



War in Tigray and Crimes of International Law

By Mulugeta Abai, Executive Director, Canadian Centre for Victims of Torture

06 January 2021

Almost all wars are intertwined with cover-ups and keeping people in darkness by the ruling cliques and war-mongering forces. The extent of war crimes and crimes against humanity, therefore, may come to the fore years after the initial outbreak of the war. This is particularly true about the present war in Tigray, Ethiopia, specifically when we consider the fact that Ethiopia's government has openly rejected frequent calls for independent investigations into the deadly and devastating conflict in Tigray, by mentioning that it "doesn't need a babysitter". This essay is a modest attempt to investigate the heinous crimes of international nature in Tigray by relying on the available sources, testimonies by witnesses and official statements.

Root Causes of the Conflict

War should neither be judged by its spontaneous outbreak nor by propaganda of the parties involved in the conflict. According to the German general and military theorist, Karl von Clausewitz:

"War is not an independent phenomenon, but the continuation of politics by different means. Consequently, the main lines of every major strategic plan are largely political in nature, and their political character increases the more the plan encompasses the entire war and the entire state. The plan for the war results directly from the political conditions of the two belligerent states as well as from their relations to other powers." (1).

On November 4, 2020, Ethiopian Prime Minister, Mr. Abiy Ahmed Ali, formally declared war on the Tigray National Regional State (TNRS) calling his action a "law enforcement operation" in order to "protect the constitution and restore the rule of the law." The roots of this war, however, can be traced back to few months after his sudden ascendance to power.

In April 2018, the ruling Ethiopian People's Revolutionary Democratic Front (EPRDF) selected Mr. Ahmed to be the interim Prime Minister with the mission of bringing peace and harmony to the ethnically fragmented Ethiopia. He was mandated to lead the country through a national free and fair election by May 2020. Before Mr. Ahmed's coming to power, Ethiopia was ruled by EPRDF, a coalition of four parties, including Tigray People's Liberation Front (TPLF) that ruled the regional and autonomous Tigray National Regional State (TNRS). It should be acknowledged that the TPLF's representation in the cabinet and parliament has always been minimal and it had not held prime minister's office for the past eight years. The TPLF, however, had a great influence over the EPRDF and Tigrayans dominated the Ethiopian security agencies

Main 194 Jarvis St, 2nd Fl., Toronto, ON, Canada M5B 2B7 T: 416.363.1066 F: 416.363.2122 E: mabai@ccvt.org Toll Free: 1.877.292.2288
Scarborough 2401 Eglinton Ave. E., 3rd Fl., Unit 310, Scarborough, ON, Canada M1K 2N8 T: 416.750.3045 F: 416.750.4990
The Hub 1527 Victoria Park Avenue 2nd Fl., Toronto, ON, Canada M1L 2T3 T: 416.750.9600 F: 416.750.9200
Mississauga Office 130 Dundas St. East, #204, Mississauga, Ontario, Canada L5A 3V8 T:905-277-2288 F:905-277-8083
20 Palace Road Toronto, Ontario, Canada M5A 1G4 T:416-364-3184
Accredited to the International Rehabilitation Council for Torture Victims
www.ccvt.org Charity No: 133327908 RR0001



due to their historical struggles against the Derg regime of terror(and the secessionist move by Mr. Afwerki of Eritrea) within brackets could be omitted .

During the first few months of his rule, Mr. Ahmed introduced some far reaching civil liberty reforms and released political prisoners. In July 9, 2018, he concluded a peace accord with the Eritrean tyrant, Mr. Isaias Afwerki, who had been ruling the Eritrea with an iron fist since 1993. This persuaded the Nobel Prize Committee to grant Mr. Ahmed the 2019 Nobel Prize on Peace on October 11, 2019.

Mr. Ahmed's peace agreement with Mr. Afwerki, was considered by many, in those days, as shaking hand with the devil due to the latter's human rights records. Since its independence, Eritrea has been notorious as a closed, military and totalitarian society referred to by human rights advocates as "an open-air prison" or the "North Korea of Africa". The regime has maintained full control of every aspect of people's life. Despite neighbourhood between Tigray and Eritrea and their ethnic similarity, Mr. Ahmed did not involve Tigray and its leader Mr. Debretsion Gebremichael in peace negotiations. The lack of transparency and denial of Tigrayan participation, suspected the latter to consider the pact as a conspiracy between Ahmed and Afwerki to eliminate the TPLF.
(2)

Hopes soon turned into the despair in Ethiopia, as the Prime Minister, Abiy Ahmed failed to control the army, police and militia from brutal suppression of ethnic movements in different part of the country. Mr. Ahmed failed to acknowledge that Ethiopia, like many African nations, is a diverse multi-ethnic society. Ethiopian population is composed of more than 70 ethnic groups: Oromo (34.49%), Amhara (26.89%), Somali (6,20%), Tigrayans (6.07%), Sidama (4.1%), Gurage (2.53%), Welayta (2.31%), Hadiya (1.74%), Afar (1.73%), (3). The Ethiopian constitution of 8 December 1994, has provided for a far-reaching decentralization based on ethnic diversity. It guarantees "free cooperation between equal Ethiopian peoples." (Beken, C.v.d., 2012, p. 146)

More than 2 million people in Ethiopia are internally displaced due to intercommunal conflicts and violence. Among them is the displacement of over a million Somalis from their homes in Oromia into the desert of the Ogaden. Mr. Ahmed's government has failed to make sustainable efforts to protect displaced people and stop inter-ethnic violence. This has led to further displacement in ethnically diverse Ethiopia. More often than not Mr. Ahmed has forced displaced people to return to their homes without any guarantee for their safety and security.

