 (also citing jurisprudence of the ICTR and ICTY).

75 ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 795 (also citing jurisprudence of the ICTR and ICTY).

76 In the case of *The Gambia v Myanmar*, the ICJ made an order for provisional measures under the Genocide Convention on the basis of self-identification; see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (2020), ICJ Rep (Provisional Measures, Order of 23 January 2020), paras. 14-15 (“Rohingya Muslims ‘self-identify as a distinct ethnic group with their own *language* and *culture*, and claim a longstanding connection to Rakhine State”; emphasis added. “The Court’s references in this Order to the ‘Rohingya’ should be understood as references to the group that self-identifies as the Rohingya group and that claims a longstanding connection to Rakhine State, which forms part of the Union of Myanmar”).

77 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, para. 11; Ministry of Foreign Affairs of the Netherlands, Directorate for Sub-Saharan Africa Country of Origin Information Reports Section, *Thematic Country of Origin Information Report on Tigray 2021* (August 2021), p. 45.

78 ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 513 (“An ethnic group is generally defined as a group whose members share a common language or culture”).

79 Ministry of Foreign Affairs of the Netherlands, Directorate for Sub-Saharan Africa Country of Origin Information Reports Section, *Thematic Country of Origin Information Report on Tigray 2021* (August 2021), p. 43.

80 Ministry of Foreign Affairs of the Netherlands, Directorate for Sub-Saharan Africa Country of Origin Information Reports Section, *Thematic Country of Origin Information Report on Tigray 2021* (August 2021), p. 45. Characterization of Tigrayans as a national, racial, or religious group does not seem to be apposite. Notably, Tigrayans of both Christian and Muslim faith exist, and Islamic Tigrayans are “not seen as a separate ethnic group”; see Ministry of Foreign Affairs of the Netherlands, Directorate for Sub-Saharan Africa Country of Origin Information Reports Section, *Thematic Country of Origin Information Report on Tigray 2021* (August 2021), para. 43. It is reported that Tigrayans of both Muslim and Christian religions were targeted and killed; see Goitom Mekonen Gebrewahid, *Primed for Death: Tigray Genocide, a Survivor’s Story* (2022), p. 8.

81 Ministry of Foreign Affairs of the Netherlands, Directorate for Sub-Saharan Africa Country of Origin Information Reports Section, *Thematic Country of Origin Information Report on Tigray 2021* (August 2021), p. 43.

82 Zecharias Fassil, *Report on Citizenship: Ethiopia* (European University Institute, 2020), p. 23, fn. 70.

83 Christophe Van der Beken, “Ethiopia: Constitutional Protection of Ethnic Minorities at Regional Level” (2007), 20 *Afrika Focus* 105, pp. 107-108.



associated with affiliated militias or the Amhara regional government, and members of the EDF, possessed the intent to destroy Tigrayans as an ethnic group, in whole, or in part.

63. With this intent, there is a reasonable basis to believe that such persons were responsible for at least four of the acts constituting the crime of genocide: killing Tigrayans, causing serious bodily or mental harm, deliberately inflicting conditions of life upon Tigrayans calculated to bring about their destruction, and imposing measures intended to prevent births among Tigrayans.
64. With regard to the alleged infliction of conditions of life calculated to destroy Tigrayans, there is a reasonable basis to believe that this occurred in two main ways: by depriving the Tigrayan population of food, causing famine; and by intentionally causing the destruction of the health care system in Tigray. In the context of the situation in Tigray, removing these basic necessities of life over an extended period of time not only severely endangered the civilian population but actually caused widespread harm and death.

D. Specific Intent to Destroy the Tigrayans, in Whole or in Part, As such

65. In order to establish genocide, it is necessary to show that the relevant acts are carried out with the required genocidal intent. In particular, this requires not only proof of intent to commit the alleged prohibited acts but also proof of the specific intent to destroy the protected group, in whole or in part.⁸⁴ This specific intent is critical,⁸⁵ and must relate to the group “as such.”⁸⁶ In other words, the perpetrator must *positively*⁸⁷ ascribe certain characteristics to the targeted group which they wish to destroy, and these characteristics cannot be wholly subjective; they must have an objective basis.⁸⁸ This is what makes genocide an exceptionally grave crime and distinguishes it from other serious crimes, such as persecution as a crime against humanity.⁸⁹
66. Notably, in finding that “the ENDF, EDF and Fano have committed widespread acts of rape and sexual violence against Tigrayan women and girls,” and often with an intent to render Tigrayan women and girls infertile, the ICHREE has already found that these perpetrators may have “used dehumanising language that suggested an intent to destroy the *Tigrayan ethnicity*.”⁹⁰ In other words, this implies a possible genocidal intent.

84 See e.g. ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 20; ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 797; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 549.

85 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 188 (referring to “[t]he specificity of the intent and its particular requirements”).

86 ICTY, *Prosecutor v. Stakić*, IT-97-24-A, Judgment, 22 March 2006, para. 20 (noting that the term “as such” “shows that the offence [of genocide] requires intent to destroy a collection of people who have a particular group identity”). See also ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3436.

87 ICTY, *Prosecutor v. Stakić*, IT-97-24-A, Judgment, 22 March 2006, paras. 21-22 (“[G]enocide was originally conceived of as the destruction of a [...] group with a particular positive identity—not as the destruction of various people lacking a distinct identity [...] Given that negatively defined groups lack specific characteristics, defining groups by reference to a negative would run counter to the intent of the Genocide Convention’s drafters”). See also ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3436.

88 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, paras. 193-196.

89 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 187. See further ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 551; ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Judgment, 1 September 2004, para. 699; ICTY, *Prosecutor v. Krstić*, IT-98-33-T, Judgment, 2 August 2001, para. 553; ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Judgment, 14 January 2000, para. 636; ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 798 (“the phrase ‘as such’ emphasizes that the victim of [the] crime of genocide is not merely the person but the group itself”).

90 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022) A/HRC/51/46, paras. 62, 70 (emphasis added). See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 146 (“Some statements by the perpetrators suggested they may have had an intent to destroy the Tigrayan population”), para. 482 (The ICHREE “is aware that many sources have suggested that the mass killings, including indirect killings resulting from the above-described violations in Tigray region since 3 November 2020, may amount to the crime against humanity of extermination and/or genocide [but] was not able [due to the time and resource limitations placed on its work to] make such determination under its reasonable grounds to believe standard and finds that further investigation is required to determine the full facts and legal implications.”)



67. Despite significant evidence of joint operations between ENDF, EDF, and ASF, it cannot be assumed at this stage that the three broad groups allegedly responsible for crimes against Tigrayans are under a unified command.⁹¹ Thus, it is necessary to consider the evidence of any relevant intent with regard to each of three broad groups: the Ethiopian national authorities and the ENDF (acting under the orders of the federal government); the Amhara regional administration, Amhara regional armed forces and any associated militia (e.g., Fano); and the Eritrean forces (EDF).⁹² While the Afar Special Forces are also implicated in various incidents, they have not been the focus of this report, so no conclusion is reached as to whether its members had the required special intent.
68. Intent to destroy can be evidenced through relevant circumstances, such as the planning and coordination of acts, the commission of other culpable acts, and a pattern of prohibited acts, but also directly through policies, statements, and utterances.
69. In assessing whether a specific intent amounts to genocide, three considerations should be borne in mind:
- Specific intent is to be distinguished from personal motive,⁹³ such that the existence of a personal motive to commit underlying acts of genocide (for example, revenge, or the advancement of certain policy objectives) does not preclude the existence of a specific intent to destroy the protected group. Yet equally, the existence of a motive which may be seen as associated with the destruction of a protected group does not displace the requirement to prove that the perpetrator(s) actually possessed the specific intent to destroy the protected group.⁹⁴
 - The specific intent for genocide must be distinguished from an intent to “ethnically cleanse” a particular place or territory—in particular, a desire to displace a group, or dispossess them of land, need not always be genocidal.⁹⁵ Similarly, “[i]t is not enough that the members of the group are targeted because they belong to that group, [...] because the perpetrator has a discriminatory intent. Something more is required. The [underlying acts of genocide] must be done with intent to *destroy* the group.”⁹⁶ This is not to say that acts of discrimination or ethnic cleansing *cannot* coincide with a genocidal intent, but merely that this cannot simply be assumed. However, this does not mean that the perpetrator’s conduct must itself lead

91 See UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 90 (concluding that there is evidence of joint operations, but that further investigations into the existence of any formal agreements to that effect are necessary). See further Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 31 (citations omitted) (highlighting that some groups such as the Fano had a “history of targeting ethnic groups for sexual violence and other human abuses,” which “appears to have been tolerated by the federal and regional authorities”).

92 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 31 (concluding that the “data does not make clear whether the EDF, regional forces, and aligned militias are subordinated under the ENDF or take instructions from them” but that there is evidence of “co-perpetration alongside Ethiopian troops [...] forces operating on their own”).

93 See, e.g., ICTR, *Simba v. the Prosecutor*, ICTR-01-76-A, Judgment, 27 November 2007, paras. 88, 269; ICTY, *Prosecutor v. Stakić*, IT-97-24-A, Judgment, 22 March 2006, para. 45; ICTY, *Prosecutor v. Jelišić*, IT-95-10-A, Judgment, 5 July 2001, para. 49; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 554.

94 See also ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 189 (“specific intent is also to be distinguished from other reasons or motives the perpetrator may have. Great care must be taken in finding in the facts a sufficiently clear manifestation of that intent”).

95 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 190 (“Neither the intent, as a matter of policy, to render an area ‘ethnically homogeneous’, nor the operations that may be carried out to implement such policy, can *as such* be designated as genocide: the intent that characterizes genocide is to ‘destroy, in whole or in part,’ a particular group, and deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group”; emphasis supplied); ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 231; ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, Judgment, 9 May 2007, para. 123; ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 33; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Judgment, 12 December 2012, para. 739; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Judgment, 10 June 2010, para. 813; ICTY, *Prosecutor v. Stakić*, IT-97-24-T, Judgment, 31 July 2003, para. 519.

96 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 187 (emphasis added).



directly to the intended destruction of the group (provided that it constitutes one of the five underlying acts) or that it would be efficient or even effective in doing so.⁹⁷

- The specific intent must amount to *physical or biological* destruction of the group, and not only seek to annihilate the “cultural or sociological characteristics [...] which give to that group its own identity distinct from the rest of the community.”⁹⁸ This applies even to underlying acts of genocide which do not “*directly* concern” physical or biological destruction, such as the imposition of measures intended to prevent births or the forcible transfer of children from the group to another group.⁹⁹ Such acts must still be carried out with the intent of achieving the physical or biological destruction of the group—although it should be recalled that this does not necessarily mean the death of all the group’s members and can encompass circumstances in which the group is by other means prevented from reconstituting itself.¹⁰⁰

70. It is not necessary that the perpetrator intends to destroy the whole of a protected group. Rather, it also suffices that they target *part* of such a group (for example, in a “geographically limited area”),¹⁰¹ provided that it forms a “substantial part”¹⁰²—or, in other words, that its destruction would be “significant enough to have an impact on the group as a whole.”¹⁰³ This assessment is highly fact-sensitive.¹⁰⁴ On the facts of this case, to the extent that the evidence supports any alleged genocidal intent, it potentially relates to a large proportion of Tigrayans, if not the whole group. Notably, Tigrayans were not only targeted in Tigray but also in other locations in Ethiopia, such as in Addis Ababa and in the Afar region. However, even if any genocidal intent were confined to Tigrayans within the region of Tigray, or even just Western Tigray, the affected population would still appear to represent a substantial part of the Tigrayan ethnic group as a whole. Notably, the Tigrayan population in Tigray represents a large part of the Tigrayan group as a whole, and it is highly significant to the Tigrayan group as their homeland.
71. Assessing whether the protected group was targeted for destruction “as such” is highly fact sensitive. Relevant considerations have been found to include conduct which had “an impact on the long-term survival” of the group, or “severe procreative implications,” such as killing a large number of one sex,¹⁰⁵

⁹⁷ ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, paras. 28-32.

⁹⁸ ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 25. See also, e.g., ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 800; ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3435.

⁹⁹ ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 800.

¹⁰⁰ ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 801; ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Judgment, 17 January 2005, para. 666.

¹⁰¹ ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 199; ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, p. 3, para. 142.

¹⁰² IRMCT, *Prosecutor v. Mladić*, MICT-13-56-A, Judgment, 8 June 2021, paras. 572, 576, 580, 582; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR98bis.1, Judgment, 11 July 2013, para. 66; ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, paras. 8, 12; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 555. See also ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, paras. 198, 201; ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, p. 3, para. 142.

¹⁰³ ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, paras. 193, 198. See also ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 8; ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3437; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 555; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Judgment, 12 December 2012, para. 749; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Judgment, 10 June 2010, paras. 831-832; ECCC, *Khieu Samphan (Case 002/02)*, 002/19-09-2007-ECCC/SC, Judgment, 23 December 2022, paras. 1630, 1633-1637.

¹⁰⁴ ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, paras. 199-201; ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, p. 3, para. 142. See also ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 261; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR98bis.1, Judgment, 11 July 2013, para. 66; ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, paras. 12-14; ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3437; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 555. Relevant factors may include (i) the numerical size of the affected population, both absolutely and proportionally; (ii) the prominence, distinctiveness, or significance of the affected population within the group; and (iii) the capabilities of the perpetrator.

¹⁰⁵ See, e.g., ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, paras. 28-29; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 552; ICTY, *Prosecutor v. Krstić*, IT-98-33-T, Judgment, 2 August 2001, para. 595. But see also IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A, Judgment, 20 March 2019, para. 729.



conduct targeting prominent individuals within the group whose disappearance would affect its survival,¹⁰⁶ or conduct which targeted “symbols” of the group such as religious or cultural property.¹⁰⁷ Potential contra-indicators include, for example, the fact that more members of a targeted group could have been subject to underlying acts of genocide (such as killing) but were not.¹⁰⁸

72. Assessing the existence of genocidal intent will very frequently be a matter of inference.¹⁰⁹ Such inferences may potentially be drawn from two types of material, which the following sections of this report will consider in turn:

- First, statements by relevant actors, whether in public speeches or in meetings, may be taken into account¹¹⁰—although this must be assessed in light of the circumstances as a whole, and even “highly inflammatory language” may not, of itself, *necessarily* establish the specific intent to destroy.¹¹¹ In particular, this applies to “[u]tterances that fall short of expressly calling for a group’s physical destruction.” Notably, “[e]vidence demonstrating ethnic bias, however reprehensible, does not necessarily prove genocidal intent.”¹¹²
- Second, genocidal intent may be inferred from “a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, the repetition of destructive and discriminatory acts, or the existence of a plan or policy.”¹¹³ Acts which do not themselves constitute underlying acts of genocide may, in appropriate circumstances, be relied upon as evidence of specific intent.¹¹⁴ However, in carrying out this assessment, it is important to consider all the relevant evidence in context—“a compartmentalized mode of analysis may obscure the proper inquiry.”¹¹⁵

106 See, e.g., ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, paras. 263-264.

107 See, e.g., ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 230 (noting that such acts may not themselves constitute underlying acts of genocide); ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 553; ICTY, *Prosecutor v. Krstić*, IT-98-33-T, Judgment, 2 August 2001, para. 580.

108 IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A, Judgment, 20 March 2019, para. 727; ICTY, *Prosecutor v. Stakić*, IT-97-24-A, Judgment, 22 March 2006, para. 42.

109 ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 246; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR98bis.1, Judgment, 11 July 2013, para. 80; ICTR, *Gacumbitsi v. the Prosecutor*, ICTR-2001-64-A, Judgment, 7 July 2006, para. 40; ICTR, *Rutaganda v. the Prosecutor*, ICTR-96-3-A, Judgment, 26 May 2003, para. 525; ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Judgment, 1 June 2001, para. 159.

110 ICTR, *Gacumbitsi v. the Prosecutor*, ICTR-2001-64-A, Judgment, 7 July 2006, para. 43; ICTR, *Kamuhanda v. the Prosecutor*, ICTR-99-54A-A, Judgment, 19 September 2005, paras. 81-82; ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 803; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 550; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Judgment, 12 December 2012, para. 745.

111 See e.g. IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A, Judgment, 20 March 2019, paras. 742-745.

112 IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A, Judgment, 20 March 2019, para. 745; ICTY, *Prosecutor v. Stakić*, IT-97-24-A, Judgment, 22 March 2006, para. 52.

113 IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A, Judgment, 20 March 2019, para. 727; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, paras. 246, 248, 253; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Judgment, 30 January 2015, para. 468; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR98bis.1, Judgment, 11 July 2013, paras. 80, 99; ICTR, *Hategekimana v. the Prosecutor*, ICTR-00-55B-A, Judgment, 8 May 2012, para. 133; ICTR, *Gacumbitsi v. the Prosecutor*, ICTR-2001-64-A, Judgment, 7 July 2006, paras. 40-41; ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 34; ICTY, *Prosecutor v. Jelišić*, IT-95-10-A, Judgment, 5 July 2001, paras. 47-48; ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 803; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 550.

114 ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 254.

115 ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 247. See also paras. 230, 246, 248, 253-254; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR98bis.1, Judgment, 11 July 2013, para. 56 (“Rather than considering separately whether an accused intended to destroy a protected group through each of the relevant genocidal acts, a trial chamber should consider whether all of the evidence, taken together, demonstrates a genocidal mental state”); ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, Judgment, 9 May 2007, para. 123; ICTY, *Prosecutor v. Stakić*, IT-97-24-A, Judgment, 22 March 2006, para. 55; ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, paras. 33, 133; ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3435; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 550; ICTY, *Prosecutor v. Krstić*, IT-98-33-T, Judgment, 2 August 2001, para. 580.



1. The Ethiopian Federal Government and the Ethiopian National Defence Forces

a) Evidence of Direct Intent to Destroy Tigrayans

73. The ENDF are under the command of the Ethiopian national government, led by Prime Minister Abiy Ahmed.¹¹⁶ In assessing the possibility of genocide carried out by members of the ENDF, it is relevant to consider both the conduct of the ENDF but also, as necessary, relevant officials of the federal government.
74. In general, the Ethiopian government has “strongly denied ethnically motivated violence.”¹¹⁷ For example, in a statement, it maintained that “it undertook the law enforcement operations in the Tigray region with utmost precaution to avoid as much as possible damage on civilians,” and that it “takes any allegations of human rights abuses and crimes very seriously.”¹¹⁸
75. However, this appears inconsistent with the conclusion that the “Ethiopian Federal Government and military officials pejoratively used terms like *junta*, *woyané*, and *agame* to refer to TPLF and Tigray forces.”¹¹⁹
76. Likewise, in his position as senior EU envoy, Pekka Haavisto (now Minister for Foreign Affairs of Finland), revealed to press that, during a closed-door meeting with Prime Minister Abiy Ahmed and other ministers, he was told that “*they are going to wipe out the Tigrayans for 100 years*,” which Haavisto warned (in non-technical terms) “looks for us like ethnic cleansing.”¹²⁰
77. The meeting took place in February 2021, merely a few months after the outbreak of conflict in November 2020. It must be stressed that those comments were not publicly accredited to any particular person at that meeting. Although Haavisto has not spoken further on this matter, third parties who were not present in the meeting but who claim to be familiar with the contents of the conversation, have stated that they regard his concern as highly credible.¹²¹ Warning that the crisis is spiraling out of control, Haavisto added:

“When I met the Ethiopian leadership in February they really used this kind of language, that they are going to destroy the Tigrayans, they are going to wipe out the Tigrayans for 100 years and so forth. [...] If you wipe out your national minority, well, what is it? [...] You cannot destroy all the people, you cannot destroy all the population in Tigray. And I think that’s very obvious, that we have to react, because it looks for us like ethnic cleansing. It is a very, very serious act if this is true.”¹²²
78. The potentially alarming language reportedly used in this meeting cannot be interpreted in isolation. For example, in a Facebook post, Prime Minister Abiy Ahmed is said to have referred to Tigrayan leaders as “‘cancer’ and ‘weeds’ in need of removal”.¹²³

116 The judgment of the Nuremberg Tribunal stated that “crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced”; *France et al v Goering et al.* (1946), 22 IMT 411, p. 466.

117 Andres Schipani, “Ethiopia ‘will be digging up mass graves for a decade’: inside Tigray’s dirty war” (*Financial Times*, 26 March 2021).

118 Andres Schipani, “Ethiopia ‘will be digging up mass graves for a decade’: inside Tigray’s dirty war” (*Financial Times*, 26 March 2021).

119 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 441. *See also* para. 127, fn. 85 (explaining that “woyané means “revolutionary” or “rebel” in Tigrinya, and the term forms part of the Tigrinya language name of the TPLF: *Hizbawi Woyane Harnet Tigray*. However, during the conflict, the term took on increasingly negative connotations, especially as government officials used it pejoratively to refer to the TPLF and TPLF supporters”).

120 Cara Anna, “EU envoy: Ethiopian leadership vowed to ‘wipe out’ Tigrayans” (*Associated Press*, 18 June 2021) (emphasis added).

121 Interview by author.

122 Cara Anna, “EU envoy: Ethiopian leadership vowed to ‘wipe out’ Tigrayans” (*Associated Press*, 18 June 2021).

123 Declan Walsh, “A Lifeline to Millions of Ethiopians Is Being Blocked” (*New York Times*, 29 July 2021); The use of coded language and/or insults (for example, “*inyenzi*,” meaning “cockroach”) does not bar the conclusion that speech relates to a particular ethnic group: *see, e.g.*, ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 739 (speech “must be considered as a whole and placed in [its] particular context”), p. 756 (affirming that calls referring to the extermination of the “*inyenzi*” amount to direct and public incitement to genocide).



"We work to get the weeds up. But when we pull out the weeds, we take all possible care not to damage the wheat. In our country, weeding is done with a hammer. The children of Ethiopia are also doing it."¹²⁴

79. Such comments by "top political leaders" have caused international concern and condemnation.¹²⁵ Similarly, the parent company of Facebook (Meta) removed posts by Prime Minister Abiy which "called on Ethiopians to 'bury' the TPLF."¹²⁶ Another post attributed to Mr Abiy which stated that "a rat that strays far from its hole is nearer to its death" was posted shortly thereafter.¹²⁷
80. Speeches by Abiy to "diaspora gatherings in Washington, DC, Minnesota, and Los Angeles" were felt by Tigrayans to be anti-Tigrayan.¹²⁸
81. Although most of Prime Minister Abiy's remarks refer to the TPLF, these comments may be understood as referring to Tigrayans as such. Indeed, "[e]ven those who swallowed the federal government's narrative that it faced resistance to reform from the TPLF cautioned"¹²⁹—already in 2019, before the outbreak of the war—that "the prime minister needs to be careful not to allow his targeting of anti-reform elements within the TPLF, to become an attack on the people of Tigray."¹³⁰ A former minister of Prime Minister Abiy's cabinet said of Ethiopians:

"They deny that an ethnic element has become a major part of this war. ***They have stopped seeing the difference between Tigrayan people and the TPLF, even if many Tigrayans don't support the TPLF.***"¹³¹
82. The ICHREE found that, once Mekelle was re-captured by Tigrayan forces (in June 2021), these statements then:

"widened to include the 'TPLF and its supporters'; they encompassed those perceived as associated with the TPLF, including civilian women, men, and children. This shift in language *dangerously expanded the targets to include potentially the Tigrayan population of Ethiopia as a whole*. These narrative shifts emerged in the context of senior government leaders' appeals for national mobilisation against the 'enemy' in Tigray."¹³²
83. Yet by allowing the 'demonisation' of the TPLF and threatening to "strangle the Tigray region [the TPLF] represents,"¹³³ Abiy is said to have ridden "a wave of wide criticism, even hatred."¹³⁴ This allowed him to align with Amhara and Oromo elites, exacerbating ethnic division.¹³⁵

124 [Tweet by Prime Minister Abiy Ahmed](#), 18 July 2021. English version cited in *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (2022) High Court of Kenya at Nairobi ([Affidavit of Abrham Meareg](#)), para. 59, referred to below at para. 338. Further English translation [here](#).

125 [Press Statement by Alice Wairimu Nderitu](#), United Nations Special Adviser on the Prevention of Genocide, on the continued deterioration of the situation in Ethiopia (New York, 30 July 2021) ("The use of pejorative and dehumanizing language like 'cancer,' 'devil,' 'weed,' and 'bud' to refer to the Tigray conflict is of utmost concern").

126 Max Bearak, "[Rebel advance to within 200 miles of Ethiopia's capital puts the city and wider region on edge](#)" (*Washington Post*, 6 November 2021).

127 Max Bearak, "[Rebel advance to within 200 miles of Ethiopia's capital puts the city and wider region on edge](#)" (*Washington Post*, 6 November 2021).

128 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia's Tigray War* (Hurst, 2023), pp. 154-155. The videos are listed on p. 394, fn. 27 (the third video relating to Los Angeles is no longer available).

129 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia's Tigray War* (Hurst, 2023), p. 157.

130 Ahmed Soliman, quoted by James Jeffrey, "Power shift creates new tensions and Tigrayan fears in Ethiopia" (*The New Humanitarian*, 14 February 2019).

131 Max Bearak, "[She was in Abiy Ahmed's cabinet as war broke out; Now she wants to set the record straight](#)" (*Washington Post*, 30 December 2021) (emphasis added).

132 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 441 (emphasis added).

133 René Lefort, "[Preaching unity but flying solo, Abiy's ambition may stall Ethiopia's transition](#)" (*Ethiopia Insight*, 25 February 2020).

134 René Lefort, "[Preaching unity but flying solo, Abiy's ambition may stall Ethiopia's transition](#)" (*Ethiopia Insight*, 25 February 2020).

135 René Lefort, "[Preaching unity but flying solo, Abiy's ambition may stall Ethiopia's transition](#)" (*Ethiopia Insight*, 25 February 2020).



84. Indeed, once the conflict broke out in November 2020, Prime Minister Abiy is said to have promoted a narrative in which he ascribed a period of conflict between 2018 and 2020 to “the machinations of the TPLF, arguing that this was all part of a policy aimed at inciting violence to discredit his government and derail his reforms, and ultimately restoration of TPLF control.”¹³⁶
85. The ICHREE further found that federal officials used similarly inflammatory rhetoric:
- “In August 2021, the Head of the National Intelligence and Security Services advocated for the elimination of the TPLF, its followers, and ideologies stating that the ‘junta mentality’ was ‘*not limited only to a few thugs, swindlers, liars, murderers vagabonds, and terrorist pensioners*’. [...] By November 2021, the Deputy Director of the Ethiopian Media Authority was calling for the removal of the TPLF, described as a ‘thorn’ and ‘traitors,’ from Ethiopia and insinuated that all Tigrayans has been affected by the TPLF ‘disease.’”¹³⁷
86. One speech by Prime Minister Abiy’s social affairs adviser, Daniel Kibret, is often referred to as “openly [advocating] genocide”.¹³⁸
- “Weyane [Tigray] is not something we can understand. We can only erase it. For instance, Australia. ... there is an island called Tasmania which is found in southern Australia. They have destroyed Tasmanian tribes until only one person remained. There was only one person left for [continuity of] the race. Only one person! They have completely wiped them out. It is only by wiping out. As I had said before, it is only by wiping out [of existence] the disease called Weyaneness. ... Firstly, so that is may not exist physically. ... Secondly, the [very] idea. The idea of Weyaneness must never exist. Even in the form of an idea. ... When people say “Weyane” one ought to say “in the name of the father”! [A common Ethiopian Orthodox reaction uttered against wickedness while crossing oneself] Everyone [should say that]!”¹³⁹
87. The speech was widely criticized as dangerous, including by the US government.¹⁴⁰ Daniel Kibret himself clarified that “the word ‘They’ “refers to the terrorist TPLF group.”¹⁴¹ Yet Kibret is also said to have said “There should be no land in this country which can sustain this kind of weed,”¹⁴² which refers to the land itself rather than a particular political group.
88. Kibret explicitly refers to the erasure and killing of members of that group:
- “They should be erased and disappeared from historical records. A person who wants to study them should find nothing about them. *Maybe he can find out about them by digging in the ground.*”¹⁴³

136 Anthony Shaw, “Ethiopia at War,” in Eritrea Focus and Oslo Analytica, *The Tigray War and Regional Implications: Volume 1* (2021), pp. 16-72, at p. 29: This narrative included a reference to 113 outbreaks of ethno-nationalist violence, and the TPLF’s plans to eventually seize control of the government—a narrative which has been deemed to be “highly implausible” in the absence of any support for such accusations. Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 161: This very narrative “continued to have strong traction with audiences internationally and domestically long after the war began.” Tom Gardner, “How Abiy’s Effort to Redefine Ethiopia Led to War in Tigray” (*World Politics Review*, 8 December 2020) (reporting that Tigray’s president Debretsion Gebremichael already warned of Prime Minister Abiy’s overreach by accusing him and his government of working “to destroy the people of Tigray” by the end of 2019). See also Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 160.

137 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 442 (italics in the original). See also UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 33 (referring to the State Minister of Peace calling for the “eradication of the enemy”).

138 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 337.

139 A now-deleted blog post documented Daniel Kibret’s call for the extinction of Tigrayans on Ethiopian television in January 2022. Cited by Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 270, fn. 53. Accessible also at Martin Plaut, “Ethiopian Prime Minister Abiy Ahmed’s social affairs adviser in public call for genocide” (author’s blog, 24 January 2022). A video is available at <https://www.youtube.com/watch?v=8BxA8hJ-dy0>. See also UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 33 (also relying on Kibret’s call for the “‘erasure of woyane’ equivalent to the population of Tasmania”).

140 AFP, “US blasts rhetoric by ally of Ethiopia PM who compared Tigrayans to the devil” (*Alarabia News*, 20 September 2021).

141 AFP, “US blasts rhetoric by ally of Ethiopia PM who compared Tigrayans to the devil” (*Alarabia News*, 20 September 2021).

142 AFP, “US blasts rhetoric by ally of Ethiopia PM who compared Tigrayans to the devil” (*Alarabia News*, 20 September 2021).

143 AFP, “US blasts rhetoric by ally of Ethiopia PM who compared Tigrayans to the devil” (*Alarabia News*, 20 September 2021) (emphasis added).



89. Other public figures have uttered similarly incendiary remarks. Kedir Juhar, mayor of Dire Dawa (the only other federal-level city administration in Ethiopia besides Addis Ababa, with over 440,000 inhabitants), is alleged to have argued on national television that “Tigrayans are worse than the devil himself.”¹⁴⁴
90. Seyoun Teshome, a journalist and political analyst from Amhara, who is said to be a close friend of Abiy Ahmed,¹⁴⁵ reportedly said in an interview with reference to Tigray:
- “Banditry is their culture. I want to separate Ethiopia from Tigray. What, does it hurt? It doesn’t hurt. [...] What I am saying clearly is that it was Wolkayit, and we are left with our land. [...] After this, the aim and goal of the Ethiopian movement should be to separate Ethiopia from Tigray. What is the deal? What do we owe? A lifetime of country denial, brats. As if they had sold a country for a lifetime. I have no obligation to live with someone who promotes a culture of banditry and disloyalty. We have to speak up; we have to separate Ethiopia from Tigray. We should think about it because Ethiopia should not be bleeding for the rest of its life due to the betrayal of Tigray. What do we owe?”¹⁴⁶
91. A retired Brigadier General of the Derg regime, Kassaye Chemed, was reported to have said on the government-aligned Walta TV station:
- “The military and security officers [should order] those that hold sticks and arms in villages [in Tigray] to put them down. If they refuse, they should shoot them. That’s it! It is a state of emergency. There is nothing [more important] beyond Ethiopia. The main snake got hit around its middle: it then fled and got under a rock in Mekelle. I will not give out the details here, but the government! ... A good plan has to be prepared and they have to be hit [destroyed].”¹⁴⁷
- The retired general “had reportedly returned to [Ethiopia] to become a close associate of prime minister Abiy.”¹⁴⁸
92. Reflecting the degree to which the ethnically charged rhetoric had become part of public discourse, religious leaders also used terms like “the enemy,” and “sickness,” and “cancer” when speaking about the TPLF. One preacher is also alleged to have called Tigrayans “hyenas,” “traitors,” and “junta.”¹⁴⁹ The ICHREE found that “In Ethiopia, where the majority of the population are deeply devout and religious leaders hold significant influence, such statements were extremely inflammatory.”¹⁵⁰
93. Propaganda through broadcasts has also been widely used. For example, satellite stations, in particular Oromo Media Network and ESAT (Ethiopian Satellite Television), which was established in 2010 as an independent non-State media outlet, were conspicuous. While these stations are formally independent of the government, they nonetheless appear to reflect official sentiments and discourse from senior members of the Ethiopian federal government, including broadcasting various pieces that were hateful of Tigrayans generally. ESAT broadcasts were widely available in urban households across Ethiopia: “ESAT aired and amplified the allegations of other pro-government broadcasters, and went beyond them with a line-up of trenchant commentators who were consistent and strident in their condemnation of TPLF ‘sabotage.’”¹⁵¹ On

144 [Tweet by Teklehaymanot G. Weldemichel \(ተክሌሃይማኖት ዌልደሙክረት\)](#), 22 December 2021 (Kedir Juhar speaking).

145 [Tweet by Gebrekirstos Gebreselassie](#), 14 April 2021 (“Seyoun Teshome, a prominent Amhara political analyst and @AbiyAhmedAli’s close friend (his Addis support rally organizer) says “given that western Tigray and Raya have now been annexed, Ethiopia should push Tigray out and disown Tigrayans whose culture is treason.”

146 [Tweet by Gebrekirstos Gebreselassie](#), 14 April 2021. This video was translated by an official interpreter instructed by New Lines Institute.

147 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 165 (citing Kassaye Chemed’s comments, as broadcast on Walta TV, in a video posted on Twitter, 8 July 2020).

148 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 165.

149 [Tweet by OmnaTigray](#), 17 September 2021 (translation into English provided by tweet author).

150 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 445.

151 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 165; *see also* pp. 139-140 (on the background of ESAT TV station).



or around 1 November 2021, the account “ESAT What’s New” from ESAT also allegedly posted on Facebook the following statement:

“Why do we tolerate the renegade Tigrayans among us while we are dying? Raise your machete, axe, or gun and ignite the campaign against renegade Tigrayans in the respective areas. Ignite the massacre to a point no Tigrayan survives.”¹⁵²

94. Another broadcast, which followed after violence in Gonder in mid-2016, included a ‘call for solidarity from the people of Gonder’, portraying the violence as:

“a struggle between a minority tribe who want to exterminate us and get the upper hand to rule over us and we, the people, who suffering [sic] has never come to an end... This plan of havoc is prepared by 5 million people against the 95 million people... Do we wait until they exterminate us one by one? There is only one choice ... taking measures by force ... one way of removing dead fish from the sea water is by drying the sea.”¹⁵³

95. In particular, ESAT journalist Mesay Mekonnen broadcasted that:

“the difficulty that we (Ethiopians) are facing now is not between the oppressor government/regime and the oppressed people, as other countries are facing. What we Ethiopians are now facing is between a small minority ethnic group, representing five percent of the Ethiopian population, who wants to rule Ethiopia subjugating others and the subjugated peoples. And the solution for what we are facing at this time is ‘drying the water so as to catch (kill) the fish.’”¹⁵⁴

96. According to commentators, this metaphor of “water” and “fish” is meant to signal that in order to catch the fish—the ruling members of the TPLF within the Ethiopian government at the time—the water needed to be drained, i.e., “it means that there is a need to massacre the population [of] Tigray in order to annihilate the TPLF. This was not a call to kill against individual members of Tigray people, but it was a call against the entire Tigray people extermination [sic].”¹⁵⁵

97. Furthermore, the implication is that the conflict is between the Tigrayan *people* and other Ethiopian ethnic communities. By referring to the “Woyane regime,” an image was created that the EPRDF government was solely made up of Tigrayans.¹⁵⁶ At the same time, Mekonnen’s broadcast also “called on Ethiopians in Amhara and Afar to block roads into Tigray.”¹⁵⁷

98. Within the Oromo Media Network, Jawar Mohammed called those ethnic Tigrayans whom he believed were profiteering from the EPRDF government “Hagos,” which is a Tigrayan name but used as a “shorthand slur.”¹⁵⁸ The power of these broadcasts is evident in their commentators’ prophetic calls—already in October 2020, a month before the war—for the disruption of banking services, electricity, and telecommunication, as well as livelihoods in Tigray.¹⁵⁹

152 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (2022), High Court of Kenya at Nairobi ([Affidavit of Abrham Meareg](#)), para. 136.

153 Cited by Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 391, fn. 58; For a similar translation, *see also* TGHAT, “‘[Drain the Sea](#)’: The Genocidal Call Broadcast by ESAT” (TGHAT, 16 July 2021).

154 Zeray Wolqait, “[ESAT Radio and Television: The Voice of Genocide](#)” (*Horn Affairs*, 23 August 2017).

155 Zeray Wolqait, “[ESAT Radio and Television: The Voice of Genocide](#)” (*Horn Affairs*, 23 August 2017).

156 Zeray Wolqait, “[ESAT Radio and Television: The Voice of Genocide](#)” (*Horn Affairs*, 23 August 2017). *See also* Alex de Waal, “[Steal, Burn, Rape, Kill](#)” (2021), 43(12), London Review of Books: “In practice, *woyane* refers to any Tigrayan suspected of sympathy with the TPLF. But given that the party won more than 90 per cent of the vote in Tigray’s regional elections in September, that means pretty much everyone.”

157 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 391, fn. 58.

158 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 139. *See Tweet by Jawar Mohammed*, 30 January 2016 (“Hagos is wetting his pants as his daylight robbery is about to end fast”).

159 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 165.



99. Speech vilifying Tigrayans was also reported among soldiers and ordinary citizens,¹⁶⁰ including in particular online.¹⁶¹
100. Retreating Ethiopian soldiers left abuse written on school walls: “Tigray and snakes are the same”; “Tigray must be cleansed”; “Tigray must be cleansed for the development of the country”; and “Tigray are junta.”¹⁶²
101. The pejorative term “junta” was used “in particular [against] Tigrayan members of the ENDF, police force and civil service—but also academics and businesspeople.”¹⁶³ Other pejorative terms uttered in the context of violence against Tigrayans include “woyane”—as referred to elsewhere in this report—and “agame.”¹⁶⁴
102. One survivor says that the son of her landlord started calling her “junta” repeatedly. This word was one that “the prime minister started calling Tigrayans.”¹⁶⁵ She reports:
- “He told me I am Tigrayan, that I am ‘junta’ and that he would report me to the administration, and they would have me killed if I didn’t leave. He even said: ‘I will even stab you with my own hands.’”¹⁶⁶
103. A witness reports: “There were a lot of different things that were written about Tigray women that I cannot repeat. It is too painful.”¹⁶⁷ Whilst being raped, a 60-year-old Tigrayan survivor reports that one of the ENDF soldiers raping her said “We will destroy Tigray and all the Tigrayans.”¹⁶⁸
104. Another survivor reports: “They were calling my little girl, who is 4, a junta. [...] Not only them, but their kids, little boys, were threatening my little girl, and they would say they would behead my daughter. I assumed that these were words they heard and learned from their parents. So, what if they would [actually] do it someday? What if they took a knife and beheaded my daughter? I had to leave; it wasn’t safe for me.”¹⁶⁹

b) Relevant Circumstances Indirectly Evidencing an Intent to Destroy

105. The statements in the section above illustrate the febrile tone of much public discourse in Ethiopia, which has served to link political tensions with ethnicity. Likewise supporting the possible inference that one or more relevant actors may have formed the intent to destroy the Tigrayans as a group, in whole or in part, are

160 See also UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 32.

161 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 57. See further below at para. 337 and following (case against Meta).

162 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 283.

163 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 28. For the repeated use of the word “junta”; see also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 103, 108, 109, 119, 120, 126, 127, 147, 164, 168 (concerning UN peacekeepers of Tigrayan ethnicity), 185, 186, 188, 195, 310, 426 (concerning the situation of the Kunama community), 435, 436, 437, 438, 441, 442.

164 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, paras. 32. See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 126, 127, 147, 436, 441.

165 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 99. See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, p. 73 (citing Prime Minister Abiy Ahmed’s speech: “The *junta* is probably the only group in history that used its political power to disintegrate its own country. ... We can confidently say, the *junta* will be uprooted in a manner that will ensure it will not bud again. This will happen if we collaborate to remove the invasive weed.... We will work to remove the weed”).

166 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 99.

167 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 283.

168 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, p. 25, para. 435. See below at SECTION V.E.4, relating to rape and sexual violence, for further statements (by all three perpetrator groups) suggesting an intent to destroy.

169 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 100.



some of the events and circumstances surrounding the conflict.¹⁷⁰ There are five different aspects that feed into this analysis.

106. First, the inflammatory public discourse led to the normalization of discrimination and violence against the Tigrayan group in various aspects of public life. The ethnic tensions created by the inflammatory public discourse have progressively ostracized Tigrayans in daily life, and have exacerbated a spiral of abuse and violence against them.

107. A former cabinet minister reports that:

“she had been told first by a high-ranking official in Abiy’s Prosperity Party and then by an official in his personal office that all Tigrayans on her staff—and at other ministries, too—were to be placed on leave immediately. ‘I said, ‘I won’t do it unless the prime minister calls me himself, or you put it in writing,” she said, adding that subordinates of hers enforced the order anyway.”¹⁷¹

108. The outbreak of the conflict then coincided with ethnic profiling.¹⁷² For example,

a. Tigrayans were targeted due to their ethnicity and removed from their employment.¹⁷³ Initially, the armed forces and security sector “purged” its staff of Tigrayans; later, the government security and civil services dismissed Tigrayans working for them.¹⁷⁴ This intensified after the fighting began.¹⁷⁵

b. Those companies that had Tigrayan employees were either shut down or the Tigrayan employees were prevented from going to work. One survivor says:

“People knew I am Tigrayan. [...] So, there was lots of harassment and intimidation. Starting from my own family, Tigrayans in Addis Ababa are suffering. My Tigrayan coworkers have been arrested. I have friends whose bank accounts have been shut down, who still can’t access their own money. The father of my children was imprisoned multiple times. He is still languishing in jail.”¹⁷⁶

c. Travel restrictions were put in place.¹⁷⁷ In November 2020, police in Addis Ababa started requiring Tigrayan people to “check in with authorities every two days,”¹⁷⁸ and one witness was told by an officer: “If you don’t sign, we will come and arrest you. If you are not there, we will harass your families.”¹⁷⁹

170 ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 13 (“The historical examples of genocide also suggest that the area of the perpetrators’ activity and control, as well as the possible extent of their reach, should be considered. Nazi Germany may have intended only to eliminate Jews within Europe alone; that ambition probably did not extend, even at the height of its power, to an undertaking of that enterprise on a global scale. Similarly, the perpetrators of genocide in Rwanda did not seriously contemplate the elimination of the Tutsi population beyond the country’s borders. *The intent to destroy formed by a perpetrator of genocide will always be limited by the opportunity presented to him*. While this factor alone will not indicate whether the targeted group is substantial, it can—in combination with other factors—inform the analysis”; emphasis added). See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 146 (“Some statements by the perpetrators suggested they may have had an intent to destroy the Tigrayan population”).

171 Max Bearak, “She was in Abiy Ahmed’s cabinet as war broke out; Now she wants to set the record straight” (*Washington Post*, 30 December 2021) (emphasis added).

172 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 28.

173 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), pp. 203–204.

174 Zecharias Zelalem, “Ethiopia Airlines accused of ethnic profiling over civil war with Tigray” (*The Telegraph*, 4 December 2020) (“Staff at Africa’s largest airline are being ethnically profiled and excluded from work because they come from a region embroiled in a civil war with the Ethiopian government”); Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

175 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 204 (“Ethiopian cabinet ministers were instructed to fire staff simply because of their ethnicity”).

176 Nayna Exhibition, Tigray Advocacy Canada, 4 November 2022.

177 Simon Marks and Abdi Latif Dahir, “As War Goes On in Ethiopia, Ethnic Harassment Is on the Rise” (*New York Times*, 12 December 2020) (“The C.E.O. of the national carrier, Ethiopian Airlines, who is an ethnic Tigrayan, was barred from leaving the country earlier this month, according to a pilot at the airline and a foreign diplomat who spoke on the condition of anonymity because of the sensitivity of the matter. The pilot said that the C.E.O., Tewolde GebreMariam, was prevented from boarding a flight to Paris on Nov. 8 because of his strong links to senior members of the T.P.L.F. Mr. Tewolde himself could not be reached for comment”).

178 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 220 (It is unclear whether this referred to local or federal police).

179 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 220.



