

## **Atrocity and its Aftermath: The Law and Pathways for Justice in the Tigray Conflict**

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### **Abstract**

The armed conflict in Ethiopia's Tigray region between 2020 and 2022 constitutes one of the most severe mass-atrocity crises of the twenty-first century, yet meaningful accountability remains elusive. This paper examines how atrocities committed during the Tigray conflict should be evaluated under international criminal and human rights law and explores viable pathways for justice in a post-conflict context marked by political fragility. Drawing on international criminal jurisprudence, United Nations and NGO reporting, and historical analysis, the paper assesses allegations of genocide, crimes against humanity, and war crimes, with particular attention to the evidentiary and doctrinal challenges surrounding the crime of genocide. It argues that while substantial evidence supports findings of crimes against humanity and war crimes, the genocide determination is complicated by issues of specific intent, attribution, and individual criminal responsibility in a multi-actor conflict.

Beyond legal classification, the paper interrogates core transitional justice paradoxes—peace versus justice, truth versus justice, and justice versus reconciliation—highlighting the limitations of purely retributive mechanisms in Ethiopia's political context. It contends that while criminal prosecutions of senior perpetrators are legally and morally necessary, they are insufficient on their own. Accordingly, the paper proposes a hybrid accountability framework that combines formal judicial processes with dialogical and restorative mechanisms, including indigenous alternative dispute resolution models. Such an approach, it argues, offers a more sustainable path toward accountability, reconciliation, and long-term stability in post-conflict Ethiopia.

## I. Introduction

Much like the majority of mass-atrocity conflicts, the Tigray War is rooted in millennia of history. Although this article focuses primarily on the atrocities committed between November 2020 and November 2022, this conflict cannot be understood without stressing Ethiopia's long-evolving struggles over sovereignty, unified statehood, national pride, and profound ethnic complexity. As one of the few African countries to have never been colonized, Ethiopia's history involves the constant interplay of these forces, which in turn have shaped motives, alliances, and patterns of violence.

This paper examines what is often referred to, perhaps oversimplistically, as the Tigray War. In response to an alleged attack by Tigrayan forces on federal Ethiopian military entities in Tigray, Ethiopian National Defense Forces (ENDF) launched a military campaign in Tigray on November 4, 2020,, one of Ethiopia's ten ethnically based regional states (*kililoch*).<sup>1</sup> In response, the Tigray Defense Force (TDF) and Tigrayan People's Liberation Front (TPLF) mobilized, resulting in a violent conflict between myriad actors and regional factions. The war formally ended with the Pretoria Agreement (the Cessation of Hostilities Agreement, or CoHA), on November 2, 2024. Nonetheless, instability persists today, especially in light of the humanitarian catastrophes and widespread commission of atrocities that leading human rights bodies (including the Human Rights Council and Amnesty International) have characterized as crimes against humanity and war crimes, largely perpetrated by Ethiopian and Eritrean forces against Tigrayan civilians. Accordingly, this paper asks: How should the atrocities committed during the Tigray conflict be evaluated under international human rights and criminal law? What

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<sup>1</sup> *Ethiopia*, CIA World Factbook, <https://www.cia.gov/the-world-factbook/countries/ethiopia/> (last visited Feb. 6, 2026).

combination of transitional justice mechanisms—retributive, dialogical, or restorative—could best address them?

Drawing on factual analysis of the conflict and the international criminal law jurisprudence, this paper assesses available legal avenues for justice and explores alternative reconciliation mechanisms suited to the region’s ongoing volatility. It analyzes the legal basis for characterizing the conflict as a genocide, while underscoring the well-supported conclusion of human rights organizations that crimes against humanity and war crimes have occurred. Much like in many comparable conflicts, subsequent dilemmas arise as to how to balance achieving justice for victims, ensuring due process for perpetrators, finding truth despite contradictory perspectives from various parties, and considering reconciliation, especially in the context of deeply divisive ethnic conflict. Consequently, this paper considers the post-conflict paradoxes that define the Ethiopian context: the dilemmas between maintaining political peace and ensuring justice, excavating truth and justice, and justice and mercy. It evaluates the strengths and limitations of different accountability frameworks, recognizing that while the conflict is formally concluded, its consequences are still pertinent, through political instability and remnants of harm.

## *II. Historical background and Context of the Tigray War*

Tigray is Ethiopia’s northernmost regional state, bordered by Eritrea, Amhara, and Afar,<sup>2</sup> with Mekelle as its capital and Tigrigna as its primary language.<sup>3</sup> Often understood as the birthplace of Ethiopian civilization, the region has long occupied a politically and symbolically important place in the country’s history.<sup>4</sup> Yet its relationship with Ethiopia’s central authorities has been marked by recurring tensions over autonomy, identity, and political power.