In response to inter-communal conflicts, Mr. Ahmed provided the military, police and local militia with free hands to suppress any vestige of the opposition. According to the Amnesty International, on a single day in December 2018, soldiers from the federal military killed 13 people in the town of Finchawa in West Guji. One of those killed was an old woman selling milk on the street. Some 10,000 people, suspected of supporting the Oromo Liberation Army (OLA), were detained and tortured by security forces in an



operation that started in January 2019. Families were evicted from their homes. Houses were destroyed and burnt. At least 39 people were extra-judicially executed in Oromia's East Guji and West Guji zones. In January 2019, the security forces attacked a Qemant settlement in Metema and killed fifty-eight people within 24 hours. This brutal attack resulted in the displacement of hundreds of people. (4)

According to the Guardian (May 29, 2020), in Oromia's Guji district the unrest had driven 80,000 people from their homes by the start of the year 2020. (5)

The 34-year-old Oromo-language pop singer and song writer, Haacaaluu Hundeessa, was shot dead by unknown assailants in Addis Ababa in the night of June 29, 2020. His music gave voice to Oromo people who are desperate for economic well being and self-rule. Despite claiming to be an Oromo himself, Prime Minister Ahmed, have paid little attention to the plight of Oromo people and their call for self-determination.

Hundeessa's murder sparked demonstration across Oromia region with police intervention with the death toll of at least 166 people, 167 injuries" and 1,084 arrests, including the arrest of high-ranking opposition leaders such as the media magnate and activist Jawar Mohammed. Officials repeatedly pointed to the involvement of Oromo Liberation Front and TPLF. (6)

Mr. Ahmed's records made him so unpopular that within several months "Abiy must go" became a new slogan. Intoxicated with power, he chose not to go. He concentrated power in his own hands, filled government's positions with his allies and repeatedly overruled Parliament. He charged Tigrayans with corruption and purged them from the government, security services and state-owned corporations. In December 2019, he disbanded the EPRDF and merged several ethnically based regional parties into a single party named the Prosperity Party, in which the TPLF was excluded. He suppressed opposition through imprisonment of the leader and shutting down the internet.

Mr. Ahmed's term of office was up to October 5, 2020. He suspended the national election in August in the pretext of Covid-19 and postponed it for nine to 12 months.

The TNRS and the TPLF considered this as unconstitutional and conducted their regional elections as was scheduled for September 9, 2020, based on the constitutional provision that national and regional elections must be held every five years. TPLF won 98% of the votes, duly established its own state government. Mr. Ahmed spared no time to reveal his hostilities by rejected the election and even forbidding international reporters from flying to Tigray at the Bole International Airport, to witness the elections. The federal and regional governments did not recognise each other and regarded the other party as illegal. On November 4, 2020, Mr. Ahmed condemned the TPLF as a terrorist group, labelled its leaders as a gang of criminals and declared war against Tigray.



The war, among others, rooted in opposing visions about future direction of Ethiopia. While, Mr. Ahmed advocates, a centralized state with power at the hands of the prime minister, the TPLF supports a multinational federal policy with cultural, linguistic, and economic autonomy for the states, as explicitly expressed in the Ethiopian constitution. The government's establishment of the Administrative Boundaries and Identity Issues Commission on 20 December 2020 can be considered as a manifestation of this difference. The Commission was directly responsible to the prime minister who was mandated to look into the reasons behind identity and border conflicts and suggest solutions to parliament. This was criticized by TPLF and others as an anti-democratic move with the intention of restriction the authority of regional states in this matter. (7)

Before Mr. Ahmed, Ethiopia was one of the most economic growth success in Africa for 15 years. This was mainly due to the rejection of the neo-liberal model of economic growth. Unlike EPRDF, Abiy Ahmed has frequently shown his intension to introduce his own open and liberal economy: "The dramatic change brought by Prime Minister Abiy Ahmed in 2018 repudiated the authoritarian economic model that was previously seen as an important aspect of Ethiopia's positive development story." (8)

The War

On November 4, 2020, Mr. Ahmed deployed the Ethiopian National Defence Force (the army) mobilized the Special Forces, the State Police, the militia, and civilian volunteers from Amhara National Regional State (ANRS) in an onslaught against Tigray. Mr. Ahmed utilized full support from Eritrea in this operation. On Nov. 8th, the Ethiopian army announced that there would be "no mercy" for Mekelle's residents when its soldiers "encircle" the city. (9)

Mr. Ahmed refused scores of calls from outside for the peaceful settlement of the dispute and pressed on with the offensive. On November 22, 2020, military spokesman Colonel Dejene Tsegaye told state-run Ethiopia Broadcasting Corporation that "the next phases are the decisive part of the operation, which is to encircle Mekelle using tanks". He warned the residents of this city of half a million populations as follows: "We want to send a message to the public in Mekelle to save yourselves from any artillery attacks and free yourselves from the junta ... After that, there will be no mercy." This was followed by the message of Mr. Ahmed: "We urge you to surrender peacefully within 72 hours, recognising that you are at the point of no return." (10)

The Ministry of Defence and the Prime Minister announced that Ethiopian Air Force planes had carried out multiple air strikes against TPLF military installations.



