

Rape as a Weapon of War in Tigray: An Appraisal from the Legal Standpoint

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Abstract

Tigrayan women were subjected to terrible gang rapes and genital mutilations; many were raped, then killed, raped in front of their family members, and forcibly impregnated; and many others were held hostages to sexual slavery and raped to be infected with incurable disease. Forcing family members to rape their own members and insertion of foreign objects into genitalia were the other manifestations of the brutal rapes in Tigray throughout the war. This shows that the rape was not an incidental wartime rape but rather an orchestrated campaign of rape over the Tigrayan ethnic group. International organizations, governmental authorities, human rights institutions, and medical reports have blatantly revealed beyond a shadow of doubt that rape has been used as a weapon of war in Tigray. This systemic rape has violated international human rights, humanitarian laws, and customary laws, thereby committing war crimes, crimes against humanity, and genocide by using rape as a weapon of war. However, nothing has been done to hold perpetrators responsible and remedy survivors yet. So far, no case has seen the sun of justice. This paper scrutinizes the case of Tigrayan women and girls from the legal point of view, i.e., it examines the commission of grave international crimes, assesses the possible legal recourses that avoid impunity, and provides potential reparation schemes for the survivors.

Keywords: *Crime against Humanity, War Crime, Genocide, Rape, Tigray*

1. Introduction

On November 4, 2020, the Ethiopian government announced military operations in Tigray, a northern tip regional constituent of the Ethiopian federation. The federal government integrated the Ethiopian National Defense Force (hereinafter ENDF) and the Eritrean Defense Force (hereinafter EDF), paramilitary forces from all of Ethiopia's regional states, and the informal Amhara militia (hereinafter Fano) as allied forces.¹

¹ RFI, *UN warns sexual violence being used as weapon of war in Ethiopia's Tigray region*, April 16, 2021.

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Though the war was launched by the federal government under the ‘law enforcement operation’ scheme, it finally turned out to be a devastating calamity for Tigrayan civilians. The atrocity extended from massacres to massive gang rapes; from looting of public and private properties to destruction of civil institutions and shelling of cities; and from forced displacements to extra-judicial executions.² Rape, starvation, and a lack of medication are used as weapons of war. Ethnic Tigrayans were targeted exclusively based on their ethnicity through hate speech and dehumanizing propaganda.³

Widespread and systematic rape was used as a weapon of war, and it was committed by the ENDF, EDF, ASF, and aligned militias.⁴ A report publicized by the World Peace Foundation has even revealed the existence of ‘rape camps’ in Tigray.⁵ Among other goals, it was launched to destroy the reproductive and mental health of survivors. .

This paper tried to answer the following questions: Can it be said that rape was used as a weapon of war in Tigray? What were the serious crimes committed using rape as a weapon of war? Who is legally responsible for such crimes? And what mechanisms of legal recourse are available to redress the damage?

To answer the above questions, qualitative and quantitative data analyses were employed using human rights investigations, medical reports, research books and journals, national, regional, and international laws, field investigations at Internally Displaced People (IDP) sites, media outlets, and press releases as sources of data.

2. Definitions and Elements: GBV, VAW, Sexual Violence, Rape, Genocidal Rape

To begin with, sexual violence is a broad term that includes rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any

² Office of the UN High Commissioner on Human Rights (OHCHR), *Ethiopia: Persistent, credible reports of grave violations in Tigray underscore urgent need for human rights access – Bachelet*, March 4, 2021.

³ Lauren Ploch Blanchard, *Ethiopia's Transition and the Tigray Conflict*, Congressional Research Service CRS Report R46905, September 8, 2021, p. 2, <https://crsreports.congress.gov>.

⁴ RFI, *supra* note 2.

⁵ Hayelom Mekonnen et al., *What ‘rape as a weapon of war’ in Tigray really means*, World Peace Foundation, August 10, 2021.

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other form of sexual violence of comparable gravity perpetrated against women, men, girls, or boys. It is not limited to the physical invasion of the human body. It may consist of acts that do not involve insertion or even physical contact, such as forced nudity.⁶

On the other hand, gender-based violence (GBV) is a sex-free term that is defined as “any type of harm that is perpetrated against a person or group of people because of their factual or perceived sex, gender, sexual orientation, and/or gender identity.”⁷ ‘Sex free’ in this context refers to the fact that GBV can be committed against any person, regardless of sex or gender difference. When it is seen from the women’s side only, it is “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”⁹ The phrase “discrimination against women in all its forms⁸ under CEDAW is clarified to include violence against women.

Violence against women (VAW) is defined under the Declaration on the Elimination of Violence Against Women (hereinafter DEVAW) as:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.⁹

To broaden the scope of protection against gender based violence, it is defined under the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa to include:

All acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation

⁶ See Akayesu Judgment, Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, (Sept. 2, 1998), para. 688.

⁷ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Art. 3, <https://rm.coe.int/168008482e last 10/08/2023>.

⁸ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 18, 1979), Art. 2.

⁹ Declaration on the Elimination of Violence against Women (DEVAW), UN General Assembly Resolution A/RES/48/104, 23 February 1994, Art. 1.

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*of fundamental freedoms in private or public life in peacetime and during situations of armed conflicts or of war.*¹⁰

It is, hence, an assault of different forms, physical, emotional, or economic, on women and girls in peace and wartime.

When we look at the definition of rape, some people define it as sex without consent, such as sexual robbery or sexual burglary.¹¹ Under international law, it is defined as sexual penetration or "invasion," however slight, when committed by force, by threat of force or coercion, by taking advantage of a coercive environment, or against a person incapable of giving genuine consent.¹² In terms of scope, gender-based violence includes violence against women, while violence against women most of the time includes rape.¹³

The common elements of rape in national and international crimes are sexual intercourse (penetration), use of force, and lack of consent. However, penetration nowadays is broadly interpreted to include the insertion of foreign objects into the genitalia.¹⁴

Rape may be committed under two conditions: wartime and peacetime. A 'rape as a weapon of war' (wartime rape) refers to a rape that is systematic, officially orchestrated, and carried out as a deliberate policy to terrorize and humiliate the rape victims, rather than as random acts during wartime used for sexual urges and desires.¹⁵ It is '*a military tactic, serving as a combat tool to humiliate and demoralize individuals, tear apart families, and devastate communities*'.¹⁶ It is also used as a military tactic to spread fear among communities. However, all rape cases committed during a time of war may not fall within the scope of 'rape as a weapon of war'. It

¹⁰ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Maputo, 11 July 2003, Art. 1(j).

¹¹ Consent is debatable here. Someone can change his/her mind while having sex. If someone says "no" at any time the other person must stop or it becomes rape. See Wills, C. (2003) Illinois' new rape law clarifies that consent can be withdrawn during sex, Associated Press, July 29, 2003.

¹² ICC, Elements of Crimes, Element 1, Article 7 (1) (g)-1 and Article 8(2)(e)(vi)-1(2).

¹³ Though victims of rape are most of the time women, it may be committed against men as well.

¹⁴ ICTY, Furundžija, Case No. IT-95-17/1, Trial Chamber Judgment (1998) 16 November 1998, para

¹⁵ Mengistu Welday Gebremichael et al., *Rape survivors' experience in Tigray: a qualitative study*, BMC Women's Health, 2023, p. 2.

¹⁶ UN Action (2007) UN Action against Sexual Violence in Conflict: Stop Rape Now, <https://evaw-un-inventory.unwomen.org/en/agencies/un-action> last visited on 12/08/2023.

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may happen accidentally. The focus of this study is not a rape of this type, but one that is used as a systematic tool for achieving the end target of a war.

Lastly, genocidal rape is defined as a systemically organized military tactic of terror and genocide. It is used to generate fear in a subdued population, humiliate the population, derogate women through spoilage of identity, and create a cohort of mixed-ethnic children to maintain the humiliation, spoilage, and dominance.¹⁷ A rape used as a weapon of war may finally constitute genocidal rape when it is ordered by high-ranking commanders and is applied with the specific intent to exterminate or destroy, in whole or in part, a particular group by inflicting physical and psychological harm.¹⁸ Rape may be a way of committing acts that could amount to genocide, such as biological warfare and forced impregnation.

3. Historical Background of the Use of Rape as a Weapon of War

The rationale behind wartime sexual violence against women has been perceived differently. It was viewed as an unfortunate outcome of war rather than crime.¹⁹ It is explained because of the abnormal behavior of men under harsh conditions of war and separation from their families and communities. This view considers rape and other forms of sexual violence against women as incidental effects of war. It is viewed as a scenario where men commit it to satisfy their immediate sexual lust in a forceful demonstration of hyper-masculinity.

In ancient Greece, wartime rape was a common practice, and legend states that many Trojan women were raped by the victors.²⁰ It is also recorded in the Old Testament of the Holy Bible as a normal casualty of war. In the book of Lamentations, it reads, “They ravished (raped) the women in Zion and the maids in the cities of Judah.”²¹ In another book, Zechariah, it is noted as such: “For I [God] will gather all the nations against Jerusalem to battle, and the city shall be

¹⁷ Christopher W. Mullins, “*He Would Kill Me with His Penis*”: *Genocidal Rape in Rwanda as a State Crime*, *Critical Criminology: An International Journal*, Vol. 17 No. 1, 2009, p.6.

¹⁸ Akayesu Judgment, *supra* note 7, para. 731.

¹⁹ Jasminka Kalajdzic, *Rape, Representation, and Rights: Permeating International Law with the Voices of Women*, cited in Sherrie L. Russell-Brown, *Rape as an Act of Genocide*, *Berkeley Journal of International Law*. Vol. 21, issue 2 (2003), p. 2.

²⁰ Cyril J. Smith, *History of Rape and Rape Laws*, cited in Maria Alejandra Gómez Duque, *Towards a Legal Reform of Rape Laws*, the *Georgetown Journal of Gender and the Law*, Vol. XXII:487, p. 492

²¹ Holy Bible, Lamentations 5:11.

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taken and the houses looted and the women raped.”²² Until the 20th century, until modern studies prove the contrary, rape was not considered an orchestrated tactic of warfare.

Nowadays, there is almost a consensus that most of the massive rapes are committed with the agenda of using them as a tool of war. The UN Special Representative on Sexual Violence in Conflict also emphasized this issue. She said, “*Sexual violence in conflict needs to be treated as the war crime that it is; it can no longer be treated as unfortunate collateral damage to war.*”²³

In the former Yugoslavia, Rwanda, Sierra Leone, Uganda, the Democratic Republic of the Congo, and the Darfur region of Sudan, rape has been used as a tool of terror and population elimination.²⁴ During these wars, rape was used as a wholesale tactic and weapon in the conflict, with some military units being expressly charged with raping women and girls in villages and camps.²⁵

Rape has been and is being used as a weapon of war in many countries. Afghanistan, Algeria, Argentina, Bangladesh, Brazil, Burma, Cambodia, Chechnya, China, Congo, Cyprus, East Timor, El Salvador, Guatemala, Haiti, India, Indonesia, Kuwait, Liberia, Mozambique, Nicaragua, Peru, Pakistan, Rwanda, Sierra Leone, Somalia, Turkey, Uganda, Vietnam, The Former Yugoslavia (Bosnia, Croatia, Kosovo, and Serbia), Zimbabwe, the Sudan, the Central African Republic (CAR), the Congo, and the Democratic Republic of Congo (DRC) are the countries where rape has been used and are currently experiencing rape as a weapon of war.²⁶

²² Id. Zechariah 14:2.

