

**Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia**

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## List of Acronyms/Glossary

<b>African Charter</b>	African Charter on Human and Peoples' Rights
<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>ANDM</b>	Amhara National Democratic Movement
<b>ADP</b>	Amhara Democratic Party
<b>AP</b>	Additional Protocol
<b>ARDPF</b>	Amhara Region Disaster Prevention and Food Security Programme Coordination Office
<b>ARRA</b>	Agency for Refugee and Returnee Affairs
<b>ASF</b>	Amhara Special Forces
<b>CAT</b>	Convention against Torture
<b>CCI</b>	Council of Constitutional Inquiry
<b>CED</b>	International Convention for the Protection of All Persons from Enforced Disappearance
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>CIHL</b>	Customary International Humanitarian Law
<b>CMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<b>CPJ</b>	Committee to Protect Journalists
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>DRC</b>	Danish Refugee Council
<b>EDF</b>	Eritrean Defence Force
<b>EEU</b>	Ethiopia Electric Utility Company
<b>EHRC</b>	Ethiopian Human Rights Commission
<b>EMA</b>	Ethiopian Media Authority
<b>ENDF</b>	Ethiopian National Defence Force
<b>EPDM</b>	Ethiopian People's Democratic Movement
<b>EPRDF</b>	Ethiopian People's Revolutionary Democratic Front
<b>FAO</b>	Food and Agriculture Organization
<b>FDRE</b>	Federal Democratic Republic of Ethiopia
<b>GBV</b>	Gender-based Violence
<b>HIV</b>	Human Immunodeficiency Virus
<b>HoF</b>	House of Federation
<b>HoPR</b>	House of Peoples' Representative
<b>HRC</b>	Human Rights Committee
<b>ICC</b>	International Criminal Court
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic Social and Cultural Rights
<b>ICJ</b>	International Court of Justice
<b>ICRC</b>	International Committee of the Red Cross
<b>ICTR</b>	International Criminal Tribunal for Rwanda

<b>ICTY</b>	International Criminal Tribunal for the former Yugoslavia
<b>IDP</b>	Internally Displaced Person
<b>IHL</b>	International Humanitarian Law
<b>ILO</b>	International Labour Organization
<b>IMC</b>	International Medical Corps
<b>IOM</b>	International Organization for Migration
<b>IRC</b>	International Rescue Committee
<b>JIT</b>	Joint Investigation Team
<b>MoWCYA</b>	Ministry of Women, Children, and Youth Affairs
<b>MSF</b>	Médecins Sans Frontières
<b>NDRMC</b>	National Disaster and Risk Management Commission
<b>NEBE</b>	National Electoral Board of Ethiopia
<b>NISS</b>	National Intelligence and Security Service
<b>NGO</b>	Non-Governmental Organization
<b>OAG</b>	Office of the Federal Attorney General
<b>OAU</b>	Organization of African Unity
<b>OCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>ODP</b>	Oromo Democratic Party
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>OLA</b>	Oromo Liberation Army
<b>OLF</b>	Oromo Liberation Front
<b>OP-CRC-AC</b>	Optional Protocol on the Involvement of Children in Armed Conflict
<b>OP-CRC-SC</b>	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
<b>OPDO</b>	Oromo Peoples' Democratic Organisation
<b>OSC</b>	One-Stop-Centre
<b>PP</b>	Prosperity Party
<b>PPE</b>	Personal Protective Equipment
<b>PSNP</b>	Productive Safety-Net Programme
<b>PWD</b>	Persons with Disabilities
<b>SEPD</b>	Southern Ethiopian Peoples' Democratic Movement
<b>SGBV</b>	Sexual and Gender-Based Violence
<b>TIA</b>	Tigray Interim Administration
<b>TPLF</b>	Tigray People's Liberation Front
<b>TRJB</b>	Tigray Regional Justice Bureau
<b>TSF</b>	Tigray Special Forces
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNFPA</b>	United Nations Population Fund
<b>UNHCR</b>	UN Refugee Agency
<b>UNICEF</b>	United Nations Children's Fund
<b>UNSC</b>	United Nations Security Council
<b>WFP</b>	World Food Programme

## **Executive Summary**

### **Introduction**

From 16 May to 30 August 2021, the Ethiopian Human Rights Commission (EHRC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) conducted a joint investigation into alleged human rights violations and abuses, and violations of international humanitarian law, and refugee law committed in the context of the conflict in Tigray, Federal Democratic Republic of Ethiopia. The objectives of the joint investigation were to provide a faithful account of the human rights situation in Tigray including its gender dimension; further the accountability process and advocate for effective remedies; provide clear and actionable recommendations; and identify serious violations to ensure redress for victims and prevent recurrence.

The investigation was carried out within the framework of relevant international legal norms, including international human rights law, humanitarian law, refugee law and criminal law, as well as Ethiopian domestic law. Prior to the commencement of the investigation, the Joint Investigation Team (JIT) agreed on its methods of work to guide the investigation and applied best practices regarding victim and witness protection, rules of procedure, international investigative standards, report writing, and archiving. Consistent with the practice of international fact-finding bodies, the JIT adopted a “reasonable grounds to believe” standard of proof for factual determinations on individual cases, incidents and patterns of violations.

The JIT investigated alleged violations by all parties to the conflict from 3 November 2020 until the unilateral ceasefire declared by the federal government of Ethiopia on 28 June 2021. Field investigations were conducted from 16 May to 31 August 2021 in different locations in Tigray including Mekelle, Wukro, Samre and nearby areas, Alamata, Bora, Maichew, Dansha, Maikadra, and Humera. The JIT visited internally displaced persons (IDPs) camps in Mekelle, Gondar, Dabat, and Dansha, and, interviewed IDPs from various parts of Tigray, including Adi Aro, Adi Hageray, Adigrat, Adwa, Badme, Dengolat, Humera, Korem, Maikadra, Mekelle, Quiha, Shimelba, Shire, Sheraro, Tembien, and Zalambesa. The JIT also conducted investigations in Addis Ababa and other affected locations such as Gondar and Bahir Dar. The JIT conducted 269 confidential interviews with victims and witnesses of alleged violations and abuses and held 64 meetings with federal and regional authorities, representatives of United Nations agencies and non-governmental organizations, community groups, medical personnel, and other sources.

The report does not purport to be an exhaustive record of all relevant incidents that occurred during this period, but it fairly illustrates the main types and overall patterns of violations and abuses over the period in question. Presentation in some of the thematic summaries follows a chronological pattern in terms of occurrences of incidents and does not imply a ranking of alleged perpetrators.

### **Findings**

On 3 November 2020, the Tigray Special Forces (TSF) and allied militia attacked the Northern Command of the Ethiopian National Defence Forces (ENDF) and took control of the bases and the weaponry. On 4 November 2020, the federal government announced a military operation against the Tigray People’s Liberation Front (TPLF) and its forces. The ENDF, the Amhara Special Forces (ASF) and allied militia, and the Eritrean Defence Forces (EDF) accordingly started a military offensive against the TSF and allied militia in Tigray. The violent conflict resulted in serious violations of international human rights law, humanitarian, and refugee law. Based on the

information gathered and analysed by the JIT, there are reasonable grounds to believe that the following major violations and abuses occurred in the context of the conflict:

***Attack on civilians and civilian objects:*** The ENDF, EDF, and TSF, carried out attacks on civilians resulting in the deaths of and injuries to men, women, boys, and girls. Civilian objects which enjoy special protection under international humanitarian law such as health facilities, schools, places of worship, and houses were indiscriminately attacked. Parties to the conflict failed to take sufficient precautions to protect civilians and civilian objects. ENDF and TSF occupied and used civilian infrastructure, such as schools and health facilities without appropriate justification for military usage. Twenty-nine civilians were killed in Mekelle due to shelling by the ENDF on 28 November 2020; 15 civilians were killed between 9 and 11 November 2020 in Humera due to artillery shells fired by the EDF and TSF; between 25 and 27 November 2020 an undisclosed number of civilians died in Wukro due to exchange of artillery fire between the ENDF and TSF, and several private and public property were damaged; a rocket fired by the TSF destroyed a farmer's home in the Amhara region 140 km from Gondar Airport causing injuries to a family of nine; shelling by ENDF in Amedwha, Waereb, and Dejen resulted in the death of two civilians and injuries to an unspecified number of people; 17 civilians were killed and 3 injured following ethnic-based attacks by TSF on two farms on the outskirts of Maikadra; the Dansha Health Centre was used by the TSF to launch an attack on the 5<sup>th</sup> Mechanised ENDF Division on 3 November 2020, resulting in visible damage to the health centre; the ENDF used a school in Samre as a military camp between 1 – 31 December 2020 resulting in damage to the school and Atsey Yohannes School in Mekelle between 3 December 2020 and 13 April 2021, resulting in looting and destruction of the school's property.

***Unlawful killings and extra-judicial executions:*** The ENDF, EDF, Fano (group affiliated to the Amhara militia), TSF and affiliated militia, the Samri (local Tigrayan youth group), have committed unlawful killings and extra-judicial executions amounting to violations and abuses of international human rights and international humanitarian law, as well as violations of the Constitution and laws of Ethiopia. Persons taking no direct part in hostilities were wilfully killed by parties to the conflict, including ethnic-based killings of more than two hundred Amharas, mostly men, in Maikadra by the Samri accompanied by Tigrayan police and militia on 9 November 2020, as well as the retaliatory killing of at least five Tigrayans by the Fano; the killing of more than 100 people in Axum on 28 November 2020 by the EDF; the killing of at least 70 men in Bora, Amedwha, Bora Chemala, and Mai Liham by the ENDF on 8 and 9 January 2021; the killing of civilians by the ENDF in the enforcement of curfew restrictions including two civilians in Mekelle on 19 January 2021; and the killing of civilians who were taking refuge in St. Giorgis Church in Adi Hageray by the TSF on 4 November 2020. Young men were targeted in most of these killings, particularly in Maikadra and Bora.

***Torture and other forms of ill-treatment:*** The ENDF, EDF, TSF and allied militias, and Tigrayan police, committed acts of torture and ill-treatment against civilians and captured combatants in various locations across Tigray, including in military camps, detention facilities, victims' homes, as well as secret and unidentified locations. From 9 to 10 November 2020, Tigrayan militia and armed civilians in Humera arrested and detained mostly ethnic Amharas, whom they insulted as "Amhara donkey", made them sit in uncomfortable postures, beat them with plastic pipes, kicked them, and denied them food and water for several days. In March 2021 in Samre and Berezba, EDF subjected victims to torture and other ill-treatment; and the ENDF committed acts of torture and ill-treatment in Bora in December 2020. On 2 April 2021, in Samre, at least 600 men suffered

degrading treatment when they were forced by the EDF to remove their clothes for a strip search in public; captured ENDF soldiers in Sheraro, Adi Hageray and Shire were subjected to torture and ill-treatment by Tigray forces between 3 and 4 November 2020, as well as abuse of the bodies of deceased ENDF soldiers; several ENDF camps in Tigray were used to torture captured Tigray forces or civilians suspected of providing support to Tigray forces including Adi Gudem, Awash military camp, Adigrat, and Kedamay Weyane police station in Mekelle.

**Arbitrary detentions, abduction, and enforced disappearances:** The ENDF, TSF and allied groups, Amhara militia, Fano, and the EDF engaged in arbitrary detentions, abductions, and enforced disappearances. The ENDF detained individuals in secret locations and military camps including the Northern Command in Mekelle, Awash Camp, and Martyrs Memorial Monument Centre. In Tigray and other parts of Ethiopia, individuals were arrested by the ENDF and the federal police for perceived affiliation with the TPLF and kept incommunicado for long periods without formal charges or legal proceedings. In Western Tigray, at the beginning of the conflict, Tigray forces detained civilians mostly of Amhara origin starting from 9 November 2020 for perceived support to the federal government and took them to Shire, Axum, and Mekelle. Many were released or managed to escape, some were killed, and others disappeared. There was mass detention of Tigrayan civilians including women and children by Amhara militia and Fano in Maikadra for more than a month. In Adashi, Berezba, EDF soldiers abducted six individuals, killed two, and later released the others.

**Sexual and gender-based violence:** Various acts of sexual and gender-based violence (SGBV) including physical violence and assault; attempted rape; rape including gang rape, oral and anal rape; insertion of foreign objects into the vagina; and intentional transmission of HIV have been committed by all parties to the conflict. Women, girls, men, and boys were victims of SGBV including gang rape. Women and girls were exposed to unwanted pregnancy, and some were infected with sexually transmitted diseases, including HIV. The ENDF, EDF, and TSF have committed sexual and gender-based violence including gang rapes, and in many cases, rape and other forms of sexual violence have been used to degrade and dehumanize the victims. Women and girls whose male family members were Tigrayan combatants were targeted by the EDF, and wives of ENDF soldiers were similarly targeted by Tigray forces for SGBV. Women and girls were also exposed to SGBV when fleeing the conflict, and in some instances when fetching water from the river due to disruption of running water. Women and girls were abducted, detained, and raped including in one incident in which a 19-year-old survivor was abducted, detained, and repeatedly raped for three months. Rape of a woman with a disability was also documented. Sexual violence has profoundly violated the survivors' physical and psychological integrity and caused serious health complications, particularly the gang rapes which were characterised by their brutality. The JIT also obtained reports which implicate the ASF in acts of sexual violence.

**Refugees:** Between November 2020 and January 2021, the TSF and EDF violated the civilian character of refugee camps in Tigray by their presence in Shimelba refugee camp which shelters Eritrean refugees. TSF and EDF fought around the camp putting the security and lives of refugees at risk, resulting in the destruction of the camp, the displacement of thousands of refugees, and the disappearance of hundreds. The EDF violated the fundamental principle of *non-refoulement* by forcibly returning some Eritrean refugees to Eritrea. Tigray forces and civilians looted private property of refugees and property of humanitarian organizations. Large number of refugees lost their livelihood, they live in fear of the EDF, and of possible retaliation from the host community.



***Forced displacement of the civilian population:*** Hundreds of thousands of civilians fled their homes in Tigray, at different intervals. The Tigrayan population, in particular, was significantly affected by the forced displacement in Western Tigray. The forced displacement of ethnic Amharas from their homes by the Samri youth group with the support of the local administration in Maikadra in November 2020 was followed by widespread retaliatory forcible displacements of ethnic Tigrayans mainly in Western Tigray by ASF, Amhara militia, and Fano. The forced displacements were committed on a broad scale and without lawful justification. The displacement caused by different groups has also exacerbated the existing tensions between mainly Tigrayans and Amharas in areas where they once lived together, and which might prove to be a challenge in efforts to return IDPs in safety to their previous residence.

***Internally displaced persons (IDPs):*** IDPs have not been provided with adequate food, nutrition, water, healthcare, sanitation, and hygiene. In Mekelle, the local community provided 70% of the food for IDPs due to the gap in food provision from the State and other actors. The shortage of food particularly in Gondar, Dabat, and Dansha was serious, resulting in the deaths of one lactating mother and three children due to malnutrition and lack of healthcare in a camp in Gondar. IDPs in Mekelle remained in a situation of fear due to sudden raids and arrests by the ENDF, which occurred in Shire in May 2021. IDPs in Mekelle, Gondar, and Dabat also did not have proper personal identification documents that would allow them to move freely or find work.

***Restrictions on freedom of movement:*** The multiple roadblocks and check points and excessive measures taken by ENDF and EDF in enforcing the curfew that have in some instances resulted in the death of civilians and obstructed the movement of people and essential goods raises serious questions as to their justification and proportionality. The failure of government authorities to issue identification cards to IDPs and the refusal of security and immigration officials at Addis Ababa International Airport to allow some Tigrayans to leave the country and in some instances the confiscation of their travel documents without any explanation, justification and due process also appears motivated by discrimination and is disproportionate and unjustified.

***Freedom of expression and access to information:*** Civilians were unable to seek, receive and impart information because phones and internet communications were cut off in Tigray following the start of the conflict. The communication interruption may have been justified until the expiry of the state of emergency, but the continued disconnection is a violation of the right to freedom of expression and access to information. The killing of journalist Dawit Kebede on 19 January 2021 by the ENDF in Mekelle constitutes a violation of the right to freedom of expression and amounts to unlawful killing.

***Pillage, looting, and destruction of property:*** There has been large-scale destruction and appropriation of property by different actors, including armed forces, militias and civilians. The ENDF looted and destroyed property in Atsey Yohannes School in Mekelle on two occasions while using the school as a military camp and took three cars from the premises of the Supreme Court in Mekelle. The EDF looted public and private property, including objects indispensable for the survival of the civilian population in Southern Tigray, including Keih Emba, Samre, Adi Gibai, Adi Awsa, Bora, and Wukro in Eastern Tigray. Tigray forces looted and destroyed private and public property and infrastructures in Western Tigray and parts of North-Western Tigray. Amhara militia and Fano have been implicated in looting and appropriation of houses and businesses in parts of Western Tigray such as Humera and Maikadra.

***Denial of access to humanitarian relief:*** Impediments or delays in humanitarian assistance were attributed to active conflict, lack of functional local administrative bodies for coordination,

and lack of cooperation by ENDF and EDF at checkpoints including confiscation of medication. Tigray forces were also implicated in setting up road blockades delaying delivery of humanitarian relief. The conflict further had a direct bearing on the operations of humanitarian organisations following the killings of over 20 humanitarian workers. While the JIT could not confirm deliberate or wilful denial of humanitarian assistance to the civilian population in Tigray or the use of starvation as a weapon of war, the JIT recognizes the need for further investigation on alleged violations related to denial of access to humanitarian relief and killings of humanitarian workers.

***Economic, social, and cultural rights:*** The enjoyment of economic, social, and cultural rights including the rights to health, adequate food and water and sanitation, as well as access to basic services such as electricity and banking services, was seriously undermined as a direct result of the actions of the parties to the conflict or indirectly as a result of failures to take measures to mitigate the impact of the conflict on civilian services and objects. Looting and destruction of health facilities in all parts of Tigray by parties to the conflict, had a direct impact on the right to health of the civilian population. The war resulted in damage to water, telecommunications, electricity, and banking infrastructure.

***Children:*** Children were subjected to SGBV, physical injuries and, in some cases, killings as a direct result of the conflict. Children were exposed to traumatic experiences such as witnessing the killing or rape of close family members by soldiers of the parties to the conflict, including the ENDF, EDF, and TSF. The displacement and killing of their caregivers left children orphaned and vulnerable to further abuses and violations. Thousands of children were separated from their families as result of the conflict. Children in Tigray and children displaced from Tigray to the Amhara region do not have adequate food, water, shelter, protection, and other lifesaving assistance. The lack of access to education and health care services has deprived children of their fundamental rights.

***Older persons and persons with disabilities:*** Parties to the conflict failed to provide special protection to older persons and persons with disabilities (PWDs) in line with their human rights obligations. There were incidents of direct attacks against older persons and PWDs, including physical assault, summary execution, and rape of a woman with a disability. Older persons expressed a feeling of abandonment due to the conflict.

### **Conclusion and recommendations**

The JIT has found serious abuses and violations of human rights, humanitarian, and refugee law, committed by the ENDF, EDF, TSF and allied militia, ASF and allied militia, as well as other affiliated to various parties to the conflict. The JIT has reasonable grounds to believe that a number of these violations may amount to crimes against humanity and war crimes, which require further investigations to ensure accountability. The primary responsibility for addressing the violations rests with the State, as part of its obligation to respect and protect human rights. The JIT emphasises that accountability should not be understood narrowly, and that criminal responsibility is only one of a broader set of actions which are required. The JIT repeats the calls by victims and survivors of violations, who wish for the restoration of their means of livelihood, reparations, the truth about what happened to their loved ones, for all sides to acknowledge responsibility, and also for perpetrators to be brought to justice.

The State should initiate a victim-centred and gender-sensitive reparations scheme that includes restitution, compensation, rehabilitation, satisfaction - including the right to the truth, and

guarantees of non-repetition. The international community should support initiatives to strengthen justice and accountability for serious violations and crimes, including efforts by the Ethiopian authorities to investigate and prosecute perpetrators for violations of human rights, humanitarian, and refugee law committed within the context of the conflict in Tigray.

The JIT report provides detailed recommendations to all parties to the conflict and to the international community, including the UN and Ethiopia's bilateral and multilateral partners.

## I. Introduction

1. Following preliminary discussions on collaborative efforts to respond to the human rights situation in the Tigray Regional State of the Federal Democratic Republic of Ethiopia (Tigray Region or Tigray), on 10 March 2021 the Ethiopian Human Rights Commission (EHRC)<sup>1</sup> formally requested the Office of the High Commissioner for Human Rights (OHCHR) to conduct a joint investigation with it into alleged human rights violations and abuses and violations of international humanitarian law committed in the context of the conflict in Tigray. OHCHR accepted the request on 12 March 2021.
2. On 26 April 2021, EHRC and OHCHR adopted the Terms of Reference for the joint investigation (see Annex III) and subsequently established a Joint Investigation Team (JIT) comprising a total of 38 members.<sup>2</sup>
3. In accordance with the Terms of Reference, the investigation focused on alleged human rights violations and abuses and violations of international humanitarian law committed by all parties to the conflict in the Tigray Region from 03 November 2020 to 28 June 2021, assessed from the perspective of international human rights law, together with relevant international humanitarian law, international refugee law and international criminal law. Ethiopian domestic law was also taken into account.
4. The specific objectives of the joint investigation were to:
  - a) provide a faithful account of the overall human rights and humanitarian situation in Tigray, including its gender dimension and impact on women and men, girls and boys;
  - b) assist in furthering the accountability process where violations were found and advocating for effective remedies for victims;
  - c) provide clear and actionable, and gender-sensitive recommendations to relevant actors to address human rights and humanitarian concerns; and
  - d) identify serious violations committed in the context of the conflict and provide guidance on the necessary measures to provide redress for victims and prevent recurrence.
5. The investigation was conducted from 16 May to 31 August 2021 covering different zones in Tigray namely Mekelle, Southern, Southeastern, Western, and parts of Eastern Zones, as well as relevant locations outside Tigray including Addis Ababa. The JIT conducted field missions to Mekelle, Wukro, Samre, Alamata, Bora, Maichew, Dansha, Maikadra, Humera, Gondar, and Bahir Dar. The investigation also intended to cover

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<sup>1</sup> The EHRC is an independent national human rights institution established under Article 55(14) of the Federal Constitution of the Federal Democratic Republic of Ethiopia, 1995 and the Ethiopian Human Rights Commission Establishment Proclamation, No. 210/2000 (as amended by Proclamation No. 1224/2020). Its mandate is to ensure that “human rights are protected, respected and fully enforced as well as to have the necessary measure taken where they are found to have been violated.” (Proclamation, art. 5). As part of its mandate, the EHRC may “undertake investigation, upon complaint or its own initiation, in respect of human rights violations” (Proclamation, art. 6[4]).

<sup>2</sup> The JIT comprised: 2 co-team leaders (one each from the EHRC and OHCHR); 12 investigators (six each from EHRC and OHCHR, including the team leaders); 6 reserve investigators (three each from EHRC and OHCHR); 9 specialists, including one forensic expert, one military expert, two gender and child rights advisors (one from the EHRC and one from OHCHR), two media advisors (one from each organization), one security advisor and two legal advisors (one from EHRC and one from OHCHR); 2 Administrative Assistant; and 9 interpreters.

other locations Northwestern Tigray, Eastern Tigray, Central Tigray, and Sudan, but it was not possible, for logistical and other reasons set out in Section G of Part II of the present report.

6. This report does not purport to be an exhaustive record of all relevant incidents that occurred during this period. Nevertheless, the JIT considers that it fairly illustrates the main types and overall patterns of violations and abuses over the period in question. Presentation and analysis of findings of the report in some cases follows a chronological pattern in terms of occurrences of incidents and may not necessarily imply a ranking of alleged perpetrators.

## **II. Methodology**

### **A. General**

7. Prior to the commencement of the investigation, the JIT agreed on its methods of work to guide the investigation. These were outlined in a document entitled “Methods of Work for the EHRC-OHCHR Joint Investigation into the Conflict in the Tigray Regional State of the Federal Democratic Republic of Ethiopia” and included guidelines on methods for collection of specific forms of information; verification, corroboration and assessment of information; standard of proof; protection of victims, witnesses and other cooperating persons; information management; and reporting and follow up.
8. In carrying out its work, and in assessing the information and evidence collected, the JIT was guided by the principles of independence, impartiality, objectivity, transparency, integrity, and the principle of “do no harm”, including in relation to guarantees of confidentiality and the protection of victims and witnesses. The JIT applied best practices with regard to victim and witness protection, rules of procedure, international investigative standards, report writing, and archiving.<sup>3</sup>

### **B. Standard of proof**

9. Consistent with the practice of international fact-finding bodies, the JIT adopted a “reasonable grounds to believe” standard of proof for factual determinations on individual cases, incidents, and patterns of violations. Factual determinations provided the basis for the legal qualification of incidents and patterns of conduct as human rights violations or abuses and, where appropriate, as violations of other relevant norms of international law.
10. The JIT considered that the “reasonable grounds to believe” standard was met when it was satisfied that it had obtained a reliable body of information, consistent with other material, based on which a reasonable and ordinarily prudent person would have reason to believe that such an incident or pattern of conduct had occurred. As the “reasonable grounds” threshold is lower than the standard required in criminal trials, the JIT does not make findings concerning, and should not be taken to imply, criminal responsibility of specific individuals for alleged violations of international law. However, it considers that this standard of proof is sufficiently high to legally require further investigations into the incident or pattern of conduct, which could lead to

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<sup>3</sup> The JIT followed the best practices set out in OHCHR Guidance and Practice, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights Law and Humanitarian Law* (2015).

criminal prosecution of the alleged perpetrators where there are sufficient indications of culpability.

11. Individual cases and incidents reflected in this report are generally based on at least one source of first-hand information assessed as credible, which was independently corroborated by at least two other independent and reliable sources. In limited cases, information from a particularly reliable primary source was corroborated by at least one additional independent and reliable source.
12. In view of the time-frame and resources available for the investigation, the JIT selected representative issues and incidents covered in the investigation based on certain criteria, in particular the gravity of the alleged violation; their significance in illustrating patterns of alleged violations; the number, age, gender and profile of victims; access to victims, witnesses and supporting evidence; and the geographic location of the incident for diversity.

### **C. Information-gathering methods**

#### **i. Confidential interviews**

13. The JIT conducted 269 (124 women and 145 men) confidential interviews with victims and witnesses of alleged violations and abuses, as well as with other sources. These interviews were conducted during field visits to Mekelle, Eastern Tigray (Wukro), Southeastern Tigray (Samre and nearby areas) Southern Tigray (Bora, Alamata, and Maichew), Western Tigray (Dansha, Humera and Maikadra), Bahir Dar and Gondar. Interviews were also conducted in Addis Ababa. The interviews conducted in these locations also covered incidents in areas that the JIT could not itself reach, including northwestern and eastern Tigray, including through interviews with internally displaced persons (IDPs). In some instances, the JIT conducted follow-up interviews to gain further insight into specific incidents discussed during the initial interviews or meetings.
14. Excerpts from these interviews are included in the report. In many instances, information on the exact location and time of violations and abuses and other details that might identify a source have not been included due to protection concerns.

#### **ii. Meetings**

15. The JIT held 64 meetings with Government officials and representatives of United Nations (UN) agencies, funds and programmes, NGOs, and medical personnel. Meetings with the Government provided an opportunity for the JIT to raise a range of issues concerning alleged violations and for the Government to provide responses thereto. The JIT scheduled meetings with all parties to the conflict. Some parties responded while others did not. Parties were also given an opportunity during the investigation period to respond to queries in writing. In its reaction to the JIT's request for a meeting, posted in the social media, the Tigray People's Liberation Front (TPLF) indicated its readiness to facilitate an independent investigation but expressed its opposition to the EHRC's involvement in the investigation. As at the date of this report, no official response had been received from the State of Eritrea on the JIT's request for a meeting or to the list of issues it had transmitted to the Embassy of the State of Eritrea in Addis Ababa.

#### **D. Review of written and other materials**

16. The JIT collected and reviewed numerous relevant reports and background materials produced by the EHRC, non-governmental organizations, research institutes, academics, UN entities and experts. While the findings contained in this report rely primarily on first-hand testimony from victims and witnesses, the written materials provided important context and, in some instances, served to corroborate the interviews conducted by the JIT.

#### **E. Integration of gender in the investigation**

17. In keeping with best practices in the integration of gender in human rights investigations and in accordance with its Terms of Reference, the JIT devoted specific attention to gender-related issues and the gendered impacts of violations and abuses. This approach ensured that all violations against women, girls, men and boys of all ages and segments of society were recognized and accounted for, and to better understand the causes and types of human rights violations committed, how these affected women, girls, men and boys differently, and the measures required for prevention and protection. A gender perspective was integrated throughout the investigation, starting with the collection of relevant contextual information, to understand fully how cultural, social, religious, legal and economic issues affected women and men differently, and adjusting the methods of work according to OHCHR methodologies and good practices on gender-sensitive investigations.

18. A gender specialist was made available to the JIT in the context of a collaboration framework between OHCHR, UN Women and Justice Rapid Response, while the EHRC also availed a gender specialist at various stages of the investigation to jointly lead this process with the UN gender specialist.

#### **F. Archiving and record-keeping of testimony**

19. With the assistance of OHCHR, a confidential electronic database was specially created to enable the JIT to securely record and store information pertaining to the investigation. This database contains the records of all interviews conducted as well as electronic copies of relevant materials gathered during the investigation. The database also facilitated the logical organization and retrieval of information for analysis, helping to establish trends and patterns which underlie the conclusions in this report. The confidential database will be accessible following conclusion of the investigation for future reference as may be required, consistent with applicable United Nations' and EHRC process.

#### **G. Challenges and constraints**

20. The JIT faced several security, operational and administrative challenges in carrying out its investigation, in particular with respect to arrangement of planned visits to parts of Tigray. Key challenges included the harassment and intimidation of JIT members by Regional security forces, especially in Western and Southern Tigray; Government-imposed restrictions on carrying communications equipment both by air and road; perceptions of mistrust of the UN in Western Tigray and Amhara administered areas; as well as of perceptions of bias against the EHRC in some parts of Tigray where some potential interviewees declined to be interviewed by the JIT because of the presence of

EHRC personnel. Operational constraints included the closure of telecommunications, internet and banking services in the Tigray Region; the failure to date by the Government to release JIT satellite phones procured for the investigation which rendered safety and communications less certain; difficulty in obtaining necessary security clearances for travel owing to the dynamic security situation on the ground; insufficient vehicles for field visits; and, in one incident, restriction on the amount of cash (ETB10,000) that could be carried into Tigray.

21. The Council of Ministers' resolution to designate TPLF as a terrorist organization, and its subsequent unanimous approval by the House of Peoples Representatives (HoPRs) on 5 May 2021, complicated decisions to conduct JIT meetings with TPLF members.
22. Lack of written responses from parties to the conflict, to the JIT's list of issues and questions also presented a challenge. As at the date of this report, the JIT had not received a response from the TPLF, the State of Eritrea, and the Amhara Regional Administration.
23. The JIT noted a series of obstacles to the effective documentation of cases of sexual violence. While the JIT's composition included men and women investigators (including women gender specialists) the presence of women-only investigative teams was not possible in all interviews. Some victims expressed preference to not hold an interview in the presence of any man. In addition, medical records were often impossible to obtain due to the lack of timely and specialized medical-care available for victims, and available documentation heavily relied in any event on first-hand accounts from victims themselves. Other barriers surrounding the reporting of these forms of violence, included victims' trauma and lack of adequate psychosocial support, as well as victims' fear of stigma and family pressures. The OHCHR Gender Expert provided extensive guidance and support to ensure adherence to standards of investigating sexual and gender-based violence related incidents. Importantly, despite these obstacles and associated under-reporting, the JIT was able, through the interviews it conducted, to collect a significant amount of information establishing patterns of sexual and gender-based violence.
24. Finally, a joint investigation between an international human rights organization and a national human rights institution in such a complex conflict, presented unique challenges due to their different structures and reporting arrangements. Social media both within and outside Ethiopia was replete with negative criticism and propaganda, which is believed to have contributed to the hostility registered in four locations where the investigation was conducted, namely in Mekelle, Wukro, Alamata, and Maikadra.
25. Notwithstanding these constraints, the JIT was able to collect a significant body of information, based on which it found that there are reasonable grounds to believe that gross violations and abuses of international human rights law, and serious violations of international humanitarian law, and international refugee law had been committed in the context of the Tigray conflict.

#### **H. Cooperation and acknowledgements**

26. The JIT expresses its gratitude for the assistance provided by many in connection with the investigation. It is particularly grateful to the many victims and witnesses who shared their experience as well as to other individuals who provided pertinent



information. It is also grateful for the cooperation provided by the Government and non-governmental entities who provided useful information for the report. The JIT benefited from the invaluable advice and support rendered by OHCHR Headquarters' services. This advice and support were provided with full deference to and respect for the independence and integrity of the joint investigation.

### **III. Legal Framework**

27. This investigation was carried out within the framework of all relevant international legal norms, including international human rights law, international humanitarian law, international refugee law and international criminal law, as well as Ethiopian domestic law. The general legal framework used by the JIT is set out below, with more details of the legal standards applicable to specific violations and abuses presented within each individual section of Part V of the report.

#### **A. International human rights law**

28. Ethiopia is a State party to seven of the nine core international human rights treaties: ; the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC) and its Optional Protocols on the Involvement of Children in Armed Conflict (OP-CRC-AC), and on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT);<sup>4</sup> and the Convention on the Rights of Persons with Disabilities (CRPD). In addition, it is a State Party to the following regional human rights treaties: the African Charter on Human and Peoples' Rights (African Charter); the African Charter on the Rights and Welfare of the Child (ACRWC); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol); and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa. Ethiopia is also bound by relevant rules of international human rights law that form part of customary international law.

29. As a State party to the above-mentioned treaties, Ethiopia is obliged to respect, protect and fulfil the human rights of all persons within its territory and subject to its jurisdiction, without discrimination. This includes duties to investigate and bring to justice perpetrators of violations, as well as the obligation to ensure a prompt, adequate and effective remedy to those whose rights have been violated, including the provision of reparations and guarantees of non-recurrence.

30. Ethiopia has not submitted any declaration of a state of emergency under Article 4 of ICCPR.<sup>5</sup> However, even if the authorities were to do so, a broad range of rights is in any event non-derogable under the ICCPR.<sup>6</sup>

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<sup>4</sup> It has also accepted the inquiry procedure under Article 20 of CAT.

<sup>5</sup> On 4 November 2020, the Government declared a six-month state of emergency for the Tigray region, which has since expired and has not been extended.

<sup>6</sup> See Human Rights Committee, General Comment No. 29, States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11.

31. Eritrea is also bound by its human rights treaty<sup>7</sup> and customary obligations, including even with regard to acts conducted outside of its own territory.<sup>8</sup>
32. International human rights law applies both in peace and in times of armed conflict.<sup>9</sup> The concurrent application of international humanitarian law and international human rights law in situations of armed conflict means that the provisions of the two bodies of law should be read together and reconciled to the extent possible.

## **B. International humanitarian law**

33. International humanitarian law regulates the conduct of parties to an armed conflict,<sup>10</sup> whether international or non-international. Among other things, it protects and guarantees the humane treatment of persons who are not, or no longer, directly participating in hostilities and regulates the means and methods of warfare with the aim of restricting the use of armed force “to the amount necessary to achieve the aim of the conflict, which – independently of the causes fought for – can only be to weaken the military potential of the enemy.”<sup>11</sup> In situations of armed conflict, all parties to the conflict are bound by the applicable rules of international humanitarian law.
34. International humanitarian law draws distinction between “international” and “non-international” armed conflicts. International armed conflicts occur between two or more States through their respective armed forces or other actors acting on behalf of the States,<sup>12</sup> while non-international armed conflicts take place between a State and one or more non-state armed groups, or between such groups only, within the territory of the State concerned. Treaty law governing non-international armed conflicts primarily consists of Common Article 3 and Additional Protocol II to the Geneva Conventions. Additional norms applicable to non-international armed conflicts can be found in customary international humanitarian law and several treaties regulating, prohibiting, or restricting the use of certain weapons.
35. For a situation of violence to be characterized as a non-international armed conflict, three requirements must be met. First, there must be protracted violence or a sufficient

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<sup>7</sup> Eritrea is a State Party to the following international human rights treaties: CRC, CEDAW, ICESCR, ICERD, ICCPR, CRC-OP-AC, CRC-OP-SC, and CAT. Eritrea is a State Party to the following regional human rights treaties: African Charter and ACRWC.

<sup>8</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, paras. 108–113; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, para. 216.

<sup>9</sup> In its *Nuclear Weapons Advisory Opinion*, the International Court of Justice (ICJ) held that the application of the ICCPR does not cease in situations of armed conflict. In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, ICJ Reports 2004, para. 106, the Court confirmed this position and identified three possible scenarios regarding the relationship between international humanitarian law and human rights law, stating that “some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law.” See also Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13/ (2004), para. 11.

<sup>10</sup> According to the International Criminal Court, “an armed conflict exists whenever there is resort to armed force between States or protracted violence between governmental authorities and organized armed groups or between such groups within a State.” See *Prosecutor v Lubanga*, ICC-01/04-01/06, Trial Chamber I, 14 March 2012, paragraph 533.

<sup>11</sup> M Sassoli, AA Bouvier AA and A Quintin(eds), *How Does Law Protect in War?* (3rd edn, Geneva: ICRC, 2011), Vol I, Pt 1, at 1.

<sup>12</sup> *Prosecutor v Bemba*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ICC-01/05-01/08-424, Trial Chamber II, 15 June 2009, paragraph 223. See also Geneva Conventions, common Article 3.

degree of intensity in hostilities between the parties which cannot be addressed through routine peacetime policing, measured by the weapons used, duration and other factors. Second, the violence must be conducted by government forces and one or more non-state armed groups, or between two or more non-state armed groups, within the territory of the State concerned. Third, the armed groups must exhibit sufficient organization and control to be capable of sustaining military operations and adhering to international humanitarian law to be considered “parties” to the conflict.

36. Armed conflicts involving foreign intervention are deemed to be international or non-international in nature depending on whether they involve armed confrontation between States, or between States and organized armed groups.
37. The conflict in Tigray is between the Ethiopian National Defence Force (ENDF), the Eritrean Defence Force (EDF) and the Amhara Special Forces (ASF) and Amhara militia groups/Fano on one side and Tigray Special Forces and Tigrayan militia groups on the other. It satisfies the requirements outlined in paragraph 35 above and is thus a non-international armed conflict. All parties to the conflict, their armed forces and persons or groups acting on their instructions or under their direction or control are bound by the relevant rules of treaty and customary international law applicable in non-international armed conflict.
38. Ethiopia is a State party to the four Geneva Conventions of 12 August 1949 and Additional Protocols I, II and III to the Geneva Conventions. It is also a party to specialized treaties including the Geneva Protocol on Asphyxiating or Poisonous Gases, and of Bacteriological Methods, 1925; the Convention on the Prohibition of Biological Weapons, 1972; the Convention Prohibiting Chemical Weapons, 1993; the Anti-Personnel Mine Ban Convention, 1997; the Hague Convention for the Protection of Cultural Property, 1954; and its Protocol for the Protection of Cultural Property, 1954.
39. Article 3 common to the Geneva Conventions (applicable to conflicts not of an international character) and Additional Protocol II are applicable to the Tigray conflict. These instruments contain protections applicable to civilians and other persons not taking a direct part in hostilities. Common Article 3 binds all parties to the conflict to respect, as a minimum, that persons taking no direct part in hostilities as well as those placed *hors de combat*, shall be treated humanely, without any adverse distinction.<sup>13</sup> In the conduct of hostilities parties to conflicts are enjoined, at all times, to adhere to the principles of distinction, proportionality and precautions in attack.<sup>14</sup> These principles are briefly discussed in Section A, Part V below).
40. States must apply fully the relevant norms of international humanitarian law and international human rights law to women and girls and take special measures to protect women and girls from gender-based violence during armed conflict.

## **International refugee law**

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<sup>13</sup> Common Article 3 prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, outrages upon personal dignity as well as the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, respecting the generally accepted principles of fair trial and due process.

<sup>14</sup> ICRC, Database on Customary International Humanitarian Law (CIHL), Rules 1-24.

41. Ethiopia is a State party to the 1951 Convention relating to the Status of refugees and its 1967 Protocol, as well as the Organization of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa 1969, which confirms that the 1951 Convention is “the basic and universal instrument relating to the status of refugees.” Article 1 of the 1951 Convention defines a “refugee” as any person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”
42. The OAU Convention extends the definition in the 1951 Convention to include any person compelled to leave his or her place of habitual residence and to seek refuge in another place because of “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his [or her] country of origin or nationality.”
43. International refugee law establishes the principle that refugees cannot be returned to a country where their lives or freedom would be at risk on specific grounds (the principle of *non-refoulement*). The prohibition of *refoulement* is a customary law norm. Thus, even States that are not party to the 1951 Convention must respect the principle of *non-refoulement*. The prohibition of *refoulement* in international refugee law is complemented by wider provisions in international and regional human rights law that prohibit the removal of anyone, whether a refugee or not, at risk of torture, or cruel, inhuman or degrading treatment or punishment, or other violations of particular gravity.
44. As a party to the above-mentioned instruments, Ethiopia is obliged to protect refugees on its territory and under its jurisdiction. It also has a duty to extend relevant rights to refugees in accordance with its international human rights obligations, to cooperate with the UN High Commissioner for Refugees (UNHCR) in the exercise of its functions and to facilitate UNHCR’s mandate of supervising the application of the 1951 Convention.
45. Ethiopia has signed, but not ratified, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention),<sup>15</sup> which prohibits forcible recruitment of persons, kidnapping, abduction or hostage taking, sexual slavery and trafficking in persons, especially women and children. Under international treaty law, it therefore cannot act inconsistently with the object and purpose of the Kampala Convention.

### **C. International criminal law**

46. International criminal law governs situations in which individuals can be held individually criminally responsible for gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law. States have the primary obligation to ensure accountability

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<sup>15</sup> Ethiopia has not deposited the instrument of ratification for the Kampala Convention.

for these crimes. In this context, they must ensure that their domestic legislation incorporates the necessary legal basis to enable domestic courts to duly exercise jurisdiction over such crimes, in accordance with applicable principles of customary and treaty law.<sup>16</sup> Thus, States must take appropriate measures to ensure that those suspected of having committed crimes under international law are prosecuted and, if found responsible, duly punished.

47. Core international crimes encompass war crimes, crimes against humanity, and genocide.<sup>17</sup> War crimes include, inter alia, grave breaches of the Geneva Conventions and other serious violations of the laws and customs of war applicable in both international and non-international armed conflicts. For such acts to be considered war crimes, a connection (or 'nexus') to an armed conflict must be established.
48. Crimes against humanity involve the commission of certain prohibited acts as part of a widespread or systematic attack directed against a civilian population. The population against whom the attack is directed is considered civilian if it is predominantly civilian in nature.<sup>18</sup> The term "widespread" generally refers to the large-scale nature of the attack and the number of victims, although an attack may also be considered widespread by the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude."<sup>19</sup> The notion of a "systematic" attack refers to the organized nature of the acts of violence and the improbability of their random occurrence.<sup>20</sup>
49. The crime of genocide refers to the commission of certain prohibited acts "with intent to destroy in whole or in part, a national, ethnic, racial or religious group, as such."<sup>21</sup> It includes acts against the physical or psychological integrity of members of the group or its existence or biological continuity.
50. Individuals are criminally responsible if they commit, attempt to commit, plan, order, or instigate war crimes or other international crimes. They are also liable for a crime if they aid, abet, or otherwise assist or facilitate the commission of a crime.<sup>22</sup>
51. Depending on the circumstances, military commanders and other superiors may bear individual responsibility for the crimes they directly committed, ordered, or instigated, and for crimes perpetrated by those under their command or effective control, when they knew or ought to have known that such acts were being or were about to be committed and failed to take all necessary and reasonable measures to prevent or punish these acts.<sup>23</sup>

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<sup>16</sup> Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principles 20 and 21.

<sup>17</sup> See Rome Statute of the International Criminal Court (ICC), Articles 6,7 and 8.

<sup>18</sup> *Prosecutor v Akayesu*, ICTR-96-4, Judgment, Trial Chamber, 2 September 1998, paragraph 582.

<sup>19</sup> Warrant of Arrest for Omar Hassan Almad Al Bashir, ICC-02/05-01/09, Pre-Trial Chamber I, 4 March 2009, paragraph 81; *Prosecutor v Blaskic*, IT-95-14, Judgment, Trial Chamber, 3 March 2000, paragraph 206.

<sup>20</sup> Warrant of Arrest for Omar Hassan Almad Al Bashir, ICC-02/05-01/09, Pre-Trial Chamber I, 4 March 2009, paragraph 81;

<sup>21</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Article II; Rome Statute of the ICC, Article 6.

<sup>22</sup> Rome Statute of the ICC, Article 25. See also ICRC CIHL, Rule 156,

<sup>23</sup> See Rome Statute of the ICC, article 28; Statute of the ICTY, article 7(2); and Statute of the ICTR, article 6(2). See also ICRC, Database on Customary International Humanitarian Law, Rule 152.

52. Ethiopia and Eritrea are not parties to the Rome Statute of the International Criminal Court. Nevertheless, many of the provisions of the Rome Statute reflect customary international law and, to that extent, are therefore binding on Ethiopia and Eritrea.<sup>24</sup>
53. It should be noted that the JIT conducted a human rights investigation, not a criminal investigation. As such it has not made findings concerning the criminal responsibility of specific individuals for alleged violations of international law.