The army took control of Tigray's capital of Mekelle on 28th of November. The TPLF leadership retreated to the mountains. Local resistance has reportedly been continuing. Tigray remained sealed off from the world during and even after the military operations. Thousands of people, including civilians and four aid workers, were killed and nearly a million fled their homes during air strikes and ground battles in Tigray. An estimated

55,000 people have so far fled to neighbouring Sudan. More than half of those uprooted as a result of war are children. Mekelle, and other cities, are left with the shortage of food, fuel, running water and inadequate medical care. Eritrean refugees are facing the threats of life and starvation.

Crimes of International nature

Among the first United Nations document dealing with crime of international nature is the Convention on Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly, 9 December 1948. According to Article II of this convention, "genocide means... acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group."

Throughout human history, attempts have been made to regulate the way states can wage war. These include at a minimum standard that belligerent parties should observe during the war (*jus in bello*) and after the conflict (*jus post bellum*). The aim of such attempts has been to alleviate the suffering of all sides. It was not until 1864 that the rules of war were enshrined in the First Geneva Convention adopted by twelve governments. This ground-breaking document laid the foundation for the International Humanitarian Law (the four Geneva Conventions of August 12, 1949) to limit the impacts of war on non-combatants. It protects those who are wounded during the war or shipwrecks, captives and the civilian population. International Humanitarian Law (IHL) is also known as the law of war or the law of armed conflict.

Torture is also considered a crime against the family of nations under common article 3 of the IHL and article 6 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly of the United Nations on 10 December 1984. This was reiterated by the Rome Statute for International Criminal Court (ICC)

The Rome Statute of ICC established the International Criminal Court as a permanent institution with jurisdiction over "persons for the most serious crimes of international concern" which "shall be complementary to national criminal jurisdictions." (Rome Statute, Art. 1) The court has jurisdiction with respect to: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; and (d) The crime of aggression. (Art. 5) The States Parties to the Rome Statute of ICC defined the crime of aggression in their amendment to the Statute adopted by consensus on 11 June 2010 at the Kampala Review Conference. According to Article 8 bis(???) of this amendment:



“crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations... act of aggression means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State.... Any of the following acts, regardless of a declaration of war, shall qualify as an act of aggression: (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State....” (11)

The definition of the crime of genocide in Rome Statute is similar to the definition given in Article 2 of the 1948 Genocide Convention mentioned above.

The concept of “crime against humanity” that was introduced by the Nuremberg Tribunal, is well defined in Article 7 of the Rome Statute. It states that the following acts constitute crimes against humanity, when they are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group... on political, racial, national, ethnic, cultural, religious, gender grounds ...; (i) Enforced disappearance of persons; (j) The crime of apartheid; and (k) Other inhumane acts of a similar character.

The definition of war crimes in the Rome Statute is based on the provisions of the International Humanitarian Law. According to these provisions, war crimes consist of willful killing, torture, wilfully causing great suffering, or serious injury to body or health, extensive destruction and appropriation of property, compelling a prisoner of war or other protected person to serve in the forces of a hostile Power, wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial, unlawful deportation or transfer or unlawful confinement, taking of hostages. (Article 8)

It is important to note the difference between war crimes, genocide and crimes against humanity. Though they partly overlap, crimes against humanity may occur in war or peaceful times; also, unlike genocide, crimes against humanity are not intended to fully or partially destroy a group of people. A Crime Against Humanity means any act, as listed by the Rome Statute, committed as part of a widespread or systematic attack



directed against any civilian population, with knowledge of the attack. Also, these crimes are systematic and widespread and carried out against an identifiable group irrespective of the make up of that particular group.

The Rome Statute for International Criminal Court is based upon the principle of “complementarity”. The ICC intervenes only when national courts are unwilling or unable to prosecute and its jurisdiction is not retroactive. It can only investigate and prosecute crimes committed after 1 July 2002. It is difficult for the ICC to act in a country that has not ratified the Rome Statute unless the state where the crime has been committed accepts its jurisdiction. When a crime constitutes a threat to international peace and security, the UN Security Council can refer the case situation to the ICC. The Council also has the authority to postpone any investigation.

In its actual practice, the ICC is not mandated to prosecute authorities in power. Such prosecutions can be taken as violation of the principle of national sovereignty. Given today’s system of international relations and the UN structure, it is hard to expect the UN Security Council to activate the ICC for prosecution of ruling tyrants. Such decisions can be vetoed by a permanent member of the Security Council due to its close military, economic and political ties with the offending ruling power.

Application of International Law

Due to the lack transparency, it is very difficult to examine the perpetration of some categories of crime of international nature in Tigray’s conflict: the crime of torture, treatment of wounded soldiers, violation of the rights of prisoners of war, sexual violence, etc. This is due to the shutdown of internet, severing telephone communications, strict censorship and blocking journalist and independent observers from access to Tigray. It is, however, easier to examine the crimes of international nature in the following areas:

The War of Aggression

In early June 2018, the Prime Minister, Abiy Ahmed revealed his intension of militarization of the country. During a meeting with senior military officers, he said: “Following the efforts made to build capacity of our national defense, we built one of the strongest ground and air force in Africa.... We should build our naval force capacity in the future.” (12) He added that the military reforms should "take into account current fast changing world, socio-economic and political situation in Ethiopia." (13)

He exposed his ambition, despite the fact that the landlocked Ethiopia had disbanded its navy following the secession of Eritrea in 1993 and the army was relatively a small one.