- d. One survivor reports of an atmosphere of fear and ethnic profiling in Addis Ababa after the outbreak of conflict:

“There was so much suspicion, everyone was watching us. Tigrayans couldn't leave the country. We were being returned from the airport even though we had valid travel documents. This happened to me twice, despite the fact that I had my visa and ticket already. Even travelling inside Ethiopia was stressful. At any point, police could stop you and demand to see your ID. If you have a Tigrayan name, they will interrogate you, and they won't let you pass until you bribe them.”¹⁸⁰
- e. Systematic ID checks were carried out, and homes were searched without warrants.¹⁸¹ In November 2020, police with machine guns entered the home of Lisanewerk Desta, a theologian of the Ethiopian Orthodox Church, without a warrant, and searched it for incriminating material.¹⁸² Only one item, his Ethiopian ID card, showing that he was of Tigrayan ethnicity, was confiscated.¹⁸³
- f. In late 2020, “Ethiopia’s attorney general, Gedion Timothewos, acknowledged [...] that there had been ‘isolated incidents’ in which law enforcement agencies ‘acted out of line,’” but that the government took “the issue of ethnic profiling very seriously.”¹⁸⁴
- g. However, it is reported that by 2021, “[v]igilantes were scouring the cities, searching for Tigrayans. Some were arrested; all were interrogated, abused and intimidated.”¹⁸⁵ Later, in May 2021, the Ethiopian government formally designated the TPLF a ‘terrorist’ organization, opening up scope for further searches, arrests, and prosecutions.¹⁸⁶ This designation decision is broad in scope and applies to “organisations and individuals who collaborate, have links with or relate to the ideas and actions” of the TPLF.¹⁸⁷
- h. Bars and venues that feature Tigrinya music were targeted, and those singing in Tigrinya were told to stop.¹⁸⁸ From 28 June 2021, local authorities have closed dozens of Tigrayan businesses in Addis Ababa (in Haya Hulet and neighborhoods in the Bole district).¹⁸⁹ In one case, “local authorities alleged [that] the two establishments [two hotels] had played music that could stir up emotional backlash and violence” and that the “inciting music that celebrates the adversity of the country and humiliates the Ethiopian National Defense Force.”¹⁹⁰ While a Tigrayan hotel owner was arrested by police and intelligence agents, his ethnic Amhara colleague was released.¹⁹¹ The hotel owner was allegedly moved to an undisclosed location, and his whereabouts were unknown by August 2021.¹⁹²
- i. As Tigrayan forces advanced to within 200 miles of Addis Ababa in November 2021, Tigrayans living in the capital became careful not to speak Tigrinya, else they risked being detained by the police.¹⁹³ Police are said to have gone from door to door searching for Tigrayans who may be sympathetic to the

180 Nayna Exhibition, Tigray Advocacy Canada, 4 November 2022.

181 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021). See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 174 (“former detainees were not aware of the reason for their arrest and no warrant was shown”).

182 Simon Marks and Abdi Latif Dahir, “As War Goes On in Ethiopia, Ethnic Harassment Is on the Rise” (*New York Times*, 12 December 2020).

183 Simon Marks and Abdi Latif Dahir, “As War Goes On in Ethiopia, Ethnic Harassment Is on the Rise” (*New York Times*, 12 December 2020).

184 Simon Marks and Abdi Latif Dahir, “As War Goes On in Ethiopia, Ethnic Harassment Is on the Rise” (*New York Times*, 12 December 2020).

185 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 204.

186 AP, “Ethiopia to designate TPLF, OLF-Shene as ‘terror’ groups” (*AlJazeera*, 1 May 2021).

187 AP, “Ethiopia to designate TPLF, OLF-Shene as ‘terror’ groups” (*AlJazeera*, 1 May 2021).

188 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

189 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

190 Selam Gutu, “Addis Abeba Hotels Closed Temporarily Over ‘Inciting’ Music” (*Addis Fortune*, 11 June 2021).

191 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

192 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

193 Max Bearak “Rebel advance to within 200 miles of Ethiopia’s capital puts the city and wider region on edge” (*Washington Post*, 6 November 2021).



TPLF.¹⁹⁴ Those who had been picked up by the police at their places or work or running errands had not been reachable since.¹⁹⁵

- j. On one occasion, traffic police stopped and arrested one Tigrayan for spurious traffic violations because he had a Tigrayan name in his passport.¹⁹⁶ Joined by federal policemen, they all slapped his face, struck his body and head with their sticks, even bit him, and called him “TPLF junta.”¹⁹⁷ His smartphone was checked for any evidence of TPLF affiliation.¹⁹⁸ Photos, such as of Debretsion Gebremichael (President of Tigray), as well as the private and public sharing of information about the Tigray war on Facebook, Twitter, and similar social media platforms, could be enough to be charged and brought before a judge.¹⁹⁹ Judges are known to hand out maximum penalties.²⁰⁰ Yet one judge reportedly dismissed these ‘ridiculous claims’ and asked investigators to “refrain from [...] accusing the same people again and again.”²⁰¹
- k. Later, even those who were merely associated with Tigrayans, such as Oromo civilians—after an Oromo rebel group announced an alliance with the TPLF in August 2021—were also profiled and detained alongside ethnic Tigrayans.²⁰²
- l. The public discrimination against Tigrayans continues even after the *Cessation of Hostilities Agreement*. Ethiopian Airlines, the state-owned airline, has also been accused of discriminating against ethnic Tigrayans—in early 2023—because of their refusal to sell tickets to Tigrayans aged between 15 and 60 for flights from Mekelle to Addis Ababa, and for increasing ticket prices “as a form of ‘collective sanction’ against the people of Tigray.”²⁰³ Those wishing to travel to Addis Ababa had to resort to travel by coach instead, or show a doctor’s letter evidencing the need for medical treatment in the capital. Some who do secure tickets had to background checks by intelligence services. The official justification is that tickets were prioritized for young children, the sick, or elderly people, but a former employee confirmed that enough seats were available, and flights were not fully booked. The policy of not selling tickets to people between 15 and 65 was confirmed by a former Ethiopian Airlines employee.²⁰⁴

109. Second, as set out in detailed analysis below, when the ENDF and associated persons did commit crimes in the Tigrayan conflict, those crimes were carried out in a manner which suggested the intent to destroy the Tigrayan group or at least a substantial part of it.²⁰⁵ This includes contemporaneous statements by physical perpetrators, and similar indicators. According to one report, Ethiopian and allied forces used CRSV to eliminate the Tigrayan population.²⁰⁶ This entails, among other acts, the destruction of women’s reproductive abilities through insertion of foreign objects, including as accompanied by statements evidencing an intention to wipe out the Tigrayan people. Other examples of the manner in which the ENDF

194 Max Bearak “[Rebel advance to within 200 miles of Ethiopia’s capital puts the city and wider region on edge](#)” (*Washington Post*, 6 November 2021).

195 Max Bearak “[Rebel advance to within 200 miles of Ethiopia’s capital puts the city and wider region on edge](#)” (*Washington Post*, 6 November 2021).

196 Goitom Mekonen Gebrewahid, *Primed For Death: Tigray Genocide, A Survivor’s Story* (2022), p. 79.

197 Goitom Mekonen Gebrewahid, *Primed For Death: Tigray Genocide, A Survivor’s Story* (2022), pp. 79-80.

198 Goitom Mekonen Gebrewahid, *Primed For Death: Tigray Genocide, A Survivor’s Story* (2022), p. 79.

199 Goitom Mekonen Gebrewahid, *Primed For Death: Tigray Genocide, A Survivor’s Story* (2022), p. 81. A refugee in Canada “describes an environment of terror for Tigrayans in Addis Ababa. ‘We were getting imprisoned,’ he reveals, ‘Just because I am Tigrayan, just because we are speaking in Tigrigna, we were sent to jail’”; Nayna Exhibition, Tigray Advocacy Canada, 4 November 2022.

200 Cara Anna and Andrew Drake, “[“Clean out our insides”: Ethiopia detains Tigrayans amid war](#)” (*Associated Press*, 29 April 2021).

201 Goitom Mekonen Gebrewahid, *Primed For Death: Tigray Genocide, A Survivor’s Story* (2022), p. 85.

202 Dawit Endeshaw and Katharine Houreld, “[Deadly Detention](#)” (*Reuters*, 17 June 2022).

203 Guardian correspondent, “[Ethiopian Airlines faces legal case over claims it blocks Tigrayans from travel](#)” (*The Guardian*, 31 May 2023).

204 Guardian correspondent, “[Ethiopian Airlines faces legal case over claims it blocks Tigrayans from travel](#)” (*The Guardian*, 31 May 2023).

205 See below SECTION V.E.1.A), PARAS. 200, 202, 209, and SECTIONS V.E.2, V.E.3, V.E.4.

206 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 29 (“Data suggest that Ethiopian and allied forces committed CRSV on a widespread and systemic basis in order to eliminate and/or forcibly displace the ethnic Tigrayan population”).



and other Ethiopians carried out crimes against Tigrayans include various large-scale incidents such as arbitrary detentions, killings, forcible transfer, in which ethnic Tigrayans were singled out.²⁰⁷

110. Third, to aid a military intervention against its own citizens, Ethiopia sought the assistance of Eritrean forces,²⁰⁸ which were known to have a particular animus against the Tigrayan group, which a reasonable person could foresee would result in violence against them. Given the past circumstances and history of conflict, this was particularly significant. Notably:
- a. Eritrea seceded from Ethiopia in 1993 following persistent tensions between the two countries.²⁰⁹ Even after gaining independence, Eritrea remained in economic competition with Ethiopia, leading to the Ethiopian-Eritrean War from 1998 to 2000,²¹⁰ and Eritrean President Isaias Afwerki became the TPLF's "arch enemy."²¹¹
 - b. Eritrea and Ethiopia did not reconcile until the peace agreement brokered by then newly elected Prime Minister Abiy Ahmed in 2018, with whom President Isaias publicly sides as he blames the TPLF for the internal conflicts within Ethiopia. The main border crossings between Ethiopia and Eritrea opened briefly, but were closed again before the end of 2018, apparently in an attempt to "suffocate the already ailing Tigrayan economy," according to an Ethiopian opposition figure with close ties to the Eritrean capital.²¹²
 - c. According to an official in Mekelle, "[Isaias] was looking to sideline the TPLF by allying with the federal government. It was the TPLF factor that brought them [Abiy and Isaias] together, not the peace (deal) we had already decided (to pursue) as the EPRDF."²¹³ A foreign diplomat said: "This is open season for Eritrea. [...] Isaias wants to get rid of Tigray once and for all."²¹⁴ The war in Tigray is thus an opportunity for Eritrea to "fight its decades-old Tigrayan foe."²¹⁵
 - d. The involvement of Eritrean soldiers does not appear to have happened by chance, but rather to have been planned—in particular, since Eritrean troops were on Ethiopian territory within days of the outbreak of the conflict.
 - e. On 9 December 2020, UN SG Antonio Guterres told reporters, on assurances from Ethiopian Prime Minister Abiy, that Eritrean troops were not on Tigrayan territory.²¹⁶ Prime Minister Abiy also insisted that he was "forced to move quickly" after the alleged attack against his forces in early November 2020. Yet aid workers, refugees, UN officials, and diplomats reported that Eritrean soldiers were involved in and coordinating fighting in Tigray,²¹⁷ and Eritrean forces shot artillery from Eritrean territory in the early weeks of fighting.²¹⁸
 - f. Moreover, the involvement of other foreign troops further undermines Prime Minister Abiy Ahmed's claim for a 'law enforcement operation' that was ostensibly executed in response to an attack by the

207 See in particular, *SECTIONS V.E.1.A), V.E.2, V.E.3, V.E.4, V.F.3, VI.B.2, VI.B.3, VI.B.4, and paras. 100(h), 192.*

208 Declan Walsh and Simon Marks, "Refugees Come Under Fire as Old Foes Fight in Concert in Ethiopia" (*New York Times*, 28 December 2020); Kjetil Tronvoll, "The Anatomy of Ethiopia's Civil War" (2022), 121 *Current History*, p. 167 (analyzing the reasons for Eritrean "payback").

209 Gérard Prunier and Éloi Fiquet (eds.), *Understanding Contemporary Ethiopia* (Hurst, 2015), pp. 10-11.

210 Gérard Prunier and Éloi Fiquet (eds.), *Understanding Contemporary Ethiopia* (Hurst, 2015), pp. 10-11.

211 International Crisis Group, *Bridging the Divide in Ethiopia's North* (12 June 2020).

212 International Crisis Group, *Bridging the Divide in Ethiopia's North* (12 June 2020).

213 International Crisis Group, *Bridging the Divide in Ethiopia's North* (12 June 2020) (square brackets in the original source).

214 Andres Schipani, "Ethiopia 'will be digging up mass graves for a decade': inside Tigray's dirty war" (*Financial Times*, 26 March 2021).

215 Andres Schipani, "Ethiopia 'will be digging up mass graves for a decade': inside Tigray's dirty war" (*Financial Times*, 26 March 2021).

216 Declan Walsh and Simon Marks, "Refugees Come Under Fire as Old Foes Fight in Concert in Ethiopia" (*New York Times*, 28 December 2020).

217 Declan Walsh and Simon Marks, "Refugees Come Under Fire as Old Foes Fight in Concert in Ethiopia" (*New York Times*, 28 December 2020).

218 Declan Walsh and Simon Marks, "Refugees Come Under Fire as Old Foes Fight in Concert in Ethiopia" (*New York Times*, 28 December 2020). Note also that even when the outbreak of fighting seemed likely due the TPLF's refusal to postpone elections—notwithstanding the fact that Prime Minister Abiy's rejected accusations that the government was sending federal forces to Tigray to stop the election as "madness"—a former army general called for military intervention in Tigray: "The government should plan well, and they should be attacked"; see Desta Gebremedhin, "Why there are fears that Ethiopia could break up" (*Wardheer News*, 5 September 2020).



TPLF. Somali troops are reported to have been training in neighboring Eritrea since 2019, with numbers ranging between 3,000 and 7,000 recruits.²¹⁹ This was initially denied, but later conceded by Somali President Farmaajo.²²⁰ The training in Eritrea itself was also shrouded in secrecy. The “troops taken for training [...] have not been told about where they are going, [and] cannot be contacted,” and the training was led by Somalia’s intelligence agency, rather than the defence ministry, as would be customary.²²¹ These Somali troops, reported to be around 10,000, were then deployed in Tigray.²²² This would be especially noteworthy if, as reported, the troops had been training in Eritrea since 2019—a year prior to the November 2020 outbreak of conflict.²²³ In addition to the Somali troops, the Ethiopian government was later aided by drones, from the United Arab Emirates, China, Turkey, and Iran.²²⁴

111. Fourth, Ethiopia sought to cover up evidence of crimes, suggesting that these were at least accepted, or even potentially implying consciousness of guilt or at least an attempt to prevent external scrutiny. One former government minister said:

“We brought back the most painful stories, and every side was implicated. [...] But when I wanted to release our findings, I was told that I was crossing a line. ‘You can’t do that,’ is what an official very high up in Abiy’s office called and told me. And I said, ‘You asked me to find the truth, not to do a propaganda operation. I am not trying to bring down the government—there is a huge rape crisis for God’s sake. Child soldiers are being recruited by both sides. I have the evidence on my desk in front of me.’”²²⁵

112. The federal government has even been accused of “rounding up Tigrayans solely based on their ethnicity” by Hailu Kebede, foreign affairs head of opposition party Salsay Weyane Tigray, in an article published in June 2022.²²⁶ It was reported that he was detained by security forces in Addis Ababa in August 2022,²²⁷ and was active on Twitter again in January 2023, confirming his detention.²²⁸ The federal government similarly critiqued the ICHREE report as “inflammatory rhetoric.”²²⁹

113. Fifth, members of the Tigrayan group were not permitted to flee Tigray, and either killed during escape or forced to remain in Tigray, where they were exposed to further victimization.

114. According to one report, Ethiopian soldiers blocked the routes to Sudan to keep the stories and evidence of their acts hidden away in Ethiopia.²³⁰ This happened as early as November 2020, when ENDF soldiers, together with Amhara militia, are said to have physically attempted preventing Tigrayans from crossing into Sudan.²³¹ Also in December 2020, “Ethiopian forces [...] blocked people fleeing the country’s embattled Tigray region from crossing into Sudan at the busiest border crossing point for refugees.”²³² Since this occurred shortly after the outbreak of the war, when Tigray was cut off from the outside world, these reports from several Tigrayans could not be verified by UNHCR.²³³

219 Harun Maruf, “Clandestine Training of Somali Forces in Eritrea Stirs Families’ Concern” (*Voice of Africa*, 19 February 2019).

220 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 204.

221 Harun Maruf, “Clandestine Training of Somali Forces in Eritrea Stirs Families’ Concern” (*Voice of Africa*, 19 February 2019).

222 Lucy Kassa, “Somali troops committed atrocities in Tigray as new alliance emerged, survivors say” (*Globe and Mail*, 20 January 2022).

223 Harun Maruf, “Clandestine Training of Somali Forces in Eritrea Stirs Families’ Concern” (*Voice of Africa*, 19 February 2019).

224 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 263.

225 Max Bearak, “She was in Abiy Ahmed’s cabinet as war broke out; Now she wants to set the record straight” (*Washington Post*, 30 December 2021).

226 Dawit Endeshaw and Katharine Houreld, “Deadly Detention” (*Reuters*, 17 June 2022).

227 Tweet by Yabele Media, 30 August 2022.

228 Tweet by Hailu Kebede, 1 January 2023.

229 AFP, “Ethiopia warns UN-backed probe could ‘undermine’ peace process” (*Justice Info*, 15 February 2023).

230 “Nima Elgabir on Jamal Osman, “The Horrors of the Hidden War: Inside the Tigray conflict in Ethiopia” (*Channel 4*, 18 May 2021).

231 Mohammed Amin, “Tigray refugees recount the horrors of Ethiopia’s new conflict” (*The New Humanitarian*, 19 November 2020).

232 Fay Abuelgasim and Nariman El-Mofty, “Ethiopian forces said to block refugees from entering Sudan” (*AP*, 3 December 2020).

233 UNHCR, “Ethiopian refugees report obstacles to reach safety in Sudan as numbers approach 50,000” (10 December 2020).



115. At the same time, “[d]ays after Abiy urged people in Tigray to return in late March, at least two men trying to do so from Hamdayet [a refugee reception centre in Sudan] were fatally shot within sight of the border crossing.”²³⁴ Several corpses were found lying by the Tekeze river at the part where it separates Ethiopia from Sudan.²³⁵

2. Regional Amhara authorities and Amhara Special Forces

a) Evidence of Direct Intent to Destroy Tigrayans

116. Two major reports have concluded that Amhara officials, the ASF, and Fano militia are responsible for a campaign of ethnic cleansing,²³⁶ and persecution,²³⁷ committing serious human rights violations, including CRSV. It should be recalled that “ethnic cleansing” is not itself a legal concept, but rather a term often used to describe (as a matter of fact) the commission or alleged commission of international crimes against persons of a particular ethnic group. Depending on the circumstances, such conduct may amount to war crimes, crimes against humanity (such as the crime against humanity of persecution), or genocide.

117. One report goes further and states that “the data on CRSV in the context of the area controlled by the Amhara regional authorities suggest that it [CRSV] is an underlying act of a campaign of persecution and ethnic cleansing that co-occurs alongside other non-CRSV related acts, such as mass killings, mass detentions, denial of food and humanitarian aid, and discriminatory laws and regulations targeting the Tigrayan population.”²³⁸

118. There are certain statements that suggest that the ASF and regional authorities are not only persecuting Tigrayans in Western Tigray, but are singling out ethnic Tigrayans positively because of their ethnicity, which could be consistent with genocidal intent if matched with an intention to destroy them as a group.²³⁹ Tigrayans have been targeted both by Amhara citizens, but also by the ASF, the *Fano* militia, and Amhara interim authorities in Western Tigray.²⁴⁰

119. As regards Amhara citizens, for example, a survivor who has an Amhara mother and Tigrayan father reported being threatened by a former classmate who was Amhara, who said that he was a ‘hybrid’ [dik’ala] and that they were coming for him next because of his mixed ethnicity.²⁴¹ The survivor said that “I had

234 Cara Anna, “‘Leave no Tigrayan’: In Ethiopia, an ethnicity is erased” (*Associated Press*, 7 April 2021).

235 Cara Anna, “‘Leave no Tigrayan’: In Ethiopia, an ethnicity is erased” (*Associated Press*, 7 April 2021).

236 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 2 (stating that this is done “with federal forces’ complicity”); Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 59.

237 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 59; Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 2 (stating that this is done “with the acquiescence and possible participation of Ethiopian federal forces”), p. 193, p. 227 (stating that a “Colonel Demeke should be investigated and appropriately prosecuted for the command responsibility for crimes against humanity of [...] persecution”), p. 229 (stating that “Colonel Dejene should be investigated and appropriately prosecuted for command responsibility for the crimes against humanity of [...] persecution”), p. 230 (stating that an intelligence officer based in Humera, whose full name was believed to be Belay Ayalew, “should be investigated and appropriately prosecuted for criminal responsibility for the crimes against humanity of [...] persecution”).

238 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 59.

239 See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 146 (“Some statements by the perpetrators suggested they may have had an intent to destroy the Tigrayan population”).

240 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 2.

241 Max Bearak, “Ethiopian refugees say they escaped ‘final stage of ethnic cleansing’ in western Tigray” (*Washington Post*, 16 December 2021).



thought being dik'ala was what would save me. But now, even one drop of Tigrayan blood in anyone is a death sentence."²⁴²

120. Another escapee reports that "Even for the people we had been friendly with, it became a heroic thing to kill a Tigrayan—something to brag about. [...] That is why it is extremely difficult to escape Tigray now. Anyone can kill you, *everyone wants to kill you*—it's total lawlessness."²⁴³
121. As regards the ASF, a 23-year-old trader tried to escape from a patrol of ASF near Rawyan. The ASF attacked him with a knife, and brought him back to town. He said: "They hit me on several parts of my body. 'You can't escape! ... You are a member of the junta! This is your end! We will erase you from this land. This land is ours. This is the last time a Tigrayan will live in the area.'"²⁴⁴ This suggests that Amhara militia had not only an intent to remove Tigrayans from a part of Tigray due to the underlying territorial dispute, but also an intent to erase the Tigrayan ethnicity.²⁴⁵
122. Indeed, one witness reported that Amhara guards said "All Tigrayans have to die. We will *wipe you all out*."²⁴⁶
123. The ICHREE also heard from another former detainee, who recalled one AFS official say: "You are not human beings. ... You are the snakes of Ethiopia. ... Ethiopia will get peace only when you have vanished."²⁴⁷
124. As regards *Fano* militia, one survivor described being raped by *Fano* militia with her children present. The *Fano* were targeting Tigrayans in neighborhood searches. She reports:
"Two of them raped me and then I lost consciousness and don't know how many more raped me, if all six [did], or not. They said: 'You Tigrayans should disappear from the land west of Tekeze! You are evil and we are *purifying your blood*.'"²⁴⁸
125. A survivor recalled: "One of them told me, 'I'm going to destroy your uterus so *you can never give birth to a Tigrayan*. Tigrayan children grow like a cancer inside, then one day they become adults.'"²⁴⁹
126. Women refugees who escaped from Tigray into Sudan reported that their rapists said: "You Tigrayans have no history, you have no culture. I can do what I want to you and no one cares."²⁵⁰ According to a doctor treating rape victims, "Amhara forces [...] told them they were intent on ethnically cleansing Tigray."²⁵¹

242 Max Bearak, "Ethiopian refugees say they escaped 'final stage of ethnic cleansing' in western Tigray" (*Washington Post*, 16 December 2021).

243 Max Bearak, "Ethiopian refugees say they escaped 'final stage of ethnic cleansing' in western Tigray" (*Washington Post*, 16 December 2021) (emphasis added). Nayna Exhibition, Tigray Advocacy Canada, 4 November 2022 ("Someone I was seeing, who was Amhara, told me he didn't want the Tigrayan bloodline anywhere near him and just ended it").

244 Amnesty International and Human Rights Watch, "*We will erase you from this land*": *Crimes Against Humanity and Ethnic Cleansing in Ethiopia's Western Tigray Zone* (April 2022), p. 75.

245 If Amharas destroyed the Tigrayan people as a means to acquire territory, then this may amount to genocide because the intent to destroy has been formed. On the other hand, if the primary concern is to acquire territory, and the means to do so do not evince an intent to destroy—meaning that the perpetrators do not care *how* they are going to obtain the relevant land—then an intent to destroy is not present. It is difficult to distinguish these two variants apart factually, especially where discriminatory intent, such as persecution, is also present.

246 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 186 (emphasis added).

247 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 186.

248 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 29 (emphasis added).

249 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 188 (emphasis added).

250 Bethlehem Feleke, Eliza Mackintosh, Gianluca Mezzofiore, Katie Polglase, Nima Elbagir, Barbara Arvanitidis, and Alex Platt, "*Practically this has been a genocide*" (*CNN*, 22 March 2021).

251 Bethlehem Feleke, Eliza Mackintosh, Gianluca Mezzofiore, Katie Polglase, Nima Elbagir, Barbara Arvanitidis, and Alex Platt, "*Practically this has been a genocide*" (*CNN*, 22 March 2021); Nima Elbagir on Jamal Osman, "*The Horrors of the Hidden War: Inside the Tigray conflict in Ethiopia*" (*Channel 4*, 18 May 2021).



127. A woman “who was gang-raped by Fano members in a detention camp in Western Tigray recalled her attackers saying: ‘We will drive you out of this place. We will not allow Tigray to exist anymore. We will destroy you. You don’t belong here.’”²⁵²
128. Tedros Tefera, a doctor from the Hamdayet refugee camp in Sudan, reported that:
 “The women that have been raped, that the things they [Amhara] were saying to them as they were raping them, is that they need to change their identity. To either Amharize them or at least leave Tigrinya status.... and that they’ve come there to cleanse them... [to] cleanse the blood line.”²⁵³
129. In addition, ruling figures in Amhara have been advancing a narrative that Tigrayans and the TPLF had oppressed them, and even committed genocide against them.²⁵⁴ After the breakout of conflict, the atrocities committed on both sides in the town of Mai Kadra then “became central to Ethiopian and Amhara propaganda.”²⁵⁵
130. One distressed government worker, who is of Amhara and Oromo ethnicity, told the Associated Press that Tigrayans in the Oromia region were being told to clear out “without any legal papers, without any reason.” Questioning what the country would do with the 6 million Tigrayans, he says: “These are Ethiopians. [...] It’s horrible. ... I’m a patriotic person, but that doesn’t mean I support the government to do something unacceptable against Tigrayans.”²⁵⁶

b) Relevant Circumstances Indirectly Evidencing an Intent to Destroy

131. The conflict between Tigrayans and Amhara arises out of historical disputes regarding land administration, but the origins of the dispute go back to Derg’s dismantlement of the Ethiopian empire after the 1974 revolution. Amhara and Tigrayan people share a religion, language, and culture, but each side has an entrenched ethnic nationalism, which fuels the present conflict.²⁵⁷
132. The Amhara contested the TPLF’s claim to Western Tigray, which they consider historically belonged to the Amhara region and had been illegitimately annexed by the Tigray region in 1991, when Tigray and Amhara were parties to the ruling coalition.²⁵⁸ The Amhara also alleged the commission of serious human rights violations in those contested areas against Amhara people.²⁵⁹ Tigray “rejects the constitutional legitimacy of a federal boundary commission the central government set up in December 2018 to resolve this and other territorial quarrels”.²⁶⁰ Arising out of these disputes, Amhara in 2016 mobilized resistance to the Tigrayan administration of what they consider an illegal annexation, which led to violence, including the late 2018 killings of thousands of “Qimant, an ethnic minority pursuing greater autonomy within the region, amid regional officials’ claims that Tigray’s ruling party is funding the self-rule campaign.”²⁶¹

252 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, para. 62.

253 Bethlehem Feleke, Eliza Mackintosh, Gianluca Mezzofiore, Katie Polglase, Nima Elbagir, Barbara Arvanitidis, and Alex Platt, “Practically this has been a genocide” (CNN, 22 March 2021; [transcript](#)).

254 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 162 (“The overall effect of the presence of multiple opposition actors was to sharpen the nationalism of prime minister Abiy’s ruling party [...]. This was especially in the Amhara regional state where these issues played out most strongly, and the ruling party had begun to embrace the diaspora narratives of Amhara oppression—even genocide”).

255 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 234.

256 Cara Anna, “New wave of Ethiopian detentions of Tigrayans includes kids” (Associated Press, 18 August 2021).

257 International Crisis Group, *Bridging the Divide in Ethiopia’s North* (12 June 2020).

258 International Crisis Group, *Bridging the Divide in Ethiopia’s North* (12 June 2020).

259 Amnesty International, “‘I don’t know if they realized I was a person’: Rape and other Sexual Violence in the Conflict in Tigray, Ethiopia” (11 August 2021), AFR 25/4569/2021, p. 9.

260 International Crisis Group, *Bridging the Divide in Ethiopia’s North* (12 June 2020).

261 International Crisis Group, *Bridging the Divide in Ethiopia’s North* (12 June 2020).



133. Amhara consider that certain districts in West Tigray, North West Tigray, and South Tigray belong to them (Welkait, Humera, Tsegede, Tselemte, and Raya-Akobo).²⁶² In a briefing to US Congressmember Karen Bass, Tewodros Teshome, an Ethiopian filmmaker, refers to a map of Ethiopia before Tigrayans came to power, describing that “Tigray had no access to the Sudanese border. [...]. There was no such thing as Western Tigray.”²⁶³ Considering it their historical land, senior federal officials from Amhara say that they “have to get it back.”²⁶⁴
134. In addition to the land disputes, Amhara also claim that “TPLF rebels” altered the “demographic balance in favour of Tigrinya speakers and [laid] the basis for a TPLF claim to the lands under Ethiopia’s ethnic federal system,”²⁶⁵ by killing and displacing Amhara and taking local wives.²⁶⁶
135. Tigrayans, on the other hand, claim that the relevant regions contained a majority of Tigrinya speakers even before the rebellion by the TPLF which eventually led to them coming to power, and that Tigrayans “would stand up if they [Amhara] try to take it by force.”²⁶⁷ Since 2018, Amhara protesters “blocked the main road from the capital Addis Ababa to Tigray’s regional capital Mekelle, the key transport corridor into Tigray,” which the TPLF views “as the Amhara activists’ attempt to pressure [the Tigrayan leadership in] Mekelle into altering its stance on the territorial dispute.”²⁶⁸
136. Amnesty International and Human Rights Watch found:
“that the authorities in Western Tigray [Interim Authority installed by the Amhara region administration] deprived Tigrayan communities of resources key to their survival, and coerced people to depart for Sudan or other parts of Tigray. In some places, local authorities provided the means to forcibly remove Tigrayans from the area, organizing the trucks or buses that took Tigrayans from their homes or places of detention to the Tekeze bridge, the crossing marking the limits of the area newly under the Amhara authorities’ control. Before allowing Tigrayans to cross, Amhara security forces manning the final checkpoint on the bridge confiscated their identification cards and the property documents that linked them to land in Western Tigray, warning them not to return. They also prevented Tigrayans who were fleeing the violence in other parts of Tigray from entering Western Tigray.”²⁶⁹
137. The sending of Tigrayans out of Western Tigray alone is not necessarily evidence that amounts to intent to *destroy*. However, it has been previously found that “forcible transfer could be an additional means by which to ensure the physical destruction of the Bosnian Muslim community in Srebrenica, [...] eliminating even the residual possibility that the Muslim community in the area could reconstitute itself.”²⁷⁰ Indeed, some of the other actions taken by Amhara do allow the inference of an intent to destroy.
138. For example, some actions deprive the Tigrayan population of means of living. Since the outbreak of the conflict between Tigray and the Ethiopian federal government in November 2020, Amhara militia (*Fano*) have been attacking Tigray on the side of the federal government, which led to the federal forces and its allies establishing control of Western Tigray. The interim administration which then governed

262 International Crisis Group, *Bridging the Divide in Ethiopia’s North* (12 June 2020).

263 Tweet showing Teshome briefing Congresswoman, posted 14 September 2021.

264 International Crisis Group, *Bridging the Divide in Ethiopia’s North* (12 June 2020).

265 International Crisis Group, *Bridging the Divide in Ethiopia’s North* (12 June 2020).

266 International Crisis Group, *Bridging the Divide in Ethiopia’s North* (12 June 2020).

267 International Crisis Group, *Bridging the Divide in Ethiopia’s North* (12 June 2020).

268 International Crisis Group, *Bridging the Divide in Ethiopia’s North* (12 June 2020).

269 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 5.

270 ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 31.



Western Tigray included both members of the “Amhara community in Western Tigray, as well as from the Amhara region.”²⁷¹

139. The administration then imposed a range of restrictions, including on movement, the speaking of Tigrinya, and access to farming, as well as blocking of access to critical aid; pillaging crops and livestock, which forced Tigrayans to leave for lack of sustenance; signs demanding Tigrayans to leave; pamphlets with ultimatums, stipulating that Tigrayans must leave or be killed; and slogans, such as “Tigrayans belong east of the Tekeze River” and “This is Amhara land.”²⁷²
140. One Tigrayan survivor managed to escape the *Fano* he encountered by speaking fluent Amharic; nonetheless, he was robbed of the \$5 which he had on him.²⁷³ Forcible transfer, while not itself constituting a genocidal act, can also be relied upon as evidence of the intention of the perpetrators.²⁷⁴ Even after the TPLF re-took Tigray, the Western Tigray Administrative Zone remained under the control of Amhara regional forces and militias, and Amhara continued to perpetrate CRSV.²⁷⁵
141. Amhara regional officials and interim authorities “called for the settlement of Amhara residents into Western Tigray, with promises of available homes and land.”²⁷⁶ By settling Amhara people in former Tigrayan territory, Tigrayans are effectively locked out from their homes and deprived of a future opportunity to return. This may be consistent with genocidal intent, but is not of itself evidence of such.
142. Some actions include violent acts, from which an intent to destroy can be inferred. Amhara detained thousands of Tigrayans; and also rounded up male Tigrayans and summarily executed them, consequently resulting in a mass exodus of all those who witnessed the executions.²⁷⁷
143. One 27-year-old man said *Fano* militia approached him and asked him if he was Tigrayan or Amhara. He reports: “I told them I am Tigrayan, and they hit me with a machete.”²⁷⁸ A resident in Humera reported that the “Amhara militia cut people’s heads.”²⁷⁹
144. Moreover, the ASF is accused of having committed CRSV in Western Tigray as well as in detention facilities, and did so while communicating an intent to drive out Tigrayan communities from Western Tigray, which “may be a strategic use of CRSV.”²⁸⁰
145. Another survivor reports that he was unable to stay in Humera because Amhara gunmen “were rounding up people with Tigrayan IDs and imprisoning them.”²⁸¹ This was confirmed by two other Tigrayans; one priest from Rewasa told of a circulated paper threatening that if they do not leave the area in the next two days,

271 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 5.

272 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 5.

273 Abdi Latif Dahir, “Fleeing Ethiopians Tell of Ethnic Massacres in Tigray War” (*New York Times*, 9 December 2020).

274 ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 33.

275 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), pp. 26-27 (citations omitted).

276 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 6.

277 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 5.

278 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 74.

279 Abdi Latif Dahir, “‘Finish Him!’ Ethiopians on the Run Describe Ethnic Slaughter” (*New York Times*, 9 December 2020).

280 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 61.

281 Katharine Houreld, “‘You don’t belong’: land dispute drives new exodus in Ethiopia’s Tigray” (*Reuters*, 19 July 2021).



they would lose their lives; three others reported similar circulated papers at other locations.²⁸² Reuters was not able to independently verify the accounts.

146. A similar account is reported by another victim of ethnic profiling, who was illegally detained twice in 2021. The first time, in January 2021, he was pulled over by traffic police and spent a day in jail. The second time, in August 2021, he was detained after armed security forces raided his home. He was taken to one of the jails in Addis Ababa, where he was kept under “immensely difficult conditions” with about 40 people in a single room for 18 days before being released without charges. He said: “They searched my house claiming that they got an anonymous tip. They came in the dark, around 5 a.m. They searched my home and didn’t find anything. But still, they detained me.”²⁸³

3. The State of Eritrea and Eritrean Defence Forces

a) *Evidence of Direct Intent to Destroy Tigrayans*

147. Eritreans have been implicated in the conflict in Tigray due to the support lent to the Ethiopian government. Direct statements by Eritrean leadership are scarce, but “President Isaias Afwerki delivered a speech in which he described ‘woyané’ as a having a ‘disturbed mind’ and ‘greedy attitude.’”²⁸⁴
148. Eritrean media rhetoric included the following accusations against Tigray and Tigrayans: Tigray caused “all the complications Eritrea has experienced in the past 15 years”; “Tigray has always been associated with ‘duplicitry, treachery, lies and backstabbing’”; and “Tigrayans are our [Eritrean] enemies, betrayers and liars.”²⁸⁵
149. Eritrean soldiers allegedly executed a range of atrocities, in particular rape and other sexual violence, which was often accompanied by statements evidencing a direct intent to destroy the Tigrayan ethnicity.²⁸⁶
150. The ICHREE found:
- “A woman who was six months pregnant recalled being raped and verbally assaulted by EDF troops in southwestern Tigray: ‘They were saying “we will cleanse your body and your blood,” and ‘we will destroy your child and stop you from giving birth.’”²⁸⁷
151. Another survivor was raped by two EDF soldiers in Saharti Samre *woreda* (Southern Zone). She recalled that one of the assailants took out his dagger and showed it to her, saying “We will rip open your stomach and kill your child.”²⁸⁸

282 Katharine Houreld, “‘You don’t belong’: land dispute drives new exodus in Ethiopia’s Tigray” (Reuters, 19 July 2021).

283 Nayna Exhibition, Tigray Advocacy Canada, 4 November 2022 (Name omitted).

284 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 446.

285 Listed in UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, fn. 164.

286 See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 146 (“Some statements by the perpetrators suggested they may have had an intent to destroy the Tigrayan population”).

287 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, para. 62.

288 See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 143.



152. A survivor from Adet overheard EDF soldiers say:

“you [Tigrayans] ill-treated the Eritreans for 20 years, now for 50 years you will starve, then we will kill your men and rape your women. We were sent here to clean out Tigrayans, they will be replaced by real Ethiopians; we are cleansing this country of people like you.”²⁸⁹

153. The ICHREE interviewed one witness from Bora, who recalled an EDF soldier say “*Until all of these Tigrayan people die, Ethiopia will not be peaceful.*”²⁹⁰

154. Another Tigrayan, from Humera in Western Tigray, was raped by six EDF soldiers. They killed her 5-year-old son, and told her: “Tigrayan women should not be able to give birth. It’s good to rape this Tigrayan. *Let’s eliminate the Tigrayans for generations.*”²⁹¹

b) Relevant Circumstances Indirectly Evidencing an Intent to Destroy

155. Eritrean soldiers were reportedly invited into Ethiopia to fight against the TPLF in what is officially called a “military intervention.” However, according to a senior federal government official, Eritrea sees the TPLF as the “biggest existential threat to both Tigray and Eritrea,” and therefore Eritrean involvement in the conflict is considered to be “payback.”²⁹²

156. As referred to above, the Ethiopian government and ENDF invited Ethiopian soldiers into their territory to fight against the TPLF and Tigrayan civilians assumed to be associated with the TPLF—despite, and potentially because of, their animus against Tigray.²⁹³

157. It is noteworthy that Eritrean soldiers are accused of having committed a range of serious crimes against civilians, in particular, without discriminating whether those were indeed TPLF militias. For instance, Eritrean soldiers killed an Orthodox priest’s sons and grandsons when they came to his house in Dengelat in Northwest Tigray, although he had just invited the soldiers to join and eat with them.²⁹⁴ Other civilians who tried to escape Eritrean soldiers were shot, and the soldiers also broke into houses, killing those who were hiding there.²⁹⁵

158. It is also noteworthy that, during joint ENDF/EDF house-to-house searches across the region, Eritreans were specifically asking for Tigrayan men. The ENDF were using EDF soldiers as interpreters as Eritreans generally speak Tigrinya while ENDF soldiers generally speak Amharic.²⁹⁶ This occurred, for example, in searches in Axum,²⁹⁷ Zambessa, Adwa,²⁹⁸ and Saesie.²⁹⁹

289 OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 162.

290 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 436 (emphasis added).

291 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 146 (emphasis added).

292 Andres Schipani, “Ethiopia ‘will be digging up mass graves for a decade’: inside Tigray’s dirty war” (*Financial Times*, 26 March 2021). Kjetil Tronvoll, “The Anatomy of Ethiopia’s Civil War” (2022), 121 *Current History*, p. 167 (analyzing the reasons for Eritrean “payback”).

293 See analysis above at PARA. 110 and following.

294 Andres Schipani, “Ethiopia ‘will be digging up mass graves for a decade’: inside Tigray’s dirty war” (*Financial Times*, 26 March 2021).

295 Andres Schipani, “Ethiopia ‘will be digging up mass graves for a decade’: inside Tigray’s dirty war” (*Financial Times*, 26 March 2021).

296 Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), fn. iii (citations omitted).

297 See below at PARA. 186.

298 Jamal Osman, “Tigray conflict: the testimonies of alleged war crimes” (*Channel 4*, 23 March 2021). UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 103, 109.

299 See below at PARA. 159.



159. At the time when the ENDF captured Mekelle, EDF soldiers killed many Tigrayan civilians in Saesie *woreda*, including by going from house to house and shooting men and boys. Locals told them they are civilians, but EDF soldiers were recalled as saying that they did not care, that “they had come from Eritrea and would kill every male over five years old.”³⁰⁰ One survivor, interviewed by the ICHREE, said that “she heard one of the soldiers say, ‘Don’t waste your bullets on the women, just shoot the men.’”³⁰¹
160. The Joint Investigation Team of the Office of the High Commissioner of Human Rights and the Ethiopian Human Rights Commission (JIT) found that “women and girls were subject to attacks in the context of a conflict whereby most of the men had left to join parties to the conflict or were deliberately targeted and sometimes killed.”³⁰²
161. Moreover, where EDF soldiers came upon women who were perceived to be affiliated with TPLF fighters³⁰³ or “whose male family members were Tigray forces,”³⁰⁴ the women were targeted for harassment, detention, and, subsequently, different forms of sexual violence, for that reason.³⁰⁵ This is a pattern frequently observed in genocide cases, and may be consistent with a finding of genocidal intent.³⁰⁶ Some women were punished by EDF soldiers for hiding Tigrayan forces or providing food for Tigrayan forces.³⁰⁷
162. Multiple survivors are said to have “reported that Eritrean troops stated that they have been “ordered” to assault Tigrayan women [without their being an indication] of which entity gave such orders.”³⁰⁸ Rape survivors say that Eritrean soldiers told them they were ordered “to come after the women,” and that “their actions were revenge against Tigray.”³⁰⁹
163. In addition, EDF soldiers attacked cultural property in Axum [Aksum], a religious city famous for allegedly preserving the Ark of the Covenant.³¹⁰
164. Notwithstanding the signing of the *Cessation of Hostilities Agreement*, some Eritrean troops (who are not bound by its terms) reportedly remained in Tigray until at least January 2023, including in Axum, Adigrat, and Adwa.³¹¹ In this period, they allegedly carried out further crimes, including murders and raping two women.³¹² In May 2023, Eritrean troops also reportedly prevented a team from carrying out monitoring activities in implementation of the Agreement.³¹³ The continued presence of Eritrean troops, and the apparent acquiescence of the Ethiopian federal government in their presence, may suggest continued official tolerance of crimes against Tigrayans.

300 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 112.

301 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 113.

302 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 162.

303 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 25 (citations omitted).

304 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 162.

305 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 162.

306 [INSERT cases] See also below SECTIONS V.E.2 and V.E.4.

307 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 162.

308 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 58.

309 Insecurity Insight, *Sexual Violence in Ethiopia’s Tigray Region* (30 March 2021).

310 See below at PARA. 165 (acts of attacks on cultural property may indicate genocidal intent, even if they do not constitute an underlying act of genocide).

311 Katharine Houreld and Stefanie Le, “Peace deal ending Ethiopia’s Tigray war yet to dispel fear of more atrocities” (*Washington Post*, 25 January 2023).

312 Katharine Houreld and John Hudson, “Blinken to visit Ethiopia as progress under Tigray peace deal slows” (*Washington Post*, 13 March 2023).

313 Reuters, “Protesters in Ethiopia’s Tigray demand withdrawal of outside forces” (*Reuters*, 23 May 2023).



E. Commission of Prohibited Acts against the Tigrayans as a Protected Group

165. The Genocide Convention recognizes in express terms five prohibited acts as constituting genocide, when carried out with the requisite specific intent. To the extent the perpetrator may also carry out other acts—such as destruction of cultural property³¹⁴—these are at least significant (as a matter of evidence), in particular in establishing legal requirements such as the genocidal intent.³¹⁵
166. Each of the five prohibited acts of genocide has its own particular legal requirements. While the first three have received some degree of elaboration in the caselaw of international courts and tribunals, the contours of the fourth and fifth acts of genocide are yet to be the focus of any international prosecution.
167. Each of the five prohibited acts of genocide must have been carried out intentionally.³¹⁶
- ### 1. Killing Members of the Protected Group
168. The legal requirements for killing as an act of genocide are substantially similar to the requirements for murder as a crime against humanity or murder or unlawful killing as a war crime. Notably, it is necessary that the perpetrator actually caused the death of the victim(s),³¹⁷ and did so intentionally.³¹⁸ There is no numerical threshold for the number of victims killed by the perpetrator—a single victim will suffice—although the number of victims may be relevant to assessing whether the perpetrator had the requisite genocidal intent.³¹⁹
169. Numerous Tigrayans have been killed in the context of the conflict, of which only a fraction has been reported and verified.
170. For example, by 16 November 2021, researchers were able to verify a sample of 3,240 deaths, 8 percent of which are women, and 92 percent men,³²⁰ and also gathered reports of a further 9,124 and 11,516 victims (which were not verified).³²¹ These figures do not take into account deaths by starvation or as a result of the collapse of the Tigrayan health system.³²² Thirty percent of this sample of all casualties occurred as a

314 See also ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, p. 3, paras. 386-390; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 230.

315 For example, if a perpetrator kills members of a religious group and also burns down the buildings used by those persons for religious worship, it is the killing which constitutes the relevant prohibited act within the express terms of the Genocide Convention. Yet the burning of the buildings may potentially assist in showing that those killings were carried out with genocidal intent (to destroy the group) and were not merely ‘ordinary’ murders.

316 See e.g. ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 20; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 549.

317 See e.g. ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 542; ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Judgment, 1 September 2004, para. 688; ICTY, *Prosecutor v. Stakić*, IT-97-24-T, Judgment, 31 July 2003, para. 514.

318 The degree of intentionality required may vary according to the particular requirements of the jurisdiction which may hear the case. Under customary international law, for example, it suffices that the perpetrator was at least aware of the substantial likelihood that their conduct would cause the death of the victim(s): see, e.g., KSC, *Prosecutor v. Mustafa*, KSC-CA-2023-02, Judgment, 14 December 2023, para. 388. Under the Rome Statute, applicable at the ICC, it must be established that the perpetrator was at least aware that their conduct would cause the death of the victim(s) “in the ordinary course of events”: ICC Statute, art. 30(2).