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<sup>2</sup> *Tigray History*, Ass’n of Tigrayan Cmty. in Can., <https://tigraycommunitiescanada.org/tigray-history/> (last visited Feb. 6, 2026).

<sup>3</sup> Omna Tigray, *Tigray Overview*, <https://omnatigray.org/slide-deck/tigray-overview-deck/> (Mar. 24, 2022).

<sup>4</sup> Omna Tigray, *Tigray Overview*, <https://omnatigray.org/slide-deck/tigray-overview-deck/> (Mar. 24, 2022).

Tigray was the center of the ancient D'mt Kingdom, which encompassed the Tigrayan region and what is now Eritrea, from around 980 to 400 BC. This kingdom was succeeded by the Aksum Kingdom (80 BC to around 960 AD), historically one of the most developed cultures and most powerful kingdoms of the ancient world, spanning across Eritrea, northern Ethiopia, Sudan, Yemen, and southern Saudi Arabia.<sup>5</sup> With its Golden Age in the 3rd century, King Ezana then formalized the name “Ethiopia” while also bringing in Christianity. As the empirical kingdom experienced a decline in the 14th century, territories came to be fragmented and presided by different lordships.

Modern conflict dynamics between Tigray and broader Ethiopia emerge more clearly from the late 19th and 20th centuries, as national unification under Emperors Yohannes IV and Menelik II effectively shifted political influence southward and weakened Tigrayan regional sovereignty. Having resisted the multiple attempts of colonial powers to impose colonial rule, namely with the Battle of Adwa in 1896, in which invading Italian forces were defeated, Ethiopia continued to solidify as a unified country, with a strengthened and centralized government under Emperor Haile Selassie (1930-1974). Centralization under Selassie further marginalized Tigray, resulting in the First Woyane Rebellion in 1943, in which Tigrayans demanded self-administration under the Ethiopian flag and unity, “administration by Tigrayan Customary laws, [and] objection to payment of excessive taxation,”<sup>6</sup> amongst other demands. However, the rebellion was violently suppressed by the central government with British support, deepening Tigrayan resentment toward the national authority.

In the 1970s, tensions intensified under Marxist leader Mengistu Hailemariam and the Derg military regime (1974-1991), leading to the overthrow of the elitist Imperial regime and

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<sup>5</sup> *Id.*

<sup>6</sup> Hadush G. Meskel, *Woyane/TPLF: A Story of Bravery and Restraint* 88 (Nov. 2, 2015), <https://www.aigaforum.com/articles/TPLF-A-Story-of-Bravery.pdf>

leading the birth of the Tigrayan People Liberation Front (TPLF) in 1975, as the Tigrayan people continued to experience disempowerment and marginalization under the Derg government. This included coercive demands to give away their food, as well as a broader neglect from the national government, leading to a regional decline.<sup>7</sup> The TPLF later became a leading force in toppling the Derg and establishing the Ethiopian People's Revolutionary Democratic Front (EPRDF) in 1991—a coalition in which the TPLF held disproportionate influence for nearly three decades. The EPRDF's system of ethnic federalism produced both expanded regional autonomy and new sources of ethnic tension, which contributed to widespread dissatisfaction across Ethiopia. Ultimately, this led to the election of Prime Minister Abiy Ahmed in 2018, leader of the Prosperity Party following the dissolution of the EPRDF in 2018, effectively resulting in the sidelining of Tigrayan leaders.<sup>8</sup> As a main actor in this conflict, it is important to note that Prime Minister Ahmed remains a polarizing political leader, as he is often lauded for his peacebuilding endeavors with Eritrea<sup>9</sup> and received the Nobel Peace Prize in 2018.

Abiy's government soon clashed with Tigray's regional authorities, particularly over the postponement of national elections during the COVID-19 pandemic. In response to this June 2020 extension of Abiy's first term, the TPLF rejected the delays and proceeded with its own regional elections, defying federal directives.<sup>10</sup> The TPLF then held local elections in defiance of the federal authorities. On November 4, 2020, Prime Minister Abiy accused Tigrayan troops of attacking a federal military camp in Mekelle,<sup>11</sup> thus launching an allegedly retaliatory attack on

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<sup>7</sup> *Id.*

<sup>8</sup> Cara Anna, *Ethiopia Calls "All Capable" Citizens to Fight in Tigray War*, AP News (Aug. 10, 2021), <https://apnews.com/article/africa-ethiopia-bd70724f2d03bd57b4f0111efc111a11>

<sup>9</sup> See generally *Ethiopia–Eritrea Relations*, Council on Foreign Relations, <https://www.cfr.org/backgrounder/ethiopia-eritrea-relations> (last visited Feb. 6, 2026).

