

# **Ethnic Cleansing or Genocide? Either Way, the World Must Act to Prevent Further Atrocities in Tigray**

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# Ethnic Cleansing or Genocide? Either Way, the World Must Act to Prevent Further Atrocities in Tigray

By Chloe Canetti

The Tigray region of Ethiopia is under siege, with Ethiopian and Eritrean forces at war with the armed forces of the Tigray Regional Government, a group fighting for the region's autonomy under the current Ethiopian Constitution. The violence has caused massive displacement in the region, both of Eritrean refugees previously in Tigray, and of Tigrayans themselves. As of July 1, 2021, the United Nations High Commissioner for Refugees (UNHCR) had registered over 46,000 refugees from Tigray in Sudan, but the total number of refugees is estimated to be almost 70,000. There have been credible reports of atrocities committed by all actors in the conflict, but some of the most concerning reports implicate Ethiopian, Eritrean, and Amhara regional government forces in deliberate violence systematically targeting the Tigrayan people. Many have called the violence ethnic cleansing, but prominent Tigrayan leaders and human rights activists are now calling on the international community to recognize it as genocide.<sup>1</sup> The U.S. government is in the process of determining what terminology to use, but regardless of its decision, we know the violence occurring in Tigray is serious enough to trigger countries' legal and moral obligations to intervene.

This paper lays out the definitions of ethnic cleansing and genocide and the key differences between them. It then describes the atrocities occurring in Tigray, and analyzes whether they meet the definition of genocide. Finally, it calls on the United States and other countries to intervene to prevent further atrocities.

## What is Ethnic Cleansing?

Ethnic cleansing is not a distinct crime under international law, and there is no general global consensus on the exact definition.<sup>2</sup> Despite the lack of consensus, the International Court of Justice (ICJ) has defined ethnic cleansing as "rendering an area ethnically homogeneous by using force or intimidation to remove persons of

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<sup>1</sup> Former TPLF leader Debretsion Gebremichael said that Ethiopia and Eritrea are waging "a devastating and genocidal war" in Tigray. "Tigray Crisis: 'Genocidal War' Waged in Ethiopia Region, Says Ex-Leader." BBC News (Jan. 31, 2021), <https://www.bbc.com/news/world-africa-55877939>. Abune Matthias, the patriarch of Ethiopia's Orthodox Church, has also spoken out about genocide. "Ethiopian Orthodox Church Head Says Genocide is Taking Place in Tigray." Reuters (May 9, 2021), <https://www.reuters.com/world/ethiopian-orthodox-church-head-says-genocide-is-taking-place-tigray-2021-05-09/>.

<sup>2</sup> "Ethnic Cleansing." UN Office on Genocide Prevention and the Responsibility to Protect (last visited July 23, 2021), <https://www.un.org/en/genocideprevention/ethnic-cleansing.shtml>.

given groups from the area.”<sup>3</sup> The United Nations has associated ethnic cleansing with forced movement or displacement. In a UN General Assembly resolution on Bosnia and Herzegovina in 1992, the General Assembly linked the “acquisition of territory by force” to ethnic cleansing.<sup>4</sup> In 1993, the Assembly listed “violence aimed at forcing individuals to leave their homes” as one of the violations by Bosnian Serbs in connection with ethnic cleansing.<sup>5</sup> In 1997, the UN Sub-Commission on Human Rights described ethnic cleansing as a form of “forced population transfer,” referring to it in conjunction with “dispersal of minorities or ethnic populations from their homeland... and the implantation of settlers.”<sup>6</sup> Ethnic cleansing, by definition, often causes both internal displacement and refugee flows across international borders.

## What is Genocide?

According to the Rome Statute of the International Criminal Court, genocide is “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”<sup>7</sup>

For a crime or set of crimes to constitute genocide, it must be proven that the genocidal actors (1) committed one or more of the above acts, (2) against a national, ethnic, racial, or religious group, and (3) had the intent to destroy the group, not just specific members of the group. The most difficult element to prove is the last; as the UN Office of Genocide Prevention states, “there must be a proven intent on the part of the perpetrators to physically destroy” the group, not just to wipe out the group’s culture or to displace the group.<sup>8</sup> The ICJ determined in *Croatia v. Serbia* that while genocidal intent can sometimes be inferred from a pattern of conduct, a finding of genocide can only occur where genocidal intent is “the *only* inference that could reasonably be drawn from the acts in question.”<sup>9</sup> Thus, while the “acts” element of genocide may be relatively straightforward to prove, the bar for intent is extremely high.