#### **D. Domestic law**

54. The Constitution of the Federal Republic of Ethiopia, 1995, includes a comprehensive bill of rights chapter (Chapter III) encompassing a detailed catalogue of human rights recognized under international human rights law. Further, the Constitution declares all ratified international agreements to be an integral part of Ethiopian law and requires the rights and freedoms recognized by the Constitution to be interpreted consistently with the principles of the Universal Declaration of Human Rights (UDHR) and international human rights instruments adopted by Ethiopia.<sup>25</sup>
55. While the Constitution envisages the provisional suspension of human rights in the event of a state of emergency, there are certain rights that are non-derogable, including freedom from inhuman treatment and the right to equality and non-discrimination.<sup>26</sup>
56. Criminal liability for gross violations of human rights which constitute crimes against humanity (a term broadly conceived under the Constitution to include genocide, summary executions, forcible disappearances and torture)<sup>27</sup> shall not be barred by period of limitation or commuted by amnesty or pardon.
57. The 2004 Criminal Code includes standard criminal provisions prohibiting crimes such as homicide; bodily injury; illegal restraint; abduction; political abduction; enslavement; rape and other sexual offences; robbery; looting; and damage to property.<sup>28</sup>
58. Article 269 of the Code provides for the prohibition and punishment of the crime of genocide which can be committed in times of peace or war. In addition to groups ordinarily regarded as protected groups under international law (i.e. national, ethnic, racial or religious groups), the crime of genocide is broadly formulated to cover also political groups.
59. Article 270 prohibits war crimes committed against a civilian population including killings; torture and inhuman treatment; willful reduction to starvation or destitution; compulsory movement or dispersion of a population; rape and forced prostitution; taking of hostages; the imposition of collective punishment and destruction of property. Further, the provision proscribes the attack, displacement or disappearing of stateless

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<sup>24</sup> Customary international law is binding on every State, except where the State has constantly objected to a specific customary obligation.

<sup>25</sup> FDRE Constitution, art. 13(2).

<sup>26</sup> FDRE Constitution, art. 93(4).

<sup>27</sup> FDRE Constitution, art. 28. Article 44 (1) of the Criminal Code similarly uses the term “crimes against humanity” in reference to the international crimes provided for under Articles 269-274 of the Code. However, the Code does not have a provision that specifically criminalizes and punishes crimes against humanity.

<sup>28</sup> Some crimes under the 2004 Criminal Code are punishable with a more serious penalty when committed against children or women such as the crime of abduction (Articles 586 to 589). In the case of rape against children (Articles 626 and 627), the penalty increases as the age of the victim decreases. The victims of some crimes such as harmful traditional practices (Articles 561 and 562) are usually women and children only.

persons or refugees. The Refugees Proclamation No. 1110/2019 providing for the rights and protection needs of refugees in Ethiopia also specifically prohibits forced repatriation of refugees to a country where they may be subject to persecution.<sup>29</sup>

60. Articles 271 and 272 of the Criminal Code prohibit war crimes against wounded and sick persons and medical services and against prisoners and interned persons, respectively. Articles 273 to 283 deal with other crimes committed in the context of war including pillage and looting; economic spoliation; unlawful destruction or removal of property; use of illegal means of combat; denial of justice; and hostile acts against international humanitarian organizations.

#### **E. State duty to investigate and prosecute, and provide an effective remedy**

61. As noted earlier, States have the duty to investigate and prosecute gross violations of international human rights law and serious violations of international humanitarian law, in particular those that constitute crimes under international law. Such investigations must be undertaken by independent and impartial bodies and be prompt, thorough, and effective. Transparency is also an increasingly important element.<sup>30</sup>

62. As part of the duty to provide effective remedies, States are obliged to ensure reparation for the harm suffered.<sup>31</sup> States must also ensure the inalienable right to know the truth about violations and take other necessary measures to prevent their recurrence.

#### **F. Non-State actors**

63. The present report applies the approach that non-State actors who exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of individuals under their control. Non-State armed groups that are party to an armed conflict are also bound by international humanitarian law. Moreover, relevant rules of customary international humanitarian law apply to non-State armed groups that are party to an armed conflict. The scope of international criminal law extends to all individuals.

### **IV. Context**

64. The Federal Democratic Republic of Ethiopia is a land-locked country in the Horn of Africa, covering an area of 1,104,300 square kilometres.<sup>32</sup> The country borders Eritrea and Djibouti to the north, Somalia to the east, Kenya to the south, South Sudan to the west, and Sudan to the northwest. Ethiopia is the second most populous country in Africa with an estimated population of 117.9 million as of 2021.<sup>33</sup> Despite

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<sup>29</sup> Refugees Proclamation No. 1110/2019, art. 11.

<sup>30</sup> A/HRC/29/CRP.4 para. 604; A/HRC/15/50, para. 21; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989; ICRC and Geneva Academy, Guidelines on investigating violations of international humanitarian law: Law, policy and good practice, Guideline 10.

<sup>31</sup> ICCPR, article 2(3); Human Rights Committee, General Comment No. 31, para. 15; ICRC Study on Customary International Humanitarian Law, Rule 150; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principles 15-23; Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principles 31-34.

<sup>32</sup> FAO Country STAT (CSA data), available at: <http://ethiopia.countrystat.org/home/en/>.

<sup>33</sup> UNFPA, World Population Dashboard: Ethiopia, available at: <https://www.unfpa.org/data/world-population/ET>.

registering rapid economic growth over the past decade, the country remains one of the least developed economies in the world.<sup>34</sup>

65. The country is home to over 80 ethnic groups which makes it a mosaic of cultures and languages. According to the last national census (2007), the Oromo constitute the single largest ethnic group at 34.5 percent of the population, followed by the Amhara (26.9 percent), Somali (6.2%), Tigrayan (6.1%), Sidama (4 %), Gurage (2.5%), Welaita (2.3%), Hadiya (1.7%), Afar (1.7%) and Gamo (1.5%). The remaining over seventy (70) ethnic groups make up 19.8 percent of the total population.<sup>35</sup> About 43.5 percent of the population belong to the Ethiopian Orthodox Tewahedo Church, 33.9 percent are Muslim, and 18.6 percent are Protestant. Smaller religious groups including Catholics, Jehovah's Witnesses and followers of indigenous religions collectively account for less than 5 percent of the country's total population.
66. Ethiopia took its current shape in the late 19<sup>th</sup> century during the reign of Emperor Menelik II, who ruled from 1889 to 1913. The centuries old monarchical rule under the Solomonic dynasty came to an end when Emperor Haile Selassie I, who ascended to the throne in 1930, was deposed in 1974 by a military junta that would later become known as the Derg, led by Mengistu Haile Mariam.
67. In 1991, Derg was toppled by the Ethiopian People's Revolutionary Democratic Front (EPRDF), a coalition of ethnic-based political movements in which the TPLF assumed a dominant position.<sup>36</sup> Eritrea gained independence from Ethiopia in a referendum conducted in 1993. A new Constitution was adopted in Ethiopia, in 1994, which provided for a federal system structured mainly based on language whereby the country's diverse ethnic groups were granted the right of self-rule as well as representation at the federal level.
68. From May 1998 to June 2000, Ethiopia and Eritrea fought a devastating war over disputed territories including the town of Badme.<sup>37</sup>
69. A political crisis caused by years of anti-government protests beginning in 2014, centred in Oromia and, later, Amhara regional states, led to the resignation of the then Prime Minister Hailemariam Desalegn in February 2018. On 27 March 2018, Abiy Ahmed was elected Chairperson of the EPRDF and subsequently sworn in as Prime Minister by the House of Peoples' Representatives (HoPR) on 2 April 2018. The new administration promised to resolve the country's deep ethnic and political divide and implemented reforms which included releasing political prisoners, allowing exiled

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<sup>34</sup> In 2019 Ethiopia ranked 173rd out of 189 countries and territories in terms of human development index (HDI) by scoring HDI value of 0.485. (Human Development Report 2020, UNDP).

<sup>35</sup> More recent figures are unavailable — a new census has been postponed repeatedly, most recently in 2019 owing to insecurity and large-scale internal displacement.

<sup>36</sup> In 1989, TPLF and the Ethiopian People's Democratic Movement (EPDM), which in 1994 was renamed the Amhara National Democratic Movement (ANDM), formed the Ethiopian People's Revolutionary Democratic Front (EPRDF). The Oromo Peoples' Democratic Organisation (OPDO) and Southern Ethiopian People's Democratic Movement (SEPDM) joined the coalition in 1990 and 1992 respectively. In 2019, Oromo Peoples' Democratic Organization (OPDO) was renamed as Oromo Democratic Party (ODP) while Amhara National Democratic Movement (ANDM) was renamed as Amhara Democratic Party (ADP).

<sup>37</sup> On 13 April 2002, the Eritrea-Ethiopia Boundary Commission, established on the basis of the Algiers Agreement signed by the parties to the conflict on 18 June 2000, made a ruling awarding the town of Badme to Eritrea. On the other hand, the Ethio-Eritrea Claims Commission found Eritrea to be in violation of international law for triggering the war by invading Ethiopia. Tensions between the two countries continued until the signing of a peace agreement in July 2018.



political groups into the country, revising a number of restrictive laws, and removing restrictions on the media and civil society organizations. The administration also normalized relations with Eritrea after the signing of a Peace Agreement between the two countries in July 2018.

70. In December 2019, three constituent parties of the EPRDF - the Oromo Democratic Party (ODP), Amhara Democratic Party (ADP) and Southern Ethiopian Peoples' Democratic Movement (SEPDM) - merged into a single new party called the Prosperity Party (PP), under Prime Minister Abiy Ahmed. The TPLF declined to join the newly established party.
71. In March 2020, the National Electoral Board of Ethiopia (NEBE) indicated that it will not be able to conduct the elections scheduled for August 2020 due to the COVID-19 pandemic.<sup>38</sup> On 6 May 2020, the House of Federation (HoF) sent a request to the Council of Constitutional Inquiry (CCI) seeking an interpretation of the 1995 Constitution regarding the possible postponement of the elections.
72. The CCI considered the matter and recommended to the HoF that the terms of offices of the Federal and Regional executive and legislative bodies should continue until elections are held owing to the declaration of the state of emergency to prevent and control the COVID-19 pandemic; and that elections should be held within 9-12 months from the time the national and international health authorities and scientists confirm that COVID-19 is no more a public health threat. These recommendations were adopted by the HoF.
73. However, some opposition parties remained critical of the decision, particularly the TPLF, arguing that the decision to postpone the elections was unconstitutional. On 9 September 2020, the Tigray Regional Council organized elections in the Tigray Region.<sup>39</sup> The TPLF was declared the winner of all seats, while the Federal Government declared the election unconstitutional and thus "null and void."<sup>40</sup>
74. On 6 October 2020, the TPLF stated that it no longer accepted the legitimacy of the Federal Government (the House of Peoples' Representatives, the House of Federation, the Cabinet, and the Prime Minister) as its mandate had expired.<sup>41</sup> It further stated that henceforth Tigray would not accept any decision or resolution that came from the Federal Government.<sup>42</sup>
75. On 7 October 2020, the HoF decided to sever relations with Tigray Regional State Council and the region's Cabinet by, among others, suspending funding to the Regional administration, instead electing to deal with the lower administrative units (the

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<sup>38</sup> Press Statement by NEBE on the postponement of Ethiopia's 2020 elections, 01 April 2020, <https://www.ethioembassy.org.uk/press-statement-by-nebe-on-the-postponement-of-ethiopia-2020-elections/>; Ethiopia postpones landmark August election due to coronavirus, France24, 31 March 2020, <https://www.france24.com/en/20200331-ethiopia-postpones-landmark-august-election-due-to-coronavirus>.

<sup>39</sup> Several opposition parties, including the TPLF, had objected to this decision.

<sup>40</sup> House Committee Proposes Tigray Regional Election to be Declared Null and Void, 05 September 2020, <https://www.ena.et/en/?p=16719>.

<sup>41</sup> Mekelle Foresight: Interview with Getachew Reda, Executive Committee Member, TPLF, On the expiry of the term of the Federal Government, Tigray Communication Affairs Bureau, October 6/2020. Source; Tigray Television <https://www.facebook.com/TigrayCAB/videos/346252249819545/>.

<sup>42</sup> As above.

Woredas and Kebeles).<sup>43</sup> Tensions between the Federal Government and the Tigray Regional State were further escalated with military posturing and build-up on both sides. Attempts by civil society including elders to bring about peaceful resolution to the dispute also failed.

76. On 3 November 2020, Tigray Special Forces (TSF) and militia attacked the Northern Command of the ENDF and took control of the bases and the weaponry.
77. On 4 November 2020, PM Abiy announced a military operation, which he termed a “law enforcement operation”, against TSF and the TPLF. The ENDF, ASF and militias, and the EDF accordingly started a military offensive against the TPLF in Tigray. On the same day, the Federal Council of Ministers declared a six-month state of emergency in the Tigray Region, including a curfew. On 7 November 2020, the HoF voted to establish an Interim Administration for the region to replace the TPLF-led administration, as armed clashes continued in most parts of Tigray.
78. On 28 November 2020, Prime Minister Abiy announced that the ENDF had gained “full control” of Mekelle and subsequently the Interim Administration of Tigray started administering the Region by first establishing its administration in the Regional Capital, Mekelle, and gradually other cities/towns under the control of the Federal forces and allies. By this time, the TPLF had withdrawn, but continued to be engaged in the fighting in parts of Tigray.
79. On 8 May 2021, the HoPR designated the TPLF and another group called “Shene” (which calls itself Oromo Liberation Army)<sup>44</sup> as terrorist groups pursuant to article 18 of the Prevention and Suppression of Terrorism Crimes Proclamation No. 1176/2020.
80. On 21 June 2021, Ethiopia held its 6<sup>th</sup> National Elections except in Somali, Harar and Tigray regions, as well as some constituencies in other regions due to security concerns and other reasons.<sup>45</sup> According to the NEBE, PP led by PM Abiy Ahmed won 410 of the 436 contested federal parliamentary seats.<sup>46</sup>
81. On 28 June 2021, the Federal Government announced a unilateral ceasefire in Tigray to “enable farmers to undertake the seasonal farming activities and facilitate the humanitarian assistance” in the region. The announcement of the ceasefire was followed by the withdrawal of the ENDF and EDF from Tigray, except the contested western and southern parts of the region. On 29 June, shortly after the ceasefire was announced, the TPLF issued a statement that Mekelle, the capital city of Tigray, was under the control of the Tigray forces and that it had since begun administering the region. The TPLF also rejected the unilateral ceasefire by the Federal Government. On 4 July 2021, the TPLF administration issued a statement setting out seven “conditions for a negotiated ceasefire,” including the withdrawal of Amhara and Eritrean forces from Tigray, and allowance of “unimpeded delivery of humanitarian aid to the people

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<sup>43</sup> “Federal Gov’t Severs Relationship with Tigray Regional State” *Fana Broadcasting Corporate* (7 October 2020), available at <https://www.fanabc.com/english/federal-govt-severs-relationship-with-tigray-regional-state/>.

<sup>44</sup> “Shene” (also referred to as the “Oromo Liberation Army,” OLA), is not officially registered but is believed to be the armed wing of the Oromo Liberation Front (OLF), which was established in April 2018, following a disagreement with the OLF, after the OLF entered a peace agreement with the Federal Government of Ethiopia. It operates in West Oromia and other parts of the country.

<sup>45</sup> General Election to Take Place on June 21, 21 May 2021, <https://www.ena.et/en/?p=24583>.

<sup>46</sup> NEBE, [https://nebe.org.et/sites/default/files/HOPR%20Last%20edition%20\\_0.JPG](https://nebe.org.et/sites/default/files/HOPR%20Last%20edition%20_0.JPG).

of Tigray.”<sup>47</sup> The conflict has since spread to the neighbouring regions of Amhara and Afar following advances into these regions by the Tigray forces, further exacerbating the humanitarian crisis in Tigray and parts of Amhara and Afar Regions.

82. The armed conflict in Tigray has resulted in a dire humanitarian situation. Since the conflict began in early November 2020, more than 50,000 people have sought refuge in Sudan while more than 1.7 million have been internally displaced in Tigray by August 2021.<sup>48</sup> The conflict has also left an estimated 5.7 million people in need of humanitarian assistance – up from 1.5 million in need before the conflict.

## **V. Issues and allegations arising under international humanitarian, human rights, and refugee law**

### **A. Attacks on civilians and civilian objects, and other protected persons and objects**

#### **1. Introduction**

83. There have been numerous credible reports of possible violations of international human rights and international humanitarian law committed by all parties to the conflict since it began in November 2020. These reported violations include the deliberate targeting of civilians and civilian objects, indiscriminate attacks, failure to take sufficient precautionary measures to protect the civilian population, and widespread destruction of property. The JIT has documented several attacks against or affecting protected persons or objects, including hospitals and health centres, indiscriminate attacks and destruction of civilian property and infrastructure in several areas of Tigray.

#### **2. Legal framework**

84. International humanitarian law imposes constraints on the methods and means of warfare by regulating the conduct of hostilities to ensure the protection of the civilian population and civilian objects from the effects of the hostilities. Thus, international humanitarian law prohibits attacks<sup>49</sup> against civilians and civilian objects. Consistent with the foundational principle of distinction, parties to an armed conflict must always distinguish between civilians and civilian objects on one hand and combatants and military objectives on the other. Attacks may only be directed at the latter.<sup>50</sup> In order for an object to be considered a military objective it must meet two cumulative criteria namely that (1) by its “nature, location, purpose or use [it] make[s] an effective contribution to military action” and, (2) the object’s “total or partial destruction, capture or neutralization in the circumstances ruling at the time, offer[s] a definite

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<sup>47</sup> On 27 July, the “Government of Tigray” announced amendments to the earlier conditions for a negotiated ceasefire, including the “commencement of a transitional arrangement and an inclusive political process that includes the major political actors in the country” and “internationally verifiable withdrawal of Eritrean and Amhara forces from Tigray and assure the return of status quo ante.”

<sup>48</sup> See UNHCR, Emerging Response to Tigray Situation, Weekly Update #6, Reporting Period: 15-22 August 2021; OCHA, Ethiopia – Tigray Region Humanitarian Update, Situation Paper, 6 January 2021; OCHA, Ethiopia – Tigray Region Humanitarian Update, Situation Paper, 26 August 2021. Information also received from the National Disaster and Risk Management Commission of Ethiopia in August 2021.

<sup>49</sup> In international humanitarian law, the word “attacks” refers to both offensive operations and all “acts of violence against the adversary, whether in offence or in defence.”

<sup>50</sup> Additional Protocol II, art. 13(2); ICRC *Study on Customary International Humanitarian Law (CIHL)*, rules 1-10.

military advantage.”<sup>51</sup> Civilians enjoy protection against attack “unless and for such time as they take a direct part in hostilities.”<sup>52</sup> Intentionally directing attacks against the civilian population as such or against individual civilians not directly participating in hostilities constitutes a war crime.<sup>53</sup>

85. Apart from direct attacks against civilians or civilian objects, international humanitarian law also prohibits:

- indiscriminate attacks, i.e., attacks which are of a kind to strike military objectives and civilians and civilian objects without distinction, either because they are not or cannot be directed at a specific military objective or because their effects cannot be limited as required by international humanitarian law;<sup>54</sup>
- attacks that may cause an incidental loss of life, injury to civilians and/or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated;<sup>55</sup>
- acts or threats of violence with the primary purpose of spreading terror among the civilian population;<sup>56</sup>
- using civilians or other protected persons as “human shields”; i.e., using the presence or directing the movement of the civilian population or individual civilians to attempt to shield military objectives from attack, or to shield, assist or impede military operations;<sup>57</sup>
- collective punishment and countermeasures against persons who do not or have ceased to take a direct part in hostilities;
- methods of warfare causing widespread, long-term, and severe damage to, or involving the hostile manipulation of, the natural environment; and
- starvation of civilians as a method of warfare.<sup>58</sup>

86. Parties to an armed conflict are obliged to take all feasible measures to prevent erroneous targeting and to avoid or, in any event, minimize incidental loss of civilian life, injury to civilians, and damage to civilian objects. In conducting their military operations, parties must take such precautions in relation both to the attacks they carry out (*precautions in attack*), and in relation to the protection of the civilian population under its control from the effects of attacks launched by the enemy (*precautions against the effects of attack*). This includes a duty to avoid, to the maximum extent possible, locating military objectives within or near densely populated areas, as well as taking all feasible measures to remove civilians and civilian objects under their control from the vicinity of military objectives.<sup>59</sup>

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<sup>51</sup> ICRC, *Database on customary international humanitarian law*, Rule 9.

<sup>52</sup> AP II, art. 13(3); CIHL, Rule 6.

<sup>53</sup> Rome Statute of the ICC, art. 8(2)(e)(i).

<sup>54</sup> CIHL, Rules 11-13.

<sup>55</sup> CIHL, Rule 14.

<sup>56</sup> CIHL, Rule 2.

<sup>57</sup> CIHL, Rule 97.

<sup>58</sup> AP II, art. 14

<sup>59</sup> CIHL, Rules 14-24.

87. In recognition of the importance of their functions, international humanitarian law provides specific protection for certain categories of personnel, including religious, medical, and humanitarian personnel.<sup>60</sup> These must be respected and protected. Thus, they cannot be the object of attack, and they should not be impeded in the performance of their functions, other than for reasons of military necessity. Religious, medical, and humanitarian personnel lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy.<sup>61</sup>
88. International humanitarian law provides special protection for objects indispensable to the survival of the civilian population (such as foodstuffs, agricultural areas, crops, livestock and water installations and supplies); medical units and medical transports (whether military or civilian);<sup>62</sup> objects used for humanitarian relief operations;<sup>63</sup> cultural property,<sup>64</sup> including places of worship; and works and installations containing dangerous forces, including dams and nuclear power plants.<sup>65</sup>
89. Under international humanitarian law, the destruction or seizure of the property of an adversary is prohibited, unless imperatively demanded by the necessities of the conflict.<sup>66</sup> The systematic and violent appropriation of movable public or private property is also prohibited.<sup>67</sup> Either type of conduct may constitute a war crime.<sup>68</sup>
90. Based on the universally accepted principle that the right of the parties to an armed conflict to choose methods and means of warfare is not unlimited, international humanitarian law prohibits or regulates, inter alia, the use of certain weapons (means of warfare) and prohibits or restricts the ways in which such weapons can be used, or hostilities conducted (methods of warfare). Thus, international humanitarian law restricts or prohibits the use of weapons, that are by their nature indiscriminate, cause superfluous injury or unnecessary suffering,<sup>69</sup> or cause widespread, long-term, and severe damage to the environment. Parties to a conflict must strike a balance between considerations of military necessity and of humanity.<sup>70</sup>

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<sup>60</sup> Regarding medical and religious personnel, see Additional Protocol II, art. 9(1) and CIHL, Rules 25 and 27; and for humanitarian personnel, see CIHL, Rule 31.

<sup>61</sup> See, e.g., Additional Protocol II, art. 11(2).

<sup>62</sup> Additional Protocol II, art. 11(1). CIHL, Rule 54. The term 'medical units' refers to establishments and other units - whether military or civilian, fixed or mobile, permanent or temporary - organized for medical purposes. It includes hospitals and other similar units, blood transfusion centres, medical depots, and the medical and pharmaceutical stores of such units. The term 'medical transports' refers to any means of transportation (military or civilian, permanent or temporary) assigned exclusively to medical transportation under the control of a competent authority of a party to the conflict. This includes ambulances and medical aircraft.

<sup>63</sup> CIHL, Rule 32.

<sup>64</sup> The term 'cultural property' refers to any movable or immovable property dedicated to religion, art, science, education, or charitable purposes. This includes property of great importance to the cultural heritage of all people, such as architectural or historical monuments, archaeological sites, works of art, books, museums, and libraries and other buildings containing cultural property. See Hague Convention on Cultural Property, art 1; Additional Protocol II, art. 16.

<sup>65</sup> Additional Protocol II, arts 14-16; CIHL, Rule 42.

<sup>66</sup> CIHL, Rule 50.

<sup>67</sup> Additional Protocol II, art. 4(2)(g); CIHL, Rule 52.

<sup>68</sup> Rome Statute, art. 8(2)(e)(xii) and 8(2)(e)(v).

<sup>69</sup> CIHL, Rules 70. And 71.

<sup>70</sup> In its Advisory Opinion on nuclear weapons, the International Court of Justice (ICJ) stated that the prohibition against causing superfluous injury or unnecessary suffering makes it unlawful to cause combatants "harm greater than that unavoidable to achieve legitimate military objectives." *Legality of the Threat or Use of Nuclear Weapons*, 226, para 78.

### 3. Findings

91. On 28 November 2020, several civilian and public facilities in Mekelle city, were shelled resulting in civilian deaths and destruction of civilian and public property and infrastructure. The JIT found that, following the shelling that was launched in the early hours, continuing into the evening of 28 November 2020, more than 15 civilian facilities, including public institutions located in Mekelle, were struck by artillery shells, resulting in at least 29 civilian deaths, including three (3) children. At least 34 civilians were injured. Witnesses mentioned that the attacks appeared to come from the direction of Mesebo mountains, which they claimed at the time were under the control of the ENDF. The JIT visited several civilian residences, educational facilities, a hospital, and a church in Semien, Ayder and Haweltti that were shelled.
92. In one incident, a witness described how a family of four that was renting part of his premises in Ayder Sub City was killed by an explosion. According to the witness, on 28 November 2020, around 09.00 hours, he heard a loud explosion, as his house was hit by an object. A family of four (one man, one woman, and their children aged 4 and 12 years) were killed. Another eight (8) people, including the witness were injured in the blast. In another incident, in the afternoon of 28 November 2020, at Hadush-mender, Laches in Semien Sub city, a young woman was killed, and four children aged 4 to 14 years were injured, following an explosion near the area where the children were playing. In another incident on 28 November 2020, the Tigray Agricultural Institute premises were reportedly hit seven times, with two of the rockets hitting and destroying one of the institute's buildings. At the time of the visits, the JIT saw what appeared to be destruction of the walls, office furniture and doors in one of the buildings. The JIT was also shown an unexploded rocket, allegedly, one of two, fired at the Institute, that did not explode. In Haweltti Sub City, the JIT visited Daero Academy, a private school, and saw shattered glasses in the office of the Director of the Academy, and shattered windows of the school bus, reportedly, occasioned by the shelling. The ENDF reported that necessary precautions were taken despite the alleged use of civilians as human shields by the TPLF and storage of weapons in civilian areas in Mekelle.<sup>71</sup> The JIT found that civilians were killed and injured during the attacks. Additionally, private property and public facilities were destroyed. The JIT did not establish through its visits the presence or indications of a military target in or near the areas that were shelled.
93. During its visit to Wukro on 27 May 2021, the JIT found that shelling had occurred in the town between 25 and 27 November 2020, which led to multiple civilian deaths and injuries, as well as destruction of property. The JIT visited Wukro Hospital where it observed some damage to one of the blocks in the Hospital, which was a maternity ward, due to shelling. The JIT also visited a residential area called Kebele 01 where it observed that there was damage to civilian houses including two houses with serious damage. During the onsite observation, the JIT team interviewed a woman whose adult

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<sup>71</sup> ENDF claims to have taken the following precautions; there is a procedure for target selection which includes avoiding civilian areas; advance warning of 48-72 hours for civilians to stay at home or to leave the areas; conduct of operations at night; and opening up of a safe passage for TSF. The ENDF further claims that the TSF used civilians as human shields, stored bullets and heavy artillery inside churches and other civilian areas in Mekelle.

daughter died due to the shelling, who said as she cried “*you left me alone to raise your [her daughter’s] two sons.*” A few other residents also showed the JIT the damage to their houses, ranging from serious to minor. The JIT found that there was fighting between two parties in Wukro from 25 to 27 November 2020 and that both sides were reportedly using artillery; the ENDF was in Adigrat and the TSF was in Agulae. Witnesses informed the JIT that on 27 November 2020, the ENDF entered Wukro. The JIT was also told that at least 22 civilians were killed in a nearby town called Enda Selassie due to the shelling. Information gathered from the on-site visits, interviews and meetings revealed that civilians were killed and that damage was caused to public and private property due to shelling. The JIT was told that a nearby military camp/depot in Arato, in Wukro, was shelled. However, the JIT was not able to attribute responsibility for the civilian deaths or the destruction of property to either of the conflicting parties.

94. Humera city became the scene of heavy fighting between the ENDF and the EDF against the Tigray forces including the TSF from 09 to 11 November 2020. Artillery shells hit several populated areas within the city on November 9 and 10 reportedly resulting in the deaths of 15 people and many more injuries. In one incident, a witness whose family members were killed recounts “... people were gathered to a corner of the compound behind a wall where they thought it would be safe but were instead hit by the shelling.” On-site visits were carried out by the JIT in July 2021, where investigators saw visible marks from artillery shell fragments on walls. Two craters on the streets confirmed that Kebele 4, Meskel Square, Mariam Church, and other locations in Humera were affected by the shelling. According to information received, both the EDF and TSF are implicated in these allegations.
95. The JIT investigated rocket attacks on Gondar and Bahir Dar airports on 13 and 14 November 2020.<sup>72</sup> The JIT found that the ENDF used the two airports for military purposes. However, some of the rockets fired by Tigray forces also landed on a house several kilometers from Gondar from Gondar Airport, and a farm 2 km from Bahir Dar Airport. On 13 November 2020, in Tabla Selassie village, approximately 25 km from Debark, a rocket landed on a lone house where nine family members, including eight children were sleeping at the time. The victims suffered minor injuries, but their house was damaged and as a result the family was living in a makeshift shelter, at the time of the JIT’s visit.
96. The JIT found that between December 2020 and March 2021, civilians were killed and injured during shelling and other attacks in Gidjet and nearby areas including in Dengolat, Addis Alem, Adi Nedaki, Teshi, and Adi Zankira. The number of victims could not be conclusively established. However, one witness told the JIT that in Dengolat, between 01 – 05 December 2021, shelling by ENDF resulted in loss of life and destruction of property, including two houses and a church. Additionally, shelling in Dengolat by EDF around 30 March 2021, killed one woman and a church was damaged. The JIT was also told that there were airstrikes in Teshi and Gidjet which resulted in burnt houses. Another witness told the JIT that 65 people were killed in Adi Qaela due to bombing and shooting. The ENDF and EDF were implicated in these acts. The witnesses provided testimonies about different incidents, which were not corroborated making it difficult to conclude on the circumstances of the incidents, including the

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<sup>72</sup> The JIT observed extensive damages to Bahir Dar Airport and substantial damages to Gondar Airport.

perpetrators and the number of victims. However, the information collected provides reasonable grounds to believe that civilians were killed and injured in villages/towns stretching from Dengolat to Gidjet, between December 2020 and March 2021. Further investigation is required.

97. Shelling by ENDF on 30 December 2020 resulted in the killing of a woman and a man, as well as damage to residential houses and a health center in Amedwha. The JIT visited the Abune Aregawi Church in Amedwha and some of the houses in the town and confirmed the damage. ENDF shelled other neighboring villages including Chemela, Gimela, Shamqe, Michirqo, Weldereq, Kumakum and Chichaber. There were airstrikes by ENDF in villages near Amedwha between February and March 2021 which resulted in the death of one person in Waareb and injury to unspecified number of people in Dejen. Witnesses also told the JIT that EDF shelled villages near Amedwha on 20 May 2021 (Waareb and Chemela), killing 8 people.
98. Between 6 and 9 November 2020, approximately 17 civilians were reportedly killed and 3 were injured, in what witnesses described as ethnic based attacks by TSF against two different farms in Maikadra, attacks which included the destruction of their harvest by burning a total of 5,620 quintals of sesame. The civilian farm workers were deliberately killed, including with machetes and knives, while one farm worker died in crossfire between the TSF and allied armed militia on one side, and two Amhara militia who guarded the farm. TSF were implicated in these incidents. The JIT corroborated one of the attacks on the farm and finds reasonable grounds to believe that the second attack which revealed similar details showed a pattern with a similar modus operandi.
99. Following the eruption of the conflict on 3 November 2020 until the declaration of ENDF's unilateral ceasefire on 28 June 2021, Amharas living in Mekelle and nearby areas were profiled, targeted and attacked. Four (4) civilians were attacked and 2 were killed because of what interviewees believed was their ethnicity as Amhara. The TSF and others in civilian clothing were implicated in these allegations. Witness testimonies revealed a pattern of harassment, intimidation, theft, beatings, and killings. The JIT has reasonable grounds to believe that these attacks occurred, in violation of IHL.
100. The JIT confirmed that between 3 and 6 November 2020 destruction of civilian and public property and facilities such as hospitals, health centres, courts and police stations occurred in Dansha injuring civilians. Dansha Health Centre, which is located very close to the 5<sup>th</sup> Mechanized ENDF Division, was one of the public facilities damaged when the 5<sup>th</sup> Mechanized ENDF Division came under attack by the TSF on 3 November 2020. The Health Centre was not being used for military purposes by the ENDF. The JIT visited the Health Centre and viewed damage including bullet marks which hit the iron sheet fence and the walls of the hospital's various rooms. The JIT found these impacts occurred during crossfire as TSF attacked the health Centre and then used it to launch an attack on the camp of the ENDF 5<sup>th</sup> Division.

#### **i. Use of civilian infrastructure for military purposes**

101. Between 1 and 31 December 2020, the ENDF used a technical and vocational school in Samre as a military camp. During its site inspection, the JIT observed insults against the TPLF written on walls, trenches dug in the school grounds and classrooms vandalised, with items strewn over the floors. While it may be necessary to conduct



further inquiry to ascertain the facts, the JIT site visit confirmed that the school was used as a military camp.

102. Between 3 December 2020 and 13 April 2021, the ENDF occupied the Atsey Yohannes Preparatory School in Mekelle twice and used it as a military camp. The ENDF also used the premises of the Tigray Supreme Court in Mekelle as a detention centre. This and other factors caused a disruption to the functioning of the court for approximately a month until an agreement led to part of the premises being restored to the court and the ENDF eventually leaving in April 2021.<sup>73</sup> Between November 2020 and March 2021, three groups of ENDF personnel occupied Hotel Milano in Mekelle, resulting in the destruction of property which affected the functioning of the hotel. The Tigray Interim Administration confirmed that schools and other civilian facilities had been used for military purposes by the TSF, ENDF and EDF, both in Mekelle and other locations. The ENDF has denied the use of civilian sites, stating that ENDF medical personnel may have been in hospitals to treat injured soldiers or ENDF soldiers may have been guarding these important public institutions and facilities.

#### **4. Impact**

103. The attacks described above left many civilians dead or injured, and also resulted in the destruction of civilian property and public infrastructure, including educational institutions, health facilities, and places of worship. Civilians have been displaced while the destruction of public infrastructure has resulted in severely reduced access to social services.

#### **5. Conclusion**

104. Based on the information collected by the JIT, there are reasonable grounds to believe that all parties to the conflict – including the ENDF, EDF, and TSF – have undertaken either direct attacks on civilians affecting men, women, boys and girls - and civilian objects enjoying special protection under international humanitarian law, including houses, hospitals, health centres, schools, places of worship, and/or conducted indiscriminate attacks striking them. There was also limited information of sufficient precautions taken by all parties to the conflict to protect civilians and civilian objects. It is important to note that the possible lack of respect by one party does not absolve the attacking party of its obligations under IHL, in particular the principles on the conduct of hostilities.

105. Directing attacks against civilians not taking a direct part in hostilities and/or civilian objects is a serious violation of international humanitarian law, which may also amount to a war crime. The reports of civilians being targeted allegedly because of their ethnicity requires further investigation.

106. There are also reasonable grounds to believe that the ENDF and TSF occupied and made use of civilian infrastructure (including schools and health centres), absent

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<sup>73</sup> In May 2021, the Tigray Regional Attorney General's Office told the JIT that "the justice system in the Region is starting from scratch, as the courts also have either been looted or burnt. Courts are not operational. The Regional AG's Office is keen to work but does not have the capacity to carry out justice work. Problems include staffing, infrastructural challenges, and insecurity. Courts cannot resume work because of the insecurity. Furthermore, police are not armed. They have only made 27 charges since they resumed work."

indication of appropriate justification for a military usage of the civilian facilities described.

## **B. Unlawful or extra-judicial killings and executions**

### **1. Introduction**

107. The JIT investigated incidents of unlawful or extra-judicial killings and executions allegedly committed by all parties to the conflict, including acts perpetrated by civilians. The JIT also received reports of killings on the basis of ethnicity, which in many instances targeted young men.

### **2. Legal framework**

108. The right to life is a fundamental guarantee. The State and its agents are obliged to respect, protect, and fulfil the right to life. International law prohibits the arbitrary deprivation of this right.<sup>74</sup> Furthermore, a violation of the right to life may be established where there is a failure to investigate any potentially unlawful death, ensure accountability and remedy any violations.

109. International human rights law enjoins law enforcement officials, first, to explore other non-violent means before resorting to use force.<sup>75</sup> The use of firearms may be permissible only as a matter of last resort to protect against an imminent threat to life or of serious injury. Intentional lethal use of firearms is permissible only when strictly unavoidable to protect life.<sup>76</sup> These standards apply to the military when it is acting in a law enforcement capacity.

110. The right to life is non-derogable. Thus, the prohibition against deprivation of the right to life continues to apply in all circumstances, including in situations of armed conflict and other public emergencies.<sup>77</sup>

111. In the context of hostilities, in situations of armed conflict, what constitutes an “arbitrary” deprivation of life must be determined in view of the applicable rules on the conduct of hostilities.<sup>78</sup> While rules of international humanitarian law may be relevant for the interpretation of the right to life, when the situation calls for their application, both areas of law are complementary, not mutually exclusive. Accordingly, practices inconsistent with international humanitarian law entailing a risk to the lives of civilians and other protected persons, including the targeting of civilians, failure to apply the principles of precaution, distinction and proportionality and the use of human shields could all amount to a violation of the right to life.

112. In the context of a conflict not of an international character, violence to life and person, in particular murder of all kinds against persons taking no active part in the

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<sup>74</sup> Art. 4, the African Charter on Human and Peoples’ Rights [African Charter]; Art. 6 the International Covenant on Civil and Political Rights [ICCPR]; Art. 3 Universal Declaration of Human Rights [UDHR]. Art. 14, Constitution of the Federal Democratic Republic of Ethiopia “Every person has the inviolable and inalienable right to life the security of person and liberty”.

<sup>75</sup> Art. 3, Code of Conduct for Law Enforcement Officials (UN General Assembly Resolution 34/169 of 17 December 1979); Principle 4, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>76</sup> Para. 9, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>77</sup> Art. 4 (2) ICCPR; HRC, General comment No. 36, para. 67; para. 1, ACHPR General Comment No. 3.

<sup>78</sup> Para. 13, African Charter, General Comment No.3; para. 64, UN HRC, General Comment No.36; para. 25, Advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons.

hostilities is a war crime.<sup>79</sup> The Criminal Code of Ethiopia furthermore criminalizes the killing of civilians during armed conflict.<sup>80</sup>

### 3. Findings

113. On 9 and 10 November 2020, a local Tigrayan youth group commonly known as ‘Samri’ killed hundreds of ethnic Amhara civilians, particularly men, in Maikadra (Western Tigray) with the assistance and direct participation of the local administration, police and other militias affiliated with the TPLF. On the morning of 9 November 2020, local administrative authorities began checking identification cards and seizing SIM cards from Amhara residents.<sup>81</sup> At around 3 pm, Amharas were told to stay at home and keep their doors shut, soon after which members of Samri, accompanied by police and local militia conducted house-to-house raids. Members of Samri used axes, machetes and sticks to selectively attack ethnic Amharas, while local police and militia shot anyone that attempted to resist or escape. The attacks focused particularly on “Ginb Sefer” and “Serategna Sefer” neighbourhoods where mostly ethnic Amhara farmhands called “Salug” lived. One woman stated that:

*“At 3 PM, a Tigrayan woman ran through the streets shouting in Amharic telling people to shut their doors. I pushed my husband inside and locked the door. Immediately after, some 30 Samri youths came to our home armed with machetes...When they set the house on fire, my husband picked up his stick to defend himself and stepped outside. The Samri then started swinging machetes at him but when he tried to defend himself, he was shot in the back [by a town militia]. As he fell face first, the others started hitting him with machetes. They then threw his body in the fire.”*

114. On 10 November 2020, as the ENDF and ASF approached Maikadra, most members of Samri, local police and militia responsible for the killings, as well as ethnic Tigrayan civilians who feared retaliation, fled over the border to Sudan. It was difficult to determine with certainty the number of persons killed because the victims were largely undocumented seasonal farmhands.<sup>82</sup> However, more than 200 civilians were confirmed to have been killed. The victims were buried in mass graves on 10 November by the ENDF and ASF at a local church called Abune Aregawi.

115. Following the events of 9-10 November 2020, revenge killings were also committed against ethnic Tigrayans who remained in Maikadra after the ENDF and ASF had captured the town. The JIT found that the “Fano” affiliated with the Amhara militia, killed at least five ethnic Tigrayans in retaliation for the killing of ethnic Amharas.

116. On 28 November 2020, members of the EDF killed more than 100 civilians in Axum, central Tigray. The victims were mostly young men. One witness stated that:

*“EDF soldiers took a 70-year-old man, and his two sons out of their homes. They took them to the nearby water tanker, ordered them to lay on the ground and shot all three of them in the head”.*

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<sup>79</sup> Art. 8(2)(c)(i), Rome Statute of the International Criminal Court.

<sup>80</sup> Art. 270 (a), the Criminal Code of the Federal Democratic Republic of Ethiopia.

<sup>81</sup> Following the shutdown of telecommunications in Tigray, residents of the region were using Sudanese telecom networks.

<sup>82</sup> While other sources place the number of civilians killed to be more than 700, investigations conducted by the Ethiopian Federal Police and Federal Attorney General’s Office places the number of victims at 229.

117. Sources told the JIT that although the ENDF was also present in Axum during the killings, it did not intervene.<sup>83</sup> The following day, on 29 November 2020, EDF members fired at mourners who tried to bury the dead. A witness stated that:

*“They only allowed us to bury the dead on 30 November 2020. By then, bodies had littered the roads for three days; many had been eaten by animals, smelled foul and were difficult to collect as the bodies had started to decompose”.*

118. On 8 and 9 January 2021, members of the ENDF killed at least 70 civilian men in and around their homes in Bora Amedwha, Bora Chemala and Mai Liham, in Southern Tigray. On 8 January 2021, at around 3pm, ENDF soldiers conducted house-to-house raids in Bora Amedwha and executed young men they found. Most of the men were removed from their homes, forced to kneel and shot in the head. Families were prohibited from collecting the bodies and many of the victims were buried one or two days after their death. Most of the victims were buried in mass graves around the five churches located in the area.

119. The mother of a man who was detained by ENDF and later killed told the JIT:

*“Ethiopian soldiers came to my compound in Amedwha, Bora, at around 1pm on 8 January where they met several children, including my son, born in 1987. They picked out my son and took him away. They picked out men from other compounds as well. Later, on the same day at dusk, I was informed that my son was killed near REST (NGO) entrance in Amedwha, Bora, by Ethiopian soldiers for suspectedly being a TPLF fighter. On that day, Ethiopian troops killed a total of 36 males in my neighborhood and prevented residents from collecting and burying the bodies.*

120. Other acts amounting to unlawful killings and extra-judicial executions attributable to the ENDF and EDF were also recorded in Adigrat, Adi Awsa, Adwa, Adi Gibai, Adi Hausen, Berezba, Dengolat, Gijet, Grizana, Humera and Wukro. In Mekelle, individuals were killed as the ENDF was enforcing curfew restrictions, which came into effect on 9 November 2020 and prohibited movement from 7 pm – 6 am. The victims were unarmed and posed no threat to the ENDF at the time of their deaths.<sup>84</sup> In one instance, around 7 pm on 19 January 2021, ENDF soldiers fired multiple shots at a vehicle occupied by four civilians. Two of the occupants were shot in the chest and head, dying on the scene. Another occupant was shot in the back as the vehicle swerved and survived, while another occupant was not seriously wounded. The bodies of the dead occupants were only collected the following morning.

121. The TSF attacked the 8<sup>th</sup> mechanized brigade of the ENDF in Adi Hageray on 3 November 2020. While some civilians remained in their homes, others took refuge in St. Giorgis Church as they believed that it would be a safe place. In the afternoon of 4 November 2020, the TSF entered the church and opened fire resulting in civilian deaths and injuries. The JIT met a displaced woman who was shot at St. Giorgis Church, and still had a bullet lodged deep inside her rib which made her suffer from chronic back pain. The number of victims could not be conclusively established, but several credible

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<sup>83</sup> According to residents of Axum, on November 25, members of ENDF were seen to be leaving Aksum and on November 26, residents said they could not see any “soldiers moving around the city”. On November 27, however, “a large number of Eritrean soldiers began coming into Aksum”. “They took up posts in three different locations of the city: ‘Maye Kuho’; ‘Samuna Fabrika’ and ‘Tsele’a’”. On November 28, 2020, we started hearing heavy gun fire all around the city.”

<sup>84</sup> The JIT has recorded three killings while staff of Ayder Hospital in Mekelle informed the JIT that it was common sight to see dead bodies in the streets immediately after the ENDF captured Mekelle following the start of the conflict.

eyewitness accounts provided reasonable grounds to believe that civilians, were killed and injured during an attack at St. Giorgis Church by the TSF.

#### **4. Impact**

122. Across Tigray, entire communities and particularly survivors and families of the victims have been traumatized by the cycle of violence, and many more have been displaced. In towns such as Humera and Maikadra, extra-judicial and mass killings have further deepened ethnic fault lines and increased tensions between ethnic Amharas and Tigrayans. The killings have torn families apart and left many without the social support systems they previously depended on for their physical and mental wellbeing.

123. In Maikadra, Bora Amedwha, Bora Chemala and Mai Liham, several men were targeted and killed by parties to the conflict. Victims of unlawful killings and extra-judicial executions were disproportionately male, on account that they would be most likely to join a party to the conflict and engage in hostilities. Beyond the psychological suffering caused by the killing of their loved ones, the targeted killing of men, has in many cases, turned wives into single parents left to support entire families including their children and older people in the family.

#### **5. Conclusion**

124. The JIT concludes that unlawful killings and extra-judicial executions were perpetrated by the ENDF, EDF, TSF and affiliated militia, Fano (group affiliated to the Amhara militia), and the Samri (local Tigrayan youth group) and amounted to violations and abuses of international human rights law, serious violations of international humanitarian law, and breach of the Constitution and laws of Ethiopia.

125. War crimes may also have been committed since there are reasonable grounds to believe that persons taking no direct part in hostilities were willfully killed by parties to the conflict. In enforcing curfew restrictions in urban areas such as Mekelle, members of the armed forces arbitrarily deprived individuals of their right to life through the intentional use of firearms outside the narrow circumstances permissible in civilian contexts, namely to protect life as a measure of last resort. Civilians armed with axes, machetes and sticks also committed mass killings against other civilians on the basis of ethnicity in Maikadra, with the assistance and direct participation of parties to the conflict. There are reasonable grounds to believe that the killings in some instances were consciously committed as part of a widespread and systematic attack against a selected civilian population and therefore may amount to crimes against humanity.