Before waging war against Tigray, Mr. Ahmed had used the army against Oromia, the conflict against the Sidama nation ahead of the referendum for statehood in November 2019, and the suppression against the Wolaita and Konso involving fighter planes,



missile and rocket attacks, artillery shelling, drones, and infantry units.

Article 95 (1-a) The Ethiopian Constitution allows deployment of army exceptional circumstances:

“The Council of Ministers of the Federal Government may declare a state of emergency in the event of external aggression or where conditions arise which endanger the constitutional order and cannot be brought under control by means of normal law enforcement measures, or in the cases of natural disaster or epidemic endangering public health.” (14)

Article 33 of the United Nations Charter has provided for the peaceful settlement of the most serious conflicts before considering armed intervention: “The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”

Mr. Ahmed deliberately ignored these national and international provisions and began his war propaganda against Tigrayan people, while there was no condition whatsoever to “endanger the constitutional order.” He declared war on the most stable and peaceful state government that had been legally elected by 98% of Tigrayans’ votes. There was no emergency situation to compel him respond by military power.

Mr. Ahmed rejected peaceful negotiations and refused all appeals for mediation by independent people and agencies. The African Union (AU) made an abortive attempt for mediation and Tigray’s President Mr. Debretsion Gebremichael, wrote to the South African President, Mr. Cyril Ramaphosa, requesting for an “all-inclusive and comprehensive dialogue [to] avert an all-out civil war in the country”. An AU delegation was sent to Addis Ababa, but Mr. Ahmed refused any mediation or dialogue with the “criminal” TPLF, as he had rejected appeals by the European Union, the UN and the US. (15)

The Canadian Foreign Minister, Mr. Champagne, called for a peaceful solution and protection of civilians. The British Foreign Secretary, Dominic Raab, spoke with Mr. Ahmed called for “de-escalation of the Tigray conflict”. The US government also called for immediate action to restore peace and protect civilian. Human rights and humanitarian agencies across the globe requested immediate ceasefire and access to Tigray for humanitarian assistance. Anti-war Ethiopians in diaspora demonstrated in many countries including USA, South Africa, Belgium, Netherlands, and Norway demanding immediate end to hostilities. The Noble Committee, which rarely expresses views about the actions of past Nobel laureates, issued the following statement on November 17, 2020: “It repeats today what it has stated before, namely that it is the responsibility of all the involved parties to end the escalating violence and to solve disagreements and conflicts by peaceful means.” (16) Mr. Ahmed ignored all these



appeals and reiterated his position that “Ethiopia is being run by a strong functional government. It doesn’t need a babysitter.” (17)

Mr. Ahmed followed the foot-prints of his predecessors, more vehemently, in not looking for a multi-lateral solution to the Ethiopian disputes. According to Human Rights Watch, in a report entitled “Ethiopia Events of 2018”:

“Despite its role as a member of both the UN Security Council and, until the end of 2018, the UN Human Rights Council, Ethiopia maintains its history of non-cooperation with UN mechanisms. Other than the UN special rapporteur on Eritrea, no special rapporteur has been permitted to visit since 2006. The rapporteurs on torture, freedom of opinion and expression, and peaceful assembly, among others, all have outstanding requests to visit the country.” (18)

Mr. Ahmed’s war against people of Tigray is devoid of any legal basis. It is an unjust war of fratricide with the sinister capacity of setting ethnic groups in Ethiopia against one another. It is, therefore, a war against all nations in the country, not just Tigray. It is a war against democracy and fundamental rights of humankind. It can easily spread to the Horn of Africa and threaten peace and security of the world. It is also a crime against peace, that was defined by the principle of the Nuremberg Trial that was later (in 1950) enshrined in international law: “planning, preparation, initiation, or waging of [wars of aggression](#), or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing”. (19) In the course of the Nuremberg Trial the war of aggression was considered as a supreme crime:

“The charges in the indictment that the defendants planned and waged an aggressive war are charges of utmost gravity. War is essentially an evil thing. Its consequences are not confined to the belligerent states alone but affects the whole world. To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.” (20)

As an ex-soldier, Mr. Ahmed was well aware of the impacts of war on the most vulnerable people. While receiving Nobel Peace Prize in Oslo, he made the following remarks:

“There are those who have never seen war but glorify and romanticize it. They have not seen the fear, They have not seen the fatigue, They have not seen the destruction and heartbreak, Nor they have felt the mournful emptiness of war after the carnage. War is the epitome of hell for all involved. I know because I have been there and back. I have seen brothers slaughtering brothers on the battlefield. I have seen older men,



women, and children trembling in terror under the deadly shower of bullets and artillery shells. You see, I was not only a combatant in war. I was also a witness to its cruelty and what it can do to people. War makes for bitter men. Heartless and savage men.” (21)

Hypocrisy, double-standard and greed for staying in power without electoral mandate prompted Mr. Ahmed to unleash the beasts of hatred and hubris and wage a devastative war of aggression without cause against the most vulnerable people of his country. The aggressive war in Tigray has all the characters of the “war of aggression” specified in the article 8bis of Rome Statute of ICC, except the fact that the parties to the aggression are not two sovereign states. This is the flaw in the Kampala amendment of June 11, 2020 to the Rome Statute that has not included aggression of non-state parties on the one hand and that of a federal government against an autonomous regional state on the other. These loopholes may be rectified during the future people’s tribunals against war-mongering elements like Mr. Ahmed.