²³ Outreach Programme on the Rwanda genocide and the United Nations, *Sexual violence: a tool of war, Background Note*, 2014, p.1, <https://www.un.org/en/preventgenocide/rwanda/pdf/bgsexualviolence.pdf&sa>.

²⁴ United Nations Action and the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (2014). Background note: Sexual Violence: a Tool of War. Department of Public Information. <https://www.un.org/en/preventgenocide/rwanda/assets/pdf/Backgrounder%20Sexual%20Violence%202014.pdf>.

²⁵ Kirby, P. (2012), *How is rape a weapon of war? Feminist International Relations, modes of critical explanation and the study of wartime sexual violence*, cited in Inessa Adilkhanyan et al, *Preventing and responding to gender-based violence during the war and in post-war settings Experiences and recommendations of women’s NGOs*, WAVE – Women against Violence Europe, Bacherplatz 10/6, A-1050 Vienna, 2022, p. 20.

²⁶ Cassandra Clifford, *Rape as a Weapon of War and its Long-term Effects on Victims and Society*, 7th Global Conference Violence and the Contexts of Hostility Monday 5th May - Wednesday 7th May 2008, Budapest, Hungary, p. 3.

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When we see the figures, it is too horrific and hard to imagine. UN agencies estimated it as follows:²⁷

State	Year	Number of rapes (reported and estimated)
Nanjing ²⁸ , China	1937	20,000 - 80,000
Rwanda	1994	100,000 - 250,000
Sierra Leone	1991 – 2002	More than 60,000
Liberia	1989 – 2003	More than 40,000
Former Yugoslavia	1992-1995	Up to 60,000
Democratic Republic of the Congo	1998	At least 200,000

Remark: About 700,000 women are estimated to be raped in these 5 states only.

4. The Rationale Behind the Use of Rape as a Weapon of War

Rape and other forms of sexual violence during armed conflict are now acknowledged as weapons of war, designed not only to inflict bodily harm on primarily female victims but also to terrify and humiliate them, their families, and their communities.²⁹ By systematically raping women and girls, armed groups assert power and dominance over not only the women but their men as well.³⁰ Mass sexual violence even becomes a brutal form of ethnic cleansing when it is used to displace whole communities or deliberately impregnate women with combatants' 'superior' genes.³¹ Women's bodies are nowadays being used as battlegrounds. While the

²⁷ Outreach Programme, supra note 25.

²⁸ Danqing Yang, *Nanjing Massacre*, in Oxford Research Encyclopedia of Asian History, August 27, 2020, 1, cited in Anya Syed, *Prosecuting Rape as Genocide: An Analysis of the Legal Framework and Challenges in International Law* (2023). CMC Senior Theses, p. 65, https://scholarship.claremont.edu/cmc_theses/3297.

²⁹ Domingo, P. et al., (2013), *Assessment of the evidence of links between gender equality, peace building and state building: literature review*, London: ODI, p. 7.

³⁰ Harvard Humanitarian Initiative and Oxfam International *Now, the world is without me: an investigation of sexual violence in Eastern Democratic Republic of Congo*, Cambridge MA and Oxford: Harvard Humanitarian Initiative and Oxfam International, 2010, p. 1.

³¹ Kelly, J. et al., C., *Hope for the Future Again: Tracing the effects of sexual violence and conflict on families and communities in eastern Democratic Republic of the Congo*, Cambridge MA: Harvard Humanitarian Initiative, 2011, p. 15.

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battlefield may be the body, the target is the entire civil society or body politics. When it is applied as a weapon of war, the effect of the weapon continues to wield its power beyond the primary victim.³²

The United Nations asserts that:

“... rape committed during war is often intended to terrorize the population, break up families, destroy communities, and, in some instances, change the ethnic makeup of the next generation. Sometimes it is also used to deliberately infect women with HIV or render women from the targeted community incapable of bearing children.”³³

Generally, war-time rape is nowadays considered differently from the classical view, which views it as an incident of war. It is recognized as a systematic instrument to achieve the end goal of the war.

5. The Legal Framework against Rape and Rape as a Weapon of War

5.1. Evolution of the Protection against Rape as a Human Rights Violation

In 1976, the European Commission on Human Rights recognized rape as a form of “inhuman treatment” that was seen as a violation of the private life of an individual.³⁴ Violence against women started to be regarded as a human rights issue during the 1970s and 1980s. However, the 1979 CEDAW did not include an explicit provision outlawing such violence.³⁵

Rape, although outlawed under international humanitarian law and implicitly covered by international human rights law, was rarely the subject of international legal attention. In international humanitarian law, rape has long been considered a war crime.³⁶ Following World War II, international tribunals were established with jurisdiction to try rape cases. The

³² Cassandra Clifford, *supra* note 28, p. 4.

³³ Outreach Programme, *supra* note 25, p. 2.

³⁴ ECmHR, *Cyprus v Turkey* (1976) 10 July 1976.

³⁵ Alice Edwards, *Everyday Rape: International Human Rights Law and Violence against Women in Peacetime*, in Clare McGlynn and Vanessa Munro (eds.), *Rethinking Rape Law: International and Comparative Perspectives* Routledge Cavendish, 2010, pp. 94-95.

³⁶ Rape is treated as a form of “humiliating treatment”, an “outrage upon personal dignity”, or an “attack on honor”. It is considered as a crime against honor and is not seen as a crime of violence and is not named in the list of “grave breaches”.

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Nuremburg Tribunal and Tokyo Tribunals admitted and heard evidence of rape, but rape was never actually and specifically charged and prosecuted at all, and though crime against humanity was first recognized in the Tokyo and Nuremburg Tribunals, none of the defendants were charged with rape as a war crime or crime against humanity.³⁷

5.2. International Legal Framework against Rape and Other Forms of Gender Based Violence

5.2.1. International Laws

Rape is guaranteed by international humanitarian, criminal, and human rights law, together with other forms of gender-based violations. CEDAW obligates states “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against women.”³⁸ They are also obliged to establish legal protection of the rights of women on an equal basis with men, to ensure the effective protection of women against any act of discrimination through competent national tribunals and other public institutions, and to refrain from discriminating against women and ensure that public authorities act accordingly.³⁹ The word ‘discrimination’ under CEDAW is clarified by CEDAW General Recommendation 19 to include gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty.⁴⁰ Under this General Recommendation, states are responsible for violations of their obligations under international human rights law and other conventions and for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and are required to provide compensation for survivors.⁴¹ The DEVAW, in the same way, obliges states to “exercise due diligence to prevent, investigate, and, in accordance with national legislation, punish acts of violence against women,

³⁷ Copelon, *Gender Crimes as War Crimes: Integrating Crimes against Women into International Law*, 2000, pp. 221-223. See also Nicole Eva Erb, Gender-Based Crimes under the Draft Statute for the Permanent International Criminal Court, cited in Russel-Brown, *supra* note 21.

³⁸ CEDAW, *supra* note 10, Art. 2(f).

³⁹ *Id.* Art. 2(c) and (d).

⁴⁰ CEDAW General Recommendation 19, *supra* note 9, para. 6.

⁴¹ *Id.* para. 8-9.

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whether those acts are perpetrated by the state or by private persons."⁴² Hence, states are legally responsible for failure to carry out either of their duties.

When we see the humanitarian laws, Article 27 of the 1949 Geneva Convention states that women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.⁴³ Protocol I of this Convention also likely provides that “women shall be the object of special respect and shall be protected in particular against rape, forced prostitution, and any form of indecent assault.”⁴⁴ Protocol II also accorded all persons (who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted) a fundamental guarantee against “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault.”⁴⁵ These definitions, however, emphasize “honor,” “dignity,” and “special respect” instead of focusing on the brutal nature of these crimes, and they fail to explicitly treat gender crimes as grave breaches of human rights.⁴⁶

The most significant step in advancing international protection against violations of women’s rights is the establishment of the United Nations Special Rapporteur on Violence against Women, which is empowered to “seek and receive information on violence against women, its causes and consequences, from governments, treaty bodies, specialized agencies, and other special rapporteurs” and to recommend actions, ways, and means, at the national, regional, and

⁴² DEVAW, supra note 11, Art. 4(c).

⁴³ Geneva Convention IV; Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) of August 12, 1949, Art. 27.

⁴⁴ Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) of June 8, 1977, Art. 76(1). This Protocol has many drawbacks. To mention some, first, it perceives women as objects of legal protection, not as subjects in law. Second, it considers rape as a crime committed against women only, though men could also be victims.

⁴⁵ Id. Art. 4(2)(e).

⁴⁶ The Convention has listed the “willful killing, torture or inhumane treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, . . . taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” as grave breaches. But, it does not explicitly include rape in the list, though some of the crimes, such as ‘torture or inhuman treatment’ or ‘willfully causing great suffering or serious injury to body or health’ may be broadly interpreted to include rape as what is observed in the Celebici Case of the ICTY. See Geneva Convention IV, supra note 46, Art. 147.

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international levels, to eliminate violence against women and its causes and to remedy its fallouts.⁴⁷ Besides, the Optional Protocol to CEDAW (1999) establishes the competence of the Committee on the Elimination of Discrimination against Women to receive and consider complaints from individuals or groups within its jurisdiction.⁴⁸

When we see the African legal framework for the protection of women against violence, the African Charter on the Rights and Welfare of the Child includes protection from sexual abuse under the scope of “torture, inhuman, or degrading treatment.”⁴⁹

5.2.2. International Tribunals for the Protection of Women’s Rights

Several international tribunals are still established to try cases of human rights violations, including sexual violence. In the Nuremberg and Tokyo tribunals, though cases were lodged where mass rape was among the incidents of World War II, the crime of rape was overlooked. The following tribunals, however, brought advanced jurisprudential concepts to the rape crime and its corresponding crimes.

5.2.2.1. The International Criminal Tribunal for Rwanda (ICTR)

In 1994, around one million Tutsi people were killed by the Hutus in Rwanda. Women were raped, intentionally infected with HIV, sexually tortured, mutilated, and enslaved by armed men, and the strategy was propagated by the radio station *Interahamwe*.⁵⁰ The ICTR, hence, was established by the UN Security Council through Resolution 955 to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighboring

⁴⁷ U.N. Econ. & Soc. Council, Comm. On Human Rights, Report on the 50th Session, U.N. Doc. E/CN.4/1994/132 of Jan. 31-Mar. 11, 1994, p. 143.

⁴⁸ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 54/4, U.N. Doc. A/RES/54/4 of Oct. 15, 1999, Art. 1.

⁴⁹ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 of Nov. 29, 1999, Art. 16.