### **C. Torture and other forms of ill-treatment**

#### **1. Introduction**

126. During its investigation, the JIT documented numerous allegations of torture and other cruel, inhuman or degrading treatment or punishment by parties to the conflict, in some cases accompanied by ethnic slurs.<sup>85</sup>

#### **2. Legal framework**

127. There is an absolute prohibition on torture and other cruel, inhuman, or degrading treatment or punishment under international human rights law and

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<sup>85</sup> Other alleged cases of torture and ill-treatment are described in Section E on sexual and gender-based violence.

international humanitarian law.<sup>86</sup> The prohibition of torture is a peremptory norm of international law which cannot be limited or derogated from under any circumstances, including armed conflict.

128. Under CAT, torture is defined as the intentional infliction of severe pain or suffering (whether physical or mental), for a specific purpose (e.g., to obtain information or a confession, as punishment, to intimidate or coerce, or for any reason based on discrimination of any kind), by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Unlike international human rights law, there is no requirement under international humanitarian law that an official be present or involved for an act to be regarded as torture.<sup>87</sup> Inhuman and cruel treatment is defined as the infliction of severe physical or mental pain or suffering, which goes beyond mere degradation or humiliation.<sup>88</sup>

129. International humanitarian law explicitly prohibits torture and cruel treatment, as well as “outrages upon personal dignity, in particular, humiliating and degrading treatment”, of persons taking no active part or those no longer taking part in hostilities.<sup>89</sup> Torture and other inhuman treatment are war crimes in both international and non-international armed conflict,<sup>90</sup> as well as crimes against humanity when they are committed as part of a widespread or systematic attack directed against any civilian population.<sup>91</sup>

### 3. Findings

130. The JIT documented repeated instances of torture and other forms of cruel, inhuman, or degrading treatment against civilians and captured combatants in several locations across Tigray committed by all parties to the conflict.

131. The JIT found that TSF and militia committed acts of torture and other ill-treatment against civilians in places of detention and victims’ homes in Mekelle, Humera, Shire, Adebayo and Axum. Victims reported abductions, beatings, being subjected to sit in painful postures for long hours, food and water deprivation, threats of being killed and verbal abuse among others at the time of arrest, during detention/internment in facilities operated by the Tigrayan authorities, including makeshift detention facilities and military camps. Witnesses also reported seeing inmates in some detention places killed after having been tortured.

132. From 9 to 10 November 2020, as the fighting approached Humera in Western Tigray, Tigrayan militias and civilian mobs of the same ethnicity, armed with guns,

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<sup>86</sup> Universal Declaration of Human Rights, art. 5; ICCPR, art. 7; CAT, art. 2(2); CRC, art. 37(a); ICERD, art. 5(b); CMW, arts 10 and 16(2); African Charter, art. 5; ACRWC, arts 16 and 17(2)(a); Common article 3; Additional Protocol II, art. 4(2)(a).

<sup>87</sup> In *Kunarac*, the ICTY held that contrary to the definition of torture in article 1 of CAT, the presence of a state official or any other person wielding state authority in the commission of torture is not necessary for the offence of torture to be established under international humanitarian law. The Tribunal defined torture as the ‘intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental, in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate on any ground, against the victim or a third person.’ See *Prosecutor v Kunarac*, IT-96-23-T and IT-96-22/1-T, Judgment, 22 February 2001, paras. 496 and 497. Cf. CCPR General Comment No. 20: Article 7, para. 2.

<sup>88</sup> ICCPR art. 7, CAT art. 16; see also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2006/6, para. 35.

<sup>89</sup> Common Article 3 to the Geneva Conventions; Additional Protocol II, art. 4(2)(a).

<sup>90</sup> ICC Statute, arts. 8(2)(a)(ii) and 8(2)(c)(i) and (ii).

<sup>91</sup> ICC Statute, art. 7(1)(f) and (k); CIHL, Rule 156.

stones, machetes, sticks and other bladed weapons started arresting and beating non-Tigrayan residents particularly targeting ethnic Amharas. Victims and witnesses spoke of beatings and deprivation of food and water while in custody. Many of those detained were accused of helping ENDF by passing information using Sudanese SIM cards. For example, on 10 November 2020, a 43-year-old businessman was at his home when a large group of Tigrayan civilians and militia forced their way into his home in Humera. He was beaten in front of his wife and children and insulted as an 'Amhara donkey.' He was then detained incommunicado in the basement of the police station in Humera. At about 5 pm, he was transferred to Adebayo, outside Humera, with other detainees where he was subjected to torture and other forms of cruel and inhuman treatment. He told the JIT:

*At Adebayo, my wrists were tied and they beat me until I bled. My captors were stamping on my back causing me to sustain injuries on the back. We spent one night at Adebayo during which Tigrayan militia and civilians insulted and threatened to kill us. The TPLF security however advised against killing us because we would be needed to provide intelligence information. The following morning, all the seven of us were taken to Shire with wrists so firmly tied that we bled through our finger nails. At Shire, they put chains on us and locked us up in a dark cell for four days without food. On the fifth day, we were each given a small packet of biscuits.*

133. Another man who was arrested on 9 November 2020 in Humera and detained by Tigrayan police officers in a classroom with 8 others in Adebayo, outside of Humera, on 10 November, told the JIT:

*Our hands were tied and we were made to sit in an uncomfortable posture and if we moved our bodies, the captors would beat us with a plastic pipe on the back. I did not care about the beating but was afraid for my life and the thought of being killed and not seeing my family again; it was traumatic.*

134. In Southern Tigray, victims were subjected to torture and other ill-treatment by EDF in Samre in March 2021 and Berezba in March 2021, and by ENDF troops in Bora in December 2020. In all the locations mentioned, Ethiopian and Eritrean soldiers prohibited relatives of victims of summary execution from collecting the bodies and burying them, aggravating the severe suffering of surviving family members who had suffered the loss of their close relatives.

135. Additionally, on 2 April 2021, in Samre, at least 600 men suffered degrading treatment when they were forcibly paraded, naked, on the main street of their town by Eritrean soldiers and became the objects of mockery from on-looking EDF soldiers. One of the victims, a 70-year-old man, told the JIT:

*EDF soldiers rounded up men from the community into Aba Gabir Church in Samre and kept us in one hall of the church. We were then held at gun point and told to wait for further instructions. No one was allowed to speak and to go to the toilet. Then the soldiers [Eritrean] ordered us to queue up in ten lines and to strip to our underpants, and then marched us to the main street in Samre where we were ordered to sit for over six hours under the hot sun. There were men without underpants who remained naked after taking off their trousers. Female EDF soldiers mocked us and took pictures of us.*

136. According to multiple witnesses, ENDF soldiers who had been captured following the Tigray forces attacks on ENDF military camps in Sheraro, Adi Hageray and Shire between 3-4 November 2020, were subjected to various forms of torture and ill-treatment. Tigrayan youths insulted and threw rocks at them while Tigray forces kicked and dragged the bodies of deceased ENDF soldiers on the ground and forbade their burial for several days. The Tigray forces were also heard instructing the doctors at a hospital in Sheraro to ‘throw out the donkeys’ [ENDF wounded soldiers] on the street but the doctors refused, saying the Red Cross had brought them. In Adi Hageray, the Tigray forces detained ENDF soldiers in Adi Hageray Elementary and High School premises without food or water and did not allow them to use toilet facilities. Tigray forces also turned away civilians who brought food to the detained ENDF soldiers. They killed some of detainees and stripped off the uniforms and shoes of others. In Shire, a witness saw the beating of ENDF soldiers and an ENDF soldier being dragged behind a vehicle through the town. A similar episode was recorded in Mekelle on 28 June 2021, whereby a vehicle with a government license plate dragged a dead body clad in ENDF uniform on the street, when the federal government declared a unilateral ceasefire and withdrew its troops from Tigray.

137. Information collected and assessed from victims and witnesses indicates that several ENDF military camps in Tigray were used to torture captured Tigray forces or civilians suspected of providing support to the armed group. Witnesses and victims testified to the ill-treatment of captured Tigray forces in Adi Gudem, Awash military camp, Adigrat, and Kedamay Weyane police station in Mekelle. Most of those in detention in Kedamay Weyane police station were former members of the TSF or civilians suspected of providing food and other support to them. One woman, who was a captured Tigrayan fighter, described how she and another friend arrested with her were tortured by the ENDF using wooden sticks at Awash military camp in Mekelle. She said soldiers also tortured prisoners at the camp with electric cables and plastic covered metal rods and wooden sticks. ENDF also abused prisoners by holding guns to their heads. Another man arrested on suspicion of providing food to Tigray forces described how his hands were tied behind his back for three hours and how he was later reportedly tortured by the ENDF with electric cables at a military camp in Adigrat.

#### **4. Impact**

138. The torture and ill-treatment of civilians and captured combatants has been an expression of the brutality exhibited by all sides during the conflict. In relation to civilians in Western Tigray, torture and ill treatment was mainly based on the victims’ ethnic identity. In other parts, it was against captured soldiers and fighters of parties to the conflict as well as civilians suspected of providing support to them. Civilians and combatants subjected to torture and ill-treatment interviewed by the JIT continued to suffer physically and psychologically. The JIT observed that victims of torture and other ill-treatment did not have access to medical and psychosocial services.

#### **5. Conclusion**

139. There are reasonable grounds to believe that torture and other cruel, inhuman, or degrading treatment or punishment has been committed by all parties to the conflict, including the ENDF, EDF, Tigray forces and militias allied with the TPLF. The Tigray police have also been implicated. These acts have been committed against civilians and



captured combatants in various locations across Tigray, including in military camps, detention facilities, victims' homes, as well as secret, and unidentified locations. These acts have taken various forms including severe beatings with electric cables, plastic covered metal pipes or wooden sticks; being held incommunicado; being threatened with guns held to the victims' heads; and deprivation of food and water. There were also incidents of abuse and despoilation of the bodies of the dead, in violation of international humanitarian law. In at least two incidents, EDF soldiers forcibly paraded naked Tigrayan civilian men in public and Tigray forces subjected captured ENDF troops to public curiosity and insults. These acts violate the absolute prohibition on torture, and international humanitarian law norms, including the prohibition on inhumane treatment.

140. Moreover, these acts of torture and other ill-treatment may also amount to crimes against humanity if it is established that they were committed as part of a widespread or systematic attack, and to war crimes if sufficient nexus is established with the armed conflict and its parties.

## **D. Arbitrary detentions, abductions and enforced disappearances**

### **1. Introduction**

141. The JIT investigated incidents of arbitrary detentions, abductions and enforced disappearances allegedly committed by all parties to the conflict. The JIT received reports that parties to the conflict were detaining individuals on the basis of their perceived support for and affiliation with the opposing forces, which was often based on the ethnicity of the individual. Information received further indicates that some detainees were released while the whereabouts of others remains unknown.

### **2. Legal framework**

142. Deprivation of liberty must not be arbitrary and must be carried out with respect to the rule of law. Arrest that lacks legal basis is necessarily arbitrary.<sup>92</sup> 'Arbitrariness' includes not only elements 'against the law' but also elements of "inappropriateness, injustice, lack of predictability and due process of the law," as well as elements of reasonableness, necessity and proportionality.<sup>93</sup> Arrest or detention as punishment for the legitimate exercise of the rights guaranteed by the ICCPR is arbitrary, including freedom of association (art. 22), and freedom of expression and opinion (art. 19). Arrest or detention on discriminatory grounds is in principle, arbitrary. State parties may "in no circumstances invoke a state of emergency as justification for acting in violation of humanitarian law and peremptory norms of international law, for instance... through arbitrary deprivation of liberty".<sup>94</sup>
143. The prohibition of arbitrary deprivation of liberty is a norm of customary international law both in international and non-international armed conflicts. Arbitrary deprivation of liberty is not compatible with the requirements of Common article 3 of the Geneva Conventions and its Additional Protocols I & II which require that all civilians and all persons *hors de combat* be treated humanely. International human rights law aims to prevent arbitrary detention by specifying grounds for detention,

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<sup>92</sup> Art. 9(1), ICCPR; 414/1990 *Mika Miha v. Equatorial Guinea*, para. 6.5.

<sup>93</sup> General Comment No. 35, HRC; 1134/2002, *Gorgi-Dinka v. Cameroon*, para. 5.1

<sup>94</sup> Human Rights Committee, General Comment No. 29, (art.4, ICCPR).

providing conditions and procedures to prevent disappearance and to supervise the continued need for detention. While detention that is authorized, and that is consistent with international humanitarian law, is in principle not arbitrary,<sup>95</sup> it must be implemented pursuant to substantive grounds and appropriate procedures established by law. Furthermore, while detention in peacetime is normally linked to criminal offences, in armed conflict it is lawful, under certain conditions, for belligerent parties to detain individuals in order to prevent a security threat from materializing.<sup>96</sup> While in non-international armed conflicts, international humanitarian law does not explicitly establish a legal basis for detention, according to the International Committee of the Red Cross, parties to a non-international armed conflict have an inherent power to intern persons on the grounds of imperative reasons of security.<sup>97</sup> All persons deprived of their liberty for reasons related to a non-international armed conflict must be given the opportunity to challenge the legality of the detention.<sup>98</sup>

144. Although international humanitarian law treaties do not refer to “enforced disappearance” as such, enforced disappearance<sup>99</sup> violates or threatens to violate a range of customary rules of international humanitarian law particularly arbitrary deprivation of liberty, the prohibition of torture and other cruel or inhuman treatment and the prohibition of murder.<sup>100</sup> It also violates numerous substantial and procedural provisions of the ICCPR and constitutes a particularly aggravated form of arbitrary detention. In non-international armed conflicts, parties are required to take steps to prevent enforced disappearances, including through registration of persons deprived of their liberty. The combined effect of these rules is that the phenomenon of enforced disappearance is prohibited by international human rights law and international humanitarian law. According to the 24<sup>th</sup> International Conference of the Red Cross in 1981, enforced disappearances “imply violations of fundamental human rights such as the right to life, freedom and personal safety, the right not to be subjected to torture or cruel, inhuman and degrading treatment, the right not to be arbitrarily arrested or detained, and a right to a just and public trial”.<sup>101</sup> State parties must protect individuals against abduction by individual criminals or irregular groups, including armed groups operating within their territory.

### 3. Findings

145. Recurrent incidents of arrest and internment, abductions and enforced disappearance were documented in different places in Tigray by all parties to the conflict. Individuals were detained on the basis of their perceived affiliation with a party to the conflict, or on the perceived threat the victim’s activities posed to the detaining conflict party. In Western Tigray, Tigray forces adopted a recurrent *modus operandi* at the beginning of the conflict when they retreated with the advance of the ENDF and

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<sup>95</sup> Human Rights Committee, general comment No. 35, para. 64.

<sup>96</sup> Such non-criminal detention for security reasons is sometimes also referred to as “administrative detention” or “security detention”.

<sup>97</sup> ICRC, Commentary of 2016 on the First Geneva Convention, para. 720.

<sup>98</sup> General Comment No.35, para. 15

<sup>99</sup> It is characterized by three cumulative elements: (1) Deprivation of liberty against the will of the person; (2) Involvement of government officials, at least by acquiescence; (3) Refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person. See CED.

<sup>100</sup> ICRC CIHL Study, Rule 99.

<sup>101</sup> 24<sup>th</sup> International Conference of the Red Cross, Res. II, § 2433

Amhara forces. Tigray forces detained civilians, mostly of Amhara origin, starting from 9 November 2020. While the conflict was approaching Humera town, Tigray militias and groups of youths arrested and beat the civilians after taking them from their homes. Most of those detained were prominent ethnic Amhara, suspected by Tigrayan authorities of supporting the Amhara claim to territories in Western Tigray and of passing on intelligence information to the advancing ENDF and Amhara forces using Sudanese mobile SIM cards.

146. Tigray forces took detained civilians towards Tigray, especially Shire, Mekelle<sup>102</sup> and Axum. In one instance, the victim said he was taken from Adebayo with 7 other prisoners to Shire with their wrists so firmly tied that they bled through their fingernails and on arrival in Shire, Tigray forces put chains on them and locked them in a dark cell for four days without food. The number of civilians taken from their homes and detained is not verified. However, a victim from Humera testified to being one of 46 men arrested from several locations and detained in a police station in Axum on 10 November 2020 by Tigray forces. Many of those detained were released or managed to escape and returned home in difficult circumstances. However, some others have disappeared after being taken. In Humera, the JIT established that 6 civilians who were taken from their homes by Tigray forces to Humera police station, were transported to Adebayo the next day where they were beaten and denied food and water. The bodies of the victims were found in a farm in Idris on 13 November 2020.
147. Similarly, in many other parts of Tigray and in other parts of Ethiopia, including Addis Ababa, the JIT established that individuals were arrested by ENDF, allied forces, and the federal police for perceived affiliation with the TPLF and were kept incommunicado for long periods without formal charges or legal proceedings. During a visit to Kedamay Woyane Police station in Mekelle in May 2021, the JIT interviewed detainees who testified that the ENDF captured them from various places in Tigray, including Samre, Adigrat, Adi Gudem and other areas and took them first to military camps before bringing them to Kedamay Woyane Police station some days later. All of the interviewees stated that during the entire period of detention at the police station, they were neither interrogated nor brought before a judge of a competent court. At the time of the JIT's visit, there were 139 prisoners, including 9 women. Officials of the Tigray Interim Administration (TIA) that administered Tigray from 28 November 2020 to June 2021 when the ENDF controlled most of Tigray, also confirmed cases of detentions in various police stations in Tigray for up to 40 days without charge - although some detainees did not know who had arrested them. Most detainees were routinely denied their right to be brought before the court within 48 hours as provided by law.<sup>103</sup> They remained detained even after the 6 months state of emergency declared by the Federal government in Tigray region had expired on 3 May 2021.

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<sup>102</sup> Members of Tigray Interim Administration told the JIT that prisoners released from several prisons across Tigray were released into Mekelle and claimed the TPLF armed them to fight against the Federal forces. They claimed the presence of released prisoners in Mekelle presented a security challenge to the Interim Administration especially as the prisoners were suspected for acts of looting in Mekelle during the transition period.

<sup>103</sup> The limited functioning of courts during that period also meant that there was little recourse to judicial review to challenge the legality of detentions. When the JIT first reached Mekelle in May 2021, courts were generally not functioning; even when they resumed, they operated only in a few places.

148. The JIT has established from interviews and official sources that the ENDF kept prisoners in secret locations and military camps in Mekelle, including the Northern Command, Awash Camp, the Martyrs Memorial Monument Centre and other places that were not accessible to the justice system even after the Tigray Interim Administration offices had become operational. A source from the Attorney General's Office of the Tigray Interim Administration told the JIT:

*"We have not visited these places [ENDF military camps and secret detention places] and all those arrested and detained in secret places are inaccessible. There is no regular budget for food in all detention places and they live in very inhumane conditions".*

149. In Central and Southern Tigray, the JIT investigated allegations of multiple abductions of individuals held in secret detention places where they were allegedly killed or disappeared by the ENDF and EDF. For instance, in Adashi (in Berezba), 12km from Samre, EDF soldiers took two brothers, aged 24 and 26, from a relative's house on 27 February 2021 and shot them dead in the jungle after interrogating them together with four other males who were later released. In Bora, witnesses described the abduction and killing of male youths by ENDF following a house-to-house search on 8 January 2021. According to witnesses, more than 36 young men were abducted and killed.

150. The JIT also found that there was mass detention of Tigrayan civilians by militias affiliated with authorities in areas controlled by the Amhara regional state. The detainees were held without charge for prolonged periods, including in unofficial and temporary detention facilities. Such detention occurred in Maikadra, Western Tigray, where several victims and witnesses of Tigrayan ethnicity testified to having been detained for more than a month by Amhara militia and Fano, including many women and children.<sup>104</sup> The JIT also recorded testimonies of mass arrests and detentions of Tigrayans across the country, including in Addis Ababa, where several victims and witnesses of Tigrayan ethnic origin testified that their houses were searched and some of them were arrested by the Federal police and officers of the National Intelligence Service in Addis Ababa.<sup>105</sup>

#### **4. Impact**

151. Victims and families of abduction, arbitrary detention and enforced disappearances suffered different forms of torture and other ill-treatment, including psychological trauma. Families continue to suffer psychological trauma from not knowing the whereabouts of their family members. A 70-year-old man whose two adult sons were detained and killed by Ethiopian soldiers in Bora on 30 December 2020 said

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<sup>104</sup> Official sources responded to these claims and told the JIT that victims were detained for their own safety, to protect them from retaliatory attacks following the killing of people of Amhara ethnicity in Maikadra and to identify perpetrators that were involved in the killings.

<sup>105</sup> Regarding mass arrest of Tigrayan civilians in Addis Ababa, the Federal Attorney General confirmed that around 1,000 Tigrayans were initially detained on the basis of reasonable suspicion that they were providing at least financial support to the TPLF, among which less than 1% were women. The Attorney General claimed that the detainees were brought before a court of law within 48 hours and most of them were released on bail. The JIT found after reviewing the charges against some detained Tigrayans that most suspects were charged for possession of unlicensed guns and arms. Some of the cases were closed when investigation disclosed lack of evidence but only after the suspects were detained for some time.

the responsibility of raising his deceased son's children and providing for their family has fallen on him. Similarly, a 50-year-old woman whose son was detained by Ethiopian soldiers and killed near REST NGO in Amedwha, Bora, on 30 December, lost the financial support her working son used to provide her. She now depends on the goodwill of community members for farm chores and other support. Apart from the material support surviving family members have lost as a result of the death of the victims, the psychological suffering attending the deaths in some cases is extremely traumatic, especially as there is no justice in sight for the victims.

152. The killing of victims of abduction and enforced disappearance has, in many cases, turned surviving spouses, mostly women, into single parents now shouldering the entire responsibility of caring for their own needs and that of their children, including bearing the entire economic and financial burden attending such responsibilities. A 20-year-old woman whose husband was abducted on 10 November 2020 by Tigrayan militia in Humera and later killed in Idris told the JIT:

*"At the moment I have no job and live on the support of people of good will. The 15kg of wheat the government provides to IDPs and people in need comes once in 5 or 6 months. I am also behind on rent and don't know where I will get the money".*

## **5. Conclusion**

153. The information gathered and assessed as credible by the JIT affords reasonable grounds to believe that the parties to the conflict, ENDF, Tigray forces and allied groups, the Amhara militia, and the EDF have engaged in detentions, many arbitrary in character, abductions and enforced disappearances, in violation of international human rights law and international humanitarian law. The ENDF detained individuals in secret locations and military camps, including the Northern Command in Mekelle, Awash Camp, Martyrs Memorial Monument Centre, and other places. In many cases the detentions were arbitrary as procedures established in law were not respected. Tigray forces and groups allied to them have been implicated in the detention and abduction and arbitrary detention of non-Tigrayan civilians in Wukro, Mekelle, Tembien, and Axum. There were also instances of arbitrary detention by the EDF in Berezba.

## **E. Sexual and gender-based violence**

### **1. Introduction**

154. The JIT interviewed and received information from survivors of sexual violence, witnesses, family members, service providers, humanitarian organizations, regional and federal state institutions, and other sources. Information emanates from primary sources, including survivors, and secondary sources, such as One-Stop-Centers (OSCs). Information from secondary sources generally supported the testimonies of survivors. The JIT received information on reports of sexual violence, especially of rape, against women and girls, and men and boys. The reports indicated that young girls and elderly women were victims of sexual violence, including rape. The implicated perpetrators included the ENDF, EDF, and Tigray forces. Civilians<sup>106</sup> and ASF were also implicated as perpetrators according to the records of OSCs and hospitals. Survivors were interviewed in the towns and cities visited by the JIT, at IDP sites, and at a safe house in

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<sup>106</sup> Information from the OSC at Ayder Hospital and Samre mobile clinic.

Mekelle. The survivors came from different parts of Tigray including Mekelle, Samre, Maichew, Mekoni, Bora, Addis Alem, Wukro, Adi Hageray, Shire, Tembien, Adet, Shimelba, and Sheraro.

155. Various acts of SGBV including physical violence and assault; attempted rape; rape including gang rape, oral and anal rape; insertion of foreign objects into the vagina; intentional transmission of HIV; verbal abuse including ethnical slurs; abduction; and other violations have been committed. Some of the reported accounts of rape were characterized by appalling levels of brutality. Acts of rape were frequently intended to degrade and dehumanize an entire ethnic group.
156. Although incidents of sexual and gender-based violence (SGBV), including rape of men and boys are rarely reported, men and boys are also exposed to sexual and gender-based violence during times of conflict. While timely and adequate support for women and girls who experienced sexual violence is generally lacking, support for men and boys, including sexual and reproductive health services, is also often inadequate to respond to the needs of male survivors of SGBV.

## **2. Legal framework**

157. Ethiopia is party to instruments that enshrine the fundamental principle of equality and non-discrimination including ICCPR, CEDAW and the Maputo Protocol, among others. Gender equality and equality among the nations, nationalities and people of Ethiopia is also guaranteed in the Ethiopian Constitution including the rights enshrined in international treaties ratified by Ethiopia.<sup>107</sup>
158. Gender-based violence (GBV) is violence directed towards, or disproportionately affecting, someone because of their gender or sex. States are obliged to take all appropriate measures to eliminate GBV, including when perpetrated by State officials, must act with due diligence to prevent, investigate, punish, and redress GBV, including that perpetrated by non-State actors.
159. Sexual violence, including rape, is a form of gender-based violence. Sexual violence can violate international human rights law's prohibition on torture and other forms of cruel, inhuman, or degrading treatment. Sexual violence also impairs other human rights including the right to the highest attainable standard of physical and mental health. International humanitarian law expressly prohibits rape and other forms of sexual violence when committed against persons taking no active part in hostilities and when used to pursue military and socio-political gains.<sup>108</sup> Rape, along with sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence of similar gravity constitute war crimes and may constitute a crime against humanity if committed as part of a widespread or systematic attack on civilians.<sup>109</sup>

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<sup>107</sup> Article 9(4) of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazeta, Year 1, No. 1, Addis Ababa, 21st August 1995.

<sup>108</sup> Additional Protocol II, Article 4(2)(e). Such acts would also be covered by common art. 3 of the Geneva Conventions' reference to "violence to life and person, in particular ... cruel treatment and torture, and "outrages upon personal dignity humiliating and degrading treatment". See also ICRC Study on Customary International Humanitarian law, Rule 93 and Ruby Reid-Cunningham, A. (2008). Rape as a Weapon of Genocide. *Genocide studies and prevention*, 3(3), 279-296, p. 280.

<sup>109</sup> Rome Statute, Article 7 (1) (g).

### 3. Findings

160. The JIT conducted more than 47 interviews and meetings with survivors, witnesses and key sources, including 30 interviews with women survivors who experienced different forms of SGBV. Most of the victims were subjected to SGBV in the form of rape, with multiple reports of gang rape. The JIT also spoke to 3 men who were part of a group that was subjected to a strip search in public in Samre. The JIT's findings are limited to these particular geographic areas and do not purport to be exhaustive for or representative of the whole of Tigray.

#### **i. Gang rape**

161. Nearly half of the survivors that the JIT interviewed were survivors of gang rape. The ENDF, EDF, and TSF are implicated in multiple reports of gang rape, although the gravity and brutality of the reported cases vary. One woman survivor informed the JIT that she was taken from a minibus by 4 EDF soldiers and kept for 11 days, and gang raped by 23 EDF soldiers who also inserted foreign objects into her vagina. The soldiers left her for dead when she fell unconscious and she was found and taken to a Hospital in Mekelle where she was treated for 4 months. A 22-year-old survivor informed the JIT that 15 Eritrean soldiers raped her in turns before they dumped her at a place called Bete-Haryat. She stated that a person took her to a nearby hospital. She was traumatized and had difficulties walking at the time the JIT interviewed her due to grave bodily injuries inflicted during the rape. A 19-year-old woman survivor from Werie-Leke informed the JIT that she and her 15-year-old sister were taken to an EDF military camp, because their father and brother were fighting for the Tigray forces. She stated that they were separately detained. She was detained for one month and over that period, 27 EDF soldiers raped her, sometimes with two to three soldiers at a time. She reported that there were other women in a similar situation, and she reported that she saw two of the women have their legs amputated. She indicated that she fell pregnant and contracted HIV as a result of the rapes. In Adet, a 26-year-old woman reported that she was gang raped by EDF soldiers in front of her 3-year-old daughter. In January 2021, a woman in Shire was raped in her house for three consecutive days by ENDF soldiers. In Bora, a 28-year woman was raped at gunpoint in her house by three EDF soldiers in front of her 2-year old son. In November 2020, a survivor from Adi Hageray who was going through town with her baby searching for assistance was raped by 2 TSF soldiers five times.

#### **ii. Violence against women and girls associated with fighters of parties to the conflict**

162. The JIT established that women and girls were subject to attacks in the context of a conflict whereby most of the men had left to join parties to the conflict or were deliberately targeted and sometimes killed. In Werie-Leke, the JIT found that women whose male family members were Tigray forces were targeted for detention and subsequently subjected to different forms of sexual violence. In Shire, Tembien, and Adet, survivors reported that EDF soldiers would claim that they detain and rape women who hid men and provided food to the Tigray forces. In Samre, the EDF harassed women for being wives and sisters of Tigray forces. A number of women and girls were also left to provide for their families and head households which was an added burden. A survivor from Adet reported that EDF soldiers were heard saying that:

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

163. Similarly, the TSF reportedly abused and in some cases raped the wives of ENDF soldiers during the period that Tigray forces-controlled cities and towns. Some of the wives of ENDF soldiers were reportedly detained in Mekelle in November 2020 labelled as the wives of “prosperity party” soldiers. A survivor informed the JIT that she witnessed the killing of 2 ENDF soldiers’ wives with machetes after phones they had hidden in their vaginas were discovered. She stated that the 3 TSF soldiers warned her that the same fate awaited her and gangraped her until she was left unconscious. Another survivor from Adi Hageray, who was the wife of an ENDF soldier, reported that in November 2020, 3 TSF searched her house and threatened to shoot her if they found an ENDF soldier. She stated that they came back and raped her in turns while her daughter waited at the neighbor’s house. She informed the JIT that she worries that she has HIV but that she had not yet received a tested. She added that Amhara women stayed in one house for protection as the TSF were taking women to rape them.

### **iii. Violence against women and girls fleeing conflict**

164. Women and girls who fled their homes to hide in the fields or left for other towns following the outbreak of conflict in their areas were met by perpetrators. On 3 November 2020, a 16-year-old girl from Adi Hageray who got separated from her mother when she saw people being killed and houses being burnt escaped to a nearby field where she was stopped by 3 TSF soldiers. She reported that she was forcibly held by two of the soldiers while the third one raped her. She had not reported her rape, nor had she received any medical attention. Her physical and psychological symptoms were highly consistent with her testimony and the alleged rape. She informed the JIT that:

*“I went to the forest and 3 TSF soldiers surrounded me. They started beating me, by fists and butt of guns then forcedly pushed me to the ground. Then they forcedly took my dress off. While two of them were holding my body one of them raped me... I stayed in the forest and hid all day and night because I was afraid other Tigrayan soldiers can also rape me. Now, I sleep so much, sometimes I cry, I don’t want to speak to anyone, and I get dizzy.”*

165. In Mai Laha, near Shimelba, a 19-year-old girl who had fled with her 6-year-old sister was begging a woman in a compound for food, when a Tigrayan militia came out of a house, hit her stomach, undressed and raped her. In Mekelle, a 17-year-old girl testified she was raped by an ENDF soldier in May 2021 in Bizet, after she left her home in search of food.

### **iv. Rape in detention**

166. Five women were abducted, detained, and raped for a period ranging from three days to three months. In November 2020, a 19-year-old female survivor from Mekoni was abducted by an ENDF soldier who identified himself as “an Amhara Agew, a true Agew”. She was taken to an unknown location in the Amhara region where she was held against her will in the soldier’s house for three months. During this time, the soldier repeatedly raped as well as verbally and physically abused her. She was forced to stay in a room which she also used as a bathroom. The survivor reported that the soldier



had told her that he left his military post to have her as his wife and he used to ask her why she would not participate actively during sexual intercourse. At the time of her interview with the JIT, the woman was nearly seven months pregnant as a result of the rape during her detention. She told the JIT that she was ill and depressed.

**v. Violence against older women and women with disability**

167. The JIT has established cases in which elderly women were insulted, beaten, threatened at gun point, or killed, when they tried to rescue their daughters from rape. In Samre, two women were attacked by EDF soldiers when they tried to rescue their daughters from being raped. In Shire, an elderly, visually impaired, woman was shot dead by ENDF soldiers after being detained in a room for three days while her daughter was being raped by three ENDF soldiers in an adjacent room. The survivor told the JIT that throughout the gang rape she could hear her mother screaming and, as a result, she has been experiencing trauma, including nightmares.

168. In December 2020, a 21-year-old female survivor from Wukro, who has a physical disability, was separated from her 8-year-old brother and her mother and raped near her residence in Wukro by a person she identified as an ENDF soldier. She told the JIT that she was at home with her mother and brother when four ENDF soldiers knocked on the door and asked for their identity documents. Around 10 pm, the soldier dragged her out of the house and to a dark, isolated area where he forcibly undressed and raped her. The survivor recalled him saying:

*'We are in charge of this country and we are going to kill all wives of TLPF. Yes, you are all "weyane." We will rape you, we will kill you and this country will have no rebels.'*

169. She heard the other soldiers threatening her mother and young brother. She indicated that she had contracted HIV due to the rape:

*"I have received the results of my tests and I am devastated I am now HIV positive. My country betrayed me and the Ethiopian force who raped me disregarded many factors, I keep on asking questions and I am not getting answers. If indeed I am an Ethiopian how come the Government allows the military to brutally rape me, infecting me, now I am HIV positive?"*

**vi. Women and girls made vulnerable due to lack of basic services**

170. Due to lack of access to basic services such as running water, women and girls were forced to fetch water from the river, where they are at higher risk of all forms of violence. In Samre, a 6-months pregnant woman who was fetching water from the river was attacked by an EDF soldier who attempted to rape her. She informed the JIT that the soldier tried to stab her, pulled out some of her hair and that she bled. She reported that she had nightmares and that she lived in fear in case the EDF ever came back. Another survivor from Bora reported that an ENDF soldier attempted to rape her while she was fetching water from a nearby river.

**vii. Women complicit in the perpetration of GBV**

171. Whilst the majority of women are survivors and victims, the JIT also identified cases whereby women were complicit in the perpetration of acts of violence, including SGBV against other women, such as by luring in women and girls who were searching for refuge. A 22-year-old survivor from Adi Hageray reported that she was looking for

help in town when an acquaintance took her and her baby to her shop where she met 4 TSF soldiers, 2 of whom took turns to rape her, five times, while the shop owner held her baby, but did not help her. A survivor from Mekoni indicated that a woman whom she thought was the soldier's sister would laugh and ridicule her as she was beaten and raped. She reported that the sister of the soldier would bring her food but would not allow her to use the toilet instead bringing her a container to use in the room. In the case of forced nudity of some men and boys in Samre described below, female EDF soldiers reportedly took photos and ridiculed boys and men who were paraded nude in a public place.

#### **viii. Violence against men and boys**

172. Men and boys were also subjected to different forms of sexual and gender-based violence. According to information obtained by the JIT, one male survivor was raped by an EDF soldier and another by a civilian. The two were later provided assistance in Mekelle.<sup>110</sup> The JIT was told that a 16-year-old boy was raped by nine EDF soldiers in Humera but did not receive any support. The victim later committed suicide. On 2 April 2021, the EDF forced at least 600 men to strip down to their underwear for a search in public in Samre, and those with no underwear were completely naked. Two of the older men that the JIT spoke to reported that they were not forced to strip down, but that they felt humiliated by the experience.

#### **ix. Overall situation and access to services for survivors of rape**

173. Gender specific violations increased during the Tigray conflict. Since the start of the conflict, a UN Agency, the Health Bureau of Tigray, and other service providers documented a continuous rise in the use of SGBV services by survivors. To respond to the rise in the number of survivors requiring access to SGBV services in Tigray, five One Stop Centers were opened since the start of the conflict.<sup>111</sup> According to the Health Bureau of Tigray, from November 2020 to 22 May 2021, there were 1,324 visits to hospitals all around Tigray by survivors of SGBV, including Mekelle, Adigrat, Axum, Adwa, Shire, and Maichew.<sup>112</sup> However, the Health Bureau indicated that complete data was available only for 600 – 700 cases. The Bureau added that most reports of SGBV were received from Mekelle,<sup>113</sup> Adigrat, and Axum. Information from the OSC at Ayder Hospital in Mekelle, indicates that from October 2020 to May 2021, 503 survivors received services for SGBV at Ayder Hospital.<sup>114</sup> The OSC informed the JIT that because of cultural considerations and shame, victims do not always report and access services at the OSC.<sup>115</sup>

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<sup>110</sup> Information received from the OSC at Ayder Hospital, Mekelle.

<sup>111</sup> New one-stop-centres were opened in Mekelle, Axum, Adigrat, Shire, and Maichew. The prevalence was confirmed during the JIT meeting with the Ministry of Health.

<sup>112</sup> Information provided by the Ministry of Women, Children, and Youth and the Ministry of Health.

<sup>113</sup> On 2 June 2021 at a safe house in Mekelle, the JIT was allowed to access 50 identified survivors of SGBV, 20 from Mekelle and 30 from Mekelle environs and beyond including Wukro. On 27 May 2021, the JIT was informed by a Medical Officer at Wukro Hospital, that 30 survivors of SGBV were at the Hospital, although the JIT was not able to interview the survivors.

<sup>114</sup> 265 survivors received legal and medical service without abortion, while 238 survivors only had an abortion and no other service.

<sup>115</sup> The humiliation of a culture through the systematic violation of women is especially common in ethno-national conflicts (Ruby Reid-Cunningham, 2008: 292). In contexts where religion and culture play a significant role, as it does in Tigray (Istratii, 2021), harm on "chastity" of women has multi-layered implication. When such an incident happens,

174. UN entities informed the JIT that numbers may not accurately reflect the situation on the ground, and that focus should be on provision of services to survivors. UNFPA further noted that there is no systematic response or a survivor-centred care for most of the survivors, underscoring the challenge of traumatization by having to repeat stories of sexual violence. The need to train the media on ensuring a survivor-centred approach was stressed.<sup>116</sup> Journalists who visited an OSC in Mekelle were provided information about survivors and asked whether they wish to go to the safehouses to interview the survivors.<sup>117</sup>
175. Despite multiple attempts to secure complete data on reported SGBV cases in Tigray prior to the conflict from different relevant sources, data from previous years was either not available at the federal level or that information at the regional level was lost or destroyed as a result of the conflict.<sup>118</sup>
176. UN entities highlighted that while the focus has only been on women and girls, there were also men and boys who suffered sexual violence but noted that they were generally not seeking services and so were not visible. It was noted that service providers were not prepared to interface with men and boys who may seek service for SGBV. The need to accommodate all survivors in responding to SGBV was underscored, as the stigma for men and boys was even higher.

#### **4. Impact**

177. Sexual violence perpetrated against survivors has profoundly violated their physical and psychological integrity and caused serious health complications, particularly the gang rapes characterised by their brutality. Survivors experienced depression and other forms of emotional distress and were also exposed to unwanted pregnancy and sexually transmitted diseases. Some survivors reported that they contracted HIV following the incidents, and some indicated lack of timely and adequate medication and other services such as psychosocial support. Women and girls living with physical and psychosocial disability were severely impacted by the conflict. Different categories of survivors talked about displacements, losing loved ones and surviving attacks as they fled their villages seeking safer havens which also proved to be as volatile and insecure.
178. Regarding survivors displaced from Tigray due to the conflict and living in IDP camps in Gondar and Dabat, the JIT established that they had not received any medical, psychosocial, or legal support. Most of the survivors indicated that they go to church to take holy water “to heal”. The JIT found that neither the relevant state authorities nor the few humanitarian actors operating in Western Tigray have taken steps to identify and support the survivors, which resulted in the women being unable to access the

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especially in the presence of other family members, it may not only be considered as an assault on the individual woman but as a collective dehumanization and defiling of her community at large (Nebesar, 1998:15).

<sup>116</sup> Two humanitarian organisations operating in Tigray informed the JIT that media reports of rape were used to attract international attention and put pressure on parties to the conflict. The organisations reported that during assessments on the ground, they found it difficult to verify some of these reports, noting however that there is a possibility that the survivors do not wish to speak due to the trauma suffered or to avoid stigmatisation.

<sup>117</sup> UN Security Council Resolution 2467 is cited as UNSC Res 2467 (2019) S/RES/2467).

<sup>118</sup> As human rights investigations and corresponding corrective or punitive measures become increasingly reliant on data, destroying of property including statistical resources during conflicts hampers thorough analysis of the situation.

services needed to recover from the trauma they suffered.<sup>119</sup> The JIT found that the psychological and physical trauma of the survivors was exacerbated by their poor living conditions and lack of access to basic necessities such as food and water.

179. The JIT established that women viewed a central component of accountability for the violations and abuses committed against them as being the restoration and restitution of what they lost in the conflict. Women spoke to the JIT about restoration of their means of livelihood and sources of income and reparations for the loss of homes and other property. Women stated they wanted to know the truth about their loved ones and hear acknowledgement from all sides of the conflict for violations against them.

## **5. Conclusion**

180. There are reasonable grounds to believe that all parties to the conflict – the ENDF, EDF, and TSF – have committed sexual and gender-based violence and that, in many cases, rape and other forms of sexual violence have been used to degrade and dehumanize the victims. The JIT found that the ENDF committed acts of sexual violence in Mekelle, Wukro, Bora, Mekoni, Shire, and Bizet; the EDF committed acts of sexual violence in Ahferom Samre, Werie-Leke (in Edega Hamus), Shire, Tembien, Adet, Humera; the TSF committed acts of sexual violence in Adi Hageray, Mai Laha (in Shimelba), and Mekelle. The JIT also found that the parties committed acts of sexual violence in other locations in Tigray. Additionally, there are reasonable grounds to believe that some of the acts of sexual violence committed by the EDF were marked with extreme brutality. The JIT also obtained reports which implicate the ASF in acts of sexual violence.

181. The JIT has documented numerous incidents of sexual and gender-based violence against women, girls, men and boys. Women and girls have been subjected to rape and gang rapes, with many having unwanted pregnancies and getting infected with sexually transmitted diseases, including HIV.

182. Victims reported being subjected to rape, including the penetration of the vagina with foreign objects. Given the stigma and trauma attached to sexual violence, the JIT believes that the prevalence of rape was likely much higher than that documented by the JIT. Based on the information available to it, there are reasonable grounds to believe that violations of international human rights and humanitarian law related to sexual violence, including rape, have been committed by all parties to the conflict and require further investigation. Some of these may further constitute war crimes and, in view of their widespread and systematic nature, crimes against humanity.

## **F. Refugees**

### **1. Introduction**

183. Ethiopia is the third-largest refugee-hosting country in Africa, providing shelter to 785,322 registered refugee and asylum-seekers as of end June 2021.<sup>120</sup> Most of these

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<sup>119</sup> The JIT's forensic expert examined some of the victims and confirmed that their medical conditions matched their alleged suffering from rape and other forms of sexual violence.

<sup>120</sup> UNHCR, Fact Sheet: Ethiopia, June 2021  
<https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Fact%20Sheet%20Ethiopia-June%202021FINAL.pdf>.

originate from South Sudan, Somalia, Eritrea, and Sudan. 'Ethiopia is home to 178,980 Eritrean refugees across the country, equal to 22% of the total refugee population in Ethiopia of 801,349. Before the conflict erupted in the Tigray region in November 2020, UNHCR had registered 96,223 Eritrean refugees in the Tigray region, sheltered mainly in four refugee camps in the western part of the region: Mai Aini (21,682), Adi Harush (32,167), Shimelba (8,702) and Hitsats (25,248).' <sup>121</sup> Since the conflict began in November 2020, there have been credible reports of Eritrean refugees being targeted by both parties to the conflict. There are also reports of reprisal attacks and killings, sexual violence, beatings of Eritrean refugees, as well as the looting and destruction of refugee camps and property. In July 2021, UNHCR expressed concern about the fate of an estimated 24,000 Eritrean refugees in the Mai Aini and Adi Harush camps, who had been cut off from humanitarian assistance.<sup>122</sup>

## 2. Legal framework

184. As a party to the 1951 Refugee Convention and the OAU Refugee Convention, Ethiopia is obliged to protect refugees on its territory and under its jurisdiction. It also has a duty to extend relevant rights to refugees in accordance with its international human obligations, to cooperate with UNHCR in the exercise of its functions and to facilitate the UNHCR's mandate of supervising the application of the 1951 Convention.

185. According to international humanitarian law, persons who do not take part in fighting, whether they have been displaced or not, must be respected, protected against the effects of hostilities, and provided with impartial assistance. The protection of refugees from the effects of hostilities includes the prohibition of indiscriminate attacks on refugees and refugee property; the duty to take precautions to spare the refugee population during attacks; the prohibition on destruction of objects indispensable to the survival of refugee populations and the prohibition of reprisals against the refugee population and its property. Also prohibited is collective punishment, taking the form of destruction of refugee homes, and hindering the passage of relief supplies and assistance necessary for survival of the refugee population.

186. Refugees continue to be entitled to the basic protections and rights to which they had been entitled before the outbreak of hostilities. Only for absolute security imperatives may a party in whose control refugees find themselves, intern them or place them in assigned residence.

187. The Ethiopian Refugee Proclamation<sup>123</sup> prohibits *refoulement* and has domesticated, by incorporation, refugee rights contained in all ratified international instruments, including the rights to health services, movement and property. Under the Ethiopian Criminal Code, 'attacking, displacing, causing to disappear or mistreating refugees during an armed conflict or occupation' is a war crime.<sup>124</sup>

## 3. Findings

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<sup>121</sup> UNHCR Ethiopia Operation: Tigray Situation Update, 15 April 2021, <https://reliefweb.int/report/ethiopia/unhcr-ethiopia-operation-tigray-situation-update-15th-april-2021>.

<sup>122</sup> 'Tigray conflict: all combatants have the obligation to protect Eritrean refugees - UN expert,' <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27366&LangID=E>.

<sup>123</sup> Refugee Proclamation No.1110/2019, Article 22.

<sup>124</sup> Ethiopia Criminal Code, Article 270(1).