Intent is the most distinct difference between ethnic cleansing and genocide. In a judgment regarding atrocities committed in the former Yugoslavia, the ICJ noted that the drafters of the Genocide Convention debated

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<sup>3</sup> *Bosnia and Herzegovina v. Serbia and Montenegro*, I.C.J. Reports 2007, p. 42, Judgment on Application of the Convention on the Prevention and Punishment of the Crime of Genocide, ¶ 190 (Int’l Ct. of Justice Feb. 26, 2007).

<sup>4</sup> The Situation in Bosnia and Herzegovina, UN General Assembly, p. 7, Aug. 25, 1992, A/RES/46/242.

<sup>5</sup> Resolution Adopted by the General Assembly: Situation of Human Rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), UN General Assembly, p.4, Mar. 10, 1995, A/RES/49/196.

<sup>6</sup> Human Rights and Population Transfer: Final Report of the Special Rapporteur, Mr. Al-Khasawneh, UN Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, ¶ 65, June 27, 1997, E/CN.4/Sub.2/1997/23.

<sup>7</sup> Rome Statute of the International Criminal Court, art. 6 (July 17, 1998).

<sup>8</sup> “Genocide.” UN Office on Genocide Prevention and the Responsibility to Protect (last visited July 23, 2021), <https://www.un.org/en/genocideprevention/genocide.shtml>.

<sup>9</sup> Buchwald, Todd and Adam Keith. “By Any Other Name: How, When, and Why the US Government has Made Genocide Determinations.” United States Holocaust Memorial Museum (Mar. 2019), [https://www.ushmm.org/m/pdfs/Todd\\_Buchwald\\_Report\\_031819.pdf](https://www.ushmm.org/m/pdfs/Todd_Buchwald_Report_031819.pdf)

including “measures intended to oblige members of a group to abandon their homes” as an act of genocide, but chose to leave this out because genocide must include an intent to destroy, not just to force people to move.<sup>10</sup> Although ethnic cleansing through forced removal can sometimes rise to the definition of genocide, ethnic cleansing can also include forced displacement or evictions that may not be meant to kill the group. And while forced displacement may result in death or destruction of a group, if the perpetrators’ intent is only to move the group elsewhere, the act cannot be considered a genocide.

Two of the most infamous examples of genocide, the Holocaust and the Rwandan genocide, illustrate the intent required for ethnic cleansing to become genocide. During the Holocaust, Hitler created the “Final Solution,” the well-known goal of which was to eliminate the Jewish people of Europe. Although many Jews were deported from their home countries during the Holocaust, they were relocated directly into concentration camps where they were slaughtered by the millions.<sup>11</sup> The fact that Jews were still murdered even after being removed from certain areas, along with Hitler’s specific plan for mass murder, demonstrated a genocidal intent. Similarly, in Rwanda, radio messages and other propaganda were helpful in proving intent to destroy, for instance through broadcasts calling the Tutsi people “cockroaches” and calling for people to “finish off these Tutsi cockroaches.”<sup>12</sup> Unfortunately, not all genocidaires are so blatant in advertising their genocidal intent. However, absent such admissions, it is important to factor in all acts and circumstances to determine whether genocidal intent exists.

## What are the Legal Implications of a Determination of Genocide?

Labeling an act or series of acts as a genocide triggers a state’s legal obligations under the Genocide Convention. The Convention contains four main state obligations: (1) to prevent and punish acts of genocide, (2) to enact legislation to enforce the Convention, (3) to try persons who commit genocide in a state’s jurisdiction, and (4) to grant extradition of persons charged with genocide.<sup>13</sup> Despite these obligations, the Convention is vague about exactly what such obligations entail and when the obligations are triggered.

