



The Full-Scale Military Offensive on Tigrai:

Possible breaches of international human rights and humanitarian laws

Background to the Conflict

1. The causes of the conflict are complex. Without going to details, one can safely say that the way the transition was managed laid a conducive ground for it. Two such significant manifestations deserve specific mention.
2. First, Prime Minister Abiy chose to use both reconciliation and prosecution for past misdeeds without transparency and in such a way that targeted and discriminate prosecution against Tigrayans officials. While officials from other regions that were leading security and law enforcement agencies who are equally suspects of human rights violations were maintained or promoted to positions in Abiy's administration, Tigrayan officials were first massively dismissed and then prosecuted early into his reign.
3. Prime Minister Abiy's relationship with President Isaias of Eritrea was also not helpful mainly because it was not transparent and institutionalized. First and foremost, the terms of the peace deal have never been presented to the Ethiopian Parliament, as required under Ethiopian Constitutional law. Equally important is how the people-to-people relations and opening up of the border between Eritrea and Ethiopia were materialized only for a few months and was stopped with no explanation. More damaging development was that President Isaias Afewerki of Eritrea has been on record expressing his intentions to annihilate the TPLF even after the peace deal, clearly vowing to get involved in Ethiopia's politics. Given the troubling history of the relationship between the TPLF and the Eritrean leader, Prime Minister Abiy clearly siding with Isaias instead of his old comrades administering a region of a country he leads meant that the mistrust continued, and tension was brewing.
4. Among the more concrete layers in the development of the tension, mention is also necessary to the abrupt dissolution of the EPRDF coalition by Prime Minister Abiy and TPLF's rejection to join in a brand new party namely, Prosperity Party, and the decision made by Abiy's regime to postpone the election and a subsequent decision by the Tigray government to go ahead with the regional election despite objections from the federal government.
5. The actual trigger for the war the PM declared through a social media post at the night the world was affixed to the US 2020 presidential elections is also highly contested. While the Prime Minister's side claims that Tigrayan forces have attacked a military post in the region, authorities in Tigray say that Abiy sent the same command to arrest political leaders and forcefully control the region and that they acted in self-defense.
6. In the light of events before the relevant date, however, one can see those preparations were underway for a military attack on the region, which was considered as being unruly by the federal government. For instance, days before the declaration,



significant troop movement towards the region was reported, and the Prime Minister has been openly threatening with military action on various occasions. As the Foreign Affairs, citing a UN diplomat on the ground, argues early into the conflict, Abiy's government ". will have difficulty convincing anyone worth their salt that this wasn't pre-planned."

The Nature of the Conflict and Applicable International Law

7. To speak of violations in the context of an armed conflict, it is imperative to appreciate the nature and features of the conflict. What has been happening in Ethiopia since the early hours of November 4, 2020, is a text-book definition of an Armed Conflict. As the International Criminal Tribunal for the Former Yugoslavia authoritatively clarified in the Tadic case, an armed conflict exists when there is an armed confrontation between two or more states or there is "protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."

8. Protracted armed violence, according to the same decision and subsequent rulings, is assessed in terms of both its 'intensity' and the 'organization' of the parties to a conflict. In light of these, and when a situation goes beyond "internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature' as having been clearly excluded from the concept of armed conflict under Additional Protocol II to the Geneva Conventions, it becomes an armed conflict.

9. In the conflict at hand, the entire Ethiopia national army is involved, and the forces from the Tigray side are also well organized. Intensive armed confrontation has been ongoing for three weeks now. These facts clearly leave no doubt that this has been an armed conflict from the beginning. This is so even if we set aside the involvement of other foreign forces that are either clearly or allegedly involved in the conflict.

10. Clarity on the nature of the conflict is essential to ascertain applicable laws and outline legal responsibilities. That said, the nature of the current conflict is complex. On the one hand, the armed conflict between Tigray and the Abiy's regime is that of non-international armed conflict. On the other hand, the direct and significant involvement of Eritrea in the conflict strongly suggests that this war is, at the same time, an international armed conflict. It is, thus, possible that the conflict is a mixed armed conflict. Different rules apply to each type of conflict, but the foundations and customary principles of international humanitarian law equally apply to both situations.

11. There is growing evidence that Eritrea has been fighting alongside Abiy's Army. Not only does Tigray based broadcasters report the shelling of Tigraian towns from Eritrean territories and operation of Eritrean battalions in Tigray, but also recorded interviews with captured soldiers clearly show Eritrea's engagement. This is also unequivocally confirmed by Eritrean media with sources in the country that both infantry and mechanized Eritrean forces are in Tigray (latest, 25 November). International media are also airing the testimony of witnesses that fled to the Sudan as saying that their towns on west Tigray have been indiscriminately shelled from the Eritrean side.