188. When the conflict started, Eritrean refugees were targeted and placed in danger by parties to the conflict with many killed, displaced, disappeared, refouled, their property looted and humanitarian assistance unavailable to them for months. The effects of the conflict were more severe on Eritrean refugees who resided in Hitsats and Shimelba refugee camps although those living in Mai Ayni and Adi Harush were also affected.
189. The JIT was unable to visit the refugee camps due to security concerns. However, it was able to interview Eritrean refugees who fled Shimelba Refugee Camp in Mekelle and in Addis Ababa. In addition, the JIT interviewed the Agency for Refugee and Returnee Affairs (ARRA), UNHCR, and other organizations to collect relevant information. The information it collected confirms the reports of human rights violations perpetrated by EDF and Tigray forces.<sup>125</sup> In complete disregard for the rights of refugees, the fighting between EDF and Tigray forces was conducted close to Shimelba refugee camp. Due to damages caused in crossfire, looting of property of humanitarian organizations by Tigray forces and civilians, and destruction of its infrastructure, the camp became non-operational. In one instance, five houses of refugees were destroyed by artillery fired by the EDF on Tigray forces stationed close to the camp. Troops from both sides stayed at the camp at different times and harassed refugees. Tigray forces looted property that belonged to humanitarian organizations and other facilities providing services to refugees as well as the personal belongings of refugees. Following the climate of generalized insecurity, civilians also looted property of refugees and humanitarian organizations.
190. Witnesses also spoke of different instances of killings of Eritrean refugees in and around the refugee camp by both EDF and Tigray forces between November 2020 to January 2021. An unknown number of refugees, mainly members of the camp's refugee central committee, were also abducted and taken to Eritrea by the EDF.
191. Following fierce fighting close to the Shimelba refugee camp, staff of ARRA, humanitarian, and other organizations fled from the camp and the refugees were left by themselves. Due to heavy fighting around the camps, intimidation by both forces, and fearful of a repeat of what they said had happened in Hitsats camp, Eritrean refugees fled from Shimelba at different times. Many were forced to flee to the nearby Sheraro area as well as to Eritrea, which is not far from the camp, for safety and humanitarian reasons. Refugees were also going back to the camp from places where they hid in search of food. When relief organizations were able to access the camp in January 2021, there were no refugees left in the camp.
192. One refugee told the JIT that he returned to Shimelba refugee camp from nearby Sheraro, where many refugees were hiding on 11 December 2020. He indicated that refugees kept coming back from hiding in search of food inside the camp. He said:
- Those of us who ran and stayed in the bush were left with no food. Then, we decided to come back to the camp to collect some food from our houses for our family members. When we came back to the camp, we found some food.*
193. At the time relief organizations could access the camp, refugees were initially not coming forward to register for assistance mainly for fear of retaliation from EDF and

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<sup>125</sup> Tigray forces include Tigray special forces and militias.

local civilian population if they were to disclose their identity. Many had not presented themselves as refugees to UNHCR and other organizations and only did so very slowly. Thousands of refugees were unaccounted for over several months and at the time of writing this report, there were still hundreds whose whereabouts were unknown.<sup>126</sup> Many of those who reported to ARRA or UNHCR were relocated to Mai Ayni and Adi Harush as ARRA officially declared the closure of Shimelba and Hitsats camps in February 2021. The witnesses who spoke to the JIT in May 2021 said that they lived in fear as they could not move freely. “We fear Eritrean soldiers and the host community for possible revenge attack,” they said.

194. Eritrean refugees in Shimelba were provided food assistance in September 2020, and many refugees were left without food from the start of the conflict in November 2020. This, coupled with the displacement, put the lives of refugees at risk. Moreover, property and stock belonging to ARRA, UNHCR and other humanitarian organizations were looted and humanitarian personnel were attacked. The Danish Refugee Council (DRC) and International Rescue Committee (IRC) reported that some of their staff were killed in November 2020, due to the conflict. Other challenges faced by refugees included lack of assistance due to the camp’s inaccessibility by ARRA and humanitarian organisations for several months; a communications black out; lack of electricity; and absence of banking and other basic services. The combination of these resulted in the interruption of medical and other services leaving refugees in very dire conditions.

#### **4. Impact**

195. The conflict has worsened the situation of thousands of Eritrean refugees already in Tigray. The life and security of Eritrean refugees was affected by killings and injuries. Their property and businesses were looted and destroyed. Thousands have been left in dire need of humanitarian assistance.

196. Shimelba camp is the first of the four refugee camps that opened in Tigray. There were about ten thousand refugees in Shimelba with a majority of ethnic Kunamas. Most of the refugees lived in the camps for around 20 years and established their livelihoods there. With the destruction of Shimelba camp, refugees lost their entire livelihoods. The conflict has created both actual and perceived hostility between the refugee community who are Eritreans and the host community due to the involvement of EDF in the conflict.

197. The impact on refugees continues to manifest in other refugee camps, such as Mai Ayni and Adi Harush where the fate of the refugees is of concern. Limited access to these camps has undermined efforts to provide much needed humanitarian assistance.

#### **5. Conclusion**

198. There are reasonable grounds to believe that parties to the conflict have violated the rights of refugees as stipulated under international human rights law, humanitarian law, refugee law, and national laws. Such acts warrant further investigation and may also amount to war crimes. EDF and Tigray forces violated the civilian character of the camp by their presence in the camp and fighting around the camp and put refugees’ liberty and security at risk which in turn resulted in their displacement and

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<sup>126</sup> On 19 August 2021, ARRA informed the JIT that there were 235 Eritrean refugees whose whereabouts were unknown.

disappearance. EDF violated the fundamental principle of *non-refoulement* by forcefully returning some Eritrean refugees to Eritrea. On the other hand, Tigrayan forces and civilians looted private property of refugees and property of humanitarian organizations.'

## **G. Forced displacement of the civilian population**

### **1. Introduction**

199. Following the outbreak of the armed conflict in Tigray in early November 2020, the civilian population was forcibly displaced within Tigray and to neighboring Sudan. Since the conflict began in early November 2020, more than 50,000 people have sought refuge in Sudan while more than 1.7 million have been internally displaced in Tigray by August 2021.<sup>127</sup>

### **2. Legal framework**

200. Forced displacement is defined as a coerced or involuntary removal of people from their home or habitual residence as a result of or in order to avoid the effects of events or situations such as armed conflict, generalized violence, apartheid policies, ethnic cleansing, human rights abuses, natural or man-made disasters, and/or development projects.<sup>128</sup> Forced displacement can constitute deportation and forcible transfer. While deportation involves cross border displacement, forcible transfer is displacement within a national territory.<sup>129</sup> To establish deportation and/or forcible transfer, there must be a forced displacement of persons carried out by expulsion or other forms of coercion. The term "forced" may include physical force, as well as the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, or the act of taking advantage of a coercive environment. The forced character of the displacement is determined by the absence of genuine choice by the victim in his or her displacement.<sup>130</sup>

201. Therefore, forced displacement includes both situations where people have fled as well as situations where people have been forcibly removed from their homes, evicted or relocated to another place not of their choosing, whether by State or non-State actors. The defining factor is the absence of will or genuine consent.<sup>131</sup>

202. In international human rights law, while there is no specific right to protection against forced displacement as such, it is inherent in a number of human rights, including the rights to freedom of movement and choice of residence,<sup>132</sup> the right to

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<sup>127</sup> See UNHCR, Emerging Response to Tigray Situation, Weekly Update #6, Reporting Period: 15-22 August 2021; OCHA, Ethiopia – Tigray Region Humanitarian Update, Situation Paper, 6 January 2021; OCHA, Ethiopia – Tigray Region Humanitarian Update, Situation Paper, 26 August 2021. Information also received from the National Disaster and Risk Management Commission of Ethiopia in August 2021.

<sup>128</sup> Para. 2, Scope and Purpose, Guiding Principles on Internal Displacement.

<sup>129</sup> Prosecutor vs. Slobodan Milošević, Case No. IT02-54-T, Decision on Motion for Judgment of Acquittal, see also Stakic Milomir Case, Appeal Judgment.

<sup>130</sup> ICTY, *the Prosecutor vs Radovan Karadzic*

<sup>131</sup> Jan Willms, 'Without order, anything goes? The prohibition of forced displacement in non-international armed conflict' *International Review of the Red Cross* Vol 91, 875 (2009)

<sup>132</sup> Art. 13 of UDHR; Art. 12 of ICCPR; Art. 5(d)(i) and (f) of ICERD; Art. 15 of CEDAW; Art. 16 of ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries; and Art. 12 of African Charter. See also Principle 14 of the Guiding Principles on Internal Displacement.



respect for the home and for privacy,<sup>133</sup> the right to an adequate standard of living, including food and housing,<sup>134</sup> and the right to respect for the family.<sup>135</sup>

203. Forced displacement can only be justified on an exceptional basis under human rights law and is subject to strict conditions. It must be provided for by law and be necessary and proportionate to achieve a legitimate aim, such as to protect national security or public order, public health or morals, or the rights and freedoms of others. It must be non-discriminatory and consistent with other human rights and international legal obligations of the State.<sup>136</sup>

204. In the context of a non-international armed conflict, parties to a conflict are specifically prohibited from ordering<sup>137</sup> the displacement of the civilian population, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand and requires that displaced persons be allowed to voluntarily return in safety as soon as those reasons cease to exist.<sup>138</sup> Forced displacement is also recognized as a violation of customary international humanitarian law.<sup>139</sup>

205. Furthermore, forced displacement may, in particular circumstances, also entail responsibility for war crimes or crimes against humanity. Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand, is a war crime.<sup>140</sup> Deportation or forcible transfer of population when committed as part of a widespread or systematic attack directed against a civilian population also constitutes a crime against humanity.<sup>141</sup>

### 3. Findings

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<sup>133</sup> Art. 12 of UDHR; Art. 17 of ICCPR; Art. 8(16) CRC.; and Art. 10 of African Charter on the Rights and Welfare of the Child.

<sup>134</sup> Art. 25 of UDHR; Art. 11 of ICESCR; Art. 5(e)(iii) of ICERD; and Art. 14(2)(h) of CEDAW; Art. 27 of CRC; and Arts. 15 and 16 of the Protocol to the African Charter on the Rights of Women in Africa. See also General Comments of the Committee on Economic, Social and Cultural Rights No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions; and Principle 18 of the Guiding Principles on Internal Displacement.

<sup>135</sup> Art. 16 of UDHR; Art. 10 of ICESCR; Arts. 17 and 23 of ICCPR, Arts. 16 and 18 of CRC and Art. 18 of African Charter.

<sup>136</sup> Even when displacement can be justified, it must meet certain substantive and procedural safeguards and take place in conditions of safety and dignity. As an example, any decision to displace individuals or communities must be taken by competent authorities. Those affected must be informed of the reasons and procedures for displacement and given an opportunity to challenge the decision, including through independent judicial review. Wherever possible, their informed consent should be sought, their participation in planning and implementing the decision ensured and fair compensation given. Displacement should never be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

<sup>137</sup> Direct order' is not necessary to establish violation of Art. 17 of Additional Protocol II. Thus, 'unordered' displacement such as displacement as result of indiscriminate military attack or military operation may amount to forced displacement. The ICTY on several occasions, has found only displacement as a result of coercive measures which is forced. Therefore, not all displacements are arbitrary. What is prohibited under international law is arbitrary/forced displacements. Jan Willms, 'Without order, anything goes? The prohibition of forced displacement in non-international armed conflict' *International Review of the Red Cross* Vol 91, 875 (2009)

<sup>138</sup> The law also requires that all possible measures be taken to protect any property left behind and ensure satisfactory conditions while in displacement, including shelter, hygiene, health, safety and nutrition, and that members of the same family are not separated. Rules 129-132 of Customary International Humanitarian Law Volume I: Rules (ICRC, 2005). See also Arts. 49 and 147 of the Fourth Geneva Convention; Art. 85(4)(a) and Art. 4(3)(b) of Additional Protocol I; and Art. 17 of Additional Protocol II.

<sup>139</sup> ICRC concluded that the prohibition of the deportation, forcible transfer, and forced displacement of civilian populations—unless the security of the civilians involved or imperative military reasons so demand—is a rule of customary international humanitarian law, applicable to both international and internal armed conflicts. Rule 129, ICRC, Customary IHL.

<sup>140</sup> Art. 8(2)(e)(viii), Rome Statute of the International Criminal Court.

<sup>141</sup> Art. 7(1)(d) & (2)(d), Rome Statute of the International Criminal Court.

206. Hundreds of thousands of civilians fled their homes in Tigray, at different intervals. These displacements can be broadly categorized into two waves. The first wave of displacement involved the displacement of the civilian population, including both Tigrayan and non-Tigrayans, following the outbreak of conflict and the violence associated with exposure to or after witnessing human rights violations such as extra-judicial executions, killings, unlawful arrests and detentions, and destruction of property. This displacement was mainly associated with the violence, including during and after the killings in Maikadra, which occurred between 9 and 10 November 2020.
207. The second wave involved those who fled to different parts of Tigray or out of Tigray, due to what seemed to be ethnically induced displacement of both Tigrayans and Amharas.
208. Forced displacement in most of the Tigray region was induced by a general sense of fear and, for some people, exposure to violence. However, in the Western part of Tigray, from Dansha to Humera, the forced displacement appeared to be ethnically driven along the Amhara – Tigray lines. Evidence suggests that, both Tigrayans and Amharas fled their habitual areas of residence, at different intervals, in substantial numbers, in fear or after witnessing ethnically induced human rights violations including extra-judicial executions, killings, unlawful arrests and detentions, destruction of property, among others. Following the outbreak of the armed conflict, more than six hundred thousand (600,000) ethnic Tigrayans fled their habitual residences in some woredas (districts), including, Awrora, Dansha, Mai Gaba, Maikadra, Tsegede, Welkait and Humera.
209. In Maikadra, immediately after the killings, the city came under the control of the Fano (armed group affiliated with Amhara forces). At this point, both the Amhara Special Forces and ENDF were reportedly still operational in the town. The JIT was informed that the Fano deliberately targeted the Tigrayans in what seemed to be retaliatory killings. This spate of killings triggered further displacement as ethnic Tigrayans fled Maikadra. Some of the Tigrayans who remained in the town were gathered and detained by the Fano, for approximately two months, after which they were transported to the Tekeze River<sup>142</sup> in buses and trucks and were left there. The civilians then moved to different parts of Tigray.
210. A 73-year-old Tigrayan man, initially from Maikadra, but now in Mekelle, described to the JIT circumstances regarding his arrest and subsequent forceful displacement. He narrated that he was arrested at his home by “soldiers in grey uniforms,” armed, while others carried knives. Following his arrest, these soldiers wanted to kill him, saying “we are here to kill Tegar,” however, one of the soldiers intervened shouting “tew tew” (stop stop) in an apparent attempt to save his life. He was joined with another group of 37, including nine (9) women, three (3) priests and four (4) militia. He added that the four militia, who were all known to him, were separated from the rest and killed. They were detained for two months. Following their release, they were brought up to the Tekeze bridge, released and told that “this is the place you belong.” Consequently, he fled the area, later arriving in Mekelle where he feels safer.

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<sup>142</sup> The Tekeze River forms what is disputedly called the natural boundary between Amhara and Tigray regions.

211. The number of ethnic Tigrayans who were forcibly removed from Maikadra, through this method, and the timeline of the operation remain unestablished. A Tigrayan woman reported that she was detained by the Fano for a month and a half and was transported to the Tekeze River. The JIT could not establish further details other than the group identified by the Tigrayans as those responsible .i.e. the Fano.
212. Outside of Maikadra, ethnic Tigrayans were displaced *en masse* from other parts of Western Tigray, such as Dansha and Humera, according to information received from IDP accounts in Mekelle and regional administrators. In Western Tigray, it was apparent that the Tigrayans had left most of the areas, as it was difficult to find Tigrayans to interview. In addition, particularly in Humera, many shops and businesses were closed as they belonged to Tigrayans who had since fled. An ethnic Tigrayan woman, currently in Mekelle, recounted that she fled her home in Awrora, when the conflict broke out, after the Welkaits killed some people in her area, vandalized her house, looted her household property before setting it on fire, claiming that “Tigrayans had made them live in darkness for 27 years.” The same forced displacement appeared to have taken place in Humera. Furthermore, Tigrayans are reluctant to go back to areas in Western Tigray out of fear of those who are currently in control of the area, .i.e. Amhara Special Forces, Amhara militia and Fano. An IDP from Humera said that she does not intend to travel outside Mekelle since the Amhara control the area and she worries that they will take revenge on her.
213. Additionally, the investigators also established evidence of ethnically motivated attacks on the Amharas by a local Tigrayan youth group called Samri, which prompted many Amharas to flee. The investigators found evidence of actions of the Samri that could amount to forced displacement of civilians in areas such as Maikadra, Adi Goshu, Mai Tsebri and Division. A 40-year-old Amhara IDP told the JIT that he and others fled their homes in Ketena 5 in Maikadra, after witnessing the Samri kill Amhara using machetes, axes, and sticks. Another Amhara IDP, formerly a cab driver, narrated how he and many other ethnic Amharas fled Maikadra, entering the village of Gallabat in the Sudan, after the Samri allegedly killed some ethnic Amharas, including one of his friends, who was reportedly hacked to death with amachete.
214. On 6 November 2020, about 30 women and children were allegedly transported from their homes in Kebebo to Division by people they identified as part of the administration in the town. The JIT spoke to an Amhara IDP in Dansha who was among the women in this group. She described how women and children were gathered by (Tigrayan) administrators of the town and transported from their homes in Kebebo to another town called Division. She described being pregnant at the time and giving birth in the wilderness as she and the rest of the group travelled to Dansha.

#### **4. Impact**

215. The conflict and the displacement have had manifold impacts on affected individuals and communities. Many displaced are in camps in the Amhara and Tigray regions set up since the start of the conflict. They have left their homes and belongings behind and many are reluctant to return despite being in camps and depending on humanitarian aid. They also left farmlands behind, affecting food security and productivity in the area. The situation of IDPs is concerning due to shortages of food, clean water, and accommodation. Access to health services is minimal or lacking in

most instances. Many IDPs have suffered psychological and physical trauma. Due to the extensive population displacement, active towns such as Humera are now quiet, with limited activity, also impacting those who remain. The displacement caused by different groups has also exacerbated the existing tensions between mainly Tigrayans and Amharas in areas where they once lived together, and which might prove to be a challenge in efforts to return IDPs in safety to their previous residence.

## **5. Conclusion**

216. The JIT established that the Tigrayan population, in particular, was substantially affected by the forced displacement in Western Tigray. The forced displacement of ethnic Amharas from their homes by the Samri youth group with the support of the local administration in Maikadra followed by the widespread retaliatory forcible displacements/removal perpetrated against ethnic Tigrayans mainly in Western Tigray by ASF and Amhara militia/Fano were neither carried out in order to protect the security of the victims nor for sufficient military imperatives as required by international law. Instead, thousands of civilians were forced to flee due to the gruesome physical and psychological violence that they were subjected to as the result of ethnic/identity-based attacks, killings, destruction and looting of property as well as for fear of reprisal attacks.

217. The JIT has reasonable grounds to believe that forced displacements were committed in the context of the conflict in Tigray on a broad scale and without lawful justification, in violation of conventional and customary international humanitarian law. Such acts may also amount to crimes against humanity and war crimes.

## **H. Internally Displaced Persons**

### **1. Introduction**

218. The conflict has been characterized by the large-scale displacement of the civilian population. The JIT received numerous reports on unsatisfactory conditions of living for internally displaced persons (IDPs), including lack of basic necessities, and insecurity, which has affected certain groups more such as older persons, PWDs, women and children. The JIT visited IDP camps/sites in Mekelle, Gondar, Dabat, and Dansha, and interviewed IDPs from various parts of Tigray, including Adi Aro, Adi Hageray, Adigrat, Adwa, Badme, Dengelat, Humera, Korem, Maikadra, Mekelle, Quiha, Shimelba, Shire, Sheraro, Tembien and Zalambesa.

### **2. Legal Framework**

219. Internally Displaced Persons (IDPs) are “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.<sup>143</sup>

220. When displacement occurs within the context of an armed conflict, parties to the conflict have an obligation to receive IDPs under satisfactory conditions of “shelter, hygiene,

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<sup>143</sup> UN Guiding Principles on Internal Displacement; African Union Convention For The Protection And Assistance Of Internally Displaced Persons In Africa (Kampala Convention).

health, safety and nutrition”.<sup>144</sup> Specifically, some of these conditions also include essential food and potable water; basic shelter and housing; appropriate clothing; and essential medical services and sanitation.<sup>145</sup> The special needs of displaced women, children, elderly and persons with disability must also be taken into consideration when ensuring satisfactory conditions.<sup>146</sup> When parties are unable to provide the prescribed satisfactory conditions, they must allow international actors to provide relief and assistance to IDPs.<sup>147</sup>

221. Displacement should not last longer than required by the circumstances, and as such, IDPs have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.<sup>148</sup> IDPs may also be voluntarily resettled in another parts of the country.<sup>149</sup> While displaced, “property and possessions left behind by internally displaced persons should also be protected against destruction and arbitrary and illegal appropriation, occupation or use”.<sup>150</sup>

### 3. Findings

222. The conflict has caused large scale displacement of the civilian population across Tigray. As at August 2021, the estimated number of IDPs in Tigray was 1,710,347 (92,000 in Mekelle, 772,343 in Shire, 329,112 in Central Tigray, 185,690 in East Tigray, 267,304 in Northeast Tigray, and 63,898 in the South).<sup>151</sup> The JIT was informed that priority was given to IDPs when providing assistance to people in need. Easily consumable food, nutritional food for children, and shelter was provided. NDRMC indicated that partners were given guidance on the type of food they should provide to IDPs. 684 million birr (USD 22 million) was spent on non-food items such as shelters and clothes. 67% of was covered by government and 33% by partners.

223. The JIT visited several IDP sites in Mekelle in May and June 2021 and interviewed IDPs from different parts of Tigray, including Maikadra, Humera, Dengelat, Adigrat, Adwa, Zalambesa, Humera, Shire and Sheraro. <sup>152</sup> The JIT observed that IDP sites – mostly schools – were congested, increasing the risk of communicable diseases, particularly during the COVID-19 pandemic. The JIT observed that the schools were not suitable living spaces for the IDPs, but it was told that an IDP site capable of accommodating 20,000 IDPs was being built to resettle IDPs from the schools.

224. The JIT found that food was not regularly distributed by the State or humanitarian organisations, leaving the host community to fill this gap; 70% of IDP sites in Mekelle received support, including food assistance, from their host community. This may lead to host community fatigue. Insecurity was also identified as a major concern, mainly attributable to fears that the ENDF may arrest more IDPs, following reports of previous arrests. Due to this fear, some IDPs stay in camps during the day and spend the night

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<sup>144</sup> Art. 17 (1) AP II.

<sup>145</sup> Principle 18 (2) UN Guiding Principles on Internal Displacement.

<sup>146</sup> Rule 131 ICRC Study on Customary International Humanitarian Law Study; Principles 4(2) and 19(2) UN Guiding Principles on Internal Displacement.

<sup>147</sup> Rule 55 ICRC Study on Customary International Humanitarian Law.

<sup>148</sup> Principle 6 (3) UN Guiding Principles on Internal Displacement; Rule 132 ICRC Study on Customary International Humanitarian Law.

<sup>149</sup> Principle 28 (1) UN Guiding Principles on Internal Displacement.

<sup>150</sup> Principle 21 (3) UN Guiding Principles on Internal Displacement.

<sup>151</sup> Figure from the NDRMC. Data on IDPs in Western Tigray was not provided.

<sup>152</sup> 22 IDP sites were schools while 2 were shelters.

elsewhere. The JIT found that on 24 May 2021, IDP camps in Shire were indeed raided and hundreds of IDPs arrested by the ENDF, although several were later released.<sup>153</sup>

225. The JIT further found that IDPs who had lost their identification cards were experiencing difficulties in accessing government services. IDPs were however able to receive psychosocial aid from UN humanitarian organizations and medical services from Ayder Hospital in Mekelle, as well as the one-stop-centre for survivors of SGBV.<sup>154</sup> A humanitarian organization providing support to IDPs in Mekelle informed the JIT that people who were staying with family also registered as IDPs because families were struggling economically, but that they spend the night with their relatives not in the sites.
226. The JIT also visited IDP camps in Gondar, Dabat, and Dansha. Persons in these camps were displaced from different parts of Tigray including Division, Mekelle, Quiha, Badme, Sheraro, Tembien, Adi Hageray, Shire, Adi Aro, Maikadra, Humera, Shimelba, Zalambesa, and Korem. Despite information that there was no IDP site in Dansha by the town administration, the JIT found an IDP site and engaged with the IDPs and observed their living conditions. At the time of the JIT's visit in July 2021, the IDPs had not received the government provided 15 kg of wheat grain for 4 months, they did not have access to water, healthcare, or any support from the State or from humanitarian actors. The JIT found the conditions of the IDPs concerning, particularly because they were not recognized as IDPs by the Dansha town administration, which affected access to humanitarian support and basic services.
227. The JIT furthermore visited Keberomeda Azezo camp in Gondar and Shimelaku IDP camp in Dabat, where nearly 4,000 IDPs were staying. Both camps reported chronic lack of food as they had not received the State provided 15 kg of wheat for several months, nor received assistance from other actors. Food was the primary concern for both camps, followed by lack of safe drinking water. In Dabat, the IDPs fetched water from the river or from a community well which caused friction with the host community. While pit latrines were available for IDPs, the lack of water was detrimental to sanitation and hygiene. Female IDPs also reported that they had received sanitary pads twice in 8 months. Some IDPs slept on the floor which exposed them to illnesses. Both camps reported shortage of medication, including antipsychotics.
228. The IDPs in Dabat reported that they could access secondary health care, but the IDPs in Gondar informed the JIT that they could not access secondary health care. The JIT observed that there were IDPs who required serious medical attention, including a woman with a bullet lodged in her rib, an older man who was severely beaten and suffering from incontinence, survivors of rape, and IDPs who had suffered psychological trauma. The JIT found that in the Dabat camp, nutritional supplements for children had stopped for 3 months, which resulted in illness and malnutrition. In the Gondar camp, 1 lactating mother and 3 children died due to complications arising from malnutrition and lack of access to healthcare. A joint assessment by humanitarian actors revealed that the camp in Gondar lacked electricity so women could not use latrines at night and the camp

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<sup>153</sup> UN condemns the arbitrary and brutal arrest of at least 200 IDPs in military-led raids in Shire town (Tigray Region), 27 May 2021, <https://ethiopia.un.org/en/128792-un-condemns-arbitrary-and-brutal-arrest-least-200-idps-military-led-raids-shire-town-tigray>. See also Ethiopia Situation (Tigray Region) #17, 17 May - 14 June, <https://reporting.unhcr.org/sites/default/files/Ethiopia%20Situation%20regional%20update%2017%20May-14%20June.pdf>.

<sup>154</sup> See Section E. Sexual and gender-based violence.

flooded during the rainy season. The JIT also found that the IDPs were discriminated due to their Tigrayan identification cards, particularly those in Gondar, which affected their security, freedom of movement, and access to services such as banks.

229. The JIT spoke to a lactating mother with hypertension and mental health problems in Keberomeda IDP camp, who indicated that she was not able to get medication in the IDP camp. The JIT also found that some IDPs had developed serious mental health problems as a direct result of traumatic experiences they underwent including survivors of SGBV, but that they had little to no support in different IDP camps/sites in Tigray as well as those who are in Gondar and Dabat IDP Camps.

#### **4. Impact**

230. The JIT found that there was lack of adequate food in several IDP camps, particularly in Gondar, Dabat, and Dansha. In Mekelle, the local community provided 70% of the food for the IDPs due to the gap in support from the State and humanitarian actors. Malnutrition has in particular affected mothers and infants in IDP camps, resulting in death of 1 lactating mother and 3 children in Gondar. Female IDPs did not receive sanitary pads regularly, and only twice in 8 months in Dabat. The JIT has observed a pattern of lack of proper assistance to the growing number of IDPs who have developed serious mental health challenges due to the conflict, which is exacerbated by the poor living conditions in IDP camps.

231. The JIT also observed that IDPs in camps in Mekelle lived in a situation of fear due to possible raids and arrests by the ENDF, which the JIT confirmed took place in Shire in May 2021. IDPs in Mekelle, Gondar, and Dabat also did not have proper identification documents that would allow them to move freely and work in the places they were displaced to.

#### **5. Conclusion**

232. The JIT concludes that the State has not taken all possible measures to provide internally displaced persons with satisfactory conditions of shelter, hygiene, healthcare, safety and nutrition, in line with its obligations under international human rights and international humanitarian law. Mass arrest of IDPs without due process also violates human rights law and instills fear in IDPs in other parts of Tigray. The lack of recognition by local authorities in Dansha as to the existence of an IDP site is extremely concerning and formally excludes IDPs in Dansha from services that they may have otherwise benefited from. In several camps, particularly in Gondar, Dabat, and Dansha, IDPs had not received food rations – 15 kg of wheat earmarked by the government – for up to 4 months, nor did they receive support from other actors. The JIT also notes the effects of lack of basic necessities, particularly for hygiene, sanitation and medical services, on the health of women and persons in need of support with their mental health.

### **I. Restrictions on freedom of movement**

#### **1. Introduction**

233. The JIT investigated measures implemented by parties to the conflict that may have amounted to violations of the right to freedom of movement, roadblocks, checkpoints and curfews. The JIT received reports that travel into and out of Tigray was restricted and that some ethnic Tigrayans were furthermore prevented from traveling

abroad. Reports also indicate that refusal to issue identification cards to internally displaced persons was used as a means to restrict movement. The JIT also examined the manner in which these measures were implemented, specifically, whether they violated other fundamental rights and guarantees that parties to the conflict were obliged to respect and protect, such as non-discrimination..

## 2. Legal Framework

234. Freedom of movement is a fundamental human right that is widely recognised under various international human rights instruments.<sup>155</sup>The right to freedom of movement as enshrined in international human rights instruments includes four distinct rights: a) the right to move freely within a given territory; b) the right to choose a residence within a territory; c) the right to leave any country, including one's own; and d) the right to enter one's own country.<sup>156</sup>

235. The right to move freely relates to the whole territory of a State, including all parts of federal States. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place.<sup>157</sup> Similarly, freedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country. Thus, travelling abroad is covered, as well as departure for permanent emigration.<sup>158</sup>

236. While limitation of freedom of movement is permissible under international human rights law, such limitations must never render the right illusory. Any restrictions on movement and choice of residence to be permissible should be expressly prescribed by law and necessary to achieve legitimate objectives such as national security, public safety, maintenance of '*ordre public*', the prevention of crime, protection of health and morals, and protection of the rights and freedoms of others. Restrictions should "conform to the principle of proportionality; they must be appropriate to achieve their protective functions; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected"<sup>159</sup>. Furthermore, the application of the restrictions must "be consistent...with the fundamental principles of equality and non-discrimination."<sup>160</sup> The burden to prove the legality, necessity and proportionality of restrictions lies with the State.

237. Freedom of movement of IDPs is also recognized in international law including their right to move freely in and out of camps or other settlements.<sup>161</sup> As per customary international humanitarian law, freedom of movement of humanitarian relief personnel must be respected and protected, and restrictions on their movement is

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<sup>155</sup> "[E]veryone has the right to freedom of movement and residence within the borders of each state." Art. 13(1), UDHR. The ICCPR similarly establishes that everyone has "the right to liberty of movement and freedom to choose his residence," and "to leave any country, including his own." Art. 12, ICCPR; Art. 12, African Charter.

<sup>156</sup> Magdalena Sepúlveda, *et al*, Human Rights Reference Handbook, p. 243.

<sup>157</sup> Para. 5, HRC, General Comment no. 27, Art. 12 on Freedom of movement.

<sup>158</sup> Para. 8, HRC, General Comment no. 27, Art. 12 on Freedom of movement.

<sup>159</sup> Para. 14, General Comment No. 27, CCPR/C/21/Rev.1/Add.9.

<sup>160</sup> As above, para. 18.

<sup>161</sup> Principle 14, OCHA Guiding Principles on Internal Displacement.



permitted on a temporary basis only when required for imperative military necessity.<sup>162</sup>

238. Domestically, the FDRE Constitution guarantees the “right to... movement and freedom to choose ones’ residence”, which is accorded to “any Ethiopian or foreign national lawfully in Ethiopia, within the national territory”, as well as the freedom to leave the country at any time.<sup>163</sup>

### 3. Findings

239. The state of emergency law declared by the Federal Government prohibited entry into and exit from Tigray and restricted movement during curfew hours.<sup>164</sup> The restriction to freely enter into and leave from Tigray Regional State was lifted a few months later. The state-owned airline, Ethiopian Airlines, resumed normal flight operations starting from mid-December 2020. However, ongoing military operations meant that people in several parts of Tigray could not freely and safely travel within and outside Tigray.

240. After the ENDF forces took control of most of the areas in Tigray, including the capital Mekelle, in the last weeks of November 2020, it enforced a curfew prohibiting movement initially from 6pm (later extended to 8pm) to 6am.

241. There were patrols and checkpoints run by the ENDF and Federal Police to enforce the curfew. The JIT was able to establish at least 3 killings in connection with enforcing movement restriction outside curfew hours.<sup>165</sup> According to Government sources, one civilian was killed in Axum in crossfire between armed robbers and ENDF during curfew hours.

242. Roadblocks and checkpoints in many parts of Tigray significantly impeded the movement of people, essential goods such as food and medicine, and inhibited humanitarian assistance. Checkpoints were set up on roads, including on main roads connecting major cities and towns, by all parties to the conflict intermittently and even for extended periods during the conflict. An example of such roadblock was instituted on the road to Samre at Dengolat, starting from March 2021.

243. ENDF had a recurring *modus operandi* of restricting movement for security concerns- stating that there was an active conflict and it was not safe for people to travel. There were also claims from several witnesses that movement was deliberately

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<sup>162</sup> Rules 31& 56, ICRC Study on Customary International Humanitarian Law.

<sup>163</sup> Art. 32 of the FDRE Constitution.

<sup>164</sup> On 04 November 2020, the Council of Ministers passed into law Proclamation no 4/2020, which placed restriction on the exercise of a range of rights, including on the right to freedom of movement, applicable to Tigray region but which may also be expanded in other areas for a period of six months. The Preamble provides for the *raison de tre* for the state of emergency declaration, stating “illegal activities within the National Regional State of Tigray are endangering the Constitution and Constitutional Order; public peace and security, specially threatening the country’s sovereignty, impeding the Federal Government from discharging its Constitutional responsibility in the Region...and that the this situation has reached a level where it cannot be prevented and controlled through the regular law enforcement mechanism”.

<sup>165</sup> In addition, JIT received information from a medical expert in Mekelle that ENDF has killed several others while enforcing movement restrictions after curfew hours. However, the JIT was not able to establish this serious allegation with detailed, corroborated and verified information.

restricted by ENDF and EDF, on account of suspicion that travelers were providing assistance and support to TPLF fighters.<sup>166</sup>

244. On the other hand, limited or completely absent public transport services in several parts of Tigray during the conflict posed significant barriers for civilians, including those with serious medical conditions, to move freely and to access essential health services. In one case, an HIV positive woman had to reportedly walk on foot from Samre to Mekelle, approximately 57 Km, to procure her medication.
245. The JIT also received numerous reports of individuals of Tigrayan origin whose travel abroad was denied by security personnel at Bole Addis Ababa International Airport and their travel documents confiscated.<sup>167</sup> It was not clear how these individuals were identified and, in most of such cases, there was neither due process nor judicial recourse for individuals that faced such restrictions.<sup>168</sup>
246. IDPs in different camps located in Tigray and Amhara regions spoke of refusal by local administration officials to issue them with personal identification documents, putting an additional barrier to exercising their right to freely move from place to place. This, in turn, prevented them from fully enjoying their rights to seek and be engaged in gainful employment opportunities, attain adequate standard of living, and to access basic social services.

#### **4. Impact**

247. Restrictions on freedom of movement during the Tigray conflict had significant impact on the civilian population. In particular, restrictions and interruption of transport services have impacted the rights to life, physical safety, wellbeing and livelihood of the civilian population. An example of such was the reported death of two pregnant women in Samre town who died of childbirth related complications in and around March 2021 as a result of roadblocks instituted by the EDF that prevented them to travel and access health care services.
248. Women also faced heightened risk to their physical safety and security during the conflict with an impact on their freedom of movement. For example, witnesses recounted that in Samre, a pregnant woman was beaten and survived attempted rape by EDF soldiers on her way to fetch water from a nearby river in March 2021. Women interviewees told the JIT that due to that incident they no longer go to fetch water from the river.

#### **5. Conclusion**

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<sup>166</sup> ENDF responded saying that such blocks at checkpoints are instituted until adequate security measures were put in place as it has a role to secure the safety and security of the people and whenever there were blockades; action could be taken to resolve such instances and it has lost some of its soldiers in the process of opening up roadblocks set up by Tigray forces. It stated that if there was an unprofessional conduct at checkpoints, it' is because not all those who man check-points are professional, and there may be some individuals who do not have proper training and carry out unnecessary acts.

<sup>167</sup> The NISS responded to the JIT that measures can be taken against individuals who are a threat to public safety or security to restrict their movements.

<sup>168</sup> The EHRC issued a press release on 20 November 2020 that expressed concern on complaints of "ethnic profiling of [persons of] Tigrayan origin" who were being "stopped from travelling overseas including on work permission, for medical treatment or studies" and urged "authorities, particularly airport security authorities, to immediately cease preventing any passenger from travelling without appropriate legal justification."

249. The failure of government authorities to issue identification cards to IDPs and the refusal of security and immigration officials at Addis Ababa International Airport to allow some Tigrayans to leave the country and in some instances the confiscation of their travel documents without any explanation, justification and due process also appears motivated on discriminatory grounds and is disproportionate and unjustified. These measures were neither necessary nor proportional to the aims of protecting “the Constitution and Constitutional Order, public peace and security”, as stated in the State of Emergency proclamation. Additionally, measures taken by the ENDF in enforcing the State of Emergency proclamation, such as the killing of civilians in the enforcement of curfews, violated other non-derogable guarantees such as the right to life.
250. While restrictions such as roadblocks and check points by ENDF and EDF may have been justified by the conflict the impact on the movement of essential goods such as food and medicine raises serious questions on the necessity and proportionality of the measures.
251. In view of the above, the JIT finds reasonable grounds to believe that violations of freedom of movement have been committed by ENDF, EDF and federal security personnel.<sup>169</sup>

## **J. Freedom of expression and access to information**

### **1. Introduction**

252. Since the start of the conflict in Tigray, freedom of expression and access to information has been constrained as internet and other means of communication were largely cut off. The JIT received reports of shutdown of communication which caused trauma and distress among civilians in Tigray and amongst their families and loved ones residing in the country and abroad. The JIT was informed that the communications shutdown has also impacted the service sector, such as banks, further compounding the challenges. The JIT has received reports of harassment, intimidation and arrest of journalists reporting on or from Tigray by the Federal Government.

### **2. Legal framework**

253. The right to freedom of expression is enshrined in a number of international and regional human rights instruments.<sup>170</sup> Everyone has the right to share their ideas with whomever they want, and in whichever way they choose.<sup>171</sup> The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions.

254. Freedom of expression may be restricted, but only as provided by the law and as necessary for the protection of the rights and freedoms of others, as well as for the

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<sup>169</sup> See Section L Part V of this report regarding movement of humanitarian relief and workers.

<sup>170</sup> Art. 19, UDHR; Art. 19, ICCPR; Art 9, African Charter; Art. 5, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Art. 7, CEDAW; ILO Convention N° 135, Workers' Representatives Convention; General Comment 11 [19] Art. 20. of the Human Rights Committee (CCPR/C/21/Rev.1 of 19 May 1989); The public's right to know: Principles on Freedom of Information Legislation. Annex II Report E/CN.4/2000/63; ACHPR, Declaration of Principles on Freedom of Expression in Africa.

<sup>171</sup> Para. 12, Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34 (12 September 2011). This General Comment replaced General Comment No 10 [19] (Article 19) of the Human Rights Committee (CCPR/C/21/Rev.1 of 19 May 1989).

protection of national security, public safety, order, health or morals.<sup>172</sup> Freedom of expression may be derogated from during a state of emergency, but the freedom of opinion cannot be suspended.<sup>173</sup> The restrictions on the freedom of expression cannot be invoked to justify “an attack on a person because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing”<sup>174</sup>.

255. The recognition of the right to freedom of expression and information requires the protection of “all forms of expression and the means of their dissemination”.<sup>175</sup> This includes the protection of “electronic and internet-based modes of expression”.<sup>176</sup> States have obligations to ensure internet-based mode of expression and access to information. They have a negative obligation to abstain from engaging in or condoning “any disruption of access to the internet and other digital technologies” unless such disruption is compatible with the requirements of limitation clause.<sup>177</sup> They have a positive obligation to “facilitate the rights to freedom of expression and access to information online and the means necessary to exercise these rights.”<sup>178</sup>
256. Under international humanitarian law, journalists in non-international armed conflict enjoy the same protections as civilians.<sup>179</sup> Although international humanitarian law does not contain as extensive provision for duties with respect to civilian journalists as it does in the case of other protected categories, there is a similar recognition within customary international humanitarian law of the requirement that journalists be respected and protected. Protection of journalists goes beyond the protection from attacks, to include protection from other acts intended to dissuade journalists from their professional duties such as torture, arbitrary deprivation of liberty, and enforced disappearance.<sup>180</sup> Journalists enjoy this protection unless (and for such time) as they take a direct part in hostilities. Attacks on journalists constitute a war crime in both international and non-international armed conflict as a form of intentional attack on civilians.<sup>181</sup>
257. The 1995 Constitution of Ethiopia provides for freedom of expression and press freedom<sup>182</sup> that includes freedom to seek, receive and impart information and ideas of all kinds either orally, in writing or in print, in the form of art or through any media of choice. The Constitution further prohibits any form of censorship and guarantees access to information of public interest. According to the Constitution, these rights can be limited through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or the effect of the point of view expressed. Any propaganda for war as well as the public expression of opinion intended to injure human dignity are prohibited.

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<sup>172</sup> Art. 19(3), ICCPR.

<sup>173</sup> Para. 5, HRC General Comment 34.

<sup>174</sup> Para. 23, HRC General Comment 34.

<sup>175</sup> Para 12, HRC General Comment 34.

<sup>176</sup> Ibid.

<sup>177</sup> African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019), Principle 38(2).

<sup>178</sup> As above, Principle 37(1).

<sup>179</sup> ICRC *Customary International Humanitarian Law: Volume 1: Rules*, rule 34.

<sup>180</sup> ICRC, *Customary International Humanitarian Law: Volume 1: Rules*, pp. 117-8.

<sup>181</sup> Rome Statute, arts 8(2)(a)(i), and 8(2)(e)(i).

<sup>182</sup> Art. 29 of the FDRE Constitution provides for the ‘Right of Thought, Opinion and Expression’

### 3. Findings

258. The Ethiopian government instituted limiting measures on freedom of expression during the Tigray conflict. The state of emergency announced in November 2020 allowed taking measures to limit means of communication in Tigray and other places that warrant such measures and prohibited any statement urging for war, or calling the Federal Government as weak, illegal and or unacceptable.<sup>183</sup>
259. Telephones (landlines and mobile) and internet communications were cut off shortly after midnight on 4 November 2020.<sup>184</sup> Internet and telecommunication services continued to be interrupted after the Federal Government forces took back control of Mekelle and even after the end of the state of emergency on 3 May 2021.
260. Sources from Ethio-Telecom confirmed that from 3 December 2020, where Ethio Telecom was able to return to the North Region until the declaration of the unilateral ceasefire on 28 June 2021, it was only able to restore service to less than 50% of the region. It listed the active conflict; frequent theft of property, including fuel; repairing damaged or disconnected grids; and contacting and redeploying its employees, who had fled following the outbreak of conflict, as some of the challenges for restoration of services.
261. There were also cases of arrest and intimidation of journalists during the Tigray conflict in Addis Ababa and in Mekelle. On 1 December 2020, the Committee to Protect Journalists (CPJ) in its annual census of jailed journalists stated that there were at least seven journalists in custody in Ethiopia for their work. According to a CPJ statement, five of those arrests took place after the Tigray fighting erupted on 4 November 2020.
262. The journalists included staff from Addis Standard, an online media, and three journalists from the state-owned Ethiopian Press Agency. Police accused the journalist of Addis Standard in court of trying to "dismantle the constitution through violence", his website reported. He was released without charge more than a month later. The other three were accused of conspiring with groups fighting the government and dismantling the constitution; they were held between five to eight weeks before being released. The Federal Attorney General confirmed there were arrests but claimed all laws were respected during the arrests and all of the journalists were later released after investigations.
263. The JIT was also able to confirm the killing of at least one journalist in Mekelle. According to witnesses and victims, around 7pm on 19 January 2021, former Tigray TV journalist Dawit Kebede and 3 of his friends were returning home after they dropped off their friend. As they approached Adi-Housi around UNICEF's field office in Mekelle, ENDF soldiers fired multiple shots at their vehicle. Dawit and one of his friends died immediately. The other two survived and were taken to a military prison inside Awash

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<sup>183</sup> Art. 4 (5) & (6), State of Emergency Proclamation 4/2020.

<sup>184</sup> Ethio telecom, the national service provider, told the JIT that it took steps to protect the national network from intrusion by blocking access to the national network because armed and masked individual took over its core site in Mekelle around midnight on 4 November 2020 (video shown and shared by EthioTelecom). It also claimed that services resumed on 12 November 2020 outside the control of Ethio Telecom and it was unable to access any of its networks in the North Region for approximately 14 days. During that time, approximately 39.8 billion cyber-attacks were launched against its networks allegedly by TPLF and its affiliates, in collaboration with some of its own employees.

Camp in Mekelle. According to the ENDF, they were killed while they were distributing leaflets calling for resistance against the Army.

264. One of the survivors told the JIT:

*“As we approached Adi-Housi around UNICEF’s field office in Mekelle, we suddenly heard multiple gun shots. Dawit and Bereket died immediately. The gunshots seemed to have been directly aimed at those occupying the vehicle. I do not understand why the soldiers chose to fire on us directly. Even if we have violated curfew, they could have stopped us without killing them. Dawit was a journalist at Tigray TV before the war and he was arrested twice before his death and released.”*

265. Revocation of licenses and warning letters were also issued to some journalists and media houses. Ethiopia’s media regulator, Ethiopian Media Authority (EMA), confirmed that out of several complaints it has received on media misconduct, two have been cautioned with a written warning because it preferred an educative rather than punitive approach.

