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Human Rights situations that require the Council's attention

Report of the International Commission of Human Rights Experts on Ethiopia^{*}, ^{}**

Summary

In the present report, submitted pursuant to Human Rights Council resolution 51/27, the International Commission of Human Rights Experts on Ethiopia provides an overview of the situation of human rights in Ethiopia. It identifies grave and systematic violations of international law and crimes committed in Tigray, as well as Amhara, Afar and Oromia regions. Violations include mass killings, rape, starvation, forced displacement and arbitrary detention. The conflict in Tigray has not ended, with Eritrean troops and Amhara militias engaging in ongoing violations. Past and current abuses in these four regions demand further investigation. The Government of Ethiopia has failed to effectively investigate violations and has initiated a flawed transitional justice consultation process. Ethiopia has sought to evade international scrutiny through the creation of domestic mechanisms ostensibly to fight impunity. The Commission recommends a range of measures to end current abuses and promote serious transitional justice.

^{*} The present report was submitted after the deadline to include the most recent developments.

^{**} The annex to the present document is reproduced as received, in the language of submission only.

I. Introduction

1. The year since the Commission's first report in September 2022 began with some signs of hope for the human rights situation in Ethiopia but ended with a significant deterioration of it. The signing of the Cessation of Hostilities Agreement (COHA) in Pretoria on 2 November 2022 brought about a notable diminution of the large-scale violence in Tigray. But the Federal Government has failed to carry out COHA commitments on human rights, transitional justice and territorial integrity. The conflict in Tigray, still not resolved in any comprehensive peace, continues to produce misery. Equally alarming, hostilities in Ethiopia are now at a national scale, with significant violations increasing particularly in Amhara region, but also ongoing in Oromia and elsewhere. The risk to the State as well as regional stability and the enjoyment of human rights in East Africa cannot be overstated.

2. The violations of human rights in Tigray are grave and ongoing. After the COHA, the Commission's investigations documented the continued presence in Tigray of Eritrean Defense Forces (EDF) responsible for continuing atrocities, at times committed not far from the Ethiopian National Defense Forces (ENDF). EDF attacks on civilians in Tigray, past and current – in particular sexual and gender-based violence – have been abetted or tolerated by the Federal Government, which has failed in its legal duty to protect its population from violations by a foreign army, or by Amhara militia present in the areas of Western and Southern Tigray. In and beyond Tigray, the Commission recorded scores of brutal incidents of rape and sexual violence and displacement. Across the country in 2023, it recorded large-scale arbitrary detentions (especially but not only of Amharas); the ongoing, widespread use of hate speech and incitement to ethnic and gender discrimination; and the continued devolution of civil authority through militarized "Command Posts," including under State of Emergency legislation.

3. These systematic and ongoing violations and crimes are entrenching alienation and estrangement amongst disaffected communities in Tigray, Amhara, Oromia and elsewhere. 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. Support for survivors of sexual and gender-based violence is non-existent in many areas. Instead of engaging with the Commission on transitional justice, the Government has publicly postured to demonstrate forward movement on the issue while little of substance is taking place. As a result of all these factors, the current situation across the country continues to bear hallmarked risks of future atrocity crimes.

II. Mandate and membership

4. In its resolution S-33/1 of 17 December 2021, the Human Rights Council (HRC) established the International Commission of Human Rights Experts on Ethiopia for a period of one year, with a mandate to conduct a thorough and impartial investigation into allegations of violations and abuses of international human rights law and violations of international humanitarian law and international refugee law in Ethiopia committed since 3 November 2020 by all parties to the conflict. Its mandate includes collecting and preserving evidence, in support of accountability efforts, and integrating a gender perspective and survivor-centered approach throughout its work. The Commission must also provide guidance on transitional justice, including accountability, reconciliation and healing. During the Council's 51st Session, the Commission's mandate was extended for an additional one year.¹ The Commission comprises three human rights experts appointed by the HRC President:

¹ A/HRC/RES/51/27.

Mohamed Chande Othman (Chairperson, Tanzania), Steven Ratner (United States of America) and Radhika Coomaraswamy (Sri Lanka).²

III. Methodology and standard of proof

5. The methodology employed was based on best practices of the OHCHR and fact-finding and investigation bodies mandated by the HRC.³ The Commission adopted an inclusive, and age- and gender-balanced approach to its investigations. It developed a strategy designed to collect, preserve and analyze evidence while also building the foundation for longer-term collection and verification efforts. The Commission adopted internationally accepted procedures and technologies for conducting remote investigations by investigation bodies denied physical access.

6. Consistent with other investigative mandates established by the HRC, the Commission employed a “reasonable grounds to believe” standard of proof. This standard is met when factual information has been collected that would satisfy an objective and ordinarily prudent observer that the incident has occurred as described with a reasonable degree of certainty.

7. The investigative component of the present report was prepared primarily on the basis of 545 firsthand interviews taken both remotely and in-person in countries neighboring Ethiopia.⁴ This includes 360 interviews undertaken during the reporting period, 155 females (152 women, 3 girls) and 205 males (199 men, 4 boys), as well as 185 interviews conducted during the Commission’s first mandate, 101 females (99 women, 2 girls) and 84 males (all adult men). Interviewees identified as being Afar, Agew, Amhara, Irob, Kunama, Oromo, Qemant, Somali, Tigrayan and mixed ethnicity. The Commission also interviewed Eritrean refugees who identified as being Biher Tigrinya and Bilen ethnicity. Interviewees identified as being of Orthodox, Catholic, Protestant and Muslim faiths or not holding religious beliefs. They also included persons who identify as LGBTQIA+.

8. In addition to firsthand statements, the Commission collected, consolidated, preserved and analyzed over 570 supplementary documents and evidence including satellite imagery, including from UNOSAT, photographs, videos, public statements by officials and copies of medical records.

9. The Commission faced challenges that prevented it from thoroughly fulfilling its mandate. Owing to logistical and administrative circumstances beyond its control, a significant proportion of its staff began work only in March 2023. This made it difficult to investigate some regional states to the same level as others. The problem was compounded by telecommunication blackouts or interruptions as well as protection concerns. The present report highlights some of the most serious violations but does not capture them all.

IV. Engagement with Member States

10. The Commission regrets the lack of cooperation from the Government of Ethiopia, despite the appeals made by the HRC and its own communications. The Commission repeatedly requested the Government for meetings, information and access to the country to implement its investigative mandate.⁵ The Commission also sought to engage with the Government on its advisory mandate, providing a guidance note on the ongoing transitional

² Former members include Chairpersons Fatou Bensouda (The Gambia) and Kaari Betty Murungi (Kenya).

³ See, generally, https://www.ohchr.org/documents/publications/coi_guidance_and_practice.pdf.

⁴ In 2023, the Commission undertook field investigations in Nairobi, Kenya (29 January-3 February and 7-14 May), and Kampala, Uganda (4-5 July).

⁵ Note verbale: HRC/ICHREE/2022/083 (30 January 2023); HRC/ICHREE/2022/085 (2 March 2023); HRC/ICHREE/2022/099 (9 May 2023); HRC/ICHREE/2022/105 (23 June 2023).

justice consultation and requesting further cooperation.⁶ The Government of Ethiopia neither responded to nor acknowledged these requests.

11. The Commission also wrote to the Government of Eritrea about its presence and involvement in alleged violations in Ethiopia.⁷ It received no response.