<sup>10</sup> *Conflict in Ethiopia*, Global Conflict Tracker, Council on Foreign Relations, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ethiopia> (last visited Feb. 6, 2026).

<sup>11</sup> *Id.*

the region. This came to be known as the Mekelle Offensive, which quickly escalated as parties ramped up their responses. Throughout this 2-year long conflict, the media, UN officials, and international human rights NGOs started to [report or call out] the mistreatment and abuse of civilians, especially Tigrayans.<sup>12</sup> Indeed, A 2021 United States government report alleges claims of ethnic cleansing perpetrated by Ethiopian and Eritrean national forces against civilian Tigrayans. Amnesty International further reports that “Eritrean troops fighting in Ethiopia’s Tigray state **systematically** killed hundreds of unarmed civilians in the northern city of Axum on 28-29 November 2020, opening fire in the streets and conducting house-to-house raids in a massacre that may amount to a crime against humanity.”<sup>13</sup> Here, Amnesty International employed terms of international law such as “systematically,” and explicitly alleged crimes against humanity, recounting the level of violence having been perpetrated by Eritrean troops in the region against Tigrayans. Thus, while the war formally ended in November 2022 with the Pretoria Agreement, in which parties agreed to “disarm Tigrayan troops, hand control of Tigray to Ethiopian federal government, end the Mekelle Offensive, and permit full humanitarian access to Tigray,”<sup>14</sup> it is the stain of the alleged crimes against humanity, war crimes, and atrocities that render the conflict a crucial site for examining international criminal law, the classification of atrocity crimes, and the possibilities and limitations of reconciliatory justice.

### *III. Legal analysis of the conflict and relevant paradoxes*

According to the Human Rights Council (HRC), “international criminal law sanctions serious violations and abuses of international human rights law and international humanitarian

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<sup>12</sup> *Id.*

<sup>13</sup> 11. Amnesty Int’l, *Ethiopia: Eritrean Troops’ Massacre of Hundreds of Axum Civilians May Amount to Crime Against Humanity* (Feb. 16, 2022), <https://www.amnesty.org/en/latest/news/2021/02/ethiopia-eritrean-troops-massacre-of-hundreds-of-axum-civilians-may-amount-to-crime-against-humanity/>

<sup>14</sup> *Conflict in Ethiopia*, supra note 10.

law and provides for individual criminal responsibility.”<sup>15</sup> However, still according to the HRC, neither Ethiopia nor Eritrea are State parties to the Rome Statute of the International Criminal Court. In the shadow of this absence of participation, this conflict has been the theater of gross human rights violations and the HRC’s International Commission of Human Rights Experts on Ethiopia has concluded that it has reasonable grounds to believe that various parties have “committed serious violations and abuses, including war crimes and crimes against humanity.”<sup>16</sup> Other reports and scholars have also evaluated the situation to determine whether the alleged campaign of ethnic cleansing against civilian Tigrayans amounts to genocide, with the New Lines Institute stating that “on the evidence currently available, there is a reasonable basis to believe that members of the ENDF, the Amhara Special Forces (“ASF”), and the EDF have committed genocide against Tigrayans.”<sup>17</sup> The absence of a definite genocide charge illustrates how challenging it can be to qualify such atrocities under the law, despite it being evident that atrocities are present.

This paper will mainly focus on the allegation of genocide, as those of crimes against humanity and war crimes are generally unanimously agreed upon. As genocide constitutes one of the hardest crimes to prove beyond a reasonable doubt, fraught with debate, namely with respect to destruction in whole or in part of a protected group, specific intent, individual criminal responsibility. Firstly, pursuant to Article 6 of the Rome statute, genocide means any of the enumerated acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”<sup>18</sup> Furthermore, under *The Prosecutor V. Jean-Paul Akayesu* (1998), groups

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<sup>15</sup> Hum. Rts. Council, Int’l Comm’n of Hum. Rts. Experts on Eth., *Comprehensive Investigative Findings and Legal Determinations* (Oct. 13, 2023),

<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/chreethiopia/a-hrc-54-crp-3.pdf>

<sup>16</sup> *Id.*

<sup>17</sup> Contributors, *Genocide in Tigray: Serious Breaches of International Law in the Tigray Conflict, Ethiopia, and Paths to Accountability*, New Lines Inst. (Oct. 23, 2025),

<https://newlinesinstitute.org/rules-based-international-order/genocide-in-tigray-serious-breaches-of-international-law-in-the-tigray-conflict-ethiopia-and-paths-to-accountability-2/>

<sup>18</sup> Rome Statute of the International Criminal Court art. 6, July 17, 1998, 2187 U.N.T.S. 90.

protected by this article are those deemed stable and permanent.<sup>19</sup> The Tigrayans should qualify for protection under this precedent, namely in that the broad literature review and aforementioned history underscores the Tigrayan people as unified by a long-lasting ethnic identity, forming one of the ten ethnically-based states composing federal Ethiopia. This is the premise of the country’s constitutional makeup, just as the south-central Oromia and northwestern Amhara regions, respectively inhabited by the Oromo and Amharic people, are rooted in the same unique and specific ethnic identity.