266. In March 2021, the New York Times reported that one of its staff had his credentials revoked by the Ethiopian Broadcasting Authority after returning to Addis Ababa from the Tigray region, where he had interviewed civilian survivors. The journalist told Reuters that he was given no credible reason nor explanation for his swift deportation. EMA responded that it revoked his licence because his report highly exaggerated the death toll of killings in Tigray and violated Ethiopian law. EMA considered that a legitimate measure, stating that about 120 foreign correspondents and 43 foreign media houses operate in Ethiopia with over 50 foreign journalists having travelled to Tigray since the start of the conflict.

#### **4. Impact**

267. The internet and phone shutdowns restricted access to information also for civilians. The lack of information during the conflict prevented civilians from communicating with each other about safety considerations, access to medical facilities, and sources of food and shelter thereby causing considerable harm and distress to the civilian population. Families were unable to know the status of their loved ones and in the words of one witness, “it has turned my life upside down”.

268. The lack of information caused by the shutdown also hindered the work of journalists and human rights monitors who were providing information about the situation on the ground. A journalist noted that such action could be termed as collective punishment by imposing penalties on people without a clear lawful basis.

269. The arrest and intimidation of journalists have threatened independent voices and limited the work of journalists. A former journalist for the Amharic service of Tigray Mass Media Agency based in its Addis Ababa office stated that he could not do his journalism work and report on the various violations committed against Tigrayans as he went into hiding during the conflict due to intimidation by the Federal authorities and for fear of arrest.

#### **5. Conclusion**

270. Individuals were unable to seek, receive and impart information using the internet and other communication technologies because phones and internet

communications were cut off in Tigray. General shutdowns of internet and telecommunications violate multiple rights, including the rights to freedom of expression and access to information, if it can be established that they were killed due to their work, and hinder others, including the right to free assembly. The disconnection may have been justified until the expiry of the state of emergency. The continued disconnection is however a violation of the right to freedom of expression and access to information because it was not justified as per the restrictions specified under international human rights law. The detention and killing of journalists by the Federal Government and the ENDF also constitute violations of the right to freedom of expression and information.

## **K. Pillage, looting and destruction of property**

### **1. Introduction**

271. The JIT investigated cases of allegations of widespread pillaging, looting and destruction of property committed by all parties to the conflict. This section should be read in conjunction with the sections dealing with violations related to humanitarian situations and violations of economic, social and cultural rights, also addressing violations and abuses of this nature.

### **2. Legal framework**

272. International human rights instruments guarantee the right to property.<sup>185</sup> As is the case with other rights, the recognition of the right to property entails both negative and positive obligations. A State has the obligation to respect, protect, and fulfil the right to property. A State has a negative obligation to refrain from interfering with the enjoyment of the rights. State agents such as the military force, militia and the police should respect the right to property during times of peace and conflict as human rights law is always applicable. The State has the obligation to investigate and prosecute any violations on the right to property, whether the act is committed by a private individual or a state agent or committed during peace or war.

273. International humanitarian law provides specific rules relating to the protection of property. Under customary international law applicable to non-international armed conflicts, “the destruction or seizure of the property of an adversary is prohibited, unless required by imperative military necessity”.<sup>186</sup> In addition, associated with the prohibition of the use of starvation of civilians as a method of warfare, there are several specialized rules concerning the non-destruction of objects indispensable to the survival of the civilian population. Therefore, it is a violation of international humanitarian law if a party to an armed conflict destroys, removes or renders useless any of these objects, absent sufficient military justification.<sup>187</sup> Objects which are considered indispensable to the survival of the civilian population include foodstuffs, agricultural areas for the production of foodstuffs, crops and livestock, among others.

274. With regard to appropriation of property, international humanitarian law expressly prohibits pillage. Pillage is the appropriation or forcible taking of property

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<sup>185</sup> Art. 14, African Charter on Human and Peoples’ Rights; Art. 17, Universal Declaration of Human Rights; ICESCR and ICCPR do not expressly guarantee the right to property.

<sup>186</sup> CIHL, Rule 50.

<sup>187</sup> Additional Protocol II art. 14 and CIHL, Rule 54.

with the intention to deprive the owner of the property and to appropriate it for private or personal use. Pillaged property may be public or private, movable, or immovable. The term 'pillage' is usually used interchangeably with 'looting', 'plundering' or 'spoliation'.<sup>188</sup> Pillaging entails large scale appropriation rather than sporadic acts of violation of property rights. However, it is prohibited whether it is organized or resulting from "isolated acts of indiscipline."<sup>189</sup>

275. Pillaging a town or place, even when captured during hostilities, is prohibited and constitutes a war crime.<sup>190</sup>

276. The Ethiopian Criminal Code establishes several crimes for the protection of the right to property. It clearly prohibits pillaging and looting: "Whoever organizes, orders or engages in looting, piracy, pillage, economic spoliation or the unlawful destruction or removal of property on the pretext of military necessity, is punishable".<sup>191</sup>

### 3. Findings

277. Civilians reported the systematic looting of crops and livestock in areas where EDF operated. The appropriation of vehicles, including cars and motorbikes, was attributed to the ENDF. On most occasions in which schools and courts were used as military camps by ENDF and EDF, it resulted in the looting of schools' property and in their consequent dysfunction. Repeated looting of health centers and courts have also been reported, perpetrated by armed forces and civilians. Witnesses have reported seeing military trucks being loaded with public and private property and taken away. In Western Tigray and parts of North-Western Tigray including Adi Hageray, Sheraro, Humera, Maikadra, and Dansha, instances of ethnically targeted looting and destruction of private and public property and infrastructures, including crops, houses, health centers and financial institutions, was attributed to the Tigray forces and civilians. Amhara militia and Fano have also been implicated in looting and appropriation of houses and businesses in parts of Western Tigray such as Humera and Maikadra.

278. Between 3 December 2020 and 13 April 2021, the ENDF occupied the Atsey Yohannes Preparatory School in Mekelle twice and used it as a military camp. In both occasions, the school was looted and many of its property destroyed, including classrooms, laboratories, teachers' room and the storeroom. "The electrical system, doors and windows were broken and offensive graffiti directed at the Tigrayan people were written on the school walls", said a school staff member. Before the start of the conflict, the school had 1,890 regular students and 350 evening students, aged 16 to 21. Students were in school from September until November 2020 but were unable to return to school due to security concerns and the destruction and looting of the school. The school has since then been repainted and cleaned by the former Interim Administration, but was unable to resume its services because of the lack of basic school

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<sup>188</sup> Olivia Radics & Carl Bruch, 'The Law of Pillage, Conflict Resources, and *Jus Post Bellum*' in Carsten Stahn, Jens Iverson & Jennifer S Easterday (eds) *Environmental Protection and Transitions from Conflict to Peace: Clarifying Norms, Principles, and Practices* (Oxford University Press 2017) p. 146.

<sup>189</sup> ICRC, *Commentary on the Additional Protocols* (Geneva, Martinus Nijhoff, 1997), p. 1376.

<sup>190</sup> Art. 8(2)(e)(v), Rome Statute of the International Criminal Court.

<sup>191</sup> The crime is punishable with rigorous imprisonment, which ranges between five years and 25 years, or with life imprisonment or death in serious cases. Art. 270 cum 273, FDRE Criminal Code, Proclamation No 414/2004.



items. “We don’t have books and whiteboard markers”, explained a school representative.

279. On 28 November 2020, the ENDF entered the premises of the Supreme Court in Mekelle and took three cars. Then civilians broke in and looted other materials, including laptops and scanners. The court was left without security for a week, until the ENDF came back. At first, military personnel occupied the court and used the offices as a detention center, therefore interrupting judicial functions for about a month. Later, an agreement was reached between the ENDF and the judicial authorities and part of the court was given back to the judiciary. The ENDF left the court’s premises around April 2021. “Safe boxes were opened with guns and money stolen. Many files, including criminal records, were destroyed, and we are now looking for a solution to restart cases”, said a judicial official.

280. The JIT established that looting of public and private property, including banks, occurred in Wukro. There is reasonable ground to believe that EDF primarily perpetrated the looting, including by going to private residential houses and shops. The JIT also received reports that civilians took part in the looting during the time the ENDF and EDF took control of the town.

281. Public and private property, including objects indispensable for the survival of the civilian population, were systematically looted by the EDF both in large centers and rural areas in Southern Tigray. In and around Samre, the EDF advance towards Mekelle was accompanied by large scale appropriation of crops and livestock. In March 2021, EDF soldiers took control of Keih Emba, Samre, Adi Gibai and Adi Awsa, and looted property in these towns. Private houses as well as the Agricultural Bureau and the Samre Mobile Clinic were also looted by the EDF. Similarly, in Bora and nearby areas, the EDF looted property and killed livestock. “They killed my goats, then loaded trucks with donkeys, cereals, crops, farming tools, mattresses and other house items”, said a victim from Bora. The health center in Bora was also looted and medicines taken by the EDF.

282. Between 6-9 November 2020, Tigray forces attacked farms belonging to non-Tigrayans in nearby areas to Maikadra. The attackers burnt the harvest of 5,000 quintals of sesame in one case and 620 in another. The attacks were considered as ethnicity-based, targeting Amharas.

283. There was destruction of civilian and public property during the first three days of the war (3–6 November 2020) while the Tigray forces were in control of Dansha, with reports of damage to courts and police stations, as well as burning of registries and documents in the police stations. TSF are implicated in these allegations. The JIT found a pattern of destruction of property with similar modus operandi and therefore reasonable grounds to believe that destruction of private and public property occurred in Dansha.

#### **4. Impact**

284. The large scale appropriation and destruction of private and public property has had a severe socio-economic impact on the civilian population across Tigray. Due to the appropriation of food and crops, entire families were exposed to serious risk of hunger and rely on other community members and humanitarian assistance in order to

survive. In several villages, following the looting of health centers, civilians lost their access to basic health care. Since the start of the conflict, both primary and secondary schools have been used for military purposes and have been unable to resume their education service because of the continued military use and looting of necessary equipment and supplies. This has caused the loss of education opportunities for students across Tigray, both in large towns and rural areas. At least 15 courts were destroyed across Tigray, while many others were looted, particularly in rural areas. In this regard, Central and Eastern Tigray were the most affected areas. Judicial functions were interrupted and have not resumed in most of Tigray, with the limited exceptions of Mekelle, part of Southern Tigray and Shire in North-Western Tigray.

## **5. Conclusion**

285. The conflict in Tigray has been characterized by large scale destruction and appropriation of property perpetrated by different actors, including armed forces, militias and civilians. There have been cases of widespread pillaging and looting of public and private property, including household items and money. Additionally, there was looting and destruction of objects indispensable to the survival of the civilian population, including crops, foodstuffs, and livestock.

286. The ENDF looted and destroyed property in Atsey Yohannes Preparatory School in Mekelle on two occasions during its use of the school as a military camp. The EDF looted public and private property, including objects indispensable for the survival of the civilian population in Southern Tigray, including Keih Emba, Samre, Adi Gibai, Adi Awsa, Bora, and Wukro in Eastern Tigray. Tigray forces looted and destroyed private and public property and infrastructures in Western Tigray and parts of North-Western Tigray. Amhara militia and Fano have also been implicated in looting and appropriation of houses and businesses in parts of Western Tigray such as Humera and Maikadra. Based on the investigation conducted, the JIT finds reasonable grounds to believe that these amount to violation of the right to property under international human rights law and a violation of rules of international humanitarian law, which may also constitute war crimes.

## **L. Denial of access to humanitarian relief**

### **1. Introduction**

287. The humanitarian impact of the conflict in Tigray has been well documented and recognized at the national and international level. An estimated 5.7 million people in Tigray have been reported to be in need of humanitarian assistance by August 2021. There were several reports of impediments to the delivery of humanitarian assistance to the civilian population in need. The JIT met several humanitarian organisations involved in the delivery of humanitarian assistance either directly or through local or international NGOs, who spoke of impediments to the delivery of humanitarian relief.

### **2. Legal framework**

288. Humanitarian relief generally consists of items such as foodstuffs, water, medical supplies, clothing, bedding, means of shelter and fuel, as well as any other items

considered essential for survival.<sup>192</sup> Under international human rights law, the State has the primary obligation to provide food, medicine and other essential items to vulnerable groups and people in need of assistance. Undue or unjustified restrictions imposed by the State on humanitarian relief could amount to a violation of the State's obligations under ICESCR. Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil that right directly.<sup>193</sup> Moreover, the minimum core obligations inherent to the right to health<sup>194</sup> require States at least:

*“to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; to ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone; to ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water.”*<sup>195</sup>

289. In situations of non-international armed conflicts in which the population is suffering undue hardship owing to a lack of supplies essential for its survival, such as foodstuff and medical supplies, international relief may be undertaken.<sup>196</sup> Relief actions are however subject to the consent of the concerned State and must be “exclusively humanitarian, impartial and conducted without any adverse distinction”.<sup>197</sup> While consent is necessary, it must not be withheld or refused arbitrarily.<sup>198</sup> When refusal leaves “...the civilian population as a whole, or segments thereof, without essential relief items or specific services for prolonged periods, then the party can be considered to be violating the obligation to allow and facilitate rapid and unimpeded passage of relief operations”.<sup>199</sup> However, it is generally recognized that even after granting consent, a State may still exercise control over the content and delivery of humanitarian relief, provided this is not used as pretext to impede humanitarian relief.<sup>200</sup> States have a duty to provide rapid and unimpeded passage for relief consignments, equipment and personnel carrying out relief work.<sup>201</sup>

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<sup>192</sup> Art. 18 (2) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II); Rule 55 International Committee of the Red Cross, Customary International Humanitarian Law Volume I: Rules (ICRC Study on Customary International Humanitarian Law).

<sup>193</sup> Para. 15, UN Committee on Economic, Social and Cultural Rights, General Comment No. 12.

<sup>194</sup> Art. 12, ICESCR.

<sup>195</sup> Para 43, UN Committee on Economic, Social and Cultural Rights, General Comment No. 14.

<sup>196</sup> Art. 18 (2) Additional Protocol II.

<sup>197</sup> As above; See also “Strengthening of the coordination of humanitarian emergency assistance of the United Nations” (A/Res/46/182).

<sup>198</sup> Rule 55, ICRC Study on Customary International Humanitarian Law. As a minimum, consent cannot be refused on arbitrary grounds. A refusal must be based on valid reasons. Whether a decision not to accept assistance is arbitrary depends on the circumstances and should be determined on a case-by-case basis. In situations of siege, blockade or embargo which has the effect of starving the population, the party which imposes it has an obligation to provide access to humanitarian aid for civilians in need.

<sup>199</sup> United Nations Office for the Coordination of Humanitarian Affairs “Humanitarian Relief Operations in Armed Conflict: IHL Framework” [OCHA Note].

<sup>200</sup> Rule 55, ICRC Study on Customary International Humanitarian Law; OCHA Note “parties to conflict can prescribe technical arrangements for the passage of humanitarian relief, such as the search of consignments to verify that they are exclusively humanitarian, prescribed routes at specific times so that relief convoys do not interfere with and are not endangered by military operations, or measures to ensure that medical supplies and equipment comply with health and safety standards”.

<sup>201</sup> Rule 56, ICRC Study on Customary International Humanitarian Law.

290. Parties to an armed conflict have an obligation to allow and facilitate the rapid and unimpeded impartial and non-discriminatory access for humanitarian relief to civilians in need.<sup>202</sup> Each party to the conflict must refrain from deliberately impeding the delivery of relief supplies in areas under its control. Intentionally impeding relief supplies as part of the use of starvation as a method of warfare is a war crime,<sup>203</sup> while deprivation of food and medicines, with the aim of bringing about the destruction of part of a population may constitute a crime against humanity.<sup>204</sup>
291. Deliberate or willful denial of humanitarian relief calculated to bring about the destruction of part of the population may constitute a crime against humanity when committed as part of a widespread or systematic attack against a civilian population<sup>205</sup> and a war crime under customary international law.<sup>206</sup> The Criminal Code of Ethiopia also criminalizes the withholding of clothing, bedding, means of shelter, medical supplies and other supplies essential to the survival of the civilian population during armed conflict.<sup>207</sup>

### 3. Findings

292. Humanitarian actors faced access restrictions to large parts of Tigray. All parties to the conflict, including the EDF, ENDF, Tigray forces, and ASF were accused of restricting humanitarian access, particularly food assistance. All humanitarian organizations raised the issue of active conflict, and some indicated that the number of checkpoints and the multiplicity of actors involved complicated access. Lack of understanding of international humanitarian law and other relevant rules by the military were also raised as a challenge.
293. Reports indicated that at some checkpoints manned by EDF and ENDF, soldiers at the checkpoint would accuse mobile clinics of giving medication to the “junta” or rebels. Medication was allegedly confiscated from NGOs at a check point manned by ENDF and EDF, on the basis that it was being taken to the rebels, specifically by the ENDF at Agulae, 32 km north-east of Mekelle.
294. On 22 May 2021, the JIT received information that mobile clinics were denied access to Samre and Gidjet in Southern Tigray and that these areas were inaccessible for nearly 7 weeks. The JIT carried out a visit to Samre from 10 – 11 June 2021, where it visited and met the mobile health clinic staff at Samre Hospital who informed the JIT that they arrived to Samre a month before, after having received a support letter from the Tigray Interim Administration, which was accepted by the EDF at the checkpoint outside Samre. They were searched but allowed to proceed. The hospital team was able to return to Mekelle twice to get more medical supplies. At the time of the JIT’s visit to Samre, Gijet was accessible and humanitarian organisations were providing humanitarian relief.

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<sup>202</sup> CIHL, Rule 55.

<sup>203</sup> CIHL, Rule 156 and Amendment to be inserted as article 8-2-e)-xix) of the Rome Statute, adopted by the Assembly of State parties to the Rome Statute of the ICC on 6 December 2019.

<sup>204</sup> ICC Statute, art. 7.

<sup>205</sup> Art.7(1)(b) read together art.7(2)(b), Rome Statute of the International Criminal Court.

<sup>206</sup> Rule 156, ICRC Study on Customary International Humanitarian Law.

<sup>207</sup> Art. 270 (k), Criminal Code of the Federal Democratic Republic Of Ethiopia.

295. In May 2021, there were reports of access restrictions to Western Tigray and attempts were made by humanitarian organizations to reach Western Tigray from Gondar in the Amhara region. In July 2021, one of only two humanitarian organisations operating in Western Tigray stated that it never had a problem accessing Western Tigray since it started operations in January 2021, adding that it received the cooperation of authorities at security check points. A UN entity which started operation in Western Tigray in June 2021, informed the JIT that the Amhara region had not presented any access problems to Western Tigray.
296. A UN agency informed the JIT that areas near the Eritrean border had more access related problems, as well as Zata and Ofla, contested areas which were administered by the Amhara region, which the Agency reported it was denied access to. The UN entity reported that checkpoints to access Zata and Ofla were manned by ENDF and ASF. In response to why access was denied, the agency indicated that the reason was usually about security and safety and the risk of robberies. The JIT was not able to travel to these locations and cannot therefore confirm the veracity of these allegations.
297. The Tigray Interim Administration (TIA) also reported obstruction of food supplies by the Tigray forces as a serious challenge adding that road blockades by the Tigray forces prevented humanitarian access for up to three days at a time.
298. Information gathered from multiple humanitarian organisations revealed that active conflict presented the primary impediment to delivery of humanitarian assistance. The multiplicity of actors at check-points further caused delays in the delivery of relief. The lack of functional administrative bodies at the local level to receive and coordinate relief aid in some areas was also a challenge. In the specific areas of Samre and Gijet, while the mobile clinic of the Tigray Bureau of Health was able to access Samre around 10 May 2021, there were reports of access restrictions before the JIT's visit on 10 June 2021. Regarding Western Tigray, the JIT found that humanitarian organizations were able to access the civilian population.
299. The JIT found that since the start of the conflict, more than 20 humanitarian workers in Tigray were killed while engaged in the delivery of humanitarian assistance.<sup>208</sup> These killings impeded the delivery of humanitarian assistance in the region.
300. The ENDF informed the JIT that access restrictions were imposed based on security imperatives. The JIT has reasonable grounds to believe that humanitarian relief was also impeded by members of the ENDF and EDF who accused humanitarian organizations of providing material support to Tigray forces.

#### **4. Impact**

301. The civilian population in Tigray has not been able to have access to much needed humanitarian assistance due to impediments resulting from active conflict, lack of functional local administrative bodies for coordination, and lack of cooperation by ENDF and EDF at checkpoints including confiscation of medication. The conflict has had

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<sup>208</sup> HC a.i. statement on the killing of 23 aid workers in the Tigray region since the start of the crisis, 01 September 2021, <https://reliefweb.int/report/ethiopia/hc-ai-statement-killing-23-aid-workers-tigray-region-start-crisis>. See also, MSF calls for Tigray murders investigation and safety for humanitarian workers, 07 July 2021, <https://www.msf.org/msf-calls-tigray-murders-investigation-and-respect-aid-workers>.

a direct bearing on the operations of humanitarian organisations following the killings of humanitarian workers.

302. Additionally, the lack of access and telecommunications limitations in most parts of Tigray posed difficulties to the operations of humanitarian workers, including delivery of humanitarian assistance and ability to assess the full impact of the conflict on the civilian population and the overall security of humanitarian workers in the region.

## **5. Conclusion**

303. The JIT found that there were access restrictions, including multiple checkpoints by EDF and ENDF, which impeded or delayed delivery humanitarian assistance to parts of Tigray and Amhara region. Tigray forces were implicated in setting up road blockades that resulted in delay of humanitarian relief. While the JIT could not confirm deliberate or willful denial of humanitarian assistance to the civilian population in Tigray or the use of starvation as a weapon of war, it recognizes the need for further investigation on alleged violations related to denial of access to humanitarian relief and killings of humanitarian workers.

## **M. Economic, social and cultural rights**

### **1. Introduction**

304. The JIT has received information that due to the conflict in Tigray, the enjoyment of economic, social and cultural rights has been undermined, including the rights to healthcare, the right to food, the right to water and sanitation, access to telecommunications and electricity, as well as banking services. Reported looting and destruction of health facilities, impeded access for humanitarian relief, destruction of public infrastructure has significantly impeded the ability of individuals to access public services that support the realization of their economic, social and cultural rights.

305. Women, children, older persons, persons with disabilities, persons with preexisting chronic illnesses, internally displaced persons, and refugees have disproportionately borne the brunt of the disruption of services necessary to the enjoyment of their rights.

### **2. Legal framework**

306. As a State Party to ICESCR,<sup>209</sup> Ethiopia is obliged to take steps to the maximum of its available resources with a view to progressively realizing the rights set out in the treaty, including the rights to work, social security, an adequate standard of living (including adequate food, clothing and housing), the highest attainable standard of physical and mental health, and education.<sup>210</sup> States may not take any measures that limit the realization of economic, social and cultural rights. This prohibition applies even during an armed conflict or other emergency,<sup>211</sup> such as the conflict in Tigray.

307. States have a duty to respect, protect and fulfil economic, social and cultural rights. Thus, they must refrain from any action that would directly or indirectly

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<sup>209</sup> The ICESCR contains no derogation clause, and the Committee on Economic, Social and Cultural Rights has confirmed that the Covenant applies even in times of conflict or emergency.

<sup>210</sup> Issues related to the right to education is covered under the Section N on children and not under this section.

<sup>211</sup> Report of the United Nations High Commissioner for Human Rights, E/2015/59, para 23-26.

interfere with the enjoyment of the rights, prevent third parties (including armed groups) from interfering in any way with the enjoyment of the rights, and take all necessary measures to guarantee the enjoyment of these rights without discrimination of any kind.

308. Although an armed conflict may pose significant challenges to the enjoyment of these rights (for example, through the destruction of public services infrastructure), States retain the obligation to prioritize access to these rights and to do everything possible to at least realize the ‘core minimum’ content of rights, including by facilitating access to humanitarian assistance and restoring services.
309. Several international humanitarian law treaties contain provisions that are relevant to economic, social, and cultural rights. Amongst these are the protection from attack of civilian objects and infrastructure prohibitions on starvation of civilians as a method of warfare and on attacking objects indispensable to the survival of the civilian population. Such objects include food, crops, and public services infrastructure, which has implications for, inter alia, the rights to education, food, health, housing, and water.
310. Parties to armed conflicts are obliged to ensure adequate conditions of life for the civilian population in relation to matters such as health, food, relief assistance, work, employment and education. In particular, they have an obligation to allow and facilitate rapid and unimpeded humanitarian relief for civilians in need.<sup>212</sup>

### **3. Findings**

#### **i. Right to health**

311. While the full extent of the damage on health facilities in Tigray due to the conflict is unknown, pending a complete and comprehensive assessment, credible sources informed that the health sector has been significantly affected. As part of its investigation, the JIT visited health facilities in some of the towns and cities affected. Damage to health facilities included looting of medical equipment and medicine, structural damage ranging from serious to minor, and destruction of records or data. Different parties to the conflict were implicated in looting and damage to hospitals, including the EDF in Central, Eastern, and Southern Tigray, and the TSF in Western Tigray. Looting by civilians due to the breakdown of law and order took place.
312. In most parts of Tigray, from November 2020 until the end of June 2021, the population did not have access to health care. In Samre, the hospital had been looted, with hospital equipment and medicines taken by EDF. Before the arrival of the mobile health clinic in May 2021, people in Samre did not have access to medical facilities or medicine. Similarly, in Bora, the health centre was damaged due to shelling and was looted. In Western Tigray, following the 9 November 2020 attacks, the Maikadra Health Centre was damaged and medical equipment and medication looted, rendering it non-functional. The Dansha Health Centre, which is located near the Fifth Mechanised ENDF Division, was damaged by shelling during the attack on the Division on 3 November 2020. The JIT visited Dansha Health Centre in July 2021 and observed bullet marks on the iron sheet fence and the walls. Humera Hospital was also looted and there was some damage due to shelling. The JIT was also informed of the serious limitation of access because of

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<sup>212</sup> CIHL, Rule 55.

ongoing conflict, and that the Health Bureau had been prohibited from going to places purposely by the ENDF and the EDF.

313. The JIT was informed that the healthcare situation worsened because healthcare workers had fled, and it was through concerted efforts from State and humanitarian actors that the health facilities had slowly started operating, even though not all of them were fully functional. According to the Tigray Health Bureau, less than half of the health facilities in Tigray were operational in May 2021. Even functional health facilities reported challenges such as communication disruptions, transportation, and lack of electricity and water. The Ministry of Health informed that in June 2021, 52% of health facilities were functional, 26.5% were not functional, and there was no communication with 21% of the facilities which meant that their status was unknown. In Central Tigray, there was no communication with 39 health centres, which is higher than in any other zone. Out of 224 health centres in Tigray, only 40 were functional and were mainly around Mekelle and other big cities such as Shire and Axum, and on the main roads.
314. To address the problem of accessibility, the State and some partner organisations, including UNICEF, MSF, Goal Ethiopia, and the ICRC constituted 65 mobile clinics, although access problems were reported.
315. During the conflict, persons with chronic illnesses such as HIV, hypertension, and diabetes were at higher risk because they were not able to access the medication they needed. Additionally, the shortage of medication coupled with the shortage of food has further increased their vulnerability. Challenges faced by HIV patients in accessing medication was reported in Maikadra and Samre.
316. Maternal mortality cases increased because mothers were delivering at home instead of health facilities, although there was no data to indicate the extent of the increase. In Samre, it was reported that 2 women died while giving birth.
317. Due to the conflict, COVID-19 prevention and control work in all parts of Tigray had ceased for several months. However, sensitisation activities, provision of personal protective equipment (PPE), and testing had resumed.

## **ii. Right to food**

318. Prior to the conflict, there were an estimated 1,500,000 people in the Tigray region who were in need.<sup>213</sup> Of these, 1 million were under the Productive Safety-Net Programme (PNSP),<sup>214</sup> 390,000 people were direct beneficiaries who were poor and vulnerable, and 100,000 were IDPs. The conflict made access to large parts of the region difficult, which increased the vulnerability of the population and the need for food support. This was compounded by the number of checkpoints and the multiplicity of actors involved including the ENDF and EDF, which impacted on movement of humanitarian convoys, although the ENDF informed the JIT that the checkpoints were intended to enhance the security for the humanitarian convoys. The JIT was also informed that access to food for

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<sup>213</sup> Information from the National Disaster and Risk Management Commission (NDRMC) which is mandated for the coordination of humanitarian assistance in Ethiopia. The WFP also informed the JIT that the Tigray region and Wollo in the Amhara region were the most susceptible to food insecurity, prior to the conflict, and that farming was severely affected due to the conflict.

<sup>214</sup> PSNP is a policy initiative by government and donors to shift millions of chronically food-insecure rural people from recurrent emergency food aid to a more secure and predictable, and largely cash-based, form of social protection.



some of the IDP camps/sites was worse and this was evident in some of the IDP camps/sites visited.

319. Banks were not functional, markets were closed, government employees had not received their salaries, which increased the number of people who needed assistance. Four and a half million people were deemed in need of financial support in Tigray following the conflict. The State reported that it diverted large amounts of food aid intended for distribution to other regions to the Tigray region due to the magnitude of the demand in the region. An estimated 5.5 to 5.8 million people were reportedly in need of humanitarian assistance in August 2021, which is nearly the entire population of Tigray. The National Disaster and Risk Management Commission (NDRMC) indicated that the fluidity in the number of people who require assistance is due to lack of a proper assessment, because of internal mobility which resulted in double counting. IOM also reported problems in numbers, indicating that there were IDPs who registered twice.
320. The World Food Program (WFP) indicated that it was delivering food support together with partners in the whole of Tigray, except for Western Tigray. As of end of May 2021, WFP stated that nutrition under the supplementary feeding programme for pregnant and lactating mothers was provided to 46% of screened mothers. The Tigray Health Bureau informed the JIT that malnutrition was a serious problem, and that the 15kg of wheat that should be provided monthly was not reaching those in need, and that several months could pass without people receiving assistance. There were cases of acute malnourishment, and the situation could be worse in areas which were not easily accessible, such as villages off the main road, signifying further implications on the rights to food for the population.
321. During its visit in July 2021, the JIT learned that the Western Zone was under the administration of the Amhara Region as Welkait Tegede Setit-Humera Zone, and in that regard food support was provided by the Amhara Region Disaster Prevention and Food Security Programme Coordination Office (ARDPF), together with the NDRMC. The ARDPF reported that the Amhara Regional government was stretched due to 840,000 IDPs in the region in July 2021, and that it was not receiving enough support from the Federal Government or from humanitarian actors to support the Western Zone. The ARDPF and humanitarian organisations operating in the Western Zone indicated that despite raising the gap in humanitarian support in the Western Zone repeatedly during humanitarian coordination meetings in which the State and humanitarian organisations participate, no steps were taken to improve the situation. The Administrator of the Western Zone informed the JIT that over 100,000 people in the Western Zone required assistance. A UN agency engaged in humanitarian support noted that while access was not a problem in Western Tigray, humanitarian intervention in the West was relatively weak due to the greater need in other parts of Tigray.
322. International Medical Corps (IMC) reported that it screened thousands of affected persons in Western Tigray, but that supplies for severe acute malnutrition were received very late in May 2021, and supplies for moderate malnutrition were still outstanding, despite multiple complaints at partners meetings. IMC added that response to the food needs of the IDP sites in Dansha was also unsatisfactory.

### **iii. Right to water and sanitation**

323. Water, sanitation, and hygiene services did not readily resume in Tigray due to damage to the facilities with impact on the various rights of the population. Several sources in Samre informed the JIT that the EDF intentionally damaged the water tank/ pipe in Samre on 27 April 2021. While it was not clear how the water source was damaged, whether intentionally or otherwise, there was consistency in the report that the EDF damaged the water source disrupting the provision of running water in Samre and severely impeding the people's rights to water. Women were fetching water from the river or from a well where there were long queues. In addition, fetching water from the river had made women vulnerable to sexual and gender-based violence. The JIT met a woman who survived attempted rape at the river while she was fetching water with three other women.

### **iv. Access to basic services**

324. Following the start of the conflict on 3 November 2020, the Tigray region experienced disruption of electricity, internet, telecommunications, transportation, and banking services which exacerbated the situation of the above social and economic rights. In at least one case, phone and internet connections were intentionally disrupted by the Tigray forces in Mekelle on 4 November 2020. The Tigray Interim Administration stated that an assessment revealed damages to public service infrastructure in Mekelle and other parts of Tigray including transport, telecommunications, public offices, courts, prisons, schools, and hospitals. The public offices reported that in addition to looting and destruction of property, registries and records were also destroyed. The UN Protection Cluster confirmed that most services were affected by the conflict which in turn affected the operation of public offices. Sources stated that it would take billions of Birr to repair the damages.

325. Challenges to resume operation of public services included reluctance by employees in Tigray to resume work due to fear of being perceived as cooperating with the Federal Government or due to other political reasons. Communication also presented a problem, as some employees could not be reached, including to receive back pay of their salaries. The JIT was informed that members of the Interim Administration were targeted, threatened, harassed, intimidated, and more than 50 were killed while undertaking their duties as public servants. The JIT also established that the resumption of public services was affected by incidents of harassment, intimidation, kidnapping, beating, disappearance, and killings of public servants who were working in Tigray.

326. Electricity service in Tigray and some parts of neighbouring regions was disrupted in various locations, in different phases of the conflict. Electricity transmission and distribution networks in Tigray and surrounding regions suffered extensive damages due to the conflict and looting. Ethiopian Electric Utility (EEU) reported that when the ENDF entered Mekelle on 28 November 2020, only one of the 18-transmission links in Tigray, was functional. The JIT was also informed that electricity distribution lines were erected along roadsides which exposed them to significant damages during conflict. In response to allegations that the State intentionally disconnected electricity to the Tigray region, the EEU informed stated that it did not have a policy or technology to remotely enable or disable power plants, sub-stations, or districts, adding that sub-stations are

manually managed, and staff of the sub-stations fled during conflict and that resulted in disconnection from the grid.

327. Since the start of the conflict, all economic activities were affected, including banking services. Banking services in Tigray were affected due to the disruption of the banking system which required internet connection and electricity. Banks were also targeted through looting and destruction, following the breakdown of law and order. Civilians were unable to access money needed to purchase food and non-food items as well as healthcare and medicine. Banking services slowly started to resume in December 2020 and banks were functional for some time, despite challenges due to reported damages to internet, electricity, and banking infrastructure.

#### **4. Impact**

328. Economic, social, and cultural rights including the right to healthcare, the right to adequate food, the right to water and sanitation, the right to access basic services including telecommunications and internet access, electricity, banking services, were seriously hampered due to the conflict, directly as result of the actions of the parties to the conflict or indirectly due to failures to take measures to mitigate the impact of the conflict. The destruction of public service infrastructure – such as schools, health care facilities – have severely compromised the enjoyment of economic, social and cultural rights in Tigray. Damages were also caused to water, telecommunications, electricity, and banking infrastructure. Cases of maternal mortality and child malnutrition increased. Persons in situations of vulnerability were disproportionately affected including pregnant women and persons with preexisting chronic illnesses. Limited access to humanitarian relief has worsened the situation. In the Western Zone, limited response by the Government and humanitarian actors has resulted in over 100,000 persons not receiving food assistance.

#### **5. Conclusion**

329. Based on the information available, the JIT is of the view that there are reasonable grounds to believe that there have been serious violations of economic, social, and cultural rights in Tigray and affected neighbouring regions, including the rights to healthcare, the right to adequate food, the right to water and sanitation, the right to access basic services including telecommunications and internet access, electricity, banking services, and the right to an adequate standard of living. The JIT has documented looting and destruction of health facilities in all parts of Tigray by parties to the conflict, which had a direct impact on the right to healthcare of the civilian population. The JIT has found inadequate provision of food and water to the civilian population. The conflict had a direct impact on the provision of telecommunications, electricity, and banking services, due to damages caused to the infrastructure necessary to provide these services.

### **N. Children**

#### **1. Introduction**

330. The conflict has had a particularly devastating impact on children in Tigray.<sup>215</sup> It has adversely affected the enjoyment of children's rights, including their rights to life, to the highest attainable standard of health, to education, to an adequate standard of living and to protection of the family. The impacts described in other sections, including direct or indiscriminate attacks resulting in deaths or injuries and lack of, or reduced, access to basic public services as a result of the destruction of infrastructure also applies to children. A large number of children have been separated from their families in the context of the conflict, while exposure to the violence in the conflict has also left many children deeply traumatized and in urgent need of psychosocial and other forms of assistance.

## **2. Legal framework**

331. Ethiopia is a party to the CRC and the ACRWC, both of which guarantee a range of rights for children, including the rights to life, education, health, an adequate standard of living and development. Under both the CRC and ACRWC, States are obliged to take all feasible measures to ensure protection and care of children who are affected by an armed conflict.<sup>216</sup> The UN Committee on the Rights of the Child has outlined essential measures for the realization of the rights of children affected by armed conflicts. These include protection of children within the family environment; ensuring the provision of essential care and assistance; prohibition of torture, abuse or neglect; preservation of the child's cultural environment; and ensuring humanitarian assistance and relief and humanitarian access to children in armed conflict.<sup>217</sup>

332. As a party to the Optional Protocol to the CRC on the involvement of children in armed conflict, Ethiopia is further obliged to take all feasible measures to prevent the recruitment or use of children under the age of 18 years by non-State armed groups<sup>218</sup> and to ensure that members of armed forces under 18 do not take a direct part in hostilities.<sup>219</sup>

333. Under international humanitarian law, all parties to a non-international armed conflict have an obligation to provide children with the care and aid they require.<sup>220</sup> The fundamental guarantees relating to the treatment of persons taking no active part in hostilities provided in Common Article 3 to the Geneva Conventions also protect children, a particularly vulnerable group.

## **3. Findings**

334. Children have been disproportionately affected by the conflict. Children were subjected to sexual and gender-based violence, physical injuries and, in some cases, killings as a direct result of the conflict. Children were exposed to traumatic experiences such as witnessing the killing or rape of close family members by the parties to the conflict, including the EDF, ENDF and TSF. A witness reported that a four-year-old girl and her mother who worked as a cook in an ENDF camp, were killed inside the camp in

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<sup>215</sup> Conflict and crisis in northern Ethiopia, 18 August 2021, <https://www.unicef.org/stories/conflict-and-crisis-northern-ethiopia>.

<sup>216</sup> CRC, art. 38(4); ACRWC, art. 22(3).

<sup>217</sup> UN Committee on the Right of the Child, Report of the second session, UN Doc. CRC/C/10, 19 October 1992, § 73.

<sup>218</sup> OP-CRC-AC, arts. 4(1) and (2).

<sup>219</sup> OP-CRC-AC, art. 1.

<sup>220</sup> Additional Protocol II, Article 4(3); CIHL Rule 135.

Adi Hageray town at the beginning of the conflict. At least three children were among the 29 civilians killed on 28 November 2020, during the shelling in Mekelle by the ENDF. The JIT found that in November 2020, one boy was killed, and two children (one boy and one girl) were injured as a result of shelling between the EDF and TSF in Humera. The killing of unarmed children has also been reported in Zalambessa, and Dengelat.

335. A witness in Mekelle described an incident in which she and her 15-year old sister were taken from their house in Werie-Leke to a military camp located in a former Sur Construction camp off the new road from Edaga Arbi to Edaga Hamus by Eritrean soldiers on 21 January 2021. She was kept in the camp for one month, until she escaped, and was raped by 27 Eritrean soldiers, sometimes two to three soldiers at a time. Her 15-year-old sister was also kept in the same camp for over a month. The Ministry of Women, Children, and Youth Affairs (MoWCYA) confirmed that children have been victims of SGBV, physical injuries, and deaths due to shelling and shooting without providing specific details.
336. The MoWCYA identified and re-united 3,621 separated and unaccompanied children in Tigray since the start of the conflict, an indication that large numbers of children were separated from their family during the conflict. Some parents also informed the JIT that the Red Cross helped to reunite them with their children or that it was assisting them to search for their children. Five parents informed the JIT that their children went missing due to the chaos and confusion that followed the attack on the ENDF camps, in Adi Hageray and Dansha, in November 2020.
337. Large numbers of children in Tigray and those displaced from Tigray to the Amhara region due to the conflict were not receiving adequate food, water, shelter, protection, and other lifesaving assistance.
338. While COVID-19 had contributed to the closure of schools prior to the conflict, this has been compounded by damage to and looting of schools across Tigray since the most recent conflict started. The Ministry of Education informed the JIT that 10 schools in Mekelle and the surrounding areas were damaged and rendered non-functional. Moreover, 22 schools in Mekelle were being used as IDP sites. The Ministry of Education also indicated that there were unverified reports that 34 schools in other parts of Tigray had been damaged or looted. Additionally, school premises were used as military camps, in some cases resulting in looting and damages to the property.<sup>221</sup>
339. The looting of and damage to healthcare facilities, mostly by EDF, have undermined children's access to basic health care services, including medication and immunization services. Children's access to education and health had been impacted significantly by the conflict.

#### **4. Impact**

340. The conflict has had a devastating impact on children. The displacement and killings of their caregivers has left children orphaned and vulnerable to further abuses and violations, including SGBV. Thousands of children were separated from their families as result of the conflict. The lack of access to education and health care services has deprived children of their basic rights. The breakdown of security and rule of law

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<sup>221</sup> See Section A on Attack on Civilians and Civilian Objects – Use of Civilian Objects for Military Purposes.

has further compounded the plight of children in the affected locations, with violations against children being committed with impunity. The JIT was told that from 116,358 under-five children screened for malnutrition, 10,206 (9%) were found to be suffering from moderate acute malnutrition while 3,172 (3%) suffered from severe acute malnutrition.<sup>222</sup> One lactating mother and three children in Keberomeda Azezo IDP camp in Gondar died due to complications caused by malnutrition and lack of access to healthcare.

## 5. Conclusion

341. The conflict has significantly undermined the enjoyment, by children in Tigray and affected neighbouring regions, of their rights, including their rights to life, an adequate standard of living, the highest attainable standard of health, education, and protection of the family. Many children were killed or injured in the hostilities or subjected to sexual violence. Some have died due to lack of life-saving intervention to address malnutrition or provide adequate healthcare. On the basis of the information available to the JIT, there are reasonable grounds to believe that these are violations and abuses of international human rights law, some of which directly attributable to the parties to the conflict.

## 0. Older Persons and Persons with Disabilities

### 1. Introduction

342. The JIT investigated cases of direct harm against older persons and persons with disabilities (PWDs), and assessed the impact of the conflict on their wellbeing. The JIT received reports of direct attacks against older persons and PWDs, including physical assault and sexual violence, and information on the socio-economic challenges caused by the conflict, which has disproportionately affected older persons and PWDs.

### 2. Legal Framework

343. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Protocol on Older Persons) understands "older persons" as persons aged 60 and above. States are obliged to respect the principles of independence, dignity, self-fulfillment, participation, and care of older persons as the basis for protecting the rights of older persons.<sup>223</sup> The Protocol on Older Persons also recognizes the intersectionality of different factors such as disability and gender.<sup>224</sup> In situations of an armed conflict, older persons should enjoy access to assistance during rescue efforts, settlement, repatriation, and other interventions on a priority basis.<sup>225</sup>

344. Persons with disabilities (PWDs) are persons with "long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".<sup>226</sup> Ethiopia has ratified the Convention on the Rights of Persons with Disabilities. States should be guided by the principles of respect for the inherent dignity, individual

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<sup>222</sup> Information provided by the Ministry of Health on 17 August 2021.

<sup>223</sup> Art. 2 (2) The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Protocol on Older Persons).

<sup>224</sup> As above, Arts. 9 & 13; See also Art. 18 (4) African Charter.

<sup>225</sup> As above, Art. 14 (1).

<sup>226</sup> Art. 1 Convention on the Rights of Persons with Disabilities.

autonomy and independence; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of PWDs; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities when protecting the rights of PWDs.<sup>227</sup> States have a duty to ensure the protection and safety of PWDs in situations of armed conflicts in line with their obligations under international humanitarian law.<sup>228</sup>

345. The FDRE Constitution provides that the “State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged...” in relation to economic, social and cultural rights.<sup>229</sup>

346. Under international humanitarian law, older persons and PWDs are entitled to “special respect and protection”, in addition to what ordinarily pertains to persons not taking an active part in hostilities.<sup>230</sup> The specifics of this “special respect and protection” depends on the particular context and such protection may manifest itself in the provision of adequate medical care, establishment of safety zones or evacuation, among others.<sup>231</sup> The determining factor is the recognition that older persons and PWDs have vulnerabilities on the basis of their respective statutes and should therefore be accorded additional protection. These obligations apply to both State and non-State actors.

### 3. Findings

347. The JIT learned that older persons and PWDs were disproportionately affected by the conflict. Older persons and PWDs suffered abuse and ill-treatment, including physical beatings, and parties to the conflict took no measures to assist these persons, such as providing medical treatment or ensuring access to medicine. Older persons expressed a feeling of abandonment as a result of the conflict.

348. A 92-year-old man from Samre informed the JIT that two of his children died during the conflict with the Derg and his last son also joined the Tigray forces in the latest conflict, so he was left alone. He told the JIT “... my biggest fear is that I would die alone, and there would be no one left to bury me.” A witness from Adi Hageray explained that his bed-ridden elderly neighbor, who was in his 90s, had no one to take care of him because all his family members had fled the conflict.

349. Older people were also victims of direct attacks. The JIT interviewed an elderly man in an IDP camp who was stabbed by the Tigrayan youth group called “Samri” in Maikadra on 9 November 2020 and fled to Sudan. The man was once again attacked with sticks and stones by the same group, who had also fled to Sudan. As a result of the attacks, the elderly man suffers from incontinence and ear problems. The victim furthermore reported that he found his home looted and crops burnt when he returned to Maikadra.

350. In Shire, a witness reported that she was raped by three ENDF soldiers in January 2021 for three days and that her elderly and visually impaired mother was shot dead on the

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<sup>227</sup> As above, Art. 3.

<sup>228</sup> As above Art. 11.

<sup>229</sup> Art. 41 (5), FDRE Constitution

<sup>230</sup> Rule 138 ICRC Study on Customary International Humanitarian Law; See also the Vienna Declaration and Programme of Action (World Conference on Human Rights) (1993) “The World Conference on Human Rights is deeply concerned about violations of human rights during armed conflicts, affecting the civilian population, **especially women, children, the elderly and the disabled**”.