319 ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR98bis.1, Judgment, 11 July 2013, para. 23; ECCC, *Nuon Chea and Khieu Samphan (Case 002/02)*, 002/19-09-2007/ECCC/TC, Judgment, 16 November 2018, para. 796; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 542. This must be assessed in light of all the circumstances, however, including the capacities of the perpetrator(s) and the identities of the victims. See further, e.g., ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, paras. 263-269 (considering the significance of targeting the leaders of a protected group); ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, p. 3, para. 139 (expressing caution, in the absence of direct evidence, about inferring genocidal intent on the basis of “isolated acts”).

320 Tim Vanden Bempt, Sofie Annys, Emnet Negash, et al., *Tigray: one year of conflict—Casualties of the armed conflict, 2020-2021—Tigray (Ethiopia)* (Every Casualty Counts, 2021), pp. 2-3.

321 Tim Vanden Bempt, Sofie Annys, Emnet Negash, et al., *Tigray: one year of conflict—Casualties of the armed conflict, 2020-2021—Tigray (Ethiopia)* (Every Casualty Counts, 2021), p. 5.

322 Tim Vanden Bempt, Sofie Annys, Emnet Negash, et al., *Tigray: one year of conflict—Casualties of the armed conflict, 2020-2021—Tigray (Ethiopia)* (Every Casualty Counts, 2021), p. 6.



result of direct killings (such as massacres, killing sprees, in-house searches, rounding up of civilians, or killings in detention).³²³

171. The total number of civilian deaths in the Tigray conflict remains unknown. However, further analysis as of 31 December 2022 estimated a civilian death toll since November 2020 ranging between 311,000 at a minimum and 808,000 at most.³²⁴ These figures include direct killings and bombings, causing an estimated minimum of 12,000 deaths (potentially up to a maximum of 60,000),³²⁵ and include indirect deaths, both as a result of the collapse of the health system,³²⁶ and deaths as a result of famine.³²⁷ It is understood that these estimations do not include battlefield deaths generally, nor deaths in the Afar and Amhara regions. Contextualized, this would mean that between 5 and 10 percent of the entire Tigrayan population had perished. Later calculations have further revised these figures, estimating a civilian death toll in Tigray of at least 162,000 to 378,000, including at least 36,000 civilian fatalities resulting from direct killings (and as many as 60,000).³²⁸
172. It is noteworthy that men were predominantly targeted to be killed.³²⁹ Testimonies describing the difficulties of farming reveal that women, children, and elderly people would work the land during the day, and that men only worked at night because they were otherwise at risk of being targeted by Ethiopian and Eritrean soldiers during the farming.³³⁰ The large majority of male killings is said to be “in line with an often-stated intention to ‘eradicate Tigray fighters, as well as the future generation of fighters.’”³³¹ Illustratively, the following massacres are capable of being evidence of the underlying act of killing as genocide.³³²

323 Tim Vanden Bempt, Sofie Annys, Emnet Negash, et al., *Tigray: one year of conflict—Casualties of the armed conflict, 2020-2021—Tigray (Ethiopia)* (Every Casualty Counts, 2021), p. 3.

324 Jan Nyssen, “Webinar: Documenting the Civilian Victims of the Tigray War” (Every Casualty Counts, 19 January 2023) (figures accurate as of 31 December 2022). According to calculations by Jens Plötner, German Chancellor Olaf Scholz’s Foreign Policy adviser, Germany recognized a death toll figure of 600,000-800,000, in Kai Clement, “Krisendiplomatie als politisches Speeddating: Scholz in Äthiopien und Kenia” (*Deutschlandfunk*, 4 May 2023), at 45 seconds.

325 Jan Nyssen, “Webinar: Documenting the Civilian Victims of the Tigray War” (Every Casualty Counts, 19 January 2023), at 29:10 min.

326 See further the analysis in SECTION V.E.3.B).

327 See further the analysis in SECTION V.E.3.A).

328 Emnet Negash, “Updated assessment of civilian starvation deaths during the Tigray war” (*Martin Plaut blog*, 24 May 2023). A senior humanitarian official in Tigray drew comparisons with the former Yugoslavia, saying “Ethiopians will be digging up mass graves for a decade,” in Andres Schipani, “Ethiopia ‘will be digging up mass graves for a decade’: inside Tigray’s dirty war” (*Financial Times*, 26 March 2021).

329 See UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023) A/HRC/54/55, para. 22 (“the Commission verified [that...] incidents of large-scale killings carried out by ENDF and/or EDF [...] were all] reflective of a manifest pattern, distinctly characterized by undertones of androicide and overwhelmingly targeted at fighting-age civilian males of Tigrayan ethnicity”).

330 Jan Nyssen, Emnet Negash, and Sofie Annys, “How Ethiopia’s conflict has affected farming in Tigray” (*The Conversation*, 22 August 2021) (“Who farmed has also changed. Farmers feared that they’d be killed while ploughing. We were told that, in some places, during the daytime elderly people, women and children worked on the lands. Adult men worked at night and stayed in the village during the day because they were a target of the Ethiopian army and supporting Eritrean forces”).

331 Tim Vanden Bempt, Sofie Annys, Emnet Negash, Robin Ghekiere, and Jan Nyssen, *Tigray: one year of conflict—Casualties of the armed conflict, 2020-2021—Tigray (Ethiopia)* (Every Casualty Counts, 2021), p. 3. Note that in a patrilineal society, like Tigray, ethnicity is passed on via the father—killing men therefore also reduces the chance of passing on the ethnicity.

332 See UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 22 (“the Commission verified 44 other separate incidents of large-scale killings carried out by ENDF and/or EDF members in North-western, Central, Eastern, North-eastern, South-eastern and Southern Tigray beginning in November 2020”).



a) Killing of Tigrayan prisoners by Ethiopian guards

173. 17 ENDF soldiers of the 17th Division (known as the *Dejen* Division) are accused of having killed at least 83 Tigrayans at Mirab Abaya military camp. The camp is located in Arba Minch in what was once Ethiopia's Southern Nations, Nationalities, and Peoples' Region, and merged into the South Ethiopia Regional State on 18 August 2023. The attack took place on 21 November 2021.³³³ Two survivors told the ICHREE that the perpetrators were ethnic Amhara.³³⁴
174. Over a third of the Tigrayan victims were reported to also be (former) members of the ENDF, and in particular of the same *Dejen* Division.³³⁵ However, none of them "had been combatants fighting against the Ethiopians and thus prisoners of war."³³⁶ Many of these detained ENDF soldiers of Tigrayan ethnicity had been detained and imprisoned in November 2021, when Tigrayan forces were advancing toward Addis Ababa.³³⁷ According to survivors, some of the 83 victims were "shot by their [prison] guards."³³⁸
175. Some prisoners ran into the surrounding bush in an attempt to escape the shooting inside the prison. There, they encountered locals, who the escaping prisoners begged for help.³³⁹ About 150-200 locals then hacked and bludgeoned the escaping prisoners to death with machetes, sticks, and stones, taunting the soldiers about their Tigrayan ethnicity.³⁴⁰ Some locals used machetes to cut the bodies into pieces, separated some of the escapees' heads, and displayed them on sticks.³⁴¹ Survivors reported that the locals said: "We will show you what you deserve."³⁴²
176. The locals were "apparently spurred by local radio and Government officials."³⁴³ The ICHREE also finds the following:
- "According to survivors, prior to the attack, a broadcast on local radio informed the surrounding community that their children, who were ENDF soldiers, had been killed in the conflict in Tigray region and the detainees were *junta*. After the shooting, broadcasts encouraged the local residents to search for the escapees; local officials made similar announcements using loudspeakers."³⁴⁴
177. The killing at Mirab Abaya is reportedly not the only occasion in which prison guards have imprisoned soldiers: Killings were also reported to have taken place in at least seven other locations.³⁴⁵ Ethiopian officers were at least present when the killings took place, and some of the killings might have been ordered by them.³⁴⁶

333 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 163; Katharine Houreld, "Exclusive: Ethiopian guards massacred scores of Tigrayan prisoners, witnesses say" (*Washington Post*, 4 December 2022).

334 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 163.

335 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 163; Katharine Houreld, "Exclusive: Ethiopian guards massacred scores of Tigrayan prisoners, witnesses say" (*Washington Post*, 4 December 2022).

336 Katharine Houreld, "Exclusive: Ethiopian guards massacred scores of Tigrayan prisoners, witnesses say" (*Washington Post*, 4 December 2022).

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340 Katharine Houreld, "Exclusive: Ethiopian guards massacred scores of Tigrayan prisoners, witnesses say" (*Washington Post*, 4 December 2022).

341 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 164.

342 Katharine Houreld, "Exclusive: Ethiopian guards massacred scores of Tigrayan prisoners, witnesses say" (*Washington Post*, 4 December 2022).

343 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 164.

344 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 164.

345 Katharine Houreld, "Exclusive: Ethiopian guards massacred scores of Tigrayan prisoners, witnesses say" (*Washington Post*, 4 December 2022).

346 Katharine Houreld, "Exclusive: Ethiopian guards massacred scores of Tigrayan prisoners, witnesses say" (*Washington Post*, 4 December 2022).



b) Mai Kadra massacre

178. The first documented massacre took place on 9 November 2020 in Mai Kadra [May Cadera], a town in the southwest Tigray.³⁴⁷ Both the TPLF and allied forces, as well as Amhara militia and the ENDF are accused of having killed inhabitants of the town where people of both Amhara and Tigrayan ethnicities lived alongside each other.³⁴⁸ People were killed with machetes, sticks, and cobblestones,³⁴⁹ and were scattered around the town.³⁵⁰ A witness describes entering Mai Kadra once the massacre had begun, seeing “dead bodies on the ground; ... people were slaughtered, necks cut, stomachs stabbed.”³⁵¹
179. According to one report, “the massacre [...] resulted from a unique combination of local circumstances, including preexisting tensions in the town and news of the advance and abuses by Ethiopian and allied Amhara forces as fighting spread in Western Tigray.”³⁵² Fueled by news of the imminent advance of Ethiopian and allied forces and attacks in surrounding towns, Tigrayan men and youth killed ethnic Amhara with knives, machetes, and axes.³⁵³ The number of Amhara killed ranged from 200 to over 1,000.³⁵⁴
180. Amhara armed forces then retaliated against Tigrayan residents,³⁵⁵ and were later joined by Ethiopian soldiers and Amhara security forces and militia, who captured the town. Tigrayan residents were killed in revenge, arbitrarily detained and expelled from the area.³⁵⁶ This was a precursor to the “pattern that would repeat against Tigrayan communities across the Western Tigray Zone in the year that followed.”³⁵⁷
181. One Tigrayan survivor reports that he witnessed *Fano* militia kill 15 people with rifles and machetes.³⁵⁸ In a Sudanese refugee camp, a Tigrayan student showed his injuries which were inflicted by an axe after being dragged from his home in Mai Kadra by Amhara militiamen. His injuries included cuts with a machete to neck and wrist, almost causing him to lose his hand: “They discussed whether to kill me or take me with

347 Amnesty International, *Ethiopia: Investigation reveals evidence that scores of civilians were killed in massacre in Tigray state* (12 November 2020).

348 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 49, 51. Will Brown, “Ethiopia’s civil war: ‘We left them to die in their hospital beds. I don’t know how I will face God’” (*Telegraph*, 21 November 2020). Katharine Houreld, “‘You don’t belong’: land dispute drives new exodus in Ethiopia’s Tigray” (*Reuters*, 19 July 2021) (One survivor reported that she fled her farm when Amhara regional forces, together with Ethiopian federal forces, attacked civilians in nearby Mai Kadra; the attacks against Tigrayans were corroborated by similar accounts of displaced residents, but disputed by Amhara officials).

349 Andres Schipani, “Refugees flee Ethiopia’s brutal war with tales of atrocities on both sides” (*Financial Times*, 4 December 2020).

350 Amnesty International, *Ethiopia: Investigation reveals evidence that scores of civilians were killed in massacre in Tigray state* (12 November 2020).

351 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 67.

352 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), pp. 49-50.

353 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 50. See also Katharine Houreld, Michael Georgy and Silvia Aloisi, “How ethnic killings exploded from an Ethiopian town” (*Reuters*, 7 June 2021).

354 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), pp. 50-51 (“team of federal police investigators and prosecutors deployed to Mai Kadra in December 2020 concluded that 229 civilians were killed”; the JIT concluding “that more than 200 civilians were killed”; AI and HRW “spoke with an expert involved in the investigation who described the exhumation of 229 bodies found in three mass grave sites behind the Abune Aregawi church. The expert evaluated 40 bodies, the majority of which showed blunt force head injuries, and found three identification cards of those killed from the Amhara region”, citations omitted); Jason Burke, “Ethiopia: 1,900 people killed in massacres in Tigray identified” (*The Guardian*, 2 April 2021) (reporting that the massacre at Mai Kadra resulted in 600 deaths); Katharine Houreld, “‘You don’t belong’: land dispute drives new exodus in Ethiopia’s Tigray” (*Reuters*, 19 July 2021) (reporting that, according to the Ethiopian HR Commission, 600 civilians were killed).

355 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), pp. 50-51. See also Katharine Houreld, Michael Georgy, and Silvia Aloisi, “How ethnic killings exploded from an Ethiopian town” (*Reuters*, 7 June 2021).

356 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 51.

357 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 51.

358 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 68.



them, then attacked me with sticks and machetes. They left me there thinking I was dead.”³⁵⁹ He alleges that an Amhara friend of his disclosed his location because of his Tigrayan ethnicity.³⁶⁰ The exact number of Tigrayan civilians killed in this massacre is unknown, but in total, according to a special Reuters report, “at least 767 people were killed.”³⁶¹

c) Axum massacre

182. Eritrean troops are alleged to have committed a massacre in Axum.³⁶² In the morning of 28 November, about 50-80 pro-TPLF militia, armed with rifles, sticks, knives, and stones, and with local support, attacked soldiers from Eritrea on Mai Koho mountain, which is located east of the Axum Tsion St. Mary Church.³⁶³
183. Eritrean forces responded with automatic weapons and precision rifles.³⁶⁴ A video recorded from different locations at the bottom of the mountain reveals gunfire.³⁶⁵ The Tigrayan militia was easily overwhelmed by EDF weaponry.³⁶⁶
184. While the initial acts against armed forces may not constitute a war crime—if and to the extent that they amounted to the conduct of hostilities, according to international humanitarian law (in particular, compliance with the principles of distinction and proportionality)—the fact that the EDF then turned against civilians, reportedly in retaliation, would in any event constitute a war crime. Such killings are likewise relevant to the *actus reus* of genocide.
185. From about 4 pm onward on 28 November, and continuing on 29 November, Eritrean troops shot at civilians.³⁶⁷ The victims reportedly had no weapons and were running away from the EDF. One survivor reports that his neighbor was shot in the head on the street near the Mana Hotel by a group of six Eritrean soldiers with a machine gun standing about 10 meters away from him. One resident looked through his window as Eritrean soldiers killed six men outside his house, by lining them up and shooting at them from behind with a light-machine gun.³⁶⁸
186. Another survivor reports that the streets were full of dead bodies. On 29 November, those who tried to move the bodies were shot at by the EDF, who proceeded to conduct house raids and killing adult men, teenage boys, and some women.³⁶⁹ AI recorded the names of over 240 victims.³⁷⁰ After the massacre, Eritrean forces detained residents and threatened to kill them if they resisted.³⁷¹

359 Andres Schipani, “Refugees flee Ethiopia’s brutal war with tales of atrocities on both sides” (*Financial Times*, 4 December 2020).

360 Andres Schipani, “Refugees flee Ethiopia’s brutal war with tales of atrocities on both sides” (*Financial Times*, 4 December 2020).

361 Katharine Houreld, Michael Georgy, and Silvia Aloisi, “How ethnic killings exploded from an Ethiopian town” (*Reuters*, 7 June 2021). According to the Department of Geography of Ghent University, the total number of deaths referred to in various media reports amounts to 205 to 1,200 (63 of whom are named); see Ethiopia: Tigray War, Database, Incident 100180.

362 Amnesty International, *Ethiopia: The Massacre in Axum (Report)* (26 February 2021), AFR 25/3730/2021, p. 4, 5.

363 Amnesty International, *Ethiopia: The Massacre in Axum (Report)* (26 February 2021), AFR 25/3730/2021, p. 10.

364 Amnesty International, *Ethiopia: The Massacre in Axum (Report)* (26 February 2021), AFR 25/3730/2021, p. 10.

365 Amnesty International, *Ethiopia: Eritrean troops’ massacre of hundreds of Axum civilians may amount to crime against humanity* (26 February 2021).

366 Amnesty International, *Ethiopia: The Massacre in Axum (Report)* (26 February 2021), AFR 25/3730/2021, p. 10.

367 Amnesty International, *Ethiopia: Eritrean troops’ massacre of hundreds of Axum civilians may amount to crime against humanity* (26 February 2021).

368 Amnesty International, *Ethiopia: Eritrean troops’ massacre of hundreds of Axum civilians may amount to crime against humanity* (26 February 2021).

369 Amnesty International, *Ethiopia: Eritrean troops’ massacre of hundreds of Axum civilians may amount to crime against humanity* (26 February 2021) (the identity of the perpetrators was ascertained through their: language (either speaking Arabic or in a Tigrinya dialect that was not spoken in Ethiopia); self-declaration by Eritrean soldiers; their appearance (facial scarring typical of the Ben Amir, an ethnic group from Eritrea) uniforms with distinctive camouflage; footwear typically used by the Eritrean army; and vehicles having Eritrean license plates).

370 Amnesty International, *Ethiopia: Eritrean troops’ massacre of hundreds of Axum civilians may amount to crime against humanity* (26 February 2021).

371 Amnesty International, *Ethiopia: The Massacre in Axum (Report)* (26 February 2021), AFR 25/3730/2021, p. 5.



187. According to researchers, around 800 people are thought to have been killed in the Axum massacre,³⁷² but it is not clear whether this figure describes deaths which occurred in the conduct of hostilities or is composed of civilian deaths.
188. A reportage on the massacre states the Eritrean troops conducted killings throughout the night, killing 1,200 young people, elderly, and children.³⁷³ According to a witness, killings also took place in the rural neighborhoods around Axum, including May Atsmi (200 deaths), Saglamen (100 deaths), and south of Adet, where 19 civilians were taken off a mini-bus on which they were traveling from Axum to Adet to be with their families for Christmas.³⁷⁴
189. In the following days, Ethiopian soldiers are alleged to have continued killing local Tigrayans, including young people who they alleged were thieves, two men, and a woman who owned a bar.³⁷⁵

d) Other allegations

190. Many other incidents like these have been reported by various organizations and newspapers.
191. For example, in early November 2021, Amhara militias, *Fano* and Eritrean forces, divided men and women by ordering men to stay for a meeting and telling women to leave, in towns such as Adebai, Humera, and Rawyan.³⁷⁶
192. On 3 November, in Adebai, an Eritrean intelligence person is reported to have said: “Tigrayans go on this side, [while] Amharas, Walqayte, Eritreans, Kunamas, go on the other.”³⁷⁷ Tigrayans were then divided by age. In Adebai, young Tigrayans were then put in vehicles, the perpetrators coming back for more two or three times, whilst older people, guarded by *Fano*, were made to walk.³⁷⁸
193. One witness reported that *Fano* rounded up all Tigrayans by going from house to house: “Older people, parents were loaded on big trucks [going] east. They let them go with nothing, while the young remained behind.”³⁷⁹ On all occasions, many Tigrayan men then tried to escape; some were shot and attacked by Amhara militia members, among them a 70-year-old man in Adebai.³⁸⁰
194. Another survivor from Adebai reports:
- “They started shooting whoever was in range running. [...] When the people tried to escape, ... [the *Fano*] attacked them with machetes and axes so no one could escape. ... We were passing bodies and we were all in shock. ... After we calmed down, we noticed that there were more bodies there too. Everywhere you turned, there would be five, 10 bodies.”³⁸¹

372 Sofie Annys, Tim Vanden Bempt, Emnet Negash, et al., *Tigray: Atlas of the humanitarian situation* (University of Ghent, June 2021), p. 71.

373 Charles Emptaz, ‘ARTE Reportage Ethiopia: Tigray Humanitarian Crisis’ (ARTE, 7 July 2022) at 20:50 min.

374 Hiyab Gebretsadik, “My Eyewitness Account of the Massacre of Aksum and Its Vicinity” (TGHAT, 5 July 2022).

375 Hiyab Gebretsadik, “My Eyewitness Account of the Massacre of Aksum and Its Vicinity” (TGHAT, 5 July 2022).

376 Amnesty International and Human Rights Watch, “We will erase you from this land”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), pp. 183, 226-227.

377 Amnesty International and Human Rights Watch, “We will erase you from this land”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 183.

378 Amnesty International and Human Rights Watch, “We will erase you from this land”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 183.

379 Amnesty International, *Ethiopia: New Wave of Atrocities in Western Tigray* (16 December 2021) (square brackets in the original source).

380 Amnesty International and Human Rights Watch, “We will erase you from this land”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 183.

381 Amnesty International, *Ethiopia: New Wave of Atrocities in Western Tigray* (16 December 2021).



195. Many of those who were expelled from these towns are still unaccounted for. Another man from Adebai said: “My wife and my mother called me four days ago, told me they had put them in vehicles, and they don’t know where they are taking them. After that I have never heard from them.”³⁸²
196. On 6 November, at least 17 men were killed in the neighborhood of Dedebit in Division, which was captured by Ethiopian and Amhara forces. One man who was killed had immediately surrendered on his doorsteps, but was nonetheless struck with a machete.³⁸³
197. One 5-year-old from Mylomin (west Tigray) was shot by the Ethiopian army on 9 November 2020, showing reporters the scars on back and stomach.³⁸⁴
198. On 10 November 2020, Ethiopian and allied forces killed several Tigrayans with machetes. One witness reports:
- “They struck his head with a machete. His brain was coming out. [...] There were a lot of them, and they surrounded him. They dragged him by his legs, holding onto his feet. After they dragged him some distance, they left him there. His brain was completely out of his head.”³⁸⁵
199. Another man was killed having been identified by a town resident, who alleged that the man was “hating the Amharas”; several *Fano* militia then hit the man on the head with a machete.³⁸⁶
200. On 11 November 2020, Ethiopian and Amhara forces killed people in Adebai, shooting at residents without warning, including at women, children. and one person with a mental health condition.³⁸⁷
201. One survivor reports:
- “They hit [my son’s] ankle and thigh. [...] I begged the soldiers for medical supplies if they could call for help. One soldier was going to call, but a second soldier said, ‘Finish him.’ He said [my son] ‘is a TPLF puppy and when he grows up, he’ll be TPLF and fight us.’ ... My son lost so much blood that he bled to death.”³⁸⁸
202. On 13-15 November 2020, ENDF and EDF killed at least 70 civilians, most of whom were men, in Zalambessa.³⁸⁹ Survivors report that ENDF and EDF soldiers said: “If you find somebody, just kill them. Knock on the door and if you find a man or a woman just kill them’ and ‘Kill them! Kill the junta.”³⁹⁰
203. A woman reports:
- “ENDF and EDF soldiers entered my house and shot my husband. He was a priest. Then they moved to the neighboring house of my sister-in-law. I saw them shooting her husband and her 20-year-old

382 Amnesty International, *Ethiopia: New Wave of Atrocities in Western Tigray* (16 December 2021).

383 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), pp. 43-44.

384 Katharine Houreld, “‘You don’t belong’: land dispute drives new exodus in Ethiopia’s Tigray” (*Reuters*, 19 July 2021).

385 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 47.

386 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 46.

387 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 43.

388 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 43 (square brackets in the original source).

389 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 102-106.

390 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 103.



son. They were shouting, 'We are civilians!' but the ENDF soldier replied: 'Yes, we are looking for the civilians!' Dead bodies were lying around everywhere. You could not even walk on the street, there were so many."³⁹¹

204. On 19 November 2020, EDF soldiers killed Tigrayan civilians in Hitsats.³⁹² Eritrean soldiers are also accused of having massacred a number of civilians in Adigrat:

"My younger brother was the father of seven children. He was at home. He was getting food for the cattle. The soldier saw him through binoculars. My brother did not see him. He then came to the house and tried to shoot him twice. Shocked, the children went to their dad. They were crying. The Eritrean soldier pushed and shoved his little girl. My brother couldn't do anything. He begged 'Please don't do anything in front of my children.' They beat him horribly. They forced him to walk barefoot and took him to the desert. We have never seen such a horrific thing. [...] They killed him. [...] I have a cousin who found his three children shot dead. I can't tell you in words how the Eritrean troops killed them."³⁹³

205. On 20 November 2020, ENDF and EDF soldiers killed more than 30 civilians, most of whom were men, in Adwa.³⁹⁴ In the following weeks, EDF soldiers also killed hundreds of civilians in other towns, such as Nebelet and Axum.³⁹⁵

206. One survivor reports that he was stopped by *Fano* militia members of a rival ethnic group when he was on his motorcycle. Once they realized he was ethnic Tigrayan, his cash was stolen and they started beating him, tightening a noose around his neck, and proceeded to pull him along the road until he passed out, only to wake up in a pile of bodies, among which were children.³⁹⁶ Photos of his injuries were made available to the *New York Times*, showing peeling skin on his neck from the noose. Tigrayan refugees that fled to Sudan reported being attacked and maimed by *Fano* fighters, who "ransacked their properties and extorted them as they sought to flee."³⁹⁷

207. One survivor describes how in late December 2020, a dozen Amhara militia shot at him and 12 fellow farmers in fields near Adebai. A sole survivor, he sustained injuries because bullet fragments superficially penetrated his scalp:

"We sent a man from our group to bring water from the river when the forces [approached]. [They] asked what we were doing. [We] said: 'Harvesting sorghum.' [One] said: 'This is Amhara land, and you have no right to be here and to harvest the sorghum.' Then they made us stand in a line. Ordered us to sit, and then to stand, and to sit again, several times. Then, as we were standing, [they] ordered us to turn our back to them, and they shot at us. As the shooting started, I turned to face them. I was scared—I don't know why I wanted to see. I got a bullet in the front of my head, above my left eye, top of the head. I fell and lost consciousness so I don't know anything that happened after.... I woke up the following day, next to the 12 dead."³⁹⁸

391 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 103.

392 Yenat Mersie, Giulia Paravicini, and Katharine Houreld, "Dual Agenda: In Ethiopia's civil war, Eritrea's army exacted deadly vengeance on old foes" (*Reuters*, 1 November 2021).

393 Jamal Osman, "Tigray conflict: the testimonies of alleged war crimes" (*Channel 4*, 23 March 2021).

394 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, paras. 107-111.

395 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 111.

396 Abdi Latif Dahir, "Fleeing Ethiopians Tell of Ethnic Massacres in Tigray War" (*New York Times*, 9 December 2020).

397 Abdi Latif Dahir, "Fleeing Ethiopians Tell of Ethnic Massacres in Tigray War" (*New York Times*, 9 December 2020).

398 Amnesty International and Human Rights Watch, "We will erase you from this land": *Crimes Against Humanity and Ethnic Cleansing in Ethiopia's Western Tigray Zone* (April 2022), p. 109 (square brackets in the original source).



208. Some time in January 2021, a number of civilians were executed by people in military uniform south of Mahbere Dego.³⁹⁹ The military uniform displayed markings of the Ethiopian flag, and there were sleeve badges showing the national flag as currently worn by acting members of the ENDF; the person recording states the name of the military unit to which they claim to belong; and the soldier recording the videos refers to victims as “Woyane,” which can be roughly translated as “insurgent” and is used as a derogatory term for those associated with the TPLF.⁴⁰⁰ The incident was recorded on five videos, which were analyzed and geolocated by Bellingcat in cooperation with BBC Africa Eye and Newsy. The civilians were executed on a cliff edge, before being thrown over the edge.⁴⁰¹
209. On 22 June 2021, Ethiopian government forces conducted an airstrike on Togogwa market, killing at least 64 civilians, wounding 180, and destroying 25 houses.⁴⁰² The market takes place on Tuesdays, attracting many people to purchase and sell products, and the attack occurred at the peak of trading.⁴⁰³ Reports differ as to the timing of the attack,⁴⁰⁴ but videos show a large number of civilians including children, both dead and injured, the latter laying on the ground waiting for first aid.⁴⁰⁵ Medical workers trying to get to the scene were stopped by Ethiopian soldiers, although this was denied by ENDF spokesperson Colonel Getnet Adane.⁴⁰⁶
210. Those injured were moved to a nearby hospital, which was later reported to be targeted for further bombing. Consequently, patients were moved to a nearby forest, and IV infusions hung from trees. The casualties were still arriving in regional hospitals two days after the attack. According to an Ethiopian army spokesperson, the target were rebel fighters, “insisting that those injured or killed were fighters ‘in civilian clothes.’”⁴⁰⁷ Col Getnet Adane considered the strike to be a successful precision strike, owing to the “latest technology”; according to eyewitnesses, the market had been full of families and no army forces had been present.⁴⁰⁸
211. Eritrean soldiers are accused of having massacred over 300 civilians in various towns in Tigray in the course of a week in late October and early November 2022, shortly before the *Cessation of Hostilities Agreement*. The villages involved are Mariam Shewito, Geria, Adi Bechi, Adi Chiwa, Mindibdib, Kidfimet, Rahiya, Endabagerima, and Kumro. At least 140 civilians were killed in Mariam Shewito, and victims include civilians of a range ages: a toddler and his 7-year-old brother and their mother; an elderly priest; a nursing mother. Corpses were found by family members half-eaten by wild animals. Some men were killed with their families, others were shot on a nearby mountain.⁴⁰⁹ The Eritrean troops also destroyed and looted the victims’ houses.⁴¹⁰

399 Giancarlo Fiorella, “[Tigray Conflict: Videos Provide New Details of Mahbere Dego Massacre](#)” (*Bellingcat*, 24 June 2021).

400 Giancarlo Fiorella, “[Tigray Conflict: Videos Provide New Details of Mahbere Dego Massacre](#)” (*Bellingcat*, 24 June 2021).

401 Giancarlo Fiorella, “[Tigray Conflict: Videos Provide New Details of Mahbere Dego Massacre](#)” (*Bellingcat*, 24 June 2021).

402 Jason Burke, “[Scores killed in Ethiopian airstrike on Tigray market](#)” (*The Guardian*, 24 June 2021); TGHAT, “[Healthcare workers recount Togoga after the airstrike \(Photos and videos included\)](#)” (*TGHAT*, 25 June 2021).

403 Jason Burke, “[Scores killed in Ethiopian airstrike on Tigray market](#)” (*The Guardian*, 24 June 2021); TGHAT, “[Healthcare workers recount Togoga after the airstrike \(Photos and videos included\)](#)” (*TGHAT*, 25 June 2021).

404 Jason Burke, “[Scores killed in Ethiopian airstrike on Tigray market](#)” (*The Guardian*, 24 June 2021) (reporting 1pm); TGHAT, “[Healthcare workers recount Togoga after the airstrike \(Photos and videos included\)](#)” (*TGHAT*, 25 June 2021) (reporting three strikes starting at 11 am).

405 TGHAT, “[Healthcare workers recount Togoga after the airstrike \(Photos and videos included\)](#)” (*TGHAT*, 25 June 2021); TGHAT, “[More Videos and Photos from the Togogwa Market Day Airstrike](#)” (*TGHAT*, 10 July 2021).

406 TGHAT, “[Healthcare workers recount Togoga after the airstrike \(Photos and videos included\)](#)” (*TGHAT*, 25 June 2021); Jason Burke, “[Scores killed in Ethiopian airstrike on Tigray market](#)” (*The Guardian*, 24 June 2021).

407 Jason Burke, “[Scores killed in Ethiopian airstrike on Tigray market](#)” (*The Guardian*, 24 June 2021).

408 Jason Burke, “[Scores killed in Ethiopian airstrike on Tigray market](#)” (*The Guardian*, 24 June 2021).

409 Katharine Houreld, Meg Kelly, and Stefanie Le, “[Hundreds massacred in Ethiopia even as peace deal was being reached](#)” (*Washington Post*, 28 February 2023).

410 Negasi Awetehey, “[A Photo Essay of Adwa Houses Destroyed by Eritrean Troops in a Week in October 2022](#)” (*TGHAT*, 7 March 2023).



2. Causing Serious Bodily or Mental Harm

212. The legal requirements for causing serious bodily or mental harm as an act of genocide may likewise appear similar to some aspects of the requirements for torture or other inhumane act as crimes against humanity, or equivalent conduct as war crimes⁴¹¹—although it has been acknowledged that the precise definition may remain open,⁴¹² and a number of judgments have suggested that the determination depends on the facts of each case.⁴¹³
213. While the harm need not be permanent or irreversible,⁴¹⁴ it must have an impact on the victim “beyond temporary unhappiness, embarrassment, or humiliation.”⁴¹⁵ Notwithstanding jurisprudence to the contrary, it may potentially be argued that there is no additional requirement that the harm to the victim is “of such serious nature as to threaten the destruction of the group in whole or in part.”⁴¹⁶
214. Case law has recognised a wide variety of acts as potentially amounting to serious bodily or mental harm as an act of genocide, including torture (such as violent interrogations) or other cruel, inhumane, or degrading treatment; rape and other forms of sexual and gender-based violence; threats of imminent death or other serious harm; and enforced displacement.⁴¹⁷ Indeed, sexual or gender-based violence may be especially significant in the context of genocide⁴¹⁸—as the Akayesu Trial Chamber recalled, rape and sexual violence not only satisfy the requirements of serious bodily or mental harm but also “may be one of the worst ways of inflict[ing] harm on the victim as he or she suffers both bodily and mental harm.”⁴¹⁹ As with the prohibited act of killing, serious bodily or mental harm must be caused intentionally.⁴²⁰
215. This report details a range of acts that resulted in bodily harm against Tigrayans, where there is a reasonable basis to believe that they were carried out with the required special intent.⁴²¹ In many cases, the violence used was extreme. For example, Ethiopian intelligence officers allegedly tortured one detainee accused of supporting the TDF with a cattle prod, threatening to burn and bury him alive.⁴²² Security forces were also captured on video burning a Tigrayan man alive.⁴²³

411 Nema Milaninia, “Understanding serious bodily or mental harm as an act of genocide,” 51 *Vanderbilt Law Review* 1381 (2021), p. 1419 (but noting that “[e]ven though the underlying acts are ostensibly similar in nature, it is entirely possible that certain harms may, for instance, amount to torture, but not meet the threshold required to be an act of genocide”).

412 ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 202.

413 ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 544; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Judgment, 10 June 2010, para. 811; ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Judgment, 17 January 2005, para. 646; ICTY, *Prosecutor v. Krstić*, IT-98-33-T, Judgment, 2 August 2001, para. 513.

414 ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 543; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Judgment, 12 December 2012, para. 738; ICTY, *Prosecutor v. Krstić*, IT-98-33-T, Judgment, 2 August 2001, para. 513.

415 ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 543; ICTY, *Prosecutor v. Krstić*, IT-98-33-T, Judgment, 2 August 2001, para. 513.

416 ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 544. See also ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR98bis.1, Judgment, 11 July 2013, para. 33; Nema Milaninia, “Understanding serious bodily or mental harm as an act of genocide,” 51 *Vanderbilt Law Review* 1381 (2021). For the contrary view, see e.g. ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, paras. 202-203, 212, 217; ICTR, *Prosecutor v. Seromba*, ICTR-2001-66-A, Judgment, 12 March 2008, para. 46; ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3434; ICTY, *Prosecutor v. Krajišnik*, IT-00-39-T, Judgment, 27 September 2006, para. 862; ICTR, *Prosecutor v. Kajelijeli*, ICTR-98-44A-T, Judgment, 1 December 2003, para. 814.

417 ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3434; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 545.

418 See also ICC, Office of the Prosecutor, *Policy Paper on Gender-Based Crimes*, December 2023, para. 51 (noting that such acts often coincide with “a sexualised interpretation of the victim’s ethnic, racial, religious or national identity,” and may also feature compulsion for “family members to commit these acts against each other, or to witness them”).

419 ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 731.

420 ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3434; ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Judgment, 1 September 2004, para. 690; ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Judgment, 17 January 2005, para. 645.

421 See above SECTION V.E.1.A), PARAS. 199, 201, 209, and below SECTIONS V.E.3, V.E.4, VI.B.2, VII.C.2.

422 Declan Walsh, “How Local Guerrilla Fighters Routed Ethiopia’s Powerful Army” (*New York Times*, 11 July 2021).

423 Tom Gardner, “I was a war reporter in Ethiopia. Then I became the enemy” (*The Economist*, 24 June 2022); Emmanuel Akinwotu, “Video of armed men burning man alive in western Ethiopia sparks outrage” (*The Guardian*, 15 March 2022).



216. Many acts appear to have been calculated to inflict serious mental harm. Notably, EDF, Ethiopian soldiers and Amhara militia often prevented Tigrayans from burying their killed family members, and from performing individual burials.⁴²⁴ This practice is said to have been applied only to ethnic Tigrayans,⁴²⁵ and caused serious mental suffering given the nature of the relevant circumstances. Similarly, the mental harm caused to Tigrayans manifested in some cases, for example, as PTSD, depression, and suicide.⁴²⁶ Parents reportedly committed suicide “because they have nothing to feed their children,”⁴²⁷ as a consequence of the restrictions on food supply, as described below in section 3.a). Another report describes how a former civil servant and father of three hanged himself after he saw his wife being forced to beg for food in the streets, having been unable to sustain their family after losing employment and assets and his children becoming malnourished.⁴²⁸

217. Sexual violence against Tigrayan women and girls has been both extensive and extreme, as referred to below,⁴²⁹ and included the “insertion of foreign objects (nails, shrapnel, rocks) into victims’ genital organs, and other forms of sexual mutilation, including burning and searing of vaginas with hot metal rods.”⁴³⁰ Such acts were often “accompanied by threats about ending their reproductive capacity,”⁴³¹ and sometimes were carried out performatively, including in front of family members.⁴³² Such acts were also frequently accompanied by other extreme acts of violence, such as forcing survivors to witness the murder of their family members during, before, and/or after their rape, or mutilating the face of the women raped.⁴³³ One clinician included in a patient note the following:

“They tied her hands and legs in front of her child and raped her then they killed her four-year-old child and repeatedly raped her”.⁴³⁴

218. One 21-year old survivor, who was a mother of a then-8-month-old girl, reports:

“Two fighters came to my house and demanded food but I told them I had nothing; they went away and came back with potatoes and told me to boil them and they ate. Then they told me to boil some water and after I did they said ‘what do you prefer—that we put your baby in boiling water or we rape you?’ I was terrified that they would hurt my baby. I still have nightmares about it.”⁴³⁵

424 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 115, 461; Cara Anna, “‘Leave no Tigrayan’: In Ethiopia, an ethnicity is erased” (*Associated Press*, 7 April 2021); Amnesty International and Human Rights Watch, “*We will erase you from this land’: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone*” (April 2022), pp. 70, 73, 76, 139, 145-146.

425 Cara Anna, “‘Leave no Tigrayan’: In Ethiopia, an ethnicity is erased” (*Associated Press*, 7 April 2021); Amnesty International and Human Rights Watch, “*We will erase you from this land’: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone*” (April 2022), pp. 145-146 (reporting that one man said: “We couldn’t cry for our dead families. We were there just for each other. No one would cry like [we normally do in] the culture, where people would cry for three or seven days. But no one did that. It was so hard for us victim families to even mourn our own families”; square brackets in the original source).

426 See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 343 (concluding that “Displacement impacts all communities across Ethiopia, affecting their safety, physical and mental wellbeing”).

427 Nayna Exhibition, Tigray Advocacy Canada, 4 November 2022.

428 Markos Sisay, “Ethiopian government’s Tigray siege leading to starvation, suicide, exodus” (*Ethiopia Insight*, 20 May 2022); see also Katharine Houreld and Giulia Paravicini, “Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray” (*Reuters*, 11 June 2021) (“The children are coughing and getting diarrhea. We eat once a day,” said Mekonnen Lake, an Ethiopian Orthodox priest from central Tigray, who has 13 displaced relatives living with him. Half his harvest had to be abandoned due to fighting, and the half he had gathered in was burned, he said at the meeting. ‘I think about killing myself, but it is forbidden as a priest,’ he said”).

429 See also section V.E.4, in particular paras. 312-316; and section VI.B.2

430 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), pp. 7, 24.

431 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 8.

432 UN ICHREE, ‘Report of the International Commission of Human Rights Experts on Ethiopia’ (14 September 2023) A/HRC/54/55, para. 54.

433 See Thera Mjaaland and Kibrom Mebrahtom, *Speaking the unspeakable: In the aftermath of weaponized rape in Tigray, North-Ethiopia* (2023).

434 Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), p. 11.

435 Amnesty International, *Ethiopia: Summary killings, rape and looting by Tigrayan forces in Amhara* (16 February 2022) AFR 25/5218/2022, p. 16.



219. In relation to physical health following CRSV, the following symptoms occur frequently:

"Patient records show a range of reproductive organ injuries and disorders (11%), including urinary incontinence (10 instances), fecal incontinence (4 instances), abnormal uterine bleeding (8 instances), uterine prolapse (4 instances), chronic pelvic pain (4 instances), and fistulas (3 instances). Additional physical signs and symptoms reported included 4 cases of loss of consciousness, as well as two cases of hearing loss/deafness."⁴³⁶

220. The CRSV was also mostly committed without use of a condom, which was intentional.⁴³⁷ As a result, many contracted HIV and Syphilis.⁴³⁸ All of these physical manifestations impair "survivors' ability to be intimate with their partner, thereby negatively affecting the necessary conditions to conceive in order to sustain their family line."⁴³⁹

221. The impact of CRSV on mental health includes "social stigma, isolation and the threat of divorce."⁴⁴⁰ Many Tigrayan women describe their husbands divorcing them upon discovery of their rapes, and the stigmatisation through their community.⁴⁴¹ A survivor of rape says: "Even my husband who used to support me, has dumped me. [...] I'm stuck in destitution. What worries me the most is my children. [...] What prevents me from taking my own life is my children".⁴⁴²

222. In addition, "the often-severe sexual abuse of mothers, grandmothers, sisters and daughters in front of or with knowledge of their family, including children, caused long-term physical and mental health consequences *far beyond the survivor*".⁴⁴³ The mental consequences of unwanted pregnancies not only impact the direct victims of rape, but also the next generation of the protected group: children who are born due to war-time rape and in turn face social stigma and revictimisation.⁴⁴⁴

223. According to medical records based on a limited quantitative study of CRSV, in relation to mental health: 17 percent of patients reported depression, 13 percent post-traumatic stress disorder, and three patients attempted suicide.⁴⁴⁵ One survivor, 42 years old, who was raped at gun point in front of her daughter, says: "I have no hope. What can I hope for? I'm without hope. [...] I don't think I want to live any longer. Can you continue to live if you're always ill and in pain both day and night?"⁴⁴⁶

436 Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), p. 16.

437 UN ICHREE, 'Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia' (13 October 2023) A/HRC/54/CRP.3, para. 147 ("We want to destroy your womb so you can't give birth to a Tigrayan fighter. We will infect you with HIV").

438 Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), p. 17 (based on a study of 304 medical records, 9 patients tested for HIV were positive, and two patients tested for Syphilis were positive).

439 Legal Action Worldwide, 'Every Day, I Remember They Destroyed My Life' (November 2023), p. 41.

440 UN ICHREE, 'Report of the International Commission of Human Rights Experts on Ethiopia' (14 September 2023) A/HRC/54/55, para. 54 (emphasis added). See, generally Thera Mjaaland and Kibrom Mebrahtom, *Speaking the unspeakable: In the aftermath of weaponized rape in Tigray, North-Ethiopia* (2023) (documenting the physical and mental health repercussions of rape). See also Legal Action Worldwide, 'Every Day, I Remember They Destroyed My Life' (November 2023), p. 41 (revealing how, in the context of the Rohingya, SGBV-related experiences impair the kinship with others, intimacy with partners, and the broader social status of women).

441 Thera Mjaaland and Kibrom Mebrahtom, *Speaking the unspeakable: In the aftermath of weaponized rape in Tigray, North-Ethiopia* (2023).

442 Thera Mjaaland and Kibrom Mebrahtom, *Speaking the unspeakable: In the aftermath of weaponized rape in Tigray, North-Ethiopia* (2023), at 3:27 min.

443 UN ICHREE, 'Report of the International Commission of Human Rights Experts on Ethiopia' (14 September 2023) A/HRC/54/55, para. 54 (emphasis added).

444 Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), p. 26.

445 Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), p. 16. Note also that "Social discrimination associated with sexual violence and lack of access to education – coupled with telecommunication and internet shutdowns and inaccessible health systems in Tigray, Amhara, Afar, and Oromia regions – contributed to untreated, long-term physical and mental health consequences for sexual violence survivors with incidence of significantly delayed reporting and underreporting", see UN ICHREE, 'Report of the International Commission of Human Rights Experts on Ethiopia' (14 September 2023) A/HRC/54/55, para. 53; see also UN ICHREE, 'Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia' (13 October 2023) A/HRC/54/CRP.3, para. 148.

446 Thera Mjaaland and Kibrom Mebrahtom, *Speaking the unspeakable: In the aftermath of weaponized rape in Tigray, North-Ethiopia* (2023), at 2:23 min.