Defined in the Rome Statute, the charge of genocide depends on the commission of acts (*actus reus*) including the following:

*“killing members of the group, causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group,”*<sup>20</sup>

Additionally, there is the necessity of demonstrating the deliberate and specific *mens rea*, or culpable mental intent, to do so. Many scholars and human rights organizations have reported evidence of specific intent to underpin overflowing evidence of such acts having been committed, namely with respect to the use of sexual violence and rape as a tool of genocide in Tigray. It is noteworthy that pursuant to *Akayesu*, rape became formalized as *actus reus* embedded in the crime of genocide. According to various journalistic agencies, including the Guardian,<sup>21</sup> as well as scholars Gebru Kidanu and A.H. Tefera, in their piece “‘He had Orders, and His Superiors were Outside’: Strategic Rape as Genocide in Tigray,” there is evidence of

<sup>19</sup>*Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, ¶ 124 (Sept. 2, 1998).

<sup>20</sup> Rome Statute of the International Criminal Court art. 6(a)–(e), July 17, 1998, 2187 U.N.T.S. 90.

<sup>21</sup> “Mass rape, forced pregnancy and sexual torture in Tigray amount to crimes against humanity – report,” *The Guardian* (2025), <https://www.theguardian.com/global-development/2025/jul/31/mass-rape-forced-pregnancy-sexual-torture-in-tigray-ethiopian-eri-trean-forces-crimes-against-humanity-report> (last visited Mar 9, 2026).

direct orders given to the Eritrean Defence Forces (EDF) and Ethiopian National Defence Force (ENDF) to use “rape, killings, forced abortions, and the transmission of HIV, perpetrated with strong indications of genocidal intent.”<sup>22</sup> A focus on sexual violence alone seems to meet acts enumerated by Articles 6b and 6d, as “rape inflicts long-lasting and potentially irreparable psychological trauma on survivors [...and] contributes to collective trauma, effectively serving to dismantle and destroy an entire ethnic group,”<sup>23</sup> embodying serious bodily and mental harm to members of the group pursuant to Article 6b. An aim of using rape as a tool of genocide is to disrupt natural reproductive processes in a community and the transmission of ethnic and genetic continuity through generations. To this end, perpetrators use sexual violence to damage women’s reproductive organs and cause infertility, as well as ‘purify’ bloodlines by impregnating women, and in doing so, consider them ‘ethnically cleansed.’<sup>24</sup> This wholly embodies Article 6d, on the count of “imposing measures intended to prevent births within the group.”<sup>25</sup>

In their piece, Kidanu and Tefera demonstrate how specific intent is evident through various instances; for example, they tell the story of how a Tigrayan doctor treating a rape survivor found a piece of paper held in a plastic sheet from within her womb, with written on it “Deki Erena [‘we Eritreans’] are always Heroes. That is how we do! And we will still keep doing this. We want the wombs of Tigrayan women to be infertile.”<sup>26</sup> Such atrocity explicitly evidences the presence of specific intent, as infertility substantiates Article 6d.

Beyond the use of rape as a genocidal tool and with specific intent, reports also describe other forms of violence which substantiate Article 6c, of “deliberately inflicting on the group

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<sup>22</sup> Gebru Kidanu & A.H. Tefera, “*He Had Orders, and His Superiors Were Outside*”: *Strategic Rape as Genocide in Tigray*, in *Langaa RPCIG eBooks* 533, 533–60 (2024), <https://doi.org/10.2307/jj.22136029.18>

<sup>23</sup> *Id.* at 535.

<sup>24</sup> *Id.*

<sup>25</sup> Rome Statute of the International Criminal Court art. 6(d), July 17, 1998, 2187 U.N.T.S. 90.

<sup>26</sup> Kidanu & Tefera, *supra* note 22, at 536.

conditions of life calculated to bring about its physical destruction in whole or in part,”<sup>27</sup> describing “the widespread pillage of crops and livestock, and the looting and occupation of Tigrayan homes, destroyed sources of livelihood” and the imposition of “discriminatory rules that deny Tigrayans basic services and access to humanitarian aid,”<sup>28</sup> effectively creating the conditions of life that threaten human survival of Tigrayan civilians, fomenting famine and health insecurity. By limiting access and infringing on the ability to produce life-sustaining nutrition and humanitarian support, the Ethiopian state and associated perpetrators are creating such conditions of life that impact survival. In 2021, the UN reported that “at least 400 000 Tigrayans were in ‘famine-like conditions,’”<sup>29</sup> as a result of siege and blockage of aid imposed by the federal government.