In the case of *Bosnia and Herzegovina v. Yugoslavia* in 1996, the ICJ clarified and elaborated on these obligations. The Court noted that the responsibility to prevent and punish genocide “is not territorially limited by the Convention,” meaning that a genocide occurring in another country can still trigger the obligations of countries that are not directly involved.<sup>14</sup> In a 2007 judgment in *Bosnia v. Serbia*, the ICJ stated that states’ obligation is “to employ all means reasonably available to them, so as to prevent genocide so far as possible.”<sup>15</sup> Whether a state has met such obligation depends on several factors, including a state’s capacity to influence the situation, geographical distance between the offending state and the other state, political links between the two states, and the legality of means a state can use to intervene.<sup>16</sup> In the case between Bosnia and Serbia, these factors

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<sup>10</sup> *Bosnia and Herzegovina v. Serbia and Montenegro*, I.C.J. Reports 2007, p. 42, Judgment on Application of the Convention on the Prevention and Punishment of the Crime of Genocide, ¶ 190 (Int’l Ct. of Justice Feb. 26, 2007).

<sup>11</sup> “Operation Reinhard (Einsatz Reinhard).” United States Holocaust Memorial Museum (May 14, 2021), <https://encyclopedia.ushmm.org/content/en/article/operation-reinhard-einsatz-reinhard>.

<sup>12</sup> “Propaganda and Practice.” Human Rights Watch (1999), <https://www.hrw.org/reports/1999/rwanda/Geno1-3-10.htm>.

<sup>13</sup> Convention on the Prevention and Punishment of the Crime of Genocide, UN General Assembly, arts. 1, 5-7, Jan. 12, 1951.

<sup>14</sup> *Bosnia and Herzegovina v. Yugoslavia*, I.C.J. Reports 1996, p. 595, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Judgment, ¶ 31 (Int’l Ct. of Justice July 11, 1996).

<sup>15</sup> *Bosnia and Herzegovina v. Serbia and Montenegro*, I.C.J. Reports 2007, p. 42, Judgment on Application of the Convention on the Prevention and Punishment of the Crime of Genocide, ¶ 430 (Int’l Ct. of Justice Feb. 26, 2007).

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

were very strong, given the “special relationship and ‘undeniable influence’ that Serbia at that time exerted over the ethnic Serb leaders operating in neighboring Bosnia.”<sup>17</sup> However, the Court also noted in this case that the Convention does not create an obligation or even a right of countries to intervene militarily to stop genocide.<sup>18</sup>

These obligations to prevent and stop genocide, regardless of how ill-defined they are, can make states hesitant to declare that a genocide is occurring. Labeling an act or series of acts as “ethnic cleansing,” on the other hand, does not trigger states’ legal obligations because ethnic cleansing is not a recognized international crime. Therefore, states may opt to use “ethnic cleansing” instead of “genocide” to avoid a requirement to act or intervene. However, political will should not be the determining factor in whether a crisis is labeled a genocide; it is vital to examine the entire context of a situation to decide whether a genocide is occurring.

## What is Happening in Tigray?

Tigray is a region in northern Ethiopia that borders Eritrea and Sudan. The Tigrayan people constitute the third largest ethnic group in the country at 6% of the population. Tigray is also home to the Tigray People’s Liberation Front (TPLF), a political group that, prior to the election of the current Prime Minister Abiy Ahmed, had wielded disproportionately great power compared to the size of the Tigrayan population.<sup>19</sup> When Abiy came to office, he worked to redistribute power amongst the political parties, angering the TPLF.<sup>20</sup> The Tigray Regional Government fights for Tigray’s autonomy from the rest of Ethiopia, and tensions between the Tigray Regional Government and the Ethiopian central government grew quickly under Abiy. The situation hit a breaking point in November of 2020 when the Tigray Regional Government’s army, the Tigray Defense Forces (TDF) allegedly attacked an Ethiopian military base, and Ethiopian forces retaliated with disproportionate force in a military offensive, starting a large-scale conflict.

Unfortunately, the conflict is not internal to Ethiopia; Eritrean forces are assisting the Ethiopian army and carrying out mass atrocities against both Tigrayans and Eritrean refugees who were living in the region. Prior to Abiy’s regime, Ethiopia and Eritrea had tense relations, in part because of the Eritrean government’s animosity towards the TPLF, and also because Ethiopia houses many Eritrean refugees.<sup>21</sup> However, Abiy won a Nobel Peace Prize in 2018 for mending relations between the two countries. Thus, when Ethiopia began its attack in Tigray, Eritrea joined in to assist its new ally. Eritrea was also incentivized to join to retaliate against Eritrean refugees who fled the Eritrean regime.