224. Other consequences include insomnia, anxiety, emotional distress,⁴⁴⁷ and “mood swings, aggression, sleep deprivation, ongoing state of fear, or nervousness”.⁴⁴⁸ Even the destruction of the healthcare system and forced exposure to the ‘enemy’ results in mental suffering for victims of CRSV:

“During the months of November [2020] through to June [2021], when the Federal forces of Ethiopia were occupying Mekelle, President Sahlewerk Zewde visited the only safe house in the region *with armed men*. The administration has shown a continued lack of care in the treatment of survivors—both in terms of *disclosing their location to perpetrators* and *re-traumatizing* women and children assaulted by soldiers. The *presence of armed men at hospitals, clinics, and checkpoints* deterred survivors from seeking medical care. There are even reports of *armed militia storming through hospitals in search of survivors*.”⁴⁴⁹

225. In another case, a Tigrayan woman called Senbetu, who was reportedly raped in her own hotel by the Fano, was called names like “Teref Fano” (meaning “Fano left-overs”), “the raped one” or “the woman whose body Fano played on.” Her mother testified that Senbetu was strong and recognized that “what had happened was not her fault” and that she had “the courage to tell her story.” Yet the trauma of rape, and the social stigma which continued to re-traumatize her, caused Senbetu to become sick. While she received different diagnoses, none seemed the correct one. She later died.⁴⁵⁰

3. Deliberately Inflicting on the Group Conditions of Life Calculated to Bring about Its Physical Destruction in Whole or in Part

226. This act of genocide—aimed at the “slow death” of all or part of the group⁴⁵¹—encompasses “the methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction.”⁴⁵² Unlike killing or causing serious bodily or mental harm, there is no requirement that the conduct of the perpetrator actually caused the destruction of or harm to any member of the group;⁴⁵³ rather, this act of genocide is satisfied by the *prohibited nature of the measures* put in place by the perpetrator. Indeed, to the extent that destruction or harm is actually caused, then the perpetrator’s conduct is very likely to satisfy the requirements of killing or causing serious bodily or mental harm.⁴⁵⁴ Moreover, “the offence of genocide does not require proof that the perpetrator chose the most efficient method to accomplish his objective of destroying the targeted part. Even where the method selected will not implement the perpetrator’s intent to the fullest, leaving that destruction incomplete, this ineffectiveness alone does not preclude a finding of genocidal intent.”⁴⁵⁵

447 UN ICHREE, ‘Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia’ (13 October 2023) A/HRC/54/CRP.3, para. 303.

448 UN ICHREE, ‘Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia’ (13 October 2023) A/HRC/54/CRP.3, para. 148.

449 Rita Kahsay, Rowena Kahsay, and Sally Keeble, *In Plain Sight: Sexual violence in the Tigray conflict* (Eleanor Press, 2023), p. 13 (emphasis added). Note that the terrorization and intimidation through sexual violence did not end with the cessation of hostilities; see Sarah Johnson and Lucy Kassa, ‘Rape still a weapon of war in Tigray months after peace deal’ (*The Guardian*, 25 August 2023) (“Medical records from across the region show sexual violence continues to be used ‘to intimidate and terrorise communities’”).

450 Rita Kahsay, Rowena Kahsay, and Sally Keeble, *In Plain Sight: Sexual violence in the Tigray conflict* (Eleanor Press 2023), pp. 62-65.

451 ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 233.

452 ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 546; ICTY, *Prosecutor v. Stakić*, IT-97-24-T, Judgment, 31 July 2003, paras. 517-518. See also ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 505. See also ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, p. 3, para. 161 (“methods of physical destruction, other than killing”); ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, paras. 226, 228-229.

453 ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 546; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Judgment, 10 June 2010, para. 814; ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Judgment, 1 September 2004, para. 691; ICTY, *Prosecutor v. Stakić*, IT-97-24-T, Judgment, 31 July 2003, para. 517.

454 See, e.g., ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, paras. 227-228; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 546; ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Judgment, 1 September 2004, para. 906.

455 ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 32.



227. It is essential that the conditions of life were “deliberately”⁴⁵⁶ imposed by the perpetrator in order to bring about the *physical destruction* of the group in whole or in part, as opposed to its dissolution either geographically or socially and culturally.⁴⁵⁷ Acts of the required kind “typically relate to the deliberate withholding or taking away of the basic necessities of life over an extended period of time,”⁴⁵⁸ potentially including “deprivation of food, medical care, shelter or clothing, as well as lack of hygiene, systematic expulsion from homes, or exhaustion as a result of excessive work or physical exertion.”⁴⁵⁹

228. The ICHREE has alleged that the Federal Government of Ethiopia and “allied regional State governments” have “implemented a widespread range of measures designed to systematically deprive the population of Tigray of material and services indispensable for its survival, including healthcare, shelter, water, sanitation, education and food.”⁴⁶⁰ There is a high probability of such acts actually causing the physical destruction of a group if enforced over a significant period of time. Indeed, the objective probability that the measures imposed actually would cause such physical destruction—having regard to factors such as their nature, duration, and the vulnerability of the affected persons—may be highly relevant in assessing whether the requirement is met.⁴⁶¹

a) *Man-made Famine and Starvation*

229. The ICHREE found that “there are reasonable grounds to believe that [...] starvation of the civilian population as a method of warfare [has] been committed,”⁴⁶² and that the Ethiopian government and “allied regional State governments” have “implemented a widespread range of measures designed to *systematically deprive the population of Tigray* of [means] indispensable for its survival, including [...] food.”⁴⁶³

456 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 344; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 226; ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3434; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 547; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Judgment, 12 December 2012, para. 741.

457 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 344 (“the destruction of historical, cultural and religious heritage cannot be considered to constitute the deliberate infliction of conditions of life calculated to bring about the physical destruction of the group”); ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, paras. 226, 230-231, 234; ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 32; ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3434; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 547; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Judgment, 12 December 2012, para. 741; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Judgment, 10 June 2010, para. 854.

458 ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 234; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-AR98bis.1, Judgment, 11 July 2013, paras. 34, 37, 47; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Judgment, 12 December 2012, para. 740. *See also* ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, p. 3, para. 161.

459 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, p. 3, para. 161; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Judgment, 8 April 2015, para. 226; ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Judgment, 22 November 2017, para. 3434; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 547; ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Judgment, 1 September 2004, para. 691; ICTY, *Prosecutor v. Stakić*, IT-97-24-T, Judgment, 31 July 2003, para. 517; ICTR, *Prosecutor v. Musema*, ICTR-96-13-T, Judgment, 27 January 2000, para. 157; ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, paras. 115-116; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 506.

460 UN ICHREE, ‘Report of the International Commission of Human Rights Experts on Ethiopia’ (19 September 2022) A/HRC/51/46, para. 84. *Cf.* ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, para. 32 (“The international attention focused on Srebrenica, combined with the presence of the UN troops in the area, prevented those members of the VRS Main Staff who devised the genocidal plan from putting it into action in the most direct and efficient way. Constrained by the circumstances, they adopted the method which would allow them to implement the genocidal design while minimizing the risk of retribution”).

461 ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, para. 548; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Judgment, 12 December 2012, para. 742; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Judgment, 10 June 2010, para. 816; ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, Judgment, 1 September 2004, para. 906.

462 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, para. 96. *See further* UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 24 (“[ICHREE] previously found that the denial and obstruction of humanitarian access to Tigray by the Federal Government and allied regional state governments violated the ban on starvation of the civilian population as a method of warfare”).

463 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, para. 84. *See also* UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 203 (“the Commission found a range of measures designed to deprive the civilian population of objects indispensable to their survival, [...] including] those that facilitate access to healthcare, shelter, water and sanitation, and education, in addition to food. The intentional denial or deprivation of such ‘objects’ can constitute the crime of starvation as a method of warfare”).



230. In addition, there is a reasonable basis to believe that the Ethiopian government intentionally deprived the Tigray region of means of sustenance, which may amount to imposing conditions of life calculated to ensure the destruction of the Tigrayan group.
231. There are two aspects of the starvation of Tigrayans, which have to be considered in combination: indirectly, through the obstruction of (international) food aid by the Ethiopian federal government, including as executed through soldiers;⁴⁶⁴ and directly, through the destruction of harvest, crop, and arable land through Ethiopian, Eritrean, and Amhara forces on the ground.
232. First, the obstruction by the Ethiopian federal government of food aid and humanitarian assistance was continuous throughout two years of conflict, and, at times, was strategic.
233. The outbreak of the conflict coincided with the annual harvest time in November—at which time food aid is most needed. At that time, grains are harvested, but then require threshing and milling to make flour, in which form it is used to sustain local communities for an entire year until the following year's season.⁴⁶⁵ In implementing the blockade of humanitarian aid in November 2020, the federal government ensured that the 7 million Tigrayans would struggle to find enough food throughout the following year.⁴⁶⁶ The mostly continuous blockade, together with the destruction of the harvest described below, eventually caused half a million children to be malnourished by November 2022.⁴⁶⁷
234. Even before the conflict, nearly a million Tigrayans were dependent on food aid.⁴⁶⁸ However, many beneficiaries had not received support through the Productive Safety Net Programme, which aims to improve food security in Tigray, from August until December 2020, because the federal government had stopped the transfer of cash to Tigray before the outbreak of the armed conflict.⁴⁶⁹
235. The government is also accused of having refused access to Tigray for the first five weeks of the conflict.⁴⁷⁰ The humanitarian corridor was only announced to be opened on 2 December, but it could not be confirmed whether the assistance has in fact reached the designated areas.⁴⁷¹
236. Ethiopian soldiers are accused of preventing food from reaching Tigray.⁴⁷² The ICHREE also found that “the Federal Government and its allies have consistently denied or obstructed humanitarian access to Tigray.”⁴⁷³
237. It is also alleged that shortly before the outbreak of the conflict, the Ethiopian government introduced new bank notes, and simultaneously restricted opportunities to exchange old for new notes. With only a small part of the Tigrayan population having exchanged old for new notes, the remaining Tigrayans were unable to obtain cash once the blackout was imposed and banks closed and accounts frozen.⁴⁷⁴ Although, according to Prime Minister Abiy, these measures were not related to the preparations for the war, no

464 Similarly, in relation to the health sector, *see below* SECTION V.E.3.B).

465 Sofie Annys, Tim Vanden Bempt, Emnet Negash, et al., *Tigray: Atlas of the humanitarian situation* (Version 2.2, University of Ghent, December 2021), p. 82.

466 AFP, “Ethiopia: leaders of Tigray region admit they attacked neighbouring Amhara” (*The Guardian*, 14 November 2020) (citing Catherine Sozi, the UN’s resident and humanitarian coordinator in Ethiopia, who reported that they could not reach Tigrayans due to the communications blackout, road closures, and water, fuel, and cash shortages; reporting that the UN was lobbying the Ethiopian federal government for “full humanitarian access”).

467 Talha Burki, “Humanitarian crisis in Tigray amidst civil war” (2022) 22(6), *The Lancet* 774, p. 774.

468 Katharine Houreld and Giulia Paravicini, “Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray” (*Reuters*, 11 June 2021).

469 Famine Early Warning System Network, *Ethiopia Food Security Alert* (11 December 2020).

470 Katharine Houreld and Giulia Paravicini, “Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray” (*Reuters*, 11 June 2021).

471 Famine Early Warning System Network, *Ethiopia Food Security Alert* (11 December 2020).

472 Bobby Ghosh, “The World’s Deadliest War Isn’t in Ukraine, But in Ethiopia” (*Bloomberg*, 22 March 2022).

473 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, para. 77.

474 Teklehaymanot G Weldemichel, “Inventing hell: how the Ethiopian and Eritrean regimes produced famine in Tigray” (2022), 15(3) *Human Geography* 290, p. 292.



measures seem to have been taken to abate the serious consequences which inevitably flowed from such sudden fiscal change.⁴⁷⁵

238. These consequences entailed severe inconveniences and even brutality for Tigrayans: they had to pay disproportionate amounts of old money for new notes and walk hundreds of kilometers to find a branch which was open. Savings were inaccessible to many Tigrayans, who also faced daily withdrawal limits; and those who managed to withdraw money were often robbed on the route home at checkpoints manned by Eritrean and Ethiopian soldiers.⁴⁷⁶
239. According to researchers based at Ghent University in Belgium, by May 2021, 25 percent of the dispatched aid (about 12.4k tons) was unaccounted for during the formal distributions, which caused concerns over alleged widespread looting of aid.⁴⁷⁷ Similar concerns as to whether the aid was reaching its intended beneficiaries had already been voiced by OCHA in February 2021.⁴⁷⁸ Indeed, even still in May 2023, USAID paused food assistance to the Tigray region because it discovered that “food aid, intended for the people of Tigray suffering under famine-like conditions, was being diverted and sold on the local market.”⁴⁷⁹
240. By May 2021, High Representative Josep Borrell and Commissioner for Crisis Management Janez Lenarčič called for “immediate and full-scale assistance to avoid starvation,” and said that using “humanitarian aid as a weapon of war is a grave violation of international humanitarian law [...]. Those responsible for deliberately preventing timely access will be held to account.”⁴⁸⁰ By mid-June 2021, large parts of Tigray remained out of reach.⁴⁸¹
241. In June 2021, Prime Minister Abiy Ahmed claimed that “there is no hunger in Tigray.”⁴⁸² Also in 2021, in response to a question regarding allegations of a man-made hunger in Tigray, Prime Minister Abiy replied that the claims “there could be hunger in Tigray and the government could use hunger as a political tool is pure propaganda [and] not proven by any means,” suggesting that there is no data that indicates that people in Tigray die of hunger.⁴⁸³
242. Prime Minister Abiy then referred to the drought experienced in the northern part of Ethiopia in 1977, which he says was exploited by the “junta” (a term used to refer to Tigrayan forces and Tigrayans generally).⁴⁸⁴ At a minimum, this denial suggests that Prime Minister Abiy was informed of the allegations of starvation and extermination, at least putting him on inquiry notice—alerting him to sufficiently alarming information that he should have taken steps to investigate, even if he was not previously aware.

475 Teklehaymanot G Weldemichel, “Inventing hell: how the Ethiopian and Eritrean regimes produced famine in Tigray” (2022), 15(3) Human Geography 290, p. 292.

476 Teklehaymanot G Weldemichel, “Inventing hell: how the Ethiopian and Eritrean regimes produced famine in Tigray” (2022), 15(3) Human Geography 290, p. 292.

477 Sofie Annys, Tim Vanden Bempt, Emnet Negash, et al., Tigray: Atlas of the humanitarian situation (Version 2.2, University of Ghent, December 2021), p. 56.

478 OCHA, Northern Ethiopia Humanitarian Update, Situation Report (28 February 2021).

479 USAID, “Statement by Administrator Samantha Power” (3 May 2023).

480 European Union, “Ethiopia: Statement by High Representative Josep Borrell and Commissioner for Crisis Management Janez Lenarčič on restricted humanitarian access to Tigray” (14 May 2021).

481 Katharine Houreld and Giulia Paravicini, “Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray” (*Reuters*, 11 June 2021) (“In the month of May, OCHA had recorded some 130 incidents of aid agencies being turned away at checkpoints and of staff being assaulted, interrogated or hindered from working in the region. Lowcock told Reuters Eritreans were ‘clearly’ responsible for 50 such incidents and men in Ethiopian military uniforms for 50 others. Volunteer militiamen from Amhara were responsible for 27 incidents, he said. Tigrayan opposition forces also hindered operations on at least one occasion”).

482 BBC, “Ethiopia’s Abiy Ahmed: ‘There is no hunger in Tigray’” (*BBC*, 21 June 2021).

483 Tweet by OmnaTigray, 8 March 2022 (translation into English provided by tweet author). See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 239 (referring to a “a 23 June 2021 television interview in which the Prime Minister alleged that the TPLF benefited militarily from humanitarian assistance provided during the 1984 drought, and was subsequently able to overthrow the government at the time”).

484 Tweet by OmnaTigray, 8 March 2022 (translation into English provided by tweet author). Government officials generally are found to have propagated “anti-TPLF narratives, [...] which over time expanded to include the Tigrayan population more widely”; see UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 33.



243. Prime Minister Abiy is alleged to have used the unilateral cease-fire to “punish the people of Tigray for supporting the Tigrayan forces that routed the regime’s army and its allies in central Tigray in June 2021,” having allegedly said:
- “The cease-fire is because we don’t want to slaughter an ox to cure an ill chicken [the ox is a metaphor for Ethiopia and the ill chicken is Tigray]. Let us see if the people of Tigray can save themselves.”⁴⁸⁵
244. Mark Lowcock, who was United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator from 2017-2021, said that “Eritrean soldiers and local fighters are deliberately blocking supplies to the more than 1 million people in areas outside government control,”⁴⁸⁶ and that most of the food and other aid delivered to Tigray “is going to government-controlled areas.”⁴⁸⁷ He accused Eritrean forces of “trying to deal with the Tigrayan population by starving them.”⁴⁸⁸
245. In July 2021, the Ethiopian government then allegedly blocked a crucial road in Ethiopia to prevent humanitarian aid from reaching the Tigray region, both by using obstruction and intimidation.⁴⁸⁹ That road was the only one that could still be used, barring intermittent obstructions, to reach Tigray. For example, on 18 July 2021, a relief convoy came under fire 60 miles north of Semera from unidentified gunmen, who also looted several trucks, which led to the suspension of aid deliveries on that road.⁴⁹⁰ Only 50 trucks managed to travel the route in the course of one month.⁴⁹¹ According to the WFP, 170 trucks were stranded in Semera (Afar region) due to lack of permission by the Ethiopian government.⁴⁹² Aid workers were reportedly harassed at airports.⁴⁹³
246. In early August 2021, the Ethiopian government revoked the operating licenses of Doctors Without Borders and the Norwegian Refugee Council.⁴⁹⁴
247. In addition, the disruptions due to conflict meant that the harvest remained limited, as did food staples. Prices for staple food soared at over 70 percent above average, while humanitarian supplies were depleted by August 2021.⁴⁹⁵
248. The Tigray Regional Emergency Coordination Centre reports that, while 90 percent of the target population was reached during the first round of food distribution in late March 2021 and 62 percent during mid-May 2021, the third round had not started by September 2021.⁴⁹⁶ By that month, it also became clear that since July 2021, only 38 out of 466 trucks that entered Tigray to provide food aid had returned (meaning aid groups lacked transportation methods going forward).⁴⁹⁷ This was due to fuel shortages, but also due to the shooting of drivers carrying aid on two occasions.⁴⁹⁸

485 Teklehaymanot G. Weldemichel, “[Inventing hell: how the Ethiopian and Eritrean regimes produced famine in Tigray](#)” (2022), 15(3) Human Geography 290, p. 292 (square brackets in the original by Teklehaymanot G. Weldemichel).

486 Katharine Houreld and Giulia Paravicini, “[Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray](#)” (Reuters, 11 June 2021).

487 Katharine Houreld and Giulia Paravicini, “[Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray](#)” (Reuters, 11 June 2021).

488 Katharine Houreld and Giulia Paravicini, “[Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray](#)” (Reuters, 11 June 2021).

489 Declan Walsh, “[A Lifeline to Millions of Ethiopians Is Being Blocked](#)” (New York Times, 29 July 2021).

490 Declan Walsh, “[A Lifeline to Millions of Ethiopians Is Being Blocked](#)” (New York Times, 29 July 2021).

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493 Declan Walsh, “[A Lifeline to Millions of Ethiopians Is Being Blocked](#)” (New York Times, 29 July 2021).

494 Max Bearak and John Hudson, “[Samantha Power has long championed humanitarian intervention. Ethiopia’s crisis is putting her to the test](#)” (Washington Post, 5 August 2021); Simon Marks, “[Ethiopia Suspends Two Humanitarian Groups from War-Torn Tigray](#)” (Bloomberg, 3 August 2021).

495 Famine Early Warning System Network, [Ethiopia Food Security Alert](#) (14 October 2021).

496 Sofie Annys, Tim Vanden Bempt, Emnet Negash, et al., [Tigray: Atlas of the humanitarian situation](#) (Version 2.2, University of Ghent, December 2021), p. 55.

497 Michelle Nichols, “[U.N. aid chief to Ethiopia on famine in Tigray: ‘Get those trucks moving’](#)” (Reuters, 28 September 2021).

498 Michelle Nichols, “[U.N. aid chief to Ethiopia on famine in Tigray: ‘Get those trucks moving’](#)” (Reuters, 28 September 2021) (noting that he WFP referred to 61 trucks that had been able to leave Tigray).



249. In October 2021, Prime Minister Abiy made the opening up of humanitarian access subject to the condition that the TPLF withdraw forces from the Amhara and Afar regions⁴⁹⁹—which again suggests a strategic use of cease-fires, similar to the instance detailed above.⁵⁰⁰ At the same time, subjecting the opening of humanitarian access to conditions is also an apparent contradiction to the Prime Minister’s statements made in an earlier interview (referenced above in para. 241), that the Ethiopian government provides access whenever asked,⁵⁰¹ that humanitarian organizations are free to provide aid, and that any claims of “man-made hunger” are “pure propaganda.”⁵⁰²
250. However, between the months of mid-July and the end of September, the number of trucks able to enter Tigray with food aid met only 11 percent of the need.⁵⁰³ Seemingly no aid was distributed in areas controlled by Amhara regional forces and militia (Western Tigray, North-western Tigray south of the Tekeze River, and parts of Southern Tigray).⁵⁰⁴ It appears that the likely explanations for this lack of data is a genuine obstruction of aid, or lack of communication and/or active fighting.⁵⁰⁵
251. On 5 November 2021, the UN SC “called for an end to the intensifying and expanding conflict in Ethiopia [...] and for unhindered access for humanitarian aid to tackle the world’s worst hunger crisis in a decade in the war-torn Tigray region.”⁵⁰⁶
252. At the end of 2021, required humanitarian assistance forecast for 2022 was expected at levels “nearly 40 percent higher compared to 2021.”⁵⁰⁷
253. In December 2021, reports showed that although food aid is meant to be delivered every 6 weeks, distribution was actually effected only every 5 months.⁵⁰⁸ Ghent University researchers found that that 38 percent of the population only received food aid once in 5.5 months.⁵⁰⁹
254. Between October 2021 and early May 2022, an estimated total of 1.5 million people received assistance, compared with 2.9 million people *a month* in the same period of 2021.⁵¹⁰ Moreover, “a large proportion of those reached in 2022 have received partial rations, a reflection of the limited response to a population that is likely facing moderate to extreme consumption gaps.”⁵¹¹ The suspension of basic essentials, such as banking and electricity, continued.⁵¹² Lack of electricity also meant that Tigrayans were unable to go food shopping, and lack of fuel meant that humanitarian aid could not reach the local population to provide food.⁵¹³

499 Samuel Gebre and Simon Marks, “[Ethiopia Stages Airstrikes Targeting Rebel Region’s Capital](#)” (*Bloomberg*, 19 October 2021).

500 See above PARA. 245.

501 [Tweet by OmnaTigray](#), 8 March 2022 (translation into English provided by tweet author) (“Not a single NGO that came with even just 1 kg of wheat was prevented from supplying a single kg to our people. Those who came we provided them with necessary support”; “When they [humanitarian aid organizations] asked for access we told them they can go anywhere and if there are places where they could face problems the army can escort them but they said they don’t need to be escorted”).

502 [Tweet by OmnaTigray](#), 8 March 2022 (translation into English provided by tweet author).

503 OCHA, Northern Ethiopia Humanitarian Update, [Situation Report \(30 September 2021\)](#).

504 Sofie Annys, Tim Vanden Bempt, Emnet Negash, et al., [Tigray: Atlas of the humanitarian situation](#) (Version 2.2, University of Ghent, December 2021), p. 56.

505 Sofie Annys, Tim Vanden Bempt, Emnet Negash, et al., [Tigray: Atlas of the humanitarian situation](#) (Version 2.2, University of Ghent, December 2021), p. 56.

506 Edith M Lederer, “[UN Security Council calls for end to Ethiopia hostilities](#)” (*Associated Press*, 6 November 2021); UN Security Council, “[Security Council Press Statement on Ethiopia](#)” (Press Release), SC/14691 (5 November 2021).

507 Famine Early Warning System Network, [Ethiopia Food Security Alert \(22 December 2021\)](#).

508 Famine Early Warning System Network, [Ethiopia Food Security Alert \(22 December 2021\)](#).

509 Sofie Annys, Tim Vanden Bempt, Emnet Negash, et al., [Tigray: Atlas of the humanitarian situation](#) (Version 2.2, University of Ghent, December 2021), p. 55.

510 Famine Early Warning System Network, [Ethiopia Food Security Alert \(27 May 2022\)](#).

511 Famine Early Warning System Network, [Ethiopia Food Security Alert \(27 May 2022\)](#).

512 OCHA, Northern Ethiopia Humanitarian Update, [Situation Report \(12 May 2022\)](#).

513 Giulia Paravicini, “[Nearly half the people in Ethiopia’s Tigray in ‘severe’ need of food aid, World Food Programme says](#)” (*Reuters*, 20 August 2022).



255. On 24 March 2022, an informal truce was established.⁵¹⁴ Following an interruption of humanitarian aid of over three months, WFP and OCHA reported a resumption of aid deliveries at the beginning of April 2022.⁵¹⁵ But while 115 food trucks would be needed every day throughout May, convoys were able to bring supplies into Tigray on only six occasions, amounting to only 250 food trucks for all of May.⁵¹⁶
256. The numbers are telling. On 29 June 2022, the UN tweeted that since 1 April 2022, the “WFP has delivered enough food to feed 5.9 million people [in Tigray] *per month*.”⁵¹⁷ Yet WFP itself reported having delivered emergency food assistance to only 60,231 people in Tigray in March 2022;⁵¹⁸ to 461,542 people in Tigray in May 2022;⁵¹⁹ and, in June 2022, the WFP even “suspended dispatch of relief assistance in the Tigray Region due to a lack of fuel supply.”⁵²⁰ Due to a resumption in fighting in August 2022, aid deliveries were halted yet again.⁵²¹
257. In Tigrayan hospitals throughout 2022, children were not administered milk, but medicine and oxygen to ease their pain. One doctor, pained at only being able to alleviate the suffering, said:
 “We are here to watch them dying, nothing else.”⁵²²
258. Second, the destruction and forcible displacement by ENDF, EDF, and ASF soldiers as well as *Fano* militia in Tigray prevented many farmers from cultivating their crops not only indirectly through fighting, but also directly: through forcible displacement, destruction of equipment and harvests, and the burning and looting of crops.⁵²³
259. Over 80 percent of Tigrayans are farmers, and the agriculture sector is the “backbone” of the region’s economy.⁵²⁴ Thus, a large majority of people in Tigray depend on agriculture,⁵²⁵ which is “characterized by erratic rains, low soil fertility, insufficient inputs, and lack of basic tools.”⁵²⁶ While harvest yields would remain low even in good conditions and be insufficient to feed all households, the prospects for the 2020 season were nonetheless promising.⁵²⁷ Around the time of the outbreak of conflict, locusts (short-horned grasshoppers) also destroyed about 25 percent of the crop production.⁵²⁸ Those circumstances in 2020 made a general situation of potential food shortage worse. Field data relating to harvest in 2021 shows that

514 Al Jazeera, “Ethiopia declares unilateral truce to allow aid into Tigray” (*Al Jazeera*, 24 March 2022); Obi Anyadike, “Is there a path to peace in the Tigray conflict?” (*The New Humanitarian*, 28 September 2022).

515 OCHA, Northern Ethiopia Humanitarian Update, *Situation Report* (12 May 2022); Reuters, “Aid enters Ethiopian territory controlled by Tigray forces—WFP” (*Al Jazeera*, 1 April 2022).

516 OCHA, Northern Ethiopia Humanitarian Update, *Situation Report* (12 May 2022).

517 Tweet by the United Nations, 29 June 2022.

518 World Food Programme, *Ethiopia Country Brief* (March 2022).

519 World Food Programme, *Ethiopia Country Brief* (May 2022).

520 World Food Programme, *Ethiopia Country Brief* (June 2022).

521 Obi Anyadike, “Is there a path to peace in the Tigray conflict?” (*The New Humanitarian*, 28 September 2022).

522 Charles Emptaz, “ARTE Reportage Ethiopia: Tigray Humanitarian Crisis” (*ARTE*, 7 July 2022) at 7:05 min.

523 Markos Sisay, “Ethiopian government’s Tigray siege leading to starvation, suicide, exodus” (*Ethiopia Insight*, 20 May 2022); and Jan Nyssen, Emnet Negash, and Sofie Annys, “How Ethiopia’s conflict has affected farming in Tigray” (*The Conversation*, 22 August 2021); Oxfam Press Statement, “Conflict compounded by Covid-19 and climate change pushes millions in Tigray to the brink” (22 January 2021) (“Tesfay Getachew, a farmer in Tigray said: ‘Crops were burnt down in some places including mine. The total loss of my crop—an estimated 1.5 tons—could have fed my family of seven at least for ten months’”).

524 Ashenafi Manaye, Aklilu Afework, Belay Manjur, et al., “The Effect of the war on smallholder agriculture in Tigray, Northern Ethiopia” (2023), 9(1) *Cogent Food & Agriculture*, p. 2.

525 Jan Nyssen, Emnet Negash, Bert Van Schaeybroeck, et al., “Crop Cultivation at Wartime: Plight and Resilience of Tigray’s Agrarian Society (North Ethiopia)” (2022), *Defence and Peace Economics*, p. 1 (“About three out of four Tigrayans live from farming (Regional State of Tigray 2018) and the region typically depends on local yields”).

526 Markos Sisay, “Ethiopian government’s Tigray siege leading to starvation, suicide, exodus” (*Ethiopia Insight*, 20 May 2022).

527 Markos Sisay, “Ethiopian government’s Tigray siege leading to starvation, suicide, exodus” (*Ethiopia Insight*, 20 May 2022) (“For the 2020 season, Tigray’s Agriculture and Rural Development Office planned to harvest more than 25 million quintals”).

528 Jan Nyssen, “Webinar: Documenting the Civilian Victims of the Tigray War” (*Every Casualty Counts*, 19 January 2023).



only 20-50 percent of farmland were estimated to produce harvest—this would be far below the necessary level required in a subsistence farming economy in the best of circumstances.⁵²⁹

260. While it is therefore important to determine that any resulting famine was not purely caused by non-natural circumstances, these factors meant that the civilian population was *particularly* vulnerable to attacks on food supplies. The evidence below shows that objects indispensable to the civilian population, such as crops, actually were targeted and destroyed, exacerbating the already precarious conditions.
261. Witnesses interviewed by the *New York Times* claim that Ethiopian and Eritrean soldiers destroyed crops and tools in late 2020 and the first half of 2021 to interfere with planting and harvesting.⁵³⁰ Eritrean and Ethiopian forces used “scorched-earth” tactics, destroying “[w]hole villages, warehouses, expanses of fields and crops, mango orchards and grain stores.”⁵³¹
262. In addition, Eritrean soldiers forbade farmers to plough their land; and many young men who would otherwise farm the land either fled for fear of being killed or became fighters, sometimes because they witnessed indiscriminate killings in their immediate environment.⁵³² One survivor said: “EDF units have been visiting villages where people were preparing the land, with the message: you won’t plough, you won’t harvest, you won’t get any aid; we will punish you if you try.”⁵³³
263. Livestock and oxen were slaughtered, pillaged, and looted by members of the EDF, ENDF, and Amhara forces.⁵³⁴ Farmers were also “forced at gunpoint to cook their animals for the troops.”⁵³⁵
264. In one concrete example in Ziban Geneda town, which is in north-western Tigray, EDF soldiers reportedly burnt 150 houses and looted or killed 90 percent of oxen and livestock; they also “burnt and stolen harvests and set fire to animal fodder.”⁵³⁶
265. It is further reported that:
- “Eritrean soldiers were accused of systematically looting homes and businesses as they advanced into Tigray in late 2020. An eyewitness saw the pillaging of shops in the town of Adwa by Eritreans, who broke down doors, before being followed by young women, brought from Eritrea for the purpose. They looted the goods, piling them into vehicles.”⁵³⁷
266. Another report describes:
- “On the streets, all you see is now looting, they break every store, every electronics store, every shop. Could be cosmetics store, or groceries, or small stores. [...] They break it, they get in, and they take everything in their bag, and they put it in the trucks. And a couple of armed Eritrean soldiers would be waiting for them in the safety of the [vehicles]. And they take everything.”⁵³⁸

529 Tesfaalem Ghebreyohannes, Jan Nyssen, Emnet Negash, et al., “Challenges and resilience of an indigenous farming system during wartime (Tigray, North Ethiopia)” (2022), 42 (116), *Agronomy for Sustainable Development*, p. 13; OCHA, Northern Ethiopia Humanitarian Update, *Situation Report (2 September 2021)*.

530 Declan Walsh, “A Lifeline to Millions of Ethiopians Is Being Blocked” (*New York Times*, 29 July 2021).

531 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 280; FIRIS Fire Alert Tweet, 15 January 2021; Reuters, “Hundreds of buildings burned around Tigray town, research group says” (*Reuters*, 25 February 2021).

532 Jan Nyssen, Emnet Negash, and Sofie Annys, “How Ethiopia’s conflict has affected farming in Tigray” (*The Conversation*, 22 August 2021).

533 Jan Nyssen, Emnet Negash, Bert Van Schaeybroeck, et al., “Crop Cultivation at Wartime: Plight and Resilience of Tigray’s Agrarian Society (North Ethiopia)” (2022), *Defence and Peace Economics*, p. 5.

534 Markos Sisay, “Ethiopian government’s Tigray siege leading to starvation, suicide, exodus” (*Ethiopia Insight*, 20 May 2022).

535 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 280.

536 Katharine Houreld and Giulia Paravicini, “Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray” (*Reuters*, 11 June 2021).

537 Martin Plaut and Sarah Vaughan, *Understanding Ethiopia’s Tigray War* (Hurst, 2023), p. 279.

538 World Peace Foundation, *Starving Tigray: How Armed Conflict and Mass Atrocities Have Destroyed an Ethiopian Region’s Economy and Food System and Are Threatening Famine* (6 April 2021), p. 21.



267. In spring 2021, fewer croplands in Western Tigray than normal were ploughed as a direct consequence of the extreme exodus of Tigrayans from the area.⁵³⁹ Although Tigrayan forces recaptured Mekelle in June 2021, farmers lacked fertiliser, seed, and oxen, resulting in the lowest harvest in decades. The active conflict and prevention of farming “caused many farmers to miss the planting season.”⁵⁴⁰ Crop prospects remained bleak without fertilizers and seed.⁵⁴¹
268. In the days after the “unilateral cease-fire” in June 2021, soldiers are alleged to have “emptied commercial banks of any cash, severed telecommunication installations, switched power off and randomly shot at residents of the city on their way out.”⁵⁴²
269. There is evidence that these objects indispensable to the civilian population were deliberately attacked. For example, the State-owned Amhara Media Corporation, in a Facebook post on 30 July 2021, suggested that the TPLF could only be stopped “from all four directions, just like Biafra, [... by] taking its breath away from all directions.”⁵⁴³ Similarly, “Gizaw Legesse, a journalist regularly featured on ESAT TV, argued that the government’s strategy should be to build a buffer zone around Tigray to give the people ‘time for reflection’ for three to five years.”⁵⁴⁴
270. The ICHREE also found that regional government officials favoured the besieging of Tigray:
 “On 30 July 2021, the then Regional Governor of Amhara, now current speaker of the Ethiopian House of Federation, called for a ‘siege on Tigray from all four sides to turn Tigray into Biafra,’ while in March 2022, the President of the Regional Government of Afar stated that ‘the road [going from Addis Ababa to Tigray through the Afar region] is their oxygen. ... There is no way we will allow aid to get to Tigray and they know that.’”⁵⁴⁵
271. The consequences of the two measures of starvation described above were, and remain, severe. Most of the land was ploughed, albeit poorly, belatedly, and without fertilizer. One study found that 60 percent of crop yield was missing.⁵⁴⁶ Other figures are even higher: According to the former director of Tigray’s Economic Damage Assessment Centre—which was set up by the TPLF administration—after 2 years of war, 80 percent of livestock was killed or stolen, and 90 percent of crops were destroyed.⁵⁴⁷
272. Only a couple of months into the war, aid workers were concerned about famine.⁵⁴⁸ The Famine Early Warning Systems Network assessed that the stage one “minimal food insecurity,” which prevailed in Tigray in October 2020,⁵⁴⁹ drastically worsened to stage four “emergency levels” by June 2021—only half

539 Sofie Annys, Tim Vanden Bempt, Emnet Negash, et al., *Tigray: Atlas of the humanitarian situation* (Version 2.2, University of Ghent, December 2021), p. 82.

540 Declan Walsh, “A Lifeline to Millions of Ethiopians Is Being Blocked” (*New York Times*, 29 July 2021).

541 Talha Burki, “Humanitarian crisis in Tigray amidst civil war” (2022), 22(6), *The Lancet* 774, p. 775.

542 Teklehaimanot G. Weldemichel, “Inventing hell: how the Ethiopian and Eritrean regimes produced famine in Tigray” (2022), 15(3), *Human Geography* 290, p. 292.

543 Facebook post by Amhara Media Corporation, 30 July 2021 (informal translation). During the 1967-1970 Nigerian civil war, following the Republic of Biafra’s declaration of independence from Nigeria, the Nigerian government blocked the supply of food to Biafra, therefore intentionally starving the population, which resulted in the death of one to three million civilians, including up to one million children; see Jan Nyssen, “Ethiopian officials admit using a Biafra-like siege to starve Tigray” (*Ethiopia Insight*, 11 August 2022); Mikael Norman and Peter Ueda, “Biafran Famine,” in Victor Preedy and Vinood B. Patel (eds.), *Handbook of Famine, Starvation and Nutrient Deprivation* (Springer, 2017), p. 1.

544 Jan Nyssen, “Ethiopian officials admit using a Biafra-like siege to starve Tigray” (*Ethiopia Insight*, 11 August 2022).

545 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023) A/HRC/54/CRP.3, para. 241 (square brackets in the original citation).

546 Tesfaalem Ghebreyohannes, Hailemariam Meaza, Zbelo Tesfamariam, et al., “Spatially explicit dataset on crop status of 262 farm plots in Tigray (24-29 August 2022)” (2022), Mekelle University, Ghent University, PANGAEA.

547 Anonymous journalist, Anthony Morland, and Obi Anyadike (eds.), “Tigray’s long road to recovery” (*The New Humanitarian*, 20 April 2023).

548 BBC, “Ethiopia Tigray crisis: Fear of mass starvation” (*BBC*, 18 January 2021) (Leaked minutes from a Tigray Emergency Coordination Centre meeting: “People are dying because of starvation. In Adwa people are dying while they are sleeping”).

549 Economist, “Tigray is edging closer to famine” (*The Economist*, 22 April 2021) (“Tigray was deemed food secure prior to the outbreak of the conflict”).



a year later—across nearly the entire Tigray region.⁵⁵⁰ The map showing areas of food insecurity is now interspersed with dark red spots, signaling famine. Data on Western Tigray was lacking due to occupation by Amhara regional forces and *Fano* militia, preventing an assessment on famine conditions.⁵⁵¹

273. The situation on the ground made access to emergency food assistance even more critical—yet none was forthcoming. In May 2021, the EU reported that “[at] least 5.2 million people out of 5.7 million in Tigray are in need of emergency food assistance.”⁵⁵²
274. Estimations for September 2021 had considered that even with humanitarian assistance provided to 60 percent of the population, “approximately 400,000 people [would be] deemed to be at risk of famine,” while 4.4 million people would be in “crisis.”⁵⁵³ Yet it was predicted that with further escalation of the conflict or if “for any other reason, humanitarian assistance is hampered, *most areas* of Tigray will be at Risk of Famine.”⁵⁵⁴ This would mean a “minimum of 425 hunger deaths per day, and a ‘conservative maximum’ of 1201 per day,” i.e., “averaged, one person dying of starvation per two minutes.”⁵⁵⁵
275. In June 2021, over 2 million people in parts of North-western, Central, Eastern, and South Eastern Tigray experienced food emergency, and “approximately 353,000 people [were] famine-affected (IPC Phase 5) and hence at severe risk of starvation”—which is “is the highest number of people in IPC Phase 5 since the 2011 famine in Somalia.”⁵⁵⁶ Nonetheless, no famine was officially declared⁵⁵⁷—other than by Mark Lowcock, former UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator at OCHA, who insisted that “there is famine now [June 2021].”⁵⁵⁸
276. By July 2021, the UN reported that more than 400,000 people in Tigray were living in “famine-like conditions,” while 4.8 million needed urgent aid.⁵⁵⁹ By November 2021, “up to 900,000 people [were] facing famine-like conditions.”⁵⁶⁰
277. By January 2022, 83 percent of people needed food aid. Notwithstanding the unilateral cease-fire of March 2022, which enabled aid deliveries to be resumed, malnutrition rates “skyrocketed.”⁵⁶¹ Indeed, the number of Tigrayans who were malnourished, and/or in need of food aid, was expected to worsen: “an estimated 13 million people need food aid, a 44% increase from the previous WFP report released in January.”⁵⁶²
278. By August 2022, the number of people requiring food aid had risen to 89 percent, and the percentage of those in “severe” need had increased from 37% in January to 47% in August.⁵⁶³ By September 2022, UNICEF campaigns also found “global acute malnutrition (GAM) and severe acute malnutrition (SAM) rates

550 Famine Early Warning System Network, “Ethiopia” (showing assessed outcomes for June 2021 as mostly “Stage 4: Emergency” in two-thirds of Tigray, with “Stage 3: Crisis” in Western Tigray). The assessment is based on the IPC 3.0 Acute Food Insecurity Classification, reported in June 2021.

551 Katharine Houreld and Giulia Paravicini, “Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray” (*Reuters*, 11 June 2021).

552 European Union, “Ethiopia: Statement by High Representative Josep Borrell and Commissioner for Crisis Management Janez Lenarčič on restricted humanitarian access to Tigray” (14 May 2021).

553 Sofie Annys, Tim Vanden Bempt, Emnet Negash, et al., *Tigray: Atlas of the humanitarian situation* (Version 2.2, University of Ghent, December 2021), p. 74; Famine Early Warning System Network, “Catastrophe (IPC Phase 5) outcomes likely among households in Tigray” (May 2021); IPC, “Ethiopia: Acute Food Insecurity Situation May - June 2021 and Projection for July-September 2021” (22 July 2021).

554 IPC, “Ethiopia: Acute Food Insecurity Situation May-June 2021 and Projection for July-September 2021” (22 July 2021) (emphasis added).

555 Sofie Annys, Tim Vanden Bempt, Emnet Negash, et al., *Tigray: Atlas of the humanitarian situation* (Version 2.2, University of Ghent, December 2021), p. 74.

556 Sofie Annys, Tim Vanden Bempt, Emnet Negash, et al., *Tigray: Atlas of the humanitarian situation* (Version 2.2, University of Ghent, December 2021), p. 73.

557 See Alex de Waal, “Steal, Burn, Rape, Kill” (2021), 43(12) *London Review of Books* (“The aid agencies are hesitating to call it famine because they’re scared of reprisals by the government in Addis Ababa, which controls their travel permits and threatens their staff”).

558 Mark Lowcock, cited by Andrew Harding, “Ethiopia’s Tigray crisis: UN aid chief says there is famine” (*BBC*, 10 June 2021).

559 Declan Walsh, “A Lifeline to Millions of Ethiopians Is Being Blocked” (*New York Times*, 29 July 2021); Katharine Houreld and Giulia Paravicini, “Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray” (*Reuters*, 11 June 2021).

560 USAID, “On One Year of Conflict in Northern Ethiopia” (Press release, 4 November 2021).

561 Giulia Paravicini, “Nearly half the people in Ethiopia’s Tigray in ‘severe’ need of food aid, World Food Programme says” (*Reuters*, 20 August 2022).

562 Giulia Paravicini, “Nearly half the people in Ethiopia’s Tigray in ‘severe’ need of food aid, World Food Programme says” (*Reuters*, 20 August 2022).

563 Giulia Paravicini, “Nearly half the people in Ethiopia’s Tigray in ‘severe’ need of food aid, World Food Programme says” (*Reuters*, 20 August 2022).



of 30.1 percent and 7.2 percent, respectively” in several *woredas* in Tigray, and warned that insufficient nutrition supplies could exacerbate the situation and increase malnutrition rates.⁵⁶⁴ By October 2022, the *entirety* of Tigray was showing emergency levels of food insecurity.⁵⁶⁵

279. Indeed, according to estimations by Ghent University research team, using IPC qualifiers, 400,000 people experienced famine in May and June 2021. The IPC quantifies this as 1-2 famine deaths per 10,000 people per day.⁵⁶⁶
280. Children were particularly adversely affected. By May 2021, six months into the war, 19% of Tigrayan children in clinics were malnourished.⁵⁶⁷ By September 2021, 22.7% of children under 5 years were malnourished.⁵⁶⁸ In April 2022, an assessment of 18,597 Tigrayan children below 5 years of age showed a malnutrition rate of 29%—with anything over 10% being considered an emergency.⁵⁶⁹ Between March and April 2023, five months after the formal end of the conflict, the malnutrition rate of children in Tigray reportedly *increased* by 28%.⁵⁷⁰ Similarly, out of 11,000 pregnant and breastfeeding women, more than 70% were “acutely malnourished.”⁵⁷¹
281. The total number of deaths attributable to starvation is difficult to ascertain, partly due to the Ethiopian federal government’s attempts to prevent data gathering.⁵⁷² In hospitals alone, at least 2,850 children have died since the outbreak of the conflict—and of those, 230 died after the *Cessation of Hostilities Agreement* by June 2023.⁵⁷³ The number of deaths of those without access to hospitals is likely to be even higher.
282. Estimations in January 2023 of the overall number of deaths by December 2022, which are based on “the weighted average IPC famine death rate, calculated over time and districts of the Tigrayan population” resulted “in a minimum number of deaths of 246,000, with a maximum of 542,000, and an average of 375,000 people dying due to famine.”⁵⁷⁴ Later calculations in May 2022 estimated the number of famine-related deaths by December 2022 to be between 96,000 to 218,000.⁵⁷⁵
283. Even after the *Cessation of Hostilities Agreement*, food aid and distributions by both the UN WFP and the US Agency for International Development were suspended in May 2023, due to concerns over theft of aid, and aid being diverted and sold on the market.⁵⁷⁶ Several media outlets were shown a memo prepared by an independent donor group which alleges a “‘co-ordinated and criminal scheme’ apparently orchestrated by federal and regional government entities.”⁵⁷⁷

564 UNICEF, *Ethiopia Humanitarian Situation Report No. 9: September 2022* (29 October 2022), p. 2.

565 Famine Early Warning System Network, “Ethiopia” (showing assessed outcomes for October 2022 as “Stage 4: Emergency”; projected outcomes for January 2024 are “Acute Food Insecurity” across Ethiopia). The assessment is based on the IPC 3.1 Acute Food Insecurity Classification, reported in October 2022. Harvesting led to improvements in early 2023, yet those means of sustenance were also predicted to be soon exhausted, *see* Jan Nyssen, “Webinar: Documenting the Civilian Victims of the Tigray War” (*Every Casualty Counts*, 19 January 2023).