Murder and Extermination

Murder, according to the international law, involves “a deliberate taking of a person’s life” and represents “the core crimes against humanity.” (Endnote 22, p. 71) According to an ICC document, for the crime of murder to exist, “the perpetrator must kill one or more persons. His conduct must be committed as part of a widespread or systematic attack directed against a civilian population”. (Endnote 22, p. 72) Extermination refers to the mass murder of a demographic group. According to Article 7-2-b of the Rome Statute for ICC, “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.” There is no demarcation line between murder and extermination: “The requirements of murder are also applicable to extermination”. (Endnote 22, p. 72)

The military aggression of Tigray resulted in the murder and extermination of thousands of people, including civilian population. Hate propaganda and incitement to violence, fuelled the fire of ethnic conflicts. A horrible massacre happened in Mai Kadra, a town in the north western part of Tigray with the population of 45000 people including Tigrayans, Amhara and other ethnic groups. On November 9, 2020, according to Amnesty International, attackers, affiliated with TPLF, armed with machetes and knives, stabbed residents to death. The bloodshed continued persistently for almost 24 hours. Some 600 civilians, mainly from Amhara group, are thought to be exterminated. An eye-witness has told the Amnesty International: “Police and TPLF youth militias went all over town searching for non-Tigrayans to kill. Men turned into bloodthirsty beasts that day.” (23)



While Mr. Abiy Ahmed blamed the massacre on forces loyal to the Tigray regional government, the TPLF denied the accusation. Due to the complete shutdown of Tigray's communication and strict prohibition of the journalists' freedom, it is difficult to verify each side's claims. The United Nations High Commissioner for Human Rights, Ms. Michelle Bachelet, has called for further investigation: "It is essential that there are investigations into allegations of human rights violations there against both Amharans and Tigrayans." Criminals always hide their shocking crime through the use of the darkness. (24)

It is beyond any doubt that federal government forces or their allied ethnic militias have also committed murder and extermination in Tigray. Tigrayan refugees in the Sudanese refugee camps, have recounted about the massacre of Tigrayan civilians in Mai Kadra by Ethiopian federal forces and members of an Amhara militia: "Some said they had seen hundreds of bodies and described scenes of ethnically motivated attacks, including killings with knives and beatings." (25) According to the Al Jazeera's correspondence, Mohamed Vall, reporting from Um Rakuba refugee camp near the Sudanese border, refugees coming from Ethiopia were recounting instances of looting, as well as witnessing "two rounds of violence: the first being the military coming in to chase the rebels [away], and the second [being] members of local militia, particularly Amhara militia called Fano, who come after the defeat of the rebels to loot inside the homes and expel civilians from their places". (26)

The Guardian has reported that a "refugee, who gave his name only as Abraham, saw corpses in civilian clothes as he fled the Tigrayan town of Humera towards the border with Sudan. 'Nobody can bury them, they were outside on the road,' he recounted from Hamdayet, a Sudanese border transit point." (27) And this is the testimony of a doctor, in Tigray hospital, who has recently moved to Addis Ababa: "Along the way, I saw nine burned tanks, ruined houses and damaged power grids. I also [saw at least 15 makeshift graves in the town of Mehoni.](#)" (28)

The UN High Commissioner for Human Rights, Ms. Michelle Bachelet, has pointed to "multiple reports that the Amhara "Fano" militia had committed human rights abuses, including killing civilians and looting, in addition to unverified allegations that Eritrean troops were present in Tigray and had been involved in the hostilities and serious violations of international law. She has raised concerns about violation of international law in Tigray:

"We have received allegations concerning violations of international humanitarian law and human rights law, including artillery strikes on populated areas, the deliberate targeting of civilians, extrajudicial killings and widespread looting" (29)

Ethiopia's government has always rejected calls for independent investigations into the possibility of the perpetration of international crimes in Tigray. Another instance of Mr. Ahmed's policy of extermination is his deliberate attempt to grant access to war-torn



areas to provide people with much-needed humanitarian aid food and medicine. This a blatant violation of the aforementioned Article 7-2-b of the Rome Statute of the ICC.

Crimes against Civilians

Parties to the war in Tigray are the Ethiopian federal government, Amhara regional forces and militia, plus the Eritrean government on the one side, and TPLF special forces and regional militias on the other. It is a type of non-international armed conflict governed by the common Article 3 the Geneva Conventions (International Humanitarian Law) of 12 August 1949, when one or more non-state armed groups are involved. The Convention governs conflicts between non-state groups as well. Ethiopia ratified all 4 Geneva Conventions in 1969 and is also a party to Protocol II to the Conventions that guarantees further protections for combatants and civilians during non-international armed conflicts. The IHL has prohibited attacks against civilian objects (by artillery or other means), indiscriminate or disproportionate civilian harm, the use of heavy artillery (weapons with a wide blast range) and incidental harm to civilians.