12. The involvement of the Amhara special forces and other militia along the Ethiopian Defense Forces does not change the nature of the conflict. It does, however, make the intention to annex Tigrayan land to Amhara by force clearer as one causes of the armed conflict. It also means that, as untrained armed militias, it makes violations of human rights and humanitarian norms more likely.

13. Prime Minister Abiy's administration calls the ongoing conflict a law enforcement operation, or a rule of law operation, and vehemently denies that it is a war. That is simply not the case. It appears that the regime is pushing this narrative with an intention to lower diplomatic pressure; to give an impression that it will come to an end quickly and have a freehand in conducting the war, given that armed conflicts are more regulated under international law. Not clearly designating the situation as an armed conflict is not only not true, but also dangerous with regards to the protection of civilians and those who are no more able to participate in the conflict. One can think of the fate of captured fighters from both sides, which according to report, are in their thousands.

14. Ethiopia is a party to the Geneva Conventions of 1949, and most of the rules of the Conventions are customary rules. The 1977 Additional Protocols to the Conventions have also been ratified by Ethiopia and largely reflect customary international law. The Tigray state has also repeatedly expressed that it respects IHL norms.

15. Apart from humanitarian norms, human rights law also apply in the context of a conflict parallel to humanitarian norms in so far as they are not clearly derogated and suspensions justified by the exigencies of the conflict. Ethiopia, in this regard, is a party to various regional and international human rights instruments.

Potential Violations of Humanitarian and Human rights Norms

16. From the hour the war was declared, electricity, telephone and internet services are entirely shut off in Tigray by the federal authorities. This has continued for three weeks now. Access to firsthand information is almost impossible to get. The following, therefore, sketches possible violations that are being committed in the course of the conflict, as can be gathered from openly accessible news outlets or official statements from both sides of the conflict.

17. A complete blockade, including on all humanitarian aid, is enforced by Prime Minister Abiy's regime, despite repeated calls, including calls for an immediate ceasefire. Abiy's administration also rejects mediation offers, the last attempt being from the AU.

18. The UN warns of a full humanitarian crisis, and there are fears that people are going hungry as the conflict continues. This clearly violates the basic principle of humanity that parties to a conflict bear and cannot be justified either on considerations of military necessity, or other human rights imperatives. No justification for such extreme measures is also provided.

19. Besides, the government closed all banks in Tigray early into the conflict. Further, the National bank also recently suspends all bank accounts opened up in



Tigray. This closure of all banking services affects not only those in Tigray, but also those living outside Tigray, but whose accounts were opened in Tigray. No formal, plausible explanation was offered for it. This is not only unjustified under human rights norms but also may amount to systematic starvation of people. As it affects hundreds of thousands, if not millions, it is widespread in scope. Deliberately blocking people from getting access to food and medicine endangers the conditions of life which enter into a dangerous territory of crime against humanity, as envisaged under the Rome Statute. With evidence of policy intention, such actions may constitute genocide by rendering the conditions on the ground hard to survive.

20. On the morning of the 16th of November, the Ethiopian government bombed a school and St George's Church in the capital city of Tigray, Mekelle, killing 2 people and wounding many. The Tigray Region heavily suffers from the deliberate and indiscriminate air strikes and shelling of vital infrastructure such as the Tekeze hydropower dam and the Welkait Sugar Factory; and facilities in major cities in Tigray as reported by the Tigray National regional state. So far, cities such as Mekelle, Shire, Adigrat, Axum and Abyi-Adi have been targeted with a number of casualties.

21. The documentation of violations, the plights of people cannot also come out to the international community as a result of the complete information blackout. As if this was not enough, the federal government has put in place various measures to control the flow of information and to dominate the narrative fully in favour of Abiy regime's armed conflict. To begin with, a 'Fact Checking' is established at a ministerial-level and attempts to dominate flow of information related to the conflict. Though, it tries to pose as verification system, it is a propaganda machine to stifle and intimidate alternative sources of facts and information. As part of this suppression of independent media and scientific research, Ethiopia has also expelled a senior analyst for Crisis Group who was providing much needed independent research around the conflict, revoked the license of a Reuters correspondent and warned other media covering aspects of the conflict, thus tightening the media gag. These measures not only violate the freedom of expression, thought but also they curtailed the human right to access information. These measures hampered neutral information that could have helped the international community to have a full picture of the stakes in this war.