12. The Commission engaged with Ethiopians living in neighboring countries, and is grateful to the Governments of the Kenya and Uganda for their cooperation in this regard. It regrets that neither the Governments of Sudan nor Djibouti responded to repeated requests for access to Ethiopian refugees residing in their territories.

13. The Commission engaged with the Ethiopian Human Rights Commission (EHRC) and OHCHR-East Africa Regional Office (EARO) on information sharing. Their Joint Investigation Team (JIT) responded to the Commission's requests, initially made in May 2022, for access to information collected and owned jointly by the JIT. While the JIT shared the requested information twice, it only came in August 2023, during the drafting of this report.

V. Context

14. In its last report, the Commission noted the complex background to Ethiopia's violent and multiple conflicts.⁸ Political polarization about federalism and centralization, and new and historical ethnic grievances have continued to destabilize Ethiopia. After six months of fighting between November 2020 and June 2021, and a further year of bombardment and blockade, renewed fighting in Tigray from 24 August to 2 November 2022 displaced and endangered additional hundreds of thousands of civilians. Talks between the Federal Government and the Tigray People's Liberation Front (TPLF) in October 2022 failed as the ENDF and allied forces pressed into new areas. On 2 November 2022, the two sides signed the COHA. Although the handover of heavy weaponry and the disarmament of some Tigrayan forces have since been confirmed, both Eritrean and Amhara forces remain in parts of Tigray, and the COHA has not yet paved the way for a sustainable settlement.

15. After the COHA, hostilities in Oromia, ongoing between the Oromo Liberation Army (OLA) and ENDF since early 2019, re-escalated. Violence has grown in the four Wollega zones, Guji, Borana and in parts of West Shewa. Initial negotiations between the Federal Government and the OLA collapsed in April 2023, and the Government relaunched counter-insurgency operations in May 2023.

16. In April 2023, the security situation in Amhara began to deteriorate, following the assassination of the ruling party's regional head. Amid wider and long-standing Amhara grievances against the Federal Government, key Amhara politicians disapproved of the COHA negotiation and strongly opposed a withdrawal of Amhara forces from Western Tigray. By July, local Amhara *fano* militia groups began to coalesce, boosted by members of the Amhara Special Forces which the Government had attempted to demobilize. A campaign of assassination of senior regional security officials allowed *fano* or allied militants to enter and control several towns. As in Tigray and Oromia, these Amhara groups also seem to enjoy considerable local support.

17. After earlier moving against the TPLF in Tigray, and the OLA and other opposition in Oromia, the Government has now moved against political opponents in Amhara. In early August, the Federal Government declared a national State of Emergency, placing Amhara under a national Command Post. Fighting has continued in most zones of the region, with large-scale arrests in other areas.

⁶ Note verbale: HRC/ICHREE/2022/099 (9 May 2023); HRC/ICHREE/2022/105 (23 June 2023); HRC/ICHREE/2022/102 (15 June 2023); HRC/ICHREE/2022/101 (31 May 2023).

⁷ HRC/ICHREE/2022/111 (29 July 2023).

⁸ A/HRC/51/46 Section III.

VI. Military and armed actors

18. The conflicts since November 2020, both before and after the COHA, have involved multiple armed actors and hundreds of thousands of combatants. They include Ethiopia's ENDF and Eritrea's EDF, under the official chain of command of each state. They also include Special Forces nominally responsible to each Ethiopian Regional State Government, and a range of local and ethnic militias, some of significant scale. Many have shown a fluid tendency to align and realign with or against one another. Individuals and groups have often shifted allegiance and moved along a spectrum from formal military forces to localized, temporary or *ad hoc* militia, with several of the latter consolidating over the mandate periods. Tigrayan forces were made up of Tigrayan veterans or ENDF members, Tigray Special Forces, Tigray Regional Police, Tigray militia and new recruits. At times they allied with others, in particular Agew and Oromo groups.

19. Besides the multiple armed actors, the Ethiopian Government, at federal and regional levels, has regularly deployed a joint civilian-military "Command Post" system to implement the states of emergency declared since November 2020. This system provides the means to centralize control of all military, law enforcement and civil powers into one integrated security effort, headed by the Prime Minister, and exercised through the ENDF high command. Alongside national or regional command posts, other subordinate command posts continue to be established locally conjoining civilian and military control at lower levels.

VII. Investigative findings

20. The Commission's first report addressed only a small number of illustrative incidents and identified several areas meriting further investigation. Since its mandate renewal, the Commission investigated alleged violations perpetrated in Tigray, Amhara, Afar and Oromia regions, as well as violations against Tigrayans in other parts of Ethiopia. The incidents below focus on the period from November 2020 to the signing of the COHA in November 2022. The Commission also investigated ongoing violations and concerns that persist after the COHA (see Sec. VIII., below). More detailed findings and conclusions are included in the Commission's conference room paper (see A/HRC/54/CRP.2).

(i) Tigray

Mass killing of civilians

21. The Commission investigated several incidents of mass killings perpetrated by the ENDF and/or EDF, in concert or with the acquiescence of the other, which occurred in close proximity in time and place. Four emblematic examples include mass killings by the ENDF and EDF in Zalambessa (13 November 2020) and Adwa (20 November 2020), by the ENDF in Bora (8 January 2021), and by the EDF in Maryam Dengelat (30 November 2020). The Commission documented another mass killing by EDF soldiers in Mariam Shewito (25 October 2022), just days before the COHA.

22. In addition to these incidents of mass killings, 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. All were reflective of a manifest pattern, distinctly characterized by undertones of androicide and overwhelmingly targeted at fighting-age civilian males of Tigrayan ethnicity. Credible information indicates dozens of other similar incidents of large-scale killings which require further investigation.

23. Killings in Tigray region were carried out in the context of a siege, during which the ENDF and EDF deliberately interrupted food and medical supplies and cut off essential services including banking, telecommunications, electricity and trade. From November 2020 until June 2022, the EDF, ENDF, Amhara Special Forces and *fano* militia engaged in looting, pillage and destruction of civilian property on an industrial scale, while the Ethiopian government interrupted essential services including telecommunications, banking, and

electricity and restricted humanitarian access. 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.

24. The attacks on communities and their social fabric through the killing of men and boys and sexual violence against women and children (see paras. 25-27, below), was combined with the destruction of homes, crops, livestock and the regional health system. Access to medical assistance for survivors was curtailed by the siege, rendering them without the most basic medical care or any form of psychological support. The Commission 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. The Commission further verified hundreds of incidents of rape and other forms of sexual violence, and verified civilian deaths directly attributable to the manufactured humanitarian crisis in the period up to the COHA.

Rape and other forms of sexual violence

25. Across all zones and phases of the Tigray conflict, the Commission documented patterns of widespread and systematic rapes and sexual violence perpetrated against women and children. Such acts were carried out 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.

26. Tigrayan women, predominantly of reproductive age, were often targeted for sexual violence during home invasions or during looting of shelter sites, in detention settings, situations of enslavement, at or near barracks or while searching for food, water or safety. Survivors ranged in age from as young as 9 years-old to 60 and included pregnant women. Most women were subjected to unprotected multiple-perpetrator-rape, or individual perpetrator vaginal, anal and oral rape, often in front of children in their care or family members. At least one victim was raped on top of her dead family members immediately after they had been killed by ENDF.