Witnesses have reported atrocities by all three main actors— the TDF, the Ethiopian forces, and the Eritrean forces— as well as regional armies such as the Amhara allied militia forces. But the most systematic and

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<sup>17</sup> Buchwald, Todd and Adam Keith. “By Any Other Name: How, When, and Why the US Government has Made Genocide Determinations.” United States Holocaust Memorial Museum (Mar. 2019), [https://www.ushmm.org/m/pdfs/Todd\\_Buchwald\\_Report\\_031819.pdf](https://www.ushmm.org/m/pdfs/Todd_Buchwald_Report_031819.pdf).

<sup>18</sup> *Id.*

<sup>19</sup> “9 Things to Know About the Unfolding Crisis in Ethiopia’s Tigray Region.” NPR (Mar. 5, 2021), <https://www.npr.org/2021/03/05/973624991/9-things-to-know-about-the-unfolding-crisis-in-ethiopia-tigray-region>; Walsh, Declan and Abdi Latif Dahir. “Why is Ethiopia at War with Itself?” New York Times (July 11, 2021), <https://www.nytimes.com/2020/11/05/world/africa/ethiopia-tigray-conflict-explained.html>.

<sup>20</sup> Walsh, Declan and Abdi Latif Dahir. “Why is Ethiopia at War with Itself?” New York Times (July 11, 2021), <https://www.nytimes.com/2020/11/05/world/africa/ethiopia-tigray-conflict-explained.html>.

<sup>21</sup> “Tigray Crisis: Eritrea’s Role in Ethiopian Conflict.” BBC News (Dec. 28, 2020), <https://www.bbc.com/news/world-africa-55295650>.

alarming acts have been committed mainly by Eritrean and Amhara forces against Eritrean refugees and Tigrayans.<sup>22</sup> While the Eritrean refugees have primarily been targeted for their perceived disloyalty to the Eritrean regime,<sup>23</sup> Tigrayans are being targeted because of their ethnicity and the incorrect presumption that all Tigrayans are aligned with or supportive of the TPLF and TDF.<sup>24</sup>

The New York Times first broke the news of a U.S. government report detailing ethnic cleansing in Tigray in February of 2021. The government has been quietly documenting crimes in Tigray, and the report found that armed forces have been “deliberately and efficiently rendering Western Tigray ethnically homogeneous through the organized use of force and intimidation.”<sup>25</sup> Witnesses stated that Amhara forces entered towns in Tigray and told everyone to leave within 24 hours.<sup>26</sup> One woman testified that the troops “told us we are not allowed to live there anymore, because we are Tigrayans. They ordered us to leave empty-handed.”<sup>27</sup>

Those Tigrayans who were lucky enough to escape being killed have fled, mainly to Sudan. In the months since the conflict began, Sudan has registered almost 50,000 Tigrayan refugees.<sup>28</sup> These refugees continue to face challenges in Sudan, where basic resources are scarce and climate events such as flooding have periodically destroyed their tents and supplies. While conditions in Sudan’s refugee camps remain perilous, Tigrayan refugees feel they have no choice but to stay and endure; as one refugee stated, “I really don’t want to stay in this camp, but I know I can’t go back to Tigray either. I don’t know what to do.”<sup>29</sup>

Although the goal of ethnic cleansing is to force members of another ethnicity out of a certain region, the act of ethnic cleansing can take many forms. According to an Amnesty International report, in addition to ordering people to flee, Eritrean troops systematically murdered hundreds of Tigrayans in the city of Axum last November.<sup>30</sup> Witnesses stated that Eritrean troops used the excuse of trying to find TPLF soldiers to indiscriminately kill innocent civilians. The troops would go through people’s mobile phones looking for photos of TPLF members, and would even kill people wearing camouflage shirts that were clearly regular tee shirts and not army uniforms.<sup>31</sup> Others were shot simply riding down the street on motorcycles. Many were shot in the back while running away from the violence.<sup>32</sup>

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<sup>22</sup> While this paper focuses on the Tigrayan population of Ethiopia and whether the atrocities occurring are ethnic cleansing or genocide, the U.S. Committee for Refugees and Immigrants remains gravely concerned about reports of atrocities committed by Eritrean forces against Eritrean refugees who have fled Tigray.