Other such reports emphasize similar evidence of specific intent of eradication and destruction, namely through examining deliberately designed propaganda, strategic messaging, and hate speech.<sup>30</sup> For example, there have been instances of graffiti with claims such as “‘Tigrayans must be eradicated from Ethiopia and the Earth.’”<sup>31</sup> This various research demonstrate how such violent acts evidence the *actus reus* delineated by the Genocide Conventions of 1948, and the subsequent Rome Statute, with specific intent.

Formalizing a verdict becomes complicated with the discussion of criminal responsibility. Much of the difficulty of evaluating this conflict involves identifying perpetrators, given its framing as a civil war. There are myriad actors in this conflict: overtly, the main ones are ENDF,

<sup>27</sup> Rome Statute of the International Criminal Court art. 6(c), July 17, 1998, 2187 U.N.T.S. 90.

<sup>28</sup> “*We Will Erase You From This Land*”: *Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone*, Hum. Rts. Watch (Apr. 6, 2022), <https://www.hrw.org/report/2022/04/06/we-will-erase-you-land/crimes-against-humanity-and-ethnic-cleansing-ethiopia>

<sup>29</sup> Talha Burki, *Humanitarian Crisis in Tigray Amidst Civil War*, 22 *Lancet Infectious Diseases* 774, 774–75 (2022), [https://doi.org/10.1016/S1473-3099\(22\)00304-8](https://doi.org/10.1016/S1473-3099(22)00304-8)

<sup>30</sup> Daniel Tesfa & Mirjam Van Reisen, *Negative Stereotyping, Creation of a Threat, and Incitement to Genocide: Discourse Analysis of Hate Speech Disseminated in the Tigray War*, in *Tigray: The Panarchy of War*, Book 2, vol. 1 (Langaa 2024), [https://www.researchgate.net/publication/385451336\\_Negative\\_Stereotyping\\_Creation\\_of\\_a\\_Threat\\_and\\_Incitement\\_to\\_Genocide\\_Discourse\\_Analysis\\_of\\_Hate-speech\\_Disseminated\\_in\\_the\\_Tigray\\_War](https://www.researchgate.net/publication/385451336_Negative_Stereotyping_Creation_of_a_Threat_and_Incitement_to_Genocide_Discourse_Analysis_of_Hate-speech_Disseminated_in_the_Tigray_War)

<sup>31</sup> Daniel Tesfa, Mirjam Van Reisen & Araya Abrha Medhanyie, “Followers of the Devil’s Code 666”, in *Langaa RPCIG eBooks* 425, 425–72 (2024), <https://doi.org/10.2307/jj.22136029.16>

EDF, TPLF and TDF. However, there is also evidence of Sudanese participation in support of TPLF groups, as “Sudanese government interests in the Tigray conflict are, in large part, the result of historical links between the Sudanese military and the TPLF,”<sup>32</sup> as well as the role of singular high authority figures like Prime Minister Abiy Ahmed and Eritrean President Isaias Afwerki. New York Times reporters Declan Walsh and Simon Marks, based in Nairobi, explain that “Abiy has invited a foreign country to fight against his own people,”<sup>33</sup> referring to Eritrean involvement, as Abiy’s military and violent campaign has been enabled and manifested by “a hodgepodge of forces,”<sup>34</sup> including federal troops, ethnic paramilitary militias, and militant soldiers from Eritrea.”

The precise conviction is difficult to conclude given the multifactor and multiparty character of the conflict. Such components include the unisolable hodgepodge of actors, the relative absence of exact data on the amount of people, specifically of Tigrayans, who have been died from humanitarian crises such as (deliberately fomented) famine, and the cutting off telephone, internet, and media access to Tigray.<sup>35</sup> It is estimated that as a whole, the war has killed 600,000 people;<sup>36</sup> the distribution by ethnicity is not clear, further complicating the claim of genocide.