27. Several of these acts were characterized by the deliberate infliction of burns and insertion into the genitals of foreign objects, including daggers, stones, plastic, nail clippers and in one case a plastic bag containing an ethnically derogatory note. Many of the objects could only later be removed by medical intervention. In similar harrowing cases, other survivors were urinated on or forced to drink urine. Rapes were often accompanied by dehumanizing and ethicized language.

Arbitrary arrest, detention and custodial deaths

28. Coinciding with the outbreak of conflict in Tigray in November 2020, Government forces immediately began ethnically profiling and arbitrarily arresting and detaining Tigrayans, in particular Tigrayan members of the ENDF, police force and civil service – but also academics and businesspeople – who were consistently referred pejoratively to as “junta.” After Tigrayan forces captured Mekelle and other territory in Tigray and began to advance towards Addis Ababa, a second wave of mass arrests and detention of Tigrayans in Addis Ababa began in July 2021.

29. The Government declared a nationwide state of emergency on 2 November 2021, whereafter Tigrayans in Addis Ababa continued to be profiled, arrested and detained into mid-2022. Some were transferred between detention facilities or makeshift internment camps both within and outside Addis Ababa, including in Awash *Sabat* and Awash *Arba* (Afar). The Commission identified up to 20 detention locations, both official and unofficial, used by Government forces to detain Tigrayan civilians during this period. On 21 November 2021, ENDF soldiers executed 83 Tigrayan ENDF soldiers, women and men, who were detained in Mirab Abaya, Arba Minch, Southern Nations Nationalities and Peoples Region.

30. In Western Tigray, thousands of Tigrayan women, men and children were also rounded up by Amhara Special Forces and *fano* – at times accompanied by ENDF and EDF – and taken to detention camps particularly between July and November 2021. Detainees were killed, tortured, raped and in some instances forcibly disappeared. The overwhelming majority were subjected to inhumane conditions and treatment in detention; most were not

provided with sufficient access to food, water, sanitation or medical treatment. Some Tigrayans were detained for brief periods and then forcibly expelled from Western Tigray, while others were held for over a year before being forcibly expelled. Women who were married, pregnant or had children as well as children and people over the age of 65 appear to have been released in November 2021 and forcibly expelled from Western Tigray. Men perceived to be of fighting age and women without children or who were not pregnant were kept in custody. The Commission documented expulsions of Tigrayans from Western Tigray even after the COHA.

31. The Commission also documented similar patterns of detention in Afar region, for example where Tigrayan women, men and children living in Ab'ala town, bordering Tigray, were rounded up by Afar Special Forces in December 2021 and taken to detention camps in Semera where they were held for up to nine months. Once again, detainees were kept in appalling conditions and the Commission documented rape and sexual violence against women and girls.

Incitement to discrimination, hostility and violence

32. Violations against Tigrayans civilians were frequently accompanied by insulting or derogatory language, often through pejorative terms including “junta,” “woyane” and “agame” during attacks. At times, perpetrators indicated a clear intention to target the group on the basis of ethnicity. This pattern included describing Tigrayans as “cancer,” indicating a desire to kill men and children, or else to “destroy” women’s reproductive capacities.

33. Violations also occurred in a wider context of anti-TPLF narratives propagated by government officials, which over time expanded to include the Tigrayan population more widely. These statements include the Ethiopian Prime Minister insinuating on 30 June 2021 that all Tigrayans were supporting “the enemy” and that “junta” was a “cancer” and “invasive weeds” that needed to be removed; and in November 2021 calling the TPLF a “terrorist” group “who have tentacles embedded within civilian populations.” Federal officials also called for “eradication of the enemy” (State Minister of Peace); the removal of “disease,” “thorns,” and “traitors” from Ethiopia (Deputy Director, Ethiopian Media Authority); “erasure of woyane” equivalent to the population of Tasmania (Social Affairs Advisor to the Prime Minister); and elimination of the TPLF, its followers and ideologies (Head of National Intelligence & Security Service). Such narratives were prevalent on social media.

(ii) Amhara and Afar

“Three [Tigrayan fighters] broke the door and entered my house. They said they were informed that it was a militia house and there were weapons; they searched but didn’t find any, so they detained me. That night, two came to my room. They beat and kicked me... then they both raped me.”

—Female survivor from Wag Hemra Zone.

Amhara

34. By July 2021, Tigrayan forces and allied militia members began committing serious violations during offensives in Amhara and Afar regions. At times, local villagers and residents took up arms to fight against Tigray-aligned forces, although Tigray-aligned fighters killed unarmed civilians not taking a direct part in hostilities, in particular men. While in control of Amhara towns and villages, Tigray-aligned fighters also conducted regular house searches looking for “militia” members and weapons, during which they beat, harassed and detained civilians.

35. Tigray-aligned fighters’ presence in Amhara between July and December 2021 was also accompanied by violence and brutality, including rapes of girls as young as 11 and of women, in some cases in front of their children. The Commission documented widespread rape, multi-perpetrator-rape and other forms of sexual violence against ethnic Amhara and Agew women and girls in at least 11 towns and villages in Wag Hemra, North and South Wollo and North Shewa zones. Certain incidents were characterized by pejorative and derogatory comments, with survivors often called “Amhara Donkey” or accused of being

“Abiy’s puppet.” In some instances, Tigray-aligned fighters told the victims they were specifically targeting Amhara women and girls in revenge for the rape of Tigrayan women.

36. The Commission further reinforced its previous findings that Tigray-aligned fighters killed numerous civilians in Kobo town, Semien Wollo Zone and Chenna village, North Gondar Zone in September 2021 (see A/HRC/51/46, paras. 35-44.), and documented killings of Amhara civilians including in Shewa Robit and Yelen. The targeting of men in Kobo and Chenna continued to have a significant impact on women, many of whom struggled to care for their children and extended families in the absence of male breadwinners.

37. Tigrayan forces and their allies also engaged in widespread looting of public and private property in Chenna, Dessie, Hayk, Kobo, Lalibela, Sekota, Shewa Robit and Yelen. This included schools, medical facilities, police stations and other civilian buildings.

Afar

“It’s something very difficult to explain. I lost many people who were dear to me... my house was destroyed and looted. [Now] I have nothing and receive no humanitarian assistance... I’m living in misery.”

—Man from Kasagita.

38. Witnesses in Afar provided consistent accounts of the intense fighting between Tigray-aligned fighters and ENDF and its allies during Tigrayan force attacks on towns and villages, in particular from November 2021 to March 2022, including Berhale, Ab’ala, Kasagita, Erbeti and Konnaba. They reported widespread pillaging of civilian homes and foodstuffs. Tigray-aligned fighters also killed civilians and perpetrated acts of rape and sexual violence against women and girls. Wives of local militia fighters, or women perceived to be related to militia, were especially targeted. This had a significant impact on children and relatives, many of whom witnessed the assaults. As in Amhara, interviewees described how they were struggling to care for their children and extended families due to male killings. Civilian casualties also often resulted from incidents of shelling which forced people to flee their homes. Although active fighting in Afar region has ceased, the Commission documented how explosive remnants of war (ERW) pose a serious and ongoing threat to civilians, particularly children. At least 185 people, mostly children, have been killed as a result of ERW in Afar since November 2020.

39. Witnesses in Afar further described the largescale looting of livestock, including camels and oxen. This has had devastating and long-term impacts on communities, who rely on livestock for both food and income. As elsewhere in Ethiopia, humanitarian needs in Afar remain significant, including due to the pause in food aid distribution, high rates of malnutrition and the multi-regional invasion of desert locusts.