At the beginning of the war, the Ethiopian Air Force (EAF) started by bombing Mekelle, , partially destroying a hotel in the inner city. Eritrean forces, reportedly, supported the operation by drones provided to them by the United Arab Emirates (UAE). The TPLF forces have also used missiles against Amhara and other locations in Eritrea. According to Human Rights Watch, on November 6, the Ethiopian army conducted a round of airstrikes around Mekelle. On November 7, shelling along the border of the Amhara and Tigray region killed 6 and reportedly wounded over 60 combatants. The warning of the Ethiopian army to residents was ineffective, as airstrikes and heavy bombardments in populated urban areas did not allow them to escape to more secure zones. (30)

On December 3, 2020, the New York Times reached out doctors in Tigray reporting “indiscriminate artillery barrages on civilian areas, looting by armed men and the deaths of at least 27 civilians and injuries of more than 100.” A physician who moved to Addis Ababa from Tigray, has shared his observations about reported civilian casualties in Mekelle on November 28, 2020: “I witnessed 16 civilian deaths. Comparing it to other towns, people were relieved about the figure. On that day, there were artilleries on the outskirts of the city, their sound so heavy that it shook windows... there was still widespread fear, uncertainty and confusion among many.” (31)

Since the beginning of the conflict, the Tigray regions have remained largely cut off from the rest of the world with food, medicine, clean water, fuel and other basic necessities desperately needed for war-affected and displaced population. The aid trucks remained waiting at the border of Tigray for weeks, but the Ethiopian government repeatedly objected to allowing a humanitarian corridor in what it called external “interference”. This happened despite repeated warning from humanitarian agencies about the compounding risk of life and suffering to the most vulnerable population. It was not until December 12, 2020 that that the first international aid convoy carrying medicines and

Main 194 Jarvis St, 2nd Fl., Toronto, ON, Canada M5B 2B7 T: 416.363.1066 F: 416.363.2122 E: mabai@ccvt.org Toll Free: 1.877.292.2288
Scarborough 2401 Eglinton Ave. E., 3rd Fl., Unit 310, Scarborough, ON, Canada M1K 2N8 T: 416.750.3045 F: 416.750.4990
The Hub 1527 Victoria Park Avenue 2nd Fl., Toronto, ON, Canada M1L 2T3 T: 416.750.9600 F: 416.750.9200
Mississauga Office 130 Dundas St. East, #204, Mississauga, Ontario, Canada L5A 3V8 T:905-277-2288 F:905-277-8083
20 Palace Road Toronto, Ontario, Canada M5A 1G4 T:416-364-3184
Accredited to the International Rehabilitation Council for Torture Victims
WWW.CCVT.ORG Charity No: 133327908 RR0001



Funded by:

Financed by:

Immigration, Refugees and Citizenship Canada

Immigration, Réfugiés et Citoyenneté Canada





relief supplies arrived in Mekelle. This deliberate delay caused sufferings and casualties for civilians and death for patients who were in desperate need of life-saving medications.

The article 23 of the 4th Geneva Conventions Relative to the Protection of Civilian Person provides that state parties “shall allow the free passage of all consignments of medical and hospital stores” and it should be done “as rapidly as possible”. This is reiterated in the Rule 55 of the International Committee of the Red Cross: “parties to a conflict must allow and facilitate the rapid and unimpeded passage of impartially distributed humanitarian relief for civilians in need.” (32) This necessitates the freedom of movement of humanitarian workers to perform their duties effectively. Similarly, article 11 of the International Covenant on Economic, Social and Cultural Rights (ratified by Ethiopia on 11th of June 1993) provides that the states parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

Ethiopia is a party to core human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ethiopia is also party to regional human rights treaties, including the African Charter on Human and Peoples’ Rights and the African Union Convention Governing Specific Aspects of Refugee Problems in Africa.

The complete shutdown of internet and phone communications to around six million people in Tigray have acted as collective punishment to the civilian people. It violates multiple rights guaranteed under the international and regional human rights instruments Ethiopia has acceded to, including the rights to freedom of opinion, expression, information and the right to free assembly. According to the Human Rights Watch:

Internet and phone shutdowns can cause considerable harm to the civilian population, including leading to possible injury and death by preventing civilians from communicating with each other about safety considerations, access to medical facilities, and sources of food and shelter. They also hinder the work of journalists and human rights monitors who can provide information on the situation on the ground, including the reporting of possible laws-of-war violations. (33)

The invasion of Tigray has delivered its most destructive blow on children. The United Nations International Children’s Emergency Fund (UNICEF) estimates that despite an agreement on access, some 2.3 million children in the region are cut off from humanitarian assistance amid the violence. The agency’s Executive Director, Ms.



Henrietta Fore, has raised her serious concern in this respect:

“We are extremely concerned that the longer access to them is delayed, the worse their situation will become as supplies of food, including ready-to-use therapeutic food for the treatment of child malnutrition, medicines, water, fuel and other essentials run low”. (34)

This deprivation is against customary international law including the UN Convention of the Right of the Child (CRC), Ethiopia is a party to. Article 24 of the CRC obligate the state parties to guarantee “right of the child to the enjoyment of the highest attainable standard of health” and the article 27 stipulates that “States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.”

Forcible Transfer of Population

According to Article 7 (d) of the Rome Statute for ICC, "Deportation or forcible transfer of population means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present”.

Heavy casualties and destruction, mass displacement of 100,000 people from Tigray, 55,000 refugees in Sudan: this is the sheer balance sheet of the war of aggression against Tigray. What will follow is the testimony of Shimei Abra Adiko, an Ethiopian refugee in Sudan: “The [pro-government] militia said they would kill us because we are from Tigray. They told us, ‘You have 24 hours to leave’, and they began to loot our animals and property.” (35)

Before crossing the border, refugees spent days on the run, facing starvation, being stopped by armed groups who robbed their belongings. Many hid for long hours in bushes to avoid being spotted. They entered Sudan with nothing but clothes in their back. 50% of refugees in Sudan are children with inadequate means to survive. Tigrayan refugees in Sudan are unable to restock food, medical and other emergency supplies. Local communities, with their little resources, cannot be of much help to them. A great number of refugees have starved for days. They suffer from physical and mental health complications. Children suffer from flashbacks and frequent nightmares about dead bodies. Families have been torn apart by the conflict. Hundreds of refugees have lost contact with their loved ones.