⁵⁰ See Katya Kolluri, *The Rwandan Genocide: Rape and HIV Used as Weapons of War*; and, Jennie Burnet, *Rape as a Weapon of Genocide: Gender, Patriarchy, and Sexual Violence in the Rwandan Genocide*, cited in Anya Syed, supra note 30.

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states.⁵¹ The Tribunal then tried and charged several individuals with crimes against humanity, genocide, and war crimes committed in an individual and superior capacity.⁵²

A. The Akayesu Case

In the Akayesu Case (Prosecutor v. Akayesu) of the ICTR, the accused was convicted of genocide and crimes against humanity for acts of sexual violence, specifically for commission and omission in mass rape, forced public nudity, and sexual mutilation of Tutsi women.⁵³ The tribunal defined rape as “a physical invasion of sexual nature, committed on a person under circumstances that are coercive.” The forced intercourse may include the insertion of “objects and/or the use of bodily orifices not considered to be intrinsically sexual.”⁵⁴ The Akayesu case has brought two significant jurisprudential precedents. First, it has been recognized that the use of rape as a weapon of war is a crime against humanity and an act of genocide. A rape case amounts to genocide if it fulfills the acts stipulated under Art. 2 of the Genocide Convention and Art. 2 of the Statute of the ICTR, and if the perpetrator commits such acts with a specific intent to destroy a certain targeted group. The prosecution proved that Akayesu had known the ethnicities of the women being raped, and he was facilitating such a pervasive rape as a tactic to destroy the Tutsi. Hence, raping a woman because of her ethnicity, nationality, or religion with the intent to destroy the group to which she belongs is an act of genocide. Second, it regards rape in its broader sense to include other forms of insertion, even to genitalia and other orifices.

B. The Nyiramasuhuko Case

In this case, Pauline Nyiramasuhuko, former Minister of Family and Women’s Development for Rwanda, was charged with facilitating the rape committed against the Tutsi women by blocking roads. She had been convicted of rape, crimes against humanity, war crimes, and

⁵¹ UN Security Council Resolution, Statute of the International Tribunal for Rwanda, Resolution 955/1994, Preamble.

⁵² Anya Syed, *supra* note 30.

⁵³ Akayesu Judgment, *supra* note 7, paras. 692–697, 706. Jean-Paul Akayesu was convicted of superior responsibility. As the mayor of a town in Rwanda, he was in a position of power but failed to control the atrocity. As to the rape case, Akayesu was convicted for encouraging his subordinates to rape Tutsi women and availing himself of the crime scene. His superior responsibility and specific intent to destroy the Tutsi ethnic group were proven by the prosecution against him.

⁵⁴ *Id.* para. 688.

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genocide under international law.⁵⁵ What this judgment has brought is that the commission of the crime does not necessarily require physical involvement. Hence, blocking roads, denial of health services, and dehumanizing speeches could be treated as promoting rape cases and convicted as such.

5.2.2.2. The International Criminal Tribunal for the former Yugoslavia (ICTY)

The ICTY is an international tribunal established in 1993 by Security Council Resolutions 808 and 827 to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. It was empowered to prosecute persons who were responsible for grave breaches of the Geneva Conventions of August 12, 1949. The Statute of the International Criminal Tribunal for the Former Yugoslavia, which stipulates the powers of the ICTY, provides two legal avenues for prosecution: individual and superior responsibility.⁵⁶

A. The Celebici Case

In *Prosecutor v. Delalic*, the tribunal convicted officials of the Celebici prison camp of torture for the rape and other forms of sexual violence caused by their commission or omission. In this case, the indictment states that Hazim Delic and others subjected Mrs. Grozdana Cecez and Ms. Antic to rape. His acts and omissions were finally found to be acts of torture through rape.⁵⁷ The judgment in this case was praised for developing command responsibility, regardless of their actual knowledge of the misconduct by subordinates, and for recognizing rape as a form of cruel torture. Officials were held liable for their failure to prevent or protect victims against sexual violence where circumstances urged so.

B. The Furundzija Case

In *Prosecutor v. Furundzija*, where a single woman was subjected to multiple instances of rape in front of others, the court decided that humiliating sexual violence and forcing somebody to

⁵⁵ C. Fourçans, cited in Manon Koepp, *Rape as a weapon of war: An analysis of the impunity of perpetrators of sexual violence in the DRC*, Global Campus Europe, University of Cyprus, 2019/2020, p. 36.

⁵⁶ The Statute of the International Criminal Tribunal for the former Yugoslavia, UN Security Council Resolution 827, New York, May 25, 1993, Art. 7.

⁵⁷ *Prosecutor v. Delalic*, Case No. IT-96-21-T, Judgment, Nov. 16, 1998, paras. 943 and 965.

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witness the rape of another person constitute torture and a war crime of rape.⁵⁸ In another case, the Kunarac Case, the accused persons were charged with both rape and torture as war crimes and crimes against humanity.⁵⁹ Kunarac, Kovač, and Vuković were Serbian soldiers who were prosecuted for raping several Bosniak Muslims. The Tribunal found them guilty of the crime of rape as a crime against humanity.⁶⁰ These individuals committed such crimes under the command of Karadzic. The latter was prosecuted both for individual and superior responsibility. As to his individual responsibility, the prosecution proved that Karadzic made decisions to forcibly expel and kill Bosniak men and boys, and as a superior, it was decided that he was liable for his failure to take necessary and reasonable measures to punish his subordinates who commit grave crimes.⁶¹ To sum up, the ICTR and ICTY have laid the benchmark for protection against rape. These tribunals are praised for considering rape a grave breach of humanitarian laws. The ICTY was the first court to charge rape as a crime against humanity, while the ICTR was the first to prosecute a case of rape as an act of genocide.⁶² The jurisprudence of these tribunals state it clearly that (under international criminal law and international humanitarian law) rape by a combatant may amount to a war crime of torture, a crime against humanity, or an act of genocide, which is a grave breach of the Geneva Conventions.⁶³

Notwithstanding the fact that the international tribunals in Rwanda and Yugoslavia have brought a broader definition and better protection, accountability, and redress for war rape survivors, this is still the exception, not the rule.⁶⁴

5.2.2.3. The International Criminal Court (hereinafter ICC)

⁵⁸ ICTY, Furundžija, supra note 16, paras. 268 and 74.

⁵⁹ ICTY, ICTY, Kunarac, Case Nos. IT-96-23-T and IT-96-23/1-T, Trial Chamber Judgment, February 2001.

⁶⁰ Anya Syed, supra note 30, p. 39.

⁶¹ Id. P. 37.

⁶² Id. p. 39.

⁶³ REDRESS, Redress for Rape, Using international jurisprudence on rape as a form of torture or other ill-treatment, October 2013, p. 21. See the ICTY Statute, Art. 5(g); and the Statute of the International Tribunal for Rwanda, supra note 53, Art. 3(g).

⁶⁴ Global Justice Center: human rights through the rule of law, Fact Sheet Stopping the Use of Rape as a Tactic of War: A New Approach, June 2014, p. 3.

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The ICTR and ICTY are ad hoc tribunals established to try their respective cases, limited in jurisdiction and time. Whereas, the ICC is permanently established to adjudicate over the gravest crimes of international concern, such as genocide, crimes against humanity, war crimes, and aggression.

As to its geographical jurisdiction, the ICC exercises authority over crimes committed in the territory of a state party or by a national of a state party to the Rome Statute.⁶⁵ But another jurisprudence is emerging through which a non-party state may be responsible, i.e., when one element of the alleged crime has taken place on the territory of a state party. In Myanmar's case, the crime of deportation of the Rohingyas to Bangladesh, a state party to the Statute, the ICC exercised jurisdiction over Myanmar, a non-party to the Statute.⁶⁶

In cases where the alleged crime is committed on the territory of a non-party state, the statute has devised two additional options, i.e., if that non-party state willingly declares acceptance of the court's jurisdiction⁶⁷; or if the case is referred to the court's prosecutor by the UNSC.⁶⁸

5.2.2.4. International Treaty Bodies

The core international human rights instruments have established their respective treaty bodies (committees of experts that follow the implementation of treaty obligations by state parties). Anyone can lodge a complaint against a state party that has accepted the competence of the concerned treaty body. The complainant may be the direct victim or any third party with the written consent of the victim to act on behalf of him or her.

Ethiopia ratified the CEDAW in 1981 but not the 1999 Optional Protocol to the CEDAW, which established the CEDAW Committee. In this case, the Committee cannot receive individual

⁶⁵ Rome Statute of the International Criminal Court, A/CONF.183/9 of July 17, 1998, Art. 12(2).

⁶⁶ The ICC had also reflected the same stand on Israel for the alleged war crimes in the West Bank and Gaza. Though Israel is not a party state to the Rome Statute, the ICC raised the jurisdiction it has over Palestine, a state party to the Statute, where the crime results took place. See Utkarsh Dubey, *Jurisdiction of the International Criminal Court over non-party States: Legitimate or Ultra-Vires*, JURIST Legal News and Commentary, <https://www.jurist.org/commentary/2021/05/utkarsh-dubey-icc-jurisdiction-over-nonparty-states/>, last visited on 12/08/2023.

⁶⁷ Rome Statute, supra note 67, Art. 12(3).

⁶⁸ Id. Art. 13(b).

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complaints against Ethiopia. It ratified both the ICCPR and ICESCR in 1993 but has not yet ratified the Optional Protocols on individual-complaint mechanisms. As to the Convention against Torture (CAT), Ethiopia ratified the convention in 1994, but it still did not declare, as per Art. 22 of the Convention, that it recognized the competence of the Committee to receive and consider individual complaints against it. Besides, it has ratified the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), but it has not yet declared that it recognizes the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights prescribed in the Convention. Ethiopian reporting history to international committees also shows that governments have been consistently refusing to accept individual complaint mechanisms.⁶⁹ In general, though Ethiopia is signatory to most of the core international conventions, it does not dare to allow full-heartedly individual or group submission of complaints on violations of human rights to treaty bodies. Signing a treaty may have its own role for the protection of rights at home, but nothing for accountability in the international arena unless the state submits itself to international treaty bodies.

5.3. African Legal Framework

The African Charter on Human and People's Rights is the mother treaty on the protection of human rights in Africa. Though with general terminology, the Charter obligated states to "ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."⁷⁰

⁶⁹ Eva Brems, *Ethiopia before the United Nations treaty monitoring bodies*, Afrika Focus, Vol. 20, Nr. 1-2, 2007, p. 52. See International Convention on the Elimination of All Forms of Racial Discrimination, UN General Assembly in resolution 2106 A (xx), 21 December 1965, New York, Art. 14(1). On the issues of women, the CEDAW Committee had indicated, in 1996 and 2004, the prevalence of violence against women and the inefficiency of measures taken to eradicate it. The absence of specific legislation and systematic prosecution are commented as weaknesses of Ethiopia. See the concluding observations of the CEDAW Committee issued in 1996 on the combined first, second, and third reports of Ethiopia submitted in 1993, UN Doc. A/51/138, paras. 134–163; and the concluding observations of the CEDAW Committee issued in 2004 on the combined fourth and fifth reports of Ethiopia submitted in 2002, UN Doc. A/59/38 (Part I), paras. 226–273.

