



Open letter to the President of the UN Security Council

Tigrayan Scholars letter on potentially Grave Violations of the Laws of War in the Tigray Mixed Conflict

The armed conflict between the Ethiopian and Eritrean defence forces and Ethiopian militia on the one hand, and the Tigray Regional State defence forces on the other, entered its third week as it commenced on 3 November 2020. Thousands of Tigrayan civilians have fled into Sudan while millions have been internally displaced within the Tigray region. As the fighting intensifies the Ethiopian government has given a second ultimatum of 72 hours for the surrender of Tigray region elected officials on Sunday 22 November, while the regional leaders of Tigray have vowed to repel the Ethiopian and Eritrean armed forces and accompanied militia in the region. As widely reported in the international media, a military spokesperson of the Ethiopian army of the Raya front, Col Dejene Tsegaye, threatened over 5000,000 residents in the city of Mekelle via government media on the aforementioned date saying: “Free yourselves from the junta... there will be no mercy,” accompanied by threats to encircle the city with tanks and artillery.

There is strong evidence that Ethiopian and Eritrean forces are committing atrocities against civilians of Tigray; this includes extra-judicial killing, sexual violence, wanton destruction of hotels and civilian administrative buildings and looting property.

We Scholars are disappointed that the international community has largely remained silent. Human rights organisations have apparently adopted a soft approach to these atrocities and potential crimes by the armed forces and attached militia attacking Tigray.

The Ethiopian government portrays the military confrontation as a ‘law enforcement’ measure. However, the mobilisation and involvement of the entire Ethiopian and Eritrean regular armies and their militia, the Tigray defence forces and the use of heavy weaponry such as long-range rockets, fighter airplanes, ‘mercenary’ operated drones and tanks evidence the existence of an armed conflict.

The armed conflict between the Ethiopian defence forces and attached (Amhara and other) militia and Tigrayan forces are subject to the rules of non-international armed conflict. We believe, however, that the war between the Eritrean military forces and arguably those ‘foreign’ forces that have deployed drones on the one hand, and the Tigrayan forces on the other hand, has internationalised this conflict. We therefore argue that this mixed conflict is subject to the rules and customs of the law of armed conflict in its broader sense.

Ethiopia is a party to all Geneva Conventions and their Additional Protocols. While Eritrea is only party to the parent Conventions. The basic rules of Common Article 3 to the Geneva Conventions 1949, Additional Protocol II 1977 and Articles 51 and 52 of Additional Protocol I apply to this mixed and protracted armed conflict as a matter of treaty and customary law. On the basis of these and other applicable treaty and humanitarian norms, we call upon the international community and humanitarian organisations to uphold international humanitarian law, investigate allegations of violations of the laws of war and take note of the following:



First, the alleged and proven artillery shelling, air raids and drone attacks on Tigrayan cities, towns and villages such as Rama, Zalambesa, Shire, Adigirat and Mekelle, amongst others, are flagrant violations of the many norms of the law of war including Common Article 3, the general protection of civilians bestowed in accordance with Article 13 of Protocol II, and the prohibition of targeting civilians and civilian objects articulated in Protocol I codifying customary humanitarian law.

Secondly, probing deliberate attacks against Tigrayan civilians and civilian targets can be difficult as telephone and internet communication is cut off to the Tigray region. However, the international media including the BBC, German Radio and the Voice of America as well as accounts of refugees fleeing to Sudan confirm significant civilian deaths and injury. Considering Col Tsegaye's threat to the civilians of Mekelle, the capital city of Tigray, it appears that Ethiopian and Eritrean forces advancing on Tigrayan cities, including to the regional Capital, are prepared to launch indiscriminate attacks against the city of Mekelle in violation of 48 of Protocol I which mirrors customary law.

Thirdly, the repeated warnings given by the Ethiopian PM and the army's spokesman to Mekelle residents along with multiple air and drone raids and the shelling of cities and towns by heavy artillery amounts to terrorising defenceless Tigrayan civilians in violation of humanitarian law in accordance with Article 51 (2) Protocol I which is applicable to the conflict due to the involvement of Eritrean armed forces engaged in the conflict.

Fourthly, the actual conduct of the forces advancing to Tigrayan cities, towns and villages and the constant threats made against civilians disregard the duty to take precautionary measure to spare the civilian population and mitigate collateral damage to them as enshrined under Article 57 of Geneva Protocol I. We note from media reports that more than 1000 foreign citizens or tourists are also caught in the conflict while visiting historic Tigrayan sites and cities.

Last but not least, as the Tigray region is encircled by Ethiopian and Eritrean forces who have launched coordinated military operations against Tigrayan forces in the region, the population of 6 million Tigrayan civilians are in desperate need of the basic necessities to sustain their lives. The Executive Director of UNICEF, Henrietta Fore, has said on 19 November that "2.3 million children in Tigray region of Ethiopia need humanitarian assistance". All warring parties, the government of Ethiopia in particular, are under a duty to facilitate humanitarian assistance to the people of Tigray. Denying access to humanitarian relief of the population as enacted under Article 18 of Protocol II is prohibited. Furthermore, using starvation as a means of war is expressly prohibited under the law as codified under Article 54 of Protocol I and reflects customary law.

We Scholars demand the international community undertakes its responsibility 'to respect and ensure respect' for the above and other relevant norms of international humanitarian and human rights law, the violation of which constitute war crimes and potentially other grave international crimes such as crimes against humanity and genocide.



The GSTS Leadership
24 November 2020

CC:

- UN Secretary General
- ICC Prosecutor
- Genocide Watch
- African Union Commission
- ICRC
- Amnesty International
- HRW
- The Media