(iii) Oromia

“They tied my hands behind my back. They stepped on my head with their shoes. Then I was beaten with electric wire on the soles of my feet... They kept telling me that I had a link with OLA... I do not know any OLA.”

—Man detained by security forces in West Wollega.

40. The Commission investigated several emblematic incidents of extrajudicial killing, including the detention and killing of leaders of the Karrayyu community at the hands of government security forces in Fentalle District, East Shewa Zone on 1 December 2021. Security forces detained 39 men, including the senior leadership of the Karrayyu community, who were participating in a *Waaq Kadhaa* prayer ceremony, summarily executing 14 and holding 23 others in a military detention camp for over one month. In another incident, a 17-year-old boy was publicly executed by government security forces in Dembi Dollo, Kellem Wollega Zone, on 11 May 2021. He had been accused of being a member of a local armed group. Despite widespread outrage in both cases, as far as the Commission is aware, no one has been held accountable. Oromos living in Kellem Wollega and West Wollega also described killings of family members, often accused of being members of armed groups, with total impunity.

41. The Commission further uncovered a pattern of arrest and detention of Oromo civilians, in particular men, accused of having links with the OLA. Detentions documented between November 2020 and February 2023 were perpetrated primarily by the federal or regional police, Oromia Special Forces and at times the ENDF and were accompanied by torture and ill-treatment. Violations are ongoing. Family members of suspected OLA fighters were also targeted for arrest and detention – including women who experienced sexual violence. Arrests, detentions and killings often took place against a backdrop of curfews and restrictions on movement, contributing to an overarching climate of fear. Large areas of Oromia appear to have been administered throughout the mandate periods under militarized Command Posts, whether or not State of Emergency legislation was in force.

Drone strikes

42. The Commission also continued to investigate the civilian impact of a series of Ethiopian Air Force drone strikes carried out in Oromia region in October and November 2022, when fighting between the OLA and ENDF had re-escalated, particularly in Western Oromia. Access to Western Oromia remains extremely restricted, imposing constraints on access to information. The Commission was able to verify three separate incidents during which civilians were killed or injured and recommends further investigations.

VIII. Ongoing violations and concerns: Key themes

(i) The continued presence of Eritrean forces

43. The presence of Eritrean forces on the territory of Ethiopia since the onset of fighting in early November 2020 has significantly exacerbated the conflict in Tigray and the scale and intensity of violations. After months of denials, the first official confirmation of the involvement of Eritrean troops emerged from Ethiopia in March 2021, and from Eritrea in April 2021.

44. Multiple witnesses confirmed that ENDF and EDF troops conducted joint operations on the ground, often arriving simultaneously in towns and villages. Credible information also indicated that certain air attacks in Tigray were launched from Eritrean territory.

45. Multiple victims and witnesses identified Eritrean forces committing some of the most serious violations in Tigray. These include largescale killings, particularly of civilian Tigrayan men perceived to be of fighting age; rape and other forms of sexual violence; arbitrary detention; attacks against refugee camps and *refoulement* of Eritrean refugees in Ethiopia; indiscriminate shelling of civilian areas; destruction and looting; and arbitrarily blocking humanitarian access. Eritrean President Isaias Afwerki has continued to deny allegations of violations by EDF troops, describing them as a “lies,” “fabrication,” and “fantasy.” The COHA required the disarmament of Tigrayan forces concurrently with full withdrawal of foreign forces from Ethiopian territory, as well as non-ENDF forces from the region. Not only do Eritrean forces remain present on Ethiopian territory, but their presence frustrated the activities of the African Union Monitoring, Verification and Compliance Mission (AU-MVCM), and UN OCHA in May 2023.

46. Since the COHA, the Commission has documented Eritrean forces’ continuing presence and involvement in violations in Tigray. It is particularly concerned about the ongoing presence of Eritrean forces in areas of Ethiopia populated by minority Irob and Kunama communities, both of which straddle the international border, and continues to receive credible reports of violations against civilians in these areas. The violations by the EDF, whether acting in coordination with ENDF or on their own, highlight a flagrant failure of Ethiopia to protect its own civilian population from violations by other actors as required by international human rights law. The ongoing violations by Eritrean forces merit further investigation.

(ii) Starvation and food insecurity

“Some brothers and sisters died by bullets, but we can die by starvation.”

—Man displaced from Tigray.

47. The Commission welcomes the explicit commitments made by signatories to the COHA to allow for unhindered humanitarian access to all in need; to use humanitarian aid exclusively for humanitarian purposes; and to ensure that humanitarian aid is used solely for such purposes.⁹ Given the previously documented use by the Federal Government and allied regional state governments of starvation as a method of warfare in Tigray region, such commitments are particularly important. More broadly, the State of Ethiopia has a core legal obligation to take the necessary action to mitigate and alleviate hunger for all its population.

48. After discovering aid diversion, on 3 May 2023, the United States Agency for International Development (USAID) and the World Food Programme (WFP) announced that they had suspended in-kind food assistance to Tigray region. In June, the suspension was extended to the whole country after indications of a widespread and coordinated campaign to divert food assistance. According to the head of the Tigray office of the Disaster Risk Management Commission, some 1,400 hunger-related deaths were recorded in Tigray between April and August 2023 alone.

49. Since the suspension announcement in May, multiple interviewees in Tigray described facing a “desperate situation” from the acute impact of not receiving aid. One interviewee displaced in Maychew district noted how assistance in the form of wheat, lentils and cooking oil had dwindled completely by June. Others explained the impact of losing weekly provisions in the form of grains and corn, having to borrow money to obtain access to basic staples to feed their families or relying on bits of leftover meals from their neighbors for basic sustenance. This situation is challenging for displaced civilians unable to return home due to the presence of armed actors, including those forcibly displaced by Amhara forces from Western Tigray. In August, the WFP announced that it would slowly resume food aid to Ethiopia through small-scale distribution.

50. The Commission is deeply concerned that, at the time of writing, more than 20 million Ethiopians urgently require humanitarian food assistance, many of whom are suffering from famine-like conditions including those in the drought-affected areas of Afar and Oromia.¹⁰ Over 253,300 people in southern Tigray also depend on 33,000 hectares of crops that are at risk of locust infestation.¹¹ Meanwhile, malnutrition rates across Ethiopia remain exceedingly high, with nearly 39 per cent of Ethiopian children’s growth currently stunted.¹² Access to adequate healthcare also remains precarious in Tigray, with residents in Egela district for example, including pregnant women, forced to walk nearly 40 kilometers to access the nearest health facility. The Commission notes that the perpetration and impact of starvation is gendered and further found a nexus between crimes of starvation and sexual violence.

(iii) Sexual and gender-based violence

“Survivors lost faith in justice; they asked me if the world had forgotten about them, and if their family would ever accept them after what happened to them.”

—Survivor of sexual violence.

51. The Commission found ongoing patterns of rape and sexual violence, predominantly multiple-perpetrator-rape and situations of sexualized enslavement targeting women and girls. 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. Based

⁹ CoHA, Arts. 2(g)-(h), 5(4).

¹⁰ <https://news.un.org/en/story/2023/06/1137512>.

¹¹ <https://reports.unocha.org/en/country/ethiopia> (11 August 2023).