⁷⁰ African Charter on Humans and Peoples' Rights, OAU Doc. CAB/LEG/67/3 Rev. 5, 21 ILM 58 of 1982, Art. 18(3).

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Specifically, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides for strong protections against gender-based violence.⁷¹ This Protocol obligates signatory states to respect and ensure respect for the rights of women in armed conflicts⁷²; and provide appropriate remedies determined by competent authorities in cases of violations of their rights.⁷³

The African Commission on Human and Peoples' Rights, a quasi-judicial body, is tasked with the promotion and protection of the rights enshrined in the Charter. It receives complaints and indicates remedies for victims of human rights violations. Besides, the African Court of Justice and Human Rights is a judicial body to interpret African laws. The Court receives cases from the Commission, individuals, or NGOs and adjudicates and orders any appropriate measures in order to remedy the situation, including granting fair compensation for victims of human rights violations.⁷⁴

5.4. Ethiopian National Law

The FDRE Constitution has incorporated crimes against humanity, such as genocide, summary executions, forcible disappearances, or torture, as grave human rights violations that neither be barred by a period of limitation nor be muted through amnesty and pardon.⁷⁵ This stand is compatible with the Rome statute.

The Federal Criminal Code, on the other hand, has criminalized rape as a grave crime. Rape is literally defined as 'compelling a woman to sexual intercourse out of wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance.' When we examine this definition in light of the well-recognized ICTR's Akayesu Case definition of rape, it lacks broadness. First, the ICTR does not limit rape to include only sexual intercourse by using the phrase 'a physical invasion of sexual nature' which may include

⁷¹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, supra note 12, Arts. 3–4.

⁷² Id. Art. 11.

⁷³ Id. Art. 25.

⁷⁴ Statute of the African Court of Justice and Human Rights, July 2008, Art. 45.

⁷⁵ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Art. 28(1), Proc. No. 1/1995, Neg. Gaz. Year 1.

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the insertion of other objects and through any other means. Besides, the Akayesu judgment does not confine the definition of rape to being only an act out of wedlock. This limits domestic protection of women's rights and punishment of perpetrators.

The rape crime is punishable with rigorous imprisonment for five to fifteen years.⁷⁶ The punishment grows to rigorous imprisonment from five years to twenty years in case the rape is committed on a young woman, women in custody, or women incapable of understanding the nature or consequence of the rape, or when it is committed by a number of men acting in concert, or by subjecting the victim to acts of cruelty or sadism.⁷⁷ It increases to life imprisonment, if the rape has caused grave physical or mental injury or death.⁷⁸ Moreover, the code prescribes concurrent punishment when the rape crime is accompanied by illegal restraint or abduction of the victim or where communicable disease has been transmitted to the victim.⁷⁹

In addition to the FDRE Constitution and the Criminal Code, the fundamental international human rights and humanitarian laws ratified by Ethiopia are integral parts of the law of the land as stated in the Constitution, i.e., the Ethiopian law encompasses the national legislation and international laws ratified by Ethiopia.⁸⁰ Therefore, it is clear that Ethiopian law recognizes rape as a serious crime and its use as a weapon of war as a grave human rights violation.

Generally, the global legal framework is progressing, and the international community should work hard to diplomatically influence all states to sign not only conventions but also protocols that establish tribunals.

6. Rape as a Weapon of War: The Tigray Case

6.1. Modes of Rape

⁷⁶ The Criminal Code of the Federal Republic of Ethiopia, 2004, Art. 620(1), Proc. No. 414/2004. The Code has incorporated genocide and war crimes as crimes in violation of international laws. Just like the FDRE Constitution, the Criminal Code also included genocide and war crimes to be included under the scope of 'crimes against humanity'. See Art. 44 and Arts. 269–274 of the Criminal Code.

⁷⁷ Id. Art. 620(2).

⁷⁸ Supra note 78, Art. 620(3).

⁷⁹ Id. Art. 620(4). For instance, a rapist who intentionally infects a victim with HIV has committed concurrent crimes of rape (under Art. 620) and of spreading human disease (under Art. 514).

⁸⁰ FDRE Constitution, supra note 77, Art. 9(4).

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The mode of rape is among the parameters we use to categorize a rape, whether it is used as a weapon of war or not. Hence, it is examined based on the following acts.

6.1.1. Gang Rape; and Rape and Murder

Gang rape is “forcing a person to submit to sexual intercourse with several men, one after the other.”⁸¹ Several, in this sense, means when the perpetrators are more than two. Victims of gang rape, most of the time, die from the injuries they sustain. Tigrian women and girls were subjected to rape, gang-rape, sexual slavery, sexual mutilation, and other forms of torture by members of the ENDF, EDF, ASF, and Fano, often using ethnic slurs, insults, and death threats. The soldiers tease victims, saying that ‘rape is what they deserve and that they are disgusting’. Besides, the rapists used to say that they had been sent to Tigray to fight and rape Tigrian women.⁸² Hundreds of women had also reported horrific accounts of rape and gang rape since the start of the conflict in Tigray.⁸³

To show the image and severity of the gang rapes on Tigrian women, some cases are illustrated below as follows:

1. Melat, a 20-year-old woman from Wukro, was raped by five Eritrean soldiers beside the corpse of her dead brother, whom the soldiers shot at the head while defending his sister.⁸⁴
2. Letay, a 20-year-old Baaker pregnant rape survivor, was raped by three armed men (wearing a mixture of military uniforms), one after the other.⁸⁵

⁸¹ Collins English Dictionary, Penguin Random House LLC, 2005. <https://www.collinsdictionary.com/dictionary/english/gang-rape> last visited on 10/08/2023.

⁸² Amnesty International, *Ethiopia: Troops and militia rape, abduct women and girls in the Tigray conflict—new report*, August 10, 2021. <https://www.amnesty.org/en/latest/news/2021/08>.

⁸³ Supra note 1.

⁸⁴ Lucy Kassa and Pujol Mazzini, The Telegraph, ‘We’re here to make you HIV positive’: Hundreds of women rush to Tigray hospitals as soldiers use rape as a weapon of war, 27 March 2021, <https://www.telegraph.co.uk/global-health/women-and-girls/make-hiv-positive-hundreds-women-rush-tigray-hospitals-soldiers/> last visited on 12/07/2023.

⁸⁵ Amnesty International, *Demand justice for sexual violence survivors in Tigray*, <https://www.amnesty.org/en/petition/demand-justice-for-sexula-violence-survivors-in-tigray/> last visited on July 23, 2023.

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3. Another woman who was in a post-partum period was gang-raped, though she was in immediate post-delivery time. One of the rapists inflicting pain by inserting his fist in her genitalia said that they were there to make the Tigrian uterus quite giving birth.⁸⁶
4. A 32-year-old woman raped by multiple perpetrators while in detention for two months at a police station in Humera, Western Tigray, stated, “I have not enough words. They see us (Tigrian women) as a leftover kollo (a local cereal snack).⁸⁷
5. Tsedey, a 17-year-old girl from Ziban Gedena, told Amnesty International that she was held captive by Eritrean soldiers for two weeks and raped by eight men.⁸⁸
6. Blen, a 21-year-old woman from Badme, told Amnesty International that she and the other 30 women were held captive for 40 days and raped by many men in rounds.⁸⁹
7. Yemisrach, a 24-year-old woman from Badme, was also raped by four EDF soldiers. She was raped by her friend for 28 days.⁹⁰
8. A certain rape survivor had also told Channel 4 News that she and five others were gang-raped by 30 Eritrean soldiers for weeks.⁹¹

Moreover, the Eritrean soldiers have raped the nuns of the monastery collectively.⁹² The nuns were virgin Catholic missionaries living in Wukro. Another report by Amnesty International shows that the majority of rape survivors (38 out of 63 interviewed) said that they were raped by multiple perpetrators.⁹³ A certain doctor in General Hospital Mekelle had also stated that, over the two years of the conflict, he and his colleagues treated more than 500 survivors, and many of

⁸⁶ Supra note 17, p. 6.

⁸⁷ Supra note 84, p. 12.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Bethlehem Feleke et al., *Ethiopian leader says troops who raped civilians in Tigray will be held to account after CNN investigation*, March 23, 2021, www.cnn.com/2021/03/19/africa/ethiopia-tigray-rape-investigation-cmd-intl/index.html, last visited on 10/08/2023.

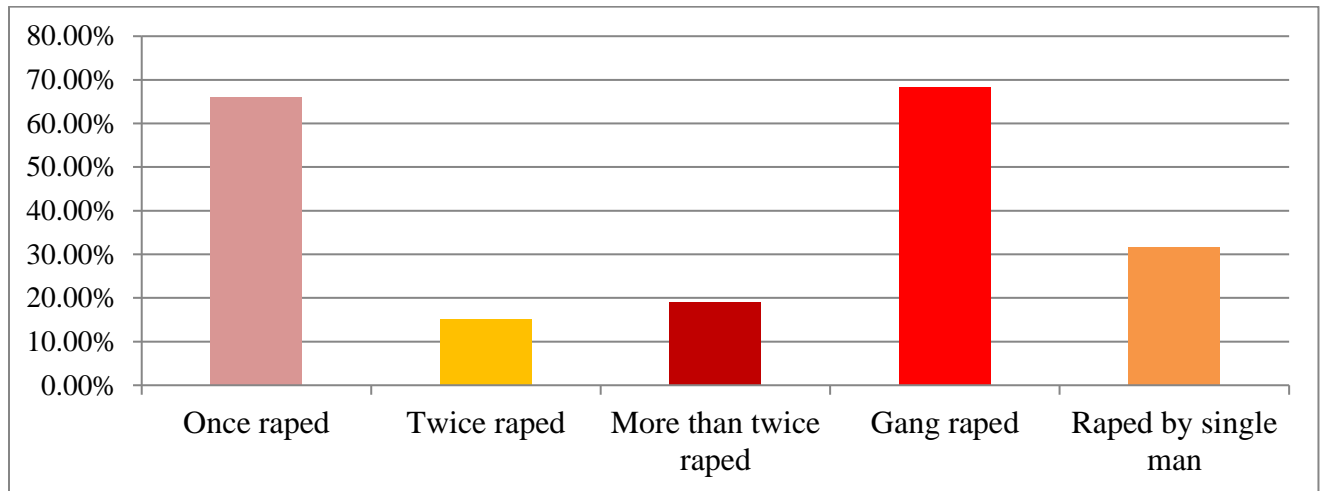
⁹² EEPA, *Gender-Based Violence in Tigray* Special Briefing No. 3 Situation Report, EEPA HORN, March 8, 2021, P. 2.

⁹³ Amnesty International phone interview, Shire, June 4, 2021, p. 13.

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them were gang-raped and had so many foreign materials inserted into their genitalia.”⁹⁴ The above incidents clearly show that many women were gang-raped in Tigray.