<sup>231</sup> Rule 138 ICRC Study on Customary International Humanitarian Law

third day. The JIT spoke to a 21-year-old woman with disability who was raped near her place of residence in Mekelle by an ENDF soldier. She reported that the soldier took her to an isolated area around 10 PM, leaving her 8-year-old brother and mother traumatized after they were harassed by two other ENDF soldiers. The victim contracted HIV after the rape.

#### **4. Impact**

351. Older persons also experienced socio-economic challenges as a result of the conflict, as they were left by their children who used to care for them, and some of them had their homes looted. IDP committee members in the IDP camps/sites informed the JIT that older persons and PWDs were greatly affected by the lack of food, water, firewood, and limited healthcare as they had limited coping mechanism. Regarding persons with mental health challenges, the JIT was informed that mental health patients in IDP camps, particularly in Gondar, were unable to access medication and secondary health care.

#### **5. Conclusion**

352. The JIT found that parties to the conflict failed to accord special respect and protection to older persons and PWDs in line with their obligations under international human rights and international humanitarian law. The JIT has documented instances of direct attacks against older persons and PWDs, including physical assault on an older man by Tigrayan youth, summary execution of an older woman, and rape of a woman with disability by members of the ENDF. The JIT has also observed the indirect implications of the ongoing conflict on the wellbeing of older persons and PWDs, including the destruction of the social support system that are essential to the pursuit of an independent and dignified life. Older persons and PWDs have been left without support.

### **VI. Overall Findings**

353. Based on the information collected and assessed by it, the JIT finds reasonable grounds to believe that there have been widespread violations of international human rights, humanitarian and refugee law by all parties to the conflict in Tigray. Notable among these are the following:

- attacks on civilians and civilian objects, as well as indiscriminate attacks by ENDF, EDF, and TSF in violation of international humanitarian law, which may amount to war crimes;
- unlawful killings and extra-judicial executions by the ENDF, EDF, TSF and affiliated militia, Fano (group affiliated to Amhara militia), and the Samri (local Tigrayan youth group) in violation of international human rights law and serious violations of international humanitarian law, which may amount to war crimes and crimes against humanity;
- torture or other cruel, inhuman, degrading treatment or punishment by the ENDF, EDF, TSF and allied militia, and Tigrayan police against civilians and captured combatants in violation of the absolute prohibition on torture and of international humanitarian law, which may amount to war crimes and crimes against humanity;



- arbitrary detentions, abductions and enforced disappearances by ENDF, TSF and allied groups, Amhara militia and Fano, and EDF in violation of international human rights law and international humanitarian law;
- sexual and gender-based violence against women, girls, men, and boys, including rape (gang rape, oral and anal rape), insertion of foreign objects into the vagina transmission of HIV, and forced nudity by ENDF, EDF, TSF and Tigrayan militia, and ASF, in violation of international human rights and humanitarian law, which may constitute war crimes and crimes against humanity;
- violation by EDF and TSF of the rights of refugees under international human rights law, humanitarian law, refugee law, and national laws;
- forcible displacement of the civilian population largely based on ethnicity of the victims, by the Samri (local Tigrayan youth group) supported by the local administration, of ethnic Amharas and retaliatory expulsions by the ASF, Amhara militia, and Fano, of ethnic Tigrayans, in violation of international human rights law and international humanitarian law, which may amount to war crimes and crimes against humanity;
- failure by the State to take adequate measures to provide internally displaced persons with satisfactory conditions of shelter, hygiene, healthcare, safety and nutrition, in line with its obligations under international human rights and international humanitarian law;
- unjustified restrictions on freedom of movement by the State authorities, ENDF and EDF, as well as on freedom of expression and access to information by State authorities and the ENDF;
- pillage, looting and destruction of property by the ENDF, EDF, TSF and allied militia, Amhara militia and Fano, in violation of international human rights law and international humanitarian law, which may constitute war crimes;
- restrictions on access to humanitarian relief by ENDF, EDF, TSF, and ASF, and killings of humanitarian workers which may amount to a violation of international humanitarian law, and requires further investigations; violations of economic, social and cultural rights, including the rights to adequate food, water and sanitation, healthcare, and access to basic services, including due to the destruction of vital public infrastructure by the parties to the conflict;
- violations against children including killings, injuries, SGBV, and the rights to education, healthcare, adequate food and water, by parties to the conflict in violation of international human rights law and international humanitarian law;
- violations against older persons and persons with disability, including killings, injuries, SGBV, and lack of access to healthcare, adequate food and water, by parties to the conflict in violation of international human rights law and international humanitarian law;

354. Some of these violations may, depending on their circumstances, amount to international crimes, in particular, war crimes and, to the extent widespread or systematic, crimes

against humanity. The seriousness of these allegations call for independent investigations and appropriate prosecution of those responsible.

## VII. Accountability

### A. Introduction

355. The JIT was tasked with providing a faithful account of the overall human rights and humanitarian situation in Tigray and to identify violations committed by all parties to the conflict. One of its key objectives was to facilitate the process of accountability by providing guidance on measures for the granting of effective remedies to victims and preventing the recurrence of violations. Through its investigation, the JIT has found serious violations of human rights, humanitarian and refugee law, committed by the ENDF, EDF, ASF, Tigray forces and militias affiliated with the various parties to the conflict. In addition, as stated, the JIT has reasonable grounds to believe that a number of these violations may amount to crimes against humanity and war crimes, making the question of accountability even more imperative. These acts require further investigation.

### B. Legal framework

356. The primary responsibility for addressing the violations found by the JIT rests with the Ethiopian Government, as part of its obligation to protect the rights of all persons under its jurisdiction.<sup>232</sup> It has an obligation to investigate alleged violations of international human rights law and international humanitarian law and to ensure that the perpetrators are held accountable.<sup>233</sup> This entails the implementation of a range of accountability mechanisms, including criminal proceedings against the alleged perpetrators of serious violations of international law, commissions of inquiry, disciplinary measures, and administrative investigations to identify and address systemic issues. The use of complementary measures can contribute to efforts to ensure that all alleged violations are appropriately addressed; that future violations are prevented; and that victims' rights are respected.<sup>234</sup>

357. Under international human rights law, States have the duty to ensure that individuals have accessible and effective remedies, including compensation, for gross violations of international human rights law and serious violations of international humanitarian law.<sup>235</sup> Remedies include the victim's right to: (a) equal and effective access to justice; (b) adequate, effective and prompt reparation for harm suffered; and (c) access to pertinent information concerning violations and reparation mechanisms.<sup>236</sup> Reparations include: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>237</sup> Satisfaction includes a range of measures, *inter alia*: measures aimed at the

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<sup>232</sup> Eritrea has a primary obligation to investigate serious violations of IHL allegedly committed by its armed forces.

<sup>233</sup> ICCPR, art. 2; Human Rights Committee, General Comment No. 31.

<sup>234</sup> See, e.g., Amichai Cohen and Yuval Shany, 'Beyond the grave breaches regime: the duty to investigate alleged violations of international law governing armed conflicts,' (2011) 14 *Yearbook of International Humanitarian Law* 37-84.

<sup>235</sup> ICCPR, art. 2 (3)(a) (b) (c); art. 7 (1) (a) African Charter; ICCPR General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Article 2) para. 15 "**A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant**"; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 200.

<sup>236</sup> *Ibid.*, principle 11.

<sup>237</sup> *Ibid.*, principles 19-23.

cessation of continuing violations; verification of the facts and full and public disclosure of the truth; a public apology; and legal reform.<sup>238</sup> This right to an effective remedy or access to justice is non-derogable and, as such, applies even in times of armed conflict.<sup>239</sup>

358. The duty to provide an effective remedy may in some instances also apply to third States. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment places an obligation on third States to either prosecute or extradite perpetrators that are within their territory or jurisdiction.<sup>240</sup> Under international humanitarian law, States must investigate and if appropriate prosecute perpetrators if war crimes are committed by their nationals or armed forces, or on their territory.<sup>241</sup>

359. Serious violations of international humanitarian law, including of Common article 3 to the Geneva Conventions and Additional Protocol II to the Geneva Conventions, constitute war crimes.<sup>242</sup> States are enjoined to investigate war crimes alleged to have been committed by their nationals or armed forces, or on their territory and, if appropriate, prosecute the perpetrators.<sup>243</sup> Under the principle of command or superior responsibility, commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they failed to “take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible.”<sup>244</sup> States also have a duty to suppress other violations of international humanitarian law not amounting to war crimes and can do so through the administrative investigations.<sup>245</sup>

360. In relation to the duty to investigate, human rights treaties, guidelines and principles provide standards against which investigations are assessed to determine compliance with the law. Thus, investigations are weighed against the following criteria: independence; impartiality; thoroughness; effectiveness; and promptness.<sup>246</sup> Transparency is also an increasingly important aspect.<sup>247</sup>

361. While international humanitarian law does not provide the same level of detail concerning investigations, these human rights standards apply at all times, including during situations of armed conflict.<sup>248</sup> During active hostilities, there are circumstances that may limit the ability of a State to fully meet these standards. Such circumstances should be assessed on a case-by-case basis and may affect the manner in which an

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<sup>238</sup> Ibid, principle 22.

<sup>239</sup> ICCPR General Comment No. 29 States of Emergency (Article 4) para. 14.

<sup>240</sup> Art. 5, CAT.

<sup>241</sup> Rule 158 ICRC Study on Customary International Humanitarian Law.

<sup>242</sup> ICRC, *Customary International Humanitarian Law*, Rule 156.

<sup>243</sup> ICRC, *Customary International Humanitarian Law*, Rule 158.

<sup>244</sup> ICRC, *Customary International Humanitarian Law*, Rule 153.

<sup>245</sup> ICRC and Geneva Academy, *Guidelines on investigating violations of international humanitarian law: Law, policy and good practice*, Guideline 13.

<sup>246</sup> For more details on these criteria, see A/HRC/15/50, paras 20-25, and The Public Commission to Examine the Maritime Incident of 31 May 2010 - Second Report – The Turkel Commission: Israel’s Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law (hereinafter: Turkel Commission), pp.118-134, at <http://www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf>.

<sup>247</sup> A/HRC/15/50, para. 21; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989; Turkel Commission pp. 134-137.

<sup>248</sup> Art. 3 (b), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005; E/CN.4/2006/53, para. 35; Turkel Commission, p.138. See also CCPR/C/ISR/CO/4, para. 6

investigation is carried out, but do not relieve the authorities from their duty to investigate in a meaningful way.<sup>249</sup>

362. Accepted principles of universal jurisdiction are also relevant, granting States an additional jurisdictional basis for prosecuting serious violations of international law beyond the traditional bases of jurisdiction: territoriality principle (based on where the crime occurred); active personality principle (based on the nationality of the perpetrator); passive personality principle (based on the nationality of the victim); and protective principle (based on the protection of national interests or security). Some serious violations are of concern to the international community as a whole, and as such, all States have a legal interest in their protection and may therefore enforce these obligations through their own legal process.<sup>250</sup> Customary international law recognizes the right of States to grant their domestic courts universal jurisdiction over crimes against humanity and war crimes.<sup>251</sup>

363. The Constitution of Ethiopia guarantees the right of access to justice and places a duty on all Federal and State legislative, executive and judicial organs to respect and enforce the human rights contained in the Constitution. The Constitution furthermore states that the criminal liability of persons who commit crimes against humanity may not be barred by a statute of limitation or subject to an amnesty or pardon.<sup>252</sup> Crimes against humanity and war crimes are also criminalized under the Criminal Code of Ethiopia, which makes these crimes applicable to militias and civilians, in addition to the armed forces of the State.<sup>253</sup>

### C. National Mechanisms

#### i. The civilian justice system

364. The Constitution establishes Ethiopia as Federal State with parallel institutions and organs at the State and Federal levels. Consequently, judicial powers are vested in both Federal and State courts, each with their own areas of exclusive jurisdiction and areas of concurrent jurisdiction. With regard to the former and of particular relevance to this investigation, Federal courts are vested with criminal jurisdiction over cases arising under international treaties accepted and ratified by Ethiopia, including “crimes in violation of international law”.<sup>254</sup> Federal courts are composed of the First Instance Court, the High Court and the Supreme Court.

365. The Office of the Federal Attorney General (OAG)<sup>255</sup> is responsible for initiating criminal investigations in cases under the jurisdiction of Federal courts and ensuring their conduct in accordance with established law. In relation to the issues investigated by the JIT, the OAG informed that matters involving alleged mass killings were within its

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<sup>249</sup>E/CN.4/2006/53, para. 36.

<sup>250</sup> Case Concerning The Barcelona Traction, Light And Power Company, Limited (Belgium v Spain) Judgement (1970) para 33 “In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; **they are obligations erga omnes**”

<sup>251</sup>ICRC, *Study on Customary International Humanitarian Law*, Rule 157.

<sup>252</sup> Art. 28 (1) FDRE Constitution

<sup>253</sup> Art. 138 Criminal Code of Ethiopia

<sup>254</sup> Art. 4 (3) Federal Courts Proclamation No. 1234/2021

<sup>255</sup> OAG has now been renamed the Ministry of Justice.

jurisdiction while individual or isolated incidents were within the jurisdiction of the Tigray Regional Justice Bureau (TRJB) and matters defined as military offenses were handled by the military's justice organs.<sup>256</sup>

366. The OAG conducted investigations into incidents of mass killings in Maikadra and Axum. With regard to Maikadra, which was the first investigation carried out by the OAG, the JIT was informed that a total of 202 suspects were identified, charged and were still on trial as of August 2021, when the JIT held meetings with the OAG. Only 30 suspects were in custody while others continued to be tried in absentia.<sup>257</sup> Most of the suspects in custody are local Tigrayan youths who are suspected of being responsible for the deaths of 229 civilians. With regard to Axum, the OAG reported that it found that 124 civilians were killed in total: 6 by the ENDF and 118 by the EDF. According to the OAG, as of August 2021, investigations were yet to be finalized.

367. The judicial system was almost non-functional across Tigray due to targeted looting and destruction of infrastructure, which affected the capacity of the TRJB to conduct effective investigations into violations falling within its jurisdiction. Courts had been looted and set on fire during the conflict, while qualified staff had also fled or had been forcibly displaced. The JIT currently has no information on what measures are being taken by the TRJB to hold perpetrators accountable, as it has been unable to return to Tigray since it was re-taken by Tigray forces on 28 June 2021.

## ii. The military justice system

368. The military justice organs consist of the Military Police, Military Prosecutor, Military Courts and Military Defence Counsel. The Military Courts are composed of the Primary Military Court and the Appellate Military Court. However, the Federal Supreme Court has power of cassation over any final decision of the Appellate Military Court that contains a basic error of law.<sup>258</sup> In addition to cases expressly listed in the Criminal Code of Ethiopia,<sup>259</sup> Military Courts also have jurisdiction over offences committed by civilians,<sup>260</sup> regular police or militias deployed alongside members of the defence forces, and cases involving persons captured in the course of an armed conflict, irrespective of whether they qualify as prisoners of war.<sup>261</sup> If part of the offences an accused is charged with falls under the jurisdiction of a military court and under the jurisdiction of a regular court, all charges are brought before the court having jurisdiction over the offence entailing the highest penalty.<sup>262</sup> In disposing of cases, the military justice system is guided by the Criminal Procedure Code of Ethiopia.<sup>263</sup>

369. All members of the ENDF have an obligation to report the commission of a military offence and any commander, investigator or prosecutor to whom a crime is reported

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<sup>256</sup> FDRE Constitution, arts 80(2) and (4) ; Federal Courts Proclamation No. 1234/2021; Defence Forces Proclamation No. 1100/2019.

<sup>257</sup> The trial of suspects in absentia may violate the right of those being prosecuted for offences related to an armed to be tried in their presence (Footnote. Additional Protocol II, art. 6(2)(e))

<sup>258</sup> Art. 40 Defense Forces Proclamation No. 1100/2019 (Defense Forces Proclamation)

<sup>259</sup> Arts. 284 – 322 Criminal Code of Ethiopia

<sup>260</sup> "Civilians [...] deployed along with members of the defense forces on grounds of general mobilization or the declaration of a state of war." See Article 38 (1) (e) Defense Forces Proclamation.

<sup>261</sup> Art. 38 (1) (e) (h) Defence Forces Proclamation.

<sup>262</sup> As above, Art. 38 (2).

<sup>263</sup> As above, Art. 43 (1).

must within a “reasonable time” take appropriate action.<sup>264</sup> The victim of the crime may also lodge a charge before the Primary Military Court if the Military Prosecutor fails to do so.<sup>265</sup> Where a decision to withdraw an investigation is found to be illegal, the entity or person having made the decision must be held liable.<sup>266</sup>

370. The JIT was informed by the State that 14 ENDF soldiers had been tried and convicted of rape by military courts. The soldiers were sentenced to prison terms of 7 years and above, which would bar them from re-joining the ENDF upon completion of their terms. Any member of the armed forces sentenced to imprisonment exceeding two years is discharged from military service and will not be allowed to re-join even after completion of sentence. As of August 2021, trial is ongoing for 20 cases in which the accused were charged with committing unlawful and extra-judicial killings.

### **iii. The Reconciliation Commission**

371. The Reconciliation Commission was established in December 2018 with the overall objective of maintaining peace, justice, national unity and consensus among Ethiopian peoples.<sup>267</sup> It was established in recognition of the importance of identifying the root causes of repeated gross violations of human rights, providing victims with a forum to be heard and an opportunity for perpetrators to “confess” their actions, so as to foster reconciliation and achieve lasting peace.<sup>268</sup> The Reconciliation Commission which was previously accountable to the Prime Minister, is now accountable to the Ministry of Peace.<sup>269</sup> In February 2019, the HoPR appointed 41 Commissioners for an initial period of 3 years.

372. However, for the Reconciliation Commission to be a genuine mechanism for ensuring accountability, the process of its establishment as well as its enabling law must be reconsidered. As an initial matter, there was no public consultation in the preparation of the establishment proclamation, nor in the nomination and appointment of its members. The nomination of the members of the Commission by the Prime Minister and accountability of the Commission to the former also raise questions of independence. Moreover, the Commission’s material competence (what specific types of violations come within its purview) and temporal competence (whether it only deals with past violations or ongoing and escalating issues) are unclear; its legal powers, such as the granting reparations or binding nature of decisions, are not addressed; criteria for the selection of its Commissioners, which significantly affects its independence and impartiality is also not clear; and its relationship to other institutions with overlapping mandates is not defined. The mandate of the Commission is also too broad for it to be effective, and its composition is also worth reconsidering. These are serious drawbacks that need to be remedied for the Commission to have legitimacy and broad-based support from the public and stakeholders.

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<sup>264</sup> As above, Art. 30 (3).

<sup>265</sup> As above, Art. 30 (2).

<sup>266</sup> As above, Art. 32 (3).

<sup>267</sup> Art. 5 Reconciliation Commission Establishment Proclamation No.1102 /2018 (Reconciliation Commission Proclamation).

<sup>268</sup> Preamble, para. 3 Reconciliation Commission Proclamation.

<sup>269</sup> The new law on restructuring of federal executive organs has been passed by parliament but not yet published.

#### **D. International mechanisms**

373. The International Criminal Court (ICC) exercises jurisdiction over the crimes of genocide, crimes against humanity, war crimes and crime of aggression, if the crimes were committed in the territory of a State Party to the Rome Statute; or by a national of such a State party; or when a non-State party accepts the jurisdiction of the ICC; or when any of the crimes are referred to the ICC by the UN Security Council (UNSC). Ethiopia and Eritrea are not State parties to the Rome Statute, and as such, currently only a referral from the UNSC or a voluntary declaration accepting jurisdiction would bring any of the violations investigated by the JIT within the purview of the ICC. Such referral would be an appropriate tool of accountability if neither Ethiopia nor Eritrea are able and willing to hold relevant individuals criminally responsible for the most serious crimes, according to international standards.

374. Building on the work of the JIT, an international, independent investigative mechanism can also be established to collect evidence on the most serious violations committed during the conflict and prepare files for criminal prosecution by either a national or international tribunal. The investigative mechanism can build on the work of the JIT. Such initiatives have been undertaken in various configurations in Syria, Iraq and Myanmar.<sup>270</sup> To conduct trials, a specialized tribunal, including the model of hybrid court involving national and international actors can also be established. Instances of such arrangements have been the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, each, established through an agreement between the respective government of Sierra Leone and the United Nations, as well as the Extraordinary African Chambers, established through an agreement between the African Union and Senegal.<sup>271</sup> The JIT also notes the model of a Hybrid Court for South Sudan as per the 2018 Revitalized Peace Agreement, also envisaged in conjunction with the African Union.<sup>272</sup>

#### **E. Conclusion**

375. International mechanisms are complementary to and do not replace national mechanisms. In this regard, the JIT was told that national institutions such as the Office of the Federal Attorney General and military justice organs have initiated processes to hold perpetrators accountable, with some perpetrators already having been convicted and sentenced. The JIT has no information regarding any measures taken by Eritrea to hold any members of the Eritrean Defence Forces accountable for violations.

376. The JIT is however concerned that investigations conducted by Ethiopian national institutions do not match the scope and breadth of the violations it has identified through its investigations nor that those investigations which are being undertaken sufficiently comply with international standards, including with respect to transparency. While

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<sup>270</sup> The International, Impartial and Independent Mechanism, General Assembly resolution 71/248, A/RES/71/248 (adopted 21 December 2016); Independent Investigative Mechanism for Myanmar, Human Rights Council resolution 39/2, A/HRC/39/2 (adopted 27 September 2018).

<sup>271</sup> Statute Of The Special Court For Sierra Leone, established by an agreement between The United Nations and The Government Of Sierra Leone pursuant to Security Council Resolution 1315 (2000) of 14 August 2000; Statute of the Extraordinary African Chambers within the courts of Senegal created to prosecute international crimes committed in Chad between 7 June 1982 and 1 December 1990.

<sup>272</sup> Chapter V, Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (12 September 2018).

recognizing that hostilities are ongoing, it is imperative that national institutions efficiently work towards holding perpetrators accountable, as justice delayed also amounts to justice denied. The JIT is also concerned that the national institutions may not be sufficiently addressing issues of command responsibility for the violations they are investigating. While holding direct perpetrators – often foot soldiers – responsible is important, to deal with impunity meaningfully, it is equally important to address the role of persons exercising command responsibility. The acts and omissions of commanders which may have enabled or failed to prevent the violations committed by foot soldiers need to be carefully assessed.

377. Finally, the JIT emphasises that accountability should not be understood narrowly, and that criminal responsibility is only one of a broader set of actions which are required. Administrative investigations on violations of international law that do not amount to international crimes is also essential to prevent recurrence and are especially necessary to identify potential systemic issues. The JIT also repeats the calls of by victims and survivors of violations it has spoken to during its investigation, who wish for the restoration of their means of livelihood, reparations for their destroyed homes, to know the truth about what happened to their loved ones and for all sides to acknowledge their role in the suffering they have inflicted on them and also for the perpetrators to be brought to justice.

## **VIII. Recommendations**

- A.** The JIT established that due to the armed conflict in the Tigray region, there have been widespread violations and abuses of international human rights, humanitarian law, and refugee law. Accordingly, **all parties to the conflict (ENDF, EDF, TSF, ASF, militias, and organised armed groups)** should:
1. Immediately end all violations and abuses of international human rights law, international humanitarian law, and refugee law;
  2. Take urgent, effective and broadly publicized steps to ensure that such violations will not be tolerated and remove suspected individuals from active duty pending investigation;
  3. Agree, without preconditions, to immediately end hostilities, enabling space to be opened towards achieving a sustainable and inclusive peace;
  4. End any measure that could exacerbate the already-acute humanitarian crisis, in particular, cease attacks against objects indispensable to the survival of the population including crops, livestock, and medicines;
  5. End all forms of sexual violence against women and girls, men and boys, including targeting of civilians on the basis of their gender or ethnicity;
  6. Issue clear, public, and unequivocal instructions to all armed forces and groups, that all forms of sexual and gender-based violence (SGBV) are prohibited and punishable on the basis of direct and command responsibility, including superiors who ordered or failed to prevent or stop violations;
  7. End all acts of torture and ill-treatment of civilians and captured combatants/fighters and ensure that such acts are punished according to the gravity of the offence, and ensure that basic conditions of detention including adequate food and water, sanitation, and medical services are provided in line with international and regional standards;
  8. Respect the civilian nature of refugee and IDP camps/sites, and refrain from targeting or attacking Eritrean refugees and respect their rights guaranteed under international law;



9. Establish the necessary conditions for the civilian population to access food, healthcare, water, sanitation, and hygiene, in particular for children, women and girls, IDPs, refugees, older persons, and persons with disabilities;
10. Respect the rights of children, older persons, and person with disabilities, as recognised under international law;
11. Cease acts of looting and appropriation of property within the armed forces and affiliated groups; refrain from using civilian infrastructure, and ensure that armed forces and groups have knowledge of prohibited and permissible appropriation of property; and
12. Cooperate fully and promptly with international, regional and national human rights mechanisms to ensure compliance with human rights and international humanitarian law in the context of military operations.

**B. The Government of Ethiopia and parties with effective/de facto control of territory should:**

1. End all acts which present challenges to humanitarian assistance, and facilitate unimpeded access to all parts of Tigray and affected parts of Amhara and Afar;
2. Facilitate through the provision of security, transport, and operational facilities, the movement of humanitarian relief to locations in Tigray, Amhara and Afar Regions in line with customary international humanitarian law, particularly by ensuring restrictions are only on a temporary basis and for imperative military necessity;
3. Facilitate resumption of essential services such as electricity, water, transportation, internet, telecommunication, and banking services in Tigray and affected neighboring regions;
4. Facilitate the work of community networks, local women's organisations, civil society, humanitarian institutions, and other actors involved in providing multisectoral services to survivors of SGBV, including by ensuring their safety and access to all affected areas;
5. Forces and groups which have de facto control of Western Tigray (ENDF, ASF, Amhara militia, and Fano) should refrain from taking measures that could cause further displacement of Tigrayans and other civilians from their habitual residence;
6. Facilitate prompt, comprehensive, and effective investigation by independent bodies into reports of unlawful or extra-judicial killings and executions; reports of forced displacement, killings, intimidation, by all parties to the conflict on civilians in Western Tigray; and violations and abuses against Eritrean refugees in and around Hitsats, Shimelba, Mai Ayni and Adi Harush refugee camps, and ensure accountability;
7. Cooperate fully with the UNHCR for safe, voluntary and dignified relocation and resettlement of Eritrean refugees;
8. Respect and protect the right of civilians to freedom of movement and ensure that restrictions are in line with the principles of lawfulness, proportionality, and non-discrimination;
9. Expeditiously issue basic civil documents such as personal identification cards to displaced persons to ensure their rights to freedom of movement and work;
10. Respect and protect the rights to freedom of expression and ensure that journalists can conduct their work without harassment or being subjected to arbitrary detention;
11. Allow regular and unconditional access to independent observers including OHCHR, EHRC, and ICRC to all detention facilities to conduct effective monitoring;
12. Immediately start and facilitate the resumption of schools and immunization programme for children; and

13. Cease all acts of intimidation against OHCHR and EHRC staff during the conduct of monitoring and investigation activities.

**C. The Government of the Federal Democratic Republic of Ethiopia:**

1. Take measures to reach a cessation of hostilities and achieve sustainable and inclusive peace;
2. Ensure prompt, comprehensive and effective investigations by independent and impartial bodies into allegations of violations of international law, international humanitarian law, refugee law, domestic law, and hold perpetrators accountable;
3. For violations and abuses of international human rights and humanitarian law that could amount to war crimes and crimes against humanity:
  - i. Consider the establishment of a specialized judicial structure in line with international standards within the Ethiopian courts to focus specifically on crimes under international law;
  - ii. Consider cooperation with regional and international organisations to ensure accountability for such violations, including possible referral to existing mechanisms for effective accountability for violations, as appropriate.
4. Facilitate a victim-centred reparations scheme that includes restitution, compensation, rehabilitation, satisfaction - including the right to the truth, and guarantees of non-repetition; and adopt a comprehensive policy and measures on the right to reparation for victims of serious human rights and humanitarian law violations;
5. Ensure comprehensive and effective documentation, and prompt investigations by independent and impartial bodies into all allegations of SGBV committed in the Tigray conflict, ensuring a survivor-centred, dignified, and informed approach; and ensure responsible media reporting guided by the Guidelines on Reporting on Sexual Violence in Conflict;<sup>273</sup>
6. Provide free, timely, and adequate services (including medical, psychosocial, and legal) to all survivors of SGBV (women, girls, men, and boys) equitably including to IDPs in Tigray and affected neighbouring regions, in full respect of their confidentiality and do no harm principles, including protection from reprisals and from the impact of stigma;
7. Ensure that the country embarks on a human right compliant, holistic, and victim-centered transitional justice mechanism for crimes committed during the Tigray conflict including accountability for past crimes;
8. Strengthen the policy and legislative framework for the protection of human rights including legal and security reforms in line with international standards;
9. Carry out, with support from relevant actors, a full gender analysis of the conflict to determine the full impact of the conflict on women and girls;
10. Release all persons arrested or detained arbitrarily, and review the legality of their detention by a competent judicial authority; and respect the rights of detainees, including their right to communicate with family and legal representatives, the right to a fair trial and procedural guarantees;
11. Conduct independent investigations into reported cases of enforced disappearances, search for disappeared persons, and hold perpetrators accountable;

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<sup>273</sup> Guidelines on Reporting on Sexual Violence in Conflict, [https://www.coveringcrsv.org/wp-content/uploads/2021/05/CRSV\\_Downloadable\\_UK\\_FULL.pdf](https://www.coveringcrsv.org/wp-content/uploads/2021/05/CRSV_Downloadable_UK_FULL.pdf).

12. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance; and the Optional Protocol to the Convention against Torture;
13. Facilitate durable solutions for IDPs, including by creating an enabling environment for the safe, secure and voluntary return of the IDPs, and consult all relevant actors to find a sustainable solution to the Welkait- Tsegede protracted land dispute;
14. Cease the practice of preventing travels without sufficient justification, and undertake investigations into allegations of ethnic profiling of ethnic Tigrayans and hold those responsible accountable;
15. Conduct a comprehensive assessment of damages due to looting and destruction in conflict areas, and take measures to ensure the restitution of the belongings looted and compensation for victims;
16. Ensure, the rapid rehabilitation of looted and destroyed infrastructure to ensure basic services, including schools, health centers and judicial bodies, in collaboration with partners;
17. Provide humanitarian support to all affected populations in an equitable manner including persons displaced from other parts of Tigray to Western Tigray and Gondar area;
18. Support coping mechanisms to ensure sustainable availability of essential supplies by facilitating local production, extension services, and restoration of security to limit long term dependence on humanitarian assistance; and
19. Consider instituting a programme of disarmament, demobilization and reintegration of youth recruited into armed forces and groups.

**D. The Government of the State of Eritrea:**

1. Desist from all acts of violence against civilians in violation of applicable international human rights law, international humanitarian law, and refugee law;
2. Take steps to ensure that such violations will not be tolerated and remove suspected individuals from active duty pending investigation;
3. Ensure prompt, thorough, and effective investigation into alleged violations by independent and impartial bodies and hold perpetrators accountable; and
4. Release Eritrean refugees detained in Eritrea, ensure their safety and security, and their right to seek asylum in accordance with international law.

**E. The international community, including the UN and Ethiopia's bilateral and multilateral partners:**

1. Promote and support all efforts to reach a cessation of hostilities to achieve sustainable and inclusive peace, support the Government of Ethiopia in setting up and/or strengthening a transitional justice mechanism, based on regional and international standards;
2. Support dialogue to bring conflicting parties to agree on a programme of demobilisation, disarmament, and reintegration of all armed groups in Tigray and neighbouring regions in line with regional and international standards;
3. Support the Government of Ethiopia in strengthening the justice and accountability framework for serious violations and crimes, including investigations and prosecutions;
4. Support the Government of Ethiopia in the reconstruction and rehabilitation efforts in Tigray and affected neighbouring regions, through funding and technical assistance;

5. Complement state efforts to address and redress SGBV such as the equitable provision of multi-sectoral SGBV services for survivors including IDPs in Tigray and affected neighbouring regions;
6. Enhance assistance to Eritrean refugees in Tigray and other parts of Ethiopia, and support measures for a secure and voluntary relocation or resettlement to a third country;
7. Support efforts to address the needs of children, older persons and persons with disabilities;
8. Mobilize and increase humanitarian assistance to Tigray, Amhara and Afar regions to ensure equitable and predictable humanitarian assistance for the population in need;
9. Initiate a review of existing technical cooperation arrangements in human rights and elaborate a new agenda with Ethiopia in this area, ensuring resources are earmarked for such process and support and
10. Ensure that the above measures of support, where applicable, are availed to the Government of Ethiopia and equally availed to the Eritrean Government.

**F. All parties to the conflict and the international community:**

1. Support the EHRC to strengthen its human rights monitoring work in Tigray and affected neighbouring regions; follow up on implementation of the recommendations of the JIT report; and support transitional justice processes.

# Annex I – Map of Tigray Region



## ETHIOPIA Administrative map of Tigray Region

As of 05 January 2021



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.  
 Creation date: 01 July, 2021 | Map Doc.: 21\_ADM3\_ETH1\_Tigray\_D5012021\_A3L | Sources: CSA, UNCS, Field Survey | Feedback: ocha-eth@un.org | www.unocha.org | www.reliefweb.int

## Annex II – Actor Mapping

**Amhara Militia:** is comprised of armed civilians, mostly farmers, with an obligation to do police work at peace time and be mobilized for war when necessary. They are not paid but receive some training and uniforms. The militias are part of the administration and security structure of the regional state and there are militia offices at each administrative level to coordinate militias. Members of the militia are sometimes provided arms by the regional government or they use their own personal weapons.

**Amhara Police:** is the regular police force of the Amhara regional state responsible for law enforcement, crime prevention and investigation.

**Amhara Special Forces (ASF):** are trained special forces with combat capability initially with a mandate of riot control and counter insurgency. They are recruited by the Amhara regional government and have their own commander accountable to the regional president.

**Eritrean Defense Forces (EDF):** are the defense forces of the state of Eritrea composed of the ground force, navy and air force. The president of Eritrea is the commander in chief.

**Ethiopian Federal Police:** is the principal police force of the federal government with a mandate of law enforcement, crime prevention and investigation. It also provides security to federal institutions and installations all over the country.

**Ethiopian National Defense Force (ENDF):** is the military force of the Federal Democratic Republic of Ethiopia composed of its ground and air force. The Ministry of Defense provides the civilian oversight and the Prime Minister is its commander in chief.

**Fano:** is an Amhara group primarily comprised of young men some of whom are armed and affiliated with the Amhara security forces. Some Fano members are organized under the formal militia structure, but not all.

**Samri:** are a Tigrayan youth group in Maikadra who are referred by other residents of the town as Samri because most of them are originally from Samre town in Tigray.

**Tigray Forces:** used in this report to refer to Tigray Special Forces or Tigray militia.

**Tigray Militia:** is comprised of armed civilians, mostly farmers, with an obligation to do police work at peace time and be mobilized for war when necessary. They are not paid but receive some training and uniforms. The militias are part of the administration and security structure of the regional state and there are militia offices at each administrative level to coordinate militias. Members of the militia are sometimes provided arms by the regional government or they use their own personal weapons.

**Tigray Police:** is the regular police force of the Tigray regional state responsible for law enforcement, crime prevention and investigation.

**Tigray Special Forces (TSF):** are trained special forces with combat capability initially with a mandate of riot control. They are recruited by the regional government and have their own commander accountable to the regional president.

**Tigray People's Liberation Front (TPLF):** Is the ruling political party in Tigray regional state. It was a founding member of the Ethiopian People's Revolutionary Democratic Front (EPRDF).

## Annex III - Terms of Reference

<b>Ethiopian Human Rights Commission - Office of the United Nations High Commissioner for Human Rights</b>	
<b>JOINT INVESTIGATION TERMS OF REFERENCE</b>	

Investigation Name:	Joint Ethiopian Human Rights Commission (EHRC) - Office of the UN High Commissioner for Human Rights (OHCHR) Mission to investigate alleged violations of human rights and international humanitarian law committed by all parties to the conflict in the Tigray Region of Ethiopia.
Timeframe of investigation:	Initially 3 months (with a possibility of extension for up to 4- 5 months upon agreement between EHRC and OHCHR)
Geographic coverage: <sup>1</sup>	<p><b>Western Tigray</b></p> <ul style="list-style-type: none"> <li>• Humera</li> <li>• Mai Kadra</li> <li>• Dansha</li> </ul> <p><b>Northwestern Tigray</b></p> <ul style="list-style-type: none"> <li>• Shire</li> <li>• Sheraro</li> </ul> <p><b>Eastern Tigray</b></p> <ul style="list-style-type: none"> <li>• Adigrat</li> <li>• Wukro</li> <li>• Dengelat</li> <li>• Atsbi</li> <li>• Edaga Hamus</li> <li>• Hawzen</li> <li>• Zalanbesa</li> <li>• Irob</li> </ul> <p><b>Central Tigray</b></p> <ul style="list-style-type: none"> <li>• Axum</li> <li>• Adwa</li> <li>• Abi Adi (Tembien)</li> <li>• Adet</li> </ul>

<sup>1</sup> Listed locations are indicative, and may be revised based on the findings of the desk-review/pre-investigation research. There is also need to be flexible on field visits to these locations, as hostilities are ongoing and travel plans may need to be adjusted.

### Methodology, Education and Training Section



INTERNAL – FOR USE BY OHCHR, HR COMPONENT OF POLITICAL/PEACE MISSION OR COI/FFM



Version: June 2020

JOINT INVESTIGATION TERMS OF REFERENCE

	<p><b>Southern Tigray</b></p> <ul style="list-style-type: none"><li>• Alamata</li><li>• Samre</li><li>• Gidjet</li><li>• Bora</li><li>• Bissober</li></ul> <p><b>Mekelle</b></p> <p><b>Bahir Dar and Gondar</b> (rocket attacks launched from inside Tigray).</p> <p><b>Sudan:</b> Refugees in Sudan and the internally Displaced Persons (IDPs) in camps in other parts of Ethiopia could be interviewed as part of the investigation.</p>
Thematic areas: <sup>2</sup>	<p><b>Violations occurring in the conduct of hostilities, including:</b></p> <ul style="list-style-type: none"><li>• Indiscriminate shelling</li><li>• Deliberate targeting of civilians</li><li>• Widespread looting and destruction of property</li><li>• use of or attacks against schools &amp; churches</li><li>• Attacks on religious institutions</li><li>• Attacks on hospitals</li><li>• Use of ambulances</li><li>• Lack of precautions to protect civilians from the effects of attacks.</li><li>• Attacks on objects indispensable to the survival of the civilian population</li><li>• Denial of access to safe haven/blockade of safe passage to fleeing communities .</li></ul> <p><b>Violations linked to the treatment of persons under the control of a party to the conflict, including:</b></p> <ul style="list-style-type: none"><li>• right to life: mass killings and other violations of the right to life, including extrajudicial, summary and arbitrary executions</li></ul>

<sup>2</sup> List of thematic areas is indicative, and may be revised based on the findings of the desk-review/pre-investigation research.

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JOINT INVESTIGATION TERMS OF REFERENCE

- Treatment of persons deprived of liberty/ attacks against persons Hors de Combat
- right to physical integrity; torture; cruel, inhuman and degrading treatment or punishment
- Enforced disappearances
- Arbitrary detention (formal and informal places of detention)
- Sexual and gender based violence
- Grave violations committed against children
- Violations suffered by vulnerable persons/groups, such as older persons and persons with disability

**Limitations on rights and freedoms:**

- Violations in the context of implementation of curfews
- right to freedom of opinion and expression: attacks on journalists
- Discrimination against Tigrayans and other ethnic groups based on their ethnic identity
- right to freedom of movement
- Forced displacement and/or removal of population based on ethnic grounds

**Humanitarian access and ESCR**

- ESCR: access to basic services (water, electricity, hospitals, banks, phone networks), right to an adequate standard of living (including housing, land and property rights), right to food
- Denial of/restrictions on humanitarian access
- Military use of schools

**International Refugee Law violations**

- treatment of refugees
  - Refoulement



**JOINT INVESTIGATION TERMS OF REFERENCE**

Investigation team:	Two Co-Team leaders 1 from EHRC and 1 from OHCHR. (2)	To be determined
	12 Investigator/s (ie EHRC-6 and OHCHR-6), including the above-mentioned Team Leaders  6 reserve team of investigators (i.e. 3 from EHRC and 3 from OHCHR)	To be determined taking into account gender considerations.
	9 Specialist/s 1 Forensic Expert, 1 Military Expert, 2 Gender & Child Rights Advisors (1 from EHRC and 1 from OHCHR), 2 in-house Media Advisors (1 from EHRC and 1 from OHCHR), 1 Security Advisor, 2 Legal Advisors (1 from EHRC and 1 from OHCHR)	To be determined

**INTRODUCTION**

This investigation is a result of a dialogue between the Ethiopian Human Rights Commission (EHRC) and the Office of the High Commissioner for Human Rights (OHCHR) leading to an official request by the EHRC dated 10 March 2021 for a joint investigation into human rights violations and abuses committed in the context of the Tigray crisis, which OHCHR accepted in its letter dated 12 March 2021. The Joint Investigation also falls within the mandates of both EHRC and OHCHR and fosters the partnership between the two Institutions.

**JOINT INVESTIGATION TERMS OF REFERENCE**

EHRC is an independent national human rights institution established under Article 55(14) of the 1995 Constitution of the Federal Democratic Republic of Ethiopia and Proclamation No. 210/2000 (as amended by Proclamation No. 1224/2020) – Ethiopian Human Rights Commission Establishment Proclamation. EHRC is mandated to promote, ensure respect of, and protect human rights in Ethiopia, including by educating the public on human rights; ensuring that human rights are protected, respected, and fully enforced; and ensuring that the necessary measures are taken where human rights are found to be violated.

The OHCHR Eastern Africa Regional Office's (EARO) mandate is derived from the global mandate of the Office of High Commissioner for Human Rights as provided under the General Assembly resolution 48/141 of 20 December 1993 as well as the Host Country Agreement (HCA) signed on 25 April 2018 between the Government of the Federal Democratic Republic of Ethiopia (FDRE) and OHCHR. In the HCA, both parties agreed that the regional office shall implement the mandate of OHCHR as set out under the General Assembly resolution 48/141 of 20 December 1993.

As provided in the 2015 Guidance and Practice document for Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law of the OHCHR, the principles and standards of *do no harm*, *independence*, *impartiality*, *transparency*, *objectivity*, *confidentiality*, *credibility*, *integrity*, *professionalism*, and *consistency* are the guiding principles for this joint investigation, including the preparatory work, all processes, and outcome products.<sup>3</sup>

## **BACKGROUND**

The sudden attack by the Tigrayan Forces on the Federal Government's Northern Command Base located in Tigray on 3rd November 2020 triggered the conflict in Tigray. In response to the attack, the Ethiopian Prime Minister announced a military operation against Tigray regional forces and the Tigray Peoples Liberation Front (TPLF) on 4 November 2020. The events of 3rd November were preceded by months of policy and political disagreements between the Federal Government and the Tigray Regional Government, including a unilateral decision by Tigrayan authorities to organize regional elections. The conflict has reportedly led to the deaths and injuries of thousands of people who were killed by parties to the conflict. Tens of thousands were displaced to Sudan and neighbouring regions, including women, children, and the elderly. Civilians in the Region lacked access to basic services such as water, electricity, healthcare, telecommunications, and banking. They also lacked food and other indispensable items and services to lead a dignified life.

There have been reports of ethnic profiling of people of Tigrayan ethnicity and discrimination on ethnic grounds including of non-Tigrayans such as the Amharas and Wolkayt, some of which has led to the mass killing of

<sup>3</sup> See "Guidance and Practice document for Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law" (OHCHR) 2015, pp. 33 – 35, available at [https://www.ohchr.org/Documents/Publications/CoI\\_Guidance\\_and\\_Practice.pdf](https://www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf).



civilians. The reported breakdown of the regional state security and justice system (police and courts) has meant that the widespread looting and increased sexual and gender-based violence has continued with impunity. Multiple credible sources reveal that there are reasonable grounds to indicate the commission of widespread and serious violations of international human rights law (IHRL), international humanitarian law (IHL) and international refugees law (IRL) committed against Tigrayans, Amharas, Wolkayts, Eritrean refugees, and other minorities in the Tigray region by different parties to the conflict, including military forces and militias.

The allegations of violations have attracted national, regional, and international attention, and various human rights organizations including Human Rights Watch and Amnesty International have released reports documenting the grave violations of human rights and international humanitarian law and called for an international independent investigation. In November 2020, the Ethiopian Human Rights Commission (EHRC) released its preliminary report on the situation in Mai kadra, in January 2021 it released a report on the situation in Western Tigray, in February 2021 it released a report on the overall situation in Tigray, and finally in March 2021 it released its preliminary finding on the situation in Axum. In January 2021, the Office of the High Commissioner for Human Rights (OHCHR) released its preliminary report on the human rights situation and presented its findings to the Federal Democratic Republic of Ethiopia. OHCHR has repeatedly called for an independent investigation into all human rights violations that occurred in Tigray, offering support to the Government. The Government opted for a national-led investigation as opposed to an international investigation.. The OHCHR has been in discussion with the EHRC on how to respond to the human rights situation in the context of the conflict in Tigray.

The Government of the Federal Democratic Republic of Ethiopia has accepted the terms of the Joint Investigation, by agreeing to allow unfettered access to the investigation team to all the identified locations where the investigation will be undertaken. It is expected to provide security and cooperate with the investigation team during the entire process.

## **OBJECTIVES AND EXPECTED RESULTS**

*Explain what will be investigated and the main output/s of the investigation (e.g. investigation of specific events, specific violations, the conduct of some authorities or armed groups, identification of institutional responsibilities, investigation of violations against some ethnic groups). Examples of outputs: public report, report to the authorities, a mapping of sites where violations occurred, confidential list of perpetrators.*

The overall objective is to conduct a comprehensive investigation into allegations of human rights and international humanitarian law violations committed by all parties in the context of the conflict in Tigray.

The specific objectives of the Joint Investigation include to:

1. Provide a faithful account of the overall human rights and humanitarian situation in Tigray, including its gender dimension and impact on women and men, girls and boys.
2. Assist in furthering the accountability process where violations are found and advocating for effective remedies for victims;
3. Provide clear and actionable and gender sensitive recommendations to relevant actors to address human rights and humanitarian concerns; and
4. Identify atrocity crimes committed in the context of the conflict and provide guidance on the necessary measures to provide redress for victims, and prevent recurrence.