However, regarding the claim of crimes against humanity, and pursuant to *Akayesu*, these figures can be held criminally responsible for “for implicitly ordering, as well as instigating, aiding and abetting.”<sup>37</sup> The very orders given to Eritrean troops by the chain of command to use sexual violence as a way of humiliating and ethnically cleansing Tigrayan civilians embody this

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<sup>32</sup> Jonas Horner & Ahmed Soliman, *Coordinating International Responses to Ethiopia–Sudan Tensions*, Chatham House (2023), <https://doi.org/10.55317/9781784135669>

<sup>33</sup> Declan Walsh & Simon Marks, *Refugees Come Under Fire as Old Foes Fight in Concert in Ethiopia*, N.Y. Times (June 29, 2021), <https://www.nytimes.com/2020/12/28/world/africa/Ethiopia-Eritrea-Tigray.html>

<sup>34</sup> *Id.*

<sup>35</sup> Cara Anna, *Ethiopia Calls “All Capable” Citizens to Fight in Tigray War*, AP News (Aug. 10, 2021), <https://apnews.com/article/africa-ethiopia-bd70724f2d03bd57b4f0111efc111a11>

<sup>36</sup> *Conflict in Ethiopia*, supra note 10.

<sup>37</sup> *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, ¶ 156 (Sept. 2, 1998).

crime. There is evidence of a survivor reporting having been told by their abuser that he did not want to commit this crime, but that “but he had orders, and his superiors were outside.”<sup>38</sup>

Evidently, there has not been justice rendered for this crime as one of sexual violence, but especially, there has not been that for the crime of instigating, aiding, and abetting this horrible crime.

If the international community were to formally prosecute such actors for such charges having taken place in Tigray, doing so through prosecuting these crimes against humanity in the International Criminal Court would be one avenue to do so. We can note that crimes against humanity charges are specifically relevant here with respect to Articles 7.1.a (“murder”), 7.1.g (“rape, sexual slavery, enforced prostitution, [...], any other form of sexual violence of comparable gravity”), and 7.1.k (“other inhumane acts of a similar character intentionally causing great suffering [...]”).<sup>39</sup> Based on aforementioned discussed evidence, if the ENDF and EDF have been given direct orders to use sexual violence as a tool of war, such authority figures could be charged as guilty for these crimes, also under Article 25.3.a,b, and c.<sup>40</sup> According to AP News reporter Cara Anna, the Ethiopian government has issued a call to arms and urged capable citizens to war and called “all Ethiopians to be ‘the eyes and ears of the country in order to track down and expose spies and agents’ of the Tigray forces.”<sup>41</sup> Such rhetoric is the corollary ideological denouement to the massacre of thousands with civilians expressing fear of the “total annihilation of Tigray.”<sup>42</sup> Indeed, as previously discussed with respect to Amnesty

International’s Report,<sup>43</sup> the killing of hundreds of civilians exactly qualifies under this legal

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<sup>38</sup> Kidanu & Tefera, *supra* note 22, at 546.

<sup>39</sup> Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90.

<sup>40</sup> Rome Statute of the International Criminal Court art. 25(3)(a)–(c), July 17, 1998, 2187 U.N.T.S. 90.

<sup>41</sup> Anna, *supra* note 35.

<sup>42</sup> *Id.*

<sup>43</sup> Amnesty Int’l, *Ethiopia: Eritrean Troops’ Massacre of Hundreds of Axum Civilians May Amount to Crime Against Humanity* (Feb. 16, 2022), <https://www.amnesty.org/en/latest/news/2021/02/ethiopia-eritrean-troops-massacre-of-hundreds-of-axum-civilians-may-amount-to-crime-against-humanity/>

definition of “widespread and systematic,” thus aligning with the criteria for crimes against humanity according to the ICC Rome Statute.<sup>44</sup>

Lastly, with respect to war crimes, this issue is particularly complex given Eritrea’s involvement in the conflict, inherently internationalizing what has been called a “civil war.” Pursuant to Article 8 of the ICC Rome Statute, war crimes are the “serious violations of the laws and customs applicable in international armed conflict.”<sup>45</sup> However, while the war began in November 2020, Prime Minister Abiy only admitted in spring 2021 that Eritrean troops were fighting in Tigray in support of Ethiopia. Interestingly, the Pretoria agreement does not mention Eritrea, which the Council on Foreign Relations flags as causing global concern that Eritrean troops would remain operational and continue to perpetuate violence in Ethiopia despite this agreement.<sup>46</sup> Thus, with respect to war crimes, it is clear that the multi-functional and multi-party character of this war problematizes whether it is a war of intra-state or international character. Albeit this, it is widely regarded as true that various parties are responsible for committing war crimes in this conflict. Article 3 of the Geneva Conventions of August 12, 1949 states that “persons taking no active part in the hostilities [...] shall in all circumstances be treated humanely [...] and that the following acts are and shall remain prohibited,”<sup>47</sup> of specific relevance here, those of “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment”<sup>48</sup> and “outrages upon personal dignity, in particular humiliating and degrading treatment.”<sup>49</sup> Given the use of rape as a weapon of war, there is evidence that it has been done in public,<sup>50</sup> constituting an obvious violation of Article 3.1.c of the Geneva Convention IV.