¹² <https://www.unicef.org/ethiopia/every-child-nutrition>.

on the consistent patterns documented by the Commission over the course of its two mandates, there are reasonable grounds to believe that EDF members bear responsibility for continuing crimes of rape and sexual violence against women and girls in Tigray.

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. By comparison, the Commission is aware of only 13 concluded and 16 pending Ethiopian military court cases addressing sexual violence committed during the conflict.¹³ Such cases cannot be said to render meaningful justice for survivors, particularly considering the historical and contemporaneous impunity in Ethiopia for such acts.

53. 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.

54. Multiple interviewees from Afar, Amhara, and Tigray described how 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. Survivors, civil society activists and religious leaders in these regions also described ongoing impacts for women, including social stigma, isolation and the threat of divorce.

55. The realities of a dismantled health system in Tigray and sparsely available health systems in Afar, Amhara and Oromia further raise serious concerns about undiagnosed and untreated long-term physical consequences of rape and sexual violence and related sexual and reproductive health concerns. These include HIV, sexually transmitted infections, reproductive harms and unwanted pregnancies, which, when discovered have led to a prevalence of unsafe abortions.

56. Meanwhile, structural drivers of rape and sexual violence in Ethiopia, including systemic gender inequity regarding all areas of life, absence of protective state structures or law enforcement as well as continuing economic and socio-political instability and normalization of violence against women and girls have been exacerbated by armed conflict and violence. While manifestations of patriarchal domination in Ethiopia vary by region, ethnicity and religion, the destabilizing effect of sexual violence continues to significantly weaken the social fabric.

(iv) Incitement to discrimination, hostility or violence

57. During its investigation, the Commission has been struck by the prevalence of exclusionary and hateful discourse in Ethiopia, particularly online. The Commission found multiple instances of derogatory language, as well as sexualized verbal abuse and incitement against political and ethnic groups since November 2020 which continued throughout 2023. For example, the Commission observed an increase in ethicized language objectifying Oromos, Tigrayans and Amharas in the context of the deteriorating security situation in Amhara from April 2023. In recent weeks, senior Government advisors coined a new term “*jawisa*” for *fano* fighters.¹⁴

58. From July 2023, the Commission also documented a disturbing increase in hate speech against persons who identify as LGBTQIA+, including calls to kill, whip and beat them; it noted instances of alleged attacks, as well as statements made by members of parliament, senior members of the executive, academics, opposition politicians, media platforms and diaspora groups. Such rhetoric is even more disturbing as it comes in a context

¹³ S/2023/413, p. 27.

¹⁴ “Jawisa” translates to bandit, hunter, scavenger.

where LGBTIQ+ persons face discrimination, marginalization, and criminalization in law, policy and practice.

(v) Securitization of the State

“A Command Post means the rule of gun. There is no law, the local administration is frozen, and the army rules the area... what the Command Post does, it does with complete impunity.”

—Oromo man.

59. Many of the violations perpetrated by the ENDF, EDF, Amhara Security Forces and *fano* in Tigray during the first phase of the conflict were committed while the underlying region was under the control of a command post, established by the state of emergency announced on 4 November 2020. In the face of increased violence, in Oromia and Amhara, command posts were established in Western and Southern Oromia from early 2019, comprised of local militia, Oromia Special Forces, ENDF, federal police and Oromia regional police. The Commission’s investigation found that although claimed to have been officially lifted, command posts continue to operate in some areas of Oromia. Witnesses from Western Oromia described ongoing arbitrary restrictions on freedom of movement, including curfews, denial of access to healthcare, shootings of unarmed residents and arbitrary arrest and detention. Other violations under command post authority include extrajudicial killings, rape and the destruction of civilian property.

60. Most recently, on 4 August 2023, the Ethiopian Council of Ministers announced a six-month state of emergency which also established a command post system across Amhara. Multiple urban centers in Amhara are now under a state of emergency and curfew, including regional capital Bahir Dar, Gondar and Lalibela. Telecommunication interruption made accessing information challenging; however the Commission received multiple credible reports of violations, including mass arbitrary detention of Amhara civilians and at least one drone strike.

IX. Legal findings

61. The Commission’s legal findings are based on its investigative findings. Detailed findings, including under international refugee law, are provided in A/HRC/54/CRP.2. Based on its investigative findings and continuous credible reports of serious violations of international law, further investigation is warranted into ongoing violations and other risks of future atrocity crimes. This includes the situation in Amhara, Oromia, and Western Tigray as well as reports of violations by the EDF in other areas of Tigray. Additional investigations into command and superior structures, including intent, in relation to the conflict since 3 November 2020 are also required.

62. These legal findings should be read in the context of State responsibility, which should be addressed alongside individual criminal responsibility as part of accountability and transitional justice processes. The Governments of Ethiopia and Eritrea carry State responsibility for violations of international law committed by their organs of state, and persons and groups acting under their instruction, direction or control. Ethiopia is also responsible under international human rights law for its failure to protect its citizens and others on its territory from violations committed there by the EDF and non-State actors.

International human rights law

63. The Commission finds reasonable grounds to believe that the ENDF, EDF and allied regional special forces, including Amhara Special Forces and Afar Special Forces and militias, in particular *fano*, committed serious human rights violations and abuses since 3 November 2020 in Tigray and against Tigrayans elsewhere as described above. This includes the right to life; right to non-discrimination; prohibition of torture and ill-treatment, including rape and other sexual violence; prohibition of the slave trade and slavery; right to physical and mental health, including sexual and reproductive health; prohibition of arbitrary arrest

and detention; prohibition of enforced disappearance; right to freedom of movement; and the right to an adequate standard of living, in particular the right to food and drinking water. The Ethiopian authorities further violated the prohibition of incitement to discrimination, hostility or violence, by engaging in and failing to prevent prohibited speech offline and online.

64. During the period that Tigrayan and allied fighters had *de facto* control over towns and areas in Amhara region, between July and December 2021, and in Afar region, between November 2021 and March 2022, the Commission finds reasonable grounds to believe that they failed to respect the fundamental rights of persons under their control. This includes the right to life; right to non-discrimination; prohibition of torture and ill-treatment, including rape and other sexual violence; prohibition of the slave trade and slavery; right to physical and mental health; prohibition of arbitrary arrest and detention; right to freedom of movement; and the right to an adequate standard of living, in particular the right to food.

65. In relation to the incidents investigated by the Commission in Oromia region, there are reasonable grounds to believe that the ENDF and Oromia regional authorities committed serious violations of human rights, in particular of the right to life; prohibition of torture and ill-treatment, including rape and other forms of sexual violence; and arbitrary arrest and detention.

International humanitarian law

66. The Commission finds reasonable grounds to believe that the ENDF, EDF and allied regional special forces, including Amhara Special Forces and Afar Special Forces and militias, in particular *fano*, violated international humanitarian law since 3 November 2020 in Tigray and against Tigrayans elsewhere as described above. Violations pertained to the principles of distinction and precaution in attack; and the prohibitions of violence to life and person and outrages upon personal dignity, including murder of all kinds, mutilation, cruel treatment and torture, and humiliating and degrading treatment; making the civilian population the object of attack; spreading terror among the civilian population; and, starvation of the civilian population as a method of warfare, including by pillaging and destroying, removing or rendering useless objects indispensable to their survival. They also committed grave violations against children, including killing and maiming, rape and other forms of sexual violence and denial of humanitarian access.