22. Communications blackout also infringes the fundamental right of families in conflict areas to be in touch with their family members elsewhere. Both under customary international humanitarian law and the second Additional Protocol, this is clarified. In the case at hand, all communications to and from Tigray are effectively cut off from the moment the war was declared. For 23 days now, family members outside Tigray could not reach out their families inside and vice versa. The need to establish communication is compounded by the fact that the blackout is happening in the context of increasingly intensified shelling and air raids including in towns; more reported military confrontation around densely populated areas; one sided news of the army and its ethnic militia controlling more towns.

23. An army official with a rank of Colonel has recently threatened the residents of Mekelle to save themselves, and declaring there won't be mercy as the army closes in the capital of the region, Mekelle and prepares to launch offense "fight of tanks and artilleries". This is a direct threat to civilians and clearly violates the principle of

distinction in international law. Former American Ambassador Susan Rice rightfully characterized it as a war crime. There are also a series of accusations that strengthens the likelihood that the Ethiopian army and those fighting on its side are not distinguishing military targets from civilian objects. Among others, it is confirmed that a university was air bombed and many students injured in Mekelle. Harrowing reports of civilians killings, not only in the course of the conflict but also in a form of revenge by militiamen are reported by those who fled into Sudan.

24. Hundreds of thousands of people are internally displaced and sought refuge in Sudan, including women, children and the elderly started the long route to makeshift camps in Sudan. Humanitarian access is yet to be facilitated by PM Abiy's administration. Article 70 (2) of the Protocol I states that parties in conflict need to facilitate assistance destined to areas and populations not only controlled by them but also by adverse parties.[1] State Parties have also the duty to refrain from impeding the provision of humanitarian aid. More importantly, for assistance to be effective, they are required to ensure the security of aid workers, aid materials and resources deployed on behalf of the needy. According to the UN World Food Programme (WFP), State Parties that deny aid organizations access to needy populations potentially violate the rights to adequate food and water.[2] In certain circumstances, such states may also be guilty of war crimes, crimes against humanity or even the crime of genocide.

25. Tigrayans in other parts of Ethiopia and elsewhere are also facing ethnic profiling, including arbitrary arrest and house searches in Addis Ababa. As per the latest reports confirmed by the international community, hundreds of thousands of Tigrayans in Ethiopia residing in and outside Tigray are being targeted for discrimination, attacks and persecution. As part of the ongoing ethnic cleansing, mass detention of tens of thousands of Tigrayans serving in the security, army, police and intelligence is a daily occurrence. Tigrayan public servants are dismissed from public services in banking, foreign affairs, aviation and other sectors and even the African Union Commission. The expropriation of Tigrayans' properties, solely based upon identity, constitutes a state-led ethnic cleansing. Such irresponsible and dangerous acts are signs of the first phase of pogrom against Tigrayans and is causing grave humanitarian crisis of unparalleled proportions in Ethiopia. A recent report from the Foreign Policy also indicates that Tigrayan peacekeepers in UN and African Union Peacekeeping Missions are also being purged, arrested, and transported to Ethiopia. The rights to life and other fundamental freedoms of these peacekeepers are in grave danger of violation. This terror on civilians has led some to warn that Ethiopia is on the edge of genocide.

26. One of the reporters that made it to Western Tigray confirmed that areas that fall under PM Abiy's forces and his Amhara allies are being administered by new appointees from the Amhara region. Though claimed by the Amhara regional state, these areas were under the legal administration of Tigray, and are now handed over to PM Abiy's allies. Not only does this simply disprove all pretenses of law enforcement the government claims to do, but also may constitute a grave violation of customary IHL. Under international law, civilian administrations are supposed to stay intact until



hostilities end. This also has the potential to elongate the conflict and strengthen ethnic animosity between Tigray and Amhara.

Likely Long-term Effects

27. If the conflict continues and humanitarian access is not allowed as a matter of urgency, the humanitarian crisis could be more devastating than the damages occurred in the last three weeks of the outbreak of the war. The conflict has also taken an ethnic dimension given the leading involvement of the Amhara region and this will likely make it difficult to establish peace even after the active war ends. A recent article in the Guardian, citing a confidential UN report also shows that heavy resistance leading to regional instability is very likely.

28. It, therefore, is in the incumbent on the International Community to ensure that the military advances are halted, and cessation of hostilities are declared and the war that is ravaging the country and the region ends the soonest possible, and that parties seat around a dialogue table. Equally urgent is the need to open a humanitarian corridor before it is too late.