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<sup>44</sup> Rome Statute of the International Criminal Court art. 8(b), July 17, 1998, 2187 U.N.T.S. 90.

<sup>45</sup> Rome Statute of the International Criminal Court art. 8(b), July 17, 1998, 2187 U.N.T.S. 90.

<sup>46</sup> *Conflict in Ethiopia*, supra note 10.

<sup>47</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 75 U.N.T.S. 287.

<sup>48</sup> *Id.* art. 3(1)(a).

<sup>49</sup> *Id.* art. 3(1)(c).

<sup>50</sup> Kidanu & Tefera, supra note 22.

As tensions persist, the complexity of analyzing this conflict is two-pronged. *Firstly*, how are we to achieve justice when peace is not guaranteed? Also, how are we to know the truth if the government can control the information that gets in and out of the conflict? Firstly, regarding achieving justice and creating peace, this conflict exemplifies the difficulty of bringing certain authority figures like Prime Minister Abiy Ahmed, President Isaias Afwerki, and adjacent factional leaders (i.e. TPFL leaders, Sudanese leaders, and ENDF and EDF generals as well as individual soldiers), to justice considering these are the very actors keeping the conflict ongoing. AP News reports that Prime Minister Ahmed and the Ethiopian national government have been retaliating against international pressure over Tigray<sup>51</sup> and alleges that humanitarian aid organizations have actually been covertly supporting Tigrayan forces. Thus, the government has halted any operations led by Doctors without Borders and other such organizations. This illustrates the deadlock forged by the persistence of a humanitarian crisis and absence of peace, and the lack of higher authority to bring such individuals to justice, without impeding on the necessity of administrative government to address such instability and insecurity.

Similarly, there is an important paradox in that it is difficult to obtain trustworthy news about the conflict as the government controls information. Senior adviser Aly Verjee at the United States Institute of Peace said that Prime Minister Ahmed's declaration of Tigrayan forces as terrorists makes it difficult to end the war, as it becomes a war of words, and "is not likely to encourage restraint on the part of the Tigrayans,"<sup>52</sup> embodying the inextricability of enemy/aggressor and survivor/victim cycles.<sup>53</sup> Thus, if truth is fraught with lacunae due to controlled information and narratives, accessing truth through a potential truth commission is inevitably determined by any sort of victor's justice paradox as well. The power of the

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<sup>51</sup> Anna, *supra* note 35.

<sup>52</sup> Anna, *supra* note 35.

<sup>53</sup> Carolyn Yoder, *Little Book of Trauma Healing: When Violence Strikes and Community Security Is Threatened* (Simon & Schuster n.d.).

international community tragically remains limited within the bounds of state sovereignty, and to the extent that other various international actors seem to be entrenched in this conflict.

*IV. Possible resolution and reconciliation?*

As mentioned above, the formal end to the conflict occurred through the Pretoria Agreement/the Cessation of Hostilities Agreement (CoHA) in November 2022. However, this agreement did not explicitly address Eritrea's role, nor did it undo any of the atrocities that have occurred and continue to impact civilians of the region. Such treaties and agreements are only immediately effective insofar as they achieve negative peace, the notion that they ensure the absence of direct violence. However, it is necessary to conceive peacebuilding processes that ensure the complete cessation of conflict and forge the path towards a unified, reconciled society.

Regarding trials, I believe this case has the necessary evidence to substantiate a trial. The question remains of who to prosecute, as discussed above. The advantages of trials in this case would be the embodiment of the norms and pre-existing regulations created by the advent of a human rights legal culture in the past century; there is a certain rule of law to be adhered to. Furthermore, trials would ensure justice is served to those guilty of crimes against humanity and war crimes, and possibly genocide, all while ensuring they are able to receive due process of law, creating space for the embodiment of ideals such as a fair trial. Moreover, as trials can be victim-centric, they generally embody the rule of law and create the space for civilians having suffered atrocities to speak freely, perhaps with a lessened fear of retaliation. The International Criminal Court emphasizes this mission, highlighting independent prosecution, the respect for defendant's rights, the centralism of victims' voices, and the protection of victims and witnesses. Indeed, trials would need to be done at the international level, given the continued unstable political and civil/national frame of the conflict.<sup>54</sup> However, at this level, given that Ethiopia is

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<sup>54</sup> Int'l Crim. Ct., About the Court, <https://www.icc-cpi.int/about/the-court>

not a party to the Rome Statute, it becomes difficult for the Court to exercise its jurisdiction, as crimes must be referred to the ICC Prosecutor by the United Nations Security Council (UNSC). However, in this judicial possibility, convictions would also be consistent; those guilty of perpetrating, aiding, and abetting in the commission of crimes would be endowed with the equal and predictable outcome, fairly judged by the law.