A rape study involving 500 rape survivors has shown that the majority of the rape cases are gang rapes. The frequency and type of rape are illustrated below.⁹⁵



Remark: This summary table is part of a survey conducted by a group of researchers in August 2021, and it shows the frequency and type of rape during the Tigray War, starting from November 4, 2020, to June 28, 2021. As to area of coverage, it includes most parts of Tigray, except the western Tigray and the districts bordering Eritrea.⁹⁶

As to the ‘rape and murder’ case, a woman in a place near Wukro was raped and killed by Eritrean soldiers in front of her three sons. The body, with her hands tight together, was left for three days.⁹⁷ Moreover, a woman in her 40s was found dead on the road to her home. She was found with her hands tied, injured to her head, and sexually assaulted.⁹⁸

⁹⁴ Mariel Müller, *In Ethiopia's Tigray war, rape is used as a weapon*, 03/17/2023, <https://www.dw.com/en/in-ethiopias-tigray-war-rape-is-used-as-a-weapon/a-65022330> last visited on 09/05/2023.

⁹⁵ Mariel Müller, *In Ethiopia's Tigray War, Rape is Used as a Weapon*, 03/17/2023, <https://www.dw.com/en/in-ethiopias-tigray-war-rape-is-used-as-a-weapon/a-65022330>, last visited on May 9, 2023.

⁹⁶ Id. p. 2.

⁹⁷ Supra note 94.

⁹⁸ Id. p. 1.

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This is simply to visualize the picture of how brutal the rape of Tigrian women and girls was. Readers are urged to understand it as a droplet from an ocean.

6.1.2. Rape in front of Family Members (Public Rape)

Rape in front of people, especially family, is psychological warfare to damage both the rape victim and the watching one. Twelve survivors interviewed by Amnesty International said that soldiers and militia raped them in front of their family members, including children. Nigisti, a 35-year-old rape survivor, was raped by EDF soldiers in front of her child. She and the other four women (one of whom was eight months pregnant) were also raped collectively. Shewit, another victim, was also raped in front of her children by soldiers who said, “The Tigrian race must be eliminated.”⁹⁹ This shows how much rape was intentionally used as a strategy of war against the Tigrian ethnicity.

6.1.3. Insertion of Foreign Bodies (Objects)

There were many incidents of the insertion of objects into women’s genitalia during the Tigray War. For instance, a survivor named Akberet told Aljazeera that four Amhara forces separated her from her children and brother, took her to an abandoned house, and took turns raping her. After they were done, the militiamen inserted into her genitals a hot metal rod that burned her uterus. The militiamen told her, “You did nothing bad to us; our problem is with your womb. Your womb gives birth to Woyane, and a Tigrian womb should never give birth.”¹⁰⁰

In another incident, two survivors told Amnesty International that they were raped by Ethiopian and Eritrean soldiers and associated militia near the border with Sudan. Among them, two survivors had large nails, gravel, and other types of metal and plastic shrapnel inserted in their vaginas.¹⁰¹

⁹⁹ Lynsey Addario and Rachel Hartigan, National Geographic, *A grave humanitarian crisis is unfolding in Ethiopia: ‘I never saw hell before, but now I have’*, 1 Jun 2021, <https://www.nationalgeographic.co.uk/history-and-civilisation/2021/06/a-grave-humanitarian-crisis-is-unfolding-in-Ethiopia-I-never-saw-hell-before-but-now-I-have> last visited on 20/08/2023.

¹⁰⁰ Supra note 1.

¹⁰¹ Supra note 84.

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Third, on February 22, a case from Edaga Hamus shows that a 21-year-old girl was gang-raped and found dumped, and the Eritrean soldiers had burned her external and internal genital parts using a match and hot metal rods.¹⁰² Medics have reported removing nails, rocks, and pieces of plastic from inside the bodies of rape survivors.¹⁰³ Besides, the Telegraph also released a video that shows a surgeon removing nails and pieces of plastic from the genitalia of a raped and tortured woman.¹⁰⁴ This shocking misery is what Tigrian women have suffered from throughout the war.

6.1.4. Forcing Family Members to Rape their Relatives

One of the mechanisms the soldiers were using to employ rape as a weapon of war was forcing family members to rape their relatives. This was a widely applied system. For instance, a father, a blind man, was ordered to rape his own daughter in Abyi Adi.¹⁰⁵ Forcing family members to rape their relatives destroys the dignity of those involved and the social fabric.

6.1.5. Biological Warfare (Rape to Infect Incurable Diseases)

Biological warfare is the use of any harmful organism, such as viruses, toxins, fungi, or bacteria, as a weapon of war to destroy men, animals, or food.¹⁰⁶ During the Tigray War, many Tigrian women were raped by recruited HIV-positive soldiers who were raping them to intentionally transmit the disease. Selam, a 26-year-old woman living in Edaga Hamus, had said that she and the other 17 women were tied in a forest and raped mercilessly by 100 Eritrean soldiers. Three days later, the soldiers killed five of the rape survivors. Selam brought home contraceptives and post-exposure HIV drugs from the hospital, and the soldiers waited for her at home and mocked her, saying, “Why the hell do you want this? We want you to be sick. That is what we are here

¹⁰² Supra note 1.

¹⁰³ Id.

¹⁰⁴ Mengistu, supra note 17.

¹⁰⁵ Id. p. 3.

¹⁰⁶ Wikitionary, https://en.m.wikitionary.org/wiki/biological_warfare. In Rwanda, militia groups used HIV infection as an operational method of ethnic cleansing to guarantee trans-generational passage of the virus through pregnancy. See Amnesty International, Rwanda: “*Marked for Death, Rape Survivors Living With HIV/AIDS in Rwanda*” (Amnesty International, 2004).

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for. We are here to make you HIV positive."¹⁰⁷ The gang rapes and refusal to use condom during the rape and the speeches of the soldiers all together show that rape was a mechanism of biological warfare, i.e., rape to infect with HIV/AIDS is used as a biological weapon of war.

6.1.6. Forced Impregnation (Rape to Impregnate another Race)

Forced impregnation, in this context, is a rape deliberately committed to achieve the goal of ethnic cleansing. It has dual objectives: altering the genes of a certain group and substituting them with a generation born out of rape; and creating a traumatic and lasting effect on the victim community.¹⁰⁸ Many rape survivors said the rapists told victims that they were raping them to change their identity, to either Amharize them or to cleanse their blood.¹⁰⁹

Rahel, a 19-year-old lady from Abiy Adi, was raped by Ethiopian soldiers. She said that she will abort the pregnancy because the soldiers raped Tigrayan women “to eliminate Tigrayans... and they do not want the next generation to be Tigrayan.”¹¹⁰ When rape is combined with the denial of medication, it is natural that pregnancy will happen. Medical centers in Tigray were deliberately demolished, and roads were blocked to maximize the sufferings of Tigrayans. Many women, as discussed below under the ‘Sexual Slavery’ caption, were forced to stay for weeks or more in a continuous rape. Hence, it is clear that women were forcibly impregnated.

6.1.7. Sexual Slavery

Many women and girls were held captive in military camps, in houses, or on grounds in rural areas for weeks and repeatedly raped by several men.¹¹¹

¹⁰⁷ Mengistu, supra note 78. With the virus’ spread in African militaries (which are 40–60% HIV positive) and the uncontrolled massive rape, the Tigray’s situation is alarming. UNAIDS/WHO, AIDS Epidemic Update (Geneva: UNAIDS/WHO, December 2004); UNAIDS, UNAIDS Global Report 2010, <http://www.unaids.org/globalreport/> (last visited on March 12, 2011).

¹⁰⁸ Larissa Peltola, *Rape and Sexual Violence Used as a Weapon of War and Genocide*, CMC Senior Theses, 2018, p. 10. http://scholarship.claremont.edu/cmc_theses/1965.

¹⁰⁹ Bethlehem, supra note 93.

¹¹⁰ Addario, supra note 101.

¹¹¹ Amnesty International, supra note 84.

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“He raped me while the other three waited outside. He took my virginity and then left, and then the other three men also raped me. They kept me for three days in that house and continued to rape me many times.”

This is the attestation given by Etsegenet, a 16-year-old girl from Adebai, Western Tigray. She was subjected to sexual slavery for days, and the other 12 women whom Amnesty International interviewed have been held hostage and subjected to repeated rape for days and weeks.¹¹²

Tsedey and Blen, rape survivors interviewed by a team Amnesty International Experts that includes the writer of this article witnessed that women were held captive for weeks and repeatedly gang raped by too many soldiers. Belen also added that she and the other 30 women were raped for 40 days.¹¹³ This is a mere sample of the sexual slavery committed in every corner of the region.

6.1.8. Genital Mutilation (Destruction of Reproductive Organ)

It is evident that a woman’s womb is the vessel through which generations are reproduced. Women are targeted for the mere existence of being members of a certain group and for their reproductive capacity. To maintain the continuity of a generation, perpetrators conduct experiments, abortions, and sterilizations of women’s reproductive organs.¹¹⁴ It is an attack on the collective body of a certain identity by cutting the bloodline and exposing survivors to a crush in body and spirit.¹¹⁵

The massive and cruel rape in Tigray was a continuation of the long litany of battles fought on the bodies of women and girls. In the remote, mountainous regions of North and Central Tigray,

¹¹² Amnesty International, *“I Don’t Know if They Realized I Was a Person,” Rape and Other Sexual Violence in the Conflict in Tigray*, Ethiopia, p. 14.

¹¹³ Amnesty International, *Rape survivors describe slavery and mutilations in Tigray*, August 11, 2021, <https://www.aljazeera.com/news/2021/8/11/amnesty-tigray-rape-ethiopia-eritrea-slavery-mutilation>, last visited on June 12, 2023.

¹¹⁴ Larissa P, supra note 110, p. 33.

¹¹⁵ Id., p. 34.

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women and girls were being subjected to sexual violence with a level of cruelty beyond comprehension.¹¹⁶ The violent rape made many Tigrian women infertile.¹¹⁷

In the regional capital, Mekelle, doctors at the Ayder Referral Hospital said the number of rape cases on April 1, 2021, was 272. Within one week, it had jumped to 330. The doctors in the hospital fear that the true number is much higher, suspecting there are many unreported cases as fighting continued and large parts of Tigray remained inaccessible.¹¹⁸ This is a case in a single city and only within months. It is easy to imagine how much it would cost in the villages. Considering the gender bias and societal stigma, along with the blockade of ways to Mekelle, hundreds of cases are left unreported. Considering the above incidents and imagining thousands of similar but unreported cases, it is right to conclude that rape and sexual violence have been used as weapons of war to inflict lasting physical and psychological damage on women and girls in Tigray.

6.2. Personal Case Study

This research was conducted on rape cases at four IDP sites: Shire, Sheraro, Axum, and May-Hanse. Interviews with IDP community representatives, women's representatives, religious leaders, caseworkers of six NGOs, anonymous survivors, and documents of NGOs were the sources of data in this part.¹¹⁹ The personal case study was conducted to verify the allegations, investigations, and reports done on the systematic use of rape as a weapon of war in Tigray. The study, throughout the four sites, shows that 860 survivors were rape victims out of the total 1,243

¹¹⁶ "The crisis in Tigray: Women and girls under violent assault," Statement of the UN Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, April 22, 2021, <https://www.un.org/sexualviolenceinconflict/statement/statement-of-srsg-svc-pramila-patten-security-council-open-debate-on-conflict-related-sexual-violence/>, last visited on May 8, 2023.