The condition of around 100,000 Eritrean refugees in four refugee camps in Tigray is not better. They had escaped Eritrea due the gross human rights violations of Mr. Afwerki's tyrannical regime including compulsory and indefinite military service and daily surveillance. With the outbreak of war, they caught in a conflict that put their safety and survival at great risk. According to the reports received by the United Nations High Commissioner for Refugees (UNHCR), a great number of them have been killed, recruited, kidnapped and forcibly returned to Eritrea by the Eritrean forces in Tigray with the consent or acquiesce of the Ethiopian army. The UNHCR and other aid agencies

Main 194 Jarvis St, 2nd Fl., Toronto, ON, Canada M5B 2B7 T: 416.363.1066 F: 416.363.2122 E: mabai@ccvt.org Toll Free: 1.877.292.2288
Scarborough 2401 Eglinton Ave. E., 3rd Fl., Unit 310, Scarborough, ON, Canada M1K 2N8 T: 416.750.3045 F: 416.750.4990
The Hub 1527 Victoria Park Avenue 2nd Fl., Toronto, ON, Canada M1L 2T3 T: 416.750.9600 F: 416.750.9200
Mississauga Office 130 Dundas St. East, #204, Mississauga, Ontario, Canada L5A 3V8 T: 905-277-2288 F: 905-277-8083
20 Palace Road Toronto, Ontario, Canada M5A 1G4 T: 416-364-3184
Accredited to the International Rehabilitation Council for Torture Victims
WWW.CCVT.ORG Charity No: 133327908 RR0001



Funded by:
Immigration, Refugees and Citizenship Canada
Immigration, Réfugiés et Citoyenneté Canada





have not had access to the four main camps hosting Eritrean refugees - Shimelba, Hitsats, Mai-Ayni and Adi Harush. Food has run out for Eritrean refugees in Tigray camps. (36)

Following the intensification of conflict in Tigray, a number of Eritrean refugees managed to escape Tigray to Addis Ababa and other parts of Ethiopia. Following the occupation of Mekelle on November 28, 2020, Ethiopian government spared no time to forcibly return them to the Tigray camps, deliberately neglecting the risk to their life and security. The government did not inform the UNHCR of its relocation plan and put refugees on buses back to the risky border area with Eritrea. Mr. Babar Baloch, the UNHCR spokesman, called the reports about relocation “alarming” and mentioned that “any refoulement would be absolutely unacceptable.” (37) The International Organization for Migration said it was “extremely concerned” about the refugees’

“forced” return and denied its collaboration with the government of Ethiopia in this respect. (38)

The forcible relocation of Eritrean refugees, masterminded by Mr. Ahmed, is a blatant violation of the principle of non-refoulement enshrined in the article 33 of the Geneva Convention relating to the Status of Refugees as well as the non-degradable right of every human person not to be return to torture (article 3 of the UN Convention against Torture)

Massive Discriminations

Since taking office in 2018, the Prime Minister Abiy Ahmed has pursued a policy of massive discriminations against oppositional ethnic groups including and specifically Tigrayans and their leadership. He removed many Tigrayans from government and security posts and arrested many in the pretext of rights abuse and corruption. In a further move, Ethiopia’s parliament stripped 39 members of TPLF, including regional president Gebremichael, of immunity from prosecution. Police arrested 242 Tigrayans charging them of conspiracy against the government. (39)

Elsewhere in the country, ethnic profiling of Tigrayans has reached an alarming point. The Ethiopian police is seeking the list of ethic Tigrayans all over the country in an attempt to arrest and persecute them as “traitors”. The government’s newly formed State of Emergency Task Force for Tigray has systematically attempted to hunt people, Tigrayans and others, suspicious of working for the TPLF in the capital Addis Ababa and elsewhere. There are fears of reprisals against Tigrayans living around Ethiopia. According to Ezekiel Gebissa President of the Ethio Multinational Federalist Support Force:

“They are illegally dismissed from jobs, their properties destroyed, their assets frozen and travels restricted. Mass arrest, arbitrary detention, and



enforced disappearance of Tigrayans in Addis Ababa and in other towns have intensified, aggravating the precariousness of their life in Ethiopia.” (40)

Article 7 (h) of the Rome Statute for ICC has classified “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender” as a crime against humanity. According to article 4 (a) of the International Convention on the Elimination of All Forms of Racial Decimation (ratified by Ethiopia on 23 June 1976), it is “an offence punishable by law... all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin”.

Conclusion

The invasion of Tigray by Mr. Abily Ahmed and his allies is a war crime and crime against humanity and peace with the sinister potential of disintegration the multi-ethnic country of Ethiopia. Multiple crimes of international nature have been committed by the Ethiopian government, although the TPLF is also not free from blemish. The occupation of Mekelle by the federal government does not mean the end of the armed conflict. The TPLF has an effective force of trained, dedicated and experienced guerrilla combatants and the support Tigrayan people who had sacrificed their lives for 16 years to save Ethiopia from the nightmare of the Derg.