566 Jan Nyssen, “Webinar: Documenting the Civilian Victims of the Tigray War” (*Every Casualty Counts*, 19 January 2023), citing <https://www.ipcinfo.org/famine-facts/en/>.

567 Katharine Houreld and Giulia Paravicini, “Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray” (*Reuters*, 11 June 2021).

568 Michelle Nichols, “U.N. aid chief to Ethiopia on famine in Tigray: ‘Get those trucks moving’” (*Reuters*, 28 September 2021).

569 Talha Burki, “Humanitarian crisis in Tigray amidst civil war” (2022), 22(6) *The Lancet* 774, p. 775.

570 Mihret G Kristos, “Under five children dying of acute malnutrition in Tigray sharply increasing amid dire humanitarian crisis” (*Addis Standard*, 5 June 2023).

571 Michelle Nichols, “U.N. aid chief to Ethiopia on famine in Tigray: ‘Get those trucks moving’” (*Reuters*, 28 September 2021).

572 Alex De Waal, “Can we Compare Famines? Gaza, Somalia, South Sudan, Sudan, Tigray, Yemen” (*World Peace Foundation*, 22 March 2024).

573 Mihret G Kristos, “Under five children dying of acute malnutrition in Tigray sharply increasing amid dire humanitarian crisis” (*Addis Standard*, 5 June 2023).

574 Jan Nyssen, “Webinar: Documenting the Civilian Victims of the Tigray War” (*Every Casualty Counts*, 19 January 2023). Estimations of March 2022 were 150,000 to 200,000 deaths from starvation, *see* Bobby Ghosh, “The World’s Deadliest War Isn’t in Ukraine, but in Ethiopia” (*Bloomberg*, 22 March 2022).

575 Emmet Negash, “Updated assessment of civilian starvation deaths during the Tigray war” (*Martin Plaut blog*, 24 May 2023).

576 AP, “UN agency suspends food aid to Ethiopia’s Tigray amid theft” (*Associated Press*, 1 May 2023); Dawit Endeshaw, “World Food Programme suspends food aid to Ethiopia’s Tigray over reported thefts” (*Reuters*, 4 May 2023). *See also* Gianluca Mezzofiore, Bethlehem Feleke, and Eve Brennan, “Eritrean forces stop UN mission in Tigray, Ethiopia, aid workers tell CNN” (*CNN*, 26 May 2023) (reporting that Eritrean forces prevented a UN-led humanitarian mission from entering the village of Gemhalo in the northern Ethiopian region of Tigray on 25 May 2023).

577 BBC, “Ethiopia: US agency suspends food as drought grips country” (*BBC*, 8 June 2023).



284. These concerns were raised by USAID “with officials from Ethiopian federal government and the Tigray Interim Regional Administration.”⁵⁷⁸ Apparently, “the officials have expressed willingness to work with the U.S. to identify and hold those responsible accountable.”⁵⁷⁹ However, any such willingness came too late: about 1,400 hunger-related deaths in Tigray were recorded between the suspension of aid in early 2023 and August 2023 alone.⁵⁸⁰ Even this number is very likely to be underestimating the full impact, as the number of hunger-related deaths of only some district administrations in Tigray are known.⁵⁸¹

285. Yet still in September 2023, “more than 20 million Ethiopians urgently require[d] humanitarian food assistance, many of whom [were] suffering from famine-like conditions.”⁵⁸²

b) Destruction of Tigray’s Health Care System

286. There is a reasonable basis to believe that the Ethiopian government intentionally imposed conditions of life on the Tigrayan population calculated to bring about the group’s physical destruction in whole or in part, by means of destroying the Tigrayan health sector.⁵⁸³ This is in addition to, and in the context of, the measures which have deliberately been taken to reduce or entirely halt the supply of food and other indispensable items to the Tigrayan population.

287. Indeed, the “complete collapse” of Tigray’s health system with the outbreak of the conflict is exceptional.⁵⁸⁴ While a decrease in medical coverage may generally be consequential upon armed conflict, targeted acts against health facilities, together with the imposition of a systematic blockade or siege, progressively led to conditions of life that are capable of bringing about the destruction of the Tigrayan group.

288. Prior to the outbreak of conflict, Tigray’s health care system was well-functioning and counted among the best in Ethiopia. It had over 700 health posts scattered across Tigray, as well as two specialized referral hospitals, 16 general hospitals, 29 primary hospitals, and 233 health centers.⁵⁸⁵ With a total of 19,324 health workers,⁵⁸⁶ hospitals were providing, among others, vaccinations, prevention for, and control of diseases, and cancer treatments. The natural death rate in Tigray prior to the war resembled those of industrialised countries, at 6/1,000.⁵⁸⁷ Notwithstanding the disruptive consequences of the conflict, three factors in particular may suggest a deliberate attempt to destroy the health care system, with the consequent potential to harm the civilian population.

289. First, the shutdown by the government of electricity, fuel, communications, and banking meant that Tigrayans could not receive medical care or meet their basic needs, and reduced the ability of humanitarian

578 Jasper Ward, “[USAID pauses food assistance to Tigray region of Ethiopia](#)” (*Reuters*, 4 May 2023).

579 Jasper Ward, “[USAID pauses food assistance to Tigray region of Ethiopia](#)” (*Reuters*, 4 May 2023).

580 Girmay Gebre and Mercy Juma, “[Ethiopia’s Tigray crisis: Deaths from starvation after aid halted—official](#)” (*BBC*, 18 August 2023) (citing Gebrehiwet Gebrezgabher, the Tigray interim government’s commissioner for disaster risk management).

581 Interview by author.

582 UN ICHREE, “[Report of the International Commission of Human Rights Experts on Ethiopia](#)” (14 September 2023), A/HRC/54/55, para. 50.

583 Mulugeta Gebregziabher, Fasika Amdelessie, Reiyee Esayas, et al., “Geographical distribution of the health crisis of war in the Tigray region of Ethiopia” (2022), 7 *BMJ Global Health* 1, p. 2 (“deliberate decimation of health facilities and attacks on healthcare and aid workers”); Hailay Gesesew, Kiros Berhane, Elias S. Siraj, et al., “[The impact of war on the health system of the Tigray region in Ethiopia: an assessment](#)” 2021, (6) *BMJ Global Health*; Correction, p. 1 (“The widespread use of hunger and rape during the brutal war and the targeting of healthcare facilities seem to be key components of the war”).

584 Kate White, MSF emergency manager, in Sharmila Devi, “[Tigray atrocities compounded by lack of health care](#)” (10 April 2021), 397 *The Lancet* 1336 (“I’ve been doing this work for a long time and I’ve never seen the complete collapse of a healthcare system as in Tigray. It’s shocking”).

585 Health posts being the lowest health institution, providing medical care in rural areas; Hailay Gesesew, Kiros Berhane, Elias S. Siraj, et al., “[The impact of war on the health system of the Tigray region in Ethiopia: an assessment](#)” 2021, (6) *BMJ Global Health*, p. 1.

586 Hailay Gesesew, Kiros Berhane, Elias S. Siraj, et al., “[The impact of war on the health system of the Tigray region in Ethiopia: an assessment](#)” 2021, (6) *BMJ Global Health*, p. 2.

587 Jan Nyssen, “[Webinar: Documenting the Civilian Victims of the Tigray War](#)” (*Every Casualty Counts*, 19 January 2023).



actors to provide services.⁵⁸⁸ MSF and other aid organizations had to reduce or close down operations, or experienced challenges in obtaining approval by the government as well as a lack of consistency in receiving permissions.⁵⁸⁹ Aid promised by, for example, the International Diabetes Federation and Ethiopian Diabetes Association, to send insulin to Tigray “were jammed by the government.”⁵⁹⁰ By January 2022, the WHO similarly complained about the complete blockade of access, imposed on it by the government, which at that point had been ongoing for six months.⁵⁹¹ Military forces were equally impeding humanitarian access,⁵⁹² potentially in violation of international humanitarian law.⁵⁹³ In addition, the Ethiopian government has placed bureaucratic restrictions on international non-governmental aid organizations, and, in July 2021 “instructed MSF and the Norwegian Refugee Council to suspend activities in northern parts of the country.”⁵⁹⁴ Although the bans have since been lifted (MSF’s in October 2021, NRC’s only in January 2022 following an initial extension of the ban), it means that crucial aid has not been administered for extended periods of five months.⁵⁹⁵

290. Second, another consequence of the blockade and shutdown on the part of the federal government was that new medicine could not be provided, and that health care workers were not paid for over a year; essential medicines were not delivered; expired medication had to be used; and, since hospitals ran out of food, patients were being turned away if they were unable to provide their own food.⁵⁹⁶ More than 50% of health workers were unable to report for work, some of whom because they were internally displaced.⁵⁹⁷

291. Third, since the war, hospitals have been vandalized and deliberately looted,⁵⁹⁸ including by Ethiopian and EDF, as well as Amhara militias and *Fano*⁵⁹⁹—itself a violation of the laws of war. MSF teams found deliberately smashed equipment such as ultrasound machines and monitors, smashed doors and windows, and “medicine and patient files scattered across floors.”⁶⁰⁰ The destruction was described as “most malicious” in that way that the looting was “not just to take property out, but [about] really making them [the hospitals] unusable to anybody afterwards.”⁶⁰¹

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- 588 Eritrea Focus and Oslo Analytica, *The Tigray War and Regional Implications: Volume 1* (2021), pp. 190-192 (see in particular, p. 191: “Despite repeated claims by Mr. Abiy’s office that Ethiopia had provided ‘unfettered’ access to humanitarian agencies in Tigray, on the 8th April, repeated calls for better access to the region and the cessation of hostilities were raised at the United Nations Security Council”; citations omitted); Human Rights Watch, *“I Always Remember That Day: Access to Services for Survivors of Gender-Based Violence in Ethiopia’s Tigray Region”* (November 2021). See also UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 23 (“the Ethiopian government interrupted essential services including telecommunications, banking, and electricity and restricted humanitarian access”).
- 589 Human Rights Watch, *“I Always Remember That Day: Access to Services for Survivors of Gender-Based Violence in Ethiopia’s Tigray Region”* (November 2021); Laetitia Bader, “Ethiopia’s Warring Parties Should End Attacks on Women, Girls: Destruction of Health Care, Blocking of Aid, Further Harms Survivors of Rape” (*Human Rights Watch*, 8 March 2022).
- 590 Addis Standard, “Analysis: Tigray’s largest hospital ‘doomed to collapse soon’ due to lack of medical supplies, doctors warn as hospital death rate surpass ten percent” (*Addis Standard*, 31 October 2022).
- 591 Paul Adepoju, “WHO Slams Ethiopia’s ‘Blockade’ on Health Relief to Tigray Region as ‘Catastrophic’ and ‘Unprecedented’ Even in Conflict Zones” (*Health Policy Watch*, 13 January 2022).
- 592 European Union, “Ethiopia: Statement by High Representative Josep Borrell and Commissioner for Crisis Management Janez Lenarčič on restricted humanitarian access to Tigray” (14 May 2021); UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 23 (“ENDF and EDF deliberately interrupted food and medical supplies”).
- 593 Customary IHL, Rule 55. Access for Humanitarian Relief to Civilians in Need (icrc.org).
- 594 Talha Burki, “Humanitarian crisis in Tigray amidst civil war” (2022), 22(6) *The Lancet* 774, p. 775.
- 595 Kaamil Ahmed, “Ethiopia lifts five-month suspension of Norwegian Refugee Council’s aid work” (*The Guardian*, 6 January 2022).
- 596 Talha Burki, “Humanitarian crisis in Tigray amidst civil war” (2022), 22(6) *The Lancet* 774, p. 774. MSF Press Statement, “People left with few healthcare options in Tigray as facilities looted, destroyed” (15 March 2021). Lizzy Davies, “I saw an oncologist cry’: Tigray cancer patients sent home to die for lack of drugs’ (*The Guardian*, 25 May 2022).
- 597 Hailay Gesesew, Kiros Berhane, Elias S. Siraj, et al., “The impact of war on the health system of the Tigray region in Ethiopia: an assessment” 2021, (6) *BMJ Global Health*, p. 2.
- 598 MSF Press Statement, “People left with few healthcare options in Tigray as facilities looted, destroyed” (15 March 2021).
- 599 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 45 (citations omitted).
- 600 MSF Press Statement, “People left with few healthcare options in Tigray as facilities looted, destroyed” (15 March 2021).
- 601 Oliver Behn, MSF General Director, in Jon Snow, “Nobel peace prize of Ethiopian Prime Minister questioned amid conflict in Tigray Province of country” (*Channel 4*, 18 March 2021), at 1:09 min.



292. It was also reported that soldiers deliberately set fire to one health facility in Semema after looting it twice.⁶⁰² According to one witness, mobile clinics were targeted by Ethiopian military in incidents in Samara and Tembien; MSF personnel were killed in February 2021.⁶⁰³ During the Axum massacre, the Eritrean army looted stores, public buildings, private homes and a hospital, taking medication, furniture, household items, and food and drink.⁶⁰⁴ Ambulances were seized by armed groups, and used to transport goods by soldiers near the Eritrean border.⁶⁰⁵ Furthermore, to the extent that health care facilities came under the control of armed forces controlled or acting on behalf of Ethiopia, they had a positive duty not only to protect them but also to restore them as much as feasible to their functions in providing care for the civilian population.
293. Consequences are manifold. One study has shown a “rapid decimation of the Tigrayan healthcare system,” and reported on the “frequency with which Tigrayan healthcare facilities have been overrun and are now under occupation by Eritrean or Amhara forces.”⁶⁰⁶ MSF reports that out of 106 health facilities visited between mid-December 2020 and early March 2021, “one in five had been or was occupied by armed soldiers” and that “one facility is being used as an army base.”⁶⁰⁷
294. According to a Lancet Health Bulletin, by June 2022, 77% of the health facilities in Tigray were non-functioning, and 13 percent were partly damaged.⁶⁰⁸ Three out of four hospitals, and four out of five health centers, were non-functional.⁶⁰⁹ Similarly, MSF reports that only 13% of facilities were functioning normally.⁶¹⁰ The UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that Tigrayans require “vaccines; treatments for HIV, tuberculosis, and malaria; severe acute malnutrition kits; and reproductive health kits.”⁶¹¹
295. As a direct consequence of the above events,⁶¹² many women died of childbirth due to the inability to receive care in hospitals, curfews, or dangers on the road on the way to medical care; and many women also gave birth in “unhygienic conditions in informal displacement camps.”⁶¹³ There was little antenatal or postnatal care.⁶¹⁴ Access to primary health care for children and pregnant and lactating women was reduced by approximately 84%.⁶¹⁵
296. Children have not received crucial vaccinations, risking infectious diseases. 73 percent of children were vaccinated prior to the war—a figure which dropped to 27% in mid-2022. Measles vaccinations decreased from 83 percent to 28 percent, making an outbreak a “distinct possibility,” and “[a]round 900,000 children younger than 5 years have missed the polio vaccine.”⁶¹⁶

602 MSF Press Statement, “[People left with few healthcare options in Tigray as facilities looted, destroyed](#)” (15 March 2021).

603 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 46.

604 Amnesty International, *Ethiopia: Eritrean troops’ massacre of hundreds of Axum civilians may amount to crime against humanity* (26 February 2021).

605 MSF Press Statement, “[People left with few healthcare options in Tigray as facilities looted, destroyed](#)” (15 March 2021).

606 Mulugeta Gebregziabher, Fasika Amdeselassie, Reiye Esayas, et al., “Geographical distribution of the health crisis of war in the Tigray region of Ethiopia” (2022), 7 *BMJ Global Health* 1, p. 9.

607 MSF Press Statement, “[People left with few healthcare options in Tigray as facilities looted, destroyed](#)” (15 March 2021).

608 Talha Burki, “[Humanitarian crisis in Tigray amidst civil war](#)” (2022), 22(6) *The Lancet* 774, p. 774. Another study, published in June 2021, found that “more than 96% of the 1007 health facilities in the Tigray region of Ethiopia did not meet criteria for a [Fully-Functioning] status,” with the functionality expected to be worse by the time of publication of that study, in Mulugeta Gebregziabher, Fasika Amdeselassie, Reiye Esayas, et al., “Geographical distribution of the health crisis of war in the Tigray region of Ethiopia” (2022), 7 *BMJ Global Health* 1, p. 7.

609 Hailay Gesesew, Kiros Berhane, Elias S. Siraj, et al., “[The impact of war on the health system of the Tigray region in Ethiopia: an assessment](#)” 2021, (6) *BMJ Global Health*, p. 5.

610 MSF Press Statement, “[People left with few healthcare options in Tigray as facilities looted, destroyed](#)” (15 March 2021).

611 Talha Burki, “[Humanitarian crisis in Tigray amidst civil war](#)” (2022), 22(6) *The Lancet* 774, p. 774.

612 Laetitia Bader, Horn of Africa director at Human Rights Watch, in Talha Burki, “[Humanitarian crisis in Tigray amidst civil war](#)” (2022), 22(6) *The Lancet* 774, p. 774.

613 MSF Press Statement, “[People left with few healthcare options in Tigray as facilities looted, destroyed](#)” (15 March 2021).

614 MSF Press Statement, “[People left with few healthcare options in Tigray as facilities looted, destroyed](#)” (15 March 2021).

615 UNICEF, *Ethiopia Humanitarian Situation Report No. 9: September 2022* (29 October 2022), p. 2.

616 Talha Burki, “[Humanitarian crisis in Tigray amidst civil war](#)” (2022), 22(6) *The Lancet* 774, p. 774.



297. Moreover, “patients with chronic diseases such as diabetes, hypertension and HIV, as well as psychiatric patients, are going without lifesaving drugs. Victims of sexual violence are often unable to get medical and psychological care.”⁶¹⁷
298. Tigray’s flagship hospital, the Ayder Referral Hospital in Mekelle, warned shortly before the *Cessation of Hostilities Agreement* that it was about collapse without external support.⁶¹⁸ The hospital’s mortality rate rose from 2% prior to the war, to over 10% after the outbreak; the intensive care unit’s rate was below 5%, and rose to over 29%.⁶¹⁹
299. Hospital staff stopped providing elective surgery and sent patients home to die with cancer, diabetes, and kidney failure, being unable to provide medical attention to ease suffering due to lack of surgical materials and drugs.⁶²⁰ Only emergency operations are available, and for over a year, the hospital had to resort to “using expired drugs [and] operating without anesthesia.”⁶²¹
300. By the end of October 2022, shortly before the *Cessation of Hostilities Agreement*, the WHO reported that only 9% of health facilities remained functional as a consequence of fighting, the lack of supply, and the blockade of humanitarian aid.⁶²² Even after the *Cessation of Hostilities Agreement*, a WHO study, for which data was collected in May and June 2023, concluded that 86% of facilities had been destroyed, and that 92% of facilities are fully or partially out of function.⁶²³ Adequate access to health care has still not been restored.⁶²⁴
301. According to calculations, the “collapse of the health sector resulted in a calculated average of 107,000 deaths over 26 months.”⁶²⁵ Later figures estimate deaths due to a lack of health care at 30,000 to 100,000.⁶²⁶

4. Imposing Measures Intended to Prevent Births Within the Group

302. Relatively little case law has yet addressed this act of genocide, which aims at the so-called “biological” destruction of the group by preventing its perpetuation through successive generations. Given this object and purpose, it seems likely that any intentional measure of a nature tending to prevent births—whether physical or mental⁶²⁷—may be sufficient.
303. The International Criminal Tribunal for Rwanda (ICTR) has held that this may include “sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages,”⁶²⁸ as well as measures which serve to deprive a child of its birth identity within the context of society.

617 MSF Press Statement, “People left with few healthcare options in Tigray as facilities looted, destroyed” (15 March 2021).

618 Addis Standard, “Analysis: Tigray’s largest hospital ‘doomed to collapse soon’ due to lack of medical supplies, doctors warn as hospital death rate surpass ten percent” (Addis Standard, 31 October 2022).

619 Addis Standard, “Analysis: Tigray’s largest hospital ‘doomed to collapse soon’ due to lack of medical supplies, doctors warn as hospital death rate surpass ten percent” (Addis Standard, 31 October 2022).

620 Addis Standard, “Analysis: Tigray’s largest hospital ‘doomed to collapse soon’ due to lack of medical supplies, doctors warn as hospital death rate surpass ten percent” (Addis Standard, 31 October 2022); Munyaradzi Makoni, “Conflict in Tigray impeding basic care for patients with cancer” (2022), 23(7) The Lancet 842.

621 Addis Standard, “Analysis: Tigray’s largest hospital ‘doomed to collapse soon’ due to lack of medical supplies, doctors warn as hospital death rate surpass ten percent” (Addis Standard, 31 October 2022).

622 Reuters/AFP/AP, “Ethiopia’s Tigray running out of medical supplies, WHO warns” (Deutsche Welle, 28 October 2022).

623 World Health Organisation, *HeRAMS Tigray Baseline Report 2023: Operational status of the health system. A comprehensive mapping of the operational status of HSDUs* (September 2023).

624 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 208.

625 Jan Nyssen, “Webinar: Documenting the Civilian Victims of the Tigray War” (Every Casualty Counts, 19 January 2023).

626 Emnet Negash, “Updated assessment of civilian starvation deaths during the Tigray war” (Martin Plaut blog, 24 May 2023).

627 ICTR, *Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgment, 6 December 1999, para. 53; ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, para. 117; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 508.

628 ICTR, *Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgment, 6 December 1999, para. 53; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 507.



304. Indeed, it has been held that “[i]n patriarchal societies, where membership of a group is determined by the identity of the father,” the rape and deliberate impregnation of a woman “by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother’s group,” may be a measure intended to prevent births within a group and qualify as an act of genocide.⁶²⁹
305. Tigray is a patrilineal society.⁶³⁰ Forced pregnancies through rape by, for instance, Amhara men, will therefore have the effect of imposing the Amhara ethnicity on the new-born, which leads to a decrease in the number of people of Tigrayan ethnicity over time.
306. Furthermore, the shame and stigma attached to rape also means that “most men rejected [their] wives who had been raped—especially those who had children as a result,”⁶³¹ further inhibiting the ethnic group’s future existence.
307. The widespread scale and gravity of sexual and gender-based violence against Tigrayan women, including those “predominantly of reproductive age,”⁶³² has been widely documented.⁶³³
308. One survivor, who was raped by Amhara militia when attempting to cross over to Sudan, reported that they said to her: “If you were male we would kill you, *but girls can make Amhara babies*.”⁶³⁴ The ICHREE recorded evidence by a woman who was raped by ENDF and EDF soldiers. They said to her:
- “Your husband is junta and a traitor. You’re *agame*. We want to destroy your womb so you can’t give birth to a Tigrayan fighter. We will infect you with HIV.”⁶³⁵

629 See e.g. ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 507. See also ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, p. 3, para. 166 (“rape and other acts of sexual violence, which may also fall within subparagraphs (b) and (c) of Article II, are capable of constituting the *actus reus* of genocide within the meaning of Article II (d) of the Convention, provided that they are of a kind which prevent births within the group. In order for that to be the case, it is necessary that the circumstances of the commission of those acts, and their consequences, are such that the capacity of members of the group to procreate is affected. Likewise, the systematic nature of such acts has to be considered”).

630 Tigray Advocacy Canada, “Message to Trudeau: Stop Canada’s support for the war on Tigray” (*Spring Magazine*, 14 October 2021).

631 Katharine Houreld, “Raped during Ethiopia’s war, survivors now rejected by their families” (*Washington Post*, 26 November 2023); see also UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 54. See, further, Thera Mjaaland and Kibrom Mebrahtom, *Speaking the unspeakable: In the aftermath of weaponized rape in Tigray, North-Ethiopia* (2023).

632 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 26.

633 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 99, 106, 110, 134-150; 151-152 (concerning the situation post-COHA); 154-157 (concerning the nexus between starvation and sexual violence); 187, 192-193, 195 (in the context of detention); UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 24 (“[ICHREE] verified hundreds of incidents of rape and other forms of sexual violence”), para. 25 (“patterns of widespread and systematic rapes and sexual violence [were] perpetrated against women and children [...] primarily by EDF members, also by or often in concert with ENDF, Amhara Special Forces, Afar Special Forces, and Fano. Multiple-perpetrator-rape often involved members of different armed groups, which suggests collaboration between members of various armed forces and factions”); Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), p. 1 (“169 incidents of conflict-related sexual violence occurred before the signing of the CoHA in November 2022 and 128 incidents occurred after November 2022”); Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022); UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, para. 55 (“Sexual and gender-based violence (SGBV), in particular rape, has been perpetrated on a staggering scale since armed conflict erupted”); Amnesty International, “*I don’t know if they realized I was a person*”: Rape and other Sexual Violence in the Conflict in Tigray, Ethiopia (11 August 2021), AFR 25/4569/2021.

634 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone (April 2022), p. 149 (emphasis added).

635 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 147.



309. Other Tigrayan survivors of CRSV recalled their perpetrators saying that “Tigrayans have no history,” “Tigrayans are beasts,” and “we are raping you to cleanse your Tigrayan bloodline.”⁶³⁶ One woman who was attacked reported that the soldiers told her:

“Claim to be Amhara and we’ll give you back your house and find you a husband. But if you claim to be Tigrayan, we will come and rape you again.”⁶³⁷

310. One woman begged her attackers to stop, asking why they were doing that to her. The reply was that:

“You did nothing bad to us. [...] Our problem is with your womb. Your womb gives birth to *Woyane* [derogative term used to refer to the TPLF]. A Tigrayan womb should never give birth.”⁶³⁸

311. A Tigrayan woman named Gual Mekelle reports that she was on her way to Sudan, after her husband was killed by Amhara special forces, when she was approached by three members of the ENDF. They told her that her “womb should be destroyed, and [she] should never give birth again.”⁶³⁹

312. One doctor, who removed foreign objects from the genitals of survivors, found among them a note on a piece of paper “which described the ‘sons of Erena’ who are ‘the heroes of Asmara’—a reference to Eritrea. The note goes on to state: ‘What you already did in the 90’s we haven’t forgotten about it even now. From now on, no Tigrayan woman will give birth from a Tigrayan man.’”⁶⁴⁰

313. Indeed, data analyzed in one report found that “a number of incidents of sexual violence [involved] women and girls of childbearing age,”⁶⁴¹ and that Tigrayan “women and girls presumed to be fertile were frequently subjected to sexual violence accompanied by verbal threats and abuse indicating intent to force their bearing of children of the perpetrator(s)’s bloodline through rape and multiple perpetrator rape, or to destroy their reproductive capacities entirely.”⁶⁴² Some victims were as young as 6 years old.⁶⁴³

314. Similarly, “Ethiopian government troops and forces allied with them appear to be committing rape, multiple perpetrator rape, and forms of sexual violence aimed at destroying Tigrayan women’s and girls’ genitals (including insertion of foreign objects, burning with hot iron rods, etc.) while also expressing an intent to affect the reproductive functions of Tigrayan women and girls. This would be consistent with strategic use of sexual violence aimed, at least in part, at inhibiting the growth or even survival of the Tigrayan population.”⁶⁴⁴

315. The sexual violence in this conflict rises to a level of “cruelty beyond comprehension.”⁶⁴⁵ It includes the “insertion of foreign objects (nails, shrapnel, rocks) into victims’ genital organs, and other forms of sexual

636 Girmay M., “The record shows there is genocide in Tigray” (*Ethiopia Insight*, 21 March 2022).

637 Cara Anna, “‘Leave no Tigrayan’: In Ethiopia, an ethnicity is erased” (*Associated Press*, 7 April 2021).

638 Lucy Kassa, “‘A Tigrayan womb should never give birth’: Rape in Tigray” (*Al Jazeera*, 21 April 2021).

639 Rita Kahsay, Rowena Kahsay, and Sally Keeble, *In Plain Sight: Sexual violence in the Tigray conflict* (Eleanor Press, 2023), pp. 49-50.

640 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 139.

641 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 34.

642 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 34.

643 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 25.

644 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 60.

645 UN, “Statement of SRSF-SVC Pramila Patten at the Security Council Open Debate on Conflict-Related Sexual Violence” (14 April 2021).



mutilation, including burning and searing of vaginas with hot metal rods,”⁶⁴⁶ mostly by Eritrean soldiers.⁶⁴⁷ Images of extracted objects were shared on social media to shed light.⁶⁴⁸ Rapes committed by Eritrean soldiers were accompanied by brutality and torture “solely to cause maximum pain and damage, not to extract information.”⁶⁴⁹ One survivor who was raped in front of her children by five Eritrean soldiers said:

“They used an iron rod, which is used to clean the gun, to burn me. They used the fire they put on to roast the goat [to heat the rod]. They inserted pieces of metal in my womb; that was what hurt me. Then they left me on the street.”⁶⁵⁰

316. The director of the Ayder Referral Hospital reports:

“On February 22, our hospital received an emergency call that a 21-year-old girl was gang-raped and found dumped in Edaga Hamus. [...] The report was that Eritrean soldiers had burned her external and internal genital parts using a match and hot metal rod. We could not send an ambulance immediately because of security issues. Later, the communication was lost. Perhaps the girl has died.”⁶⁵¹

317. The EDF was also “frequently identified as committing multiple perpetrator rape and other forms of CRSV with particular brutality,”⁶⁵² “especially in Tigray’s northern border region.”⁶⁵³

318. As with the “deliberately inflicting conditions of life” act of genocide, described above, it seems likely that there is no requirement to prove a result—thus, there is no need to prove that births were in fact prevented within the group. Rather, the gravamen of this act of genocide is the *prohibited nature of the measures*, due to the likelihood of the harm they may inflict upon the group.

319. Although one report found that the data analyzed does not indicate that pregnant women were specifically targeted *because they were pregnant*,⁶⁵⁴ survivors do report that unborn children were cut out of their Tigrayan mothers, and stomped to death.⁶⁵⁵

320. Another eyewitness describes that Amhara militia cut off the heads of four children, and cut babies out of pregnant women.⁶⁵⁶ One woman was seen at the hospital bleeding after having been raped while pregnant, shot in the abdomen, and then left on the road.⁶⁵⁷

646 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), pp. 7, 8, 24.

647 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 28. See also Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), p. 13, (“A qualitative analysis of the notes in these records shows where there was an indicator of the affiliation of perpetrators (n = 197): 73 percent of perpetrators were identified as members of the Eritrean armed forces, 10 percent as members of Amhara Special Forces, 9 percent as Fano militia members, 8 percent as members of the Ethiopian armed forces, and 1 percent as Afar Special Forces”).

648 Rita Kahsay, Rowena Kahsay, and Sally Keeble, *In Plain Sight: Sexual violence in the Tigray conflict* (Eleanor Press, 2023), p. 23.

649 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 28.

650 Amnesty International, “*I don’t know if they realized I was a person*”: Rape and other Sexual Violence in the Conflict in Tigray, Ethiopia (11 August 2021), AFR 25/4569/2021, p. 16.

651 Lucy Kassa, “‘A Tigrayan womb should never give birth’: Rape in Tigray” (*Al Jazeera*, 21 April 2021).

652 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 28 (citing Insecurity Insight, *Sexual Violence in Ethiopia’s Tigray Region* (30 March 2021)).

653 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 28.

654 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 35.

655 Goitom Mekonen Gebrewahid, *Primed For Death: Tigray Genocide, A Survivor’s Story* (2022), pp. 44, 49.

656 Will Brown, “Ethiopia’s civil war: ‘e left them to die in their hospital beds; I don’t know how I will face God’” (*Telegraph*, 21 November 2020).

657 Jamal Osman, “The Horrors of the Hidden War: Inside the Tigray conflict in Ethiopia” (*Channel 4*, 18 May 2021).



321. A survivor reports that her 12-year-old son was killed by 30 Eritrean soldiers in front of her while she was tied to a tree, injected, stabbed, and repeatedly raped over the course of 10 days.⁶⁵⁸ The new-born baby of a fellow captive, who died during childbirth, was killed as well.⁶⁵⁹
322. Even ethnic Tigrayan children were detained, including children under the age of three, and threatened to be shot if they tried to escape.⁶⁶⁰
323. Moreover, the sexual violence committed creates severe emotional trauma which can have long-lasting consequences impeding the procreation of the group. For example, children were frequently forced to watch their loved ones being raped and gang-raped; family members were also forced to commit sexual acts on each other; some survivors report that their perpetrators urinated on their head.⁶⁶¹ At least 600 men were also forced by the EDF to strip down to their underwear on 2 April 2021 in Samre, meaning those without underwear were completely naked.⁶⁶²

F. Crime of Direct and Public Incitement to Genocide

324. Even if genocide has not ultimately been committed (in the sense of any one of the five constituent acts set out in Article II of the Convention), it is a separate crime under international law to *directly and publicly incite* the commission of genocide.⁶⁶³ In other words, certain kinds of speech acts may be punishable in and of themselves—if committed with genocidal intent⁶⁶⁴—irrespective of whether they result in genocide. For example, the ICTR found that RTLM radio broadcasts made after 6 April 1994 constituted direct and public incitement to commit genocide because they “explicitly called for extermination of the Tutsi.”⁶⁶⁵
325. Incitement means “encouraging or persuading another” to commit a crime, whether “through speeches, shouting or threats, or any other means of audiovisual communication.”⁶⁶⁶ It is essential to prove that relevant speech acts are both “direct” and “public” in inciting acts of genocide.

658 Jamal Osman, “The Horrors of the Hidden War: Inside the Tigray conflict in Ethiopia” (*Channel 4*, 18 May 2021); Bethlehem Feleke, Eliza Mackintosh, Gianluca Mezzofiore, Katie Polglase, Nima Elbagir, Barbara Arvanitidis, and Alex Platt, “Practically this has been a genocide” (*CNN*, 22 March 2021).

659 Jamal Osman, “The Horrors of the Hidden War: Inside the Tigray conflict in Ethiopia” (*Channel 4*, 18 May 2021); Bethlehem Feleke, Eliza Mackintosh, Gianluca Mezzofiore, Katie Polglase, Nima Elbagir, Barbara Arvanitidis, and Alex Platt, “Practically this has been a genocide” (*CNN*, 22 March 2021).

660 Cara Anna, “New wave of Ethiopian detentions of Tigrayans includes kids” (*Associated Press*, 18 August 2021).

661 Amnesty International and Human Rights Watch, “We will erase you from this land”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 146 ff.

662 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 172.

663 See Genocide Convention, art. III. See also art. IV (making clear that not only the acts of genocide set out in art. II, but also the “other enumerated acts set out in article III shall be punished”). See further, e.g., ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, paras. 678 (“direct and public incitement to genocide [...] is itself a crime, and it is not necessary to demonstrate that it in fact substantially contributed to the commission of acts of genocide. In other words, the crime [...] is an inchoate offence, punishable even if no acts of genocide has resulted therefrom. This is confirmed by the *travaux préparatoires* to the Genocide Convention, from which it can be concluded that the drafters of the Convention intended to punish direct and public incitement to commit genocide, even if no act of genocide was committed, the aim being to forestall the occurrence of such acts”), 766. See also ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 180 (noting, by contrast, that an act of genocide must have been committed for other acts set out in article III of the Convention such as conspiracy and complicity); ICC Statute, art. 25(3)(e); ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 561.

664 ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 677. See also ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 560 (“the person who is inciting to commit genocide must have himself the specific intent to commit genocide”).

665 ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, paras. 756, 758. For example, “[i]n the 13 May 1994 RTLM broadcast, Kantano Habimana spoke of exterminating the *Inkotanyi* so as ‘to wipe them from human memory’, and exterminating the Tutsi ‘from the surface of the earth ... to make them disappear for good’. In the 4 June 1994 RTLM broadcast, Habimana again talked of exterminating the *Inkotanyi*, adding ‘the reason we will exterminate them is that they belong to one ethnic group’. In the 5 June 1994 RTLM broadcast, Ananie Nkurunziza acknowledged that this extermination was under way and expressed the hope that ‘we continue exterminating them at the same pace.’ On the basis of all the programming he listened to after 6 April 1994, Witness GO testified that RTLM was constantly asking people to kill other people, that no distinction was made between the *Inyenzi* and the Tutsi, and that listeners were encouraged to continue killing them so that future generations would have to ask what *Inyenzi* or Tutsi looked like.”

666 ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, paras. 555, 559.



1. “Direct” incitement to genocide

326. Direct incitement to genocide requires proof of “a direct appeal to commit an act [of genocide]” and must “be more than a mere vague or indirect suggestion.”⁶⁶⁷
327. As such, the Appeals Chamber of the ICTR has stressed the “difference between hate speech in general (or inciting discrimination or violence) and direct and public incitement to commit genocide.” While hate speech in general may well be punishable under various provisions of domestic law, only the latter is a crime proscribed by the Genocide Convention and related customary international law. On the facts of a particular case, these different kinds of conduct may very often occur side by side—for example, direct incitement to genocide may well be “preceded or accompanied by hate speech,” and some conduct regarded as hate speech under national law may actually constitute direct incitement to genocide. However, what is important is that “*not all* hate speech [...] constitute[s] direct incitement to commit genocide.”⁶⁶⁸ In trying to distinguish between “mere” hate speech and direct incitement to genocide, it may be helpful to consider whether there is a sufficiently clear link between denigration or demonization of a group protected by the Genocide Convention and a call for *action* against that group amounting to a prohibited act.⁶⁶⁹
328. It is not necessary that the call for the commission of acts of genocide is express or explicit.⁶⁷⁰ When analyzing speech to determine whether it constitutes direct incitement to genocide, “[t]he principal consideration is [...] the meaning of the words used in the specific context.”⁶⁷¹ To discern this meaning, it is appropriate to take into account factors such as the culture of the persons concerned, their actual and perceived background or affiliations, and the nuances of the relevant language(s).⁶⁷² As noted by the ICTR Appeals Chamber, “it may be helpful to examine how a speech was understood by its intended audience in order to determine its true message.”⁶⁷³ Correspondingly, “it does not matter that the message may appear ambiguous to another audience or in another context.”⁶⁷⁴ Ultimately, in order to prove direct incitement to genocide beyond reasonable doubt, the interpretation of the relevant speech act must be unambiguous *when considered in its proper context*.
329. Another relevant consideration may be any evidence of the “purpose of the [speech]” in question⁶⁷⁵—in other words, the broader context which informed the meaning of the speech, and the interpretation which others could reasonably be expected to place upon it. The fact that a call for the commission of genocidal acts

667 ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 692. *See also* ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 557.

668 ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, paras. 692-693 (emphasis added).

669 *See, e.g.*, ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 696 (identifying as examples of the Trial Chamber distinguishing between hate speech and direct and public incitement to commit genocide: (i) a passage in which the Trial Chamber found that one RTLM broadcast constituted hate speech but further considered that “this broadcast, which does not call on listeners to take action of any kind, does not constitute direct incitement”; (ii) a passage in which the Trial Chamber concluded that “[m]any of the writings published in *Kangura* combined ethnic hatred and fear-mongering with a call to violence to be directed against the Tutsi population”; (iii) a passage in which the Trial Chamber noted that “not all of the writings published in *Kangura* [...] constitute direct incitement,” citing the example of an article “brimming with ethnic hatred but [...] did not call on readers to take action against the Tutsi population”). *See also* paras. 765, 771-773.

670 ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 703. *See also e.g.* para. 773.

671 ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 701. *See also* paras. 711 (“the meaning of a message can be intrinsically linked to the context in which it is formulated”), 715 (“context is a factor to consider in deciding whether discourse constitutes direct incitement to commit genocide”); ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 557.

672 ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, paras. 700, 713. *See also* para. 739 (considering, on the facts of that case, that “even though the terms *Inyenzi* and *Inkotanyi* may have various meanings in various contexts (as with many words in every language), the Appeals Chamber is of the opinion that it was reasonable for the Trial Chamber to conclude that these expressions could in certain cases be taken to refer to the Tutsi population as a whole” and that “it was reasonable to conclude that certain RTLM broadcasts had directly equated the Tutsi with the enemy”).

673 ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 700. *See also* ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, paras. 557-558 (“focusing mainly on the issue of whether the persons for whom the message was intended immediately grasped the implication thereof”).

674 ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 701.

675 ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 706.



may be conditional upon some other event—for example, an attack by a third party—does not preclude its qualification as direct incitement to genocide.⁶⁷⁶

330. Likewise, while it is by no means necessary to establish that genocide actually occurred as a result of a relevant speech—and, equally, it cannot be said that all hate speech preceding genocide amounts to direct incitement to genocide because of what subsequently transpired—“the fact that a speech leads to acts of genocide could be an indication that in that particular context the speech was understood to be an incitement to commit genocide and that this was indeed the intent of the author of the speech.”⁶⁷⁷

2. “Public” incitement to genocide

331. The drafters of the Genocide Convention deliberately excluded “private” acts of incitement from the scope of “direct and public incitement to genocide.”⁶⁷⁸ In order to demonstrate that a call for genocidal action is “public,” it may be appropriate to look at the place where it occurred or the means by which it was transmitted, and the degree to which the intended audience was selective or general.⁶⁷⁹ As such, communications such as a letter, e-mail, or telephone call might be considered private in nature, and therefore cannot be taken into consideration. On the other hand, speeches to a general audience in public places, contributions to broadcast and media of general circulation, and posts and messages on social media of general circulation (such as X, formerly known as Twitter) might all potentially count as “public” incitement to genocide.

3. Application of these principles in Tigray

332. In June 2022, in its oral update to the UN Human Rights Council, the ICHREE spoke of “violence against civilians, fuelled by hate speech and incitement to ethnic-based and gender-based violence,” those being “early warning indicators and a precursor for further atrocity crimes.”⁶⁸⁰ In a press statement, the UN Security Council called on all parties to refrain “from inflammatory hate speech and incitement to violence and divisiveness.”⁶⁸¹

333. As previously discussed, there is ample evidence of speeches relevant to Tigray and Tigrayans which might be described as hate speech, insofar as they are plainly threatening and derogatory. Such speeches are also very often committed in public fora.

334. The question arises, however, whether these speeches amount to direct incitement to commit genocide. In other words, when understood in context, do these acts not only denigrate one or more groups protected under the Genocide Convention *but do they call for action* against one or more of those groups amounting to a prohibited act or acts?

335. While it is necessary to consider relevant statements in context, including as they were likely to be understood within the specific political and cultural context of Ethiopia, a number of the statements considered above (for the purpose of assessing the evidence of genocidal intent) should be further considered as potentially amounting to direct and public incitement to genocide if they were committed

⁶⁷⁶ ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 771.

⁶⁷⁷ ICTR, *Nahimana, Barayagwiza, and Ngeze v. the Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 709 (continuing to note, however, “that this cannot be the only evidence adduced to conclude that the purpose of the speech (and of its author) was to incite the commission of genocide”).

⁶⁷⁸ See, e.g., ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 556.

⁶⁷⁹ Cf. ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 556.

⁶⁸⁰ United Nations Human Rights Council, *Oral Update of the International Commission of Human Rights Experts on Ethiopia to the UN Human Rights Council*, Geneva (30 June 2022).

⁶⁸¹ UNSC, *Press Release SC/14691* (5 November 2021).



with the necessary intent. These may include Prime Minister Abiy's remarks that "weeding is done with a hammer"; his adviser's remarks that "Weyane" (referring to Tigrayans) must be "erased and disappeared"; statements of other public figures; and ESAT broadcasts calling for Ethiopians to take up arms and "[i]gnite the massacre to a point no Tigrayan survives."⁶⁸²

336. Public discourse in Ethiopia, and among Ethiopians, including speech which potentially amounts to hate speech and/or direct and public incitement to genocide was amplified and spread through social media. In particular, Twitter, Facebook, and Telegram were all used to wage a "war of propaganda," not only within Ethiopia against Tigrayans but also intended for audiences abroad.⁶⁸³ There is evidence that this resulted in violence in real life.⁶⁸⁴ This was exacerbated by the failure of social media platforms such as Facebook to detect harmful posts in local languages, such as Amharic or Oromo, and consequently to remove them.⁶⁸⁵ Human content moderators able to understand those local languages were only hired two years after the outbreak of the conflict.⁶⁸⁶
337. The social media company Meta is currently defending a civil action before the Kenyan High Court in Nairobi based on the allegation that it failed to protect Tigrayans from hateful, inciteful content and speech on its platform Facebook.⁶⁸⁷ The petitioners allege that they were subject to an "increase in posts that contained graphic violence, hate and incitement" and that reports thereof to Facebook were rejected or ignored.⁶⁸⁸
338. Posts complained of include: "a gratuitous image of dead bodies" [...] with the caption "Some of the TPLF militants who came from the side of the border and were destroyed by the Amhara special forces";⁶⁸⁹ a post stating "if we don't like your eye colour we load [i.e., our weapons]";⁶⁹⁰ and a post by Prime Minister Abiy Ahmed sharing another post which stated:

682 See above at paras. 75, 78, 79, 80, 86, 88, 89, 90, 91, 92, 93, 95, 98.

683 A staff member of the African Union posted their personal views in a now deleted tweet from the Union's official twitter profile, in which, according to screenshots taken prior to deletion (and [archived here](#)), they compared the TPLF to ISIS and the Taliban, and went on to say: "#Ethiopia cannot negotiate with #TPLFisaterroristgroup. How can a democratic cause impose a minority will on a majority?" The African Union acknowledged that a staff member shared "personal views" contrary to AU staff rules; see [Tweet by African Union](#), 13 August 2021. See also Jan Philipp Wilhelm, "[Hate speech resurfaces in Ethiopia](#)" (*DW*, 2 December 2020) (reporting "a significant spike in problematic and inflammatory postings," including that "Even if the majority of the comments are directed against the 'TPLF junta' or 'TPLF mafia,' Tigrayans have also been denigrated as 'children of the military junta,' for example, or a people who must be 'destroyed and eliminated.' One post mentions the hatred of the '100 million Ethiopians' for 'five million Tigrayans'").