67. In Western Tigray, Amhara Special Forces and Amhara regional police, with the involvement of *fano*, in addition violated international humanitarian law by forcibly displacing the civilian population absent military necessity or security reasons.

68. There are also reasonable grounds to believe that Tigrayan and allied fighters violated international humanitarian law in Amhara region between July and December 2021 and in Afar region between November 2021 and March 2022. Violations pertained to the principles of distinction and precaution in attack; prohibitions of violence to life and person and outrages upon personal dignity, including murder of all kinds, mutilation, cruel treatment and torture, and humiliating and degrading treatment; making the civilian population the object of attack; pillaging; and reprisals. They also committed grave violations against children, including killing and maiming and rape and other forms of sexual violence.

International criminal law

69. Given the nexus of investigated incidents and patterns to the non-international armed conflict, the Commission finds reasonable grounds to believe that many of the violations committed by the ENDF, EDF and allied regional special forces, including Amhara Special Forces and Afar Special Forces and militias, in particular *fano*, in Tigray region and against Tigrayans elsewhere since 3 November 2020 amount to war crimes – including violence to life and person; outrages upon personal dignity; intentionally directing attacks against the civilian population; pillage; rape; sexual slavery; sexual violence; and the intentional use of starvation of civilians as a method of warfare. Members of the EDF further committed the war crime of directing attacks against personnel involved in humanitarian assistance.

70. In this context, the Commission finds that members of the Amhara Special Forces and Amhara regional police, with the involvement of *fano*, additionally committed the war crime of ordering the displacement of the civilian population from Western Tigray for reasons related to the conflict and absent military necessity or security reasons.

71. There are also reasonable grounds to believe that Tigrayan and allied fighters committed war crimes in Amhara region between July and December 2021 and in Afar Region between November 2021 and March 2022. The Commission finds these to be the war crimes of violence to life and person; outrages upon personal dignity; intentionally directing attacks against the civilian population; pillage; rape; sexual slavery; and sexual violence.

72. The Commission further finds that there are reasonable grounds to believe that the acts committed by the ENDF, EDF and allied regional special forces, including Amhara Special Forces and Afar Special Forces and militias, in particular *fano*, constitute a widespread and systematic attack directed against the civilian population. Accordingly, it finds that members of these forces committed the crimes against humanity of murder; torture; rape; acts of a sexual nature of comparable gravity; sexual slavery; enslavement; imprisonment or other severe deprivation of liberty, enforced disappearance; deportation or forcible transfer of population; persecution on intersecting ethnic and gender grounds; and other inhumane acts.

73. The Commission maintains a confidential list with the names, affiliation and rank and/or position of alleged perpetrators of violations and abuses. Given the duration and scale of the conflict in Tigray, Amhara and Afar, it emphasizes the need for further investigations, including into the roles, actions, and knowledge of individuals implicated in international crimes, including through command and superior responsibility.

X. Transitional justice and accountability

74. Transitional justice has four pillars, derived from states' obligations established by international human rights law and standards. These are:

- *Victims' right to truth*
- *Victims' right to justice*
- *Victims' right to reparation*
- *Guarantees of non-repetition of abuses*

The Commission welcomes the explicit commitment to transitional justice made in the COHA. The Commission also notes the difficulty of implementing a successful programme of transitional justice where there is a high risk of further atrocities. The Commission repeatedly sought to engage with the Government regarding transitional justice and provided a detailed Advisory Note on the ongoing consultations. The Government did not respond to or acknowledge the Commission's communications.¹⁵

Centrality of victims' voices

"We have to hear everyone's story. It has to be 'I am willing to tell you my pain and I am willing to hear yours.' We have to include everyone."

—Participant, ICHREE Transitional Justice Workshop.

75. The legitimacy, domestic and international, of any process of transitional justice depends on how victims perceive it. Throughout its mandate the Commission has heard from victims, their families, affected communities and other interlocutors to better understand their needs and aspirations. It gleaned their views in multiple open and non-coercive settings: from interviews, meetings and a three-day workshop held in Nairobi, Kenya in July 2023. Victims gave the Commission the following messages.

76. Firstly, they believe Ethiopian victims' voices, experiences and preferences must drive transitional justice in Ethiopia. Regardless of community or political affiliation, victims desire credible, transparent, inclusive and accessible processes that give them agency, respect their needs, uphold their rights and dignity and address the harms they endured during Ethiopia's multiple crises, past and present. In practice, transitional justice processes must be locally accessible, use multiple languages, suit the needs of women, children, older people,

¹⁵ See Annex II: <https://www.ohchr.org/en/hr-bodies/hrc/ichre-ethiopia/index>.

persons with disabilities, displaced persons, refugees and respect religious and cultural differences.

77. Secondly, victims overwhelmingly prioritize effective criminal accountability mechanisms, which they see as essential to genuine transition or sustainable peace. The Commission has documented the suggestion from some government and non-government actors that the pursuit of justice and accountability for crimes committed could somehow undermine stability – the COHA, for instance: that victims should choose between justice and peace. This attitude does not accord with international standards, nor does it respect the wishes of victims.

78. Thirdly, victims want to tell their stories, but they also want them to be heard, documented and acknowledged – officially and by other communities. They also want to be better informed. In a context where experiences have differed and society is polarized, the Commission observed significant divergence between communities’ understanding and interpretation of events, before and since November 2020. At the same time, victims across communities share a desire to uncover the facts, to identify perpetrators and their motives and to learn the fate and whereabouts of missing family members.

79. Fourthly, victims identify reparation as a crucial component of redress for serious violations. They insist that the Government consult victims across all regions and communities, including hard-to-reach minorities, to ensure their needs shape reconstruction and restitution policy. Communities in Tigray, Amhara and Afar suffered extensive looting and destruction of property and want compensation for material and non-material damages to help rebuild their lives. For displaced communities, especially those in Tigray, a key element of restitution is their ability to return to their usual place of residence.

80. Finally, victims share a striking lack of confidence in domestic institutions to deliver transitional justice. Many explained ongoing conflicts and violations as the result of entrenched impunity for past atrocities. Interlocutors identified a wide range of government institutions that require reform, including a stronger gender lens. A lack of trust in the Ethiopian Human Rights Commission was also expressed. Victims emphasized that Ethiopians from diverse ethnic, religious and marginalized communities across the country must be given the agency to influence and shape reforms.

Evaluation of the current processes related to transitional justice in Ethiopia

“We don’t really have hope that this thing [the current transitional justice process] will be successful”.

—ICHREE Transitional Justice Workshop participant.

81. Several times in its history Ethiopia has sought to undertake what is now conceptualised as transitional justice. In the 1990s it prosecuted more than 5,000 officials of the previous regime for serious crimes and established a series of memorial museums. Since 2018, in Somali region, a locally valued Truth and Justice Commission has been established with strong engagement from civil society and local stakeholders. In none of these processes have investigations or truth telling processes touched senior members of incumbent administrations. Ethiopia has a strong tradition of dealing with crimes and their perpetrators only after they have lost power or been politically discredited. Justice has been consistently circumscribed by the politics of the day, and victims believe that this has not changed – hence their serious mistrust.

82. The current Government’s draft “Ethiopia Policy Options for Transitional Justice” was prepared and released in January 2023. It outlines a range of options for a future transitional justice process, including truth commissions, criminal accountability, victims’ reparations and institutional reform and was presented as a *“first-step to a locally owned transitional justice initiative.”*¹⁶ The Policy Options paper was followed by a series of consultations held across the country, the first of which were launched in Addis Ababa on 6 March 2023.