<sup>23</sup> It is widely believed that Eritrean forces have been killing Eritrean refugees “to punish them for leaving Eritrea.” “Situation Report EEPA HORN No. 51- 10 January 2021.” Europe External Programme with Africa (Jan. 10, 2021), <https://www.eepa.be/wp-content/uploads/2020/11/Situation-Report-EEPA-Horn-No.-51-10-January-2021.pdf>.

<sup>24</sup> Anna, Cara. “‘Leave no Tigrayan’: In Ethiopia, an Ethnicity is Erased.” AP News (Apr. 7, 2021), <https://apnews.com/article/ethiopia-tigray-minority-ethnic-cleansing-sudan-world-news-842741eebf9bf0984946619c0fc15023>.

<sup>25</sup> Walsh, Declan. “Ethiopia’s War Leads to Ethnic Cleansing in Tigray Region, U.S. Report Says.” New York Times (Apr. 1, 2021), <https://www.nytimes.com/2021/02/26/world/middleeast/ethiopia-tigray-ethnic-cleansing.html>.

<sup>26</sup> Kassa, Lucy. “‘A Tigrayan Womb Should Never Give Birth’: Rape in Tigray.” Al Jazeera (Apr. 21, 2021), <https://www.aljazeera.com/news/2021/4/21/a-tigrayan-womb-should-never-give-birth-rape-in-ethiopia-tigray>.

<sup>27</sup> *Id.*

<sup>28</sup> “Sudan Situation Report.” UN OCHA (July 15, 2021), <https://reports.unocha.org/en/country/sudan/>.

<sup>29</sup> *Id.*

<sup>30</sup> “The Massacre in Axum.” Amnesty International (Feb. 26, 2021), <https://www.amnesty.org/download/Documents/AFR2537302021ENGLISH.PDF>

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

Last week, bodies began washing up on the shores of the Tekeze River in Sudan. The bodies are believed to be Tigrayans killed in an Amhara massacre in Humera, in Western Tigray. Several of the bodies have been identified as Tigrayans based on facial markings and Tigrayan tattoos.<sup>33</sup> Many of the bodies appear to have been shot, and some even have gruesome axe wounds.<sup>34</sup> The bodies have their arms tied behind their backs.<sup>35</sup> Over 40 bodies have been found so far, but many more are expected to wash up in the coming days and weeks. While Tigrayans and other activists are calling for an investigation into the deaths, the evidence of ethnic cleansing continues to mount.

Another method of ethnic cleansing that has been widespread is mass rape. Rape is being used as a weapon in the conflict in Tigray.<sup>36</sup> By March, the United Nations had documented over 500 reports of rape in Tigray, but the total is expected to be much higher due to stigma and fear of reporting.<sup>37</sup> One survivor said the men who raped her and burned her genitals told her, “[our] problem is with your womb. Your womb gives birth to Woyane [derogative terms used to refer to the TPLF]. A Tigrayan womb should never give birth.”<sup>38</sup> A doctor who later treated the woman concluded that the brutal attack had rendered the woman infertile.<sup>39</sup> Another survivor was shot multiple times when she resisted her attackers, and had to have her arm amputated as a result. She believes the attack was part of “ethnic cleansing... Soldiers are targeting Tigrayan women to stop them giving birth to more Tigrayans.”<sup>40</sup>

In addition to the forced movement, killings, and rapes, more recent reports have surfaced of intentional starvation. In June, a UN official accused Eritrean forces of “trying to deal with the Tigrayan population by starving them.” By mid-year, the UN estimated that over 350,000 Tigrayans were living in famine, and another 2 million were on the brink of famine.<sup>41</sup> Despite the dire conditions, Ethiopian and Eritrean soldiers have been stealing food and medical aid or blocking it from entering Tigray at all. Some witnesses have also described soldiers burning crops, stealing seeds and farming equipment, and slaughtering livestock.<sup>42</sup> A regional official in Tigray agreed that famine is being used as a weapon of war and ethnic cleansing in the region.<sup>43</sup>

All of these acts have led to mass displacement and death in Tigray. The acts against the Tigrayans appear to be deliberate, targeted, and systematic. The U.S. government must now determine whether these acts amount to genocide. Although the terms “ethnic cleansing” and “genocide” are frequently used interchangeably, and

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<sup>33</sup> Magdy, Samy and Cara Anna. “Bodies Found in River Between Ethiopia’s Tigray, Sudan.” AP News (Aug. 2, 2021), <https://apnews.com/article/middle-east-africa-sudan-race-and-ethnicity-ethiopia-1afde1960e66425a2c9586a431fb5a6a>.