Guided by the internationally accepted principles and standards of investigations into IHRL and IHL,<sup>4</sup> the EHRC and OHCHR joint investigation team will conduct a comprehensive investigation that will cover all affected areas of the conflict and will primarily focus/look, among other issues, into; (a) The most reported and the most serious violations of international human rights and international humanitarian law committed by all parties to the context of the conflict including; (b) specific events such as allegations of indiscriminate shelling in specific locations believed to have resulted in to death of large number of civilians; (c) allegations of massacre of civilians in specific locations; (d) Forced displacement and the fate of Eritrean Refugees who were living in two (of the four) camps close to the Eritrean border;(e) The perpetrators of the violations to ensure some level of attribution of violations committed.

The expected outcome of the investigation is a joint report with agreed findings, conclusions and recommendations. In the unlikely event that both Institutions do not arrive or reach the same conclusions or recommendations, each Institution reserves the right to an alternative means of issuing its conclusions and recommendations concerning issues on which agreement has not been reached.

## **EVENT OR EVENTS TO BE INVESTIGATED**

*State more details on the event or events to be investigated, when applicable.*

The investigation will look into some of the most emblematic specific incidents and violations arising from specific occurrences documented by different organisations and various actors including but not limited to:

- Allegations of indiscriminate shelling in Mekelle, Humera and Shire in Tigray region in November 2020 leading to deaths of civilians and the destruction of property;
- Alleged launch of rockets from inside Tigray to Bahir Dar and Gondar, allegedly resulting in destruction of property, infrastructure, and injuries to civilians;

<sup>4</sup> As above.

**JOINT INVESTIGATION TERMS OF REFERENCE**

- Allegation that on 28-29 November 2020, Eritrean troops operating in the Ethiopian city of Axum killed hundreds of people;
- Allegations of sexual violence cases including conflict related sexual violence.
- Allegations of discrimination against Tigrayans based on their ethnicity and the intersections with their gender since the onset of the conflict including the information that arrest warrants were reportedly issued against hundreds of military personnel and civilians suspected of being involved with the TPLF, but ordinary Tigrayans were also reportedly targeted, suspended from their jobs, arrested, subject to house raids and harassment and, in the early weeks of the conflict, prevented from leaving the country;
- The whereabouts of Eritrean refugees who were living in two (of the four) camps close to the Eritrean border remains unknown amid reports that Eritrean military had taken over the camps are destroyed and serious violations committed against refugees. An unknown number were allegedly refouled to Eritrea. Satellite photographs of the camps in January indicated that camp structures had been destroyed and the camps were empty. Six humanitarian staff working in those camps were killed in circumstances that remain unclear;
- The alleged massacre of hundreds of civilians between 9–10 November 2020 in the town of Mai Kadra in the Tigray Region of north-western Ethiopia;
- Alleged mass killings in Dengelat and Wukro;
- Forced relocation of ethnic Tigrayans from West Tigray to Northwestern zone of Tigray.

**POTENTIAL VIOLATIONS**

*Outline potential violations of human rights and international humanitarian law that the investigation seeks to document.*

1. Allegations of violations of international humanitarian law
  - Attacks against civilian objects: Attacks/airstrikes against civilian (non-military) objects, including health centres, businesses, educational structures and residential areas (indiscriminate attacks)
  - Pillage and destruction of property by the parties to the conflict
  - Treatment of detainees/Attacks against Persons Hors de Combat
  - “wilful reduction to starvation” of the civilian population, in time of war, armed conflict or occupation (aid blockades)
  - Denial of humanitarian access
2. Deliberate targeting of civilians/ violations of the right to life by parties to the conflict:
  - Mass killings of civilians not directly participating in hostilities
  - Extra-Judicial , summary or arbitrary executions, Enforced disappearances



**JOINT INVESTIGATION TERMS OF REFERENCE**

3. Sexual and Gender based Violence including conflict related sexual violence
4. Violation of the right to freedom of movement
5. Forceful displacement of the Tigrayan population
6. Torture; cruel, inhuman and degrading treatment or punishment
7. Displacement of civilians and associated human rights concerns, including access to humanitarian assistance, housing, land and property rights, Access to humanitarian assistance; housing, land and property
8. Human rights violations against IDPs
9. Discrimination against persons on the basis of ethnicity
10. Violations of the right to freedom of opinion and expression
11. Looting and destruction of property
12. Grave violations committed against children

**ACTORS BEING INVESTIGATED (ALLEGED PERPETRATORS)**

From the available information the following are the key actors and alleged perpetrators:

1. Ethiopian National Defense Forces (ENDF), the Amhara Regional Forces (also referred to as Amhara Special Forces), Amhara militia
2. Eritrean Defense Forces (EDF)
3. Tigray Regional Forces (also referred to as Tigray Special Forces), Tigray militia, and Tigray police.
4. Organized or spontaneous and armed groups of individuals and other parties to the conflict.

**LEGAL FRAMEWORK**

**International Legal Framework**

Ethiopia is party to key human rights and international humanitarian law<sup>5</sup> instruments, including the International Covenant on Civil and Political Rights (ICCPR),<sup>6</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>7</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>8</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>9</sup> Ethiopia has legal obligations as State Party to these instruments.

<sup>5</sup> Joined the Geneva Convention in 1969 and signed up the additional protocols in 1994.

<sup>6</sup> Ethiopia acceded to the ICCPR in 1993.

<sup>7</sup> Ethiopia acceded to the ICESCR in 1993.

<sup>8</sup> Ethiopia acceded to the CAT on 14 March 1994.

<sup>9</sup> Ethiopia acceded to the CEDAW on 10 September 1981.

While all the rights enshrined in these instruments are relevant to the situation in Tigray, the following require particular attention: the right to life; the right to liberty and security of person; the right to be free from enforced disappearances; conflict-related sexual violence; the right to be free from torture and cruel, inhuman or degrading treatment or punishment including sexual violence; the right to freedom of movement, including the right to be free of forced displacement and resettlement; the right to freedom of opinion and expression; the right to access adequate food; and the right to access safe-drinking water and sanitation the right to the highest attainable standard of health; and the right to non-discrimination. International standards on the use of force by law enforcement officials, such as the requirements of legality, necessity and proportionality, are inextricably linked to these and other human rights.

In a non-international armed conflict, each party is bound to apply, as a minimum, the fundamental provisions of **international humanitarian law** contained in Article 3, common to all four Geneva Conventions. Those provisions are developed in and supplemented by Geneva Protocol II of 1977.<sup>10</sup> Applicable rules of customary international humanitarian law also bind the parties to an armed conflict.

Ethiopia is also bound by the 1951 Convention Relating to the Status of Refugees<sup>11</sup>, which accords to lawfully established refugees wide exercise of human rights for a dignified life, including the right to freedom of movement. The Convention notably prohibits expulsion and refoulement.

### **Regional Legal Framework**

The regional human rights instruments to which Ethiopia is party includes the African Charter on Human and Peoples' Rights, 1986 (African Charter)<sup>12</sup> which, inter alia, protects the right to life and integrity of the person; freedom from torture, cruel, inhuman or degrading treatment or punishment; the right to liberty and security of the person; freedom of expression and access to information; freedom of movement and residence; the right to property; duty to protect vulnerable persons or groups such as children, women, older persons, and persons with disability. Most importantly, the rights to peace and security are explicitly guaranteed under Article 23 of the African Charter.

<sup>10</sup> Ethiopia is party to the Four Geneva Conventions (1949)<sup>10</sup> and their Additional Protocols I and II.

<sup>11</sup> Articles 32 and 33 of the Refugee Convention. Ethiopia acceded to the Refugee Convention on 10 November 1969.

<sup>12</sup> Ethiopia ratified the African Charter, 1981 on 15 June 1998.





Ethiopia is also a party to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), the African Charter on the Rights and Welfare of the Child,<sup>13</sup> and the African Charter on Democracy, Elections, and Governance (ACDEG).<sup>14</sup>

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa obliges Ethiopia prohibits refoulement, and to settle them far away from the border of their country of origin.<sup>15</sup>

Similarly, Ethiopia is party to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2012 (Kampala Convention) which prohibits forceful recruitment of persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children.<sup>16</sup>

The African Charter on the Rights and Welfare of the Child and the Maputo Protocol strictly prohibit the involvement of children (below the age of 18) in hostilities or their recruitment into armed forces. The Maputo Protocol contains a provision on the protection of women in armed conflict.

### **National Legal Framework**

The Constitution of the Federal Democratic Republic of Ethiopia, 1995, declares all ratified international agreements to be an integral part of the law of the land and requires the rights and freedoms recognised by the Constitution to be interpreted in line with the principles of the Universal Declaration of Human Rights (UDHR) and international human rights instruments adopted by Ethiopia.<sup>17</sup> The Constitution further protects fundamental rights and freedoms, including the right to life,<sup>18</sup> the prohibition of cruel, inhuman or degrading treatment or punishment,<sup>19</sup> freedom of movement,<sup>20</sup> the rights of women,<sup>21</sup> the rights to property<sup>22</sup>, and some elements of economic, social and cultural rights.<sup>23</sup>

<sup>13</sup> The Maputo Protocol provides that 'States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women' and 'in accordance with the obligations incumbent upon them under international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict'. Article 3(4) of Maputo Protocol calls upon state parties to adopt and implement appropriate measures for the protection of women from all forms of violence, particularly sexual and verbal violence including at conflict situations.

<sup>14</sup> Ethiopia ratified the Maputo Protocol on 18 July 2018, the African Children's Charter on 02 October 2002, and the ACDEG on 05 December 2008.

<sup>15</sup> Ethiopia ratified the OAU Convention on Refugees on 15 October 1973.

<sup>16</sup> The instrument of ratification of the Kampala Convention has not been deposited.

<sup>17</sup> Chapter Three, Article 13(2), Ethiopian Constitution, 1995

<sup>18</sup> Chapter Three, Article 15, Ethiopian Constitution, 1995

<sup>19</sup> Chapter Three, Article 18, Ethiopian Constitution, 1995

<sup>20</sup> Chapter Three, Part Two, Article 32, Ethiopian Constitution, 1995

<sup>21</sup> Chapter Three, Part two, Article 35, Ethiopian Constitution, 1995

<sup>22</sup> Chapter Three, Part Two, Article 40, Ethiopian Constitution, 1995

<sup>23</sup> Chapter Three, Part two, Article 41, Ethiopian Constitution, 1995



**JOINT INVESTIGATION TERMS OF REFERENCE**

Further, the Refugees Proclamation No. 1110/2019, reiterates its international and regional obligations regarding the protection and assistance to refugees. The 2004 Criminal Code of Ethiopia and Ethiopia's Standing Rules of Engagement (2007) also include provisions that prohibit certain acts during armed conflicts.

According to Ethiopia's Standing Rules of Engagement, "places resided by civilians" do not constitute military objectives. Articles 270 and 272 of Ethiopia's Criminal Code prohibits war crimes against the civilian population, and against prisoners and interned persons, respectively.

## **METHODOLOGY AND STANDARD OF PROOF**

*Outline the methodology that will be used to conduct the investigation (e.g. conducting interviews, visiting sites, examining secondary sources), including verification methods and the standard of proof 'reasonable grounds to believe' when relevant.*

A "Methods of Work" document will be developed that will set out the: sources to be used (primary or secondary); assessment & verification process; information gathering process (interviews, site visits, expert opinions etc); ensuring confidentiality and protection of sources and information; ascertaining consent of sources.<sup>24</sup> and, the integration of a gender perspective throughout the investigation. The joint investigation will be guided by the principle of do no harm and apply a victim-centred approach when conducting its work. The Methods of Work document can also include a methodological tools section. The section can comprise a timeline of events relevant to the investigation; actor mapping; government/opposition structure; guidelines and protocols for members, staff, consultants interpreters on protecting information and confidentiality; interviewing guidelines and questionnaires; guidelines on record keeping; standard formats and logs for recording (interviews/statements, information gathered through briefings/meetings, documentation collected during field visits); field mission templates; and glossary of items.<sup>25</sup> Important to include witness protection measures as well: at least a minimum internationally accepted standard of witness protection should be adhered to.

The investigation by EHRC and OHCHR will be conducted jointly including the processes related to preparation, field visits, and preparation of the final product. Focal points identified from each Institution will carry out desk review to prepare the pre-investigation report to narrow down the focus of the investigation and identify priority areas with due consideration to the gender dimension of those areas. The team will also jointly visit the sites where the alleged violations occurred. Using jointly agreed upon OHCHR methodological standards and tools, interviews of victims and witnesses will be carried out and documented. Mapping of actors and witnesses to be

<sup>24</sup> The "Guidance and Practice document for Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law" 2015, p. 69. pp. 63 and 69; and, "Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice", p. 13.

As above, pp. 65 – 66.

<sup>25</sup> As above, pp. 65 – 66.



interviewed including parties to the conflict will be conducted beforehand although this does not prevent continued identification of witnesses after the investigation has begun. Video clips and photographs with forensic examination and analysis of satellite imagery will be analyzed by experts.

Careful verification will be ensured so that information collected satisfies an objective and ordinarily prudent observer that the incident did occur as described with a reasonable degree of certainty. The standard of proof to be applied is the threshold of “reasonable grounds to believe” which will be used to determine that: (a) the violation or crime occurred, and (b) that the individual identified was responsible. Investigations will apply the standard to every element that defines the violation or crime, such that no finding of responsibility may be made if any element fails to cross the threshold. In cases where the threshold is not met, the investigation will recommend further investigation.

Materials will also be collected from, and interviews held with additional sources, including the local and international non-governmental organizations, UN Agencies, Funds and Programme, inter-governmental organization, government institutions and other credible sources. All parties to the conflict as well as civil society organisations shall be called upon to cooperate fully with the joint investigation, to provide any information and documentation relevant to the investigation. Appropriate measures will be taken to ensure confidentiality, privacy, interests and personal circumstances of victims and witnesses, including information concerning their age, sex, gender and health, also taking into account the nature of the violation or crime, where it involves sexual violence, gender-based violence or violence against children or indeed all other violations. The informed consent of interviewees will be sought as appropriate, to use the information for the purposes of the report.

The Chief Commissioner EHRC and OHCHR-EARO Regional Representative will oversee the entire investigation process and will review and approve all findings, conclusions and recommendations of the investigation.

## **TIMELINE**

The timeline of activities will be determined by a separate plan.

## **RESOURCES**

*Staff and roles of each staff member. Other resources required. Specialist expertise required. Interpreters.*

## **SECRETARIAT STAFF**

The joint investigation team will be composed of 39 staff, as detailed below :



**JOINT INVESTIGATION TERMS OF REFERENCE**

- 12 investigators (6 from EHRC and 6 from OHCHR) including two team leaders from each Institution.<sup>26</sup>
- 6 reserve team of investigators (3 from EHRC and 3 from OHCHR)
- 2 Legal Analysts/Advisors (one from EHRC and One from OHCHR)
- 1 Forensic Expert
- 1 Military Expert
- 2 Gender & Child Rights Advisors (1 from EHRC and 1 from OHCHR)
- 8 Interpreters + 1 coordinator of interpreters and quality-assurer
- 1 translator
- 2 Admin staff
- 2 Media Advisors (in-house)
- 1 Security Advisor

**Investigation team leaders (one from EHRC and one from OHCHR)**

Must have proven ability in planning and managing complex investigations, with knowledge of international human rights law and/or international humanitarian law and/or international criminal law.

**Human rights investigators**

The investigators must have proven ability to handle complex human rights fact-finding and investigations. They should have experience in investigations and be fully familiar with human rights investigative methodology.

One Investigator specialized in specific human rights issues, particularly sexual violence and grave violations against children will be part of the investigation team.

**Legal advisor/analyst (one from EHRC and one from OHCHR)**

The Legal adviser/analyst must have excellent knowledge and experience in international law and standards, including international human rights and humanitarian law and international criminal law.

**Forensic expert**

The team will be composed of one forensic expert with experience in examining multiplicity of issues/events including serious incidents of torture and recent killings, location of mass graves (not unearthing mass graves but ay identify what looks like mass graves for example). This will be determined based on the issues the investigation will aim to investigate in detailed.

**Military expert**

Given that the Tigray conflict and the actors involved were highly militarised, a military expert will be needed to help in examining specific military activities and incidents that occasioned civilian casualties including

<sup>26</sup> Additional investigators may be deployed upon agreement between both Institutions on a need basis and in view of the scope of investigation. Advisable for both Institutions to have 3 additional investigators on stand-by (in reserve).

*D*

allegations of indiscriminate shelling or firing, use of weapons and the command and control structures for purposes of determining command responsibility.

### **Gender and Child Advisors (one from EHRC and one from OHCHR)**

To advise the investigations team on the gender and child rights dimensions of human rights violations, and abuses; ensure the integration of a gender perspective throughout the investigation, including on gender-sensitive interviewing and protection of witnesses and the documentation and analysis of the gender-specific impact of all violations; ensure proper documentation of sexual and gender-based violence; and recommend referral pathways for victims and survivors. The Gender and Child Advisors must have experience in gathering and analysing data on gender and children's rights issues in order to provide advice and support to the mission on these areas during the conduct of its work.

### **Media advisors**

Given that the investigation will continue to generate a lot of international media attention as the issue has already done, the joint investigation will need the support of an experienced media experts to establish links with the media in an optimal manner and to advise on specific media communications including how to manage information flow and control the narratives around the joint investigation. A media strategy will be developed by both partners and as urgently as possible. Both institutions will assign one media adviser and the two media advisers will work jointly.

### **Administrative assistant/Logistician**

An administrative assistant familiar with UN processes as well as EHRC processes will be hired to support the logistical work involved in this Joint investigation, supported by existing administrative staff of both organisations.

### **Interpreters<sup>27</sup>**

The team will have eight interpreters to interpret during interviews, who are prepared for field visits, including ones that may involve some level of security risk and entail some hardship. Interpreters will need to be fully briefed on the methodology followed by the mission, on the policies and rules related to the confidentiality of information and the protection of sources, and on how to deal with victims of serious violations. The requirements of impartiality, professionalism, and ethics will be a key criteria for engaging the interpreters. A vetting process for recruitment of interpreters will be agreed upon, interpreters will be required to sign a declaration attesting impartiality and on confidentiality, and a system for vetting the integrity of the material interpreted will be put in place.

### **Coordinator of interpreters and quality-assurer**

<sup>27</sup> See, the "Guidance and Practice document for Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law" (OHCHR) 2015, p. 25.



**JOINT INVESTIGATION TERMS OF REFERENCE**

The Coordinator of interpreters will be responsible for assigning interpreters and overseeing their work. The Coordinator will also be responsible for supervising quality of interpretation. The Coordinator will work closely with the Team Leaders.

**Translator**

Required to translate documents, reports, analysis or public information into the working language.

**Security Considerations**

Investigation of violations of human rights and international humanitarian law in the Tigray conflict presents obvious security risks given the nature and actors in the conflict. The Team will work with UN DSS to address the security risks and will rely on their advice. DSS in liaison with OHCHR security may be requested to second a UN security officer to be part of the investigation team. The EHRC will also provide advice regarding security by the Government. The United Nations Designated Official will also be engaged as necessary to support the mission.

**Security Advisor**

Has primary responsibility for safety and security oversight of all activities through continuous risk assessments and the development of appropriate risk mitigation strategies.

**EQUIPMENT REQUIREMENTS**

The investigation team will require laptops, cameras for photos and video recording, audio recorders, protective equipment (vests and helmets), vehicles, and satellite phones. The details of these equipment will be included in the itemised budget attached to this plan.

**COORDINATION AND COMMUNICATION**

*Outline coordination needs and procedures and reporting and communication requirements internally and externally (e.g. with OHCHR HQ, with the SRGS Office in peace missions, who is the investigation team report to be submitted to/shared with?).*

Given the complexity of the joint investigation mission, a coordination mechanism composed of OHCHR and EHRC technical and logistical team will be constituted to foresee and manage coordination of the joint investigation and the communication between the field and headquarters, with constant communication with the principals of both organisations.

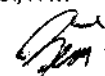
**COST**

**Methodology, Education and Training Section**

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INTERNAL – FOR USE BY OHCHR, HR COMPONENT OF POLITICAL/PEACE MISSION OR COI/FFM



 Version: June 2020

Where necessary, include an estimate of costs of the investigation taking into account travel, interpretation, equipment costs, etc. Also include costs such as satellite imagery, travel of sources, digital expertise if required, and costs associated with the dissemination of findings such as graphic designer, video editor, etc. as relevant.

## PARTNERSHIPS

The joint investigation team will leverage the varied partnerships in the entire process. Within the UN, various Agencies, Funds and Programmes already engaged on Tigray both on humanitarian and recovery initiatives have useful contextual information to the investigation. Others will provide technical expertise to the relevant and specialised areas of interest for the investigation; UN Women regarding expertise on Sexual and Gender Based Violence related violations in the investigation and UNICEF may support through technical advice or guidance on child protection violations, including grave violations committed against children.

UNDP has been supporting assessment and recovery missions while OCHA has been coordinating on various aspects including protection issues working with all actors and both will provide useful information to the mission. The DSS will have a key role in provision of security support and guidance to the mission. All UN senior officials including the RC/HC have expressed support and will be briefed on the process, outcome or any challenges encountered during the mission. International development partners and donors have already provided support and will continue to support the investigation through funding and advocacy. The mission will also engage with domestic partners with the required expertise, as relevant.

## ANNEXES

- Report structure (proposed)
- International legal and methodological standards and instruments
- Budget
- Information collection plan
- When relevant, terms of reference of investigation team members
- Other documents as relevant (e.g. maps of sites to be investigated, cost plan)

Ethiopian Human Rights Commission

Office of the United Nations High  
Commissioner for Human Rights  
East Africa Regional Office



Dr. Daniel Bekele  
Chief Commissioner

23/4/2021



Marcel C. Akpovo  
Regional Representative



23/4/2021

Methodology, Education and Training Section

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## **Annex I**

### **REPORT**

The final report marks the conclusion of the EHRC/OHCHR joint investigation and is the most visible outcome of the work. How the report, including its recommendations, is used is very important. The report can have far-reaching consequences. EHRC and OHCHR have set the deadline for producing the report of the investigation at three months after the conclusion of the investigation. The report will be drafted by a committee established by EHRC and OHCHR, with the initial draft generated by two technical drafters (one from EHRC and one from OHCHR). The committee will decide how the drafting will be coordinated, including by collating the different sections, ensuring consistency in language and tone and harmonization; how any disagreement among members will be resolved; and how the report will be finally reviewed and adopted.

The EHRC and OHCHR drafting team will not seek clearance of the report by the authorities before issuance. However, as per OHCHR public reporting practices, the draft report will be shared with the Ethiopian authorities for their comments before it goes public. Furthermore, the authorities will receive early courtesy copies of the initial findings and conclusions of the joint investigation with a view to incorporate the views of the Government of the Federal Democratic Republic of Ethiopia in the final report as the country concerned.

#### **1. STRUCTURE AND CONTENT**

The report will be structured as follows:

- Title page

- acronyms/glossary
- Table of contents
- Executive summary;

#### **I. Introduction** (mandate/terms of reference, methodology, cooperation/challenges, protection concerns, composition)

- Terms of reference;
- Methodology;
- Overview and explanation of the mandate and how the joint investigation team interpreted it;
- Cooperation (or lack thereof) received from the State or other actors object of the investigation, including any positive measure taken by them to facilitate the work as well as how its work may have been hindered or obstructed owing to non-cooperation or other reasons;



• Protection concerns, if any, with regard to sources, victims, witnesses and other persons cooperating with the investigation, and any action taken by EHRC and OHCHR and the relevant State/authorities to address them;

**II. Context/Background** (historical, political, social and economic);

Analysis of the applicable international and national legal frameworks and relevant legal obligations of the States concerned and any non-State actors;

**III. Findings:** To be presented thematically

- The **facts** as alleged and established; Maps, photographs and graphs are useful and encouraged wherever possible to clarify and reinforce the presentation of facts.
- An **assessment** of the allegations against the information collected; this will be presented thematically
- **Analysis of the facts against the relevant international law**, including conclusions about the existence of violations of international human rights and humanitarian law or criminal law, and attribution of responsibility;

**IV. Conclusions and recommendations.**

A

## **Annexe II**

### **International legal and methodological standards and instruments**

All relevant instruments of international law (human rights law, humanitarian law, criminal law and refugee law) can be found on the OHCHR website

ICRC Customary IHL Database, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> (for IHRL)

### **SELECTED UNITED NATIONS DECLARATIONS, PRINCIPLES AND REPORTS**

- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65 of 24 May 1989)
- Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (General Assembly resolution 46/59 of 9 December 1991)
- Declaration on the Protection of All Persons from Enforced Disappearance (General Assembly resolution 47/133 of 18 December 1992)
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 55/89 of 4 December 2000)
- Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Commission on Human Rights, E/CN.4/2005/102/ Add.1)
- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147 of 16 December 2005)
- Draft Model Rules of fact-finding procedure for United Nations bodies dealing with violations of human rights (1970)
- Report of the Secretary-General on Impunity (E/CN.4/2006/89)
- Report of the Office of the High Commissioner for Human Rights on the right to the truth (A/HRC/12/19)
- Report of the United Nations High Commissioner for Human Rights on the right to the truth (A/HRC/15/33)

### **MANUALS AND GUIDELINES**

- "Guidance and Practice document for Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law" (OHCHR) 2015, [https://www.ohchr.org/Documents/Publications/CoI\\_Guidance\\_and\\_Practice.pdf](https://www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf)

*B*



**JOINT INVESTIGATION TERMS OF REFERENCE**

- Minnesota Protocol: United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ST/CSDHA/12)
- Guidelines for the Conduct of UN Inquiries into Allegations of Massacres (DPI/1710 (OLA draft))
- Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Professional Training Series No. 8/Rev.1 (United Nations publication, Sales No. E.04.XIV .3)
- Training Manual on Human Rights Monitoring, Professional Training Series No. 7 (United Nations publication, Sales No. E.01.XIV .2) and revised Manual on Human Rights Monitoring (United Nations publication
- UNChildrenInArmedConflict/UNICEF, Monitoring and Reporting Mechanism(MRM) on Grave Violations Against Children in situations of Armed Conflict, 2014, [https://childrenandarmedconflict.un.org/wp-content/uploads/2016/04/MRM\\_Guidelines - 5 June 20141.pdf](https://childrenandarmedconflict.un.org/wp-content/uploads/2016/04/MRM_Guidelines_-_5_June_20141.pdf)
- UK Foreign and Commonwealth Office, International Protocol on the Documentation and Investigation of Sexual Violence in Conflict Basic Standards of Best Practice on the Documentation of Sexual Violence as a Crime under International Law, Second Edition 2017, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/598335/International\\_Protocol\\_2017\\_2nd\\_Edition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf)
- UNOHCHR, Integrating a Gender Perspective into Human Rights Investigation, Guidance and Practice, 2018,
- [https://www.ohchr.org/Documents/Publications/IntegratingGenderPerspective\\_EN.pdf](https://www.ohchr.org/Documents/Publications/IntegratingGenderPerspective_EN.pdf)  
Manual on Human Rights Monitoring (link to Table of Contents)



## Annex IV - Correspondences sent to Parties to the Conflict



H.E. Ambassador

Embassy of the State of Eritrea

24 Welega Sefer

Addis Ababa, Ethiopia

Tel.: +251 985 174550

**Subject: - Request for a meeting with the Ethiopian Human Rights Commission-OHCHR Joint Investigation Team**

The Ethiopian Human Rights Commission (EHRC) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) are currently undertaking a Joint Investigation into alleged violations of human rights, humanitarian law, and refugee law committed in the context of the conflict in Tigray, Ethiopia.

As part of the joint investigation, the team of investigators has travelled to and collected information on reported violations in different parts of Tigray and affected neighbouring regions. Based on the information gathered so far, the investigation team has developed the attached detailed list of issues/questions to ease the response of the Government of Eritrea.

The Joint Investigation is guided, among others, by the principles of impartiality and objectivity which requires it to investigate alleged violations by all parties with equal thoroughness and vigor, while ensuring that all sides in the conflict are provided with an opportunity to be heard and to provide information. The Eritrean Defense Forces have been mentioned by many people we spoke to during the investigations. During its investigation, the Joint Team has come across reports that implicate the Eritrean Defense Forces. The State of Eritrea and its defense forces are therefore important sources of information concerning some of the incidents and violations that occurred during the conflict in Tigray.

Therefore, EHRC and OHCHR kindly request a meeting with senior diplomatic officials, military attachés and other relevant representatives to discuss allegations of violation of human rights law, humanitarian law and refugee law, highlighted in the annexed document.

We appreciate the cooperation of your esteemed Embassy towards the successful and timely conclusion of the Joint Investigation and request that the meeting be held on a date of your convenience between 17 and 24 September 2021. The Joint Investigation Team prefers a meeting but should the facilitation of a face-to-face meeting prove difficult, the team would appreciate a written response to the list of issues/ allegations, preferably within the dates indicated above.



We look forward to receiving confirmation of your availability and preferred date and time. For more information, please contact the Joint Investigation Team through the official email addresses at [info@ehrc.org](mailto:info@ehrc.org) and/or [earo@ohchr.org](mailto:earo@ohchr.org).

The EHRC and the OHCHR avail themselves of this opportunity to renew to the Embassy of the State of Eritrea the assurances of their highest consideration.

Yours Sincerely,

Ethiopian Human Rights Commission

Dr. Daniel Bekele

Chief Commissioner

Office of the United Nations High Commissioner  
for Human Rights – East Africa Regional Office

Marcel Clement Akpovo

Regional Representative

**Daniel Bekele (Phd)**  
Ethiopian Human Rights Commission  
Chief Commissioner

## List of Issues/ Questions

- I. Presence of Eritrean Defense Forces (EDF) in Tigray
  1. Circumstances relating to the entry of EDF into Tigray, Ethiopia? Did Ethiopia extend an invitation?
  2. General overview of the military activities of EDF in Tigray (places and dates)?
  3. Chronology of effective control in Tigray- where and when? What places were (not) under its effective control and when?
  
- II. General (structure, relationship)
  1. General overview of the command structure in EDF
  2. Types of uniform/s
  3. Relationship and command chain with Ethiopian National Defense Forces (ENDF)
  4. Relationship and command chain with Amhara special forces, Amhara militia and other Amhara forces
  5. Relationship with the command post, interim administration at regional, zonal and woreda levels in Tigray? EDF's role in enforcing state of emergency, in allowing/denying access to humanitarian organizations, allowing/denying movement of civilian population
  
- III. Preparedness, Treatment, Code of Conduct
  1. The readiness of army officers and officials to respect IHL and IHRL? Did they have a written code of conduct? Have they received trainings before deployment? Did they understand issues of military necessity, safeguarding of civilians, taking precautions, proportionality?
  2. Processes for alleged misconduct
  3. Treatment of captured fighters
  4. How has EDF distinguished between TPLF special force, militia and civilians? Challenges?
  
- IV. Allegations of violations of HRs and IHL rules

*In requesting for responses on allegations, the issues of military necessity, military objective, precautionary measures, advance warning, proportionality, safeguarding civilians shall be mentioned as appropriate*

  1. General response to reports of allegations committed by EDF in Tigray
  2. Response to the following specific allegations committed by EDF or under its watch:
    - Allegations of killings of civilians in Aksum (November 28-29, 2020), , Bora and environs (March 2021), , Gijet, , Humera, , Samre and environs (February 2021), , Wukro,

- Allegations of denial of burial in the places where killings occurred
  - Allegations of indiscriminate shelling on some towns (Wukro, Adigrat, Humera, Mekelle)
  - Several allegations of SGBV in Mekelle, Adigrat, Aksum, Adwa, Shire, Bora, Samre and Wukro. Allegations of use of rape as a weapon of war/systematic rape of Tigrayan women
  - Allegations of violation of rights of Eritrean refugees including killings in and refoulement from Shimelba Refugee Camp in November 2020
  - Reports of the use of public facilities (health, education, etc) for military purposes, such as Abi Adi Hospital
  - Allegations of denial of movement for IDPs and other persons at check points
  - Allegations of blocking humanitarian assistance, especially at check points manned by EDF, for example at Samre & Gidjet.
  - Allegations of prohibiting farmers from farming, particularly in the border areas like Rama
  - Allegations of violation of the civilian character of IDP shelters, including in Shire
  - Allegations of destruction of major facilities- Hagere Selam and Samre Hospitals, Axum University, Adigrat University, etc
  - Allegations of looting and destruction of infrastructure, health facilities, schools and other public facilities in Bora and Samre
3. Information/data on investigations, prosecutions, trial, convictions, and sentencing related to misconduct/crimes committed by EDF, including on allegations of extrajudicial killings, sexual and gender-based violence (SGBV), looting, or other violations.
  4. Results of the investigations and measures taken on perpetrators of violence related to the conflict in Tigray? Any evidence to show the veracity of this?
  5. Allegations where EDF might have more information
    - Damage resulting from missile attacks by TPLF on Asmara on November 14/15, 2020?
    - Allegations of attacks of Eritrean refugees by TPLF in November and December 2020 in and around Hitsats and Shimelba refugee camps?

#### V. Additional

1. Supporting material or evidence for the above-mentioned issues.
2. Other relevant information.
3. Official/officer to talk to on specific allegations?



**Mr. Debretsion Gebremichael (PhD),  
Chairperson, Tigray Peoples' Liberation Front (TPLF)  
Mekelle, Tigray, Ethiopia**

**Subject: Request for Meetings by the Ethiopian Human Rights Commission and the United Nations Office of the High Commissioner for Human Rights (OHCHR) Joint Investigation Team**

The United Nations Office of the High Commissioner for Human Rights (OHCHR) and the Ethiopian Human Rights Commission (EHRC) are currently undertaking a Joint Investigation into alleged violations of human rights, humanitarian law, and refugee law committed in the context of the conflict in Tigray.

As part of this Joint Investigation, the team of investigators has travelled to and collected information on reported violations in different parts of Tigray and outside Tigray.

The Joint Investigation is guided, among others, by the principles of impartiality and objectivity which requires it to investigate alleged violations by all parties with equal thoroughness and vigor, while ensuring that all sides in the conflict are provided with an opportunity to be heard and provide information. As part of the same exercise, the Joint Investigation Team would like to meet and discuss with relevant officials of the TPLF and key leadership of its forces concerning incidents and violations that occurred during the conflict.

Therefore, EHRC and OHCHR kindly request a meeting with senior political and other relevant military officials with relevant information to discuss allegations of violation of human rights law, humanitarian law, and refugee law highlighted in the attached annex.

We appreciate your cooperation towards the successful and timely conclusion of the Joint Investigation and request that the meeting be held on a date of your convenience between 17 - 24 August 2021 in Mekelle. Should the facilitation of a face-to-face meeting prove difficult, the Joint Investigation team will be able to send a more detailed list of allegations and will request a written response on each allegation or any additional information you may have, preferably within the dates indicated above.

We look forward to receiving confirmation of the proposed meetings. For more information and coordination on this, please contact us through the official email addresses at [info@ehrc.org](mailto:info@ehrc.org) and/or [earo@ohchr.org](mailto:earo@ohchr.org).

Sincerely,

**Ethiopian Human Rights Commission**

**Dr. Daniel Bekele**  
Chief Commissioner

**Office of the United Nations High  
Commissioner for Human Rights - East  
Africa Regional Office**

**Marcel C. Akpovo**  
Regional Representative



## **EHRC/OHCHR Joint Investigation on Tigray**

### **List of issues for discussion**

- Military structure, types of uniforms, and chain of command at the regional state level (special forces, militia, and other armed groups);
- Information on the various types of uniforms or lack of uniforms by parties to the conflict;
- Processes for alleged misconduct, including allegations of extrajudicial killings and sexual and gender-based violence;
- Reported incidents of grave violations against children, including conscription of children for war;
- Reported incidents of indiscriminate attacks on civilians and civilian objects, such as shelling;
- Reported use of civilian facilities, heritage sites and places of worship for military purposes;
- Reported incidents of attacks on protected persons and objects;
- Reported incidents of blockade of humanitarian assistance;
- Reported incidents of killings of humanitarian workers;
- Reported extra-judicial killings, torture and other ill-treatment, arbitrary detention, enforced disappearances;
- Kidnapping and killing of members of the former Interim Administration and persons opposed to the TPLF;
- Forced displacements of civilian populations in areas controlled by TPLF;
- Reported incidents of looting and pillaging of refugee camps, property, vehicles, and other aid material;
- Reported incident of sexual and gender-based violence
- Reported attacks on and destruction of Hitsas and Shimelba refugee camps;
- Killing of Eritrean refugees;
- Information/Treatment of captured members of EDF/ENDF;
- Information on rocket attacks on Bahir Dar, Gondar and Asmara cities;
- Information on reports of killings and abduction of prisoners and civilians;
- Involvement of foreign forces in the Tigray conflict;
- Reported incidents of destruction and looting of schools in Tigray and some locations in neighboring regions;
- Reported incident of killings and other violations on students in Tigray;
- Reports of looting and destroyed infrastructure required for the provision of telecommunication services;
- Reports of looting and destroyed infrastructure required for the provision of electric services;
- Reports of looting and destroyed infrastructure required for the provision of water services;
- Reports of destruction of road infrastructure, airports etc.
- Reported incidents of looting of banks and other financial institutions;
- And any other relevant information



**Dr. Yilikal Kefale Assres**  
**President, Amhara Regional State**  
**Bahirdar, Ethiopia**

**Subject: Request for written responses by the Ethiopian Human Rights Commission-OHCHR Joint Investigation Team**

The Ethiopian Human Rights Commission (EHRC) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) are currently undertaking a Joint Investigation into alleged violations of human rights, humanitarian law, and refugee law committed in the context of the conflict in Tigray and affected neighbouring regions in Ethiopia.

As part of the joint investigation, the team of investigators has travelled to and collected information on reported violations in different parts of Tigray and affected neighboring regions, including the Amhara Regional State. Based on the information gathered so far, the investigation team has developed the attached detailed list of issues/questions to ease the response of the Amhara Regional State.

The Joint Investigation is guided, among others, by the principles of impartiality and objectivity which requires it to investigate alleged violations by all parties with equal thoroughness and vigor, while ensuring that all sides in the conflict are provided with an opportunity to be heard and to provide information. The Joint Investigation has identified the Amhara Regional State, and the leadership of the Amhara Special Forces, the Amhara Militia, and the Fano, as important sources of information concerning some of the incidents and violations that occurred during the conflict.

Therefore, EHRC and OHCHR kindly request written responses to the allegations of violation of human rights law and humanitarian law highlighted in the annexed document.

We appreciate your cooperation towards the successful and timely conclusion of the Joint Investigation and request that the written responses be submitted to the Joint Investigation by 08 October 2021.



For more information, please contact the Joint Investigation Team through the official email addresses at [info@ehrc.org](mailto:info@ehrc.org) and/or [earo@ohchr.org](mailto:earo@ohchr.org).

**Yours Sincerely,**

**Ethiopian Human Rights Commission**

**Dr. Daniel Bekele**

**Chief Commissioner**

**Office of the United Nations High  
Commissioner for Human Rights – East  
Africa Regional Office**

**Marcel Clement Akpovo**

**Regional Representative**

## List of Issues/ Questions

- I. **Presence of Amhara regional state security forces (special force, Police and/or Militia) in Tigray**
  1. Circumstances relating to the entry of Amhara regional state forces into Tigray?
  2. General overview of the military activities of Amhara regional state forces in Tigray (places and dates)?
  3. Chronology of effective control in Tigray- where and when? What places were (not) under its effective control and when?
  
- II. **On Amhara region security forces (General- structure, relationship)**
  1. General overview of the command structure of Amhara regional state security forces (special force, Police and/or Militia, youth groups like Fano)
  2. Types of uniform/s?
  3. Relationship and command chain with Ethiopian National Defense Forces (ENDF)?
  4. Relationship and command chain with Eritrean defense forces, if any?
  5. Relationship with the Tigray interim administration?
  
- III. **On Amhara region security forces- Preparedness, Treatment, Code of Conduct**
  1. The readiness of security officers and officials to respect IHL and IHRL?
  2. Did they have a written code of conduct?
  3. Have they received trainings before deployment? Did they understand issues of military necessity, safeguarding of civilians, taking precautions, proportionality?
  4. What accountability and disciplinary mechanisms/ processes exist for alleged misconduct or violations?
  
- IV. **On civil administration**
  1. General structure of the civilian administration in the places controlled by Amhara forces- zone, woreda, kebele?

2. Relationship of the civil administration with Amhara regional government and the command post? Assignment to government positions? Chronology, if there were changes?
3. The justice and judicial system in those places? Has it been operational? Chronology if there were changes?

**V. Allegations of violations of HRs and IHL rules**

*In requesting for responses on allegations, the issues of military necessity, military objective, precautionary measures, advance warning, proportionality, and safeguarding civilians shall be mentioned as appropriate*

1. Response to the following specific allegations on Amhara regional state security forces or under its watch:
  - Extrajudicial killings- places where Tigrian civilians have allegedly been attacked in retaliation (Mycadra, Humera, ...)
  - Allegation of forced displacement of civilians from Humera, Mycadra, Dansha? Efforts on return?
  - Allegation of eviction of Tigrians from their homes in Humera, Mycadra, Dansha?
  - Alleged resettlement and redistribution of Tigrian farm lands in Mycadra, Humera, Dansha and other places in the control of Amhara regional forces
  - Allegation of arbitrary detention and mass arrests of Tigrians in Mycadra, Humera, Dansha and other places in the control of Amhara regional forces
  - Allegations of SGBV. Allegations of use of rape as a weapon of war/systematic rape of Tigrayan women
  - Allegations of Amhara regional state security forces using ambulances
  - Reports of the use of public facilities (health, education, etc) for military purposes
  - Allegations of denial of passage to Sudan or/and mainland Tigray for Tigrayans

- Allegations of looting and destruction of infrastructure, health facilities, schools and other public facilities
  - Ill treatment of captured Tigrian fighters
2. Information/data on investigations, prosecutions, trial, convictions, and sentencing related to misconduct/crimes committed by members and officials of Amhara regional state security forces:
    - Including on allegations of killings, sexual and gender-based violence (SGBV), looting, or other violations
    - Outcomes of those investigations and measures taken on perpetrators of violence related to the conflict in Tigray?
    - Any evidence to show the veracity of this?
  3. Allegations where Amhara regional state might have more information
    - Damage resulting from missile attacks by TPLF on Bahirdar and Gonder airports?
    - Allegations of attacks/ killings of civilians by Tigrian forces (youth) in Mycadra and Humera?
    - Allegations of attacks on civilian property and infrastructure in areas now controlled by Amhara forces?

**VI. Additional**

1. Supporting material or evidence for the above-mentioned issues.
2. Any other relevant information.
3. Official/ officer to talk to on specific allegations?

## **Annex V - Response by the Government of Ethiopia**

### **Observations of the Government of the Federal Democratic Republic of Ethiopia in Respect of the Draft Report of the Joint Investigation Team of the EHRC and UNOHCHR**

#### **Introduction**

1. The Government of the Federal Democratic Republic of Ethiopia (GoE, Government, Ethiopia), had the opportunity to look into and welcomes the draft report of the Joint Investigation Team (JIT) of the Ethiopian Human Rights Commission (EHRC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) which was formed to conduct a joint investigation into alleged human rights violations and abuses and violations of international humanitarian law committed in the context of the conflict in Tigray.
2. The Government appreciates the commitment the JIT showed in undertaking this difficult task and is grateful for its professional and in-depth investigation into the allegations as well as for submitting its draft report.
3. However, as the cut off period for the joint investigation is the declaration of the unilateral humanitarian ceasefire by the Federal Government (28 June 2021), it is regrettable that such limitation in the temporal and spatial scope of the joint investigation work led to a very limited exposition of the egregious and deplorable human rights violations perpetuated by the TPLF. The most recent tragedies committed by the group in the Afar and Amhara regional states, including the extensive use of child soldiers, the killings and displacement of thousands of civilians (women, elderly, and children), and a pattern of brutal sexual violence remain to be accounted.

#### **Observations in respect of the contextual background of the report**

4. As indicated in the contextual part of the draft report (paras. 64 – 82), Ethiopia has been undertaking an all-encompassing reform in the past three to four years. The sincerity of its commitment towards respect for human rights during this period cannot be put into doubt. The revision of repressive laws and the establishment of a new legal and institutional framework for the protection and enforcement of human rights and fulfillment of other international obligations stand as testimony.
5. Despite all these efforts at the Federal level, however, TPLF rejected the reform agenda and launched an orchestrated campaign to undermine the reforms in defiance of the Federal Government. It is a matter of public record that the Federal Government tried all possible avenues to amicably resolve the differences with the TPLF but to no avail.
6. The Government's commitment to the cause of human rights emanates from a deeply held commitment to open a new chapter in Ethiopia's long history where all Ethiopians enjoy full respect and dignity as human beings regardless of their gender, religion, ethnicity, or other

extraneous considerations. Yet, the Government was unable to stop the alleged gross violations of human rights in Tigray Regional State.

7. As the draft report confirmed (Para 76), when the Tigray Special Forces (TSF) and their Militia attacked the Northern Command of the Ethiopian National Defence Forces (ENDF) on 3 November 2020, they committed a crime of treason of the highest order. As it became clear over time, however, the November 3 attack was only the first act in a well-orchestrated and rehearsed plan to usher in the disintegration of Ethiopia and replace it with a number of small independent or quasi-independent states over which Greater Tigray would reign supreme.

8. In this context, although the Ethiopian Government in principle concurs with the findings of the JIT, it is of the view that a number of general statements contained therein require further clarification and elaboration, while some of the findings and recommendations would benefit from your second look.

9. To this end, while November 3, 2020, will always be remembered as the Day of Infamy in Ethiopian history in general and that of the ENDF in particular, one where the brave sons and daughters of Ethiopia were betrayed and slaughtered, in the middle of the night, including by their own sisters and brothers in uniforms, the GoE today has conclusive evidence at hand that what in fact happened was not a mere attack.