¹⁶ <https://www.ohchr.org/en/statements-and-speeches/2023/01/policy-options-transitional-justice-ethiopia>.

83. The Commission's June 2023 Advisory Note on the consultative process outlined key principles and international and regional standards of a human rights-based approach, and shortcomings of the current consultations.¹⁷ Despite a series of meetings in urban centers, the Government has not since addressed gaps in the process and has failed to engage victims in many areas. Ethiopian refugees in the region have not been consulted. The process has been rushed to meet an arbitrary deadline set by the government, and not apparently modified in the light of the six-month State of Emergency declared in August.

84. The Policy Options paper does not adequately reflect international or regional standards. Accountability options are described as if choices are fully discretionary at the domestic level. However, international law is clear that under no circumstances can amnesties, pardons and statutes of limitations be imposed for crimes under international law. The possibility of trials outside of Ethiopia is not discussed, nor are Ethiopia's domestic and international legal obligations set out for Ethiopian stakeholders to understand them. The authorities failed to apply a victim-centered approach either through preliminary consultation over the options paper, or by including victims' representatives in its drafting. Neither have they delivered an easily comprehensible discussion framework which would help victims and other stakeholders to deliberate over their choices in an informed manner.

85. The Commission observed systemic weakness and lack of efficacy on the part of key Ethiopian institutions tasked with driving its domestic process of transitional justice. It also notes a tendency to conflate distinctive and urgent needs in this area with the wider objectives of long-term justice sector reform (institutional and legal). Little has been heard during the current reporting period from the Federal Inter-Ministerial Task Force (IMTF), tasked in November 2021 with leading redress and accountability measures in relation to the conflict in the north. The IMTF seems to have been repurposed to serve wider processes of justice sector reform. The Commission is concerned at the lack of public or parliamentary reporting from the four IMTF sub-committees on investigations and prosecutions, IDPs and refugees, SGBV and resource mobilization. It has also observed weaknesses in other institutions critical to the success of the transitional justice process, including the National Dialogue Commission which was in August 2023 urged by Ethiopia's Federal Deputy Speaker to commence a program of work due to have commenced in May 2023.

86. Moreover, Ethiopia's legal framework currently does not criminalize customary international law offenses reflected in the Rome Statute of the International Criminal Court. As a result, the country is currently unable to prosecute the full range of international crimes domestically. Thus, legal reforms must be undertaken to address these weaknesses to ensure the investigations and prosecution of the full range of international crimes.

87. Finally, there are no realistic pathways to ensure accountability for crimes committed by Eritrean soldiers in Ethiopia, including ensuring those with command or superior responsibility are brought to justice. In theory, Ethiopia's Criminal Code provides a legal basis for the prosecution of foreigners suspected of having committed any crime on its territory. Ethiopian officials told the Commission in July 2022 that Eritrean forces could be brought to justice through normal criminal law enforcement cooperation channels (e.g., extradition). During this mandate period no steps in this direction have been taken by Ethiopia or Eritrea.

Wider problems of the justice sector

88. Significant legal and institutional reforms are needed for Ethiopia to deliver judicial accountability for serious violations to international standards. The independence of the judiciary is guaranteed by the Federal Constitution, but constitutional interpretation favors political decision makers over courts, both regional and federal. Courts are widely believed to lack independence and to be subject to regular political interference.

89. The Commission notes that some recent reforms may embed or entrench structural flaws and the potential for institutional bias or over-centralization. Recent legislation handed military courts exclusive jurisdiction over all crimes, including international crimes, that involve a member of the defence forces, police or militia on active duty. Recourse to military

¹⁷ See Annex II: <https://www.ohchr.org/en/hr-bodies/hrc/ichre-ethiopa/index>.

courts as a means to avoid accountability and transparency is contrary to international standards.

90. In 2021 legislation placed the Office of the Attorney-General under the Ministry of Justice, including the power to initiate and discontinue investigations, and appoint, administer and dismiss public prosecutors, undermining prosecutorial independence and impartiality. Prosecutors could face increased pressure from political actors in their choices of investigations, prosecutions and trials. There is the risk for further centralization of power in the federal Ministry of Justice in proposals in the draft Justice Sector Reform Policy Document (September 2023), seen by the Commission.

Ethiopia – a model of “quasi-compliance”

91. The Government has been keen to highlight its cooperation with the EHRC and the OHCHR-EARO as an example of its commitment to human rights. The Government often cites the report of the Joint Investigation Team (JIT) of the EHRC/OHCHR-EARO, as an example of its cooperation with human rights bodies. However, the final JIT report addressed only a limited number of incidents in Tigray up to 28 June 2021. The JIT noted that it was not an exhaustive report and that it faced significant challenges to undertake its work, including harassment and intimidation of staff, government-imposed restrictions on communication equipment and difficulty obtaining security clearances for travel.¹⁸

92. The Government has failed to cooperate with continental bodies undertaking investigation and monitoring of the situation in northern Ethiopia. For example, the AU-MVCM has been unable to access some parts of Tigray. Meanwhile, the Commission of Inquiry of the African Commission on Human and Peoples’ Rights (ACHPR-COI) established to investigate serious violations in Tigray, was quietly terminated in May 2023. The ACHPR-COI, against whose establishment Ethiopia had strongly protested, concluded without issuing any public report on its findings. The Ethiopian government has continued to restrict access to independent journalists and human rights monitors in conflict-affected areas, while human rights defenders report ongoing arrest, threats and intimidation.

93. In assessing transitional justice initiatives in Ethiopia, the Commission is struck by evidence of “quasi-compliance.”¹⁹ The Government of Ethiopia has deliberately attempted to evade international scrutiny through the creation of domestic mechanisms ostensibly to fight impunity, which have served in practice primarily to alleviate international pressure and preclude the prospect of stronger international engagement or investigation. Under these circumstances, and given the ongoing commission of serious violations in the country, the Commission concludes that the current prospects for the success of transitional justice in Ethiopia are bleak.

XI. Risk of future atrocity crimes

94. In its first report to the Council, the Commission expressed deep concern about the presence of many of the indicators and triggers contained in the UN Framework of Analysis for Atrocity Crimes, including in particular polarization and hatred along ethnic lines. The Commission further warned of the imminent threat of further and more pronounced atrocity crimes.

95. During the reporting period, the Commission continued to monitor the presence of indicators of and triggers for atrocity crimes. It remains deeply concerned that many of the risk factors remain present in Ethiopia, even after the COHA.

96. The Commission cannot overstate the gravity of violations and crimes perpetrated in Ethiopia since 3 November 2020 by all parties to the conflict, and in particular the ENDF, EDF and allied forces. The continuing presence of Eritrean and Amhara forces in Tigray, in particular ongoing accounts of rape and sexual violence against women and girls, are deeply disturbing. The persistence of this situation more than 10 months after the COHA confirms

¹⁸ JIT report, para 20.

¹⁹ Kate Cronin-Furman, *Hypocrisy and Human Rights: Resisting Accountability for Mass Atrocities* (Cornell University Press, 2022).

not only an ongoing pattern of serious violations, but strongly indicates a policy of impunity and tolerance of serious violations on the part of the Ethiopian State. Meanwhile, impunity for past atrocities by Ethiopian and Eritrean forces remains firmly entrenched.