¹¹⁷ Supra note 1.

¹¹⁸ Id.

¹¹⁹ Respondents to the interview were selected and interviewed purposefully. In this study, 5 community representatives, 5 women representatives, 3 religious leaders, 2 case workers, and 20 rape survivors from each IDP site are interviewed to get a clear picture of the reality.

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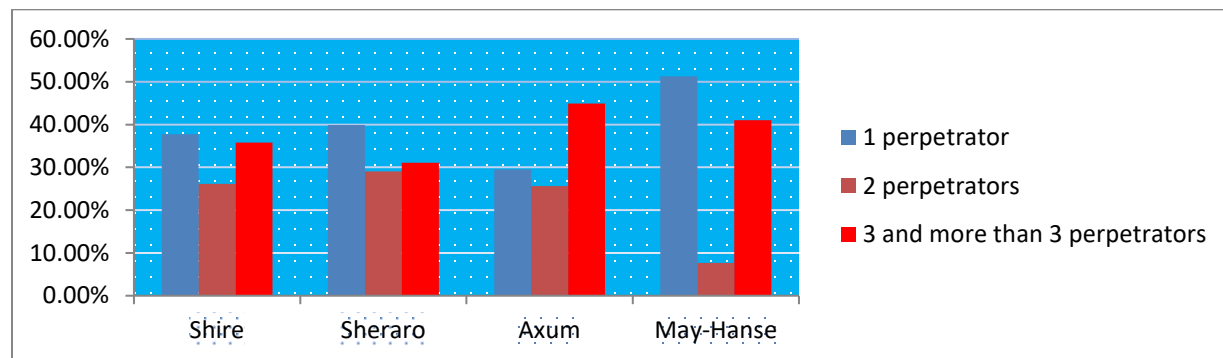
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GBV cases, i.e., 69.19%. From the rape cases, 37.22% were raped by one perpetrator, 25.7% by two, and the rest, 36.86%, were gang-raped (i.e., about 63% raped by two and more).

The following table and chart clarify the above data, listing incidents at each site.

IDP Site	GBV	Rape	No. of perpetrators		
			One	Two	3 or more
Shire	708	517	195	135	185
Sheraro	219	148	59	43	46
Axum	219	156	46	40	70
May-Hanse	97	39	20	3	16

To better clarify and emphasize on the numbers of the rape perpetrators, the above table is converted into the following chart.



Remark: Though this table does not fully describe the case of the whole Tigray, it is representative and expressive in terms of geographic coverage and substance.

The study result shows that the massive and brutal rape has infected 383 women with STIs, 50 with HIV, 27 suffering from fistulas, 64 exposed to unwanted pregnancy, and 74 suffering from ultra-vaginal prolapse. Besides, it has caused mental disability in 24 women and physical disability in 32 women.¹²⁰

¹²⁰ Bearing in mind the victim-shaming culture, the absence of medical check ups, and the desperation in the justice system, this number is only a fraction of reality. However, it clearly shows that the majority (around 63%) of the rapes are committed by two or more people. Looking into the number of cases, the number of perpetrators, and the health problems caused to the women, it is genuine to conclude that the rapes were deliberate, brutal, and aimed at causing humiliation, terror, and other lasting physical and psychological damages to survivors and their society.

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6.3. Crimes Committed in Tigray through the Use of Rape as a Weapon of War

Rape by itself is a grave human rights violation, and it is also an instrument to commit other crimes. The following are among the grave crimes committed against Tigrayan women through the use of rape as an instrument of war.

6.3.1. War crime

The Rome Statute of the ICC has stated that “committing rape, sexual slavery, enforced prostitution, forced pregnancy¹²¹, enforced sterilization, and any other form of sexual violence” is a war crime when such crimes are committed as part of a plan or policy or as part of a large-scale.¹²² Elements of this crime are: first, either of the above crimes should be committed; second, it should be planned; or third, it should be massive.

When we examine the Tigray case in line with the elements, it is more than enough.¹²³ The rape committed in Tigray was not an ordinary or peacetime rape, but rather a rape in an armed conflict of which the perpetrators were or would have been fully aware and acting upon a superior order. It was, indeed, a designed, informed, and organized war crime.

6.3.2. Crime against humanity

The Rome Statute stated that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity should be taken as crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.¹²⁴ Besides, the Statute of

¹²¹ Rome Statute, supra note 67, article 7, paragraph 2 (f). Forced pregnancy is the unlawful confinement of a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

¹²²Id. Article 8 (2) (e) (vi).

¹²³ The United Nations and Ethiopian Human Rights Commission had released a joint report on the commission of crimes against humanity and war crimes. Arbitrary killing, torture, and gang rape are reported to be committed in Tigray.

¹²⁴ICC, Elements of Crimes, Article 7 (1) (g). Rape is also a crime against humanity under customary international humanitarian law. <https://undocs.org/Home/Mobile?FinalSymbol=A%2F72%2F10&Language=E&DeviceType=Desktop> last visited on 22/08/2023.

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the ICTY and the Statute of the ICTR already included rape committed in armed conflict and directed against any civilian population as a crime against humanity.¹²⁵

The coercive, massive rape committed on Tigrian women and girls is part of an attack against the civilian population during the war. It was committed by Ethiopian and Eritrean forces, the Amhara Regional Police Special Force, and the Fano militia in a manner that was widespread and/or systematic, which amounts to a crime against humanity. It fulfills the elements of the crime: it is widespread¹²⁶ in magnitude and systemic¹²⁷ in operation; it is against civilian Tigrins who had no clue as to what was going on; and the perpetrators committed it with full intention.¹²⁸ A damage assessment study conducted in 2022 found about 120,000 rape survivors, including women and girls.¹²⁹ When we calculate it in percentages, it is terrible. Statistics¹³⁰ show that the total population of Tigray in 2023 will be around 6,038,452. Out of this total, the number of females accounts for 3,017,095. Though the massive rape of Tigrian women doesn't differentiate ages, adolescent girls and women (especially the reproductive ones) were mainly targeted. The total number of female children under the age of 14 is estimated to be 1,151,280, and the number of women above the age of 75 is 40,669. Assuming that most of the victims were from adolescence to old age (above 14 and less than 75), it can be concluded that around 6.5% of

¹²⁵ UN Security Council Resolution, Statute of the International Criminal Tribunal for the Former Yugoslavia, supra note 58, Art. 5; and UN Security Council Resolution, Statute of the International Tribunal for Rwanda, supra note 53, Art. 3.

¹²⁶As of August 2021, the number of rape cases ranged to 10,000. Refer https://en.m.wikipedia.org/wiki/Sexual_violence_in_the_Tigray_War. Adigrat Hospital recorded 376 rape cases within 6 months of the commencement of the war. This was a time when roads and communications were blocked, and perpetrators were in full control of the locality. See supra note 74. The Ethiopian Commission on Human Rights, which is considered to be affiliated with the incumbent government, stated on February 11, 2021, that it had received 108 rape cases.

¹²⁷ Systematic rape does not mean that each rape incident is planned; rather, the policy implicitly or explicitly encourages the commission of the crime. In the Ethiopian case, the soldiers themselves, in many instances, stated that they came to Tigray to rape Tigrian women and girls as a strategy to terrorize and humiliate Tigrins. Primarily, Abiy Ahmed, the Prime Minister of Ethiopia, has endorsed the wrongful acts of his soldiers and his allies, stating that "the women are penetrated by humans, while the members of the ENDF are penetrated with a knife," undermining the severity of rape.

¹²⁸ In a certain study through random sampling of 5171 women of reproductive age, 2241 (43.3%) were found to have experienced at least one type of GBV. It shows 411,500 sexual violence survivors are raped, of which 68.4 are gang-raped. The rape cases brought 16.5% STIs, 2.7% HIV, and 9.5% unwanted pregnancies. See supra note 87.

¹²⁹ Gesesew et al., *The impact of war on the health system of the Tigray region in Ethiopia: an assessment*, cited in supra note 16, p. 2.

¹³⁰ Tigray, Ethiopia: Statistics, <https://zhujiworld.com/et/208106-tigray-region/> last visited on 10/08/2023.

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Tigrayan women were raped during the war. This percentage is, perhaps, the highest world record for rape.

Total Population of Tigray	Total Female Population	Female >14	Female 15-74	Female <75	Number of rape survivors	Percent of rape in Tigray
6,038,452	3,017,095	1,151,280	1,861,146	40,669	120,000	6.5%

Remark: This paper does not conclude that there were no rape cases under the age of 14 or above 75, but it simply shows the higher percentage rate of rapes.

6.3.3. An act of Genocide

The Convention on the Prevention and Punishment of the Crime of Genocide, to which Ethiopia is the first signatory state, has defined genocide as an act of

‘Killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; or imposing measures intended to prevent births within the group... with an intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.’¹³¹

For an act to be treated as an act of genocide, it should fulfill the following elements: The act must be:

1. Either of the acts listed above
2. Against a national, ethnic, racial, or religious group; and
3. Committed with the intent to destroy the group, not just specific members of the group.

An act, whether it amounts to a crime of genocide or not, should be examined in light of the elements of the crime: material, mental, and legal elements. As to the first element, a criminal

¹³¹ Convention on the Prevention and Punishment of the Crime of Genocide, U.N. General Assembly Resolution 260 (III) A of 9 December 1948, Art. 2. The convention has listed broad sets of accounts that independently constitute genocide crimes, and genocide should not be understood to be limited to mass killings only.

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investigation should produce the commission of either of the acts listed under Art. 2(a-e) of the Convention against a national, ethnic, racial, or religious group. The fulfillment of the second element is examined by looking into the intent of the suspect in committing the acts stated above. A specific intent to destroy a group is required here. The convention requires a *dolus specialis* (specialized intent), not mere knowledge or awareness of an act and its consequences.¹³² Though rape is not explicitly listed as an act of genocide, it lies within the ambit of genocide when it is committed with the intent to destroy a group through rape. Rape amounts to a genocidal act when the acts stipulated under the Genocide Convention, such as killing, causing bodily and mental harm, inflicting conditions calculated to bring physical destruction of life, or imposing measures that prevent births, are committed through rape. The best precedent for genocidal rape is the ICTR's judgment in the Akayesu case. It precisely concluded that 'sexual violence was a step in the process of destruction of the Tutsi group—death of the spirit, the will to live, and of life itself'.¹³³

When we assess the Tigrian case, interviews with survivors demonstrate that perpetrators were clearly saying that their intent was to destroy the Tigrian women and their Tigrian ethnic group. Many women were raped and killed; tortured to suffer lasting physical and psychological harm; infected with HIV to be ethnically destroyed in the long term; mutilated and sterilized to stop giving birth; and gang raped and humiliated in front of their families. The rapists committed these acts with a clear intent to halt the blood line and stop the Tigrian generation. The intent can also be inferred from the words of the leaders and their soldiers. The total scratch of Tigrian identity from history was consistently propagated through government-owned and private media outlets. One of the mechanisms used to achieve this goal was the rape of Tigrian women. The modes of the mass rape discussed above and the specific intent to destroy the Tigrian ethnic group are identical to those of the Rwandan genocidal rape manifested in the Akayesu case in all

¹³² For a detailed discussion on the nexus between rape and genocide, see Sherrie L. Russell-Brown, *supra* note 21, and Awet Hailezgi Tefera, *The Elements of Rape as a Crime of Genocide under International Criminal Law: Case Law Analysis*, Mekelle University Law Journal, Vol. 2 No. 1 (2014). It is not the number that matters in the crime of genocide, but why it is committed. When it comes to rape, the numeric assessment matters less, and the intent and rhetoric used by perpetrators are what are essential.