The limitations of such a process are especially important in this case, as trials are selective in who ends up being prosecuted. The particular difficulty of identifying specific actors in this conflict makes this challenge all the more significant. Furthermore, the historic ethnico-political complexity of this conflict, namely the alternating domination of power by Tigray and non-Tigray groups (EPRDF, and Amharic groups, and other such ethnic groups) makes it difficult to isolate where the perpetrator-victim cycle begins, and thus, problematizes motives to engage in armed conflict in the first place. For example, the CFR notes that Prime Minister Ahmed and President Isaias Afwerki have very different reasons for opposing the Tigrayans. For Prime Minister Ahmed, the TPFL was a threat to his political power, as it began to contradict his power and policy openly.<sup>55</sup> For President Afwerki, the CFR notes that his animosity towards Tigrayans is personal. Formerly, he was engaged in the TPLF under the first Marxist leader of the Derg, Hailemariam, when Eritrea was also fighting for independence from Ethiopia. If both were prosecuted, President Afwerki's personal history complicates his defense, in a way that would be very different from Prime Minister Ahmed's. This embodies a further issue of individual responsibility for collective harm, and how the bureaucratic and political identities of a country impact its ability to firstly realize a fair and full trial, and consequently, do so in a way that ensures there is sufficient and meaningful accountability, while also taking into account the political constraints that leaders face. I contend that in this case, trials would be

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<sup>55</sup> Walsh & Marks, *supra* note 33.

necessary for the top leaders engaged in the conflict, but on their own, would be insufficient in promoting the healing especially of victims with lasting trauma from abuses.

In this vein, dialogical and restorative processes can complement the baseline judicial ones. Considering alternative dispute resolution (ADR) mechanisms, a potential and comparable process to Rwanda's historical Gacaca is the *Shimagelay* process, a tradition by which elders mediate and arbitrate disputes.<sup>56</sup> Firstly, this is evidently most effective at the interpersonal level, and also, that the Amharic roots of the mechanism are not steeped within Tigrayan history. However, most Ethiopian ethnic groups have ADR mechanisms similar to *shimagelay*.<sup>57</sup> Such a process has advantages, namely “in resolving conflict and preserving harmony and stability in society, even if they are not acknowledged by formal law.” Such ADR mechanisms like *shimagelay* emphasize reconciliation, compensation, rehabilitation and restoration,<sup>58</sup> all ideals and principles that are worthwhile in achieving reconciliation and healing. Furthermore, this method brings together all different groups and allots space to all, including victims, perpetrators, and the broader community. *Shimagelay* exists so as to slow down the process of conflict and deescalate it before the state gets involved,<sup>59</sup> a process that would also address lack of trust in the government from the Tigrayan perspective. The difficulty is the lack of scalability of this process, in that it remains very localized, both in origin and in practicality. However, it is a process that might be useful in sewing back together ruptured social ties of trust between ethnic groups in Ethiopia, which have been so divided by structural political lines.

## V. Conclusion

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<sup>56</sup> Gubaye Assaye Alamineh et al., *The Nexus Between Shimagelay as ADR and the Formal Criminal Justice System: The Case of the Amhara Regional State, Ethiopia*, *ACCORD* (Sept. 3, 2021), <https://www.accord.org.za/ajcr-issues/the-nexus-between-shimagelay-as-adr-and-the-formal-criminal-justice-system-the-case-of-the-amhara-regional-state-ethiopia/>

<sup>57</sup>*Id.*

<sup>58</sup>*Id.*

<sup>59</sup>*Id.*

The Tigray War constitutes an ongoing humanitarian crisis characterized by widespread and systematic violations of international law, including credible allegations of war crimes, crimes against humanity, and acts that may satisfy the legal threshold for genocide against Tigrayan civilians. This analysis has shown that patterns of abuses, most notably the documented, widespread use of sexual violence, are not merely incidental to the conflict but may function as instruments of persecution and ethnic cleansing, raising serious questions regarding the requisite *mens rea* and specific intent under international criminal law. At the same time, the various challenges of establishing individual criminal responsibility are compounded by significant political constraints, including issues of state sovereignty, limited enforcement capacity, and institutional limitations.

Accordingly, this paper has argued that while formal (international) criminal adjudication remains essential to establishing accountability and deterring future violations, it is insufficient as a standalone response. Complementary mechanisms, including community-based and restorative approaches, are necessary to address the full scope of harm, particularly in relation to survivors of sexual violence and communities fractured by protracted conflict. Given the ongoing nature of the crisis, it is crucial that the international community and local leaders take concrete steps to investigate, prosecute, and prevent further atrocities, while simultaneously expanding humanitarian assistance and supporting locally grounded reconciliation efforts.