684 Jasper Jackson, Lucy Kassa, Kathleen Hall, and Zecharias Zelalem, "[Facebook accused by survivors of letting activists incite ethnic massacres with hate and misinformation in Ethiopia](#)" (*The Bureau of Investigative Journalism*, 20 February 2022). Tom Gardner, "[I was a war reporter in Ethiopia; Then I became the enemy](#)" (*The Economist*, 24 June 2022).

685 International Crisis Group, *What Facebook Does (and Doesn't) Have to Do with Ethiopia's Ethnic Violence* (25 April 2023) ("Facebook whistleblower Frances Haugen claimed that the company's lack of investment in Ethiopia allowed for problematic content to be widely disseminated. According to Facebook documents that were leaked by Haugen, the company's hate speech algorithm—responsible for detecting 97 percent of the hate speech removed from the platform—could not adequately detect harmful posts in Amharic or Oromo, Ethiopia's most widely used languages. Facebook has since made changes, though their extent and value are still unclear"); Karen Hao, "[The Facebook whistleblower says its algorithms are dangerous; Here's why](#);" (*MIT Technology Review*, 5 October 2021) (citing Frances Haugen: "in places like Ethiopia it [Facebook's algorithm] is literally fanning ethnic violence"); see US Senate Committee on Commerce, Science, and Transportation, *Subcommittee: Protecting Kids Online: Testimony from a Facebook Whistleblower, Hearing of Frances Haugen* (5 October 2021).

686 International Crisis Group, *What Facebook Does (and Doesn't) Have to Do with Ethiopia's Ethnic Violence* (25 April 2023).

687 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022), High Court of Kenya at Nairobi. Similarly, Facebook's promotion of certain hateful content was also blamed for the killing of Gebremichael Teweldmedhin, a Tigrayan jeweler, by his family. Teweldmedhin was abducted and killed in Gonder, in Amhara, in late 2021. His relative said: "The worst thing that contributed to their killing are the so-called activists who have been spreading hate on social media"; see Jasper Jackson, Lucy Kassa and Mark Townsend, "[Facebook 'lets vigilantes in Ethiopia incite ethnic killing'](#)" (*The Guardian*, 20 February 2022). In 2019, Ethiopian runner Haile Gebrselassie also blamed Facebook for sharing fake news that allegedly caused violence in the Oromia region, in which 78 people died: BBC, "[Ethiopia violence: Facebook to blame, says runner Gebrselassie](#)" (*BBC*, 2 November 2019).

688 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022), High Court of Kenya at Nairobi ([Affidavit of Abrham Meareg](#)), paras. 53-54.

689 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022), High Court of Kenya at Nairobi ([Affidavit of Abrham Meareg](#)), para. 55.

690 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022) High Court of Kenya at Nairobi ([Affidavit of Abrham Meareg](#)), para. 56 (square brackets in the original source).



"We work to get the weeds up. But when we pull out the weeds, we take all possible care not to damage the wheat. In our country, weeding is done with a hammer. The children of Ethiopia are also doing it."⁶⁹¹

339. Significantly, there is evidence that such posts were indeed understood to call for the commission of prohibited acts against Tigrayans.

340. For example, Professor Meareg Amare Abrha, the father of one of the claimants in the above-noted case, was murdered on 3 November 2021. He was followed to his home from his place of work at Bahir Dar University (located in the capital of Amhara), by a group of Amhara Special Forces, who shot him, and then ensured that he would die from his wounds by preventing bystanders from helping as he lay bleeding to death.⁶⁹²

341. Previously, the Facebook page "Bahir Dar University Staff" had posted a picture of him on 9 October 2021, with the caption:

"His name is Professor Meareg Amare Abreha. He is a Tigrayan. We will tell you about how he was hiding at Bahir Dar University and carried out abuses and went to America while moving his family to Addis. For we did not know this, consider us dead, not alive. AZ."⁶⁹³

342. Comments under the post included the following: "What are you waiting for? [...] Why haven't you sucked his blood?"; "How many Juntas there are at BDU"; "Nobody knew until now? We should have detained all the staff"; "Amharas, beware of the *Woyanes*"; "We have to find out the Junta's accomplice who helped him escape. What assurance do we have that this collaborators at the chemistry department are not still paying his salary after helping him escape?"; "[...] If you are a true man, get organized and clean them [...]"⁶⁹⁴

343. The petitioner reported this post multiple times. A week after the murder of Professor Meareg Amare, Facebook replied stating that the post violated Community Standards; yet it was still online at the time of filing the affidavit on 8 December 2022.⁶⁹⁵ A further post was published on 10 October 2021, setting out the professor's place of residence.⁶⁹⁶

344. Petitioner Fisseha Tekle, a human rights expert, was subject to online vitriol falsely describing him as Tigrayan, and alleging he is "accustomed to sucking Amhara blood";⁶⁹⁷ that to him "the death of the Amhara is not a matter of humanitarian affair, instead it is a medicine to heal [his] inferiority."⁶⁹⁸ He was called a "'junta,' a 'woyane,'—used to identify [him] as Tigrayan / a member of the TPLF—'the highest leadership of the Junta,' the 'son of a prostitute,' 'a descendent of beggars and renegades,' 'Ethiopia's enemy,' with 'Judas

691 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022) High Court of Kenya at Nairobi ([Affidavit of Abrham Meareg](#)), para. 59.

692 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022) High Court of Kenya at Nairobi ([Affidavit of Abrham Meareg](#)), paras. 98-106.

693 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022) High Court of Kenya at Nairobi ([Affidavit of Abrham Meareg](#)), para. 74.

694 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022) High Court of Kenya at Nairobi ([Affidavit of Abrham Meareg](#)), para. 76.

695 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022) High Court of Kenya at Nairobi ([Affidavit of Abrham Meareg](#)), para. 78-81.

696 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022) High Court of Kenya at Nairobi ([Affidavit of Abrham Meareg](#)), para. 83.

697 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022) High Court of Kenya at Nairobi ([Affidavit of Fisseha Tekle](#)), para. 35.

698 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022), High Court of Kenya at Nairobi ([Affidavit of Fisseha Tekle](#)), para. 36.



ancestry,' a 'child of satan' who is 'fed from' the 'Junta's pot.'"⁶⁹⁹ Comments stated that "[m]ay your life be short' and [he] 'will vanish like a thin air soon!!'"⁷⁰⁰

345. Other posts published on and promoted by Facebook read:

"Worthless thieves! TPLF/ Woyane, we don't care whatever you want to call yourselves. But you are thieves. You call yourselves freedom fighters? Anti-Ethiopians, [you are] known for your cruel deeds, cowards, who rob the properties of the poor including flour and dough—you are thieves! We cannot wait to see your end!"; "We will not exult excessively when victory comes, nor will we panic if victory eludes us, we will not rest until we bury Woyane!"⁷⁰¹

346. One Facebook user was accused by the family of a Tigrayan victim to have incited violence against Tigrayans via his profile, which has over 86,000 followers. His posts include statements such as: "We need to cleanse the [Amhara] region of the junta lineage present prior to the war!!"⁷⁰²— "junta" being a term used to refer to Tigrayan forces and Tigrayans generally. The user had also posted an image of an elderly woman holding grenades, with the caption: "#Dear people of Amhara, there are mothers like these who are fighting to destroy Amhara and destroy Ethiopia! The main solution to save the #Amhara people and to protect Ethiopia is we Amharas have to rise up!! Get together Amhara."⁷⁰³

347. As found by the ICHREE, "The prevalence of hate speech in Ethiopia, in particular online, stoked community tensions and created a climate in which individuals and groups became targets of incitement and calls for violence."⁷⁰⁴

348. As such, there is a reasonable basis to believe that at least some statements which were reportedly made on social media amount to direct and public incitement to commit genocide, in that they called for action of the prohibited acts of genocide, and were made with the requisite intent. It may also be appropriate for an independent body to investigate further whether statements made in broadcast media, or other public fora, may likewise have met the necessary threshold.

699 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022), High Court of Kenya at Nairobi ([Affidavit of Fisseha Tekle](#)), para. 37(ii).

700 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022), High Court of Kenya at Nairobi ([Affidavit of Fisseha Tekle](#)), para. 37(iv).

701 *Abrham Meareg, Fisseha Tekle, and The Kabita Institute v Meta Platforms Inc* (Petition No. E541/2022), High Court of Kenya at Nairobi ([Affidavit of Fisseha Tekle](#)), paras. 62-63.

702 Jasper Jackson, Lucy Kassa, Kathleen Hall, and Zecharias Zelalem, "Facebook accused by survivors of letting activists incite ethnic massacres with hate and misinformation in Ethiopia" (*Bureau of Investigative Journalism*, 20 February 2022).

703 Jasper Jackson, Lucy Kassa, Kathleen Hall, and Zecharias Zelalem, "Facebook accused by survivors of letting activists incite ethnic massacres with hate and misinformation in Ethiopia" (*Bureau of Investigative Journalism*, 20 February 2022).

704 UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 455.



VI. Findings on Crimes Against Humanity

A. Summary of the Law on Crimes Against Humanity

349. The definition of crimes against humanity has long been settled as a matter of customary international law,⁷⁰⁵ and applied by *ad hoc* tribunals to conduct occurring in Cambodia, Rwanda, the former Yugoslavia, and Sierra Leone. The law in this respect is both coherent and consistent.
350. Similarly, Article 7 of the Rome Statute of the ICC sets out a definition of crimes against humanity for the purpose of the Court's own exercise of jurisdiction. The definition in the Rome Statute is, however, without prejudice to the content of customary international law for purposes other than those of the Rome Statute.⁷⁰⁶
351. Accordingly, to any extent that the ICC definition of crimes against humanity may differ from that in customary international law, it is inapposite for the purpose of this report. This is because Ethiopia is not a State Party to the Rome Statute and therefore is not subject to the ICC regime unless it chooses to accept the jurisdiction of the Court, under Article 12(3), or a relevant referral is made to the Court by the UN Security Council acting under Chapter VII of the UN Charter. Neither of these possibilities is contemplated for the purpose of the present analysis. It follows that the conduct in Tigray should be considered within the framework of the applicable customary international law definition of crimes against humanity.⁷⁰⁷
352. A crime against humanity is characterized by the commission of a prohibited underlying act, such as murder, within the context of a widespread or systematic attack against a civilian population. It is not required that this conduct occurs in the context of an armed conflict, although this may sometimes be the case on the facts. Nor is it required that the attack is both widespread *and* systematic. Rather, it suffices for *either* condition to be established by the evidence. While the Rome Statute further requires that the attack is carried out pursuant to a State or organizational policy,⁷⁰⁸ no such requirement has yet been accepted by any tribunal applying customary international law.
353. A widespread attack may be demonstrated in geographic terms or in terms of the number of persons targeted. The assessment asks whether an attack was "massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims." It is "neither exclusively quantitative nor geographical, but must be carried out on the basis of all the relevant facts of the case."⁷⁰⁹
354. A systematic attack need not be of similar scale to a widespread attack, but must instead be characterized by a distinct "pattern of crimes." This might be "evidenced by non-accidental repetition of similar criminal

705 Unlike for genocide, there is presently no international convention dedicated to codifying crimes against humanity as such, or directly imposing obligations upon States Parties as a matter of treaty law to prevent and punish such conduct. A draft convention to this effect is, however, undergoing consideration by the Sixth Committee of the UN General Assembly, having been proposed by the International Law Commission.

706 See ICC Statute, art. 10.

707 Depending on the content of their own domestic law, however, States carrying out investigations or prosecutions in the exercise of universal jurisdiction might apply either the definition derived from the Rome Statute, or from customary international law.

708 For the purposes of the ICC, this requirement seeks only to ensure that the multiple acts forming the attack are linked in some way, such that random, sporadic, or unrelated incidents do not amount to crimes against humanity. However, the policy need not be express, and may be inferred from a variety of factors, including public statements, the use of State or organizational resources, shared motive, and so on. While any attack which is "systematic" will necessarily satisfy the policy requirement, the policy requirement is not so demanding that in practice it requires all attacks to be systematic. Rather, it has a modest threshold, suited to its purpose. See, e.g., ICC, *Prosecutor v Ongwen*, Trial Judgment, ICC-02/04-01/15-1762-Red, 4 February 2021, paras. 2678-2679.

709 ICC, *Prosecutor v Ntaganda*, Judgment, ICC-01/04-02/06-2359, 8 July 2019, para. 691; ICC, *Prosecutor v Bemba*, Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/08-3343, 21 March 2016, para. 163.



conduct on a regular basis” or “a series of repeated actions seeking to always produce the same effects on a civilian population.”⁷¹⁰

355. The civilian population encompasses all persons who are civilians, and the presence within that population of individuals who are not civilians does not deprive the population of its civilian character. In determining whether a civilian population has been attacked, it may be relevant to consider the number and proportion of civilians within the population. However, provided that the existence of an attack against the civilian population is established, and the nexus between that attack and any particular crimes of relevance, it is not required that the victims of each and every crime are themselves all civilians. As such, individual victims of crimes against humanity may not only include civilians but also persons *hors de combat*.⁷¹¹
356. Likewise, in determining whether a civilian object has been attacked, it is immaterial “whether the civilian population is the ‘primary object’ of the attack,” or whether the attack served “other objectives or motives.”⁷¹² It is only relevant that the civilian population was actually attacked, which is “essentially a factual issue.”⁷¹³ The “primary object” requirement merely means that the civilian population must have been the target, whatever the motive may have been.⁷¹⁴
357. The underlying acts which may establish crimes against humanity include at least: murder; extermination; enslavement; deportation; forced displacement; imprisonment; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, and any other form of sexual violence; persecution on political, racial, ethnic, or religious grounds; enforced disappearance of persons; and other inhumane acts.⁷¹⁵

B. Crimes Against Humanity against Tigrayans

358. Several institutions have determined at least on a *prima facie* basis that the crimes committed against Tigrayans may amount to crimes against humanity. For example, the United States Secretary of State, Antony J Blinken, declared that “Members of the ENDF, EDF, and Amhara forces also committed crimes against humanity, including murder, rape and other forms of sexual violence, and persecution”; and that “Members of the Amhara forces also committed the crime against humanity of deportation or forcible transfer and committed ethnic cleansing in western Tigray.”⁷¹⁶
359. Amnesty International and Human Rights Watch found that:
- “since November 2020 in Western Tigray, civilian authorities, and Amhara regional security forces, with the acquiescence and possible participation of Ethiopian federal forces, committed numerous grave abuses as part of a widespread and systematic attack against the Tigrayan civilian population that amount to crimes against humanity as well as war crimes. These crimes include murder, enforced

710 ICC, *Prosecutor v Ntaganda*, Judgment, ICC-01/04-02/06-2359, 8 July 2019, paras. 692-693; ICC, *Prosecutor v Katanga*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/07-3436-tENG, 7 March 2014, paras. 1113, 1123.

711 See ICTY, *Prosecutor v Mrkšić and Šljivančanin*, Judgment, IT-95-13/1-A, 5 May 2009, paras. 28-33.

712 ICC, *Prosecutor v Ntaganda*, Public Redacted Version of Judgment on the Appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’, ICC-01/04-02/06-2666-Red, 30 March 2021, para. 424; see also SCSL, *Prosecutor v Fofana and Kondewa*, Judgment, SCSL-04-14-A, 28 May 2008, paras. 299-300.

713 ICC, *Prosecutor v Ntaganda*, Public Redacted Version of Judgment on the Appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’, ICC-01/04-02/06-2666-Red, 30 March 2021, para. 424; see also SCSL, *Prosecutor v Fofana and Kondewa*, Judgment, SCSL-04-14-A, 28 May 2008, paras. 299-300.

714 Chile Eboe-Osuji, “Crimes Against Humanity: Directing Attacks Against A Civilian Population” (2008), 2(2) *African Journal of Legal Studies* 118, p. 122.

715 Law on the Specialist Chambers and Specialist Prosecutor’s Office (Kosovo) 05/L-053 (3 August 2015), art. 13(1) (setting out the Specialist Chambers’ jurisdiction over crimes against humanity under customary international law, including the crimes listed in the Rome Statute).

716 United States Department of State, *War Crimes, Crimes Against Humanity, and Ethnic Cleansing in Ethiopia Press Statement*, 20 March 2023.



disappearances, torture, deportation or forcible transfer, rape, sexual slavery and other sexual violence, persecution, unlawful imprisonment, possible extermination, and other inhumane acts.”⁷¹⁷

360. Consistent with the previous above analysis in this report, the relevant conduct identified as potentially constituting underlying acts of genocide may also potentially constitute murder, torture, rape, extermination, and other inhumane acts as crimes against humanity.⁷¹⁸

361. In addition, five further crimes against humanity appear to be of particular relevance and require special emphasis: persecution; rape, conflict-related sexual violence, and other sexualized crimes; forcible displacement; instances of murder of humanitarian aid personnel; and unlawful imprisonment and enforced disappearances. Consistent with the analysis noted immediately above, there is a reasonable basis to believe at least that a widespread attack was carried out against the civilian (Tigrayan) population in Ethiopia.

1. Persecution

362. Persecution is a crime which requires proof of an underlying act combined with a specific intent. Compared to genocide, however, persecution is a much more comprehensive crime, both in terms of the conduct which may satisfy the requisite underlying act, and the circumstances which potentially fall within the proscribed intent.⁷¹⁹

363. To establish the objective elements of persecution, it is necessary that the perpetrator carries out one or more the underlying acts of crimes against humanity, such as those listed above, against an identifiable group or collectivity on the basis of political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law. Alternatively, the intentional and severe deprivation of the fundamental rights of such an identifiable group or collectivity also establishes the objective elements of persecution, if carried out on one or more of the impermissible grounds described and contrary to international law. These definitions are taken from Articles 7(1)(h) and 7(2)(g) of the Rome Statute of the International Criminal Court, which are now widely accepted to represent customary international law in material respects.

364. To establish the specific intent for persecution, the perpetrator must carry out the objective elements “by reason of the identity of the group or collectivity.”⁷²⁰ This is sometimes known as “discriminatory intent.” In other words, the perpetrator must carry out the objective elements of persecution against the victim(s), either because they perceive them to be members of a particular group or because they perceive that they are not members of a particular group. In this way, the specific intent for persecution can be “positive” or “negative” in nature. It is also immaterial whether the perpetrator is accurate in their perception of the victim’s characteristics or affiliations.

717 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 2.

718 See, for example, the analysis in SECTION V.E.3.A) on starvation, which, if established, can also constitute the crimes of “extermination” and “other inhumane acts” as crimes against humanity.

719 Whereas genocide protects certain legally defined groups from expressly defined harms, persecution prohibits the discriminatory targeting of human beings for criminal or other proscribed forms of unlawful behavior. As such, while it is very likely that there may be persecution in circumstances where genocide is committed, the reverse is not necessarily true—just because there may be persecution, this does not necessarily suggest that there may be genocide.

720 See ICC Statute, art. 7(2)(g).



365. Given the evidence considered above, and the alleged criminal incidents described above and below,⁷²¹ there is a reasonable basis to believe that persons of Tigrayan ethnicity were targeted on the basis of their ethnicity, their political views, and/or their gender, or on other grounds universally impermissible under international law. This took place in the context at least of a widespread attack carried out against the civilian Tigrayan population in Ethiopia. This conclusion is supported by various statements both made in the context of public discourse,⁷²² and as reportedly uttered by perpetrators in the course of carrying out crimes.⁷²³
366. In particular, the persecutory intent was obvious in multiple instances of rape, as evidenced by perpetrators' statements.⁷²⁴ For example, one survivor describes how she was raped multiple times by at least 30 soldiers in military uniform in her home, for about 11 hours during the day, in front of her children. When her 6-month-old baby daughter started crying, she sought to comfort her, but was told by one soldier: "Let her cry—isn't she Tigrayan?"⁷²⁵
367. A further factor potentially consistent with the existence of a persecutory intent is the targeting of journalists whose reporting was perceived as favorable to Tigrayans or unfavorable to the Ethiopian authorities. There is evidence of crimes committed against journalists during the conflict in particular, both regarding those of Tigrayan ethnicity and otherwise, including foreigners.⁷²⁶
368. Ethiopia's media landscape is highly polarized along ethnic fault lines, fueled by politics: journalists are likely to "frame issues in a way that aligns with their ethnic background,"⁷²⁷ and to "form alliances along regional and ethnic fault lines,"⁷²⁸ which are "highly inclined to use sources that support their own ideological interest and avoid quoting sources from other ethnicities which could balance the story."⁷²⁹ Most news articles are not balanced due to approaches known as "annihilation," meaning the ignorance toward "important aspects of an ethnic or political group that is perceived as an enemy, blurring sensitive parts of an issue to make it vague, deviation from the main issue, charming the other side, and reporting the issue in a non-ethnic or non-contentious way," and "othering," which "means taking information from another outlet to expose what another ethnic group is doing wrong, emphasising a symbolic attachment to stories to create solidarity, victimisation, blaming the other side and undermining others."⁷³⁰

721 For the 'criminal incidents' referred to in this paragraph, *see above* SECTIONS V.E.1 (murder as an underlying act of persecution), V.E.2 (describing incidents of torture, which may constitute an underlying act of persecution), V.E.3.A) (which may constitute extermination as an underlying act of persecution), V.E.4 (rape as an underlying act of persecution, and describing incidents which may also constitute torture and enslavement as an underlying act of persecution); and *see below* SECTIONS VI.B.2 (rape and sexual violence, as an underlying act of persecution), VI.B.3 (forcible displacement as an underlying act of persecution), PARA 397 (murder as an underlying act of persecution), VI.B.4 (unlawful imprisonment and enforced disappearances as an underlying act of persecution).

722 *See above* in SECTION V.D.1.A) (public discourse by Ethiopian senior figures), and V.F.3 (hate speech in public discourse against Tigrayans, including on social media).

723 *See*, in the context of rape and sexual violence, PARA. 103 (concerning statements by perpetrators) and SECTIONS V.D.2.A) (public discourse by Amhara forces), V.D.3.A) (alleged Eritrean perpetrators), V.E.4 (detailing various perpetrators' statements).

724 *See above* SECTION V.E.4, and *below* SECTION VI.B.2.

725 Thera Mjaaland and Kibrom Mebrahtom, *Speaking the unspeakable: In the aftermath of weaponized rape in Tigray, North-Ethiopia* (2023), at 4:16 min.

726 *See also* UN ICHREE, "Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia" (13 October 2023), A/HRC/54/CRP.3, para. 172.

727 Benon Herbert Oluka, "[How Ethiopian news media have become dangerously divided along ethnic fault lines](#)" (Oxford University Reuters Institute, 23 March 2021).

728 Terje Skjerdal and Mulatu Alemayehu Moges, *The Ethnification of the Ethiopian Media* (International Media Support and Fojo Media Institute, 2020), p. 5.

729 Terje Skjerdal and Mulatu Alemayehu Moges, *The Ethnification of the Ethiopian Media* (International Media Support and Fojo Media Institute, 2020), p. 5.

730 Benon Herbert Oluka, "[How Ethiopian news media have become dangerously divided along ethnic fault lines](#)" (Oxford University Reuters Institute, 23 March 2021).



369. During the Tigrayan war, press freedom in Ethiopia has suffered significantly. In 2022, the Reporters Without Borders Index gave Ethiopia a score of 50.53, putting it at rank 114 of 180 States. In 2021, Ethiopia ranked 99th.⁷³¹
370. A first in many years, international correspondent Simon Marks, who wrote for the New York Times, was expelled from Ethiopia in May 2021, his accreditation having been suspended.⁷³² The Ethiopian Broadcasting Authority accused Marks of spreading “fake news” and blamed him for “unbalanced reporting” on the Tigray conflict.⁷³³ *Economist* correspondent Tom Gardner was seen as an “enemy” by Ethiopian federal police when he visited Amhara in July 2021 and was beaten with a rifle butt, and then was expelled from Ethiopia in May 2022.⁷³⁴
371. Yet Ethiopian journalists are treated worse.⁷³⁵ Independent Ethiopian journalists who contradicted the government’s official statements on the war were detained,⁷³⁶ and physically assaulted.⁷³⁷ Within a few days of the outbreak of the conflict, Ethiopian reporters working for local Tigray media were arrested.⁷³⁸ In January 2021, security forces killed journalists Dawit Kebede and Bereket Berhe in Mekelle.⁷³⁹ In February 2021, Ethiopian journalist Lucy Kassa was assaulted outside her home, and accused of “spreading lies” and “supporting the Tigray junta.”⁷⁴⁰ She writes:
- “Whenever I uncover crimes committed by government forces, or report stories that don’t suit the government’s narrative, I fall victim to co-ordinated attacks, involving threats and online hate campaigns. Such efforts are designed to stop the atrocities from coming to light. [...] I was attacked at my home in Ethiopia in February 2021. Three security agents raided my home and threatened to kill me if I continued to dig into the war. They took evidence that I had gathered for an investigation into weaponised sexual violence involving Eritrean troops, in which a mother had been gang-raped and tortured by 15 Eritrean soldiers in a military camp. [...] Days after my home was raided I published my investigation in the Los Angeles Times. Within hours officials released a statement saying I was not a legitimate journalist. The Ethiopian state’s media outlets and supporters tried to present me as a criminal. I was forced to flee the country.”⁷⁴¹
372. In June 2021, journalist Abebe Bayu was arrested for reporting on the Tigray war.⁷⁴² In November 2021, freelance video reporter Amir Aman Kiyaro, who worked for the Associated Press, was arrested, together with journalists Thomas Engida and Addisu Mulneh, on charges of serving the purposes of a terrorist group.⁷⁴³ Four other journalists have also been detained since October 2021.⁷⁴⁴
373. In May 2022, at least nine journalists were arrested, two of whom were then held incommunicado, and two others were detained in Bahir Dar prison.⁷⁴⁵ In June 2022, two journalists who are accused “in connection

731 RSF, “[Journalist attacked, threatened in her Addis Ababa home](#)” (*Reporters Without Borders*, 10 February 2021); Note that in 2023, Ethiopia’s ranking worsened to place 130. Press freedom remains precarious: Tigrayan authorities are also accused of having charged five journalists with “collaboration with the enemy” (date unknown); see Amnesty International, *East and Southern Africa: Attacks on journalists on the rise as authorities seek to suppress press freedom* (3 May 2023).

732 RSF, “[RSF condemns NYT reporter’s unprecedented expulsion from Ethiopia](#)” (*Reporters Without Borders*, 21 May 2021).

733 Abdi Latif Dahir and Declan Walsh, “[As Ethiopia Fights in Tigray Region, a Crackdown on Journalists](#)” (*New York Times*, 13 May 2021).

734 Tom Gardner, “[I was a war reporter in Ethiopia; Then I became the enemy](#)” (*The Economist*, 24 June 2022).

735 See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 172-173.

736 Zelalem Shiferaw Woldemichael, “[Unlawful detention of journalists in Ethiopia continues despite amended laws](#)” (*Ethiopia Insight*, 11 December 2022).

737 Tom Gardner, “[I was a war reporter in Ethiopia; Then I became the enemy](#)” (*The Economist*, 24 June 2022).

738 Abdi Latif Dahir and Declan Walsh, “[As Ethiopia Fights in Tigray Region, a Crackdown on Journalists](#)” (*New York Times*, 13 May 2021).

739 Ethiopian Human Rights Council, [Press release on Human Rights situation in Tigray](#), 22 January 2021.

740 RSF, “[Journalist attacked, threatened in her Addis Ababa home](#)” (*Reporters Without Borders*, 10 February 2021).

741 Lucy Kassa, “[Dangers Journalists Face for Uncovering Truths in War](#)” (*The Economist*, May 2022).

742 International Federation of Journalists, [Ethiopia: Relentless crackdown on journalists covering military conflict](#) (8 July 2021).

743 RSF, “[More reporters arrested in renewed crackdown in Ethiopia](#)” (*Reporters Without Borders*, 12 December 2021).

744 RSF, “[More reporters arrested in renewed crackdown in Ethiopia](#)” (*Reporters Without Borders*, 12 December 2021).

745 RSF, “[Wave of arrests of media workers in Ethiopia](#)” (*Reporters Without Borders*, 24 May 2022).



with their documentation of crimes committed in the Tigray and Oromia regions” were arrested on charges of outrage against the Constitution, punishable by death.⁷⁴⁶ According to HRW, 10 Ethiopian journalists who reported on abuses against Tigrayans were held incommunicado for up to a month.⁷⁴⁷ In September 2022, journalists Sisay Gobeze and Meaza Mohammed were also arrested for their coverage on the Tigray conflict.⁷⁴⁸

374. Several newspapers have also been suspended or shut down, including Addis Standard, “one of Ethiopia’s most critical media outlets.”⁷⁴⁹

2. Rape, conflict-related sexual violence, and other sexualized crimes

375. There is a reasonable basis to believe that Tigrayans were subject to rape and other sexual violence, in the context at least of a widespread attack carried out against the civilian Tigrayan population in Ethiopia. The widespread rape and sexual violence against Tigrayan women and girls has been well-documented.⁷⁵⁰ The following analysis concerns rape, sexual violence (including against men), and other sexualized crimes as a crime against humanity, but has to be read in addition to the conduct described above at sections V.E.2 and V.E.4 in relation to genocide, both regarding the infliction of serious bodily or mental harm, and measures to prevent births.

376. In Adigrat Hospital alone, 376 rape cases were reported in the period of the beginning of the conflict until early June 2021.⁷⁵¹ Across Tigray, 2,204 survivors sought medical help following sexual violence between November 2020 and June 2021.⁷⁵² In the Amhara region, Tigrayan victims of sexual violence made 306 reports to the OHCHR in the course of only one month, between November and December 2021.⁷⁵³ According to other reports, making “conservative estimates,” around 10,000 women were victims of rape in Tigray, with many more incidents going unreported.⁷⁵⁴

377. The sexual violence included “rape by multiple perpetrators, insertion of foreign objects, rape co-occurring with arbitrary detention in both formal and informal settings, and the commission of sexual violence in public/in the presence of family members,”⁷⁵⁵ with Eritrean troops seemingly being disproportionately responsible for multiple perpetrator rape “accompanied by the most extreme forms of brutality.”⁷⁵⁶

746 RSE, “Eighteen journalists arrested in Ethiopia, two facing possible death sentence” (*Reporters Without Borders*, 3 June 2022).

747 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

748 International Press Institute, *Ethiopia: IPI calls for release of jailed journalists Gobeze Sisay and Meaza Mohammed* (19 September 2022).

749 RSE, “Popular news site suspended arbitrarily in Ethiopia” (*Reporters Without Borders*, 17 July 2021).

750 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022); Amnesty International, “*I don’t know if they realized I was a person*”: Rape and other Sexual Violence in the Conflict in Tigray, Ethiopia (11 August 2021), AFR 25/4569/2021, p. 5 (“the widespread rape against Tigrayan women and girls [...] by Eritrean Defense Forces (EDF), the Ethiopian National Defense Force (ENDF), the Amhara Regional Police Special Forces (ASF), and Fano, an informal Amhara militia group [...] amount to war crimes and may amount to crimes against humanity”); UN ICHREE, ‘Report of the International Commission of Human Rights Experts on Ethiopia’ (19 September 2022) A/HRC/51/46 (see para. 55: “Sexual and gender-based violence (SGBV), in particular rape, has been perpetrated on a staggering scale since armed conflict erupted”).

751 Hailay Gesesew, Kiros Berhane, Elias S. Siraj, et al., “The impact of war on the health system of the Tigray region in Ethiopia: an assessment,” 2021, (6) *BMJ Global Health*, p 4.

752 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 22.

753 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 22.

754 Europe External Programme with Africa (EEPA), *Situation Report, Special Briefing No. 3 “Gender Based Violence in Tigray”* (8 March 2021). See also UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 52 (“The Commission has consolidated estimates by health care providers in seven one-stop centers in Tigray of the numbers of survivors of sexual violence who sought care between November 2020 and July 2023. This figure alone exceeds 10,000 survivors, primarily women and girls”).

755 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 57.

756 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 58.



378. Tigrayan girls and women were raped by various perpetrator groups: 44% of victims by Ethiopian soldiers; 33% by Eritrean soldiers; 6% by Amhara militia (*Fano*); and 6% reported a combination of Ethiopian and Eritrean soldiers; (for 11% of rape survivors, no information on the perpetrator group was available).⁷⁵⁷
379. Multiple survivors are said to have “reported that Eritrean troops stated that they have been ‘ordered’ to assault Tigrayan women,” but that “there is no indication of which entity gave such orders.”⁷⁵⁸ Health workers report that assailants force rocks, nails and other objects into the bodies of women and men during sexual assaults; that men have been forced to rape their own family members; and that many victims contract STDs.⁷⁵⁹ The situation is exacerbated through the closures of many health clinics in Tigrayan towns as a result of the fighting and looting.⁷⁶⁰ One refugee reports that her friend was raped twice on one day by several Eritrean soldiers; another reports that they witnessed women being taken away by Eritrean soldiers, who then came back having been raped.⁷⁶¹
380. The *New York Times* reported that on 4 December 2020, in Abiy Addi, an 18-year-old Tigrayan student survived an attempted rape by an Ethiopian soldier in her home in central Tigray. She was ordered to have intercourse with her grandfather, with whom she shared the house. As her grandfather refused, he was shot in the leg and locked in the kitchen.⁷⁶² The soldier then turned to the girl; in the ensuing struggle, he threatened to shoot her if she did not comply. He shot at her right arm and leg. The arm was amputated, the bones in her leg remain shattered.⁷⁶³
381. A doctor in Mekelle reports receiving at least three patients per day since Ethiopian troops took Mekelle on 28 November 2020.⁷⁶⁴ Between December 2020 and January 2021, more than 136 rape cases were reported in Mekelle, Ayder, Adigrat, and Wukro hospitals, with up to 22 female victims seeking medical aid every day—a dramatic increase to hearing of cases every few days or once a week.⁷⁶⁵ According to another doctor, over the “recent months” leading up to March 2021, over 200 women had been admitted at his hospital for CRSV, with “many more cases [...] reported in rural villages and centres for the internally displaced, with limited to no access to medical care.”⁷⁶⁶ Due to fear of reprisals, most sex crimes have not been reported or documented, however.⁷⁶⁷ On 14 October, the Tigray’s regional Emergency Coordination Centre published an official document alleging that “[r]oughly 40 girls and women between the ages of 13 and 80 were raped in the town of Sheraro in northwestern Tigray [...], including gang rape in the district of Tselemti.”⁷⁶⁸ The report does not attach responsibility to any perpetrator group nor does it specify the time frame in which these acts were reportedly committed.

757 Insecurity Insight, *Sexual Violence in Ethiopia’s Tigray Region* (30 March 2021). See also Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), p. 13 (In this qualitative study of 304 medical files depicting cases of CRSV, “where there was an indicator of the affiliation of perpetrators (n = 197): 73 percent of perpetrators were identified as members of the Eritrean armed forces, 10 percent as members of Amhara Special Forces, 9 percent as Fano militia members, 8 percent as members of the Ethiopian armed forces, and 1 percent as Afar Special Forces”).

758 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 58.

759 Simon Marks and Declan Walsh, “‘They Told Us Not to Resist’: Sexual Violence Pervades Ethiopia’s War” (*New York Times*, 1 April 2021).

760 Simon Marks and Declan Walsh, “‘They Told Us Not to Resist’: Sexual Violence Pervades Ethiopia’s War” (*New York Times*, 1 April 2021).

761 Yenat Mersie, Giulia Paravicini, and Katharine Houreld, “Dual Agenda: In Ethiopia’s civil war, Eritrea’s army exacted deadly vengeance on old foes” (*Reuters*, 1 November 2021) (Reuters was unable to verify these accounts).

762 Simon Marks and Declan Walsh, “‘They Told Us Not to Resist’: Sexual Violence Pervades Ethiopia’s War” (*New York Times*, 1 April 2021).

763 Simon Marks and Declan Walsh, “‘They Told Us Not to Resist’: Sexual Violence Pervades Ethiopia’s War” (*New York Times*, 1 April 2021).

764 Simon Marks and Declan Walsh, “‘They Told Us Not to Resist’: Sexual Violence Pervades Ethiopia’s War” (*New York Times*, 1 April 2021).

765 Bethlehem Feleke, Eliza Mackintosh, Gianluca Mezzofiore, Katie Polglase, Nima Elbagir, Barbara Arvanitidis, and Alex Platt, “‘Practically this has been a genocide’” (*CNN*, 22 March 2021).

766 Bethlehem Feleke, Eliza Mackintosh, Gianluca Mezzofiore, Katie Polglase, Nima Elbagir, Barbara Arvanitidis, and Alex Platt, “‘Practically this has been a genocide’” (*CNN*, 22 March 2021).

767 Simon Marks and Declan Walsh, “‘They Told Us Not to Resist’: Sexual Violence Pervades Ethiopia’s War” (*New York Times*, 1 April 2021).

768 AP, “Official document describes scale of abuses in Ethiopia war” (*Associated Press*, 22 October 2022).



382. Over a 10-day period in Agula in late November, one survivor was repeatedly assaulted while her assailants took photos, poured alcohol on her, and laughed; they also killed her 12-year-old son.⁷⁶⁹ The report was corroborated by a local police investigator working in the Ayder Referral hospital in Mekelle.⁷⁷⁰ A waitress in a café in Mekelle was raped with two other women in Mekelle, in December.⁷⁷¹
383. One Ethiopian soldier spoke out on national TV about women being raped although local and federal police were present in Mekelle, who did not stop the perpetrators.⁷⁷²
384. Tigrayan men were also subjected to sexual violence. The JIT found that “one male survivor was raped by an EDF soldier and another by a civilian,” and that “a 16-year-old boy was raped by nine EDF soldiers in Humera but did not receive any support,” and later committed suicide.⁷⁷³ Male detainees were beaten on their genitals,⁷⁷⁴ with one survivor reporting:
- “All of us have went through [torture] but the most vulnerable ones were older people. ... One old man, they had hit him on his testicles and his testicles were swollen, he couldn’t pee. He was in so much agony. He [eventually] died.”⁷⁷⁵
385. Older people were equally subjected to sexual violence. One “elderly Tigrayan woman was raped in detention by three police guards every night for over two months. In addition to rape, she described suffering beatings, forced nudity, and denial of medical care, which in this context may amount to torture”:
- “They made us take off our clothes and stay naked in the sun for two hours. They wanted to do it in our mouth and other things, while we were in the police station. I was badly sick. They saw me and said that I better die outside and not there where they detained me. So, they threw me out in the dark. I was very sick, ... but there was no medical treatment.”⁷⁷⁶
386. Victims of rape and sexual violence include both girls of 10 years old as well as grandmothers.⁷⁷⁷
387. The rape and sexual violence did not stop at the formal conclusion of the conflict. Tigrayan women continued being raped by Eritrean soldiers, but also by Amhara militia and “federal government forces”.⁷⁷⁸ According to the official Tigray Health Bureau, “in November and December 2022—after the peace deal was signed—852 cases of CRSV were reported.”⁷⁷⁹ According to Physicians for Human Rights, which randomly selected 305 medical records from multiple health facilities across Tigray (of which 304 records included

769 Simon Marks and Declan Walsh, “‘They Told Us Not to Resist’: Sexual Violence Pervades Ethiopia’s War” (*New York Times*, 1 April 2021).

770 Simon Marks and Declan Walsh, “‘They Told Us Not to Resist’: Sexual Violence Pervades Ethiopia’s War” (*New York Times*, 1 April 2021).

771 Simon Marks and Declan Walsh, “‘They Told Us Not to Resist’: Sexual Violence Pervades Ethiopia’s War” (*New York Times*, 1 April 2021).

772 Simon Marks and Declan Walsh, “‘They Told Us Not to Resist’: Sexual Violence Pervades Ethiopia’s War” (*New York Times*, 1 April 2021).

773 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 172.

774 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), pp. 176, 179.

775 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 179.

776 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 130.

777 Europe External Programme with Africa (EEPA), *Situation Report, Special Briefing No. 3 “Gender Based Violence in Tigray”* (8 March 2021).

778 Catherine Byaruhanga, “Ethiopia war in Tigray: Eritrean soldiers accused of rape despite peace deal” (*BBC*, 15 February 2023). See also UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 51 (“The Commission documented rape and sexual violence by both EDF and Amhara forces since the COHA, and received additional credible information indicating that more than 100 girls aged under 18 years were raped or otherwise subjected to brutal forms of sexual violence in Tigray during the same period, in particular in areas where EDF soldiers are present”).

779 Catherine Byaruhanga, “Ethiopia war in Tigray: Eritrean soldiers accused of rape despite peace deal” (*BBC*, 15 February 2023). See also Sarah Johnson and Lucy Kassa, “Rape still a weapon of war in Tigray months after peace deal” (*The Guardian*, 25 August 2023) (“Medical records from across the region show sexual violence continues to be used ‘to intimidate and terrorise communities’”).



CRSV), 128 incidents occurred after the *Cessation of Hostilities Agreement* in November 2022.⁷⁸⁰ PHR also not that “[t]he scale and nature of these violations has not materially changed since the peace agreement was signed, except for the notable fact that 95 percent of conflict-related sexual violence experienced by children and adolescents under 18 years old occurred following the signing of the CoHA.”⁷⁸¹

388. In addition, ENDF and EDF soldiers are also accused of having sexually enslaved Tigrayan women and forcibly impregnated them⁷⁸²—and even continuing to do so after the *Cessation of Hostilities Agreement*.⁷⁸³

389. In one instance, EDF soldiers raped one woman on multiple occasions, and asked her about the presence of her children. He said:

“If they are more than seven years old, you should give them up. You don’t have children anymore. We’ve been told to kill all those over seven years old. You don’t have children anymore. But don’t worry, we’ll give you a lot of Eritrean soldiers. What do you think?”⁷⁸⁴

390. The repeated rapes without contraception also led to unintended pregnancies;⁷⁸⁵ for some Tigrayan women, lack of access to medical support meant that they could not terminate these pregnancies where they wished to do so.⁷⁸⁶

391. In the context of detention in Afar, one survivor reports that all women held in the camp were raped, often by multiple perpetrators, on multiple occasions (including every day) over the course of nine months before they were released in August 2022.⁷⁸⁷ Although there is no evidence that these rapes led to unwanted pregnancies, it is likely that this was the case in at least some instances. To the extent that such women continued to be confined, there is a reasonable basis to believe that this might constitute the crime of forced pregnancy.⁷⁸⁸

3. Forcible Displacement (Deportation and Forcible Transfer)

392. It is a crime against humanity (as well as a war crime in both international and non-international armed conflict) to compel persons to leave the area in which they are lawfully present, either by expulsion or other coercive acts, without grounds permitted under international law. This conduct is characterized as deportation rather than forcible transfer if the victim(s) are compelled to cross a *de jure* or *de facto* international border. The grounds permitting forcible displacement under international law are very

780 Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), pp. 1, 17 (emphasis added) (note also on p. 1 that “169 incidents of conflict-related sexual violence occurred before the signing of the CoHA in November 2022 and 128 incidents occurred after November 2022”), p. 18 (“there was a significant spike in the incidents of conflict-related sexual violence immediately before and after the signing of the CoHA”).

781 Physicians for Human Rights and the Organization for Justice and Accountability in the Horn of Africa, *Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia* (August 2023), p. 1 (emphasis added).

782 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 136, 141; 142 (concerning Irob women), 154-159 (highlighting the nexus between starvation and sexual violence in particular sexualized enslavement), 187 (describing that a 15-year-old girl was enslaved by 7 Fano militia and subjected to multiple-perpetrator rapes), 192 (sexualized enslavement in the context of detention in Afar by Afar Special Forces which occurred, in at least one instance, daily for nearly nine months).

783 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 151-153.

784 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 147.

785 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 138.

786 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 148-149.

787 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 192-93.

788 See generally, ICC, *Prosecutor v Ongwen*, Trial Judgment, ICC-02/04-01/15-1762-Red, 4 February 2021, paras. 2717-2729 (explanation of the elements of the crime of forced pregnancy).



narrowly delimited. They are limited to temporary evacuation in the humanitarian interests of the civilian population (such as in case of imminent natural disaster) or, in the context of armed conflict, temporary evacuation where imperative military reasons or the security of the civilian population so requires. In any circumstances where evacuation is permitted, adequate provisions must be made for the welfare of the affected population, and the duration of the displacement must be limited to the minimum time necessary. The affected population should then be assisted to return.