¹³³ Akayesu Judgment, *supra* note 7, para. 732

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elements of genocide. Having a look at the elements of the crime of genocide, it can be concluded, hence, that rape was used as a weapon of war in Tigray to commit the genocide crime.

Generally, the numbers and the brutality of the rapes assure that grave international crimes, such as war crimes, crimes against humanity, and genocide, were committed in Tigray through the tool of rape as a weapon of war.¹³⁴

6.4. State Response: Admission or Denial?

In many instances where rape is used as a weapon of war, authorities deny commission and responsibility for the crimes. For instance, Rakhine's Minister for Border Affairs, Phone Tint, asserted, in response to allegations of massive rape of Rohingya women, "These women were claiming they were raped, but look at their appearances. Do you think they are that attractive to be raped?"¹³⁵ U Aung Tun Thet, the chief coordinator of the Myanmar government body dedicated to the Rohingya crisis, also denied the allegations, declaring "there is no ethnic cleansing or genocide in our country."¹³⁶

In the Tigray case, human rights organizations, media outlets, and health centers have documented sexual assaults, rape, gang rape, and other forms of sexual violence committed by Ethiopian soldiers and their allies, such as the Eritrean army and local militia, throughout the war.¹³⁷ On February 11, 2022, Filsan Ahmed, Ethiopian Minister of Women, Children, and Youth, tweeted: "Our taskforce team on the ground in the Tigray region has unfortunately

¹³⁴Pan African Lawyers Union, Legal Action Worldwide (LAW), Debevoise, and Plimpton had submitted "widespread and brutal sexual and gender-based violence against Tigrayan women, men, and children, often wielded as a weapon of war in order to intimidate and dehumanize" as part of the submission to the UN, EU, and US. Then, experts from the addressee agencies found that multiple human rights organizations have found that war crimes, crimes against humanity, and ethnic cleansing are committed in Tigray. But they still failed to call the genocide by its name. See Pan African Lawyers Union et al., *Allegations of Massive Human Rights Violations in Tigray Submitted in Landmark Case Against Ethiopia*, Press Release, 13 December 2022.

¹³⁵AlJazeera, *Army's Rape of Rohingya Women Sweeping, Methodical: AP* December 10, 2017. <https://www.aljazeera.com/news/2017/12/rape-rohingya-women-sweeping-methodical-ap-171211063236832.html> last visited on July 1, 2023. Rakhine is a regional state of Myanmar.

¹³⁶ Hannah Beech and Saw Nang, *Myanmar Rejects U.N. Findings: 'No Ethnic Cleansing or Genocide in Our Country'*, March 14, 2018, <https://www.nytimes.com/2018/03/14/world/asia/un-myanmar-rohingyagenocide.html>

¹³⁷ <https://twitter.com/POEthiopia/status/1362836907164581889>. 19 February 2021.

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established that rape has taken place conclusively and without a doubt." Abiy Ahmed, the Prime Minister of Ethiopia, had also stated that reports indicate that atrocities were being committed by raping women.¹³⁸ Besides, in a video speech to his officials, a certain Ethiopian general also admitted that Tigrian women were raped in the presence of federal police and official administration.¹³⁹ In this regard, the Ethiopian government has admitted the commission of rape crimes during the war.

Rapes and other forms of sexual violence have continued well after the peace deal was signed. Though health workers confirmed this to Deutsche Welle (DW), a request for comment about the pervasive rape sent to Ethiopian government spokesperson Legesse Tulu went unanswered. On the Eritrean side, Eritrean Information Minister Yemane G/Meskel denied any wrongdoings by Eritrean soldiers in Tigray in a response to Deutsche Welle (DW), stating that Eritrean soldiers have never been accused of rape and all the allegations are fabricated stories.¹⁴⁰ Isayas Afewerki, President of Eritrea, also denied the fact on the ground, stating, "Everybody is talking about human rights violations (rape, looting) committed by Eritrean forces; this is a fantasy in the minds of those who own this factory, which I call a factory of fabricating misinformation."¹⁴¹ Since the tragedy was mastered by the leaders themselves, the Eritrean government's denial of the fact on the ground is just expected.

6.5. Actors and Responsible Organs of the Rape in Tigray

The Ethiopian government, allying with foreign and local partners, has committed an atrocious rape against the Tigrian women. It has played the designer and performer roles in using rape as a weapon of war. Leaders' public speech verifies this indication. Some of the speeches that encourage the atrocity are presented below.

¹³⁸ Africanews, AFP, and AP: *Ethiopia's leader Ahmed admits atrocities committed in Tigray*, 23/03/2021, <https://www.africanews.com/2021/03/23/ethiopia-s-leader-ahmed-admits-atrocities-committed-in-tigray/>, last visited on August 22, 2023.

¹³⁹ YouTube: *Ethiopian forces admit rape in the Tigray Capital, Mekelle*, <https://www.youtube.com/watch?v=sX-GmMwEF10>

¹⁴⁰ Supra note 86.

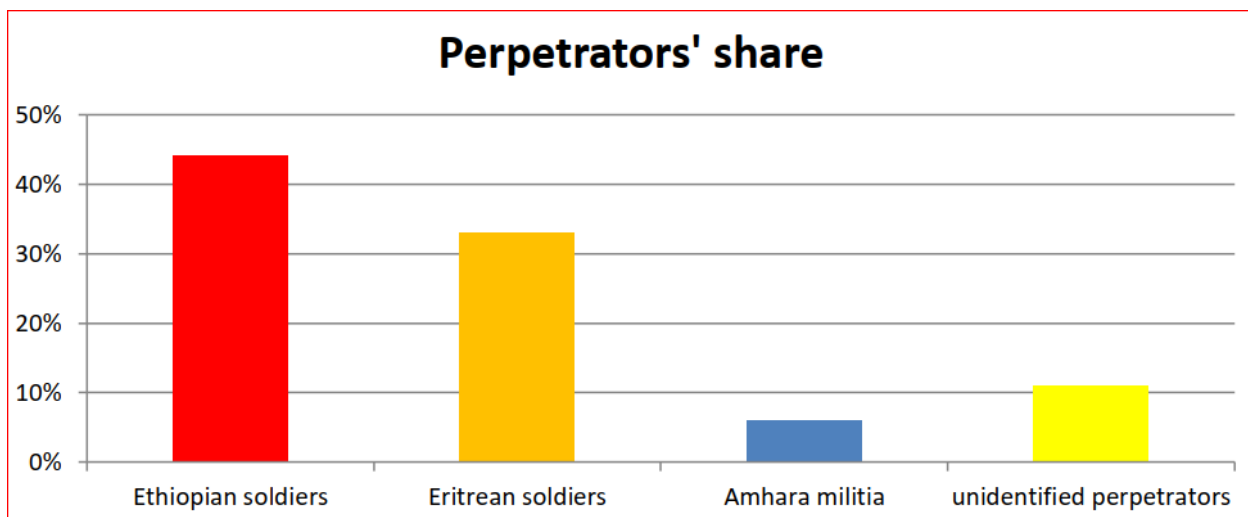
¹⁴¹ Catherine Byaruhanga, *Ethiopia war in Tigray: Eritrean soldiers accused of rape despite peace deal*, BBC News, <https://www.bbc.com/news/world-africa-64635898>, last visited on July 12, 2023.

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In many instances, Abiy Ahmed had been encouraging the use of rape as a weapon of war. First, citing previous military presences in Tigray, he said the soldiers who went to Tigray in several instances, during the time of Menelik and later during the Ethio-Eritrean war, had 10 kids each in Tigray.¹⁴² This public speech is made just to undermine the gravity of rape and to convey the message that rape is nothing but normal. It, however, clarified that the goal of the rape is to cleanse the Tigrayan bloodline.

Second, on March 21, 2020, Abiy mocked the rape of Tigrayan women, saying, “These women have only been penetrated by men, whereas our soldiers were penetrated by a knife.”¹⁴³

As reported by the rape survivors, ENDF, EDF, ASF, and Fano were the actors of the atrocious rape on the Tigrayan women and girls. A study that found 120,000 rape survivors identifies who the perpetrators of the rapes were. It is summarized as follows:¹⁴⁴



Ethiopia and Eritrea have ratified and are bound by the International Covenant on Civil and Political Rights (ICCPR), the International Covenant of Economic, Social, and Cultural Rights (ICESCR), the Convention against Torture (CAT), and the Convention on the Elimination of All

¹⁴²EBC, ጠቅላይ ሚኒስትር ዶ/ር አብይ አህመድ ከአምባሳደሮች ጋር ያደረጉት ንግግር የመጨረሻ ክፍል <https://www.youtube.com/watch?v+u0-RF8Eov0> last visited on 20/08/2023.

¹⁴³ Jan Nyssen et al., *From apologies to atrocities: How to make sense of leadership statements in Ethiopia*, World Peace Foundation, June 19, 2021, in How Prime Minister Abiy encourages rape in his public statements, Eritrean Hub; <https://www.twitter.com/womenoftigray/status1374723950786318336?s=20> last visited on July 21, 2023.

¹⁴⁴ Gesesew, supra note 131, p. 2.

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Forms of Discrimination against Women (CEDAW).¹⁴⁵ Ethiopia has also ratified Additional Protocol II to the Geneva Conventions, which is part of the International Humanitarian Law (IHL) and regulates non-international armed conflicts. Besides, both Ethiopia and Eritrea are bound by customary international humanitarian and customary international criminal law, along with the UNSC resolutions under the Women, Peace, and Security agenda.¹⁴⁶ Both governments bear responsibility for the war crimes committed by their uncontrolled or ordered soldiers.

Further, the Eritrean forces were placed at Ethiopia's disposal and were deployed to exercise government functions. Hence, the Ethiopian government, together with its Eritrean counterpart, is responsible for the wrongdoings committed by Eritrean forces as well.¹⁴⁷

As to the responsibility of the Amhara Special Forces and Fano militia, the Ethiopian government takes it for granted, as these groups were deployed, were fighting alongside the Ethiopian forces, and/or were carrying out government functions as they committed the horrific rapes.

States are responsible for failures to prevent and respond to rape by non-state actors. The Ethiopian government, hence, is responsible for the violation of human rights and IHL directly and/or for the breach of their international human rights law obligations to exercise due diligence to protect human rights against those whose conduct is not attributable to the state.