10. The draft report alludes to a series of attempts by civil society leaders, including elders, to bring about a peaceful resolution to the dispute (Para. 75), but the draft report misses the fact that these efforts were, in fact, part of a long and painstaking process designed to restore peace by peaceful means. As soon as it was clear that TPLF was unhappy with the reform agenda, several attempts were made to bring it on board, including:

- In December 2018, a call was made for the establishment of a National Reconciliation Commission to resolve simmering differences of national significance and to establish truth and justice through Ethiopia's rich social capital and indigenous mechanisms of dispute resolution in its legal history.
- In January 2019, officials from the Ministry of Peace traveled to Mekelle with invitations to engage the Regional Administration in constructive dialogue on the future of our country. However, their attempts were rebuffed.
- Prime Minister H.E. Dr. Abiy Ahmed, in October of the same year, extended an invitation to the TPLF and its supporters to use the reform as an opportunity to work together, and to refrain from improper and destructive action for the sake of narrow political gains.
- In November 2019, a group of independent female ambassadors of peace, called "Mothers for Peace", traveled to Mekelle to plead with the officials of the Regional Administration. Once again, their call was not heeded.
- In June 2020, a body made up of 50 of the country's most senior religious and community elders and representatives went to Mekelle with exactly the same mission as the Mothers for Peace. They held talks with the Tigray Regional Government and various



political leaders in Mekelle. Regrettably, these most revered community and religious leaders were also rebuffed by the TPLF, treating them with the utmost contempt and sending them back with nothing.

- In the same month, the same group of elders once again tried to set up a platform for dialogue between the leaderships of the TPLF and the Prosperity Party in Addis Ababa. Initially, both sides assigned their respective representatives to engage in the dialogue, but on the day the talks were scheduled to start, TPLF pulled out, stating that “We don’t want to engage in dialogue with the Prosperity Party.”

11. It’s against the backdrop of all the above attempts that TPLF openly declared that they will not recognize the Federal Government after October 05, 2020, nor any laws, regulations, or directives that may be enacted by this Government. As of 5 October 2020, TPLF also recalled those members of the Federal House of Peoples’ Representatives and the House of Federation representing Tigray on grounds that the Region would not recognize any of the federal state organs.

12. Finally, on 3 November 2020, TPLF launched its long-planned attack on the Northern Command of the ENDF. Several days later, a senior member of the TPLF leadership publicly and triumphantly declared how successful the TPLF’s lightning-like ‘pre-emptive’ attack was and how it supposedly incapacitated and destroyed the Northern Command of the ENDF.

13. As suggested above, the Ethiopian Government has now ample evidence, already presented before the courts of law, that demonstrate that the TPLF forces, having rejected the aforementioned peace endeavors, were busy preparing themselves to launch a surprise attack, inter alia, through:

- Raising their annual intake of recruits for the regional police force by more than tenfold and training more than two hundred thousand special forces, militia, and other combat forces;
- Acting contrary to the Federal Constitution, forming a diplomacy committee to manage foreign relations, establishing direct contact with foreign states, and engaging in the dissemination of false information;
- Fomenting ethnic-based conflict and instability across the rest of Ethiopia by recruiting, training, arming, and deploying their surrogates and bandits, thus causing crises and mass displacement in other parts of the country in a deliberate attempt to keep the Federal Government busy fighting and erode the confidence of the public in their Government;
- Engaging themselves in large-scale economic sabotage and other acts which indicate the attack on 3 November 2020 was only one part of a long and meticulously-planned operation.

14. The heinous attack resulted in the looting of a large amount of heavy and light weaponry, leading the TPLF to openly and repeatedly threaten the capitals of adjacent regions, the capital Addis Ababa as well as the capital of neighboring Eritrea. At the human level, on the day of the

attack, the TPLF forces massacred, in cold blood, hundreds of middle- to high-level ENDF commanders, and kidnapped thousands of members of the ENDF Federal Police. Individual victims were identified on the basis of their ethnic identities in a manner that was calculated to unleash ethnic violence throughout the country. Vital infrastructure facilities, including airports, roads, bridges, telecommunication, and electrical installations were also destroyed intentionally.

**In respect of the JIT’s findings regarding ‘attacks on civilians and civilian objects, and other protected persons and objects’, paras 91—106**

***JIT’s findings of violations and implicated actors***

15. The JIT report lists a series of alleged violations of international human rights and humanitarian law by all parties to the conflict, including the ENDF, EDF, and TSF. The violations mainly are said to include ‘deliberate targeting of civilians and civilian objects, indiscriminate attacks, failure to take sufficient precautionary measures to protect the civilian population, and widespread destruction of property.

***GoE’s Observations***

16. As a preliminary matter, the Government of Ethiopia (GoE) reiterates its long-standing position that it will spare no effort to investigate and prosecute any violation of national and international human rights and humanitarian law competently, independently, impartially, effectively, and transparently. To that end, The Government has decided to establish a Special Prosecutor’s Office while the Judiciary will establish a dedicated bench to handle these cases. The Government has completed preparations to initiate full-scale investigations into all alleged incidences of violations in Tigray, Afar, and Amhara regional states, which will set in motion criminal prosecution procedures (regular and military) while at the same time rolling out programs for the provision of psychological and medical treatment to victims. The Government is also at advanced stages of preparation to establish a transitional justice system to address violations of a grave nature, facilitate peace, healing, and reconciliation, while also preparing to launch a reparations scheme within the limits of our resources.

17. The GoE appreciates the Report produced by the JIT and expresses its assurances to remain engaged on each of the JIT’s findings and recommendations in this section with a commitment to discharge its obligations under domestic and international law. At the same time, it should be recalled by the JIT that the GoE has already conducted its own investigations and, indeed, prosecuted a number of alleged offenders, several of whom have been convicted on varying charges and serving sentences under Ethiopian law. The GoE undertakes to disclose to the public the records of the trials in all these cases for purposes of transparency as well as deterrence in the future.

**In relation to incidents in Mekelle of November 28, 2020**

18. The GoE disagrees with the JIT's reading and findings in relation to alleged incidents that took place in Mekelle on 28 November 2020 for reasons explained below.

19. First, the ENDF took effective control of Mekelle on November 28, 2020. While its advance towards the city was met with sporadic resistance from TSF and its affiliates, the fighting was not of such a scale as to warrant the deployment of heavy artillery and shelling. The GoE does not recognize the theory that attacks somehow came from the direction of the Mesobo mountain where ENDF forces were supposed to have been positioned, leading to the unfounded and highly speculative conclusion that the ENDF must somehow have shelled residential areas and caused fatalities. While the GoE recognizes and appreciates the great care with which the JIT produced the draft report, we would like to invite the JIT to revisit this part of the report one more time. The GoE is confident that there cannot be information or evidence that would link the ENDF with any act of shelling and related fatalities that meets the 'reasonable grounds to believe' standard of proof applied by the JIT.

20. Second, the GoE wishes to underscore the fact that the ENDF consistently follows standard procedures in terms of the protection of the civilian population and civilian objects in all its operations; in conflict settings attended by heavy ammunition, this mainly involves the adoption of precautionary measures such as cautious assessment of military targets and their proximity to civilian areas, the issuance of advance warnings to civilians to stay at home or leave affected areas temporarily, and the conduct of operations at times that are believed to be optimal to avoid or minimize collateral damage. It should also be noted that throughout the conflict TSF's use of civilians as human shields, and TSF's storage and operation of armaments inside places of worship has posed a great challenge to the ENDF.

21. Third, while the JIT's finding of the absence of military targets may be true at the time of the JIT's visit to the affected sites, it must be noted that the same could not be said about November 28. This is especially so considering the fact that the ENDF was approaching Mekelle, and that the TSF and affiliates had been in constant motion using various locations within the city as shields and centers of military command, including in densely populated residential areas for civilians.

#### In relation to incidents in Wukro town from 25-27 November 2020

22. The GoE notes that although the factual setting of the events leading to the seizure of Wukro - including the use of heavy artillery - is well documented, the JIT was not able to attribute responsibility for the civilian deaths or destruction of property to either ENDF or TSF.

23. However, given the extent of casualties, the GoE shall, take the finding of the JIT in this regard and thoroughly investigate the incidents, the circumstances of their occurrence, and the degrees of involvement and responsibility of the ENDF, the TSF, or any other party.

#### In relation to incidents in Humera from 9 to 11 November 2020

24. The GoE notes that responsibility in respect of the incidents leading to the finding of violations is attributed to the EDF and TSF.

25. However, the GoE assumes full responsibility for the protection of human rights across the entirety of its territory; in this light and given the extent of casualties, in this case, the GoE commits to take up the finding of the JIT and comprehensively investigate the incident, the circumstances of their occurrence, and the degrees of involvement of the EDF and the TSF in the context of the fighting in Humera.

#### In relation to rocket attacks on Gondar, Bahir Dar, and Debarq on 13 and 14 November 2020

26. The GoE rejects the JIT finding that the ENDF used the Bahir Dar and Gondar airports “as military facilities” and challenges the degree of casualties suffered because of the rockets fired by the TSF.

27. First, only Bahir Dar airport has a small and properly isolated and secured quarter for use by military airplanes and for purposes of military operations. Both airports are designated civilian airports.

28. Second, both during the course of November 2020 and afterward, neither of the airports was used for military operations. It follows that neither could be designated as military targets. Any deliberate attack on these facilities is, therefore, an attack on civilian infrastructure and must be recognized as a serious violation of international humanitarian law.

29. Third, the rocket attacks caused huge damage to civilian infrastructure and equipment in both airports; this had not been detailed in the JIT’s accounts of damage to protected civilian infrastructure despite the fact that public records with regard to the extent of the damage are available.

#### In relation to incidents in Gidget and nearby areas between December 2020 and March 2021

30. First, the GoE has serious reservations regarding inferences implicating the involvement of the ENDF, including the Ethiopian Air Force, in the death of civilians and destruction of civilian property in Gidget and nearby areas between December 2020 and March 2021. As stated above, the ENDF follows rigorous procedures in terms of the protection of the civilian population and civilian objects in all its operations. But, the GoE recognizes that accidents and unintended harm to civilians cannot be ruled out in operations such as this. The GoE thus remains committed to review the findings of the JIT, conduct further investigations and take appropriate measures.

31. Second, and more importantly, the GoE accepts the JIT’s finding that given the scanty nature of the evidence, the total number of casualties could not be established conclusively. However, the GoE contests, on methodological grounds, the claim that 65 civilians were killed in Dekala based solely on the account of one witness. While the GoE generally views the data collection and verification methods of the JIT as compliant with established methods and

practices in the field, in this particular case the GoE believes that the standard of proof applied does not meet the JIT's own Guidelines, which requires that at least a first-hand source of information would need to be independently corroborated by "at least two other independent and reliable sources". In the absence of such evidence, the JIT should have found that it had no 'reasonable grounds to believe' that the stated incident had taken place, nor to implicate the ENDF for any such act.

#### In relation to incidences in Mai Kadra between 6 and 9 November 2020

32. The GoE takes note of the JIT's finding regarding the willful killing of 17 civilians, the injury of 3 persons, and the deliberate destruction of harvests by burning two different farmlands - all of which are attributed to the TSF.

33. However, the GoE views this particular finding only as 'representative of the issues and incidents that had taken place in the designated area at the time - which was also selected 'based on certain criteria' adopted by the JIT, and believes that this limited coverage was necessitated by the limited 'time-frame and resources' availed to the investigation team. This is wholly understandable.

34. Since then, the Office of the Attorney General of the GoE has conducted more comprehensive investigations into the incidents in Mai Kadra in November 2020. The investigations, which commenced on 21 November 2020 and lasted for 46 days, found 229 civilian deaths, 256 civilian injuries, and massive lootings, and wanton destruction of civilian property. The prosecution of those who are suspected of committing this heinous crime has already commenced at the Federal High Court, although most of the suspects are being tried in absentia since they have fled to Sudan.

#### In relation to incidences of profiling, killing, and intimidation of ethnic Amharas between 3 November 2020 and 28 June 2021

35. The GoE takes note of the JIT's finding regarding the profiling, killing and harassment of ethnic Amharas in Mekelle and its environs following the eruption of the conflict on 3 November 2020 until the declaration of Ethiopia's unilateral ceasefire on 28 June 2021 - in breach of international humanitarian laws for which the TSF was implicated.

36. However, the GoE suspects that the pattern of the crimes committed is more serious and much broader than what was indicated in the JIT report. Given the widespread and well-documented allegations of the breach so far, the GoE commits to take up the findings of the JIT and undertake a comprehensive investigation of the incidents that took place in Mekelle so as to render effective justice to all victims.

#### In relation to the use of schools and the Regional Supreme Court as military camps by ENDF in Samre and Mekelle

37. The GoE takes note of the claims in the report relating to the use of schools and other related public facilities in Samre (1- 31 December 2020) and Mekelle (on two separate occasions between 3 December 2020 and 13 April 2021) as a military camp by the ENDF - thereby disrupting the provision of public services. It is the GoE's view that the Report misrepresents the ENDF's presence in or around such facilities.

38. As the report indicates, by the time the Government took control of Mekelle, the structures of the regional education bureau, as well as zonal and woreda education offices, had been completely disbanded (with few exceptions) and many school properties had been totally vandalized, making the restoration of education services unduly difficult. For instance, of the 87 schools in and around Mekelle, ten were completely destroyed. The military's presence in the premises of Samre as well as Atse Yohannes Preparatory School was not only short-lived (until local security officers took over), it was also effectuated on the basis of a formal request tabled by the provisional administration and triggered by the need to beef up security to prevent further looting and vandalization of public properties. The ENDF did not have any logistical reason to use a school as a military camp since it had in its possession several well-furnished camps and related facilities in Mekelle.

39. In this light, the GoE urges the JIT to reconsider its finding that '...trenches are dug in the school grounds and classrooms vandalized' and that the 'school was used as a military camp'.

40. With respect to the premises of the Tigray Regional Supreme Court in Mekelle, too, the GoE wishes to describe the relevant context and circumstances for better understanding. By the time the GoE controlled Mekelle, over 10,000 convicts had already been illegally released by the TPLF, which created serious security challenges in the form of an unusually high number of murders and armed robbery in Mekelle. The offices of the regional supreme court, where old and pending court cases were archived, were among the primary targets of vandalism by the former inmates apparently motivated by a desire to destroy their criminal records. As a result, the physical presence of the ENDF in the premises of the court was done at the formal request of the provisional administration, which was deemed necessary in order to protect whatever was left of the archives and property of the institution.

41. In this light, the GoE urges the JIT to reconsider those sections of the report that purport to implicate the ENDF for destruction or vandalization of educational institutions and public infrastructure which allegedly 'resulted in severely reduced access to social services. It is also notable that none of these services was being offered by such institutions at the time. As such, the suggestion that the military's presence on the premises somehow 'disrupted their functioning' is wrong and misleading; it needs to be corrected.

## **In respect of the JIT's findings regarding 'unlawful or extra-judicial killings and executions'**

### ***Introduction***

42. Violations of human rights including extrajudicial killings and executions are a matter of utmost concern for the Government of Ethiopia. The Government of Ethiopia has noted the JIT Report's allegations of the commission of unlawful or extrajudicial killings and executions in different parts of Tigray by ENDF and other parties to the conflict. The GoE regrets that there had indeed been instances where a small number of rogue members of the ENDF committed unlawful extrajudicial killings and executions contrary to the clear rules of engagement and direction given to them during the operation in Tigray.

43. As has been communicated to the public on several occasions previously, the GoE has brought to justice several members of the ENDF suspected of engaging in these unlawful acts. The GoE takes this opportunity to renew its commitment to redouble its efforts to investigate any allegations concerning unlawful or extra-judicial killings and executions with a view to bring to justice persons responsible for violations of international humanitarian laws and human rights norms. It must be reiterated that, in all its operations in Tigray, the ENDF had taken all measures necessary to protect civilians. The GoE reaffirms that such conduct is not tolerated within the ENDF.

### ***GoE's Observations***

#### **In relation to the findings of the Report that 'the ENDF did not intervene when members of the EDF killed more than 100 civilians in Axum, central Tigray, although it was present during the killing'**

44. As stated above, the GoE took all the necessary precautions to avoid human rights violations throughout its operations in Tigray. There were not any systematic and deliberate killings of civilians by the ENDF in Axum, central Tigray.

45. On receiving reports of violations of international human rights and humanitarian law from various sources, the GoE deployed a team of federal investigators and prosecutors to Axum. This team of investigators had been in different places in the area with the objective of investigating any violations of IHL and IHRL norms, recording testimonies of witnesses, and collecting other relevant evidence.

46. Investigations carried out by the GOE have established that ENDF were not engaged in the alleged activities. The ENDF was also not present in Axum during the timeframe in which according to the report, it is alleged to have failed to intervene to stop or prevent the killing of civilians. However, irrespective of the perpetrators of the crimes, the GoE would like to reaffirm its stance that anyone found responsible for the killings of civilians in Axum and

elsewhere will be held accountable in accordance with applicable Ethiopian and international norms, principles, and procedures of mutual legal assistance.

Regarding JIT findings that ‘the ENDF killed more than 70 civilians in and around Bora Amedwa, Bora Chemala, and Mai Lihani, in Southern Tigray and other killings in Adigrat, Adi Awsa, Adi Gibai, Adi Hausen, Berzbah, Dengelet, Gijet, Grizana, Humera and Wukro and Mekelle’

47. Ensuring the protection and security of its nationals remains of utmost importance to the GoE. As mentioned earlier, the GoE had taken all necessary precautions within its powers to protect civilians from human rights violations and targeted only combatants and military objects in all its operations in Tigray.

48. There was no deliberate and systematic campaign of extrajudicial killing of civilians by the ENDF during its law enforcement operations anywhere in Tigray, including the places identified in the JIT Report.

49. However, the GOE acknowledges that there had been instances where a small number of rogue members of the ENDF perpetrated unlawful or extra-judicial killings of civilians during the operations in Tigray.

50. After receiving information about the allegation that some members of the ENDF had committed such crimes during the law enforcement operation in Tigray, the GoE conducted investigations, identified the perpetrators, brought charges against them before the military courts with jurisdiction on such cases and, so far, secured seven convictions, who are currently serving sentences ranging from 20 years of rigorous imprisonment to life imprisonment. The GoE undertakes to disclose to the public the records of the trials in all these cases for purposes of transparency as well as deterrence in the future. It should also be noted that there are several other allegations under investigation at the moment.

51. The GoE reiterates its commitment to undertake a comprehensive and robust investigation into alleged crimes as the security situation on the ground permits.

### **In respect of the JIT’s findings regarding ‘arbitrary detention and enforced disappearance’**

52. It is to be noted that the JIT report identifies several incidents of alleged arbitrary detentions and disappearances that took place in the context of the conflict in Tigray. However, the GoE is of the view that the Report suffers from two deficiencies in this area: its findings are overly general while they also create a false equivalence between the actions of the different parties to the conflict. For example, the Report wrongly equates measures taken by the Ethiopian government and its agents that were necessary in the circumstances with the actions of a rebel group that has been officially designated as a terrorist organization.<sup>1</sup>

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<sup>1</sup> JIT Report para 144 and the concluding paragraph paint an erroneously generalized image



53. The Report states, for example, that individuals were arrested by the ENDF and allied forces in Tigray as well as in Addis Ababa for perceived affiliation with the TPLF (Para 144). As the Report correctly notes under paragraph 143, administrative/security detention is lawful in the context of an armed conflict and related state of emergency. The hallmark of such administrative/security detention measures is the fact that persons so detained need not be interrogated, charged or presented before a judge within 48 hours. The primary obligation of the authorities is, among other things and to the extent possible, to ensure and protect the life, health, and the physical and mental well-being of persons deprived of their liberty.<sup>2</sup> Neither is the detaining party prohibited from holding detainees in places other than places of detention used in peace time.

54. With respect to detentions by the ENDF in Mekele and other parts of Tigray, it is to be noted that the conflict was between the Ethiopian Federal Government and a group that had a de facto control of the Tigray regional government. The civilian and security institutions of the regional administration were active participants in the conflict in one way or another. Hence, it was deemed imperative to detain, for security reasons, those who would pose a significant security threat by virtue of their affiliation to the armed wing of the TPLF. It is evident in the Report that the detainees were held in police stations, away from areas where there were active hostilities. Most of the detentions were made on legitimate grounds and that the federal government has, to the extent possible under the circumstances, discharged its obligation under the applicable law.

55. The GoE believes that most of these detentions by the ENDF, motivated by imperative security considerations, do not amount to arbitrary detention. However, given the total collapse of the ordinary law enforcement apparatus in Tigray, including the police, courts and prosecutorial authorities, as a result of the conflict, the Government of Ethiopia is cognizant of the possibility for incidents that might amount to arbitrary detention to have occurred. The Government is fully committed to take the necessary remedial measures to minimize the occurrence of such incidents in the future.

56. With respect to alleged ‘mass detentions of Tigrayan civilians’ in Addis Ababa, the Report needs to take into account the political situation on the ground, in particular how armed groups and political parties in the country are typically formed. Like many political groups in the country, TPLF is organized along ethnic lines and its entire membership is composed of individuals having the same ethnic background. Therefore, following its engagement in an armed insurrection against the Federal Government and its subsequent designation as a terrorist organization by the HPR, it is only logical that the number of persons of Tigrayan origin being detained will rise. This is so because all of the leaders, members, and most of the operatives of the TPLF happen to be from one ethnic group. As per the country’s anti-terrorism law, anyone who is suspected of engaging in the furtherance of the activities of a terrorist organization is

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<sup>2</sup>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Article 5

bound to be subjected to criminal proceedings in accordance with the law. As a result, most of the detainees arrested in connection with TPLF's criminal activities are persons of Tigrayan ethnic background. The Report should have taken this into account in assessing the rise in the number of ethnic Tigrayans detained in Addis Ababa. 'Further, while the GoE understands that the JIT's work cannot claim to represent a complete account of all violations that had taken place in Tigray during the designated period, it is highly regrettable that the JIT had not opted to at least look in to some of the serious violations of international humanitarian laws by TPLF/TSF. The GoE is in particular concerned that the following severe violations have not been accounted: a formal and documented proclamation by the then regional government - and subsequent actions to dedicate all 'public facilities', including health stations, schools, training centers, and endowment company (EFFORT) properties for the war effort and military camping purposes; the use of Axum hotel and Mekelle University veterinary college campus for purposes of detaining higher ranking military officers; the use of Agbe Youth Training Center for detaining foot soldiers who were ambushed in their camps; a formally sanctioned looting of 1.6 Billion Birr from Dedit Microfinance in two successive rounds (after the conflict erupted); looting, re-possession and destruction of the properties of grain supply and medical warehouses owned by the National Disaster Risk Management Commission and by the Tigray Relief Association; and the use of the historical Yohannes IV Palace as TPLF command center. In this light, the GoE would like the JIT to consider capturing such serious violations in its report, or at the very least make clear reference that the events accounted in the report only represent some aspects of the violations.'

57. Furthermore, the Federal Attorney General's Office (AGO) at the time, in its exchange with the JIT, had made it clear that all those detained in such circumstances were detained on the basis of reasonable suspicions and that their cases were handled in accordance with the requirements of the rule of law. In fact, in an effort to enforce the detainees' rights to fair trial, prosecutors from the AGO conducted several rounds of sudden visitations in all police stations in Addis Ababa. In each of the visits, the Office took measures necessary to ensure that the fair trial rights of the detainees were respected and wherever there were violations, necessary remedial actions were taken immediately. Additionally, the AGO had also established a hotline service in Addis Ababa and Dire Dawa cities via which those who felt they had been subjected to arbitrary arrest or any other discriminatory actions could lodge complaints. As is clearly stated in the Report, the JIT itself had the opportunity to review the charges issued against the detainees and did not report irregularities in the criminal proceedings. In fact, the fact that some of the cases were closed when investigations disclosed a lack of evidence to pursue prosecution is a testament to the observance of the rule of law throughout the process.

58. While the GoE remains committed to investigate and address any credible allegations of violations of detainees' due process rights, it believes that some of the incidents alleged in the Report are taken out of context. The Report also does not seem to take into account the fact that a state of emergency had been declared, due to the security situation on the ground, for much of

the reporting period. Given the security and military exigencies during the period, most of the measures taken by the GoE were highly restrained and moderate.

**In respect of the JIT's findings regarding 'pillage, looting and destruction of property'**

59. Ethiopia fully recognizes its obligations to respect, protect, and fulfill the property rights of all persons within its jurisdiction. Ethiopia does not contend that the application of IHL ceases completely in the context of an armed conflict. However, despite the continued applicability of human rights laws, it is generally true that the nature of the state's obligations is altered in the context of an armed conflict. Once an armed conflict arises IHL will be triggered and its protections and standards will complement, complete and in certain cases, further clarify international human rights protections, guarantees, and minimum standards. Furthermore, it has to be noted that the state can only be said to have failed to meet its human rights obligations only to the extent of the territory over which it exercises effective control.

60. Therefore, it is important to take note that, after conflict broke out, the primary obligation of the Ethiopian Government was to regain control of territory from the rebel group in order to afford the necessary protections to its citizens. Once the TPLF launched its attack, the legal, judicial, and administrative mechanisms in the Region designed to realize the State's international obligations to respect, protect and fulfill the human rights of its inhabitants in general and the right to property in particular were rendered ineffective. As part of its efforts to re-establish effective control, the government had to mobilize its national defense forces and make use of any and all possible public resources at its disposal. Therefore, it was imperative that the ENDF be positioned in and around public institutions like that of the Regional Supreme Court and other public institutions. Given the number of prisoners TPLF had released from prisons before abandoning the regional capital, it was important to secure such institutions in order to ensure a quick and safe resumption of services to the community. Contrary to what is claimed in the Report, rendition of public service in the region, including the justice sector, had already ceased long before the arrival of the ENDF in Mekelle. Besides, given the fact that the Supreme Court is the highest judicial organ in the Region, it is an overstatement to claim that the ENDF stationing a few soldiers in the premises of the court for a few weeks would amount to disruption of judicial service. Likewise, the government is well within its rights to appropriate and make use of the public resources located in the Region. Hence, it is a gross misstatement for the JIT Report to characterize the ENDF's use of public property and resources, such as vehicles, as looting. Commandeering state property for the purpose of upholding law and order during an emergency cannot, and should not, be characterized as looting.

61. The Ethiopian Government regrets the pillage, looting, and destruction of civilian and public property that took place in the context of the conflict, some of which seemed to have been perpetrated by convicts that were let loose by the TPLF as well as by other actors. The Government reaffirms its commitment to investigate all allegations, ensure accountability, and

work towards the rehabilitation of the Region and its citizens victimized by such acts as expeditiously as possible. This commitment was well demonstrated in the period after the Government re-established effective control of the Region when it attempted to re-instate the civilian administration, restart economic and other activities, rehabilitate schools and health centers, and recommence basic services like telecommunications, electricity, and banking. Today, all those gains have been reversed following the return of TSF to control the Region following the Unilateral Humanitarian Ceasefire declared by the Federal Government and the withdrawal of its troops.

62. Therefore, the Ethiopian Government, once again calls upon the JIT to take these into account and revise the Report to present the situation in the Region accurately and refrain from lumping the ENDF and the GoE together with parties to the conflict that have committed grave violations.

### **In respect of the JIT's findings regarding 'sexual and gender-based violence'**

63. The JIT report contains harrowing accounts of alleged Sexual and Gender-Based Violence (SGBV) committed against girls and women, pointing in some cases to acts that have resulted in victims contracting sexually transmitted diseases and unwanted pregnancy, while in all cases leaving the victims with severe psychological trauma and physical harm. The report also indicates that boys and men have also suffered sexual violence. However, the report failed to capture the scale and brutality of SGBV cases committed by TSF against female members of ENDF which were provided to the JIT with ample evidence.

64. As serious and appalling as these allegations are, it is regrettable that TPLF and TPLF's sympathizers in the media have exploited the tragedy through a deliberate, coordinated, and malicious campaign to tarnish Ethiopia's image and ENDF's established track record for exemplary military discipline. Ethiopia is a signatory to most of the conventions prohibiting SGBV, and such acts are considered, under Ethiopian laws, to be serious offenses punishable with rigorous imprisonment. The reality is that SGBV had been a major problem for women in Tigray under the TPLF long before the hostilities started. Ethiopians will recall that already a year or so before the conflict in the Tigray Region started, hundreds of women took to the streets of Mekelle to condemn SGBV and seek justice from the authorities in Tigray. The protest was forcibly disrupted by TPLF at the time. “ይኸኖ”, a social media campaign, was also staged saying “enough” to such attacks. Despite the claim by that the JIT that it could not get reliable data on the prevalence of SGBV before the conflict, the problem was evidenced by the “ይኸኖ” protest and online movement.

65. It should also be noted that the unprecedented attack perpetrated against the Northern Command by the TPLF had totally disrupted the regional law enforcement mechanism in Tigray. The release of more than 10,000 convicted prisoners all over Tigray without undergoing the proper rehabilitation programs and before serving their sentences aggravated the situation.

Reflecting in the Report the facts outlined above would be helpful in providing the context in which the alleged incidents took place.

66. Having said all this, the GoE cannot deny the regrettable and unfortunate fact that a small number of rogue members of the ENDF have been convicted of committing such heinous crimes. The ENDF not only investigated and successfully prosecuted these offenders; it has also taken measures to avoid recurrence of such acts in the future. Protection of human rights and respect for humanitarian law are major parts of the training manuals and curricula of the ENDF. With regard to SGBV, the track record of the ENDF, both in its domestic as well as international and regional peace operations engagements, is impeccable and well-established. The internal military justice system is also based on zero tolerance for such crimes and provides for the prosecution and appropriate punishment of military personnel who commit such crimes. So far one sergeant major, two sergeants, one second corporal, three privates have been tried and convicted while a second lieutenant, a second corporal, and a private have been acquitted and there are three pending trials and a number of active investigation in relation to allegations of SGBVs. The GoE undertakes to disclose to the public the records of the trials in all these cases for purposes of transparency as well as deterrence in the future. It should also be noted that there are several other allegations under investigation at the moment.

67. The consecutive pocketbooks prepared by the ENDF include instructions on the use of force by soldiers. In all three of the pocketbooks carried by every soldier one of the core values of the ENDF that cannot be breached is the duty to protect people with disabilities, the elderly, women, and children among others. It further indicates violations of the rules and crimes committed in the field will not be tolerated and entail liability to be tried in military courts. ENDF has also proved its commitment to the values it upholds by charging and punishing perpetrators suspected of committing SGBV as has been indicated above.

68. The alleged facts contained in the Report as crimes of SGBV committed by ENDF do not represent its values or institutional character and reputation. The ethnically charged political environment in which ENDF members operated might also be reflected in the conduct of individual perpetrators; some of the alleged violations also show that the acts are personally motivated which cannot in any way be associated with ENDF. The statement that was quoted in paragraph 181 of the Report also provides an indication of the ENDF's values in relation to violence; the legal consequence of such acts seems to have forced the alleged perpetrator to resign his position in the army. The aggression of the TPLF, which has since continued into Afar and Amhara regional states, has disrupted the effort to thoroughly investigate these allegations before it is too late. The GoE reiterates its position that no matter which side of the conflicting parties they come from, those who engage in acts of SGBV shall be held accountable for their crimes.

69. At the same time, the conclusion the JIT reached on the attacks regarding SGBV seems to be a misreading of the facts (paragraph 179). With due recognition to the pain, such crimes entail, the GoE remains committed to investigate and ensure accountability of perpetrators. However, the temporary disruption and non-functionality of law enforcement organs have played their part in the rise of alleged incidents. As clearly noted under paragraph 169 of the Report, the release of dangerous inmates into the community - an act purposefully done by the TPLF to destabilize and aggravate the suffering of our people in Tigray – exacerbated the scale of the crime. The GoE determined to end impunity; as such, any person that participated in any violation of human rights will be held liable. In view of the foregoing, GoE is of the view that the JIT has failed to sufficiently take into consideration the challenges faced by the GoE to uphold law and order in the context of the conflict. The GoE also underscores that the Report makes no claims that the ENDF has systematically used SGBV as a weapon to dehumanize civilians.

70. Furthermore, it is important to underscore that the GoE has also worked in cooperation with stakeholders to provide medical and psycho-social support to individuals who needed these services through one-stop centers made available in the Tigray region. A safe house was made available to survivors of SGBV to recover from and get appropriate services in a protected environment. A free hotline that operates in the region was also made functional to enable women and girls, men and boys to seek assistance and to provide protection services before the occurrence of the violations. Suspected members of ENDF are currently undergoing trial in military courts, while some have been convicted and await sentences as has been indicated above. The Ethiopian Government urges the JIT to reflect this and similar other facts in the Report. The GoE undertakes to disclose to the public the records of the trials in all these cases for purposes of transparency as well as deterrence in the future. It should also be noted that there are several other allegations under investigation at the moment.

### **In respect of the JIT’s findings regarding ‘torture and other forms of Ill-treatment’**

71. The draft Report findings allege that in December 2020, ENDF troops tortured and subjected to ill-treatment victims in Southern Tigray of Bora and also prohibited relatives of victims of summary executions from collecting bodies for burial. The report further alleges that several ENDF military camps in Tigray were used to torture captured TPLF fighters or civilians suspected of providing support to the armed group.

72. The GoE has been implementing effective due diligence guidelines prior to and during the conflict to ensure full adherence to international humanitarian laws and human rights norms. The Government has implemented measures aimed at preventing and mitigating violations of international humanitarian laws and human rights norms. Prior to the conflict, the Government of Ethiopia had given continuous training for its military and security personnel on principles of

International Humanitarian Law, International Human Rights Laws, and other norms applicable to the context of an armed conflict.

73. In addition, the GoE has issued and distributed pocket-sized Rules of Engagement booklets. The booklet lists basic duties of the servicemen and women such as the protection of civilians and other pertinent norms of international humanitarian law applicable to the context of the conflict. Besides, the GoE has put in place clear monitoring and evaluation guidelines that include remedial measures when violations of international norms occur during the operation.

74. These preventive and other precautionary measures by the Government have been important to avert egregious rights infringements that could have occurred in times of military confrontation in many areas of the conflict, even sometimes by forgoing military benefits that could have been obtained in certain occasions.

75. Regarding the accounts and allegations included in the Report, the GoE undertakes to further investigate the allegations and would like to express its commitment to take necessary remedial and redress measures with regard to violations of IHRL and IHL, including the findings included within the Report concerning torture and other forms of ill-treatment, irrespective of who the alleged perpetrators are, and ensure accountability. The GoE believes that there should not be impunity for anyone who commits such crimes within Ethiopia's borders. The GoE takes note of the JIT's finding regarding the torture and other inhuman treatment of members of ENDF and other civilians for which the TSF were implicated following the eruption of the conflict on 3 November 2020. However, the GoE believes that the pattern of the crimes committed is more serious and much broader than what was indicated in the JIT's report. `

### **In respect of the JIT's findings regarding 'forced displacement of the civilian population'**

76. The GoE condemns all acts of forced displacement in all circumstances including in situations of conflict and has a zero-tolerance policy. It has been working seriously on its legal, political, socio-economic as well as administrative structures to prevent forced displacement of people in all circumstances including in conflict situations.

77. The GOE takes seriously the findings of the JIT report on forced displacement of the civilian population in Tigray Regional State. This issue remains a serious concern since the outbreak of the conflict in Tigray and the GoE has been working on it in collaboration with development partners and humanitarian organizations. Forced displacement of the civilian population is reaching an alarming level in parts of the Amhara and Afar Regional States that the TPLF controls.

78. The GoE believes that since the outbreak of the conflict in Tigray, most displacements of the civilian population were induced by fear of retaliation in the aftermath of the ethnically based massacre perpetrated in Mai Kadra by the TSF and its affiliated Samri youth group.

79. However, irrespective of the perpetrators of forced displacement of the civilian population, the GoE reaffirms its position that persons that perpetrated acts of forced displacement of civilians will be held accountable based on the relevant Ethiopian and international laws.

### **In respect of JIT's findings regarding 'refugees'**

#### ***JIT's findings of violations and implicated actors***

80. When the conflict started, Eritrean refugees were targeted and placed in danger by parties to the conflict with many killed, displaced, disappeared, refouled, their properties looted and humanitarian assistance unavailable for months. The effects were more severe to Eritrean refugees who resided in Hitsats and Shimelba refugee camps although those living in Mai Ayni and Adi Harush were not spared (para.222).

81. The information collected by JIT from various sources confirms the reports of human rights violations perpetrated by EDF and TSF/militias. In complete disregard for the rights of refugees, the fighting between EDF and Tigray Forces was conducted close to Shimelba refugee camp - causing destruction of shelters. The property of humanitarian organizations was looted, infrastructure destroyed, and personal belongings of refugees seized by TSF/militias and civilians - rendering the camp non-operational. Troops from both sides stayed at the camp at different times and harassed refugees. Civilians also looted properties of refugees and humanitarian organizations (para.223).

82. Eritrean refugees in and around the refugee camp were killed by both EDF and Tigray Forces between November 2020 to January 2021. An unknown number of refugees, mainly members of the camp's refugee central committee, was also abducted and taken to Eritrea by the EDF (para.224).

83. Due to heavy fighting around the Shimelba and the camps, intimidation by both forces, and fear of a repeat of what they said had happened in Hitsats, Eritrean refugees fled from Shimelba at different times. Many were forced to flee to the nearby Sheraro area as well as to Eritrea. When relief organizations were able to access the camp in January 2021, there were no refugees left in the camp (para.225).

84. At the time relief organizations could access the camp, refugees were not initially coming to register for assistance mainly for fear of retaliation from EDF and local civilian population if they were to disclose their identity. Many had not presented themselves as refugees to UNHCR and other organizations and only did so very slowly. Thousands of refugees were unaccounted for over several months and at the time of writing this report, there were still hundreds whose whereabouts remain unknown.<sup>3</sup> Many who reported to ARRA or UNHCR were relocated to Mai Ayni and Adi Harush as ARRA officially declared the closure of Shimelba and Hitsats camps in February 2021 (para.227).

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<sup>3</sup> ARRA said that on Aug 19, 2021, there were 235 Eritrean refugees whose whereabouts were not known.



85. Eritrean refugees in Shimelba were given food assistance in September 2020, and many refugees were left without food from the start of the conflict. This, coupled with the displacement, put the lives of refugees at risk. The Danish Refugee Council (DRC) and International Rescue Committee (IRC) reported that some of their staff were killed in November 2020 due to the conflict. The combination of many challenges resulted in the interruption of medical and other services leaving refugees in very dire conditions (para.228).

### ***JIT's conclusions***

86. There are reasonable grounds to believe that parties to the conflict have violated rights of refugees as stipulated under international human rights law, humanitarian law, refugee law and national laws. Such acts (including reprisal attacks and killings, sexual violence, beatings of Eritrean refugees, as well as the looting and destruction of refugee camps and property) warrant further investigation and may also amount to war crimes (para.233).

87. EDF and Tigray forces violated the civilian character of the camp by their presence in the camp and fighting around the camp and put refugees' liberty and security at risk which in turn resulted in their displacement and disappearance (para.233).

88. EDF violated the fundamental principle of non-refoulement by forcefully returning some Eritrean refugees to Eritrea. On the other hand, Tigray forces and civilians looted private properties and properties of humanitarian organizations' (para.233).

89. In July 2021, UNHCR also expressed concern about the fate of an estimated 24,000 Eritrean refugees in the Mai Aini and Adi Harush camps who had been cut off from humanitarian assistance.<sup>4</sup>

### ***GoE's Observations***

90. As a preliminary matter, GoE reiterates its long-standing commitment to promoting the welfare and protection of refugees and reaffirms its position that it will look into, investigate and prosecute any violation of national and international human rights and humanitarian laws which may have been committed since November 2020 through independent, impartial, effective and transparent processes and institutional platforms.

91. To that end, the GoE undertakes to establish a dedicated joint civil-military investigative and prosecutorial unit with the requisite operational autonomy to ensure accountability through a transparent and robust process. The GoE will also roll-out programs for the provision of psychological and medical treatment (along with follow-up services), and implement schemes to redress victims through the establishment of transitional justice process to address violations of

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<sup>4</sup> 'Tigray conflict: all combatants have the obligation to protect Eritrean refugees - UN expert,' <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27366&LangID=E>>

grave nature and facilitate peace, healing and reconciliation among refugees and host communities.

92. The GoE duly recognizes the importance of the work undertaken by the JIT and expresses its commitment to remain engaged with the JIT's findings and recommendations under this section with a view to meet Ethiopia's obligations for the protection of the rights of refugees under domestic and international legal frameworks.

93. On the other hand, in respect of the issues detailed hereinbelow, the GoE would like to express its reservations regarding the findings and/or reading of contexts by the JIT. As a courtesy to the laudable intention and the initiatives of the JIT, the GoE would like to provide additional information that could offer a better understanding of the facts on the ground and the background of events that unfolded during the reporting period.

#### In relation to the total number of refugees across the affected camps and in Ethiopia

94. While this may have little bearing on the fundamental issue of the violations, the GoE wishes to direct the JIT primarily to government-endorsed data when it comes to the number of refugees living in Ethiopia as well as across the four affected refugee camps. In this regard, the information supplied and the explanation offered by ARRA, itself a government agency, should be given precedence over information received from other entities. The JIT's report will be more accurate if it relies primarily on the verified figures of registered refugees which are held within ARRA's system.

#### In relation to violence perpetrated against Eritrean refugees

95. While admitting that the JIT's draft Report only paints a representative picture of the scale and gravity of the incidence of attacks against refugees, the GoE takes note of the JIT's findings and conclusions pertaining to acts of violence perpetrated against Eritrean refugees in and around the designated camps in breach of international human right law, humanitarian law, and refugee laws - as well as the attribution of responsibility.

96. Given that the violations - including the reprisal attacks, killings, sexual violence, and beatings against refugees had occurred against the background of a complex conflict setting, the GoE commits to undertake a comprehensive and thorough, and effective investigation in to these violations - in line with international standards - and hold those responsible accountable. In this regard, the appropriate authorities will work closely with both ARRA and the UNHCR.

#### In relation to looting and destruction of refugee camps and properties

97. While acknowledging that the report only displays a representative picture of the scale and gravity of the incidences that had occurred in and around the refugee camps, the GoE takes note of the JIT's findings and conclusions pertaining to the looting and destruction of refugee camps and property in breach of international human right law, humanitarian law, and refugee laws - as well as the attribution of responsibility.

98. The GoE also takes note of the JIT's findings and conclusions regarding the destruction and looting of property of humanitarian organizations, infrastructure, and personal belongings of refugees in breach of international human rights law, humanitarian law, and refugee laws - as well as the attribution of responsibility.

99. Considering that the violations had occurred against the background of a complex conflict setting, the GoE commits to undertake a comprehensive, thorough, and effective investigation into these violations - in line with international standards - and hold those responsible accountable. In this regard, the appropriate authorities will work closely with ARRA and the UNHCR.

#### In relation to the abduction of Eritrean refugee

100. The GoE takes note of and would like to express its views regarding the JIT's findings and conclusions regarding the abduction of 'some Eritrean refugees' by the EDF in violation of the fundamental principle of non-refoulement. While media reports were rife with claims of such abduction, the GoE has reason to believe that Eritrean refugees who fled towards the Ethio-Eritrean border area following the outbreak of the conflict, were held along the border by Eritrean authorities due to COVID-19 related concerns and procedures.

101. However, given the seriousness of the finding, the GoE commits to undertake a thorough investigation (as detailed above) into these specific incidents and trigger accountability if a breach is established.

#### In relation to the whereabouts of dispersed refugees and the current state of operational camps

102. The GoE takes note of the JIT's finding and conclusions - highlighting its concern about the fate of Eritrean refugees in Shimelba and Hitsatse who had since been dispersed following the conflict and the current operational status of Adi Harush and Mai Aini refugee camps that continued to host no less than 24,000 Eritrean refugees.

103. The GoE wishes to emphasize that the situation has evolved progressively and that there are new developments and initiatives implemented by the GoE, in collaboration with partners, which have not been properly captured in the JIT's report.

104. First, regarding the whereabouts of Eritrean refugees from Shimelba and Hitsatse refugee camps, which, before the conflict erupted, had hosted 19,200 refugees: ARRA had endeavored to reach out to all refugees via mass media notices and other means with a view to securely transfer them to other areas - with military escorts. As a result of this initiative, by mid-June 2021, it was possible to transfer 9148 refugees to Mai Ayni and Adi Harish refugee camps, while 9,100 refugees moved, on their own, to Addis Ababa. The GoE has credible reports that some 350 refugees continued to live in Mekelle, Adigrat, and Axum, 200 refugees traveled to Sudan, and 19 refugees travelled to South Sudan. In Total, ARRA has traced and established a full account of 18,965 refugees who had previously lived in both refugee camps. Investigation continues to

identify the whereabouts of about 235 refugees. The GoE would like to emphasize that JIT's report needs to capture the full context of the situation on the ground and include these details.

105. Second, while there were challenges in the provision of humanitarian and social services to refugees in Mai Aini and Adi Harush refugee camps, full and regular services had been reinstated since December 2020. However, since these camps could not bear the additional pressure of hosting refugees displaced from Shimelba and Hitsatse refugee camps, the GoE had taken the initiative of designating a new refugee campsite on 91 hectares of land in Dabat woreda, Alem Wach area. Camp establishment works are being carried out at the moment - in meeting with the necessary permits and standards. The GoE unequivocally rejects allegations of any intentional denial of access to humanitarian relief. With this regard, the security measures the ENDF had put in place should not be taken out of context to reach a misleading conclusion. The security challenges undoubtedly were daunting and in fact, there were recurrent instances of direct looting as well as diversion of humanitarian assistance by and to TSF. Furthermore, it's known that the general public, in addition, and apart from selected hotel facilities were forced to supply rations to the same forces. For this reason, neither the setting up of checkpoints (which were gradually reduced to two), nor isolated incidents should lead to a conclusion that there has been a deliberate impeding of assistance services.

## **Conclusion**

106. The GoE would like to urge the JIT to reconsider some of its conclusions and revise the draft report to the extent necessary, in light of the above observation. The above observations are offered in a constructive spirit with a view to ensure that the report provides a more accurate and balanced picture of the situation. It is unfortunate that the spatial and temporal scope of the report has not permitted the JIT to document the egregious violations of IHRL and IHL that have been and that are still being committed in Amhara and Afar Regions. Despite some serious reservations that the GoE has about some aspects of the JIT report, it is committed to remain engaged with the findings of the report and take the necessary steps to provide redress to victims of the violations, ensure accountability and rehabilitate communities and areas that have been affected by the community. In this endeavour the GoE will give special attention and emphasis to survivors of SGBV and will also take the necessary reform measures to strengthen its mechanisms and procedures that are meant to prevent the occurrence of such incidents.