393. Notwithstanding any pre-existing trend of migration from rural towns to rural villages, the outbreak of the conflict saw 75% to 90% of Tigrayans forcibly displaced from Western Tigray,⁷⁸⁹ moving from rural areas to towns in central and north-western Tigray.⁷⁹⁰ In June 2021, numbers of IDPs were estimated to be at around 723,000, while refugees in Sudan were registered at 51,207.⁷⁹¹ Other official estimates from May 2021 go as far as reporting over 1 million IDPs in Tigray alone, and nearly 3 million across Ethiopia as a whole.⁷⁹² By December 2021, OCHA reported that since the beginning of the conflict, 1.2 million people had been displaced from Western Tigray alone,⁷⁹³ and that between 25 November and 1 December, another 10,000 Tigrayans were newly displaced from that region.⁷⁹⁴ There is a reasonable basis to believe that these movements were the result of expulsion or other coercive acts, and that these acts were carried out in the context of at least a widespread attack carried out against the civilian Tigrayan population in Ethiopia.
394. According to one report, Ethiopian and allied forces used CRSV to displace the Tigrayan population,⁷⁹⁵ and that “[e]ven where CRSV was not accompanied by explicit statements to leave, the widespread occurrence and threat of rape led many ethnic Tigrayans to flee western Tigray.”⁷⁹⁶
395. One Tigrayan woman explained that she escaped from Humera after hearing about the rape of a woman and her daughters, whom she knew, by security forces:
- “The main reason I left was after this one incident. ... Six people raped them, the mother, with her two daughters. I thought this could happen to me next. A lot of women were raped in the area. So, I didn’t grab anything, I just left.”⁷⁹⁷
396. On 17 January 2021, Fano militia, local Walqayte [also: Welkait or Wolkait], and Amhara residents also rounded up male Tigrayans in the town of Adi Goshu.⁷⁹⁸ About 60 Tigrayan men were then executed by ASF on the bridge over Tekeze River, which prompted a mass exodus.⁷⁹⁹
397. In addition, not only did Amhara authorities deprive Tigrayans of key resources, but they also provided the means to physically remove Tigrayans through trucks and buses, and confiscated ID cards to prevent

789 Jan Nyssen, “Webinar: Documenting the Civilian Victims of the Tigray War” (*Every Casualty Counts*, 19 January 2023).

790 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 6.

791 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 6.

792 Famine Early Warning System Network, *Ethiopia Food Security Alert* (17 May 2021).

793 OCHA, Northern Ethiopia Humanitarian Update, *Situation Report* (2 December 2021).

794 OCHA, Northern Ethiopia Humanitarian Update, *Situation Report* (9 December 2021).

795 Dr. Denis Mukwege Foundation, the Hague, Netherlands and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 29.

796 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 30.

797 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 150.

798 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 139.

799 Amnesty International and Human Rights Watch, “*We will erase you from this land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 140.



Tigrayans from returning.⁸⁰⁰ Tigrayans from other parts of Western Tigray, who sought entry to the territory under Amhara control, were denied entry.⁸⁰¹

398. Amnesty and HRW found that “[t]he scale of the forced displacements and flight, the way the abuses were carried out, and the number of areas where they occurred within the Zone, all indicate a degree of control, coordination, and purpose among the authorities overseeing the Amhara regional forces and militias that appear aimed at terrorizing and directly removing Tigrayans from Western Tigray.”⁸⁰²

4. Unlawful imprisonment and enforced disappearances

399. It is a crime against humanity to imprison a person, or otherwise severely to deprive them of physical liberty in violation of fundamental rules of international law.⁸⁰³ This does not imply any minimum duration of the imprisonment. While detention in the interests of security may be permissible in certain circumstances in non-international armed conflicts, this must still meet certain minimum requirements, including the possibility of administrative review.

400. Likewise, it is a crime against humanity to detain or abduct a person, if this detention or abduction was known to be followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of the victim, and the perpetrator intended to remove the victim from the protection of the law. Both the deprivation of liberty and the denial of information must have been carried out with the authorization, support, or acquiescence of a State or a political organization.⁸⁰⁴

401. There is a reasonable basis to believe that Tigrayans were both unlawfully imprisoned and subject to enforced disappearances, and that these acts were carried out in the context of at least a widespread attack carried out against the civilian Tigrayan population in Ethiopia.

402. The ICHREE found that Tigrayans, including women and children, were “detained on a massive scale during the conflict,” and that this was linked to developments in the conflict, such as at the outbreak of the conflict, the TPLF re-capturing of Mekelle in July 2021, and the declaration of a state of emergency after November 2021.⁸⁰⁵

403. Many of those who were detained were “secretly transferred to unidentified locations.”⁸⁰⁶ Family members would only be informally told that detainees from Addis Ababa were held in Afar, which is over 200 kilometers away.⁸⁰⁷

800 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), pp. 5-6. Other Tigrayans report that once their Tigrayan ID cards were taken from them and burnt, they received new ID cards, issued in the Amharic language, with an Amhara stamp, without any reference to the Tigrayan ethnicity; see Cara Anna, *“Leave no Tigrayan”: In Ethiopia, an ethnicity is erased* (Associated Press, 7 April 2021).

801 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 6.

802 Amnesty International and Human Rights Watch, *“We will erase you from this land”: Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone* (April 2022), p. 6-7.

803 See, e.g., ICC Statute, art. 7(1)(e). This reflects a similar rule of customary international law.

804 See, e.g., ICC Statute, art. 7(1)(i); ICC Elements of Crimes, art. 7(1)(i). This reflects a similar rule of customary international law.

805 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para 160.

806 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

807 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021). See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 160.



404. The ICHREE has identified at least 16 locations in Addis Ababa alone,⁸⁰⁸ 13 in Western Tigray,⁸⁰⁹ and two in Afar region.⁸¹⁰ Detentions included military bases and one agricultural college.⁸¹¹
405. The number of Tigrayans detained varies: some report about hundreds, or more than 1,000 Tigrayans in different locations each, across Ethiopia;⁸¹² other detainees report more than 1,500 people held in detention at their location alone.⁸¹³
406. Ethnically profiled detainees include Tigrayan office workers, priests and deacons, and teachers and nurses, as well as civilian employees of state-owned companies.⁸¹⁴ Members of the police force who are of Tigrayan ethnicity were also detained.⁸¹⁵ Even five children under the age of three have been detained.⁸¹⁶
407. Detentions occurred not just of civilians, but also of both male and female ENDF soldiers of Tigrayan ethnicity.⁸¹⁷ There are over 17,000 Tigrayans in the military, who have been detained by the very government they were serving.⁸¹⁸ Detentions occurred in November 2020 and November 2021, in an attempt to prevent them from joining Tigrayan forces.⁸¹⁹ Many are still in detention, notwithstanding the *Cessation of Hostilities Agreement*.⁸²⁰
408. Early on in the war, Brigadier-General Tesfaye Ayalew, Head of Deployment Department of the Ethiopian National Defense Force (ENDF), stated in a leaked video, which was verified by the Associated Press, that the security forces were now “completely *Ethiopian*” (thereby denying that Tigrayans are also Ethiopians), and justified the exclusion of Tigrayans from the Ethiopian military:
- “We had to clean out our insides. ... Even if there may be good people among them, we can’t differentiate the good from the bad. To save the country, we made it so they were excluded from doing work.”⁸²¹
409. Tigrayan ENDF soldiers who were serving as UN peacekeepers outside of Ethiopia prior to the conflict also began facing harassment on UN bases after November 2020. Upon the conflict’s outbreak, some were

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- 808 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 173.
- 809 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 178.
- 810 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 189.
- 811 Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021).
- 812 Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021). UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 160 following.
- 813 Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021). UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 160 following.
- 814 Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021).
- 815 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 161.
- 816 Cara Anna, “New wave of Ethiopian detentions of Tigrayans includes kids” (*Associated Press*, 18 August 2021).
- 817 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 161.
- 818 According to an estimate given to a researcher by Mulugeta Gebrehiwot Berhe, a former senior Ethiopian official and Tigrayan who founded the Institute for Peace and Security Studies at Addis Ababa University, in Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021).
- 819 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 161.
- 820 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 161.
- 821 Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021). Video available here: <https://martinplaut.com/2021/01/13/ethiopian-brigadier-general-justifies-ethnic-profiling-in-the-military-to-exclude-tigrayans/>.



forcibly returned to Ethiopia, even under violence, where they were then immediately detained—others refused to do so and sought asylum in other countries.⁸²² Some of those who were returned were detained at Mirab Abaya (referred to above in section V.E.1.a)), but it is not known whether they were amongst those executed during the attack in November 2021.⁸²³

410. Detentions of Tigrayans also took place in Western Tigray and Afar, as well as the capital, Addis Ababa.

411. In Western Tigray, ASF and Fano carried out detentions which served as a precursor for forced expulsion.⁸²⁴ Arrests occurred during mass roundups, on the streets, or while fleeing homes. Tigrayans had to show their ID cards, which disclosed their Tigrayan ethnicity—those with mixed ethnicity “appear to have been released earlier” from periods of detention.⁸²⁵

412. Violence in detention, and threats thereof, were commonplace and often led to the death of detainees.⁸²⁶ ASF and Fano militia are accused of having beaten, kicked, punched, and hit detainees with sticks. One survivor reports her Fano guards saying: “All Tigrayans have to die. We will wipe you all out.”⁸²⁷

413. Armed Amhara locals are also reported to have imposed arbitrary detentions and committed torture and extortion.⁸²⁸ One ASF soldiers reportedly denied the humanity of their detainees, and said: “You are the snakes of Ethiopia... Ethiopia will get peace only when you have vanished.”⁸²⁹

414. In another example of May 2021, ENDF and EDF rounded up hundreds of young Tigrayan men from camps for IDPs in Adi Wenfito and Tsehay [Tsehay], in Shire.⁸³⁰ They then forced them onto buses and took them to a location on the outskirts of Shire, Tigray. While in custody, detainees reported having been beaten and physically abused. Although the official explanation is that the detentions were meant for members of the TPLF, aid workers questioned how the soldiers could tell who was a member of the TPLF and who was not, as the raid was indiscriminate: “How did you know who was TPLF and who wasn’t?”⁸³¹

415. Distraught parents, who gathered around a local UNHCR office in Shire to learn more about where their sons had been taken, were told by Ethiopian soldiers: “We could kill you right here and the UN would do nothing to help but take pictures of you.”⁸³²

822 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 169-170.

823 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 168.

824 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 178.

825 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 179-180.

826 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 183-185.

827 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 186.

828 Max Bearak, “Ethiopian refugees say they escaped ‘final stage of ethnic cleansing’ in western Tigray” (*Washington Post*, 16 December 2021).

829 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 186.

830 Nima Elbagir, Barbara Arvanitidis, Gianluca Mezzofiore, and Katie Polglase, “Tigrayans told, ‘We’ll see if America will save you now,’ as hundreds rounded up by Ethiopian and Eritrean soldiers” (*CNN*, 27 May 2021). Dr. Catherine Sozi, “UN condemns the arbitrary and brutal arrest of at least 200 IDPs in military-led raids in Shire town (Tigray Region)” (Press Release, 27 May 2021).

831 Nima Elbagir, Barbara Arvanitidis, Katie Polglase, and Gianluca Mezzofiore “Hundreds of detained Tigrayans released following CNN report” (*CNN*, 29 May 2021).

832 Nima Elbagir, Barbara Arvanitidis, Gianluca Mezzofiore, and Katie Polglase, “Tigrayans told, ‘We’ll see if America will save you now,’ as hundreds rounded up by Ethiopian and Eritrean soldiers” (*CNN*, 27 May 2021).



416. Some of the men were released because they identified themselves as aid workers, but hundreds were kept in detention at Guna distribution center, which was turned into a military camp.⁸³³ Only after a CNN report were the detainees released.⁸³⁴
417. In Addis Ababa, city or federal uniformed police and security forces, including those accompanied by “suspected intelligence officers in civilian clothes,” stopped Tigrayans in public places, and in their homes and places of work.⁸³⁵ Detentions often took place without detainees knowing the reason for their arrest or being shown any warrants.⁸³⁶ The identity of Tigrayans was often confirmed through their ID cards.⁸³⁷
418. One survivor reported that his brother and his brother’s friends, who had been living in Addis Ababa for several years, were detained at the Shola police station, but were seen leaving in 26 buses, which were full with Tigrayan men, around 4 July 2021. He had not been able to locate his brother until at least 16 August 2021,⁸³⁸ and it is not known whether they have found each other by now.
419. HRW ascertained that at least 23 Tigrayans were arrested between 28 June and 19 July 2021, but it does not have the whereabouts of these 23 documented cases.⁸³⁹ Another 110 people were listed as “whereabouts unknown.”⁸⁴⁰
420. One survivor describes having been arrested with a dozen other Tigrayan employees of the charity in Addis Ababa he worked for, only to be driven to the unfinished prison in Mizan Teferi with other detainees, in about 60-80 buses.⁸⁴¹ In the jail in Mizan Teferi, in the south of Ethiopia, 3,000 ethnic Tigrayan detainees were forced into 18 cells, with more than 20 people per four square meters.⁸⁴² According to Michelle Bachelet, UN High Commissioner for Human Rights, detainees appear to be ordinary Tigrayans, the EHRC suggests they were profiled solely because of their ethnicity (which is revealed in ID checks or by speaking their native language).⁸⁴³
421. In Afar, thousands of Tigrayans were also detained.⁸⁴⁴ For example, in Ab’ala, Afar Special Forces loaded Tigrayan residents onto trucks *en masse* on 18 December 2021, destined for the Afar capital, Semera.⁸⁴⁵ The figure of 12,000 told to Reuters could not be verified, but Reuters sources indicated that thousands are detained at Soloda College near Semera town in makeshift prisons.⁸⁴⁶ Although Tigrayans were allegedly moved there for their own security from attacks from the Afar community, the conditions of detention were inhumane.⁸⁴⁷ As many as 63 detainees died, including 11 infants.⁸⁴⁸

833 Nima Elbagir, Barbara Arvanitidis, Gianluca Mezzofiore, and Katie Polglase, “[Tigrayans told, ‘We’ll see if America will save you now,’ as hundreds rounded up by Ethiopian and Eritrean soldiers](#)” (CNN, 27 May 2021).

834 Nima Elbagir, Barbara Arvanitidis, Katie Polglase, and Gianluca Mezzofiore “[Hundreds of detained Tigrayans released following CNN report](#)” (CNN, 29 May 2021).

835 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

836 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 174.

837 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

838 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

839 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

840 Human Rights Watch, *Ethiopia: Ethnic Tigrayans Forcibly Disappeared* (18 August 2021).

841 Dawit Endeshaw and Katharine Houreld, “[Deadly Detention](#)” (Reuters, 17 June 2022).

842 Dawit Endeshaw and Katharine Houreld, “[Deadly Detention](#)” (Reuters, 17 June 2022).

843 Dawit Endeshaw and Katharine Houreld, “[Deadly Detention](#)” (Reuters, 17 June 2022).

844 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 189.

845 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 189-190.

846 Dawit Endeshaw and Katharine Houreld, “[Deadly Detention](#)” (Reuters, 17 June 2022).

847 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 191-196.

848 Dawit Endeshaw and Katharine Houreld, “[Deadly Detention](#)” (Reuters, 17 June 2022).



422. In all locations across Ethiopia, Tigrayan detainees were often denied access to legal advice, and families were either not told about the whereabouts of their family members, or were not allowed to visit.⁸⁴⁹ Two detainees also report of a campaign to “re-educate” them, which includes “lectures promoting [Prime Minister] Abiy’s political party.”⁸⁵⁰
423. Detainees often only received one meal a day, if at all; many detainees have to share crowded, overheated cells.⁸⁵¹ According to one detainee who escaped, over 1,500 people were held in a center in Mirab Abaya.⁸⁵² One military detainee spoke of more than 400 other Tigrayans at his location.⁸⁵³ Access to medical treatment was lacking, or even denied; there was little to no access to water or sanitary facilities.⁸⁵⁴
424. In the jail in Mizan Teferi, conditions of detention were especially dire: there was no access to medical treatment other than by bribing guards; beatings are frequent; cells are dirty and crowded.⁸⁵⁵ Plumbing was non-existent, and water scarce. Detainees were only allowed two 15-minute toilet breaks, but long queues meant that they would often soil themselves while waiting. Lice, pests, and malaria were rampant. Several Tigrayan detainees have died in detention, some through lack of treatment. The EHRC failed to receive access to the prison.⁸⁵⁶
425. In all locations of detention, rape and other forms of sexual violence against Tigrayans were also commonplace and were committed by EDF, ENDF, ASF and Fano, and Afar Special Forces.⁸⁵⁷
426. In total, the UN estimates that 15,000 Tigrayans were arrested between November 2021 and February 2022, but investigating by Reuters indicates a figure higher by at least 3,000, and a Tigrayan opposition group estimates a figure “in the tens of thousands.”⁸⁵⁸ Notwithstanding government assurances that Tigrayans have been released from detention, some 9,000 remained in detention by June 2022.⁸⁵⁹ It is unclear whether they have now been released.

5. Murders

427. There is a reasonable basis to believe that the same killings described above (in section V.E.1) as a prohibited act of genocide also constitute murder as a crime against humanity, since they were carried out in the context of at least a widespread attack carried out against the civilian Tigrayan population in Ethiopia.
428. As explained above in section V.E.1, the exact number of Tigrayans killed is unknown. Various NGOs, journalists, researchers, and diaspora groups have sought to document the deaths.⁸⁶⁰ For instance, as of

849 Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021).

850 Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021).

851 Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021); UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 175, 181-182, 191.

852 Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021). See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 162.

853 Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021).

854 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 175, 182-183, 191.

855 Dawit Endeshaw and Katharine Houreld, “Deadly Detention” (*Reuters*, 17 June 2022).

856 Dawit Endeshaw and Katharine Houreld, “Deadly Detention” (*Reuters*, 17 June 2022).

857 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 174, 177, 187-188, 192-193, 195.

858 Dawit Endeshaw and Katharine Houreld, “Deadly Detention” (*Reuters*, 17 June 2022).

859 Dawit Endeshaw and Katharine Houreld, “Deadly Detention” (*Reuters*, 17 June 2022).

860 See also Jason Burke, “Ethiopia: 1,900 people killed in massacres in Tigray identified” (*The Guardian*, 2 April 2021); AP, “Official document describes scale of abuses in Ethiopia war” (*Associated Press*, 22 October 2022).



March 2024, the database ‘Ethiopia: Tigray War’ lists a total number of 3,789 reported casualties when filtered by selecting the perpetrator groups “Amhara Special Forces or Fano Militia” (152 victims), “Ethiopian National Defence Force” (1,369 victims), and “Eritrean Defence Force” (2,268 victims).⁸⁶¹ The website TGHAT published a “Victim List” that contains 3,615 names as gathered through witness reports, family notifications, Facebook posts, and news.⁸⁶² Both lists are far from complete. Other individual researchers and local journalists conducted interviews on the ground with family members of those killed, as well as with alleged perpetrators, collecting numbers and names of those killed.⁸⁶³

429. In addition to the killings of Tigrayans which have been analyzed for the purpose of the allegation of genocide, there are also reported instances of other murders of civilians apparently connected to the attack on the Tigrayan civilian population, but where the specific victims of these murders may not have been of Tigrayan ethnicity.
430. For example, on 23 March 2021, staff of Doctors Without Borders / Médecins Sans Frontières (MSF) witnessed the extrajudicial killing of at least four men on a road from Mekele to Adigrat.⁸⁶⁴ These were among a number of passengers who were removed from public buses by Ethiopian soldiers; while the women were separated and told to walk away, the men were shot. Although the MSF team was allowed to leave, the team was stopped some distance away, and the MSF driver was beaten outside of the car by Ethiopian soldiers. The MSF team was travelling in a clearly marked MSF vehicle.⁸⁶⁵ Attacks on the personnel involved in humanitarian assistance is prohibited and may constitute an attack amounting to war crimes.
431. On 28 April 2021, an employee of the Relief Society of Tigray, which partners with the US Agency for International Development, was shot dead in the Kola Tembien district.⁸⁶⁶
432. On 25 June 2021, three MSF aid workers were murdered and found on the ground outside their vehicle.⁸⁶⁷ All three—who were clearly identifiable as humanitarian aid workers, and thus at all times were under the protection of international humanitarian law—died through close-range gunshot wounds, indicating they were killed intentionally rather than being caught in cross-fire.⁸⁶⁸ Their vehicle was also shot at and extensively burnt.⁸⁶⁹
433. In total “at least 23 humanitarian aid workers also have been killed in the Tigray conflict.”⁸⁷⁰

861 Ethiopia: Tigray War, Database, [Victims](#) (last accessed 23 March 2024).

862 TGHAT, [Victim List](#) (last accessed 23 March 2024).

863 Confidential source provided to author.

864 Médecins Sans Frontières, “[Ethiopia: MSF staff witness men dragged off buses and killed in Tigray](#)” (MSF, 25 March 2021).

865 Médecins Sans Frontières, “[Ethiopia: MSF staff witness men dragged off buses and killed in Tigray](#)” (MSF, 25 March 2021).

866 Katharine Houreld and Giulia Paravicini, “[Exclusive: UN official accuses Eritrean forces of deliberately starving Tigray](#)” (Reuters, 11 June 2021); but see Tim Vanden Bempt, Sofie Annys, Emnet Negash, Robin Ghekiere, and Jan Nyssen, *Tigray: one year of conflict—Casualties of the armed conflict, 2020-2021—Tigray (Ethiopia)* (Every Casualty Counts, 2021), p. 4 (reporting the deaths of 11 staff of the Relief Society of Tigray on that occasion).

867 Declan Walsh, “[3 Aid Workers for Doctors Without Borders Are Killed in Tigray](#)” (New York Times, 25 June 2021).

868 Médecins Sans Frontières, “[Ethiopia: Still no responsibility established for the killing of MSF colleagues Maria, Tedros and Yohannes in Tigray](#)” (MSF, 19 January 2022).

869 Médecins Sans Frontières, “[Ethiopia: Still no responsibility established for the killing of MSF colleagues Maria, Tedros and Yohannes in Tigray](#)” (MSF, 19 January 2022).

870 Tim Vanden Bempt, Sofie Annys, Emnet Negash, Robin Ghekiere, and Jan Nyssen, *Tigray: one year of conflict—Casualties of the armed conflict, 2020-2021—Tigray (Ethiopia)* (Every Casualty Counts, 2021), p. 4.



VII. Findings on War Crimes

A. Summary of the Law on War Crimes

434. International humanitarian law (IHL) is composed both of treaty law (such as the Geneva Conventions, and their Additional Protocols) and customary international law. It applies when there is an armed conflict between two or more States (an international armed conflict) or when there is an armed conflict between one or more States and a non-State organized armed group or between such groups (a non-international armed conflict). While the *content* of the applicable law may vary to some extent between international and non-international armed conflicts, violation of the applicable law may equally engage the international responsibility of any State to which the relevant conduct is attributable. For a smaller subset of the IHL applicable in each context, a violation may also occasion individual criminal responsibility—a war crime. In other words, while all war crimes are violations of IHL, not all violations of IHL are war crimes.
435. To establish a war crime, it is necessary to prove: (a) the existence of an international or non-international armed conflict; (b) a nexus between that conflict and the relevant conduct of the perpetrator, and; (c) that the conduct of the perpetrator violated one or more specific rule(s) of IHL occasioning individual criminal responsibility. While it is not an exhaustive list of the war crimes which exist in customary international law, and its provisions may not mirror customary law in all respects, Article 8 of the Rome Statute of the ICC provides a useful summary of many of the most significant crimes.
436. There is little doubt that a non-international armed conflict existed in Ethiopia at all times material to this report, between at least 4 November 2020 and 2 November 2022, between Ethiopia and a non-State organized armed group (the TPLF).⁸⁷¹ This conclusion is not altered by the intervention of Eritrea, since its forces acted with the consent of Ethiopia and in support of Ethiopia's role in the conflict.⁸⁷² The conflict satisfied the legal conditions of sufficient organization of the parties, and the intensity of the hostilities exceeding internal disturbances and tensions, such as riots and isolated and sporadic acts of violence.
437. War crimes must be committed in the context of, and be associated with, an armed conflict (the so-called “nexus” requirement). This requirement is to be assessed in light of all the relevant circumstances. At a minimum, the conflict must have “played a substantial part in the perpetrator’s ability to commit [the crime], [their] decision to commit it, the manner in which it was committed or the purpose for which it was committed.”⁸⁷³ Relevant factors which may demonstrate the required nexus include “the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of the perpetrator’s official duties.”⁸⁷⁴ It is highly likely that many of the incidents described in this report satisfy the nexus requirement, insofar as they were frequently committed by persons affiliated with a party to the armed conflict in Tigray against persons affiliated with

871 See also *above* at para. 12. See also Geneva Academy of International Humanitarian Law and Human Rights, ‘A Non-International Armed Conflict in Ethiopia’s Tigray Region’ (21 January 2021).

872 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 90, 91.

873 See ICC, *Situation in Afghanistan*, Judgment on the appeal against the decision on the authorization of an investigation into the situation in the Islamic Republic of Afghanistan, ICC-02/17-138 OA4, 5 March 2020, paras. 69-70; ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23 and IT-96-23/1-A, Judgment, 12 June 2002, paras. 58-60 (observing further that “[w]hat ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment—the armed conflict—in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime”).

874 See ICC, *Situation in Afghanistan*, Judgment on the appeal against the decision on the authorization of an investigation into the situation in the Islamic Republic of Afghanistan, ICC-02/17-138 OA4, 5 March 2020, para. 69; ICC, *Prosecutor v. Ntaganda*, Judgment on the appeal of Mr Ntaganda against the “Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9,” ICC-01/04-02/06-1962, 15 June 2017, para. 68; ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23 and IT-96-23/1-A, Judgment, 12 June 2002, para. 59.



the adverse party, the perpetrator was frequently a combatant and the victim a non-combatant, and the existence of the conflict enabled the occurrence of the incidents by providing the means and opportunity to carry them out.

B. War Crimes committed against Tigrayans

438. There appears to be ample information suggesting that rules of IHL have been violated in the Tigray conflict, including those rules occasioning individual responsibility, and consequently that war crimes have been committed. Indeed, on 20 March 2023, the United States Secretary of State, Antony J Blinken, published a press statement declaring that “members of the Ethiopian National Defense Forces (ENDF), Eritrean Defense Forces (EDF), [...] and Amhara forces committed war crimes during the conflict in northern Ethiopia.”⁸⁷⁵
439. Notably, for example, there is a reasonable basis to believe that the reported conduct described above would—if proven—in any event also likely amount to violations of Common Article 3 of the Geneva Conventions, applicable in non-international armed conflicts, and other war crimes, such as rape.⁸⁷⁶ This provision has been described as the “minimum yardstick” applying in all conflict, reflecting “elementary considerations of humanity.”⁸⁷⁷ It requires that all persons not taking an active part in hostilities, including persons who are *hors de combat*, are “in all circumstances [...] treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.” Specifically, and relevant to the allegations in this report, this includes prohibitions on violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture, and outrages upon personal dignity, in particular humiliating and degrading treatment.⁸⁷⁸ It is beyond doubt that violations of Common Article 3 occasion individual responsibility and are war crimes.⁸⁷⁹
440. Certain alleged conduct which has not previously been described in this report may also potentially constitute war crimes. In particular, this includes alleged violations of the IHL rules regulating the conduct of hostilities, and guaranteeing that the civilian population retains access to objects indispensable to survival. Each of these is briefly addressed in turn.

1. Conduct of hostilities

441. It is settled law that the parties to an armed conflict, whether international or non-international, are not unfettered in the means and methods which they may use to carry out hostilities. In particular, they are obliged to respect the cardinal IHL principles of distinction and proportionality. These principles are designed to ensure that the civilian population as a whole, civilians not taking direct part in hostilities, and civilian objects are not made the object of attack, and to limit the degree of incidental harm which may be caused in seeking to defeat the adverse party. Violations of these core principles occasion individual responsibility, and thus constitute war crimes.
442. Notably, and irrespective of the nature of the armed conflict,⁸⁸⁰ it is a war crime to *intentionally* direct an attack against civilians not taking direct part in hostilities, or the civilian population as a whole,⁸⁸¹ or

⁸⁷⁵ United States Department of State, *War Crimes, Crimes Against Humanity, and Ethnic Cleansing in Ethiopia Press Statement*, 20 March 2023.

⁸⁷⁶ See *SECTIONS V.E.1.A), V.E.2, V.E.3, V.E. 4, VI.B.2, VI.B.4*.

⁸⁷⁷ ICJ, *Military and Paramilitary Activities In and Against Nicaragua*, Judgment (Merits), 1986, para. 218.

⁸⁷⁸ See Geneva Conventions I-IV, art. 3.

⁸⁷⁹ See e.g. ICC Statute, art. 8(2)(c).

⁸⁸⁰ The ICC Statute is distinctive because it introduced an asymmetry into the conduct of hostilities provisions between international and non-international armed conflict: compare, e.g., arts. 8(2)(b), 8(2)(e). However, this is without prejudice to customary international law: see art. 10. Customary international law equally prohibits so-called “unlawful” attacks and “disproportionate” attacks in both international and non-international armed conflict: see, e.g., [ad hoc caselaw].

⁸⁸¹ See, e.g., ICC Statute, arts. 8(2)(b)(i); 8(2)(e)(i).



against civilian objects which are not military objectives (so-called “unlawful attacks”).⁸⁸² It is likewise a war crime to *intentionally* direct an attack—even against a military objective—in the knowledge that this will cause incidental harm or damage to civilians or civilian objects that is excessive in relation to the concrete and direct overall military advantage which is anticipated from the attack (so-called “disproportionate” attacks).⁸⁸³

443. There are widespread reports of conduct which might potentially amount to unlawful attacks or disproportionate attacks of this kind. Such reports must, however, be approached with a degree of caution, since it is in the nature of these crimes that the perpetrator’s intent and knowledge cannot *necessarily* be inferred from the harm actually caused to civilians or civilian objects. In particular, for any attack which has in fact caused harm to civilian or civilian objects, a court seeking to establish the truth beyond reasonable doubt would still need to exclude relevant alternate possible causes of the harm. For example, that the attack may have been carried out on a lawful military objective, or that the harm caused to civilians was accidental, or proportionate **incidental** harm to an attack on some other military objective which may have been in the vicinity. While such alternate possibilities may be much less likely where the alleged perpetrator and victim are in close proximity, the relevant inferences may become proportionately more difficult as the degree of remoteness increases.
444. This does not mean that reports of civilian harm—especially if numerous or widespread—should be disregarded. To the contrary, such reports call for prompt and effective investigation. Furthermore, IHL imposes specific obligations upon the parties to armed conflict to take precautions when carrying out attacks, with a view to avoiding harm to the civilian population⁸⁸⁴—and while breach of these obligations is not itself a war crime, it may still occasion State responsibility.
445. Specific reports which might potentially suggest violations of the IHL rules governing conduct of hostilities, and which at least merit prompt and effective investigation, include:
- a. On 9 and 10 November 2020, the potentially indiscriminate shelling of Tigrayan civilians and civilian objects in Humera [Himora] in western Tigray by the EDF, wounding some 200 and killing at least 46 civilians, including children, and destroying houses and businesses in residential areas.⁸⁸⁵ According to local (Tigrayan) militia, on 9 November Tigrayan special forces were not in Humera, but only militia who refrained from shooting back toward Eritrea so as not to give away their positions.⁸⁸⁶ Civilian objects that were hit include: a school; the Africa/Ayga hotel (in Kebele 02); a mosque compound (Kebele 01); buildings near Saint Mary’s Church (Kebele 02); warehouses; and the Humera Comprehensive Hospital. However, military objects were present and also hit, constituting legitimate military targets. There is no evidence that the hospital was a military objective, as hospital staff are reported to have left for safety, implying that they were working in the hospital as civilians.⁸⁸⁷
 - b. On 17 November, the shelling of Shire by the ENDF killed at least 10 civilians and damaged civilian and industrial infrastructure. According to local residents, Tigray special forces and militia had left the

882 See, e.g., ICC Statute, art. 8(2)(b)(ii). An object may constitute a military objective if—with reference to its nature, location, purpose, or use—it makes an effective contribution to military action and its partial or total destruction, in the circumstances ruling at the time, offers a definite military advantage: Additional Protocol I to the Geneva Conventions 1977, art. 52(2); ICRC, *Customary International Humanitarian Law*, rule 8. Certain types of civilian objects—such as hospitals—may benefit from enhanced protection, insofar as parties to the conflict may be subject to further strict limitations on the circumstances, if any, when they may be treated as a military objective. See, e.g., Geneva Convention IV, art. 19 (in international armed conflict, civilian hospitals are absolutely immune from attack unless they are used to commit acts harmful to the enemy, and even if so due and specific warning must be given to the adverse party so that they may halt such acts before any attack may be launched); see also Additional Protocol II to the Geneva Conventions 1977, art. 11.

883 See, e.g., ICC Statute, art. 8(2)(b)(iv).

884 See, e.g., Additional Protocol I to the Geneva Conventions 1977, art. 57.

885 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

886 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

887 Goitom Mekonen Gebrewahid, *Primed For Death: Tigray Genocide, A Survivor’s Story* (2022), p. 33.



town before the shelling.⁸⁸⁸ Satellite imagery shows a dark smoke plume rising from a warehouse in Shire.⁸⁸⁹ Civilian objects hit include the Abuna Aregawi Church (in Kebele 03), which reportedly did not harbor any special forces or weapons; the “Dejena Hotel, Gebar Shire Hotel, Shire elementary school, the municipal building, a multi-story apartment building, residential areas near Suhul hospital, and Shire university’s agricultural campus, where displaced residents from Humera and other western Tigray towns had been staying.”⁸⁹⁰

- c. On 28 November 2020, in attacking Mekelle, the ENDF apparently shelled large areas of the city, at a time when it appears that the Tigray special forces had retreated.⁸⁹¹ Witnesses did not believe that these attacks were aimed at specific military targets.⁸⁹² At least 27 civilians were killed, including four children, and over 100 civilians were injured.⁸⁹³ A forensic pathologist confirmed that injuries depicted on images provided to HRW are consistent with fragmentation wounds likely from shelling. Visits by ICRC confirm that 80 percent of patients suffered trauma-related injuries.⁸⁹⁴ Areas struck were Ayder and Kebele 15. Civilian objects hit included: a residential compound near Hamza Mosque; a sheep market; Yekatit 23 elementary school (where four members of a family were killed, including two girls, aged 4 and 13); Ayder Referral hospital and nearby residences for doctors.⁸⁹⁵ In a parliamentary address two days later, Prime Minister Abiy claimed that no civilian had been killed in any military operation in Tigray during that month.⁸⁹⁶
- d. On 7 January 2022, a drone attack by the ENDF on a school compound in Dedebit functioning as an IDP camp⁸⁹⁷ killed at least 57 civilians and injured more than 42 others, in the absence of any military objectives.⁸⁹⁸
- e. On 22 June 2021, an airstrike is reported to have killed at least 80 civilians at a busy market in Togoga, 15 miles west of Mekelle.⁸⁹⁹ Forty-three others were wounded, including children. One survivor was selling produce from her market stall when the bomb landed in between restaurants and shops around noon.⁹⁰⁰ Government soldiers prevented ambulances from reaching the market immediately after the strike, meaning that only 8 people reached the hospital for treatment on the 22nd; in total, 33 people received care at Ayder Hospital.⁹⁰¹ This was followed by an attack by “Tigrayan rebels” against the government on 23 June, in which they shot down an Ethiopian Air Forces transport plane on its approach to Mekelle.⁹⁰²
- f. The UN also reported troop movements in north-western and central Tigray in June.⁹⁰³ According to a local resident cited by AP, federal police was seen beating people in the centre of Adigrat, north of Mekelle, after Ethiopian and Eritrean forces re-took Adigrat from “Tigrayan rebels.”⁹⁰⁴

888 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

889 Twitter Post by Christiaan Triebeert, 24 November 2020.

890 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

891 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

892 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

893 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021). See also UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), p. 2 (referring to 29 civilians killed by ENDF shelling).

894 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

895 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

896 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

897 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, p. 8.

898 Human Rights Watch, *Ethiopia: Airstrike on Camp for Displaced Likely War Crime* (24 March 2022).

899 Simon Marks and Abdi Latif Dahir, “Dozens Killed in Market Airstrike in Ethiopia, Officials Say” (*New York Times*, 23 June 2021).

900 Simon Marks and Abdi Latif Dahir, “Dozens Killed in Market Airstrike in Ethiopia, Officials Say” (*New York Times*, 23 June 2021). See also UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para 219.

901 Simon Marks and Abdi Latif Dahir, “Dozens Killed in Market Airstrike in Ethiopia, Officials Say” (*New York Times*, 23 June 2021).

902 Simon Marks and Abdi Latif Dahir, “Dozens Killed in Market Airstrike in Ethiopia, Officials Say” (*New York Times*, 23 June 2021).

903 Simon Marks and Abdi Latif Dahir, “Dozens Killed in Market Airstrike in Ethiopia, Officials Say” (*New York Times*, 23 June 2021).

904 Simon Marks and Abdi Latif Dahir, “Dozens Killed in Market Airstrike in Ethiopia, Officials Say” (*New York Times*, 23 June 2021).



- g. On 26 August 2022, an airstrike, attributed to the Ethiopian government, hit RES Kids Paradise kindergarten in Mekelle.⁹⁰⁵ Two children were among the four people dead on arrival at Ayder Referral Hospital.⁹⁰⁶ In total, seven civilians were killed, five of whom can be named.⁹⁰⁷ The Ethiopian government alleges that the TPLF was dumping fake body bags in civilian areas, and that its Air Force was targeting military sites only.⁹⁰⁸ However, journalists that were able to get into Tigray found evidence that MiG fighter jets dropped three bombs on the kindergarten and a neighboring house.⁹⁰⁹ An online video shows human remains scattered on the site, and fragments of the bombs were still evident in January 2023.⁹¹⁰ The UN SC estimates that the bomb was an *OFAB-100*, the typical impact of which mirrors the one found at the kindergarten. Fragments of the bomb show the letters “TONAT” and “NEST,” which could stand for “detonator nested.” Satellite imagery shows that Ethiopian military fighter jets on Bahir Dar airfield changed positions, comparing before and after the attack on the kindergarten, implying that the attacks were executed by the federal forces, since the TPFL does not own fighter jets.⁹¹¹

446. According to HRW investigation, in total over 83 civilians were killed in the artillery attacks on Mekelle, Humera, and Shire. HRW interviewed 37 witnesses of the attacks, together with several forensic experts, human rights experts, aid workers and journalists, and analyzed satellite imagery and other visual evidence.⁹¹² According to HRW, the attacks consist of a pattern of attacks after the Tigrayan special forces had already withdrawn from the towns; local militias present in Humera lacked “significant presence” to defend the town.⁹¹³ The aims of the attacks appear to be generalized populated areas, instead of specific military targets.⁹¹⁴ This pattern was confirmed in HRW interviews with 13 survivors from Rawyan and Axum.⁹¹⁵

905 Bernd Dörries and Ben Heubel, „Das Sterben der Anderen: Krieg in Tigray“ [The Dying of Others: War in Tigray] (*Süddeutsche Zeitung*, 10 January 2023).

906 Rael Ombuor and Rachel Chason, “An airstrike on a kindergarten and the end to Ethiopia’s uneasy peace” (*Washington Post*, 3 September 2022); France24, “Air strike hits capital of Ethiopia’s Tigray region as fighting resumes” (*France24*, 26 August 2022); YouTube Video of Civilian Property Destroyed in Airstrike in Mekelle; Henry Wilkins, “Ethiopian Government Launches Airstrike on Tigray Capital Mekelle” (*VOA*, 26 August 2022); Al Jazeera, “UN condemns deadly air raid that ‘hit kindergarten’ in Tigray” (*Al Jazeera*, 27 August 2022).

907 Bernd Dörries and Ben Heubel, “Das Sterben der Anderen: Krieg in Tigray” [The Dying of Others: War in Tigray] (*Süddeutsche Zeitung*, 10 January 2023); Ethiopia: Tigray War, Database, [Incident I01037](#).

908 Reuters, “Air strike on playground kills 7 in Ethiopia’s Tigray region—hospital” (*Reuters*, 27 August 2022).

909 Tweet by Techjournalisto, 11 January 2023.

910 Bernd Dörries and Ben Heubel, “Das Sterben der Anderen: Krieg in Tigray” [The Dying of Others: War in Tigray] (*Süddeutsche Zeitung*, 10 January 2023).

911 Bernd Dörries and Ben Heubel, „Das Sterben der Anderen: Krieg in Tigray“ [The Dying of Others: War in Tigray] (*Süddeutsche Zeitung*, 10 January 2023).

912 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

913 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

914 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).

915 Human Rights Watch, *Ethiopia: Unlawful Shelling of Tigray Urban Areas* (11 February 2021).



2. Starvation as a War Crime

447. According to the Rome Statute of the International Criminal Court—which in this respect might also reflect customary international law⁹¹⁶—it is a war crime both in international and non-international armed conflicts to “[i]ntentionally us[e] starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival.”⁹¹⁷ This includes “wilfully impeding relief supplies as provided for under the Geneva Conventions.”

448. This war crime has not yet been charged by any international court or tribunal, nor is it known that any similar prosecution has yet been pursued under the domestic law of a State. In a novel development, in May 2024, the Prosecutor of the ICC applied for the issuance of arrest warrants for this very crime.⁹¹⁸ Nevertheless, the ICC Elements of Crimes provide a convenient explanation of the specific elements unique to this crime: (1) the perpetrator deprived civilians of objects indispensable to their survival; and (2) the perpetrator intended to starve civilians as a method of warfare.⁹¹⁹

i. Depriving civilians of objects indispensable to their survival

449. For the purpose of international armed conflict, civilians are defined negatively as persons who do not fall within the various categories which establish combatant status.⁹²⁰ While non-international armed conflict does not make status-based distinctions in the same way, it can likewise be said that civilians would for the present purpose at least include all persons who are not taking direct part in hostilities.

450. The prohibited conduct (“depriving”) should be read broadly to encompass the full range of conduct prohibited by relevant provisions of international humanitarian law. As such, it is prohibited “to attack, destroy, remove or render useless” objects indispensable to the survival of civilians. Likewise, to the extent that a party to the conflict may have obligations under international law to permit the passage of relief supplies,⁹²¹ measures to impede their transit may also fall within the definition of “depriving.”

451. This war crime prohibits depriving civilians of a wide range of objects which are indispensable to their survival, and not just food and water. The Additional Protocols to the Geneva Conventions provide a non-exhaustive list of such objects, which include “foodstuffs, agricultural areas for the production

916 For example, international humanitarian law proscribes such conduct both in international and non-international armed conflicts: *see* Additional Protocol I to the Geneva Conventions 1977, art. 54; Additional Protocol II to the Geneva Conventions 1977, art. 14; ICRC, *Customary International Humanitarian Law*, rules 53-54. The customary nature of this crime may be implied by the UN Security Council’s unqualified statement in UNSCR 2417 (2018) that “using starvation of civilians as a method of warfare may constitute a war crime.” Likewise, Article 14(1)(b)(xxv) of the KSC Law lists starvation in the context of international armed conflict as a “crime under customary international law during the temporal jurisdiction of the Specialist Chambers.” Article 8 of the Rome Statute—on which Article 14 of the KSC Law is based—was amended in 2019 to ensure that the crime of starvation is not only applicable in international armed conflict under Article 8(2)(b)(xxv) but also in non-international armed conflict under article 8(2)(e)(xix), although this amendment is still being progressively ratified. In Articles 28D(b)(xxvi) and (e)(xvi), the Malabo Protocol also lists starvation as a war crime in both international and non-international armed conflicts—although, to date, this has only been signed by 15 States Parties of the African Union and has not yet been ratified.

917 ICC Statute, art. 8(2)(b)(xxv) (applicable in international armed conflict).

918 Office of the Prosecutor, Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine (International Criminal Court, 20 May 2024).

919 ICC Elements of Crimes, art. 8(2)(b)(xxv). The Elements further detail the usual requirements to satisfy the nexus to the armed conflict: that (3) the conduct took place in the context of and was associated with an international armed conflict; and (4) the perpetrator was aware of factual circumstances that established the existence of an armed conflict. Similar requirements apply *mutatis mutandis* for the analogue to this crime applicable in non-international armed conflicts.

920 *See* Geneva Convention IV, art. 4; Additional Protocol I to the Geneva Conventions 1977, art. 50.

921 *See, generally*, ICRC, *Customary International Humanitarian Law*, rule 55. For example, within the context of an international armed conflict, parties have obligations to allow the free passage of all consignments of medical and hospital stores, objects necessary for religious worship, and “essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases,” provided these are intended only for civilians: Geneva Convention IV, art. 23. Likewise, if an occupied territory is inadequately supplied, the occupying power shall agree to relief schemes on behalf of the civilian population—such as the provision of consignments of foodstuffs, medical supplies, and clothing—and is obliged to give them free passage subject to reasonable search and other relevant conditions: Geneva Convention IV, art. 59. *See, further*, Additional Protocol I to the Geneva Conventions 1977, arts. 69(2), 70; Additional Protocol II to the Geneva Conventions 1977, art. 18.



of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.”⁹²² Other commentators likewise suggest that “‘medical supplies and clothing,’ as well as ‘beddings [and] means of shelter,’ fuel and electricity” should be included in this list.⁹²³

452. The relevant *actus reus* must be carried out intentionally (that is, not accidentally or negligently),⁹²⁴ as well as with the requisite specific intent.

ii. Intention to starve civilians as a method of warfare

453. The defining characteristic of this crime appears to be the specific intent “to starve civilians as a method of warfare.” For the purpose of this report,⁹²⁵ it is understood that this means the perpetrator must not only intend the act which deprives civilians of objects indispensable to their survival, but they must also intend (a) that this will have a specified effect (i.e., that civilians will be deprived of such objects);⁹²⁶ and (b) that this will be carried out as a means to defeat the enemy.⁹²⁷

454. As elaborated above in section V.E.3.a), there is a reasonable basis to believe that the famine in Tigray resulted from the intentional deprivation of food and other objects indispensable to the civilian population, including through willfully impeding the passage of relief supplies.