Though the Ethiopian and Eritrean officials should be responsible and held criminally liable for the atrocities their soldiers have committed in Tigray, the problem lies in a forum with jurisdiction to try the case. The ICC is the only international court that is created to investigate and prosecute the gravest crimes, such as genocide, war crimes, and crimes against humanity. The ICC comes to prosecute such crimes when the state in question is unwilling or fails to genuinely carry out the investigation, prosecute the perpetrators, and deliver justice to victims of

¹⁴⁵ See Ratification of 18 International Human Rights Treaties, <https://indicators.ohchr.org>. See also the list of countries that have signed, ratified, or acceded to the African Charter on Human and Peoples' Rights, June 15, 2017, https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf, last visited on August 20, 2023.

¹⁴⁶ Amnesty International, supra note 114, p. 30.

¹⁴⁷ ILC, Articles on State Responsibility, Article 6.

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human rights violations. However, it cannot do so in Ethiopia since the state is not a party to the court. Ethiopia is not a party to this global justice system. The fear of potential accountability for violations of treaty terms is the main reason that hinders Ethiopia and other states from being parties to the ICC.¹⁴⁸ African leaders, generally, have the fear not to be accused in the ICC. They close their doors for investigations of violations of human rights and are not justice-friendly. The African Union (hereinafter AU), which is expected to safeguard human and people's rights, had dared to call African States Parties for mass withdrawal and to implement a policy of non-compliance and non-cooperation with the ICC.¹⁴⁹ The then Ethiopian Prime Minister and Chair of the Assembly of the AU had also stated that the ICC's process had "degenerated into some kind of race hunting."¹⁵⁰

There are two mechanisms through which the ICC could gain jurisdiction over Ethiopia and Eritrea. These are state referrals and referrals by the UNSC. The first option, state referral, comes to mind when a state is unable to bring and punish perpetrators within its jurisdiction through its local judicial organs. This is an almost-locked option in this case because it is unthinkable that either or both of Ethiopia and Eritrea would willingly submit themselves to the ICC's jurisdiction since the leaders would be directly accountable for the commission of the grave crimes.¹⁵¹

¹⁴⁸ Kassahun Molla Yilma, Ethiopia Insight: Accountability for Atrocities—Why Ethiopia Should Join the ICC, February 2, 2021. <https://www.ethiopia-insight.com/2021/02/02/accountability-for-atrocities-why-ethiopia-should-join-the-icc/> last visited on July 23, 2023. Totally, 33 states out of the 123 states parties to the Rome Statute are African states. Kenya and Djibouti are Ethiopia's neighboring states that ratified the Rome Statute.

¹⁴⁹ African leaders are criticizing the ICC as a tool of selective justice used by Westerners. However, it is groundless skepticism, as most of the grave crimes are committed in Africa, most of the time backed by the leaders themselves. For instance, the use of rape as a weapon of war, which is in turn the crime of genocide, war crime, crime against humanity, and other serious international crimes, is committed in African states such as Rwanda, the D.R. Congo, Sierra Leone, Liberia, Sudan, and now Ethiopia. Hence, the researcher believes that African leaders oppose the ICC for fear of prosecution for the crimes they engage in, not for the court's bias against Africans. For instance, the AU was conspiring and campaigning against the ICC not to proceed to try Uhuru Kenyata. Though the African state parties to the ICC still have to keep their obligations under the Rome Statute and the ICC was working against impunity, the AU members were setting a precedent not to be prosecuted for the crimes they could possibly commit at home anytime.

¹⁵⁰ Kassahun, *Supra* note 150. As to the Tigray case, the AU kept silent after AU Commission head Moussa Faki described Ethiopia's military operation in Tigray as legitimate, regardless of the alarming reports about the atrocious situation on the ground.

¹⁵¹ Both Ethiopia and Eritrea have not signed the Rome Statute of the ICC. State referral under Art. 13(a) of the Rome Statute works only for State Parties to the Statute, and the investigation upon the initiation of the prosecutor under Art. 13(c) and Art. 15(1) is allowed on crimes that lie within the jurisdiction of the court. Sometimes,

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The second option, UNSC's referral, however, is still open. The Darfur case is the best precedent for Tigray's case. Though Sudan is not a party to the Rome Statute, the UNSC referred the case to the ICC through Resolution 1593 of 2005 after a thorough investigation of violations of international humanitarian and human rights laws. The ICC then exercised jurisdiction over Sudan through the UNSC's referral. Hence, Sudan government officials, Janjaweed militia leaders, and leaders of the Renaissance Front were charged by the ICC with allegedly committing genocide, war crimes, and crimes against humanity through killings, rape, torture, and other acts.¹⁵²

Just like the Darfur Case, massacres, mass displacement, gang rapes, pillaging, and other grave crimes are attributions of the Tigray war. Moreover, the UNSC has issued Resolution 1970/2011 and referred Gaddafi's case to the ICC.

These are good precedents for Tigray's case, and since the Rome Statute states that crimes under the ICC's jurisdiction are not subject to any statute of limitation¹⁵³, the UNSC is required to do the same thing in this case as well.

6.6. Local Legal Measures taken against Rape Perpetrators: Impunity or Justice?

The Ethiopian Prime Minister Abiy Ahmed had said that his government would hold accountable any soldier found responsible for rape in response to investigations that reveal that thousands of women have been raped and tortured and that rape was being used as a weapon of war against

however, states submit themselves to the ICC's jurisdiction in cases where crimes under the ICC's jurisdiction are committed within their territory, even if they are not parties to the ICC. For instance, Côte d'Ivoire did so in 2003. With the roles of the Ethiopian and Eritrean governments at stake, state referral seems to be locked for the Tigray case. See Alexis Arieff *et al.*, *International Criminal Court Cases in Africa: Status and Policy Issues*, Congressional Research Service, 2011, p. 6.

¹⁵² Darfur, Sudan, International Criminal Court, <https://www.icc-cpi.int/darfur>, last visited on 10/08/2023. UN Secretary General Antonio Guterres had warned the UNSC, stating that 'inflammatory rhetoric and ethnic profiling' are piercing apart the Ethiopian social fabric and a 'humanitarian catastrophe' is unfolding in Tigray. The UNSC was unable to reach consensus on the Tigray case. Russia and China defended the Ethiopian government, raising state sovereignty and other reasons. However, the reality on the ground requires and allows the Council to review its stand on the case once again to avoid impunity for the grave breach of human rights. See Security Council Report, "*Ethiopia (Tigray): Open Briefing, What's In Blue*, July 2, 2021.

¹⁵³ Supra note 67, Art. 29. The potential problem, here, is that decisions of the UNSC are politically influenced.

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women in Tigray.¹⁵⁴ Filsan Abdi, the Ethiopian Minister of Women, Children, and Youth, had also stated that her government has a zero-tolerance policy towards any form of sexual violence.¹⁵⁵

However, the only legal measure, though with no available information about the trials and other legal proceedings, taken against the rape perpetrators was what the Ethiopian authorities announced in May 2021: that they have convicted 3 and indicted 25 Ethiopian soldiers for rape and other acts of sexual violence, respectively. The government failed to take concrete measures to stop and prevent such crimes, and the prosecutions, if any, were far from adequate given the scale of reported abuses.¹⁵⁶

Hence, rape has continued unabated and even increased in the second half of the conflict. Though the damage of rape can never be undone, the primary thing that should have been done to lessen the damage caused to the survivors is justice. It at least requires individual accountability and/or state responsibility for the violations¹⁵⁷; and redress and reparation for the harms suffered. Justice serves here as punishment, deterrence, and remediation, and it gives survivors a glimmer of hope. Impunity, on the other hand, is a ‘green light’ and ‘two thumbs up’ signal for perpetrators and potential offenders to further commit the offense. It also demoralizes survivors and precludes them from reporting cases.

¹⁵⁴ Supra note 67, Art. 29. The potential problem here is that the decisions of the UNSC are politically influenced.

¹⁵⁵ Wikipedia, *Sexual violence in the Tigray War*, https://en.m.wikipedia.org/wiki/Sexual_violence_in_the_Tigray_War, last visited on 10/08/2023.

¹⁵⁶ The Elders, *the UN, and the AU must act now to prevent famine and end atrocities in Tigray, Ethiopia*,” June 14, 2021. What is more concerning is that the peace deal signed on November 2, 2022, between the Federal Government and the Tigray People’s Liberation Front could not yet bring accountability to the Ethiopian government and its allied forces for the grave human rights violations they committed in Tigray. It has been more than a year since the peace deal was signed. The researcher, hence, feels consternation that political reconciliation may lead to absolute impunity rather than justice. Taking the independence of the state-sponsored domestic justice system into account, the transitional justice process also seems to be a camouflage to fight impunity because the Ethiopian government is still firm in prohibiting independent human rights investigations by international institutions, like the International Commission of Human Rights Experts on Ethiopia (ICHREE).

¹⁵⁷ In modern criminology, there are individual and state criminal responsibilities. Individual criminal responsibility is the responsibility of an individual for a crime committed in his individual capacity, while a ‘state crime’ or a ‘state-organized crime’ is any action that violates international public law or a state’s own domestic law committed by individuals acting for or in their capacity as agents of the state. See Christopher W. Mullins, supra note 19, p. 8.

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Generally, no formal local legal action has been taken against the perpetrators of the terrible rape that was committed. The peace agreement also appears to be a shadow over the sun of justice rather than an opportunity to avoid impunity.

Conclusion

International laws and decisions have prescribed that the use of rape as a weapon of war amounts to grave international crimes, including, *inter alia*, war crimes, crimes against humanity, and genocide. A legal appraisal of the Tigray case satisfies the commission of these crimes more than enough. The modes of rape, the hate speeches on Tigrians, and the magnitude of the rape vividly show that rape was used as a strategic weapon of war to annihilate the Tigrayan ethnic group. The ENDF, EDF, ASF, and Fano were the perpetrators of these grave crimes of international concern. So far, the Ethiopian government has failed and is unwilling to protect Tigrayan women from this horrific rape, to bring perpetrators to justice, and to provide remedies to victims. Since the crimes were committed under the direct command of the Ethiopian government and perpetrators were placed in Tigray to accomplish the Ethiopian government's tasks, the latter is the primarily accountable body. The Eritrean government is also responsible for the crimes committed by soldiers under its effective command and control.

In addition to aggravating speeches, the Ethiopian government has been blocking investigations into allegations of human rights violations to secure impunity, as the government is a director of the use of rape as a weapon of war. Hence, nationally, it is unthinkable that justice would be served. Besides, it is difficult to hold Ethiopians responsible under treaty bodies because Ethiopia is not a party to the protocols establishing the treaty bodies. Since government authorities, the UN, and affiliated organizations, human rights groups, media outlets, scholars, and medical institutions have unanimously agreed on the commission of grave rape crimes in Tigray, the UNSC is required to work against impunity. The UNSC should use its power to refer the case to the ICC, and Ethiopian and Eritrean authorities who are by commission and/or omission accountable for the atrocious rape should not go unpunished. Otherwise, there will be an international trend of impunity for grave crimes of international concern.

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