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

<sup>35</sup> *Id.*

<sup>36</sup> As defined by the Rome Statute of the International Criminal Court, rape is a war crime when committed in the context of armed conflict “as part of a plan or policy or as part of a large-scale commission of such crimes.” Rome Statute of the International Criminal Court, art. 8 (July 17, 1998).

<sup>37</sup> Nichols, Michelle. “Men Forced to Rape Family Members in Ethiopia’s Tigray, U.N. Says.” Reuters (Mar. 25, 2021), <https://www.reuters.com/article/us-ethiopia-conflict-un-idUSKBN2BH2ZC>.

<sup>38</sup> Kassa, Lucy. “A Tigrayan Womb Should Never Give Birth: Rape in Tigray.” Al Jazeera (Apr. 21, 2021), <https://www.aljazeera.com/news/2021/4/21/a-tigrayan-womb-should-never-give-birth-rape-in-ethiopia-tigray>.

<sup>39</sup> *Id.*

<sup>40</sup> Marks, Simon and Declan Walsh. “They Told Us Not to Resist: Sexual Violence Pervades Ethiopia’s War.” New York Times (June 25, 2021), <https://www.nytimes.com/2021/04/01/world/africa/ethiopia-tigray-sexual-assault.html>.

<sup>41</sup> Paravicini, Giulia and Katharine Houreld. “Exclusive: UN Official Accuses Eritrean Forces of Deliberately Starving Tigray.” Reuters (June 24, 2021), <https://www.reuters.com/world/africa/exclusive-un-official-accuses-eritrean-forces-deliberately-starving-tigray-2021-06-11/>.

<sup>42</sup> Muhumuza, Rodney. “In Tigray, Food is Often a Weapon of War as Famine Looms.” AP News (June 11, 2021), <https://apnews.com/article/only-on-ap-united-nations-africa-business-897bed43c6743c4575298ba5cf7bdd1c>.

<sup>43</sup> *Id.*



often describe the same acts, there are key differences between them. It is vital to determine whether these acts rise to the level of genocide, to trigger international legal obligations for countries to intervene and save the Tigrayan people.

## Do the Atrocities Against Tigrayans Amount to Genocide?

Based on what we know currently, it is likely that a genocide is occurring or going to occur. As laid out above, the elements to prove genocide are 1) the acts committed, 2) against an identified ethnic, national, racial, or religious group, and 3) the intent by those acts to destroy the group in whole or in part.

### Acts

The world has not yet been able to fully identify all the perpetrators of the conflict. However, witness testimony points to Eritrean armed forces, Amhara regional armed forces, and possibly even Ethiopian federal forces as perpetrators of the crimes in Tigray. The acts of violence and terror perpetrated in Tigray fit the “act” element of genocide. Although only one type of genocidal act is needed to meet the “act” element of the crime, there is ample documentation of widespread instances of the first four acts listed in the genocide convention. First, witnesses have reported mass murders in Tigray specifically targeting Tigrayan civilians, not just members of the TPLF. Second, Eritrean and Amhara forces have inflicted serious bodily and mental harm on Tigrayans through murdering, vandalizing, burning, raping, and other acts intended to cause terror and displacement. Third, intentional starvation and blocking of food aid is a deliberate act to inflict conditions of life calculated to bring about physical destruction. Fourth, the mass rapes, especially those in which women’s genitals have been intentionally burned, cut, or damaged, are measures intended to prevent births within the group. This is further evidenced by Tigrayan survivors’ testimonies that the soldiers who raped them specifically stated their intent to prevent Tigrayan births.

### Victims

The victims of these acts are Tigrayans. Although Eritreans and members of other Ethiopian ethnicities have been targeted and killed by the TPLF and other armed forces, the victims of the acts detailed above have been almost exclusively Tigrayan. One witness to the killings said that the killers prohibited Tigrayans from burying their own dead, but that when an ethnic Oromo was mistakenly killed in a Tigrayan household, the perpetrators came back to bury the body.<sup>44</sup> Perpetrators have specifically sought out Tigrayans, as evidenced by their acts and their statements, for instance that all Tigrayans must leave the area or that Tigrayan women should not be allowed to give birth.