C. Crimes committed by the TPLF and associated forces

455. The United States Secretary of State, Antony J Blinken, on 20 March 2023 published a press statement declaring that “members of [...] Tigray People’s Liberation Front (TPLF) forces [...] committed war crimes during the conflict in northern Ethiopia.”⁹²⁸ The ICHREE also found that “Tigray forces and their allied militias committed wide-ranging violations against civilians in Amhara region,” including killings, rape and sexual violence, and looting.⁹²⁹ These may amount to war crimes if there is a nexus between the individual act to the non-international armed conflict.⁹³⁰

1. Violations of the rules on conduct of hostilities, and violations of Common Article 3

456. The TSF is alleged to have killed civilians in several incidents, including:

- On 4 November 2020, killing civilians who sought refuge in a church in Adi Hageray,⁹³¹
- Between 6 and 9 November 2020, killing 17 civilians on two farms on the outskirts of Mai Kadra, and injured three, in an “ethnically motivated attack.”⁹³²

922 See Additional Protocol I to the Geneva Conventions 1977, art. 54(2); Additional Protocol II to the Geneva Conventions 1977, art. 14.

923 Global Rights Compliance, *The Crime of Starvation and Methods of Prosecution and Accountability, Expert Report*, para. 30.

924 See also Global Rights Compliance, *The Crime of Starvation and Methods of Prosecution and Accountability, Expert Report*, paras. 40-41. See also para. 37.

925 Cf. Global Rights Compliance, *The Crime of Starvation and Methods of Prosecution and Accountability, Expert Report*, paras. 42-84.

926 It is important to stress that the nature of this specific intent does not imply any requirement to prove that civilians *actually did* starve—although evidence that this occurred may be highly relevant in showing at least the foreseeability of such consequences.

927 This implies that this crime may not apply in circumstances beyond the conduct of hostilities, although this is without prejudice to the possibility that the same conduct may satisfy the elements of other war crimes or crimes against humanity.

928 United States Department of State, *War Crimes, Crimes Against Humanity, and Ethnic Cleansing in Ethiopia Press Statement*, 20 March 2023.

929 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 274, 275.

930 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 494 (noting that in relation to alleged crimes by Tigrayan forces, the ICHREE “was not able to establish the existence of a widespread or systematic attack against the civilian population, which could give rise to crimes against humanity”).

931 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), p. 2; para. 121.

932 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), p. 2; para. 98.



457. The JIT also alleged that from the outbreak of the conflict until the ceasefire on 28 June 2021, Amhara living in Mekelle were ethnically profiled and targeted by TSF soldiers and some in civilian clothing.⁹³³ Moreover, the JIT found that the TSF committed “acts of torture and other ill-treatment against civilians in places of detention and victims’ homes in Mekelle, Humera, Shire, Adebayo and Axum,” and killing some of the inmates.⁹³⁴
458. On 9 and 10 November 2020, Tigrayan militias are also accused of having arrested and beaten non-Tigrayan residents, and particularly targeting ethnic Amhara.⁹³⁵ One survivor reports that he was beaten by a large group of Tigrayan civilians and militia in his home, in Humera in front of his wife and children, and was insulted as an “Amhara donkey” before being taken to Humera police station, where he was held incommunicado.⁹³⁶ He said:
- “At Adebayo, my wrists were tied and they beat me until I bled. My captors were stamping on my back causing me to sustain injuries on the back. We spent one night at Adebayo during which Tigrayan militia and civilians insulted and threatened to kill us. The TPLF security however advised against killing us because we would be needed to provide intelligence information. The following morning, all the seven of us were taken to Shire with wrists so firmly tied that we bled through our finger nails. At Shire, they put chains on us and locked us up in a dark cell for four days without food. On the fifth day, we were each given a small packet of biscuits.”⁹³⁷
459. Local Tigray militia are accused of having attacked Hitsats camp on 23 November 2020, shooting dead eight Eritrean refugees outside the facility’s Mariam Ethiopian Orthodox Church.⁹³⁸
460. Tigrayan forces are also accused of having summarily executed 26 civilians on 15 occasions between 31 August and 4 September 2021 in the town of Chenna.⁹³⁹ Allegations of these incidents include the use of civilians by Tigrayan forces as human shields against Ethiopian federal forces’ attacks, which included artillery, mortars, and machine guns.⁹⁴⁰ According to AP News, at least 59 people were killed by Tigrayan forces. Survivors report that “Tigray forces arrived demanding food, then killed people who tried to resist when the fighters killed their animals or looted their properties.”⁹⁴¹
461. There are also allegations of summary executions of Amhara civilians in Kobo by fighters affiliated with the TPLF, followed by looting, on 9 September 2021.⁹⁴² In this instance, a total of 23 people are said to have been killed in four different incidents, all of which were civilians.⁹⁴³

933 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 99.

934 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 131.

935 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 132.

936 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 132.

937 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 132.

938 Yenat Mersie, Giulia Paravicini and Katharine Houreld “Dual Agenda: In Ethiopia’s civil war, Eritrea’s army exacted deadly vengeance on old foes” (*Reuters*, 1 November 2021).

939 Human Rights Watch, *Ethiopia: Tigray Forces Summarily Execute Civilians* (9 December 2021).

940 Human Rights Watch, *Ethiopia: Tigray Forces Summarily Execute Civilians* (9 December 2021).

941 AP, “At scene of Ethiopia’s new killings, some fight, some flee” (*Associated Press*, 10 September 2021).

942 Human Rights Watch, *Ethiopia: Tigray Forces Summarily Execute Civilians* (9 December 2021); See also Amnesty International, *Ethiopia: Summary killings, rape and looting by Tigrayan forces in Amhara* (16 February 2022) AFR 25/5218/2022.

943 Human Rights Watch, *Ethiopia: Tigray Forces Summarily Execute Civilians* (9 December 2021); See also Amnesty International, *Ethiopia: Summary killings, rape and looting by Tigrayan forces in Amhara* (16 February 2022) AFR 25/5218/2022.



462. According to lists provided to HRW, at least 74 civilians were killed between 31 August and 9 September 2021 in these two towns, some of whom however may have been taking DPH (which makes them legitimate targets).⁹⁴⁴ In total, local officials reported 120 and 200 civilian deaths during the fighting, which could not be corroborated by HRW.⁹⁴⁵
463. In addition to the alleged killings of civilians and persons *hors de combat*, in the towns of Kobo and Chenna,⁹⁴⁶ Tigrayan forces are also accused of having killed civilians and persons, as well as of having looted and damaged civilian objectives, in the towns of Yelen and Shewa Robit in Amhara.⁹⁴⁷
464. Tigrayan forces are also accused of having “attacked towns and villages in Afar or else engaged in heavy fighting with national and regional forces in close proximity to civilian areas” and that “[v]iolations against civilians, including death and injury, as well as their displacement as a result of heavy clashes, were found in four locations from November 2021: Kasagita, Berhale, Ab’ala, and Konneba.”⁹⁴⁸ Similarly, looting and destruction of property also occurred in Ab’ala, Berhale, Erebti, Konneba, and Kasagita in Afar region.⁹⁴⁹
465. There are some reports that Tigrayan Defence Forces killed Amhara civilians in the streets in Kobo,⁹⁵⁰ and in Aradom during house searches,⁹⁵¹ as well as 11 Afar civilians when shelling Dibena, on three separate days in August 2022.⁹⁵² Tigrayan forces are alleged to have killed at least 193 civilians in Raya Kobo (Amhara) between August and October 2022.⁹⁵³
466. The ICHREE also found that “Tigray force attacks in the Amhara region forced tens of thousands of civilians to flee their homes, leading to significant displacement from and within North Gondar, Central Gondar, North Wollo, South Wollo, South Gondar, and Wag Hemra, Zones.”⁹⁵⁴

2. Rape and conflict-related sexual violence

467. Tigrayan forces are accused of having committed acts of rape and sexual violence, albeit on a relatively smaller scale.⁹⁵⁵ The fighters were recognized as belonging to the TPLF because of their accents and the “ethnic slurs they used against victims, as well as their overt announcements that they were TPLF” (e.g., “Amhara is donkey,” “Amhara is useless,” and “greedy Amhara”).⁹⁵⁶
468. Once Tigrayan forces re-gained control of Tigray, pushing Eritrean and Ethiopian forces out, Tigrayan soldiers (as part of the TPLF, TSF or loyal militia), have also been accused of the widespread (gang)-rape

944 Human Rights Watch, *Ethiopia: Tigray Forces Summarily Execute Civilians* (9 December 2021).

945 Human Rights Watch, *Ethiopia: Tigray Forces Summarily Execute Civilians* (9 December 2021).

946 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, para. 44. *See also* UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 275 and following.

947 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, paras. 281-282.

948 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023) A/HRC/54/CRP.3, para. 317.

949 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023) A/HRC/54/CRP.3, para. 338.

950 Ethiopia: Tigray War, Database, [Incident I01038](#).

951 Ethiopia: Tigray War, Database, [Incident I01043](#).

952 Ethiopia: Tigray War, Database, [Incident I01039](#).

953 AP, “Official document describes scale of abuses in Ethiopia war” (*Associated Press*, 22 October 2022).

954 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 304.

955 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, para. 70.

956 Amnesty International, *Ethiopia: Survivors of TPLF attack in Amhara describe gang rape, looting and physical assaults* (9 November 2021). *See also* UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023) A/HRC/54/CRP.3, para. 299.



of Amhara women and girls, some as young as 14 years,⁹⁵⁷ 12 years,⁹⁵⁸ and 11 years old.⁹⁵⁹ A girl from Adi Hageray, a town in Tigray, also reported having been assaulted and raped by TSF soldiers.⁹⁶⁰

469. These acts of rape and sexual violence were widespread and directed “against Amhara and Agew women and girls, and one Amhara man, in 11 locations [...] in Boza, Chenna, Debark, Dessie, Hayk, Kobo, Lalibela, Shewa Robit, Sekota, Tabla, and Yelen.”⁹⁶¹
470. Other reported incidents include, for example, the alleged rapes of 143 women and girls by “Tigray forces” in the Raya Kobo area in Amhara;⁹⁶² the gang-rapes of 16 women by TPLF in the Amhara town of Nifas Mewcha in mid-August 2021;⁹⁶³ and the rapes of civilians by “Tigrayan forces” in Kobo and Chenna (northern Amhara) between late August and early September 2021.⁹⁶⁴
471. Tigray forces also are accused of having “perpetrated acts of rape and other forms of sexual violence against women during attacks in Afar region,” including “against Afar women in towns and villages in four locations across two zones of Afar, including Berhale, Erebt, Konneba, and Kasagita.”⁹⁶⁵ The patterns of violations resemble those committed by Tigrayan fighters in the Amhara region,⁹⁶⁶ and are “seriously underreported.”⁹⁶⁷
472. The rape by TPLF soldiers against Amhara women and girls can be characterized as “revenge rape” for the rape of Tigrayan women by Federal government forces in the early stages of the conflict.⁹⁶⁸ Similarly, Tigrayan forces are also alleged to have raped Eritrean refugees in revenge for the EDF atrocities against Tigrayans.⁹⁶⁹
473. One survivor reports her rapist having said that: “Our families were raped and now it is our turn to rape you.”⁹⁷⁰ Another survivor, from Chenna, reported that her rapist offered her a choice: be raped or be killed.

- 957 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), pp. 26-27, 32.
- 958 Rita Kahsay, Rowena Kahsay and Sally Keeble, *In Plain Sight: Sexual violence in the Tigray conflict* (Eleanor Press 2023), p. 39 (referring to “an account from a 12-year-old who was gang-raped by Tigrayan troops after they captured the village of Geregera, 100 km from Lalibela, in late August 2021”).
- 959 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 35.
- 960 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 164.
- 961 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 294.
- 962 AP, “Official document describes scale of abuses in Ethiopia war” (*Associated Press*, 22 October 2022).
- 963 Amnesty International, *Ethiopia: Survivors of TPLF attack in Amhara describe gang rape, looting and physical assaults* (9 November 2021) (noting that Amnesty was informed of the rapes of over 70 women by regional authorities: According to regional government desk officer for Women, Children and Youth Affairs, the number of women raped is reported as 71, while the Federal Ministry of Justice reports 73).
- 964 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (19 September 2022), A/HRC/51/46, para. 44.
- 965 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 332.
- 966 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 333.
- 967 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 335.
- 968 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 60 (“Reports consistently quote Tigrayan fighters as stating they were taking revenge for rapes their own mothers, wives, and community members suffered at the hands of Ethiopian forces earlier in the conflict.”); Amnesty International, *Ethiopia: Survivors of TPLF attack in Amhara describe gang rape, looting and physical assaults* (9 November 2021); UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 299.
- 969 Dr. Denis Mukwege Foundation, the Hague, Netherlands, and Center for Human Rights, Gender, and Migration at Washington University, St. Louis, USA, *Understanding Conflict-Related Sexual Violence in Ethiopia: A Case of the Tigrayan Conflict* (1 November 2022), p. 33 (citations omitted).
- 970 Amnesty International, *Ethiopia: Summary killings, rape and looting by Tigrayan forces in Amhara* (16 February 2022), p. 14. See also UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 35.



He then allegedly said: “You are lucky only two of us will rape you. When ENDF soldiers raped our women, it was usually 10 soldiers per woman.”⁹⁷¹

474. The rapes were “accompanied by shocking levels of brutality, including beatings, death threats,” which includes the insertion of foreign objects.⁹⁷² The TPLF fighters are said to have raped them at gunpoint, robbed, and physically and verbally assaulted them, often in front of their children.⁹⁷³ Fourteen of sixteen women interviewed by AI said they were gang raped.⁹⁷⁴ The TSF is accused of having raped the wives of ENDF soldiers on several occasions in Mekelle and Adi Hageray, as well as killed some women who had hidden phones in their vaginas with machetes.⁹⁷⁵
475. The CRSV was also accompanied by ethnic slurs, including “Amhara is a donkey,”⁹⁷⁶ and soldiers are reported to have said “Amhara has massacred our people (Tigrayans), the Federal Defense forces have raped my wife, now we can rape you as we want.”⁹⁷⁷
476. As a result of the rapes, victims report “a variety of symptoms including back pain, bloody urine, difficulty walking, anxiety and depression,” but “damage and looting to the town’s hospital and health station by the TPLF attack has meant that none of the survivors interviewed has been able to access comprehensive post-rape care, including emergency contraception, post-emergency prophylaxis for HIV and sexually transmitted infections, assessment and treatment of injuries, or focused therapy for mental health care.”⁹⁷⁸

971 UN ICHREE, “Comprehensive investigative findings and legal determinations: International Commission of Human Rights Experts on Ethiopia” (13 October 2023), A/HRC/54/CRP.3, para. 299.

972 Amnesty International, *Ethiopia: Summary killings, rape and looting by Tigrayan forces in Amhara* (16 February 2022), pp. 14, 15.

973 Amnesty International, *Ethiopia: Survivors of TPLF attack in Amhara describe gang rape, looting and physical assaults* (9 November 2021).

974 Amnesty International, *Ethiopia: Survivors of TPLF attack in Amhara describe gang rape, looting and physical assaults* (9 November 2021).

975 UN OHCHR, *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties* (3 November 2021), para. 43.

976 Amnesty International, *Ethiopia: Survivors of TPLF attack in Amhara describe gang rape, looting and physical assaults* (9 November 2021). See also UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para 35 (“survivors [were] often called ‘Amhara Donkey’ or accused of being ‘Abiy’s puppet’”).

977 Amnesty International, *Ethiopia: Survivors of TPLF attack in Amhara describe gang rape, looting and physical assaults* (9 November 2021).

978 Amnesty International, *Ethiopia: Survivors of TPLF attack in Amhara describe gang rape, looting and physical assaults* (9 November 2021).



VIII. Avenues for accountability

477. The non-international armed conflict between the TPLF and Ethiopia's federal government culminated in a *Cessation of Hostilities Agreement* on 2 November 2022, signed in Pretoria, South Africa, following AU-led peace talks.
478. As part of this agreement, Ethiopia committed to implementing a comprehensive national transitional justice policy, aimed at ensuring "accountability, truth, reconciliation and healing in post-conflict Ethiopia," consistent with the African Union's 2019 Transitional Justice Policy Framework.⁹⁷⁹ This process "can ensure a full and impartial investigation of atrocities and the prosecution of all parties accused of committing international crimes,"⁹⁸⁰ once a "national transitional justice policy that mirrors the AUTJP" is implemented.⁹⁸¹ This commitment is significant and important, since senior figures in Ethiopia have recognized that past impunity may contribute to future violence.⁹⁸² In order to effect this commitment, the federal government already established the National Dialogue Commission and the National Rehabilitation Commission.⁹⁸³
479. However, it remains to be seen how—or even whether—Ethiopia will seek to discharge its commitment in practical terms.⁹⁸⁴ Political will, sufficient financing, and independent judges are crucial, especially since those who signed the *Cessation of Hostilities Agreement* "may well be accused of crimes."⁹⁸⁵ Notably, Ethiopia has previously failed to implement transitional justice processes.⁹⁸⁶ While the Criminal Code (2004) includes some provisions relating to genocide and war crimes, commentators have noted that further legislation may be required to enable actual prosecutions for crimes against humanity.⁹⁸⁷ There is reason to doubt that domestic accountability mechanisms will be effective in ensuring accountability.⁹⁸⁸
480. Indeed, Ethiopia was reported to have prosecuted just three soldiers of rape, while 25 other soldiers had at that time been charged with rape and sexual violence,⁹⁸⁹ and 28 other suspects faced charges of killing civilians in northern Tigray by May 2021.⁹⁹⁰ There is no evidence of any subsequent radical increase in the

- 979 Tadesse Simie Metekia, "[Peace agreement pledges transitional justice for Ethiopia](#)" (*Institute For Security Studies*, 8 November 2022); Wubeshet Tiruneh, "[Accountability for atrocity crimes: how should Ethiopia implement its commitment under the agreement on permanent cessation of hostilities](#)" (*Opinio Juris*, 23 May 2023).
- 980 Tadesse Simie Metekia, "[Peace agreement pledges transitional justice for Ethiopia](#)" (*Institute For Security Studies*, 8 November 2022).
- 981 Tadesse Simie Metekia, "[Peace agreement pledges transitional justice for Ethiopia](#)" (*Institute For Security Studies*, 8 November 2022).
- 982 Max Bearak, "[She was in Abiy Ahmed's cabinet as war broke out; Now she wants to set the record straight](#)" (*Washington Post*, 30 December 2021) (quoting Filsan Abdi, former cabinet minister under Prime Minister Abiy: "If there had been accountability for the rapes that took place in Tigray, do you think so many rapes would have happened in Amhara and Afar? No. [...] Justice helps stop the cycle. But both sides felt they could just get away with it").
- 983 Wubeshet Tiruneh, "[Accountability for Atrocity Crimes: How Should Ethiopia Implement its Commitment under the Agreement on Permanent Cessation of Hostilities?](#)" (*Opinio Juris*, 15 May 2023).
- 984 See also UN ICHREE, "Report of the International Commission of Human Rights Experts on Ethiopia" (14 September 2023), A/HRC/54/55, paras. 82-87 (pointing out the weaknesses of the federal government's 'Options for Transitional Justice' policy paper; the government's failure to abide by international standards, and to address the policy's shortcomings; the availability of pardons and amnesties for crimes under international law which contradicts international and regional standards; the lack of efficacy of key Ethiopian institutions; the lack of criminalization of international crimes as reflected in the Rome Statute of the International Criminal Court; the absence of pathways to hold Eritrean soldiers to account in Ethiopia); paras. 88-90 (highlighting wider problems of the justice sector); paras. 91-93 (concluding that the Ethiopian federal government pursues a model of "quasi-compliance").
- 985 Julia Crawford, "[Ethiopia promises transitional justice once again](#)" (Justice Info, 2 March 2023).
- 986 Julia Crawford, "[Ethiopia promises transitional justice once again](#)" (Justice Info, 2 March 2023). See also Ethiopian Government-commissioned Working Group, *Policy Options for Traditional Justice: Draft for keyholder Consultations* (January 2023), p. 3 (pointing out that Ethiopia's previous attempts at transitional justice lacked a holistic transitional justice framework which meant its efforts were "ineffective, incoherence and largely fragmented").
- 987 Tadesse Simie Metekia, "[Peace agreement pledges transitional justice for Ethiopia](#)" (*Institute For Security Studies*, 8 November 2022) (arguing also that Ethiopia should also "criminalise torture and enforced disappearance as standalone crimes and provide legislation on command responsibility").
- 988 Wubeshet Tiruneh, "[Accountability for Atrocity Crimes: How Should Ethiopia Implement its Commitment under the Agreement on Permanent Cessation of Hostilities?](#)" (*Opinio Juris*, 15 May 2023).
- 989 Al Jazeera, "[Ethiopia convicts soldiers of crimes against civilians in Tigray](#)" (*Al Jazeera*, 21 May 2021). UN ICHREE, "Report of the International Commission of Human Rights Experts on Ethiopia" (14 September 2023), A/HRC/54/55, para. 52 (contrasting the number of 10,000 survivors of sexual violence with "only 13 concluded and 16 pending Ethiopian military court cases addressing sexual violence committed during the conflict," which "cannot be said to render meaningful justice for survivors, particularly considering the historical and contemporaneous impunity in Ethiopia for such acts").
- 990 Al Jazeera, "[Ethiopia convicts soldiers of crimes against civilians in Tigray](#)" (*Al Jazeera*, 21 May 2021).



volume of accountability efforts.⁹⁹¹ Given the scale of the alleged criminality, it thus remains fair to conclude that “no meaningful step has been taken to investigate and prosecute atrocity crimes committed in the context of the conflict.”⁹⁹²

481. To the contrary, Ethiopia has also expressed skepticism about the factual basis for many of the allegations of criminality during the conflict. Significantly, for example, Ethiopia dismissed the ICHREE’s allegation that all sides in the conflict had committed war crimes as “highly politicized,”⁹⁹³ refused to cooperate with the ICHREE, prevented access to fact-finding investigations, and tried to set conditions for the ICHREE’s work, which proved “unacceptable” to the Commission’s experts.⁹⁹⁴ Later, Ethiopia “slammed the commission’s reports as ‘inflammatory’ and ‘biased.’”⁹⁹⁵
482. More concerning still, Ethiopia consistently lobbied for the de-funding of the ICHREE since its inception, and ultimately succeeded in this goal.⁹⁹⁶
483. It is a dangerous precedent that a country under investigation has succeeded in dismantling an official, international commission of inquiry. Thus, despite some notable calls in January 2023 from major European states (France and Germany) for accountability for abuses committed during the Tigray conflict,⁹⁹⁷ by March 2023 “the US and EU member states folded to Ethiopia’s threats to prematurely end the ICHREE mandate, agreeing to refer to ICHREE’s forthcoming September report as its ‘final’ one.”⁹⁹⁸ This was less than half a year after the formal end of the conflict, and while allegations of violence and criminality continued.⁹⁹⁹
484. In October 2023, shortly after the second report of the ICHREE was published, the EU and other relevant States “failed to introduce any draft resolution at the UN Human Rights Council session that would either renew ICHREE’s mandate or maintain international scrutiny of the human rights situation in Ethiopia.”¹⁰⁰⁰ Notwithstanding a draft resolution circulated by the EU, the proposal did not proceed; Human Rights Council Member States like France or Germany failed to engage diplomatic efforts to renew the ICHREE, as did the group of African States and the United States.¹⁰⁰¹
485. Finally, whilst the *Cessation of Hostilities Agreement* stipulates that “the Ethiopian Government must investigate,” an independent investigation is preferable since the government itself is a party to the conflict, and accused of committing several crimes throughout the conflict.
486. In this light, and notwithstanding the provision in the *Cessation of Hostilities Agreement* that “the Ethiopian Government must investigate,” an independent international investigation seems not only warranted but preferable. Indeed, a study of 6,689 randomly selected Ethiopians found that only 2% of Tigrayans preferred domestic trials over hybrid or international options, while 60% of Tigrayans favored a UN tribunal, and that traditional domestic mechanisms (such as customary courts) should only be used to deal with property

991 Human Rights Watch, “Q&A: [Justice for Serious International Crimes Committed in Ethiopia](#)” (*Human Rights Watch*, 4 September 2023) (stating that “the government has also largely failed to credibly investigate and prosecute atrocity crimes”).

992 Wubeshet Tirunch, “[Accountability for Atrocity Crimes: How Should Ethiopia Implement its Commitment under the Agreement on Permanent Cessation of Hostilities?](#)” (*Opinio Juris*, 15 May 2023).

993 Katharine Houreld, Meg Kelly, and Stefanie Le, “[Hundreds massacred in Ethiopia even as peace deal was being reached](#)” (*Washington Post*, 28 February 2023).

994 Julia Crawford, “[Flawed Transitional Justice in Ethiopia](#)” (*Justice Info*, 19 October 2023).

995 Julia Crawford, “[Flawed Transitional Justice in Ethiopia](#)” (*Justice Info*, 19 October 2023).

996 AS, “Ethiopia loses second attempt to defund resources for UN rights experts” (*Addis Standard*, 31 December 2022).

997 AP, “[France, Germany urge Ethiopia on accountability after war](#)” (*AP News*, 12 January 2023).

998 Human Rights Watch, *World Report 2024: Ethiopia: Events of 2023*.

999 Human Rights Watch, *Ethiopia: Ethnic Cleansing Persists Under Tigray Truce* (1 June 2023).

1000 Human Rights Watch, *World Report 2024: Ethiopia: Events of 2023*.

1001 Human Rights Watch, “[Human Rights Council: EU Fails Ethiopia’s Victims](#)” (4 October 2023).



crimes rather than sexual violence or mass killings.¹⁰⁰² Yet considering Ethiopians generally, only 29% want to see involvement by the international community.¹⁰⁰³

487. Others have already called for a special mechanism “with adequate safeguards of independence and with a power to investigate and prosecute serious crimes based on international standards.”¹⁰⁰⁴ Such a mechanism should include women and girls, and other vulnerable groups, in any process and give adequate attention to gender-based crime.¹⁰⁰⁵ As the ICHREE similarly noted:

“The vast majority of Ethiopians asked by the Commission about accountability and healing expressed their complete lack of trust in Ethiopian State institutions to carry out a credible process of transitional justice. The Commission’s own assessment of the Government’s actions to date bears out this mistrust. The Government’s consultation process falls well short of African Union and international standards. Rather than reflecting victims’ voices, it is hostage to an arbitrary deadline for completion. Impunity, rather than accountability, is the norm regarding past violations.”¹⁰⁰⁶

488. Given all these circumstances, the following paragraphs outline some of the possible avenues for interventions under international law, with a view both to determinations of potential State responsibility and individual criminal responsibility. Other novel approaches may also be possible, such as the initiative to seek provisional measures under the African Charter on Human and Peoples’ Rights.¹⁰⁰⁷

A. State Responsibility and the International Court of Justice

489. The Genocide Convention foresees two main avenues for preventing and punishing genocide—by means of criminal justice systems, and by means of the mechanisms under the UN Charter and the resolution of disputes between States.

490. Thus, in the first regard—and consistent with the general obligation in Article I—Article V requires the Contracting Parties to enact the necessary legislation to punish individuals within their jurisdiction for conduct contrary to the Convention. In particular, Article III provides that Contracting Parties should not only punish genocide itself, but also “[c]onspiracy to commit genocide,” “[d]irect and public incitement to commit genocide,” “[an a]ttempt to commit genocide,” and “[c]omplicity in genocide.” According to Article VI, all persons charged with such acts “shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.” It is irrelevant whether or not the person was acting in an official capacity, as demonstrated by Article IV.¹⁰⁰⁸

1002 Patrick Vinck, Tadesse Simie Metekia, Geoff Dancy, Kathryn Sikkink, and Phuong N. Pham, “Can Justice Bring Peace to Ethiopia?” (*Foreign Affairs*, 15 November 2023).

1003 Patrick Vinck, Tadesse Simie Metekia, Geoff Dancy, Kathryn Sikkink, and Phuong N. Pham, “Can Justice Bring Peace to Ethiopia?” (*Foreign Affairs*, 15 November 2023).

1004 Wubeshet Tiruneh, “Accountability for Atrocity Crimes: How Should Ethiopia Implement its Commitment under the Agreement on Permanent Cessation of Hostilities?” (*Opinio Juris*, 15 May 2023).

1005 Tadesse Simie Metekia, “Peace agreement pledges transitional justice for Ethiopia” (*Institute For Security Studies*, 8 November 2022).

1006 UN ICHREE, “Report of the International Commission of Human Rights Experts on Ethiopia” (14 September 2023), A/HRC/54/55, para. 3.

1007 See, e.g., LAW, “Tigrayan victims secure provisional measures relief in landmark human rights case against Ethiopia” (18 October 2022).

1008 See also ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 144. See, further, paras. 419-420 (“there is no doubt that ‘complicity,’ in the sense of Article III, paragraph (e) of the Convention, includes the provision of means to enable or facilitate the commission of the crime, [...] although ‘complicity,’ as such, is not a notion which exists in the current terminology of the law of international responsibility, it is similar to a category found among the customary rules constituting the law of State responsibility, that of the ‘aid or assistance’ furnished by one State for the commission of a wrongful act by another State”), 421 (leaving open the question whether, for the purpose of the Genocide Convention, complicity presupposes that the person(s) concerned shared the specific intent required for genocide).



491. It follows that, if genocide was committed on its territory, or acts related to genocide under Article III, Ethiopia bears the primary responsibility under international law to investigate and punish such conduct.
492. Furthermore, in the second regard, Article VIII states that any Contracting Party “may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III.” Article IX also provides that disputes between the Contracting Parties “relating to the interpretation, application, or fulfilment of the [...] Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”¹⁰⁰⁹ In other contexts, such disputes have indeed been brought before the ICJ, in cases such as *Bosnia v. Serbia*, *Croatia v. Serbia*, *Gambia v. Myanmar* (still pending judgment), and *South Africa v. Israel* (currently at preliminary measures stage).
493. When ruling on Article IX disputes, the ICJ has stressed that it “has no power to rule on alleged breaches of other obligations under international law, not amounting to genocide, particularly those protecting human rights in armed conflict,” even if the alleged breaches are of obligations under peremptory norms or which protect essential humanitarian values and are owed *erga omnes*.¹⁰¹⁰ Nor does the jurisdiction of the Court under Article IX extend to alleged violations of the customary international law on genocide, to any extent this is not co-extensive with the Convention.¹⁰¹¹ Yet in determining whether an obligation *under the Convention* has been breached, and the legal consequences if so, it will have recourse not only to the Convention itself but also other relevant rules of general international law including on treaty interpretation and State responsibility,¹⁰¹² as well as international humanitarian law or international human rights law.¹⁰¹³

1. Responsibility for Genocide as such

494. The ICJ has confirmed that Article I not only imposes on Contracting Parties to the Genocide Convention “a direct obligation to prevent genocide,”¹⁰¹⁴ including as necessary “prevent[ing] persons or groups not directly under their authority” from carrying out genocide, but also “prohibit[s] States from themselves committing genocide.”¹⁰¹⁵
495. In order for the ICJ to find that a State is responsible for genocide, or other relevant acts under Article III(b) or (e) of the Convention, “it must be shown that genocide as defined in the Convention has been committed.”¹⁰¹⁶

1009 See also ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, pp. 43, 145-146.

1010 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 147 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, para. 85.

1011 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, paras. 87-89.

1012 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 149.

1013 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, paras. 85, 153.

1014 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 165.

1015 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, paras. 166-167.

1016 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 180; ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, para. 128.



496. Given the high standard of proof adopted, *in practice* the approach of the ICJ to finding that acts of genocide have been committed has been broadly similar to the approach of international criminal courts or tribunals in determining criminal charges, as explained further below.¹⁰¹⁷ Indeed, notably, to date, the ICJ has never determined that an act of genocide has been committed in circumstances when an international criminal tribunal has not also determined an act of genocide has been committed.¹⁰¹⁸ The question of whether the relevant acts were associated with the requisite specific intent has often proved to be key. Accordingly, while it is true that a State cannot itself exhibit a subjective mental state,¹⁰¹⁹ the mental state of relevant perpetrators is often very significant, assessed through objective manifestations including patterns of conduct, statements, official policies, and so on.
497. Once the ICJ has determined the existence of one or more acts of genocide, it will then determine whether those acts, i.e., carrying out genocide, may be attributed to the respondent State.¹⁰²⁰ Yet even if not, that is not the end of the matter. The ICJ will further consider whether the respondent State may nevertheless have incurred responsibility through the attribution to it of some or all of the acts in Article III(b) to (e) (conspiracy, incitement, attempt, or complicity) of the Genocide Convention; or whether it incurred responsibility for failing to prevent genocide.¹⁰²¹ Furthermore, and in any event, irrespective of the Court's determinations on any of the preceding matters, it will consider whether the respondent State may also have incurred responsibility for failing to punish genocide.¹⁰²² The obligations to prevent genocide and to punish its perpetrators remain distinct, even if they are connected.¹⁰²³
498. It follows from the above that, if necessary and appropriate in light of their own obligations under the Genocide Convention, any other State Party to the Genocide Convention could institute proceedings against Ethiopia at the ICJ.

2. Obligation to Prevent Genocide

499. Further or alternatively, even if a State is not responsible itself for carrying out genocide, but genocide has actually been committed, it may be responsible for its failure to prevent that genocide.
500. In order for the ICJ to find that a State is responsible for breaching the obligation to prevent genocide "it must be shown that genocide as defined in the Convention has been committed."¹⁰²⁴ Consistent with the above, the ICJ may itself enter such a finding applying "the standard of proof appropriate to charges

1017 In particular, for example, the Court adopted the "only reasonable inference" standard with regard to determinations of the specific intent for genocide: *see, e.g., ICJ, Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, paras. 148, 417, 440. This is the same standard used for inferential determinations in criminal cases, where guilt must be determined "beyond reasonable doubt."

1018 This question is currently before the ICJ in the case of *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, insofar as there is no international criminal court or tribunal presently able to exercise jurisdiction over the crime of genocide allegedly committed on the territory of Myanmar.

1019 New Lines Institute, *The Uyghur Genocide: an Examination of China's Breaches of the 1948 Genocide Convention*, March 2021, p. 35.

1020 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, paras. 378, 384. *See further* paras. 385, 391-393, 396-407.

1021 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, paras. 379-382.

1022 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 383.

1023 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, paras. 425-427.

1024 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 431.



of exceptional gravity.”¹⁰²⁵ That is to say, “evidence that is fully conclusive” such that the Court is “fully convinced” that the crime of genocide has been committed, and may be attributed to the respondent State.¹⁰²⁶ Similarly, where it is alleged that a State has failed to prevent genocide, or to punish or extradite persons allegedly responsible for genocide, “the Court requires proof at a high level of certainty appropriate to the seriousness of the allegation.”¹⁰²⁷ In circumstances where another court or tribunal has made relevant findings of fact, the ICJ may consider the procedure adopted by that court and in appropriate cases may “accept as highly persuasive relevant findings of fact made [...] at trial.”¹⁰²⁸

501. In particular, the duty to prevent genocide is an obligation of “conduct” rather than result; Contracting States to the Genocide Convention are not obliged to “succeed, whatever the circumstances, in preventing the commission of genocide”, but rather “to employ all means reasonably available to them, so as to prevent genocide so far as possible.” A State may incur responsibility if it “manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide.”¹⁰²⁹ It is irrelevant whether the respondent State claims, or even proves, that even its best efforts would not have sufficed to prevent the commission of genocide—not least since “the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result,” even if the efforts of one State alone were insufficient.¹⁰³⁰

502. The facts collated in this report clearly show that, even if the Ethiopian government and its agents have not carried out, assisted, or incited any act of genocide, their conduct does not appear to have been sufficient to discharge Ethiopia’s duty to prevent genocide under Article I once it became applicable. Indeed, it is hard to identify any relevant and adequate action taken in this regard at all, notwithstanding the commitment by Ethiopia’s Attorney General to set up a reporting hotline for ethnic profiling,¹⁰³¹ or the possibility of some limited steps toward prosecuting a small number of soldiers for crimes committed against civilians during the war.¹⁰³²

503. This failure perpetuated the situation of manifest and grave risk that acts of genocide would occur. Other States Parties to the Genocide Convention should consider their own obligations in this context, including with regard to potential action before the ICJ.

1025 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 181; ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, paras. 177-178. See also paras. 211-230 (concerning evidentiary principles), paras. 172-173 (on the burden of proof).

1026 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 209; ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports 2015, paras. 177-178.

1027 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 210.

1028 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 223 (concerning findings made by the ICTY).

1029 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 430 (continuing: “In this area the notion of ‘due diligence’, which calls for an assessment *in concreto*, is of critical importance. Various parameters operate when assessing whether a State has duly discharged the obligation concerned. The first, which varies greatly from one State to another, is clearly the capacity to influence effectively the action of persons likely to commit, or already committing, genocide. This capacity itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events. The State’s capacity to influence must also be assessed by legal criteria, since it is clear that every State may only act within the limits permitted by international law”).

1030 ICJ, *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, para. 430.

1031 Cara Anna and Andrew Drake, “‘Clean out our insides’: Ethiopia detains Tigrayans amid war” (*Associated Press*, 29 April 2021).

1032 Al Jazeera, “Ethiopia convicts soldiers of crimes against civilians in Tigray” (*Al Jazeera*, 21 May 2021).



B. Individual Criminal Responsibility

504. As described above, Contracting States to the Genocide Convention may potentially have recourse to their prerogatives and duties under that regime as a matter of State responsibility—including under Article IX (submitting disputes relating to the responsibility of a State to the ICJ).
505. Yet the prospect of investigations with a view to potentially holding individuals criminally accountable for relevant crimes under international law is likely to depend on Ethiopia's own exercise of jurisdiction (which seems unlikely, for the reasons explained above); or on some form of *ad hoc* measure by the international community such as a UN Security Council referral to the ICC or the creation of a bespoke mechanism of some kind (which is technically possible but politically difficult to achieve); or on the exercise of universal jurisdiction by one or more other States (which is practicable but likely to be confined to a small number of cases, largely determined by the course of events).
506. The limited options to establish an international framework directly which could carry out an effective criminal investigation may further underscore the potential significance of the inter-State measures described above.

1. International Criminal Court

507. At present, Ethiopia is not subject to the jurisdiction of any international court or tribunal with jurisdiction *ratione materiae* over the crime of genocide—or indeed crimes against humanity or war crimes. It is not a party to the Rome Statute of the International Criminal Court, which is the only court with permanent jurisdiction over such crimes.
508. Even as a non-State Party to the ICC, Ethiopia could still choose to accept the jurisdiction of the ICC on an *ad hoc* basis (and retroactively) with regard to the situation on its territory.¹⁰³³ While such a declaration does not oblige the Prosecutor to open an investigation, he has the discretion to seek authorization to do so under Article 15 of the Rome Statute. Once Ethiopia has conferred the necessary jurisdiction on the ICC, States Parties may also refer the matter to the Prosecutor, obliging him to open an investigation if there is a reasonable basis to do so within the meaning of Article 53 of the Statute.
509. While Ethiopia's *ad hoc* acceptance of the ICC's jurisdiction might present a positive step, it is, however, considered highly unlikely in the current political climate.
510. Alternatively, the UN Security Council could refer the situation in Ethiopia to the ICC, even without Ethiopia accepting jurisdiction on an *ad hoc* basis. However, for geopolitical reasons, it again appears highly unlikely that Security Council members would pass such a resolution.¹⁰³⁴ The UN Security Council has only ever referred two situations (Darfur and Libya) to the ICC. A referral of the situation in Syria was blocked by two permanent members, Russia and China. Afterward, in this light, States have been more reluctant to consider such a referral. Yet action by the ICC would also ensure that Eritrean soldiers could be prosecuted for alleged crimes on Ethiopian territory.¹⁰³⁵

1033 Rome Statute, Article 12(3): “A non-State party can make a declaration under article 12(3), requiring the Prosecutor to consider it under article 15 *proprio motu*, in order to make an article 15(3) request for authorisation by the Pre-Trial Chamber under article 15(4). Alternatively, once a non-SP made an article 12(3) declaration, a State party to the RS can refer the situation under article 14, which removes the requirement of a PTC authorisation.”

1034 See Kjetil Tronvoll, “The Anatomy of Ethiopia’s Civil War” (2022), 121 *Current History*, p. 169 (stating that “the insistence of Russia and China on non-interference has blocked any resolution addressing the conflict”).

1035 Rome Statute, Article 13(b)



2. Other international criminal tribunals

511. In the absence of any reasonable prospect for the situation in Ethiopia coming under the jurisdiction of the ICC, or Ethiopia itself seeking international assistance with a view to ensuring accountability, it is technically possible for the international community to create an *ad hoc* tribunal or other mechanism to address alleged crimes committed in the course of the Tigray conflict.
512. However, of the three main avenues, one is highly unlikely insofar as it likewise depends on a consensus among the permanent members of the UN Security Council; the second does not require such a consensus, but will require a large measure of consensus among at least a majority of UN Member States, which may require significant diplomatic efforts to achieve; the third does not require a majority of UN Member States, but does require a sufficient majority of members of the UN Human Rights Council.
513. Thus, the first option is that the international community could establish a new tribunal applying customary international law, similar to the *ad hoc* tribunals for the former Yugoslavia and Rwanda. These were based on a binding resolution by the UN Security Council under Chapter VII of the UN Charter. However, to the extent that deadlock in the UN Security Council is likely to prevent a referral to the ICC, it is equally likely to prevent the creation of a new *ad hoc* tribunal. Indeed, if there were sufficient consensus for action in the UN Security Council, it is unclear why an ICC referral would not be regarded as a preferable option, if only on grounds of cost.
514. The second option is for the UN General Assembly to create a mechanism, based on a resolution adopted by a majority of UN Member States. While it is true that the General Assembly has never created a tribunal, it did create an independent investigative mechanism for Syria. This mechanism does not have jurisdiction to prosecute crimes under international law, but rather to investigate such crimes and to share evidence with States for prosecution by them under the universal jurisdiction principle, as described below. In principle, if universal jurisdiction is the only means of recourse, it is likely to be more effective if supported by such a mechanism. On the other hand, unlike an *ad hoc* tribunal created by the UN Security Council, these kinds of investigative mechanisms created by the UN General Assembly do not have any power to require the cooperation of the State concerned, and so may be limited in what they can achieve.
515. The third option is for the UN Human Rights Council to create a similar mechanism to that which might be created by the UN General Assembly. Again, while it has never created a tribunal, it likewise created an independent investigative mechanism (for Myanmar). Such a mechanism would be essentially similar in its potential functions and powers.

3. Universal jurisdiction

516. Finally, States around the world with relevant legislation relating to crimes against humanity, war crimes, and genocide may be able to prosecute allegations under the principle of “universal jurisdiction.” The precise requirements depend on the State concerned. In some States, this may require a link of some kind between the prosecuting State and the alleged crime—but this might be satisfied, for example, by the presence of the victim(s) or perpetrator(s) on the territory of the State concerned.¹⁰³⁶
517. The primary benefit of cases brought under universal jurisdiction is that they draw primarily on the resources of the State asserting jurisdiction, supported as appropriate by other actors such as civil society or international bodies (such as an independent investigative mechanism, as described above). There is no requirement for international consensus or diplomatic engagement, and in some ways they seem to offer a

1036 See, e.g., Justice Beyond Borders, *Global Mapping Tool*. See also Trial International, *Universal Jurisdiction Annual Review*.



more practical and immediate way forward. Depending on the circumstances, States such as Germany may have a basis in their legal systems to carry out so-called “structural investigations” with a view to a more systematic application of their powers.

518. On the other hand, the weakness of universal jurisdiction is precisely the corollary of its strength. It does not entail or imply any kind of “joined up” effort toward accountability, and indeed is more likely to take place on the basis of opportunity—if a relevant victim or perpetrator finds themselves on the territory of the “right State” at the “right time.” Accordingly, while universal jurisdiction is an essential component of the drive toward accountability, States acting on this basis may be unlikely to be in a position to conduct an investigation or prosecute a case which “tells the whole story” of a conflict.
519. Yet in many cases, the investigation and prosecution of appropriate cases under the exercise of universal jurisdiction may be the most feasible step for States to take in the short- to medium-terms, and may potentially help build momentum toward other steps such as the commencement of proceedings at the ICJ. In the meantime, universal jurisdiction affords the possibility of satisfaction for at least some victims of some crimes, and most importantly an opportunity for victims’ testimony to be heard in a court of law.



Afterword

This project of the New Lines Institute is a compelling report on the atrocity crimes perpetrated in Tigray, applying for the first time international law, including the Geneva Conventions of 1949, their Additional Protocols of 1977, and the Genocide Convention of 1948, to the myriad allegations of international criminality. It determines convincingly that Ethiopia bears State responsibility for breaches of Article II and Article III of the Genocide Convention to which it is signatory. It also reasonably establishes that Ethiopia has not made sufficient provisions to prevent genocide according to its Article I duty to prevent.

Specifically, this report demonstrates there is a reasonable basis to believe that the intentional deprivation of food took place to starve civilians as a method of warfare. There is a reasonable basis to believe that the ENDF breached cardinal rules of distinction and proportionality in the bombing and killing of civilians and that this would likely amount to the commission of war crimes. Crimes against humanity, including forcible displacement, rape, conflict-related sexual violence, and persecution, are evidenced, as are at least four acts of genocide, as follows:

- The killing of Tigrayans
- Causing serious bodily or mental harm to Tigrayans
- Deliberately inflicting on Tigrayans conditions of life calculated to bring about their physical destruction in whole or in part
- Imposing measures designed to prevent births among Tigrayans.

These findings, drawn from a critical mass of evidence, underscore our collective legal responsibility as signatory states to the Geneva Conventions and the Genocide Convention to prevent further atrocities in the region, and highlight the challenges that will be faced in seeking justice. The actions taken by Ethiopia to suppress the ICHREE reporting, and the lack of investigation required under the *CoH* agreement, means international investigation is now fully warranted.

This report has taken the first step to ensure that the deadliest conflict of the 21st century is not allowed to pass without its most pressing injustices being identified and accountability pursued. The international community now has the impetus and the evidence it needs to act.

Ambassador David J. Scheffer

Former US Ambassador at Large for War Crimes Issues (1997-2001)

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