97. Instability, tension and the potential for repetition of patterned violations and crimes including arbitrary arrests, rape and extrajudicial executions characterize the ongoing reliance on command posts and declared states of emergency. This is highlighted by the new state of emergency declared in August 2023. Alarming reports of violations committed against Amhara civilians are emerging in spite of government-imposed interruptions to internet and telecommunications.

98. The situation is compounded by the weakness of state structures which should offer protection. This includes lack of effective protection by national law, as well as lack of independence of national institutions, in particular the judiciary and law enforcement. Widespread mistrust in state institutions and domestic accountability mechanisms, already the product of long-standing impunity, has been exacerbated by the Government's politization of the transitional justice process. In this context, absence of effective external oversight and monitoring mechanisms, as well as threats, intimidation and harassment against human rights defenders, journalists and others is deeply troubling.

XII. Recommendations

99. **To the Federal Government:**

(a) **Immediately cease all violations of international human rights and humanitarian law and ensure that all regional governments and militias cease such violations;**

(b) **Implement obligations under the CoHA, particularly regarding accountability, protection of civilians, humanitarian assistance, internally displaced persons, sexual and gender-based violence and transitional justice;**

(c) **Take all measures to ensure that Eritrean Defense Forces on the territory of Ethiopia cease all violations;**

(d) **Cease and prevent diversion and misuse of humanitarian assistance to beneficiaries countrywide;**

(e) **Ensure timely provision of medical services, including psychosocial support, to survivors, with particular attention to survivors of sexual and gender-based violence;**

(f) **Take measures consistent with international human rights law to prevent the dissemination of hate speech by governmental and non-governmental actors;**

(g) **Investigate and prosecute members of its forces alleged to have committed violations of international human rights and humanitarian law;**

(h) **Remedy the current consultations over transitional justice to eliminate the gap in trust by victims and ensure that consultations are thorough, inclusive and non-coercive;**

(i) **Ensure that any future transitional justice policy meets international and regional standards regarding criminal accountability of perpetrators, reparations, truth and acknowledgment of past wrongs and institutionalization of measures to prevent recurrence of violations, progress on which would be demonstrated through these minimal benchmarks:**

- **Public orders to state security forces to cease actions violating international law, and removal of personnel implicated in violations;**
- **Establishment of an accountability mechanism for serious violations by its forces, with independent investigative and prosecutorial authority, followed by prosecutions before independent courts meeting standards of due process and transparency;**

- Cooperation with the ICHREE and other international and regional human rights mechanisms, including granting them unconditional access to all areas of Ethiopia;
- Adjustment of the timelines for consultations on a future transitional justice policy to ensure genuine engagement with all communities on a complete range of options;
- Enactment of a comprehensive reparations plan, with particular attention to victims of sexual and gender-based violence;
- Acknowledgment of and apology for violations committed by government and government-aligned forces through the country.

(j) Immediately begin an inclusive process of national dialogue to create institutional, governmental and constitutional structures for domestic peace and enjoyment of human rights.

100. To the Government of Eritrea:

(a) Immediately cease all violations of international human rights and humanitarian law in Ethiopia and investigate and bring to justice members of its forces who have committed serious violations there.

101. To all parties to the conflict:

(a) Immediately cease violations of international human rights and humanitarian law, take all measures to protect the civilian population and cease activities that may trigger atrocity crimes, including hate speech.

102. To the international community:

(a) That the High Commissioner for Human Rights provide for comprehensive, independent, timely and gender-sensitive monitoring of the situation in Ethiopia, including regular public reporting;

(b) That the African Union and states supporting the CoHA use their best efforts to ensure that the COHA parties fulfil their obligations, particularly regarding accountability, protection of civilians, humanitarian assistance, internally displaced persons and transitional justice;

(c) That, in light of the failure of Ethiopia to credibly investigate violations of international human rights and humanitarian law, the Human Rights Council provide for continued international scrutiny and investigations into past and ongoing violations;

(d) That states and other entities providing technical assistance to Ethiopia on transitional justice ensure that such assistance advances the benchmarks in paragraph 99(i);

(e) That the Secretary-General take measures to screen all military and police personnel offered by Ethiopia or Eritrea for UN peace missions to ensure that none credibly alleged to have committed serious violations of international human rights and humanitarian law serves on a UN mission; and

(f) That, if Ethiopia or Eritrea are unable or unwilling to bring to justice those credibly accused of international crimes, the African Union create a regional accountability mechanism, building on best African practices and African and international standards; and that in the absence of such a mechanism, states consider other national and international mechanisms for bringing such persons to justice.

Annex

Applicable law

1. The Commission applied international human rights law, international humanitarian law, and international refugee law, as well as international criminal law, regional instruments, and Ethiopian domestic law, as applicable.
2. Ethiopia and Eritrea are parties to most international human rights treaties, including the two Covenants, as well as regional instruments including the African Charter on Human and Peoples' Rights and its Maputo Protocol on the rights of women.²⁰
3. International human rights law applies at all times and extends to all persons within the State's territory or under its jurisdiction, including to forces acting outside its territory. Ethiopia and Eritrea have a duty to respect, protect, and fulfil human rights. Measures taken during states of emergency must meet the requirements of Article 4 ICCPR, including as regards non-derogability of fundamental rights, the principles of legality, necessity, and proportionality, and of notification. Non-State actors must, at a minimum, respect fundamental human rights in areas where they exercise government-like functions or *de facto* control.²¹ Business enterprises must also respect human rights and address adverse impacts of their operations.
4. Measures taken during States of Emergency, regardless of the existence of an armed conflict, must meet the requirements of Article 4 ICCPR, including as regards non-derogability of fundamental rights, the principles of legality, necessity, and proportionality, and of notification. The Commission notes that the Ethiopian authorities issued three States of Emergency within the period covered by its mandate, for which the necessary notifications were not provided.
5. Ethiopia and Eritrea are also parties to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Ethiopia is also a party to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.²² Under this body of law, they must abide by the principle of *non-refoulement* and not expel or return refugees to any territory where their lives or freedoms would be threatened. The African Charter in addition explicitly prohibits mass expulsion aimed at national, racial, ethnic or religious groups.
6. The four Geneva Conventions of 1949 and three Additional Protocols form the main body of international humanitarian law. Ethiopia and Eritrea are parties to the Geneva Conventions, while Ethiopia is also a party to the Additional Protocols. Many of its rules also constitute norms of customary law. International humanitarian law applies to situations of armed conflict and distinguishes between international and non-international armed conflict (NIAC). The latter includes situations where a State opposes one or more non-State armed groups. The involvement of a foreign State on the side of the State involved in a NIAC does not alter its qualification.
7. Based on intensity and organization thresholds, the Commission considers the conflict in Tigray since 3 November 2020 as a NIAC, to which Common Article 3 of the Geneva Conventions and Additional Protocol II apply. Taking into account the fluctuating nature of the hostilities, the Commission, based on a full appraisal of the facts, assesses that its application has not yet come to an end.
8. Ethiopia is a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Ethiopia and Eritrea are not parties to the Rome Statute of the International Criminal Court. The Court has also not obtained jurisdiction through a declaration or referral. However, the Rome Statute definitions of international crimes

²⁰ A/HRC/54/CRP.2, Legal framework.

²¹ See Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, para. 188.

²² A/HRC/54/CRP.2, Legal framework.

generally reflect customary international law and are binding on all individuals. Individual criminal responsibility does not preclude State responsibility or vice versa.