With the suppression of the Tigrayan’s people movement for autonomy, Tigray may choose to secede from Ethiopia and pave the way for balkanization of the country. There is also a possibility that the TPLF makes a unity with the Eritrean rebels who are struggling against the tyrannical regime of Afwerki with the prospect of the unification of Tigrigna speaking people in both sides of the border. In the meantime, the possibility of a military coup should not be ruled out.

There is hardly any doubt that there is no military solution to the ethnic problems in Ethiopia and elsewhere. War is the cruellest absurdity of the entire human existence. The only ray of hope is the triumph of federalism in Ethiopia and recognition the human rights of all ethnic and religious communities to participate voluntarily, meaningfully and effectively in all aspects of the Ethiopian life.

Endnotes

1. Clausewitz, K.V. (1985). Paret, P. & Moran, D. (trans.). Two Letters on Strategy. Kansas: Army College Foundation, Inc. P. 21.
2. Reisen, M.V., Mirjam, Mawere, M., Munyaradzi, Stokmans, M., Gebre-Egziabher, K.A. (Eds.). *Roaming Africa: Migration, Resilience and Social Protection*. Mankon: Langaa Research and Publishing CIG, p. 483.
3. Beken, C.v.d. (2012). *Unity in Diversity: Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia*. Berlin: LIT VERLAG Dr. W. Hopf, pp. 17-19.



4. <https://www.aljazeera.com/news/2020/5/29/ethiopian-security-forces-accused-of-grave-human-rights-abuses>
5. The Guardian in “Ethiopia’s security forces accused of torture, evictions and killings – report.” See <https://www.theguardian.com/global-development/2020/may/29/ethiopias-security-forces-accused-of-torture-evictions-and-killings-report>
6. <https://www.bbc.com/news/world-africa-53298845>
7. Griffiths, A., Chattopadhyay, R., Light, J., Stieren, C. (EDs.). (2020). *The Forum of Federations Handbook of Federal Countries 2020*. Cham: Palgrave Macmillan, p. 144.
8. Mills, G, Obasanjo, O., Biti, T. & Herbst, J. (2019). *Democracy Works: Turning Politics to Africa’s Advantage*. London: Hurst and Company, P. 60.
9. <https://news.un.org/en/story/2020/11/1077592>
10. <https://www.reuters.com/article/us-ethiopia-conflict-idUSKBN28206X>
International Criminal Court. Rome Statute for International Criminal Court. PDF., p. 9, as retrieved from: <https://www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf>
11. <https://fr.reuters.com/article/us-ethiopia-military-idUSKCN1IZ0ML>
12. <https://www.bbc.com/news/world-africa-44369382>
13. https://www.africa.upenn.edu/Hornet/Ethiopian_Constitution.html
14. <https://www.newframe.com/the-looming-long-civil-war-that-could-break-ethiopia/>
15. <https://www.reuters.com/article/us-ethiopia-conflict-nobel-idUSKBN27X0WZ>
16. TheGuardian, December 8, 2020 and retrieved from:
<https://www.theguardian.pe.ca/news/world/ethiopia-says-there-are-tigrayan-fighters-not-yet-defeated-after-conflict-528694/>
17. <https://www.hrw.org/world-report/2019/country-chapters/ethiopia>
18. Caron, J.F.(2019). *Disobedience in the Military: Legal and Ethical Implications*. Cham: Palgrave Macmillan, P. 40.
19. Boot, M. (2002). *Genocide, Crimes against Humanity, War Crimes: Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court*. Utrecht: School of Human Rights Research, p. 192.
20. Kerrigan, H. (Ed.). (2020). *Historic Document of 2019*. New Delhi: Sage Publications India Pvt. Ltd., P. 712
21. Ntoubandi, F.Z. (2007). *Amnesty for Crimes against Humanity Under International Law*. Leiden: Martinus Nijhoff Publishers.
22. [HTTPS://WWW.ALJAZEERA.COM/NEWS/2020/12/12/SURVIVORS-RECOUNT-HORRIFIC-DETAILS-OF-MAI-KADRA-MASSACRE](https://www.aljazeera.com/news/2020/12/12/survivors-recount-horrific-details-of-mai-kadra-massacre)
23. UN News, December 22, 2020, retrieved from:
<https://news.un.org/en/story/2020/12/1080622>



24. *Ibid.*
25. <https://www.aljazeera.com/news/2020/12/6/stories-of-separation-and-violence-as-more-ethiopians-reach-sudan>
26. The Guardian, December 3, 2020, as retrieved from:
<https://www.theguardian.pe.ca/news/world/ethiopias-war-still-churns-but-relief-aid-coming-527035/>
27. <https://www.aljazeera.com/news/2020/12/14/ethiopias-tigray-war-a-doctors-account-of-mekelles-plight>
28. UN News, December 22, 2020, retrieved from:
<https://news.un.org/en/story/2020/12/1080622>
29. <https://www.hrw.org/news/2020/11/25/qa-conflict-ethiopia-and-international-law>
30. <https://www.aljazeera.com/news/2020/12/14/ethiopias-tigray-war-a-doctors-account-of-mekelles-pligh>
31. <https://www.icrc.org/en/doc/assets/files/other/customary-law-rules.pdf>.
32. <https://www.hrw.org/news/2020/11/25/qa-conflict-ethiopia-and-international-law>
33. [Tigray crisis: Humanitarian aid for children must be a priority, UNICEF says | UN News](#)