### Intent

Intent is the most difficult element to prove. For an act or set of acts to be a genocide, the intent to *exterminate*, not just *displace* a group must be clear beyond a reasonable doubt.<sup>45</sup> Given the media blackout and that direct

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<sup>44</sup> Anna, Cara. “‘Leave no Tigrayan’: In Ethiopia, an Ethnicity is Erased.” AP News (Apr. 7, 2021), <https://apnews.com/article/ethiopia-tigray-minority-ethnic-cleansing-sudan-world-news-842741eebf9bf0984946619c0fc15023>.

<sup>45</sup> Rome Statute of the International Criminal Court, art. 66 (July 17, 1998).



access to Tigray is almost completely blocked, some of the evidence may seem contradictory. However, the current evidence suggests a genocide is occurring or is likely to occur in the very near future.

Certain evidence points to a genocidal intent by the perpetrators. For instance, the testimonies of rape survivors whose genitals were damaged to the point of making them infertile suggest that the perpetrators wanted to ensure no more Tigrayans were born, not just that Tigrayans left the area. Additionally, the fact that soldiers committed mass murders instead of simply forcing people to flee suggests that the goal was to eliminate Tigrayans, not displace them. The intentional starvation points to this conclusion as well, especially given the limited mobility of civilians within Tigray to move out in response to food shortages.

However, some of Prime Minister Abiy's actions have undercut the intent element. For instance, despite denying for many months that Eritrean soldiers were even in Tigray, Prime Minister Abiy has recently made several moves indicating an intent to hold perpetrators accountable. In late March, Abiy publicly acknowledged that some troops had been using rape as a weapon of war. He clarified that anyone "who rapes our Tigrayan sisters, anybody who is involved in looting, will be held accountable in a court of law. We sent them to destroy the junta, not our people."<sup>46</sup> This accountability has already been happening on a small scale; in May, three Ethiopian soldiers were convicted of rape and one of murder for atrocities committed in Tigray.<sup>47</sup> An additional 28 soldiers are on trial for murder and sexual violence.<sup>48</sup> These efforts at accountability and justice, although small-scale in comparison to the extent of the conflict, detract from the argument that there was a widespread plan to commit genocide.

Considered in the overall context of the atrocities, Abiy's small scale statements and actions to hold perpetrators accountable may make proving genocidal intent more difficult, but should *not* be taken as proof that genocide is not occurring. These accountability measures may in fact be more of an attempt by the Ethiopian government to avoid accusations of genocide than an effort for actual accountability.<sup>49</sup> Meanwhile, the government continues to block humanitarian actors, food, money, and supplies from reaching Tigray, and a media blackout is still in effect.

The acts detailed above are strong indicators that a genocide is occurring or very likely to occur. Given the extremely high burden of proof to prove genocidal intent, USCRI does not yet have enough information regarding these atrocities to declare that the situation in Tigray is a genocide. However, the international community must continue to seek out the truth and be prepared to declare a genocide once further indicators of perpetrators' intent are revealed.

## Legal and Moral Obligation to Act

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<sup>46</sup> Marks, Simon and Declan Walsh. "They Told Us Not to Resist': Sexual Violence Pervades Ethiopia's War." New York Times (June 25, 2021), <https://www.nytimes.com/2021/04/01/world/africa/ethiopia-tigray-sexual-assault.html>.

<sup>47</sup> Mersie, Ayenat. "Four Ethiopian Soldiers Convicted of Crimes Against Civilians in Tigray." Reuters (May 21, 2021), <https://www.reuters.com/world/africa/four-ethiopian-soldiers-convicted-crimes-against-civilians-tigray-2021-05-21/>.

<sup>48</sup> *Id.*

<sup>49</sup> The Ethiopian government has come under increasing international pressure to hold perpetrators accountable for crimes committed in Tigray. *Id.*

The U.S. government is soon expected to release a decision on whether it will label the atrocities in Tigray a genocide. However, regardless of the term the government uses, we know enough of the situation to trigger the United States' legal and moral obligation to act to prevent further atrocities. Although "ethnic cleansing" is not a defined crime in international law, forced displacement, mass murder, mass rape, and intentional starvation are crimes against humanity,<sup>50</sup> and governments have a legal responsibility to intervene under the 2005 World Summit Outcome Responsibility to Protect.<sup>51</sup> The Responsibility to Protect includes using diplomatic, humanitarian, and other peaceful means to stop the crimes. If this does not work, states must collectively determine "in a timely and decisive manner" how to respond more forcefully.<sup>52</sup> The United States must take immediate and concrete steps to intervene pursuant to its international obligations. These steps should include:

- 1) Calling for an immediate and permanent ceasefire by all actors in the conflict.
- 2) Calling for Eritrean forces to immediately leave Ethiopia.
- 3) Pressuring the Ethiopian government to lift blockades and restrictions that are preventing humanitarian and media access to Tigray and other regions in crisis. The government should consider all available and necessary means to pressure the government, including stronger sanctions than those announced in May of this year.<sup>53</sup>
- 4) Calling for an immediate and fully independent UN investigation into the circumstances and perpetrators of the murders of Tigrayans whose bodies have washed up in Sudan. The UN is currently conducting a joint investigation with the Ethiopian Human Rights Commission (EHRC) into Tigray, but the EHRC has been known for bias and should not be seen as a trusted partner in such investigations.<sup>54</sup> Any investigation must be impartial and must aim to identify the bodies and the families of the victims to allow them to seek closure and justice.
- 5) Expediting the analysis of whether the atrocities constitute genocide and making a public determination of genocide if it is warranted. Doing so serves several purposes. First, a genocide determination by the United States would convey the seriousness of the situation in Tigray and could catalyze other countries to act. Second, a genocide declaration would demonstrate respect for the victims and survivors. Third, a determination would signal that the United States is bearing witness and could deter Ethiopia and Eritrea from continuing both to commit atrocities and to block humanitarian and media access. When the United States declared a genocide in Darfur, for instance, this helped to later allow the UN Security

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<sup>50</sup> Crimes against humanity include "deportation or forcible transfer of population," "murder," "rape... enforced sterilization, or any other form of sexual violence of comparable gravity," and "other inhumane acts of a similar character intentionally causing great suffering." Rome Statute of the International Criminal Court, art. 7 (July 17, 1998).

<sup>51</sup> The 2005 World Summit Outcome document states that the "international community... has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means... to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity." Resolution Adopted by the General Assembly on 16 September 2005: 2005 World Summit Outcome, ¶ 139, Oct. 24, 2005, A/RES/60/1.

<sup>52</sup> *Id.*

<sup>53</sup> Blinken, Antony. "United States' Action to Press for the Resolution of the Crisis in the Tigray Region of Ethiopia." U.S. Department of State (May 23, 2021), <https://www.state.gov/united-states-actions-to-press-for-the-resolution-of-the-crisis-in-the-tigray-region-of-ethiopia/>.

<sup>54</sup> "Ethiopia: Human Rights Commission Must be Reformed to Correct Miscarriage of Justice." Amnesty International (June 17, 2019), <https://www.amnesty.org/en/latest/news/2019/06/ethiopia-human-rights-commission-must-be-reformed-to-correct-miscarriage-of-justice/>.

Council to refer the crisis to the International Criminal Court (ICC).<sup>55</sup> The threat of referral to the ICC can act as a deterrent to perpetrators who may otherwise believe they are acting with impunity.

While genocide is widely considered the worst of all international crimes, in practice, ethnic cleansing and genocide often have the same result: the destruction of a human population. We need not wait to determine whether the actions against Tigrayans meet the definition of genocide to take action. The time to act is now, as the world has already born witness to enough senseless violence and tragedy against Tigrayans to trigger our legal and moral obligations to intervene. Regardless of the label we use, we must not sit idly by as Tigrayans are slaughtered.

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<sup>55</sup> Buchwald, Todd and Adam Keith. "By Any Other Name: How, When, and Why the US Government has Made Genocide Determinations." United States Holocaust Memorial Museum, 24 (Mar. 2019), [https://www.ushmm.org/m/pdfs/Todd\\_Buchwald\\_Report\\_031819.pdf](https://www.ushmm.org/m/pdfs/Todd_Buchwald_Report_031819.pdf)

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